Submission to the United Nations Human Rights Committee: Review of Canada at 145th Session (March 2-19, 2026)

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HIV Legal Network

schu@hivlegalnetwork.ca
www.hivlegalnetwork.ca

INTRODUCTION

1. The HIV Legal Network ("Legal Network") makes this submission to the United Nations (UN) Human Rights Committee ("Committee") in advance of its review of Canada's periodic report, detailing our concerns about Canada's implementation of the *International Covenant on Civil and Political Rights* ("ICCPR"). The Legal Network would like to provide information on violations of Articles 2, 3, 6, 7, 9, and 26 of the ICCPR with respect to the human rights of people living with HIV, people who use drugs, people without permanent residence or citizenship, and sex workers in Canada.

2. This submission should be read alongside complementary reports by the Canadian Drug Policy Coalition, the Joint Statement Urging Review of Canada's Position on Positive Obligations Under Article 6, and national housing and homelessness organizations addressing intersecting rights violations related to criminalization, health care, poverty, and housing insecurity.

ARTICLES 2, 3, 6, 9 & 26: RIGHTS TO NON-DISCRIMINATION, LIFE, LIBERTY, AND SECURITY OF THE PERSON

In the "List of issues prior to submission of the seventh periodic reports of Canada" (LOI), the Committee asked of Canada:

4. Please describe the legislative and other measures taken within the reporting period to prevent and combat discrimination on the basis of **gender**, sexual orientation, **Indigenous status**, **disability**, socioeconomic status, **race, sex worker status**, religion, **HIV status** and/or nationality. Please also provide information about any measures taken by the State party to ensure that the coronavirus disease (COVID-19) pandemic does not exacerbate inequality, discrimination and exclusion, including about any measures to guarantee that COVID-19 vaccines reach all vulnerable groups.

The criminalization of HIV non-disclosure and deprivations of the rights to non-discrimination, liberty, and security of the person

3. Under the law of sexual assault, **Canada continues to criminalize people living with HIV for alleged non-disclosure to sexual partners**. Based on a 2012 decision from the Supreme Court of Canada in *R v Mabior*, people living with HIV in Canada have a legal duty to disclose their status before sex that poses a realistic possibility of transmission and face prosecution and conviction for non-disclosure even if there was no transmission, they had no intention to

harm their sexual partner, and they took reasonable precautions to prevent transmission.[1] People are often charged with aggravated sexual assault, one of the most serious offences in the *Criminal Code*. If convicted, they face a sentence of up to life imprisonment and possible registration as a sex offender.

4. More than 230 people have been criminally charged to date in relation to their HIV positive status.[2] **No other medical condition has triggered a similar level of criminal repression in Canada**.[3]

5. There are numerous public health concerns associated with HIV criminalization. It creates a structural barrier to healthcare engagement for some people living with HIV in Canada — discouraging access to HIV testing and linkage to HIV care required to achieve viral suppression, which is important to promote both individual and population health.[4]

6. In addition, the **criminalization of non-disclosure exposes women living with HIV to an increased risk of violence and abuse**. A disproportionate number of women convicted of HIV non-disclosure are Indigenous women and women who have had long histories of sexual abuse, underlining the continued effects of both colonialism and sexual violence against women.[5] HIV criminalization in Canada also **disproportionally affects racialized communities**. While Black people currently make up 4.3% of the population in Canada,[6] they represent at least 22% of those criminally charged to date in cases of alleged HIV non-disclosure.[7]

7. All these concerns have led HIV and human rights experts internationally to condemn HIV criminalization.[8] In 2024, the UN Special Rapporteur on the Right to Health recommended that States "repeal laws that criminalize HIV exposure, transmission and non-disclosure."[9]

8. In 2016, the UN Committee on the Elimination of Discrimination against Women ("CEDAW Committee") recommended that Canada "limit the application of criminal law provisions to

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1 *R v Mabior*, 2012 SCC 47.
2 C. Hastings et al., *HIV Criminalization in Canada: Key Trends and Patterns (1989–2020)*, HIV Legal Network, 2022 and HIV Legal Network, ongoing monitoring of HIV-related prosecutions.
3 Department of Justice Canada, *Criminal Justice System's Response to Non-Disclosure of HIV*, December 1, 2017, p. 17 at https://www.justice.gc.ca/eng/rp-pr/other-autre/hivnd-vihnd/index.html.
4 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.
5 C. Hastings et al., *HIV Criminalization in Canada: Key Trends and Patterns (1989–2020)*, HIV Legal Network, 2022.
6 N. Domey and N. Patsiurko, *The Diversity of the Black Populations in Canada, 2021: A Sociodemographic Portrait,* Statistics Canada, October 25, 2024.
7 *HIV Criminalization in Canada: Key Trends and Patterns (1989–2020)*, supra.
8 Joint United Nations Programme on HIV/AIDS, *Criminalization of HIV transmission : policy brief*, UNAIDS/JC1601, August 2008, p. 1-3, Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights and Health*, July 2012; 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, A/HRC/14/20, April 27, 2010, paras. 71 and 76.
9 United Nations 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*, A/79/177, July 18, 2024 at para 115 (g).

cases of intentional transmission of HIV/AIDS, as recommended by international public health standards."[10] In 2016, the UN Committee on the Rights of the Child also noted the need to review legislation "that criminalizes the unintentional transmission of HIV and the non-disclosure of one's HIV status."[11]

9. In 2022, the federal government announced its intention to pursue law reform and organized national consultations.[12] In the more than three years since, the government has taken no further action to reform HIV criminalization laws.

Denial of harm reduction services for people who use drugs and deprivations of the rights to non-discrimination, life, liberty, and security of the person

10. Harm reduction is an evidence-based, public health approach that reduces the health, social, and legal impacts associated with drug use and drug policy, including HIV, hepatitis C virus (HCV), and toxic drug injury and death.[13] Grounded in human rights, harm reduction is a vital component of Canada's HIV response, given higher rates of HIV among people who inject drugs than among the general population. Notably, Canada is facing rising rates of HIV, particularly in Manitoba and Saskatchewan, among people who use drugs including women and Indigeneous people.[14]

11. **Access to harm reduction services and supports is especially pressing considering Canada's exceptional, ongoing toxic drug crisis, which has already killed 53,308 people since 2016**[15] — approaching the nearly 60,000 deaths caused by COVID-19.[16] The provinces of British Columbia, Alberta, and Ontario have been hardest hit. The toxic drug crisis in Canada is so severe that it has reduced Canada's overall life expectancy.[17] **As with HIV, Indigenous people are disproportionately affected.** In Ontario, for example, Indigenous people were ten times higher to be hospitalized for an opioid poisoning and nine times more likely to die from it.[18] Exceptionally high rates of toxic drug injury and death in Canada are due to the unregulated drug supply that has become increasingly unpredictable, contaminated, and potent.[19]

12. Despite clear evidence of need, harm reduction remains highly politicized and vulnerable to

[10] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations on the combined eighth and ninth periodic reports of Canada,* C/CAN/CO/8-9, November 25, 2016 at para 43.
[11] UN Committee on the Rights of the Child, *General Comment No. 20*, 2016 at para 63.
[12] HIV Legal Network, *Words Aren't Enough: Canada Must Deliver on HIV Criminal Law Reform,* December 2025.
[13] Harm Reduction International, *What is Harm Reduction?* at https://hri.global/what-is-harm-reduction/.
[14] HIV Legal Network, *State of HIV 2025 – Rights, Progress, and Unfinished Work*, December 1, 2025 and Government of Canada, *HIV in Canada, Surveillance Report to December 31, 2023,* September 2025.
[15] Government of Canada, *Opioid- and Stimulant-related Harms in Canada*, 2025.
[16] Government of Canada, *COVID-19 epidemiology update: Current situation*, October 2024.
[17] Statistics Canada, *Changes in life expectancy by selected causes of death, 2017*, May 30, 2019
[18] See, for example, Chiefs of Ontario, *First Nations people in Ontario disproportionately affected by opioid crisis, new report shows*, October 2025 and Ontario Drug Policy Research Network, *Opioid Use, Related Harms, and Access to Treatment among First Nations in Ontario Second Annual Update, 2013-2023*, 2025.
[19] Government of Canada, *Canada's overdose crisis and the toxic illegal drug supply*, 2026 at https://www.canada.ca/en/health-canada/services/opioids/overdose-crisis-toxic-illegal-drug-supply.html.

evolving political contexts in Canada. This is especially clear in the case of supervised consumption services (SCS), which provide safe, hygienic spaces where people can use drugs under the supervision of trained staff or volunteers.[20] These evidence-based health services have been proven to save lives and improve health by preventing toxic drug deaths, reducing HIV and HCV transmission through harm reduction education and supplies, and connecting clients to health and social support services.[21] They also lessen public drug use and discarded drug use equipment.[22] Canada's national HIV and drugs strategies both include commitments to support the establishment of SCS.[23]

13. To operate legally, SCS must receive an exemption from drug laws issued by the federal government. Concerningly, new barriers to the exemption process are being reported at the federal level, making it more difficult to operate and sustain SCS in Canada.[24]

14. Provincially, Ontario, Alberta, and Quebec have recently adopted laws and policies that create barriers to SCS implementation. These laws and policies include arbitrary distancing requirements, the need for provincial approval without specified criteria, and stringent licensing requirements.[25] Even when sites comply with these rules, they have stalled opening or been forced to shut down because provincial governments have denied them funding — exposing clients that have nowhere else to go to increased risks of death and harm.[26]

15. In Alberta and Ontario, court cases are ongoing to challenge these laws and policies that **discriminate against people who use drugs, including women and Indigeneous people who are disproportionately impacted by HIV and the toxic drug crisis, by denying them access to lifesaving services, in violation of their rights to life and to security of the person**.[27]

16. Needle and syringe programs (NSP) — another cornerstone of harm reduction and HIV prevention — have operated in Canada for nearly four decades, providing sterile drug use

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[20] HIV Legal Network, *Scaling up supervised consumption services*, 2024 at pp. 9 and 21.
[21] Government of Canada, *Supervised consumption explained: types of sites and services,* 2024.
[22] Ibid.
[23] Government of Canada, *Government of Canada's sexually transmitted and blood-borne infections (STBBI) Action Plan 2024-2030*, 2024 and Government of Canada, *Canadian Drugs and Substances Strategy: Substance use services and supports*, 2024.
[24] Information shared by service providers with the HIV Legal Network, 2025. See also E. Paling, "Carney Government Prevented Parkdale SCS from Staying Open," *The Grind,* January 21, 2026.
[25] See Ontario's *Community Care and Recovery Act, 2024*, S.O. 2024, c. 27; Alberta's *Mental Health Services Protection Act*, SA 2018, c M-13.2, *Mental Health Services Protection Regulation***,** Alta Reg 114/2021, and the *Recovery-oriented Supervised Consumption Services Standards*; and Quebec's *An Act to regulate supervised consumption sites in order to promote their harmonious cohabitation with the community*, Ch. 34, 2025.
[26] See, for example, Toronto Acting Medical Officer of Health, *Anticipated service impacts for Toronto Public Health and emergency responders due to the closure of Supervised Consumption Sites in Toronto*, 2025 and Colin D'Mello and Isaac Callan, "Hospitalizations and death: Ontario's internal warnings over supervised consumption site ban," *Global News*, November 14, 2024.
[27] *The Neighbourhood Group et al v HMKRO*, 2025 ONSC 1934 and *Brown v Alberta*, 2025 ABKB 495.

equipment to prevent the spread of HIV, HCV, and other infections.[28] NSPs are among the most effective and well-established harm reduction programs in the world, with extensive evidence showing their benefits for both individual and public health.[29]

17. Yet, some provinces, including Saskatchewan and Ontario, have adopted new restrictions limiting the operation and effectiveness of NSPs. These include prohibitions on the types of equipment that can be distributed, limits on the quantity that can distributed, and restrictions on where the programs can operate.[30] In 2025, Saskatchewan, which has the highest first-time HIV diagnosis rate across provinces and territories in Canada,[31] also passed a law declaring syringes and drug pipes "street weapons."[32]

18. **Access to harm reduction is inherent in the rights to life, liberty, security, and health**; it is recognized in numerous international instruments.[33] The UN High Commissioner for Human Rights has recognized that "the right to the highest attainable standard of health applies equally in the context of drug laws, policies and practices, and includes access, on a voluntary basis, to harm reduction services."[34] The UN Committee on Economic, Social and Cultural Rights, in particular, has repeatedly called on States to provide harm reduction services and eliminate obstacles that limit access, especially to the most disadvantaged and marginalized people who use drugs.[35] In 2024, the UN Special Rapporteur on the Right to Health concluded that "harm reduction services such as needle exchange programmes and opioid substitution treatment should be implemented in order to realize the right to health (…)."[36]

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[28] Working Group on Best Practice for Harm Reduction Programs in Canada, *Best Practice Recommendations for Canadian Programs that Provide Harm Reduction Supplies to People Who Use Drugs and are at Risk for HIV, HCV, and Other Harms*, 2021.

[29] WHO, *Consolidated guidelines on HIV, viral hepatitis and STI prevention, diagnosis, treatment and care for key populations*, 2022.

[30] See J. Alevato, "More than 600 individuals, organizations send letter calling on Ontario to reverse needle distribution ban," *CBC news*, July 10, 2025 and HIV Legal Network, *The State of HIV in Canada: Rights, Progress, and Unfinished Work*, December 1, 2025 at p. 37.

[31] Public Health Agency of Canada, *HIV in Canada, Surveillance Report to December 31, 2023,* September 2025.

[32] Government of Saskatchewan, "Government Expands Legislation to Target Street Weapons and Illicit Drugs," April 2025 at https://www.saskatchewan.ca/government/news-and-media/2025/april/15/government-expands-legislation-to-target-street-weapons-and-illicit-drugs.

[33] For example, a resolution adopted by the UN General Assembly in 2021 expressed concern over the absence of harm reduction programs at the intersection of HIV and injection drug use and committed to expanding harm reduction models and tailoring approaches to meet the diverse needs of populations, including those who inject drugs. See United Nations (General Assembly), *Political Declaration on HIV and AIDS: Ending Inequalities and Getting on Track to End AIDS by 2030*, GA Res 75/284, 74th plen mtg, Agenda Item 10, UN Doc A/RES/75/284 (9 June 2021, adopted 8 June 2021).

[34] Office of the United Nations High Commissioner for Human Rights, *Human rights challenges in addressing and countering all aspects of the world drug problem. Report of the Office of the United Nations High Commissioner for Human Rights,* Human Rights Council, Fifty-fourth session, 11 September–6 October 2023, A/HRC/54/53, August 15, 2023, at para 11.

[35] UN Committee on Economic, Social and Cultural Rights, *Concluding Observations: Switzerland*, UN Doc. E/C.12/CHE/CO/4, 18 November 2019 at paras. 50–51.

[36] Office of the United Nations High Commissioner for Human Rights, *Drug use, harm reduction and the right to health - Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng,* Human Rights Council, Fifty-sixth session, 30 April 2024, A/HRC/56/52, at para. 84.

19. In its General Comment 36, the UN Human Rights Committee affirmed that the right to life requires "appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity" and clarified that positive measures are required to address a wide range of systemic issues, including "life-threatning diseases such as AIDS" and "extensive substance [use]," and that the right to life may require State parties to ensure access to essential goods and services such as health care.[37]

20. In 2016, the CEDAW Committee called on Canada to "define harm reduction as a key element of its federal strategy on drugs, and reduce the gap in health service delivery relating to women's drug use by scaling up and ensuring access to culturally appropriate harm reduction services."[38] The CEDAW Committee further recommended that Canada "establish a transparent process for exemptions permitting the operation of supervised consumption services without risk of criminal prosecution of clients or service providers," recognizing the right to access SCS for women who use drugs as an essential element of their right to equal access to health care.[39] In 2025, the UN Committee on the Rights of Persons with Disabilities further recommended that Canada "ensure harm-reduction and safe-supply programmes that respond to the intersecting identities of persons who use drugs."[40]

Disability-related discrimination in the context of immigration

21. Section 38(1)(c) of Canada's *Immigration and Refugee Protection Act* (*IRPA*) — the "excessive demand" regime — permits the denial of immigration status where an applicant's anticipated use of publicly funded healthcare services is expected to impose "undue" costs.[41] As a result, **people living with HIV and other conditions continue to be assessed and denied temporary or permanent status under the "excessive demand" regime, and subjected to additional delays, costs, and stigma related to migration and disability**.

22. In 2017, a federal government committee reviewed the "excessive demand" regime and recommended its full repeal, recognizing that the regime unjustifiably harms people living with disabilities.[42] Canada instead retained the regime and introduced limited reforms, including tripling the cost threshold[43] — a change that resulted in approximately 85% of applicants who

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[37] UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, CCPR/C/GC/35, 3 September 2019 at para. 26.
[38] CEDAW Committee, *Concluding observations on the combined eighth and ninth periodic reports of Canada,* supra at para. 45(a).
[39] Ibid, at para 45(b).
[40] UN Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Canada*, CRPD/C/CAN/CO/2-3, April 15, 2025, at para. 28(b).
[41] *Immigration and Refugee Protection Act* (S.C. 2001, c. 27).
[42] Standing Committee on Citizenship and Immigration, "Building an Inclusive Canada: Bringing the Immigration and Refugee Protection Act in Step with Modern Values," Report of the Standing Committee on Citizenship and Immigration, December 2017.
[43] Immigration, Refugees, and Citizenship Canada*, Temporary Public Policy Regarding Excessive Demand on Health and Social Services*, October 26, 2022; *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 1.

would previously have been denied being accepted.[44] Nevertheless, people living with HIV and other health conditions continue to be affected, as they are still regularly processed under s. 38(1)(c) and the current cost threshold.[45]

23. Today, most individuals applying to enter or remain in Canada must undergo an immigration medical examination, which includes mandatory HIV testing.[46] The results of the examination are shared with Immigration, Refugees, and Citizenship Canada (IRCC), who then assess whether the individual's expected healthcare costs will exceed the cost threshold. If IRCC determines that a person will pose an "excessive demand," the applicant is given an opportunity to propose mitigation measures, after which IRCC exercises discretion to approve or refuse the application based on projected healthcare costs.

24. Although most people living with health conditions, including HIV, do not exceed the applicable cost threshold, applicants whose health status is identified through the immigration medical examination nonetheless experience significant harms, including:
    - Reduction to the cost of their healthcare, and having their value negated;
    - Exposure to stigmatizing views regarding disability and migration;
    - Prolonged application processing delays;
    - Additional legal costs; and
    - The risk of refusal or removal if unable to adequately respond to an "excessive demand" determination.[47]

25. These harms have been the subject of sustained international criticism. In 2011, the UN General Assembly called on states to eliminate HIV-related restrictions on entry, stay, and residence,[48] a position reiterated by UNAIDS in 2014.[49] In 2021, the UN Committee on the Rights of Persons with Disabilities found that Australia's medical inadmissibility regime, which parallels Canada's s. 38(1)(c), violated articles 4, 5 and 18 of the *Convention on the Rights of Persons with Disabilities*.[50] Similarly, in 2025 the same UN Committee called on Canada to repeal s. 38(1)(c),[51] but it has yet to do so.

26. As a result, the "excessive demand" regime continues to prevent people living with health conditions and disabilities from exercising fundamental rights on an equal basis with others,

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[44] HIV Legal Network, *Challenging the Constitutionality of Canada's 'Excessive Demand' Regime in Federal Court*, April 17, 2024.
[45] Ibid.
[46] Certain groups are exempt from the "excessive demand" assessment, based on "compelling humanitarian and compassionate reasons" (*Immigration and Refugee Protection Act*, SC 2001, c 27, s. 38(2)).
[47] HIV Legal Network, *Challenging the Constitutionality of Canada's 'Excessive Demand' Regime in Federal Court*, supra.
[48] UN General Assembly, *Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS*, A/RES/65/277, July 8, 2011 at para. 79.
[49] UNAIDS, *The Gap Report*, July 16, 2014 at p. 169.
[50] UN Committee on the Rights of Persons with Disabilities, *Views adopted by the Committee under article 5 of the Optional Protocol*, concerning communication No. 20/2014, CRPD/C/24/D/20/2014, April 30, 2021 at para 9.
[51] UN Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Canada*, supra at para. 38.

including the right to be free from discrimination and the rights to liberty, security, and the highest attainable standard of health.[52]

The criminalization of sex work and deprivations of the rights to non-discrimination, life, liberty, and security of the person

27. In 2016, the CEDAW Committee expressed concern about the "potentially increased risk to the security and health of women in prostitution" brought about by the *Protection of Communities and Exploited Persons* (PCEPA) and recommended that Canada "[f]ully decriminalize women engaged in prostitution."[53] More than ten years since PCEPA's passage in 2014, **sex workers in Canada continue to risk criminal prosecution for working in public space and have been prosecuted for offences related to third-party benefits and trafficking** when they work with, gain material benefits from, or assist other sex workers to enter or work in Canada.[54] Sex workers also continue to endure **the constant threat of eviction for selling sexual services contrary to provincial and territorial legislation, and face multiple barriers to screening clients and accessing safety-enhancing third parties**. In particular, **Indigenous, Black, and migrant sex workers face targeted violence, stigmatization, hyper-surveillance, and over-policing under PCEPA**.[55]

28. Numerous studies have concluded that **PCEPA's prohibitions on purchasing and selling sexual services have contributed to increased risk of violence against sex workers**, who are forced to work in isolation, insecure locations, and to rush negotiations with potential clients for fear of police detection.[56] In a 2019 study involving 299 sex workers from Vancouver, B.C., 26% reported negative changes after PCEPA's passage, including reduced ability to screen clients. These experiences are more pronounced for racialized, migrant workers given immigration prohibitions on sex work.[57]

29. Additionally, research in Canada has shown that **criminalizing third parties who work with, for, or employ sex workers, forces sex workers to work in isolation, away from support networks and without proven safety mechanisms** such as work environments that allow

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[52] UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution adopted by the General Assembly*, A/RES/61/106, January 24, 2007, Articles 14 and 25.
[53] CEDAW Committee, *Concluding Observations on the combined eighth and ninth periodic reports of Canada*, supra at paras. 32 and 33.
[54] Section 213 of Canada's *Criminal Code* prohibits (1) impeding vehicles or traffic and (2) any communication in a public place near a school ground, playground or daycare centre to sell sexual services.
[55] See Canadian HIV/AIDS Legal Network, *The Perils of "Protection": Sex Workers' Experiences of Law Enforcement in Ontario*, 2019.
[56] J. McDermid et al., "How client criminalisation under end-demand sex work laws shapes the occupational health and safety of sex workers in Metro Vancouver, Canada: a qualitative study," *BMJ Open* 2022;12:e061729 and B. McBride et al., "Harms of third party criminalisation under end-demand legislation: undermining sex workers' safety and rights," *Cult Health Sex* 2021; 23:1165–81.
[57] S. Machat et al., "Sex workers' experiences and occupational conditions post-implementation of end-demand criminalization in Metro Vancouver, Canada," *Canadian Journal of Public Health*, June 10, 2019.

women to work together and promote access to health and support services.[58] Third parties often provide essential supports for sex workers who have limited means. Laws that subject all third parties to criminal sanction without evidence of abuse drives sex work underground where labour exploitation can flourish and deters sex workers from the legal system when they experience violence because they fear charges for themselves and the people with whom they work.[59]

30. Moreover, since PCEPA's passage, criminalizing sex work has been deemed a central strategy to protect women from human trafficking — enabling law enforcement to intensify surveillance and other initiatives against sex workers.[60] Surveillance from law enforcement has intensified pronouncedly for migrants, given the immigration prohibitions on sex work.[61] **As migrant sex workers have reported, racial profiling and surveillance associated with anti-trafficking campaigns has heightened their risk of arrest, detention, and deportation**, contributing to their further marginalization while increasing their mistrust of law enforcement.[62]

31. Correspondingly, greater surveillance of Indigenous women has undermined their relationships with family members or others who may offer them safety or support, including in circumstances where they may sell sex. As the National Inquiry into Missing and Murdered Indigenous Women and Girls concluded, **Indigenous women in sex work who experience violence face risks in reaching out to police, including the risk of being charged themselves**.[63] In a 2021 study, 36.36% of Indigenous sex workers reported that they were unable to call emergency services due to fear of police detection of themselves or third parties.[64] The Inquiry thus recommended "recognizing and honouring the agency and expertise held by women" and providing "access to safe spaces to engage in sex work."[65]

32. In 2022, a federal Parliamentary Committee studying PCEPA concluded that PCEPA "causes serious harm to those engaged in sex work by making the work more dangerous."[66] It

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[58] See B. McBride et al., "Third Parties (Venue Owners, Managers, Security, etc.) and Access to Occupational Health and Safety Among Sex Workers in a Canadian Setting: 2010-2016," *American Journal of Public Health* 109, 5 (May 2019): 792-798 and K. Shannon et al., "Global epidemiology of HIV among female sex workers: influence of structural determinants," *Lancet* 385, 9962 (January 3, 2015): 55–71.
[59] *The Perils of "Protection",* supra, and Canadian Alliance for Sex Work Law Reform, *Pimps, Managers and Other Third Parties: Making Distinctions Between Third Parties and Exploitation*, 2014.
[60] See A. Rose, "Punished for Strength: Sex Worker Activism and the Anti-Trafficking Movement," *Atlantis* 37, 2 (2015): 57-64 and Hamilton Police Service, "Project Orchid Takes Aim at Illegal Massage Parlours," June 3, 2019.
[61] S. Machat et al., "Sex workers' experiences and occupational conditions post-implementation of end-demand criminalization in Metro Vancouver, Canada," *Canadian Journal of Public Health*, June 10, 2019.
[62] E. Lam and A. Lepp, "Butterfly: Resisting the harms of anti-trafficking policies and fostering peer-based organising in Canada," *Anti-Trafficking Review*, issue 12, 2019: 91-107.
[63] National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place*, Volume 1a, 2019 at pp. 663-4.
[64] A. Crago et al., "Sex Workers' Access to Police Assistance in Safety Emergencies and Means of Escape from Situations of Violence and Confinement under an "End Demand" Criminalization Model: A Five City Study in Canada," *Social Sciences* 10,1 (2021): 1-15.
[65] *Reclaiming Power and Place*, supra, at p. 672.
[66] Report of the Standing Committee on Justice and Human Rights, *Preventing Harm in the Canadian Sex Industry: A Review of the Protection of Communities and Exploited Persons Act*, June 2022.

recommended that Canada repeal prohibitions on public communication and advertising of sex work as well as prohibitions against migrant sex work, which "put migrant sex workers at elevated risk of violence and danger by making them unable to report these incidents without fear of deportation."[67]

33. **Criminalizing and otherwise prohibiting sex work discriminates against women and fuels the risk of violence, other abuse, and poor working conditions**. Decriminalizing sex work is in line with recommendations made by UNAIDS,[68] UNDP,[69] the Global Commission on HIV and the Law,[70] the UN Special Rapporteur on the Right to Health,[71] the UN Working Group on Discrimination against Women and Girls,[72] and UN Women.[73] Following his 2023 mission to Canada, the UN Special Rapporteur on Contemporary Forms of Slavery expressed serious concern "that anti-trafficking rhetoric and implementation of anti-trafficking efforts have had a negative impact on the human rights of sex workers," concluded sex workers' situation had worsened under PCEPA, and recommended fully decriminalizing sex work in law and practice.[74]

RECOMMENDED ACTIONS

The Legal Network recommends that the Committee call on Canada to:

HIV criminalization

- **Remove HIV non-disclosure from the ambit of sexual assault law and restrict criminal penalties to cases of actual, intentional transmission.**
- **Ensure that, at the absolute minimum, the criminal law is under no circumstances used against people living with HIV for not disclosing their status to sexual partners where they use a condom (or similar latex barrier) for penetrative sex, practice oral sex, or have condomless penetrative sex with a suppressed viral load.**
- **Review past convictions, allowing for a conviction to be expunged if it does not fit within new limitations on the scope of criminalization.**

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[67] Ibid.
[68] UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work*, 2012.
[69] J. Godwin, *Sex Work and the Law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work*, UNDP, 2012.
[70] Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, supra.
[71] *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*, 2010 supra.
[72] UN Working Group on discrimination against women and girls, *Eliminating discrimination against sex workers and securing their human rights*, December 7, 2023.
[73] UN Women, *Note on Sex Work, Sexual Exploitation and Trafficking*, October 9, 2013.
[74] UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences Tomoya Obokata, *End of Mission Statement*, September 6, 2023.

Harm reduction services for people who use drugs

- **Repeal and rescind provincial and federal laws and policies that impede access to harm reduction services, including supervised consumption services and needle and syringe programs.**

- **Expand access to culturally appropriate and gender-sensitive harm reduction services, such as needle and syringe and other drug equipment distribution programs and supervised consumption services, particularly in rural and remote communities.**

Disability-related discrimination in the context of immigration

- **Repeal the "excessive demand" provision of Canada's laws governing medical inadmissibility, which allows people seeking permanent or temporary residence to be rejected based on their HIV status or other condition.**

The criminalization of sex work

- **Repeal all sex work–specific criminal offences.**

- **Review anti-trafficking approaches and programs that target sex work and undermine sex workers' attempts to protect themselves and counter violence, under the guise of combating human trafficking.**

- **Repeal all immigration prohibitions on migrant sex work.**

- **Fund and support culturally appropriate programs and services that are developed by people who have lived experience selling sex, including:**
  - **safe spaces to engage in sex work; and**
  - **access to healthcare, counselling, legal services, income support, housing, childcare, education, training, and support for substance use.**

ARTICLES 2, 3, 6, 7, 9, AND 10: RIGHTS TO NON-DISCRIMINATION, LIFE, LIBERTY, SECURITY OF THE PERSON, AND PROHIBITION OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

In the LOI, the Committee asked of Canada:

5. Please provide information about: (a) reports of the lethal use of force and **deaths in custody affecting individuals from racial minorities**… (b) efforts to prevent racial profiling by police officers; (c) measures to address the **overrepresentation of individuals belonging to racial and ethnic minorities**, particularly indigenous persons and those of African descent, including women, **in the criminal justice system** at all levels.

15. Please: (a) provide data on the capacity of the prison system and the total number of persons incarcerated, as well as on **the use of alternatives to detention, particularly in cases of nonviolent offences, including drug-related crimes**…and (c) provide detailed information about **conditions within prisons, in particular access to health care, including mental health services.**

The criminalization of people who use drugs and deprivations of the rights to life, liberty, security of the person, and non-discrimination

34. In Canada, drug use continues to be largely treated as a criminal law issue with immediate impacts on the life and health of people who use drugs. The federal *Controlled Drugs and Substances Act* (CDSA) prohibits "simple possession", meaning it is a crime to possess "controlled substances" such as opioids, cocaine, methamphetamines, and ecstasy, even for personal use. **Canada's continued "War on Drugs" contributes to the mass incarceration of Indigenous, Black, and other racialized communities in Canada**.[75] Indigenous women account for about half of all women in federal prisons while representing roughly 4% of Canada's adult female population,[76] and Black women account for 6% of all women in federal prisons while representing approximately 3% of Canada's female adult

[75] See Government of Canada, *Overrepresentation of Indigenous and Black adults in provincial and federal custody,* January 14, 2026; A. Owusu-Bempah et al., "Race and Incarceration: The Representation and Characteristics of Black People in Provincial Correctional Facilities in Ontario, Canada," *Race and Justice* 13(4) (2023): 530-542; Justice Canada, *Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses*, January 20, 2023; 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; and K. Samuels-Wortley, "Youthful Discretion: Police Selection Bias in Access to Pre-Charge Diversion Programs in Canada," *Race and Justice* 1-24 (2019)

[76] Statistics Canada, "Indigenous population continues to grow and is much younger than the non-Indigenous population, although the pace of growth has slowed," *The Daily*, September 21, 2022 and Office of the Correctional Investigator, *Annual Report 2021-2022*, 2022 at p. 96.

population.[77] Notably, more than half of Black women in federal prisons are incarcerated for a drug offence.[78]

35. Acknowledging this troubling reality, the CEDAW Committee has previously expressed its concern with the "excessive use of incarceration as a drug-control measure against women" in Canada.[79] Similarly, the UN Committee on the Rights of Persons with Disabilities expressed its concerns with the "significantly high prevalence of women with psychosocial disabilities, in particular Indigenous women with psychosocial disabilities, in women's prisons (…)"[80] in Canada.

36. Criminalization, including via prohibitions on simple drug possession and drug trafficking, increases risks for life and safety by forcing people to use drugs in isolation and deterring access to health and harm reduction services.[81] Police enforcement such as drug seizures also increases risks of harm and death for people who use drugs. A 2023 study found that opioid-related law enforcement drug seizures were significantly associated with increased fatal and non-fatal overdose within the vicinity of where the seizures took place.[82] Drug seizures have the effect of increasing the potency of the unregulated supply because it often incentivize drug suppliers to strengthen their supply and move smaller quantities with higher value to manage risks related to criminalization and loss of product.[83] In prison, risks of HIV and HCV infection and toxic drug injury and death increase, given the lack of harm reduction measures. This has fueled significantly higher rates of HIV and HCV and a **dramatic recent increase of deaths in custody**.[84]

37. An unprecedented crisis of toxic drug injuries and death has prompted the federal government to take some steps to "divert people who use drugs away from the criminal justice system and towards health and social services."[85] In 2017, the federal government enacted the *Good Samaritan Drug Overdose Act* which exempts individuals from arrest and prosecution if they

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[77] Department of Justice Canada, *Overrepresentation of Black people in the Canadian criminal justice system*, December 2022, p. 7.
[78] Office of the Correctional Investigator, *Annual Report 2021-2022*, 2022 and Canadian Centre for Policy Alternatives, *Decriminalizing Race: The case for investing in community and social support for imprisoned racialized women in Canada*, September 2020, p. 13.
[79] CEDAW Committee, *Concluding observations on the combined eighth and ninth periodic reports of Canada,* supra, supra at para. 45.
[80] Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Canada*, supra at para. 29(c).
[81] See HIV Legal Network, *It's Not So Simple: The impact of simple drug possession and trafficking offences on health equity*, September 25, 2025; E. Wood et al., "The war on drugs: a devastating public-policy disaster," *The Lancet* 373:9668 (2009) pp. 989-990; and J. Csete et al., "Public health and international drug policy." *The Lancet* 387:10026 (2016) pp. 1427-1480.
[82] B. Ray et al., "Spatiotemporal Analysis Exploring the Effect of Law Enforcement Drug Market Disruptions on Overdose, Indianapolis, Indiana, 2020–2021," *American Journal of Public Health* 113 (2023): 750–758.
[83] See L. Beletsky and C. S. Davis, "Today's fentanyl crisis: Prohibition's Iron Law, revisited," *International Journal of Drug Policy* 46 (2017): 156–159, and HIV Legal Network, *It's Not So Simple*, supra.
[84] See Tracking (In)Justice, *Ontario Deaths in Custody on the Rise*, February 2023 and Correctional Service Canada, *Overdose Incidents in Federal Custody, 2018/2019*, December 2020.
[85] *Government of Canada's sexually transmitted and blood-borne infections (STBBI) Action Plan 2024-2030*, supra and *Canadian Drugs and Substances Strategy,* supra.

seek emergency help during an overdose.[86] In 2022, the CDSA was further amended to require law enforcement to consider alternatives to laying or proceeding with charges for simple drug possession, recognizing that "problematic substance use should be addressed primarily as a health and social issue."[87]

38. Unfortunately, this limited progress has been jeopardized by recent provincial and municipal laws and police operations that increase repression against people who use drugs. In response to the deadly toxic crisis, the province of British Columbia secured an exemption in 2023 from the federal government to decriminalize simple possession of up to a cumulative 2.5 grams total of opioids, crack, or powder cocaine, methamphetamine, or ecstasy,[88] resulting in a sharp decrease in simple possession offences.[89] Yet in January 2026, the province opted not to renew its decriminalization pilot project.[90] Meanwhile, members of the the Drug User Liberation Front (DULF) compassion club, founded in 2022 in British Columbia to provide tested drugs to people otherwise consuming from the unregulated drug supply, were prosecuted and convicted for trafficking.[91] A constitutional challenge is currently before the courts.[92] In Ontario, the 2025 *Safer Municipalities Act* provides additional powers to police to punish people who use drugs in public space, including those living in encampments.[93] This legislation came after a 2024 Ontario law that forced a number of supervised consumption sites (SCS) in the province to close, pushing precariously housed and homeless people to use drugs in public space, where they face increased surveillance and risk of arrest.[94]

39. At the same time, several provinces have passed legislation authorizing or expanding involuntary treatment and detention of people who use drugs. In Alberta, the 2025 *Compassionate Intervention Act* gives police and family the ability to force adults and youth into involuntary drug treatment.[95] In Manitoba, the 2025 *Protective Detention and Care of Intoxicated Persons Act* allows for the detention of intoxicated people who use drugs for up to 72 hours instead of the current 24.[96]

40. Despite the clear human rights concerns they raise, there is no evidence that involuntary treatment is effective towards what is construed as "problematic substance use." A 2023 Canadian review of studies on the outcomes of forced treatment concluded that it has "limited benefit" — with voluntary treatment consistently outperforming involuntary treatment in terms

[86] *Good Samaritan Drug Overdose Act*, S.C. 2017, c. 4, 2017.
[87] *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*, S.C. 2022, c. 15, 2022.
[88] BC Center for Disease Control, *Decriminalization in B.C.* at https://www.bccdc.ca/health-info/prevention-public-health/decriminalization-in-bc.
[89] Ibid.
[90] British Colombia Government News, *Minister's statement on status of the decriminalization pilot program*, January 2026.
[91] *R v Kalicum*, 2025 BCSC 2225 (CanLII).
[92] D. Greer, "Founders of B.C. drug 'compassion club' file Charter challenge," *The Canadian Press*, October 15, 2024.
[93] *Safer Municipalities Act,* 2025, S.O. 2025, c. 5, ss.1-3.
[94] *Community Care and Recovery Act*, 2024, S.O. 2024, c. 27, Sched. 4.
[95] The *Compassionate Intervention Act* (formerly Bill 53) received royal assent on May 15, 2025.
[96] The Legislative Assembly of Manitoba, *Bill 48 The protetive detention and care of intoxicated persons act,* ss. 4(2), Explanatory Note at https://web2.gov.mb.ca/bills/43-2/b048e.php,

of cost, sustained gains (e.g. abstaining from drug use), and risk of overdose death following treatment.[97]

41. Several UN human rights treaty bodies have called on States to decriminalize drug possession for personal use, including to meet their obligations to protect the right to health. In 2018, the UN Chief Executives Board for Coordination called for "changes in laws, policies and practices that threaten the health and human rights of people," including "the decriminalization of drug possession for personal use."[98] The Office of the UN High Commissioner for Human Rights recommended in 2023 that States should "Adopt alternatives to criminalization, 'zero tolerance' and elimination of drugs, by considering decriminalization of usage; and take control of illegal drug markets through responsible regulation, to eliminate profits from illegal trafficking, criminality and violence."[99] In 2024, the UN Special Rapporteur on the Right to Health called on States to "decriminalize the use, possession, purchase and cultivation of drugs for personal use and move toward alternative regulatory approaches that put the protection of people's health and other human rights front and centre "and develop "responsible regulatory frameworks."[100]

42. With respect to involuntary drug treatment, the UN Committee on the Rights of Persons with Disabilities recommended in 2025 that Canada "ensure the repeal of federal, provincial and territorial mental health and substance-use treatment laws and policies allowing for involuntary detention and treatment, including under the auspices of drug treatment courts and through community treatment orders."[101] In its 2024 visit to Canada, the Working Group on Arbitrary Detention reaffirmed that "deprivation of liberty in all settings must be an exception" and substance use treatments must always be based on informed and voluntary consent.[102] As an alternative to compulsory drug treatment, the Working Group urged authorities to invest in evidence-informed, voluntary, and rights-based health and social services, as well as drug dependence treatment and rehabilitation options in the community.[103]

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[97] The Canadian Journal of Addiction, *Effectiveness of Involuntary Treatment for Individuals With Substance Use Disorders: A Systematic Review,* December 2023.
[98] UN System Chief Executives Board for Coordination, *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*, 2018.
[99] Office of the United Nations High Commissioner for Human Rights, *Human rights challenges in addressing and countering all aspects of the world drug problem*, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/54/53, 15 August 2023.
[100] *Drug use, harm reduction and the right to health - Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng,* 2024, supra at para 85(f).
[101] Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Canada*, supra at para. 28 (a) and (c).
[102] UN Working Group on Arbitrary Detention, *Preliminary Findings from its visit to Canada* (13 to 24 May 2024).
[103] Ibid.

Lack of access to harm reduction services in prison and deprivations of the rights to life, security of the person, and the prohibition of cruel, inhuman or degrading treatment or punishment and discrimination

43. In Canada as is the case globally, significant numbers of incarcerated people use drugs — **a factor driving Canada's HIV and HCV epidemics, with a disproportionate impact on incarcerated women**.[104] Approximately 30% of women (compared to 15% of men) in provincial prisons are living with HCV, and 1–9% of women (compared to 1–2% of men) are living with HIV.[105] Similarly, a larger proportion of women than men in federal prisons are living with HIV and HCV,[106] with highest reported prevalence amongst federally incarcerated Indigenous women.[107] **An increasing number of people in prison are also dying from the toxic drug supply; from 2018-2021, an average of 150 people per year overdosed while in custody**.[108]

44. In 2023, Canada's Office of the Correctional Investigator noted that the "need for more access to a wider range of harm reduction measures behind bars now seems beyond doubt or dispute."[109] This includes key interventions recommended by the UNODC, UNAIDS, and WHO such as sterile needle and syringe programs, safer sex supplies, programs to address HIV treatment, and opioid agonist therapy (OAT).[110]

45. Yet, access to sterile drug equipment in prison is extraordinarily limited. To date, only 12 out of 43 federal prisons have a "Prison Needle Exchange Program" (PNEP) and no provincial or territorial prisons in Canada distribute sterile drug use equipment.[111] Where PNEP exist, multiple breaches of confidentiality and restricted access pose barriers to access; as a result, there is limited program uptake.[112] SCS, which also provide access to sterile drug

[104] See M.W. Tyndall et al., "Intensive injection cocaine use as the primary risk factor in the Vancouver HIV−1 epidemic," *AIDS* 17,6 (2003): 887–893; and H. Hagan, "The relevance of attributable risk measures to HIV prevention planning," *AIDS* 17,6 (2003): 911–913.
[105] F. Kouyoumdjian et al, "Health status of prisoners in Canada: Narrative review," *Canadian Family Physician* 62:3 (March 2016): 215-222.
[106] Correctional Service Canada, *Prevalence rates of infectious diseases among offenders in federal custody*, 2023.
[107] D. Zakaria et al., *Summary of emerging findings from the 2007 National Inmate Infectious Diseases and Risk-Behaviours Survey*, Correctional Service of Canada, 2010.
[108] See Tracking Injustice, at https://trackinginjustice.ca/findings-and-analysis-deaths-in-custody/; L. McKendy et al., "Understanding overdose incidents in Canadian federal custody," *International Journal of Drug Policy* 92 (2021); A. Butler et al., "Burden of opioid toxicity death in the fentanyl-dominant era for people who experience incarceration in Ontario, Canada, 2015-2020: a whole population retrospective cohort study," *BMJ Open* 13(5) (2023); and L. Button et al., "Opioid-related deaths in Ontario correctional facilities and penitentiaries (2009-2019)," *Forensic Sci Med Pathol* 19(3) (2023): 357-363.
[109] *Annual Report 2021-2022*, supra.
[110] 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; OHCHR and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights*, Consolidated Version, UN Doc HR/PUB/06/9, 2006, Guideline 4, para. 21(e);.
[111] Government of Canada, *The Prison Needle Exchange Program,* November 2024.
[112] See S. Chu et al., *Points of Perspective: Research report on the federal prison needle exchange program in canada,* HIV Legal Network and Toronto Metropolitan University, November 2022, p. 5 and N. Kronfli, et al., *Using nominal group technique to identify perceived barriers and facilitators to improving uptake of the Prison Needle Exchange Program in Canadian federal prisons by correctional officers and healthcare workers*, *International Journal of Drug Policy*, 130 (2024) 104540.

use equipment, currently operate in five federal prisons but concerns related to confidentiality and limited access mean there is similarly low uptake; no such services exist in provincial or territorial prisons.[113]

46. Several provincial and territorial prisons still do not offer OAT or impose severe restrictions on access, resulting in acute withdrawal among prisoners and an increased risk of toxic drug injury or death.[114] Among those jurisdictions that do offer OAT, long waitlists and inappropriate medication terminations persist.[115] Additionally, the federal Correctional Service Canada (CSC) recently imposed restrictions on OAT, contrary to best practice, clinical evidence, and community care — resulting in reports of coerced withdrawal, forced medication switches, threats of detoxification, and destabilization.[116]

47. Most prisons also deny immediate, direct access to naloxone, an exceedingly safe medication that can temporarily reverse an opioid overdose,[117] whereas most Canadian jurisdictions offer free, unrestricted access to naloxone through first line responders, health centres, and pharmacies.[118]

48. As the Special Rapporteur on the Right to Health has confirmed, "Persons who are deprived of their liberty are equally entitled to the right to health, and those who use drugs are particularly vulnerable when deprived of their liberty in facilities that have inadequate health-care services."[119] Lack of access to key harm reduction measures in Canadian prisons violates the rights to life, security, non-discrimination and to be free from cruel, inhuman or drgrading treatment or punishment.[120] As the *UN Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules) and the *UN Rules for the Treatment of Women Prisoners* recommend, people in prison must, at a minimum, enjoy the same

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[113] Ibid.
[114] C. Bodkin, M. Bonn and S. Wildman, "Fuelling a crisis: Lack of treatment for opioid use in Canada's prisons and jails," *The Conversation*, March 4, 2020.
[115] F. Kouyoumdjian et al., "Physician prescribing of opioid agonist treatments in provincial correctional facilities in Ontario, Canada: A survey," *PLoS One* 2018; 13(2): e0192431 and West Coast Prison Justice Society, "Representative human rights complaint against Correctional Service Canada (CSC) on behalf of federal prisoners with opioid use disorder," June 4, 2018.
[116] HIV Legal Network, *Urgent Concerns Regarding CSC's Recent Opioid Agonist Treatment Policy Changes – Open Letter*, December 2025.
[117] Government of Canada, *Frequently Asked Questions: Access to naloxone in Canada (including NARCAN™ Nasal Spray)*, June 30, 2017.
[118] Canadian Pharmacists' Association, *Environmental Scan: Access to naloxone across Canada*, November 2017.
[119] *Drug use, harm reduction and the right to health – Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng,* 2024, supra at para. 34.
[120] R. Lines, "From equivalence of standards to equivalence of objectives: The entitlement of prisoners to healthcare standards higher than those outside prisons," *International Journal for Prisoner Health* 2(4) (2006): 269-280. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Manfred Nowak*, UN Doc A/HRC/10/44, January 14, 2009, para. 74; UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *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.

standards of healthcare that are available in the community.[121] The UN Committee against Torture has recommended ensuring the provision of medical services to prisoners, in particular to those with substance use issues, and taking all measures necessary to implement the Nelson Mandela Rules.[122]

49. During its 2016 review of Canada, the CEDAW Committee expressed its concern with "high rates of HIV/AIDS among female inmates" and recommended that Canada "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."[123]

RECOMMENDED ACTIONS

The Legal Network recommends that the Committee calls on Canada to:

- **Decriminalize the possession of all drugs for personal use and activities related to safe drug supply and distribution and remove all sanctions for such activities.**
- **Commit to legalizing and regulating all controlled substances.**
- **Affirm the right of people who use drugs to bodily autonomy and informed consent to treatment and denounce coercive and involuntary detention and care, including pursuant to forced substance use treatment legislation.**
- **Scale up voluntary treatment services, particularly those that are gender-sensitive, culturally affirming, and reflect the intersecting identities of people who use drugs, and ensure strict regulatory oversight.**
- **Expand evidence-based alternatives to incarceration for people who use drugs.**
- **Implement or remove barriers to key health and harm reduction measures in all prisons and other places of detention, including:**
    - **needle and syringe and other drug equipment distribution programs**
    - **opioid agonist therapy**

[121] Rule 24 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, UN Doc. A/RES/70/175, December 17, 2015 and Rule 10 of *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, UN Doc. A/RES/65/229, March 16, 2011.
[122] UN Committee against Torture, Concluding observations on Cabo Verde in the absence of a report, CAT/C/CPV/CO/1, 26 January 2017 paras. 25 and 25 (e) cited in United Nations, *Report of the Special Rapporteur on drug use, harm reduction and the right to health*, 2024, supra at para 35.
[123] CEDAW Committee, *Concluding observations on the combined eighth and ninth periodic reports of Canada,* supra.

- condoms and other safer sex supplies
- programs to address tattooing, piercing, and other forms of skin penetration
- overdose prevention services
- safer supply

and ensure such programs are culturally appropriate and gender-specific.

- **Update all federal, provincial, and territorial prison drug strategies to reject stigmatizing "zero tolerance" approaches to drug use in favour of rights-based, evidence-informed harm reduction principles and practices.**

ARTICLES 2, 3, 6, 7 AND 26: VIOLENCE AGAINST WOMEN

In the LOI, the Committee asked of Canada:

8. Please discuss the measures taken by the State party to tackle gender-based violence, including domestic violence. In this regard, please provide:

> (b) information on the **psychosocial support provided to victims**, including the geographical and the **capacity of shelters**.

50. Violence against women (VAW), including trans and gender diverse people, is among the "most pervasive health risks to women and gender-diverse people" in Canada.[124] Since 2019, Canada has seen increasing rates of femicides[125] — borne disproportionately by certain populations, including Indigenous women[126] and women who use drugs.[127] This is in the context of the unprecedented toxic drug crisis with Indigenous women particularly affected.[128]

51. **Despite increasing recognition of the need to provide shelter and supports to women**

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[124] House of Commons Standing Committee on the Status of Women*, Towards a Violence-Free Canada: Addressing and Eliminating Intimate Partner and Family Violence*, Report of the Standing Committee, June 2022 at p. 20.
[125] Statistics Canada, *Number of victims of spousal homicide*, July 2023; D. Sutton, *Gender-related homicide of women and girls in Canada*, Statistics Canada, 5 April 2023, at p. 3; and Canadian Femicide Observatory for Justice and Accountability, *#CallitFemicide: Understanding sex/gender-related killings of women and girls in Canada, 2018-2022*, April 2023.
[126] See Government of Canada, *Key statistics on gender-based violence in Canada*, 10 June 2024.
[127] See E. Moir, "Hidden GBV: Women and substance use," *Frontiers Psychiatry* 13 (2022); A. Hovey and S. Scott, "All Women Are Welcome: Reducing Barriers to Women's Shelters With Harm Reduction," *Partner Abuse* 10(4) (2019): 409-428; and A. Hovey, "Understanding the Landscape of Substance Use Management Practices in Domestic Violence Shelters across Ontario," *Journal of Family Violence*, 35(2) (2019): 191-201.
[128] First Nations Health Authority, "First Nations Illicit Drug Deaths Rise during COVID-19 Pandemic, July 6, 2020 and CBC Radio Canada, "Les Premières Nations particulièrement touchées par les surdoses aux opioids," December 3, 2019.

who use drugs,[129] several provinces continue to mandate "zero-tolerance" (i.e. abstinence from using or having drugs) among their shelters.[130] Blanket bans on drug use in shelters are justified on discriminatory and unfounded beliefs that people who use drugs are inherently dangerous to staff, other shelter participants, and children, or on the perceived need to minimize criminal liability for permitting prohibited drugs on site.[131] As a result, women are often barred from admission if they are noticeably intoxicated or are forced to leave for having or using drugs.[132] A 2021 national survey found that, among 500 women and gender diverse people, those who used drugs were barred from shelters at a rate that was three times higher than those who did not.[133]

52. Unsurprisingly, **most shelters do not meet the needs of women who use drugs**, even when they are not "zero-tolerance".[134] In a national survey of 203 low-barrier women's shelters, 79% of shelters reported that it was a "major challenge" to serve women who use drugs.[135] Consequently, women are dying in shelters.[136]

53. Similarly, there remains inadequate access to SCS and other harm reduction services in Canada — particularly gender-sensitive and culturally appropriate SCS.[137] In addition to overdose prevention support, SCS can provide a refuge from various forms of violence that women may experience on the street[138] and have been found to disrupt certain social structures such as gender power dynamics, enabling women to assert agency over their drug use practices.[139] As detailed above, during its 2016 review of Canada, the CEDAW Committee recommended that Canada "reduce the gap in health service delivery related to women's drug use, by scaling-up and ensuring access to culturally appropriate harm reduction services."[140]

54. Moreover, the CEDAW Committee has previously concluded that States Parties had breached their Convention obligations because they did not have sufficiently accessible VAW

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[129] See K. Maki, *More Than a Bed: A National Profile of VAW Shelters and Transition Houses*, Women's Shelters Canada, May 2019 and A. Boulanger et al*, Towards Access for All: Best and Promising Practices from Low-Barrier Harm Reduction Shelters in Canada*, HIV Legal Network, 20 February 2024.
[130] A. Boulanger et al*.,* ibid.
[131] Ibid.
[132] K. Maki, supra, at p. 34.
[133] K. Schwan et al., *The Pan-Canadian Women's Housing & Homelessness Survey,* Canadian Observatory of Homelessness, 2021.
[134] A. Hovey and S. Scott, supra at p. 409.
[135] K. Maki, supra.
[136] See, e.g., Government of Yukon, *Government of Yukon implementing coroner's inquest recommendations,* 12 July 2024 and Ontario Drug Policy Research Network, *Opioid-Related Toxicity Deaths Within Ontario Shelters: Circumstances of Death and Priori Medication & Healthcare Use*, June 2024.
[137] Canadian HIV/AIDS Legal Network, *Gendering the Scene*: *Women, Gender-Diverse People, and Harm Reduction in Canada*, 2020.
[138] N. Fairbairn, "Seeking refuge from violence in street-based drug scenes: Women's experiences in North America's first supervised injection facility," *Social Science & Medicine* 67 (2008): 817–823.
[139] J. Boyd, "Gendered violence & overdose prevention sites: A rapid ethnographic study during an overdose epidemic in Vancouver, Canada," *Addiction*, September 2018, DOI: 10.1111/add.14417.
[140] CEDAW Committee, *Concluding observations on the combined eighth and ninth periodic reports of Canada,* supra.

shelters,[141] including for women who use drugs.[142]

55. Following her 2018 visit to Canada, the Special Rapporteur on VAW also called on Canada to establish an adequate number of, and sustainably fund, shelters and services for women fleeing violence. At the time, there were 553 VAW shelters, which the Special Rapporteur concluded was insufficient.[143] The Special Rapporteur also called on Canada to ensure that women are not criminalized when they seek protection.[144] As of 2020-2021, there are only 557 shelters, with hundreds of people turned away from shelters each day, and three in ten returning to the home in which their abuser lives.[145]

RECOMMENDED ACTIONS

The Legal Network recommends that the Committee call on Canada to:

- **Increase funding to all shelters for women fleeing violence.**
- **Ensure that women are not barred from shelters on the basis of drug use.**
- **Reduce the gaps in health service delivery related to drug use by funding, scaling-up, and ensuring access to gender-sensitive and culturally appropriate harm reduction services, including supervised consumption services, and services in shelters.**

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[141] CEDAW Committee, *Report of the Committee on the Elimination of Discrimination against Women*, March 18, 2005, A/60/38, at pp. 27-39.
[142] CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, October 31, 2022, CEDAW/C/UKR/CO/9, para. 30(e).
[143] *Visit to Canada: Report of the Special Rapporteur on violence against women, its causes and consequences*, 4 November 2019, A/HRC/41/42/Add.1.
[144] Ibid at para. 95(j).
[145] D. Ibrahim, *Canadian residential facilities for victims of abuse,* 2020/2021, Statistics Canada, April 12, 2022.