



## INTRODUCTION

The HIV Legal Network (“Legal Network”) promotes the human rights of people living with HIV or AIDS and other populations disproportionately affected by HIV, punitive laws and policies, and criminalization, through research and analysis, litigation and other advocacy, public education, and community mobilization. In this submission, we comment on the implementation of recommendations that Canada received in 2018 during its third Universal Periodic Review (UPR), focusing on recommendations related to:

- The rights of Indigenous and Black people, who are
  - disproportionately charged, prosecuted, and incarcerated under Canada’s drug laws; and
  - denied equivalent access to harm reduction services in prison;
- Violence and discrimination against women in sex work; and
- The criminalization of HIV non-disclosure, which disproportionately affects LGBTQ2S+, Black and Indigenous people, and women.

## THE RIGHTS OF INDIGENOUS AND BLACK PEOPLE: DRUG POLICY REFORM AND HARM REDUCTION IN PRISONS<sup>1</sup>

During the third cycle, Canada received numerous recommendations related to the rights of Indigenous and Black people, including from Azerbaijan to implement the 2017 recommendations of the UN Committee on the Elimination of Racial Discrimination (“CERD Committee”). The CERD Committee noted the disproportionately high rate of incarceration of Indigenous and Black people for drug offences in Canada — a violation of the government’s obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination*, and called on Canada to re-examine its drug policies, provide evidence-based alternatives to incarceration for people who use drugs convicted of non-violent offences, and implement key health and harm reduction measures across all prisons.<sup>2</sup> The Legal Network urges Canada to accept the Committee’s recommendations and expands on how Canada can advance the rights of Indigenous and Black people in the areas of (a) drug policy and (b) harm reduction in prisons.

### a. DRUG POLICY

Canada’s drug control framework is rooted in, and reinforces, racism and colonialism. Today, “controlled substances” are governed by the federal *Controlled Drugs and Substances Act* (CDSA), section 4(1) of which makes it a crime to possess a substance for personal use (or “simple drug possession”), which can result in a sentence of up to seven years. For the period 2014 to 2021, police in Canada made more than 670,000 arrests for drug offences; 64% of those were for simple drug possession.<sup>3</sup> While Black and Indigenous people are not more likely to commit drug offences, numerous reports confirm that they are more likely to be subject to surveillance, arrested, and incarcerated for drug offences,<sup>4</sup> depriving them of their rights to

equality and non-discrimination in the criminal legal system, to freedom from arbitrary arrest and detention, to security of the person, and to the highest attainable standard of health.

At the same time, an immense body of evidence demonstrates that Canada's continued emphasis on drug prohibition undermines efforts to uphold the right to health of people who use drugs.<sup>5</sup> Drug prohibition has contributed to epidemics of preventable illness and death, including high rates of HIV and hepatitis C (HCV) among people who use drugs<sup>6</sup> and a drug poisoning crisis that has resulted in more than 32,000 overdose deaths between January 2016 and June 2022 nationwide<sup>7</sup> — with Indigenous peoples disproportionately affected.<sup>8</sup>

Key responses to mitigate the harms of drug prohibition include decriminalizing simple drug possession and scaling up safe supply programs to ensure a regulated supply of drugs is accessible to all those at risk of drug poisoning. As Canada's own Expert Task Force on Substance Use recommended, Canada must “end all coercive measures related to simple possession and consumption”; immediately establish a “single public health legal framework with regulatory structures that are specific to different types of substances”; fully expunge all criminal records from previous offences related to simple possession; and ensure equitable and universal access to a safe supply of pharmaceutical grade alternatives to reduce people's exposure to the toxicity of illegal street drugs.<sup>9</sup>

Globally, decriminalizing simple drug possession has been recommended by numerous health and human rights bodies as a measure that protects health and upholds human rights, including the WHO, UNAIDS, UNDP, the UN Special Rapporteur on the right to health,<sup>10</sup> and the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment.<sup>11</sup> In 2018, all agencies of the UN system adopted a common position recommending to all governments that they decriminalize simple drug possession.<sup>12</sup> Moreover, the UN Special Rapporteur on the right to health has recommended that States “seek alternatives to punitive or repressive drug control policies, including decriminalization and legal regulation and control.”<sup>13</sup>

## **RECOMMENDED ACTIONS**

- **Decriminalize and remove all sanctions for the possession of all drugs for personal use and the sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safer supply, and fully expunge all criminal records from previous offences related to these activities.**
- **Implement non-custodial alternatives for drug offences, in collaboration with Indigenous, Black, and other communities disproportionately affected by drug offences.**
- **Remove regulatory barriers to prescribing or otherwise accessing illegal drugs, and fund and support the expansion of a safer supply of drugs to curtail the harms of the unregulated drug market.**
- **Establish a single public health legal framework for controlled substances that enables the legalization and regulation of all controlled substances.**

### **b. HARM REDUCTION IN PRISONS**

Canada's failure to provide prisoners, who are disproportionately Indigenous and Black,<sup>14</sup> with equivalent access to key harm reduction measures is a violation of their rights to health, security of the person, equality, and non-discrimination.

In a 2010 national survey conducted by Canada's federal correctional service, 17% of men and 14% of women reported injecting drugs during the past six months in prison, many of whom shared their injection equipment.<sup>15</sup> Other more recent studies have also revealed high rates of syringe-sharing among people who use drugs in Canada's prisons, due to the lack of sterile injection equipment behind bars.<sup>16</sup> Research also shows that the incarceration of people who inject drugs is a factor driving Canada's HIV and HCV epidemic.<sup>17</sup> Already, rates of HIV and HCV in prison are significantly higher than they are in the community as a whole.<sup>18</sup> Indigenous prisoners, in particular, have much higher rates of HIV and HCV than non-Indigenous prisoners.<sup>19</sup>

Overwhelming evidence of the health benefits of prison-based needle and syringe programs and opioid agonist therapy (OAT) have led UN agencies, including the UNODC, UNAIDS, and WHO to recommend that prisoners have access to needle and syringe programs and to OAT.<sup>20</sup> Yet access to OAT across prisons is inconsistent and some do not offer OAT initiation,<sup>21</sup> while a federal "Prison Needle Exchange Program" (PNEP) only exists in 9 of 43 federal prisons and is riddled with operational flaws, including unnecessary security oversight and breaches of confidentiality that are contrary to recommendations from the UNODC.<sup>22</sup> As Canada's federal prison ombudsperson noted in 2022, such barriers mean "the program has failed to generate much interest, trust, or confidence from either prisoners or front-line staff. It remains a program largely in name only." As such, the ombudsperson recommended that PNEP criteria "be significantly revamped to encourage participation."<sup>23</sup>

Limited access to harm reduction measures in prison has had a harmful impact on Indigenous prisoners, who are more likely to acquire HIV and HCV via injection drug use.<sup>24</sup> Not only does this contravene the Truth and Reconciliation Commission of Canada's recommendation to Canada to close the gaps in health outcomes between Indigenous and non-Indigenous communities,<sup>25</sup> but also Canada's own commitment to realizing the right to health, "with a special focus on the most disadvantaged groups."<sup>26</sup>

Additionally, the UN Standard Minimum Rules for the Treatment of Prisoners recommend that prisoners enjoy the same standards of health care that are available in the community; these standards necessarily apply to people who use drugs.<sup>27</sup> According to the *Special Rapporteur on torture*, States should "ensure that all harm-reduction measures and drug-dependence treatment services, particularly opioid substitution therapy, are available to people who use drugs, in particular those among incarcerated populations."<sup>28</sup> In 2016, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) urged Canada to "expand care, treatment and support services to women in detention living with or vulnerable to HIV/AIDS, including by implementing prison-based needle and syringe programmes, opioid substitution therapy, condoms and other safer sex supplies."<sup>29</sup>

## **RECOMMENDED ACTIONS**

- **Implement, maintain, and scale-up the following harm reduction measures in prisons in accordance with best practices in public health and professionally accepted standards, and in consultation with prisoner groups and community**

**health organizations to ensure operational success, considering the need for culturally appropriate and gender-specific programs:**

- **needle and syringe programs;**
- **opioid agonist therapy;**
- **naloxone;**
- **supervised consumption services;**
- **safer supply;**
- **drug checking services;**
- **condoms and other safer sex supplies; and**
- **safer tattooing programs.**

## **GENDER EQUALITY AND GENDER-BASED VIOLENCE: THE CRIMINALIZATION OF SEX WORK<sup>30</sup>**

During its 2018 UPR, Canada received numerous recommendations on gender equality and women's rights. Most sex workers are women, and many identify as migrant, racialized, Indigenous, or LGBTQ2S+. Protecting the rights of sex workers is imperative to Canada's response to the UPR review and to upholding their human rights.

Human rights violations against sex workers in Canada have escalated under the 2014 *Protection of Communities and Exploited Persons Act*, which criminalizes sex workers,<sup>31</sup> those who purchase sex, and third parties (such as managers, security, receptionists or drivers) involved in sex work.<sup>32</sup> Criminalizing sex work is a violation of sex workers' right to health, life, security of the person, freedom from torture and cruel, inhumane and degrading treatment, work, privacy, equality, and non-discrimination.<sup>33</sup>

Numerous studies have concluded that banning the purchase of sexual services has contributed to violence against sex workers, who are forced to work in isolation and in clandestine locations, as well as to rush negotiations with potential clients for fear of police detection.<sup>34</sup> In Canada, research has demonstrated that police targeting clients and third parties has not affected rates of violence against sex workers or enhanced their control over their sexual health,<sup>35</sup> but perpetuated labour conditions that subject sex workers to greater risk of violence and poor health.<sup>36</sup> The criminalization of third parties who work with, or for, or who employ sex workers, also forces sex workers to work in isolation, away from social and other support networks, and without proven safety mechanisms, increasing their risk of violence and HIV.<sup>37</sup> Criminalizing all third parties without evidence of abuse drives the sex industry underground where labour exploitation can flourish, deprives sex workers access to employment and occupational health and safety protections, and deters sex workers from reporting violence, because they may fear that they, their colleagues, or their employer may be charged with prostitution offences.<sup>38</sup>

At the same time, prohibitions against migrant sex work in the *Immigration and Refugee Protection Regulations*<sup>39</sup> have fuelled targeted violence and abuse against migrant sex workers, who are reluctant to seek help from police for fear of deportation.<sup>40</sup> Additionally, massive investments in anti-trafficking practices have had harmful impacts on sex workers and impaired efforts to support those who experience abuse and exploitation. For example, law enforcement agencies across Canada have regularly participated in mass, indiscriminate efforts to identify trafficking victims in the sex industry, during which police have detained and harassed numerous

sex workers — particularly migrant sex workers — where there has been no evidence of coercion or exploitation. Sex workers have repeatedly experienced these interventions as a form of intimidation, harassment, surveillance, and a gross violation of privacy that has further entrenched fear and distrust of police services.<sup>41</sup>

Repealing sex work offences is in line with Canada's acceptance of recommendations at its previous UPR to realize the right to health and address violence against women,<sup>42</sup> and is also in line with recommendations made by UN Special Procedures and other UN agencies. The UN Special Rapporteur on the right to health has described the negative ramifications of criminalizing third parties such as brothel owners, explicitly calling for the decriminalization of sex work, and has spoken out against the conflation of sex work and human trafficking.<sup>43</sup> The UN Special Rapporteur on violence against women has noted the need to ensure that "measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers."<sup>44</sup> Similarly, UN Women has expressed its support for decriminalizing sex work, acknowledging that the conflation of sex work, sex trafficking, and sexual exploitation leads to "inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights."<sup>45</sup>

## **RECOMMENDED ACTIONS**

- **Immediately repeal all sex work-specific criminal laws, including the offences in the *Protection of Communities and Exploited Persons Act*,<sup>46</sup> and remove immigration regulations that prohibit migrant sex work.<sup>47</sup>**
- **Stop law enforcement raids, detentions, and deportations of sex workers by using anti-trafficking, anti-sex work, and immigration laws in the name of protection.**
- **Ensure full and permanent immigration status for all in Canada, and provide everyone with access without fear to health and social services.**
- **Fund and support programs and services that are developed by people who have lived experience selling sexual services, including sex worker-led outreach by Indigenous, Black, and migrant sex worker groups.**

## **DISCRIMINATION AGAINST LGBTQ2S+, BLACK AND INDIGENOUS PEOPLE, AND WOMEN: THE CRIMINALIZATION OF HIV NON-DISCLOSURE<sup>48</sup>**

During the UPR, States urged Canada to address discrimination and racism against LGBTQ2S+ and Black and Indigenous people, and to address violence against women.<sup>49</sup> Not only does HIV criminalization discriminate against people living with HIV, prosecutions for HIV non-disclosure disproportionately affect gay men, Black people, Indigenous people, and women,<sup>50</sup> violating not only their rights to equality and non-discrimination, but their rights to health and privacy, as the UN Special Rapporteur on the right to health has recognized.<sup>51</sup>

In Canada, a person living with HIV is at risk of prosecution for not disclosing their HIV status before sex even if there was no HIV transmission, the person had no intention to harm their sexual partner, and the person used a condom or had an undetectable viral load, meaning there is effectively no risk of HIV transmission. The current state of the law means people living with HIV face criminal charges, most commonly aggravated sexual assault — an offence that carries a maximum penalty of life imprisonment and potential registration as sexual offender for a minimum of 20 years. Canada has the eighth-largest absolute number of recorded prosecutions for alleged HIV non-disclosure in the world, with more than 224 separate documented prosecutions so far.<sup>52</sup>

HIV criminalization has several discriminatory dimensions. Gay men and other men who have sex with men remain the single largest population affected by HIV and hence by the *prospect* of prosecution. Black men are disproportionately represented among those prosecuted for alleged HIV non-disclosure, while Black and Indigenous people are convicted at a higher rate and are more likely to face prison sentences compared to white people facing similar charges.<sup>53</sup> Indigenous women account for a significant proportion of women who have faced charges related to HIV non-disclosure. The criminalization of HIV non-disclosure can have particularly adverse impacts on women living with HIV, especially if facing challenges due to their socio-economic status, discrimination, insecure immigration status, or abusive or dependent relationships,<sup>54</sup> putting women at increased risk of violence and prosecution by providing a tool of coercion or revenge for vindictive partners.<sup>55</sup>

Evidence also indicates that the criminalization of HIV non-disclosure is a barrier to health care for some people living with HIV, discouraging access to testing and linkage to treatment, care, and support.<sup>56</sup>

In light of numerous human rights and public health concerns associated with HIV-related prosecutions, UNAIDS, UNDP,<sup>57</sup> the UN Special Rapporteur on the right to health,<sup>58</sup> the Global Commission on HIV and the Law,<sup>59</sup> and the CEDAW Committee,<sup>60</sup> among others, have urged governments to limit the use of the criminal law to cases of *intentional transmission* of HIV (i.e. where a person knows their HIV status, acts with the intention to transmit HIV, and does in fact transmit it). Moreover, it is recommended that no prosecutions should take place when people used a condom, had a low viral load, or practiced oral sex.<sup>61</sup>

## **RECOMMENDED ACTIONS**

- **Limit the use of the criminal law to cases of intentional and actual transmission of HIV;**
- **Ensure that the criminal law is never used against people living with HIV for not disclosing their status to sexual partners where they use a condom, practice oral sex, or have condomless sex with a low or undetectable viral load;**
- **Remove non-disclosure, exposure, or transmission of HIV from the reach of sexual assault laws;**
- **End the deportation of non-citizens following conviction; and**
- **Review past convictions and expunge those that do not fit within the new limitations on the scope of criminalization.**

**Most relevant recommendations regarding the rights of Indigenous and Black people: drug policy reform and harm reduction in prisons**

Theme: A23 Follow-up to treaty bodies

33. Take all necessary measures to ensure that the recommendations made by the United Nations Committee on the Elimination of Racial Discrimination are fully implemented (Azerbaijan)

Theme: B31 Equality & non-discrimination

41. Take further legal and administrative measures for the promotion and protection of the human rights of aboriginals and to eliminate discrimination against minorities, so that they enjoy life on an equal basis throughout the country (Democratic People's Republic of Korea)

44. Strengthen legislation to combat discriminatory practices against indigenous peoples and people of African descent, and promote their inclusion in the area of human rights (Madagascar)

68. Continue strengthening the legislative and institutional foundations to combat discrimination against indigenous peoples, migrants, refugees, people of African descent and Muslim minorities (Egypt)

Theme: B32 Racial discrimination

50. Eliminate all forms of racial discrimination through legal, administrative and policy measures (Kenya)

Theme: D51 Administration of justice & fair trial

57. Strengthen measures to combat structural discrimination against African Canadians, indigenous peoples, lesbian, gay, bisexual, transgender, queer and intersex persons and religious minorities, in particular by establishing effective mechanisms of investigation and punishment of perpetrators of acts of discrimination and violence against them (Argentina)

106. Ensure that Canada's indigenous peoples are able to access justice on an equal footing with the rest of Canada's population (Philippines)

114. Tackle the root causes of the overrepresentation of African Canadians and indigenous peoples at all levels of the judicial system, from arrest to incarceration (Congo)

117. Adopt specific measures to address racial profiling in law enforcement to prevent arbitrary arrests, stops, searches and investigations and the over-incarceration of African Canadians (Botswana)

Theme: E1 Economic, social & cultural rights - general measures of implementation

152. Ensure that the rights to health, education and employment of indigenous peoples, people of African descent as well as migrants, refugees and asylum seekers are respected and guaranteed (Madagascar)

Theme: E24 Right to social security

240. Ensure full equality for indigenous peoples in the protection of their international human rights to health, education and welfare (Norway)

241. Make additional efforts to ensure equitable access to quality health, education and other social services for those belonging to indigenous communities and to those racialized individuals and groups (Qatar)

Theme: G3 Indigenous peoples

236. Take effective legislative and administrative measures to concretely improve the living conditions of indigenous people and ensure all their rights (China)

248. Continue to revise and adapt legislation to improve the living conditions of the First Nations (Spain)

250. Implement all of the “calls to action” from the Truth and Reconciliation Commission (Australia)

Theme: E25 Human rights & poverty

150. Ensure that those living in poverty are not unduly criminalized (South Africa)

<sup>2</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada*, CERD/C/CAN/CO/21-23, September 13, 2017.

<sup>3</sup> Statistics Canada, *Police-reported crime statistics in Canada: Police-reported crime for selected offences, Canada, 2014 and 2015*, July 20, 2016; Statistics Canada, *Police-reported crime statistics, 2016*, July 24, 2017; Statistics Canada, *Unfounded criminal incidents in Canada, 2017: Police-reported crime for selected offences, Canada, 2017*, July 23, 2018; Statistics Canada, *Police-reported crime statistics, 2018*, July 22, 2019; Statistics Canada, *Police-reported crime statistics in Canada, 2019*, October 29, 2020; Statistics Canada, *Police-reported crime statistics in Canada, 2020*, July 27, 2021; Statistics Canada, *Police-reported crime statistics in Canada, 2021*, August 3, 2022.

<sup>4</sup> See, for example, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, 1995; J. Rankin and S. Contenta, “Toronto marijuana arrests reveal ‘startling’ racial divide,” *Toronto Star*, July 6, 2017; R. Browne, “Black and Indigenous people are overrepresented in Canada’s weed arrests,” *Vice News*, April 18, 2018; A. Owusu-Bempah and A. Luscombe, “Race, cannabis and the Canadian war on drugs: An examination of cannabis arrest data by race in five cities,” *International Journal of Drug Policy* (2020), 102937; K. Samuels-Wortley, “Youthful Discretion: Police Selection Bias in Access to Pre-Charge Diversion Programs in Canada,” *Race and Justice* 1-24 (2019); and D. Fumano, “New figures reveal the racial disparity in Vancouver drug charges,” *Vancouver Sun*, August 7, 2020.

<sup>5</sup> Canadian HIV/AIDS Legal Network, *Drug policy and human rights: The Canadian context — Submission to the Office of the UN High Commissioner for Human Rights*, May 19, 2015; K. DeBeck et al., “HIV and the criminalisation of drug use among people who inject drugs: a systematic review,” *The Lancet HIV*, May 14, 2017; S. Boyd, C.I. Carter, and D. MacPherson, *More Harm Than Good: Drug Policy in Canada* (Halifax and Winnipeg: Fernwood Publishing, 2016); Office of the UN High Commissioner for Human Rights, *Study on the impact of the world drug problem on the enjoyment of human rights*, Report to the UN Human Rights Council, UN Doc. A/HRC/30/65, 2015; T. Babor et al., *Drug Policy and the Public Good* (Oxford: Oxford University Press, 2010); S. Rolles et al., *The Alternative World Drug Report*, 2nd ed. (London: Transform Drug Policy Foundation, 2016); Global Commission on Drug Policy, *The War on Drugs and HIV/AIDS: How the Criminalization of Drug Use Fuels the Global Pandemic*, 2012; Global Commission on Drug Policy, *The Negative Impact of the War on Drugs on Public Health: The Hidden Hepatitis C Epidemic*, 2013; Global Commission on HIV and the Law, *Risks, Rights and Health* (New York: UNDP, 2012).

<sup>6</sup> Public Health Agency of Canada, *HIV in Canada, Surveillance Report to December 31, 2020*.

<sup>7</sup> Government of Canada, *Opioid-related harms in Canada*, September 2020.

<sup>8</sup> J. Tarasuk et al., “Findings among Indigenous participants of the Tracks survey of people who inject drugs in Canada, Phase 4, 2017-2019,” *Canada Communicable Disease Report*, 2021, 47(1): 37-46; T. House, “‘These deaths were preventable’: First Nations people make up 15% of drug overdoses in B.C.,” *APTN News*, February 2, 2023; Canadian Press, “Drug crisis ‘unabated’ for First Nations in B.C., doctor says,” *Global News*, January 31, 2023; CBC Radio Canada, “Les Premières Nations particulièrement touchées par les surdoses aux opioïdes,” December 3, 2019.

<sup>9</sup> Health Canada Expert Task Force on Substance Use, *Report 1: Recommendations on alternatives to criminal penalties for simple possession of controlled substances*, May 6, 2021.

<sup>10</sup> See, for example, A. Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN General Assembly, 65<sup>th</sup> Session, UN Doc A/65/255,



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August 6, 2010 and A. Grover, *Submission to the Committee against Torture regarding drug control laws*, October 19, 2012.

<sup>11</sup> Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly, 22<sup>nd</sup> Session, UN Doc A/HRC/22/53, February 1, 2013.

<sup>12</sup> UN Chief Executives Board, *Summary of Deliberations: Segment 2: common United Nations system position on drug policy*, UN System, 2<sup>nd</sup> regular session of 2018, UN Doc CEB/2018/2, January 18, 2019; United Nations Chief Executives Board, *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*, UNCEB, 2<sup>nd</sup> Session, Annex 1, UN Doc. CEB/2018/2, January 18, 2019.

<sup>13</sup> D. Puras, *UN Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health*, A/HRC/32/32, April 4, 2016, para. 113.

<sup>14</sup> *Annual Report 2014–2015 of the Office of the Correctional Investigator*.

<sup>15</sup> D. Zakaria et al., *Summary of emerging findings from the 2007 National Inmate Infectious Diseases and Risk-Behaviours Survey Research Report R-211*, Correctional Service of Canada, 2010.

<sup>16</sup> E. van der Meulen, “‘It Goes on Everywhere’: Injection Drug Use in Canadian Federal Prisons,” *Substance Use & Misuse* 52, 7 (2017): pp. 884–891; D. Zakaria et al., *supra* note 15; C. Hankins, “Confronting HIV infection in prisons,” *Canadian Medical Association Journal* 151,6 (1994): pp. 743–745; C.A. Hankins et al., “HIV infection among women in prison: an assessment of risk factors using a non-nominal methodology,” *American Journal of Public Health* 84,10 (1994): pp. 1637–1640.

<sup>17</sup> M. W. Tyndall et al., “Intensive injection cocaine use as the primary risk factor in the Vancouver HIV–1 epidemic,” *AIDS* 17,6 (2003): pp. 887–893; H. Hagan, “The relevance of attributable risk measures to HIV prevention planning,” *AIDS* 17,6 (2003): pp. 911–913.

<sup>18</sup> F. Kouyoumdjian et al., “Health status of prisoners in Canada,” *Canadian Family Physician* 62 (2016): pp. 215–222.

<sup>19</sup> D. Zakaria et al., *supra* note 15.

<sup>20</sup> UNODC, ILO, UNDP, WHO and UNAIDS, *Policy brief: HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions*, 2013.

<sup>21</sup> G. Dias and G. Betteridge, *Hard Time: HIV and Hepatitis C Prevention Programming for Prisoners in Canada*, Canadian HIV/AIDS Legal Network and PASAN, 2007.

<sup>22</sup> UNODC, *A handbook for starting and managing needle and syringe programmes in prisons and other closed settings*, February 2015.

<sup>23</sup> Office of the Correctional Investigator (OCI). (2022). Office of the Correctional Investigator Annual Report 2021-2022. Ottawa: OCI.

<sup>24</sup> D. Zakaria et al., *supra* note 15.

<sup>25</sup> *Truth and Reconciliation Commission of Canada: Calls to Action*, 2015.

<sup>26</sup> Report of the Working Group on the Universal Periodic Review, Second UPR of Canada, UN General Assembly (28 June 2013) UN Doc. A/HRC/24/11, para 128.127 (recommendation 127; Slovakia).

<sup>27</sup> Rule 24 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, UN Doc. A/RES/70/175, December 17, 2015.

<sup>28</sup> Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, UN Doc. A/HRC/22/53, February 1, 2013.

<sup>29</sup> UN Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Canada*, November 2016, para. 49.

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**Most relevant recommendations regarding gender-based violence: the criminalization of sex work**

Theme: B31 Equality & non-discrimination

41. Take further legal and administrative measures for the promotion and protection of the human rights of aboriginals and to eliminate discrimination against minorities, so that they enjoy life on an equal basis throughout the country (Democratic People's Republic of Korea)

44. Strengthen legislation to combat discriminatory practices against indigenous peoples and people of African descent, and promote their inclusion in the area of human rights (Madagascar)

68. Continue strengthening the legislative and institutional foundations to combat discrimination against indigenous peoples, migrants, refugees, people of African descent and Muslim minorities (Egypt)

Theme: B32 Racial discrimination

50. Eliminate all forms of racial discrimination through legal, administrative and policy measures (Kenya)

Theme: D51 Administration of justice & fair trial

57. Strengthen measures to combat structural discrimination against African Canadians, indigenous peoples, lesbian, gay, bisexual, transgender, queer and intersex persons and religious minorities, in particular by establishing effective mechanisms of investigation and punishment of perpetrators of acts of discrimination and violence against them (Argentina)

106. Ensure that Canada's indigenous peoples are able to access justice on an equal footing with the rest of Canada's population (Philippines)

107. Work towards improving access to justice for women, including indigenous and racialized women, and women with disabilities (Qatar)

114. Tackle the root causes of the overrepresentation of African Canadians and indigenous peoples at all levels of the judicial system, from arrest to incarceration (Congo)

117. Adopt specific measures to address racial profiling in law enforcement to prevent arbitrary arrests, stops, searches and investigations and the over-incarceration of African Canadians (Botswana)

Theme: E24 Right to social security

240. Ensure full equality for indigenous peoples in the protection of their international human rights to health, education and welfare (Norway)

241. Make additional efforts to ensure equitable access to quality health, education and other social services for those belonging to indigenous communities and to those racialized individuals and groups (Qatar)

142 Cease cases of children being taken away from their parents by child welfare agencies, thus restoring the era of residential schools (1874–1996) (Syrian Arab Republic);

Theme: E32 Right to just and favourable conditions of work

135. Promote fairer working conditions for all, including migrant workers (Nepal)

137. Take the necessary steps to combat discriminatory labour market practices against women and migrant workers (Algeria)

Theme: F13 Violence against women

75. Step up efforts to protect indigenous women and girls from all forms of discrimination, violence and abuse (Philippines)

182. Further strengthen its efforts in addressing issues regarding gender-based violence against women (Indonesia)

183. Strengthen measures taken to prevent and punish all forms of violence against women and girls (Mali)

184. Step up efforts in order to make more efficient the legal framework to protect women of all age groups against all forms of violence and from sexual abuse (Lebanon)

198. Take effective legal measures to combat violence against women, especially indigenous and ethnic minority women (China)

199. Ensure effective investigation of cases of violence against women and girls, especially those belonging to indigenous peoples, and bring the perpetrators to justice (Russian Federation)

200. Continue all efforts to combat discrimination against women and to combat violence against women, particularly indigenous women and women of African descent (Tunisia)

202. Take immediate legal measures in order to stop the ongoing violence against indigenous and aboriginal peoples, especially women (Islamic Republic of Iran)

203. Continue its efforts to prevent and punish all forms of violence against indigenous women and girls, as well as to redress victims (Myanmar)

Theme: G4 Migrants

259. Consider taking further necessary measures to ensure adequate protection of the rights of migrants and refugees (Nigeria)

260. Take legislative and administrative actions to reform current policies to ensure the protection of all migrants (Islamic Republic of Iran)

261. Improve the conditions of migrant workers (Iraq)

264. Ensure that temporary and migrant agricultural workers are covered under the protection of labour legislation and have access to health and employment benefits (Trinidad and Tobago)

265. Revise its national legislation with a view to guaranteeing respect for and protection of migrant workers, particularly as regards access to health care and social protection for seasonal workers and their protection against all types of exploitation or trafficking (Honduras)

<sup>31</sup> B. Sawchuk, "Undercover cops take aim at sex trade," *St. Catharines Standard*, July 20, 2016.

<sup>32</sup> S. Chu et al., *Reckless Endangerment: Q&A on Bill C-36: Protection of Communities and Exploited Persons Act*, Canadian HIV/AIDS Legal Network, June 2014.

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<sup>35</sup> A. Krüsi et al., "Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study," *BMJ Open* 4 (2014): e005191; Sex Workers United Against Violence, Pivot Legal Society, and Gender and Sexual Health Initiative, *My Work Should Not Cost Me My Life: The Case Against Criminalizing the Purchase of Sexual Services in Canada*, 2014.

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<sup>37</sup> K. Shannon et al., "Global epidemiology of HIV among female sex workers: Influence of structural determinants," *Lancet* 385:9962 (2015): pp. 55–71.

<sup>38</sup> Canadian Alliance for Sex Work Law Reform, *Pimps, Managers and Other Third Parties: Making Distinctions Between Third Parties and Exploitation*, 2014.

<sup>39</sup> *Regulations amending the Immigration and Refugee Protection Regulations*, SOR/2013-245 C. Gaz. 2014. II. 148. See *Immigration and Refugee Protection Regulations*, SOR/2002-227 sections 183(1)(b.1) , 196.1(a), 200(3)(g.1) and 203(2)(a).

<sup>40</sup> C. McIntyre, "Migrant sex workers caught up in Ottawa sting facing deportation, further exploitation: activists," *National Post*, May 13, 2015.

<sup>41</sup> Centre for Feminist Research York University, *Challenging Trafficking in Canada: Policy Brief*, 2017.

<sup>42</sup> Report of the Working Group on the Universal Periodic Review, Second UPR of Canada, UN General Assembly (June 28, 2013) UN Doc. A/HRC/24/11, paras. 128.73 (recommendation 73; Burundi), 128.74 (recommendation 74; Namibia), 128.127 (recommendation 127; Slovakia).

<sup>43</sup> Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, UN Doc. A/HRC/14/20, 2010; Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, UN Doc. A/HRC/23/41, 2013.

<sup>44</sup> Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, UN Doc. A/HRC/26/38/Add.1, 2014.

<sup>45</sup> UN Women, *Note on Sex Work, Sexual Exploitation and Trafficking*, October 9, 2013.

<sup>46</sup> These offences are impeding traffic or pedestrians or communicating in a public place next to a school ground, playground or daycare centre, for the purpose of offering, providing or obtaining sexual services (s. 213 of the *Criminal Code*); purchasing or attempting to purchase sex in any place and at any time (s. 286.1 of the *Criminal Code*); materially benefitting from sexual services (s. 286.2 of the *Criminal Code*); procuring sexual services (s. 286.3 of the *Criminal Code*); and advertising sexual services (s. 286.4 of the *Criminal Code*).

<sup>47</sup> *Immigration and Refugee Protection Regulations* (SOR/2002-227), sections 183(1)(b.1), 196.1(a), 200(3)(g.1), and 203(2)(a).

<sup>48</sup>

**Most relevant recommendations regarding discrimination against LGBTQ2S+, Black and Indigenous people and women: the criminalization of HIV non-disclosure**

Theme: B31 Equality & non-discrimination

41. Take further legal and administrative measures for the promotion and protection of the human rights of aboriginals and to eliminate discrimination against minorities, so that they enjoy life on an equal basis throughout the country (Democratic People's Republic of Korea)

44. Strengthen legislation to combat discriminatory practices against indigenous peoples and people of African descent, and promote their inclusion in the area of human rights (Madagascar)

68. Continue strengthening the legislative and institutional foundations to combat discrimination against indigenous peoples, migrants, refugees, people of African descent and Muslim minorities (Egypt)

83. Continue strengthening efforts in promoting the rights of LGBTI persons (South Africa)

Theme: B32 Racial discrimination

50. Eliminate all forms of racial discrimination through legal, administrative and policy measures (Kenya)

Theme: D51 Administration of justice & fair trial

57. Strengthen measures to combat structural discrimination against African Canadians, indigenous peoples, lesbian, gay, bisexual, transgender, queer and intersex persons and religious minorities, in particular by establishing effective mechanisms of investigation and punishment of perpetrators of acts of discrimination and violence against them (Argentina)

106 Ensure that Canada's indigenous peoples are able to access justice on an equal footing with the rest of Canada's population (Philippines)

107. Work towards improving access to justice for women, including indigenous and racialized women, and women with disabilities (Qatar)

114. Tackle the root causes of the overrepresentation of African Canadians and indigenous peoples at all levels of the judicial system, from arrest to incarceration (Congo)

117. Adopt specific measures to address racial profiling in law enforcement to prevent arbitrary arrests, stops, searches and investigations and the over-incarceration of African Canadians (Botswana)

*Theme: E1 Economic, social & cultural rights - general measures of implementation*

152. Ensure that the rights to health, education and employment of indigenous peoples, people of African descent as well as migrants, refugees and asylum seekers are respected and guaranteed (Madagascar)

*Theme: E24 Right to social security*

240. Ensure full equality for indigenous peoples in the protection of their international human rights to health, education and welfare (Norway)

241. Make additional efforts to ensure equitable access to quality health, education and other social services for those belonging to indigenous communities and to those racialized individuals and groups (Qatar)

*Theme: F13 Violence against women*

198. Take effective legal measures to combat violence against women, especially indigenous and ethnic minority women (China)

202. Take immediate legal measures in order to stop the ongoing violence against indigenous and aboriginal peoples, especially women (Islamic Republic of Iran)

*Theme: G3 Indigenous peoples*

236. Take effective legislative and administrative measures to concretely improve the living conditions of indigenous people and ensure all their rights (China)

248. Continue to revise and adapt legislation to improve the living conditions of the First Nations (Spain)

<sup>49</sup> See Report of the Working Group on the Universal Periodic Review, Second UPR of Canada, UN General Assembly (June 28, 2013) UN Doc. A/HRC/24/11, paras. 128.45 (recommendation 45; Democratic People's Republic of Korea), (recommendation 73; Burundi), 128.74 (recommendation 74; Namibia), 128.81 (recommendation 81; Botswana), 128.82 (recommendation 82; Côte d'Ivoire), 128.127 (recommendation 127; Slovakia).

<sup>50</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, December 18, 1979, United Nations, Treaty Series, vol. 1249, p. 13. *International Covenant on Economic, Social and Cultural Rights*, December 16, 1966, United Nations, Treaty Series, vol. 993, p. 3.

<sup>51</sup> UN General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, Human Rights Council, Fourteenth session, Agenda item 3, UN Doc. A/HRC/14/20, April 27, 2010, paras. 2, 51.

<sup>52</sup> E. J. Bernard and S. Cameron, *Advancing HIV Justice 2: Building momentum in global advocacy against HIV criminalisation* (Brighton/Amsterdam: HIV Justice Network and Global Network of People Living with HIV (GNP+), April 2016).

<sup>53</sup> HIV Legal Network, *HIV Criminalization in Canada: Key Trends and Patterns (1989-2020)*, March 8, 2022.

<sup>54</sup> P. Allard, C. Kazatchkine, and A. Symington, "Criminal prosecutions for HIV non-disclosure: Protecting women from infection or threatening prevention efforts?" in J. Gahagan (ed), *Women and HIV Prevention in Canada: Implications for Research, Policy, and Practice* (Toronto: Women's Press, 2013): pp. 195–218.

<sup>55</sup> UN General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, at para. 71.

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<sup>56</sup> S. Patterson et al., “The impact of criminalization of HIV non-disclosure on the healthcare engagement of women living with HIV in Canada: a comprehensive review of the evidence,” *Journal of the International AIDS Society* 18 (2015): 20572.

<sup>57</sup> UNAIDS/UNDP, *Policy brief: Criminalization of HIV Transmission*, August 2008.

<sup>58</sup> UN General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, Human Rights Council, Fourteenth session, Agenda item 3, UN Doc. A/HRC/14/20, April 27, 2010.

<sup>59</sup> Global Commission on HIV and the Law (UNDP HIV/AIDS Group), *HIV and the Law: Risks, Rights & Health*, July 2012.

<sup>60</sup> UN Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, CEDAW/C/CAN/CO/8-9, November, 18, 2016, para. 43.

<sup>61</sup> UNAIDS, *Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations*, 2013.