POLICY BRIEF ON HIV, HEPATITIS C, AND STBBIs AMONG INDIGENOUS PEOPLE

HIV LEGAL NETWORK | RÉSEAU JURIDIQUE VIH

COMMUNITIES, ALLIANCES & NETWORKS | CAAN

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Land Acknowledgement

CAAN and the HIV Legal Network are located across this land now called Canada on treaty lands, stolen lands, and unceded territories of many different Indigenous groups and communities who have respected and cared for this land since time immemorial. Together, we work to address the ongoing injustices and resulting health inequities faced by Indigenous Peoples, which contribute to the disproportionate impact of the HIV epidemic on Indigenous communities. We are committed to learning to work in solidarity and to dismantling and decolonizing practices and institutions to respect Indigenous Peoples and Indigenous ways of knowing and being.

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Who We Are

CAAN Communities, Alliances and Networks is a national organization that provides a forum for Indigenous peoples across Canada to holistically address health issues, with a particular focus on HIV, hepatitis C (HCV), sexually transmitted blood-borne infections (STBBIs), and tuberculosis (TB). CAAN produces culturally relevant resources to assist and empower Indigenous peoples in preventing infectious disease, which CAAN strives to address within an Indigenous context — recognizing that Indigenous peoples in Canada do not hold monolithic beliefs or positions. This means approaching these questions by respecting our differences and accentuating our unity and strength in a spirit of wholeness, healing, and cultural safety.

> **Social determinants of health** refer to the various social, economic and environmental factors that influence a person's health outcomes. Examples of social determinants of health, which can lead to health inequities, include income, education, food insecurity, housing, access to health services, gender, culture, and race, among others.

In light of CAAN's mission to promote a "social determinants of health" framework, its policy positions touch on issues that are closely linked to the transmission of HIV, HCV, and STBBIs among Indigenous people, and the ways in which prevention, testing, treatment, care, and support services are made available and accessible in Indigenous communities. Moreover, CAAN believes strongly in the power and significance of the Calls for Action released by the Truth and Reconciliation Commission (TRC) in 2015, and of the Calls for Justice released following the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) in 2019, to stimulate meaningful change for Indigenous peoples living in Canada. CAAN's mandate is also closely linked to the 24 preambular paragraphs and 46 substantive articles of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration).

The HIV Legal Network ("Legal Network") is one of the world's leading organizations tackling legal and human rights issues related to HIV, and works to defend the rights of people living with HIV, as well as communities disproportionately affected by HIV, including gay, bisexual and other men who have sex with men (GBMSM), people who use drugs, sex workers, persons who are incarcerated, and Indigenous peoples. Crucially, the Legal Network strives to employ an intersectional lens by analyzing how multiple identities and compounding determinants of health can affect individuals when it comes to laws and policies relating to HIV, HCV, and STBBIs.

In 2022, the Legal Network recommitted to the important work of reconciliation in its latest strategic plan (*Rights Within Reach*) for 2022–2027, pledging to centre Indigenous perspectives in its work. In addition, the Legal Network strives to increase its understanding of how Indigenous communities are disproportionately affected by HIV, punitive laws and policies, and criminalization (in all its forms) and to develop resources to honour the Calls to Action of the TRC and the Calls for Justice of the MMIWG Inquiry.

Both CAAN and the Legal Network are guided in our work by a deep commitment to the meaningful involvement and engagement of people living with HIV and of people with relevant lived and living experience. Consequently, this policy brief has been developed in consultation with key populations involving dialogues with diverse Indigenous communities, including people living with HIV, people who use drugs, sex workers, and people with lived experience with incarceration. Together, CAAN and the Legal Network hope that adopting rights- and evidence-based policy positions in the areas of drug policy, sex work, and prisons can have a transformative effect in realizing the right to health of Indigenous people in relation to HIV, HCV, and STBBIs.

Context

The strength and resilience of Indigenous Peoples in Canada is rooted within a rich diversity of cultures, traditions, and values that have long been nurtured by Indigenous health systems and healing practices. Despite this, Indigenous people have been — and continue to be — deeply affected by the history of colonialism, racism, and systemic discrimination in Canada. **The final reports from the TRC and the MMIWG Inquiry clearly demonstrated how residential schools, the Sixties Scoop, and other manifestations of cultural oppression, structural violence, and abuse have resulted in long-lasting health impacts, intergenerational trauma, and economic and social marginalization for Indigenous peoples in this country.**[1] These systems of oppression have affected a range of social determinants of health, including income, education, employment, social status, working and living conditions, health practices, and child development.[2] In turn, trauma and marginalization have contributed to higher and disproportionate rates of HIV, HCV, STBBIs, and TB among Indigenous people,[3] which is exacerbated by ongoing discrimination and barriers that they face in their access to essential health care. In particular, Indigenous women face disproportionate rates of HIV, HCV, and STBBIs.[4] As the TRC report puts it, "the residential school system was an attack on the health of generations of Aboriginal peoples, an attack first made visible by the physical scars of sickness and abuse, but also one that continues to punish Aboriginal peoples with a legacy of marginalized lives, addiction, mental health, poor housing, and suicide."[5] Compounding these determinants of health, Indigenous peoples continue to be subject to disproportionate levels of criminalization and incarceration that further fuel a cycle of disadvantage and human rights violations.[6]

Effectively addressing HIV, HCV, and STBBIs among Indigenous people requires the adoption of a human rights approach, focusing on evidence-based and culturally sensitive interventions that embrace Indigenous ways of knowing and doing. In addition to the legal and policy recommendations described below, it is imperative moving forward that access to emerging health care technologies and new testing and treatment options be made truly equitable. The knowledge and benefits of scientific research and development (e.g. pre-exposure prophylaxis [PrEP], long-acting injectables, multiplex testing, self-testing, etc.) must be shared with all, so that Indigenous communities can achieve equitable outcomes in realizing the right to health.

Effectively addressing HIV, HCV, and STBBIs among Indigenous people requires the adoption of a human rights approach, focusing on evidence-based and culturally sensitive interventions that embrace Indigenous ways of knowing and doing.

At the same time, prohibitionist models based on criminalization have repeatedly failed to improve health outcomes and have instead caused great harm and damage, particularly for Indigenous communities. Practices and institutions, many of them interlinked, must be dismantled in order to holistically respond to the needs of Indigenous peoples and to uphold their rights, as per calls from the TRC report and the MMIWG Inquiry. In particular:

- **Call for action 19 of the TRC report** requires state actors to close gaps in health outcomes between Indigenous and non-Indigenous communities.
- **Call for action 30** mandates that governments at all levels commit to eliminating the overrepresentation of Indigenous people in custody.
- **Call for justice 3.1** from the MMIWG Inquiry requires state actors to ensure the equitable protection of the rights to health and wellness of Indigenous peoples (specifically women, girls, and 2SLGBTQQIA persons).
- **Calls for justice 3.2, 3.4, 7.1, and 7.2** require state actors to properly fund and resource accessible and culturally appropriate health and wellness services for Indigenous communities, including trauma and addictions treatment programs.

Importantly, the specific needs and interests of Métis and Inuit people, particularly when it comes to health, must be considered alongside those of First Nations communities, as highlighted in **calls 16.7 and 17.21** of the MMIWG Inquiry.

Additionally, there are various sources of international human rights law, which act as key reference points substantiating the positions in this policy brief. The most prominent of these is the UN Declaration, which Canada fully endorsed on the international stage in 2016 and incorporated into domestic law in 2021.[7] **The UN Declaration guarantees Indigenous peoples the right to the full enjoyment of all human rights and fundamental freedoms recognized by the United Nations Charter,** the Universal Declaration of Human Rights, and international human rights law (article 1), particularly the right to non-discrimination (article 2), the right to life, physical and mental integrity, liberty and security of the person (article 7), the right to participate in decision-making on matters that affect their rights (article 18), the right to the improvement of economic and social conditions including in the area of health (article 21), the right to be actively involved in developing and determining health and social programming (article 23), and the equal right to the highest attainable standard of physical and mental health and the right to the maintenance of traditional health practices (article 24). As confirmed by the MMIWG Inquiry, Canada's obligations under the international human rights framework can serve as valuable accountability mechanisms and benchmarks when it comes to improving outcomes for Indigenous Peoples.[8]

Drug Policy Reform

Drug policy in Canada is rooted in racism and colonialism,[9] and Indigenous communities have experienced long histories of drug policy harms. Among Indigenous people living with HIV in Canada, transmissions are attributable to injection drug use at a much higher rate than for non-Indigenous populations.[10] Against the backdrop of a toxic drug poisoning crisis in Canada fueled by an unregulated drug supply,[11] Indigenous peoples have also suffered a disproportionate proportion of fatal overdoses.[12] Despite representing only 3.2% of British Columbia's population, First Nations people represented 15% of victims of overdose deaths in the province between 2021 and 2022, dying at over five times the rate of other British Columbia residents.[13] Indigenous women have suffered even more disproportionately, as statistics from the first half of 2022 indicated that First Nations women in British Columbia were 8.8 times more likely to fatally overdose compared to other women.[14] The disproportionate representation of Indigenous people in the drug poisoning crisis has been attributed to many factors, including racism and consequent barriers to health care, ongoing and intergenerational trauma, and limited access to mental health and drug treatment.[15] Indigenous peoples (and other racialized populations) are also over-policed and over-incarcerated,[16] in a context where access to harm reduction and other essential health care in prison is far from equivalent to what is available in the community.[17] Indigenous women in particular are more likely to be incarcerated for drug-related offences than white women.[18]

While incremental steps have been taken to scale up health and harm reduction services, key measures to prevent HIV and HCV transmission and drug poisoning, such as **needle and syringe distribution programs, supervised consumption services, drug checking, opioid agonist therapy, naloxone kits,** and **safe supply programs** that provide drugs that traditionally have been available only through the unregulated drug market, are inaccessible for many people who use drugs. As scientific experts and leading actors in the fields of health and human rights have endorsed, access to harm reduction services is an essential part of the right to health and an effective tool for reducing virus transmission incidental to drug use.[19]

Needle and syringe distribution programs: Help reduce transmission of HIV and HCV for people who inject drugs by providing sterile drug use equipment.

Supervised consumption services: Provide safe, clean space for people to bring drugs to use, in the presence of trained staff or volunteers, helping to reduce risk of overdoses and HIV or HCV transmission.

Drug checking: Provides people the opportunity to detect the substances in their drugs, which can help reduce the risk of overdose.

Opioid agonist therapy: Safe and effective treatment for people who use opioids to prevent withdrawal and lower cravings for opioid drugs, which has been found to reduce sharing of injection drug equipment and the risk of HIV and HCV transmission.

Naloxone: A fast-acting drug used to temporarily reverse the effects of opioid overdoses.

Safe supply programs: Measures adopted to provide a legal and regulated supply of drugs to people who use drugs, enabling them to reduce the risks of overdose and other harms to health associated with toxic drugs on the unregulated market.

Moreover, as UNAIDS has acknowledged, the criminalization of drug possession for personal use (i.e. "simple drug possession") is not a productive public health approach.[20] At their core, prohibitionist and abstinence-based models of drug regulation focused on criminalization and moral condemnation place people who use drugs at greater risk of acquiring HIV and HCV.[21] Criminalization drives people who use drugs into isolation and away from vital health care and social services, and fosters unsafe practices (e.g. sharing drug use equipment, hurried drug consumption, using drugs alone and/or in unsafe environments to avoid detection and arrest).[22] Ultimately, criminalizing drug use directly fuels discrimination and stigma (both internal and external) for people who use drugs, which adversely affects mental and physical health and leads to exacerbated health inequities for these communities.[23]

Encouragingly, recent sentencing reforms have resulted in the repeal of mandatory minimum sentences for drug offences and **expanded alternatives to incarceration for people who use drugs,** including by making conditional sentences available.[24] Sentencing laws that allow judges to properly account for the individual circumstances of Indigenous people are an essential component in a human rights–compliant drug policy that help mitigate the harmful consequences of criminalization and incarceration.

To minimize the harms and inequities posed by criminalization, governments must also **fully decriminalize the simple possession of all types of drugs** through the repeal of section 4 of the *Controlled Drugs and Substances Act* (CDSA) and section 8 of the *Cannabis Act.* As well, **decriminalization should extend to section 5 of the CDSA in regards to the phenomenon of "necessity trafficking,"** wherein individuals incur criminal liability for the selling and sharing of a controlled substance for subsistence purposes, to support the costs of their own personal drug use, and/or to provide a safe drug supply.

Decriminalization would lead to better health outcomes and alleviate some of the harms of drug prohibition, which demonstrably fuels social marginalization, poverty, homelessness, the transmission of HIV and HCV, and drug poisoning deaths.[25] A number of expert actors and organizations in the field of public health and human rights, including the UN Office of the High Commissioner for Human Rights, UNAIDS, and the World Health Organization also recommend decriminalizing simple drug possession as a key element to reduce HIV and HCV incidence among people who inject drugs,[26] especially when combined with access to harm reduction services.[27] In light of the proportion of Indigenous people who contract HIV through drug injection, particularly Indigenous women, decriminalization would represent a key step towards furthering equality and realizing the right to health for Indigenous communities.

Other interventions to assist people who use drugs should also be made accessible, including drug education, treatment, rehabilitation, and social reintegration services, with special concern afforded to the needs of Indigenous peoples and to traditional healing practices **(CFA 22)**. In particular, the TRC report emphasized that treatments for Indigenous people are most effective when they are grounded in traditional Indigenous values and teachings and in a holistic approach to healthy living.[28] Additionally, it is important that **high quality gender-specific — including for trans, non-binary, and Two-Spirit people — and culturally safe harm reduction services and programs be made available and accessible for Indigenous peoples.**[29] Crucially, these services should be designed and delivered by Indigenous peoples in a manner that is consistent with the diverse traditions, cultures, languages and values of the different Inuit, Métis, and First Nations communities living in this country **(CFJ 7.1)**.[30] The importance of culturally appropriate care, respect for traditional practices, and the need for specific measures for Indigenous peoples when it comes to realizing the right to health has been recognized by the UN Committee on Economic, Social and Cultural Rights.[31]

Criminalization drives people who use drugs into isolation and away from vital health care and social services, and fosters unsafe practices.

The proposed drug policy reforms would address the calls for action and calls for justice from the TRC and from the MMIWG Inquiry in relation to health and to justice. In particular, drug decriminalization, different means of decarceration (i.e. community sanctions and conditional sentences, alternatives to imprisonment, etc.), and increased access to culturally sensitive harm reduction services respond to:

- **calls for action 18 and 19 of the TRC report,** helping governments to implement health-care rights of Indigenous people and close gaps in health outcomes between Indigenous and non-Indigenous communities;
- calls from the MMIWG Inquiry with respect to the provision of trauma-informed and culturally sensitive health and wellness services to Indigenous peoples, especially as they relate to addictions and substance use treatment programs **(CFJ 3.2, 3.4, 7.2, 16.7, 17.21, 18.28);** and
- the overrepresentation of Indigenous people in detention, as mandated by the TRC and MMIWG Inquiry **(CFA 30, CFA 31, CFA 32, CFA 38, CFJ 5.14, CFJ 5.16, 5.21).**

Sex Work

Sex work–specific criminal offences, including those in the *Protection of Communities and Exploited Persons Act* (PCEPA), criminalize communicating to sell sexual services in public, communicating to purchase sexual services in any context, facilitating or receiving a benefit related to the purchase of someone else's sexual services, and advertising sexual services.[32] **These laws — purportedly enacted to "protect" sex workers — have made their activities more precarious, exposing sex workers to the constant threat of criminalization, stigma, discrimination, and other harmful consequences** such as being:[33]

- Forced into isolation;
- Exposed to the risk of eviction and unable to access safe indoor workplaces;
- Prevented from meaningfully communicating with clients to access information related to their health, safety, and ability to refuse or consent to sex;
- Deprived of valuable relationships that offer support and protection;
- Prevented from accessing health, social, and legal services;
- Discouraged from reporting exploitation or abuse given the criminalization of their work and the risk of exposing themselves and their networks to arrest; and
- Subject to unwanted and unsolicited police presence in their lives — particularly for Indigenous, Black, migrant, and trans sex workers, and sex workers who use drugs, who are regularly profiled and targeted.

These laws, along with a host of other legal, structural, social, and economic forms of oppression and exclusion lead to negative health outcomes among sex workers, including by increasing the risk of acquiring HIV, HCV, and STBBIs.[34] Criminalization legitimizes stigma and discrimination against sex workers, which dissuades them from accessing health services such as HIV testing.[35] Prohibitions on communication and advertising impede sex workers' ability to screen clients, take their time to negotiate conditions, and establish consent to sexual activity, including with respect to the use of condoms and other forms of safer sex.[36] In the context of criminalization, sex workers may have less bargaining power and be pressured to accept condomless sex and other conditions that they might not usually offer.[37] Furthermore, criminalization of third-party assistance makes it so that individuals cannot benefit from support networks (which could include other sex workers) and safety mechanisms (e.g. screening processes) when offering sexual services, which fuels social and economic marginalization[38] and puts them at greater risk of harm and violence.[39] As UNAIDS has concluded: "Intersecting forms of structural and societal stigma and discrimination, including punitive laws, policies and practices, create significant inequalities and prevent sex workers from being able to protect their health, safety and well-being."[40] In the same vein, research studies in global epidemiology have come to the conclusion that macro-structural changes, relating both to law and policy reform (e.g. decriminalizing sex work) and to the improvement of work environments, are urgently needed in order to stem HIV transmission among female sex workers.[41]

Indigenous women, trans, gender-diverse, and Two-Spirit people who engage in sex work are reportedly over-represented in street-level sex work[42] and consistently experience more intense and intrusive levels of surveillance, harassment, and profiling by law enforcement in their work, all the while being under-protected, which exposes them to increased risks to their security and unwarranted interactions with the criminal legal system.[43] These negative interactions with police cause sex workers to evade law enforcement and avoid availing themselves of their assistance in case of trouble, exposing them to targeted violence. The reluctance to seek help from law enforcement is compounded for Indigenous and trans sex workers, and especially for Indigenous trans sex workers, who face pervasive violence and discrimination in their interactions with police.[44]

To meaningfully address HIV, HCV, and STBBIs and violence against Indigenous women, the federal government needs to **repeal the sex work *Criminal Code* provisions**.[45] Research studies have consistently established that decriminalizing sex work helps reduce violence against sex workers and HIV incidence.[46] Likewise, decriminalizing all aspects of sex work would align with the recommendations of international experts and human rights bodies, including the UN Committee on the Elimination of Discrimination against Women,[47] UNAIDS,[48] UN Women,[49] the Global Commission on HIV and the Law,[50] and the UN Special Rapporteur on the right to health.[51]

Decriminalizing sex work recognizes the agency and dignity of sex workers and their decision to engage in sex work. It also allows sex workers to work within **a legal framework that is centred on human rights and labour protections,** including employment, public health, and occupational health and safety standards.[52] To address violence and exploitation in the sex industry, existing criminal laws of general application (e.g. criminal prohibitions against assault, sexual assault, theft, robbery, kidnapping and forcible confinement, extortion, intimidation, criminal harassment) could be employed.

In developing much-needed law reform in this area, **legislators must engage with sex worker organizations and people with lived experiences in this sector, including Indigenous sex workers,** to ensure legal protections are as inclusive and effective as possible. It is critical to listen to and respect the lived experiences of key populations in our work. The conclusions of the MMIWG Inquiry make clear that "justice and security depend on recognizing and honouring the agency and expertise held by women themselves to create just communities and relationships in determining the services and supports that would enhance safety and justice."[53] We eschew moralizing and reductive narratives about sex work being inherently harmful and exploitative,[54] or that conflate sex work with sexual exploitation and human trafficking, which has exposed sex workers to unwanted intrusions by law enforcement into their work, including surveillance, harassment, and abuse.[55] As the UN Special Rapporteur on violence against women stressed, policymakers must ensure that "measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers."[56] Importantly, decriminalizing sex work and respecting the rights of sex workers enhances efforts to address abuse in the sex industry, as individuals have access to labour, health, and human rights protections and sex workers can help identify situations of abuse.[57] In parallel, governments should fund and **support sex worker–led organizations to address human rights violations, improve social support systems, and furnish people with networks of community support that undercut the precarity that place people in vulnerable situations. They should also invest in Indigenous community initiatives that seek to address homelessness and poverty and to provide services directed by sex workers, along with measures of assistance for all individuals to realize the right to health,** including income support, poverty alleviation, housing, childcare, education, job training, and treatment and support for substance use.[58]

In developing much-needed law reform in this area, legislators must engage with sex worker organizations and people with lived experiences in this sector, including Indigenous sex workers, to ensure legal protections are as inclusive and effective as possible.

Upholding the rights of sex workers by repealing sex work–specific criminal offences is fundamentally aligned with many of the calls for action and calls for justice from the TRC and MMIWG Inquiry. Decriminalization would:

- Contribute to improved health incomes, including by reducing HIV, HCV, and STBBI transmission **(CFA 19, CFJ 3.1).**
- Respond to the need to address the overrepresentation of Indigenous people in custody **(CFA 30, CFA 38, CFJ 5.21).**
- Help prevent violence and ensure the safety and security of Indigenous women, girls, and 2SLGBTQQIA people, particularly with respect to sex work **(CFJ 1.5, CFJ 4.3, CFJ 9.11, CFJ 18.14).**
- Promote the safety and security of Indigenous sex workers, via a decriminalization framework designed and delivered in partnership with people with lived experience. **(CFJ 4.3)**

Prisons

The overrepresentation of Indigenous people among the Canadian prison population remains one of the most damaging intergenerational legacies of colonialism and residential schools, whose insidious consequences continue to ripple across all areas of society today.[59] As of 2022, Indigenous people make up just over 30% of the prison population in Canada, and over 50% of incarcerated women, despite accounting for roughly 5% of the Canadian population.[60] The problem of over incarceration stems from multiple factors[61] including the over-policing of Indigenous people through the criminalization of offences related to drugs and sex work.[62]

As detailed above, criminalizing drug-related activities and sex work are associated with negative health outcomes, including increased risk of HIV, HCV, and STBBI transmission, before individuals even enter the prison system. These health outcomes are further undermined during incarceration, which cuts individuals off from community supports and denies or reduces access to key health and harm reduction services, thus compounding the risk of transmission of HIV, HCV, and STBBIs.[63] This contravenes the fundamental principle that people who are incarcerated are entitled to an equivalent standard of care when it comes to the health treatment and services that they receive in prison vis-à-vis the standard of care that is available in the community.[64] Consequently, the prevalence of HIV, HCV, STBBIs, and TB is far higher among people in prison.[65]

Federally incarcerated Indigenous people, and particularly Indigenous women, have especially high rates of HIV and HCV compared with their non-Indigenous counterparts.[66] Incarceration is damaging for Indigenous people as they are separated from their families, their communities, and their cultures, an experience that has been described as the modern day equivalent of the residential school system.[67] Given the disproportionate representation of Indigenous people within the prison population, these shortcomings in correctional health care have significant consequences for Indigenous health more broadly. While certain policies and measures exist within Canada's correctional systems with the stated purpose of responding to the specific needs and interests of Indigenous people, in practice these are often found to be lacking.[68] To realize the objectives of reconciliation for Indigenous peoples, including by improving health outcomes, governments in Canada must take action to confront mass incarceration and move towards decarceration.

In addition to the recommendations above, an essential step in breaking the cycle of incarceration is to **improve the socioeconomic conditions and address racial profiling and other policing patterns that lead Indigenous people to increased interactions with the criminal legal system.** This includes addressing issues related to poverty, housing, education, employment, and systemic bias and discrimination, among many other factors that have been raised in various reports and inquiries over the years. Likewise, progress must continue to be made to **reduce the impacts of excessively punitive and severe sentencing laws on Indigenous people,** including through the elimination of all remaining mandatory minimum sentences, which disproportionately affect Indigenous people, Black people, and other racialized people.[69] Additionally, despite increased efforts to account for the history and individual circumstances of Indigenous people in their sentencing (i.e. *Gladue/Ipeelee* principles), there remains a dearth of available alternatives to detention or to carceral sentences.[70] **More resources and attention must be invested into such alternatives, including Indigenous-run healing lodges,[71] the use of conditional sentences, and restorative justice models, which focus on the root causes of harm.**

All Indigenous people in prison should be provided voluntary access to HIV, HCV, and STBBI testing and treatment. Additionally, there are a variety of evidence-based harm reduction policies and programs that should be made available and accessible in all prisons in Canada, including needle and syringe programs, opioid agonist therapy, safe supply, sterile tattooing equipment, access to naloxone, condoms, dental dams, lubricant, and bleach. The implementation of these interventions in prisons is endorsed by international actors like the UN Office on Drugs and Crime, UNAIDS, and the World Health Organization.[72] These measures are proven to help reduce negative health outcomes in both community and correctional health contexts, and it is discriminatory and a violation of the right to health not to provide them for people in prison.[73]

Needle and syringe distribution programs: Help reduce transmission of HIV and HCV for people who inject drugs by providing sterile drug use equipment.

Opioid agonist therapy: Safe and effective treatment for people who use opioids to prevent withdrawal and lower cravings for opioid drugs, which has been found to reduce sharing of injection drug equipment and the risk of HIV and HCV transmission.

Safe supply programs: Measures adopted to provide a legal and regulated supply of drugs to people who use drugs, enabling them to reduce the risks of overdose and other harms to health associated with toxic drugs on the unregulated market.

Sterile tattooing equipment: Help reduce the transmission of HIV and HCV, which are associated with clandestine tattooing and the use of non-sterilized equipment in prisons.

Access to naloxone: A fast-acting drug used to temporarily reverse the effects of opioid overdoses. Providing access to naloxone for people who are incarcerated, notably by permitting naloxone kits in cells, could help save lives.

Access to condoms, dental dams, and lubricant: The distribution of condoms, dental dams, and lubricant in prisons is a key harm reduction measure, which promotes safer sex and reduces the transmission of HIV, HCV, and STBBIs.

Access to bleach: Distribution of bleach in prisons helps reduce the harms associated with the sharing of non-sterilized drug injection and tattooing equipment. However, it is not effective on its own to eliminate the risk of HIV and HCV transmission.

Notably, Indigenous people have long been underserved when it comes to the availability of culturally appropriate programming in prisons.[74] Navigating Canada's legal and correctional systems can be a traumatizing experience for Indigenous people, as these systems are founded in colonial Western values that are not adapted to or reflective of Indigenous cultures, conceptions of justice and safety, and ways of being.[75] Incarceration further inflicts spiritual violence on Indigenous people through the loss of cultural identity that comes from being severed from ones community ties in prison.[76] **Indigenous peoples who are incarcerated must be provided trauma-informed, culturally sensitive, and culturally appropriate care, including harm reduction services specifically.** While different models of culturally specific programming for Indigenous people who are incarcerated have been developed (e.g. Pathways Initiatives, the Indigenous Integrated Correctional Program Model) in the federal prison system, public resources have been mainly focused on prison-based programs, rather than Indigenous-run community correctional initiatives.[77] As well, cultural programming in prisons aimed at Indigenous people has been criticized for adopting a "one size fits all" approach, treating diverse Indigenous cultures and traditions in a homogenous manner, leaving certain groups and communities particularly underserved.[78] Consequently, programming for Indigenous people needs to be improved, rendered more effective, and made available and accessible in federal prisons across the country, and should serve as inspiration for comparable programs at the provincial level.[79]

Decarceration policies and the implementation and expansion of key harm reduction measures in correctional settings represents a crucial means of addressing the disproportionate impacts of HIV, HCV, and STBBIs in Indigenous communities, of advancing reconciliation, and of responding to the calls for action from the TRC and the calls for justice from the MMIWG Inquiry. In particular, they help address:

- health-related calls **(CFA 19, CFJ 3.1),** as they would contribute to closing gaps in health outcomes between Indigenous and non-Indigenous communities;
- the overrepresentation of Indigenous people in custody **(CFA 30, CFA 38, CFJ 5.14, CFJ 5.21);**
- sentencing reforms and greater implementation of community sanctions, rehabilitation-focused models, and other alternatives to imprisonment **(CFA 31, CFA 32, CFJ 5.16, CFJ 5.20, CFJ 16.28, CFJ 16.30, CFJ 17.27);** and
- providing culturally relevant resources and services for Indigenous people who are incarcerated and are dealing with substance use, mental health issues, and trauma, including specific support services for 2SLGBTQQIA people **(CFA 36, CFJ 14.6, CFJ 14.8, CFJ 16.30, CFJ 18.22)**.

Conclusion

Summary of Policy Positions and Recommendations

CAAN and the HIV Legal Network are committed to advocating for measures that address the historical disadvantages, intergenerational trauma, and discrimination experienced by Indigenous Peoples in Canada, in the pursuit of reconciliation, substantive equality, and holistic well-being. The involvement of diverse stakeholders from First Nations, Inuit, and Métis communities, in meaningful dialogues around the unique experiences of Indigenous people with respect to HIV, HCV, and STBBIs will be paramount in this work. The proposed policy positions in the areas of drug policy, sex work, and prisons respond to the findings of the TRC and the MMIWG inquiry, are in line with international human rights law, and would have a demonstrated positive impact in reducing rates of HIV, HCV, and STBBIs among Indigenous people. Resources should be divested from repressive law enforcement interventions that have proven harmful and ineffective and put towards evidence-based measures. Crucially, these measures would advance the right to equality, the right to health, and the right to life of Indigenous people:

Drug policy:

- Decriminalize the simple possession of all types of drugs through the repeal of section 4 of the *Controlled Drugs and Substances Act* (CDSA) and section 8 of the *Cannabis Act*;
- Decriminalize "necessity trafficking," wherein individuals incur criminal liability for the selling and sharing of a controlled substance for subsistence purposes, to support the costs of their own personal drug use, and to provide a safe drug supply, by amending section 5 of the CDSA;
- Support expanded alternatives to incarceration for people who use drugs, including by making conditional sentences available for drug-related offences;
- Implement and scale up key interventions for people who use drugs, including:
  - Needle and syringe distribution programs;
  - Supervised consumption services;
  - Drug checking;
  - Opioid agonist therapy;
  - Naloxone distribution and training;
  - Safe and regulated supply;
- Make high quality gender-specific — including for trans, non-binary, and Two-Spirit people — and culturally safe harm reduction services and programs increasingly available and accessible for Indigenous peoples.

Sex work:

- Repeal all sex work–specific *Criminal Code* provisions;
- Meaningfully engage with sex worker organizations and people with lived experiences in this sector, including Indigenous sex workers, to ensure legal protections are as inclusive and effective as possible and centre human rights and labour protections;
- Support sex worker–led organizations and invest in Indigenous community initiatives that seek to address homelessness and poverty and to provide services directed by sex workers, as well as measures of assistance for all individuals to realize the right to health, including income support, poverty alleviation, housing, childcare, education, job training, and treatment and support for substance use.

Prisons:

- Improve socioeconomic conditions and address racial profiling and other policing patterns that lead Indigenous people to increased interactions with the criminal legal system;
- Eliminate all remaining mandatory minimum sentences and invest more resources into alternatives to incarceration, including Indigenous-run healing lodges, conditional sentences, and restorative justice models;
- Ensure all Indigenous people in prison are provided access to voluntary HIV, HCV, and STBBI testing and treatment.
- Implement harm reduction policies and programs in all Canadian prisons, including needle and syringe programs, opioid agonist therapy, safe supply, sterile tattooing equipment, access to naloxone, condoms, dental dams, lubricant, and bleach;
- Ensure trauma-informed, culturally sensitive, and culturally appropriate care for Indigenous people in prison, and harm reduction services specifically, including dedicated 2SLGBTQQIA support services.

Annex of Referenced Calls for Action and Calls for Justice

Truth and Reconciliation Commission – Calls for Action

18. We call upon the federal, provincial, territorial, and Aboriginal governments to acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies, including residential schools, and to recognize and implement the health-care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties.

19. We call upon the federal government, in consultation with Aboriginal peoples, to establish measurable goals to identify and close the gaps in health outcomes between Aboriginal and non-Aboriginal communities, and to publish annual progress reports and assess longterm trends. Such efforts would focus on indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.

22. We call upon those who can effect change within the Canadian health-care system to recognize the value of Aboriginal healing practices and use them in the treatment of Aboriginal patients in collaboration with Aboriginal healers and Elders where requested by Aboriginal patients

30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.

31. We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.

32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.

36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.

38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.

National Inquiry into Missing and Murdered Indigenous Women and Girls – Calls for Justice

1.5 We call upon all governments to immediately take all necessary measures to prevent, investigate, punish, and compensate for violence against Indigenous women, girls, and 2SLGBTQQIA people.

3.1 We call upon all governments to ensure that the rights to health and wellness of Indigenous Peoples, and specifically of Indigenous women, girls, and 2SLGBTQQIA people, are recognized and protected on an equitable basis.

3.2 We call upon all governments to provide adequate, stable, equitable, and ongoing funding for Indigenous-centred and community-based health and wellness services that are accessible and culturally appropriate, and meet the health and wellness needs of Indigenous women, girls, and 2SLGBTQQIA people. The lack of health and wellness services within Indigenous communities continues to force Indigenous women, girls, and 2SLGBTQQIA people to relocate in order to access care. Governments must ensure that health and wellness services are available and accessible within Indigenous communities and wherever Indigenous women, girls, and 2SLGBTQQIA people reside.

3.4 We call upon all governments to ensure that all Indigenous communities receive immediate and necessary resources, including funding and support, for the establishment of sustainable, permanent, no-barrier, preventative, accessible, holistic, wraparound services, including mobile trauma and addictions recovery teams. We further direct that trauma and addictions treatment programs be paired with other essential services such as mental health services and sexual exploitation and trafficking services as they relate to each individual case of First Nations, Inuit, and Métis women, girls, and 2SLGBTQQIA people.

4.3 We call upon all governments to support programs and services for Indigenous women, girls, and 2SLGBTQQIA people in the sex industry to promote their safety and security. These programs must be designed and delivered in partnership with people who have lived experience in the sex industry. We call for stable and long-term funding for these programs and services.

5.14 We call upon federal, provincial and territorial governments to thoroughly evaluate the impact of mandatory minimum sentences as it relates to the sentencing and over-incarceration of Indigenous women, girls, and 2SLGBTQQIA people and to take appropriate action to address their over-incarceration.

5.16 We call upon federal, provincial, and territorial governments to provide community-based and Indigenous-specific options for sentencing.

5.20 We call upon the federal government to implement the Indigenous-specific provisions of the Corrections and Conditional Release Act (SC 1992, c.20), sections 79 to 84.1.

5.21 We call upon the federal government to fully implement the recommendations in the reports of the Office of the Correctional Investigator and those contained in the Auditor General of Canada (Preparing Indigenous Offenders for Release, Fall 2016); the Calls to Action of the Truth and Reconciliation Commission of Canada (2015); the report of the Standing Committee on Public Safety and National Security, Indigenous People in the Federal Correctional System (June 2018); the report of the Standing Committee on the Status of Women, A Call to Action: Reconciliation with Indigenous Women in the Federal Justice and Corrections Systems (June 2018); and the Commission of Inquiry into certain events at the Prison for Women in Kingston (1996, Arbour Report) in order to reduce the gross overrepresentation of Indigenous women and girls in the criminal justice system.

7.1 We call upon all governments and health service providers to recognize that Indigenous Peoples — First Nations, Inuit, and Métis, including 2SLGBTQQIA people — are the experts in caring for and healing themselves, and that health and wellness services are most effective when they are designed and delivered by the Indigenous Peoples they are supposed to serve, in a manner consistent with and grounded in the practices, world views, cultures, languages, and values of the diverse Inuit, Métis, and First Nations communities they serve.

7.2 We call upon all governments and health service providers to ensure that health and wellness services for Indigenous Peoples include supports for healing from all forms of unresolved trauma, including intergenerational, multigenerational, and complex trauma. Health and wellness programs addressing trauma should be Indigenous-led, or in partnership with Indigenous communities, and should not be limited in time or approaches.

9.11 We call upon all police services to develop and implement guidelines for the policing of the sex industry in consultation with women engaged in the sex industry, and to create a specific complaints mechanism about police for those in the sex industry

14.6 We call upon Correctional Service Canada and provincial and territorial services to provide intensive and comprehensive mental health, addictions, and trauma services for incarcerated Indigenous women, girls, and 2SLGBTQQIA people, ensuring that the term of care is needs-based and not tied to the duration of incarceration. These plans and services must follow the individuals as they reintegrate into the community.

14.8 We call upon Correctional Service Canada to ensure its correctional facilities and programs recognize the distinct needs of Indigenous offenders when designing and implementing programming for First Nations, Inuit, and Métis women. Correctional Service Canada must use culturally safe, distinctions-based, and trauma-informed models of care, adapted to the needs of Indigenous women, girls, and 2SLGBTQQIA people.

16.7 We call upon all governments to ensure the availability of effective, culturally appropriate, and accessible health and wellness services within each Inuit community. The design and delivery of these services must be inclusive of Elders and people with lived experience. Closing the service and infrastructure gaps in the following areas is urgently needed, and requires action by all governments. Required measures include but are not limited to:

> [...]
>
> ii The establishment and funding of accessible and holistic community wellness, health, and mental health services in each Inuit community. These services must be Inuit-led and operate in accordance with Inuit health and wellness values, approaches, and methods.
>
> iii The establishment and funding of trauma and addictions treatment and healing options in each Inuit community.

16.28 Given that the failure to invest in resources required for treatment and rehabilitation has resulted in the failure of section 718(e) of the Criminal Code and the Gladue principles to meet their intended objectives, we call upon all governments to invest in Inuit-specific treatment and rehabilitation services to address the root causes of violent behaviour. This must include but is not limited to culturally appropriate and accessible mental health services, trauma and addictions services, and access to culture and language for Inuit. Justice system responses to violence must ensure and promote the safety and security of all Inuit, and especially that of Inuit women, girls, and 2SLGBTQQIA people.

16.30 We call upon Correctional Service Canada and provincial and territorial corrections services to recognize and adopt an Inuit Nunangat model of policy, program, and service development and delivery. This is required to ensure that Inuit in correctional facilities get the Inuit-specific treatment and rehabilitation programs and services they need. Further, it will ensure that Inuit women can remain within their Inuit homelands and are able to maintain ties with their children and families. Correctional Service Canada and provincial and territorial correctional services must ensure that effective, needs-based, and culturally and linguistically appropriate correctional services are made available for Inuit women, girls, and 2SLGBTQQIA people in custody. Inuit men and boys in custody must also receive specialized programs and services to address their treatment and rehabilitation needs and to address the root causes of violent behaviour. We call upon Correctional Service Canada to support and equitably fund the establishment of facilities and spaces as described in section 81 and section 84 of the Corrections and Conditional Release Act, within all Inuit regions.

17.21 We call upon the federal government to recognize and fulfill its obligations to the Métis people in all areas, especially in health, and further call upon all governments for services such as those under FNIHB to be provided to Métis and non-Status First Nations Peoples in an equitable manner consistent with substantive human rights standards.

17.27 We call upon all governments to pursue the development of restorative justice and rehabilitation programs, including within correctional facilities, specific to Métis needs and cultural realities, to help address root causes of violence and reduce recidivism, and to support healing for victims, offenders, and their families and communities.

18.14 We call upon all police services to take appropriate steps to ensure the safety of 2SLGBTQQIA people in the sex industry

18.22 We call upon federal and provincial correctional services to provide dedicated 2SLGBTQQIA support services and cultural supports.

18.28 We call upon all governments to fund and support, and service providers to deliver, expanded, dedicated health services for 2SLGBTQQIA individuals including health centres, substance use treatment programs, and mental health services and resources.

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