



## **UN Special Rapporteur on contemporary forms of racism**

**Visit to Canada September 28 — October 9, 2026**

### **Comments of the HIV Legal Network**

March 2026

#### **Background**

The [HIV Legal Network](#) is grateful for this opportunity to respond to key questions that the UN Special Rapporteur on contemporary forms of racism has raised in support of her upcoming visit to Canada. Our responses focus on people who use drugs, sex workers, people without permanent residence or citizenship, and people living with HIV in Canada.

#### **Questions:**

**Which locations could the Special Rapporteur visit outside of the capital Ottawa to help her to gain a comprehensive picture of racism, racial discrimination, xenophobia and related intolerance in Canada?**

We recommend that the Special Rapporteur visit Toronto, Canada’s most populous city with the largest population of racialized people. According to the latest census data, 57% of the city’s residents belong to a “visible minority” group and 46.6% were not born in Canada.<sup>i</sup>

Toronto is also a city of great racial disparity. 2015-2020 data from Toronto police shows that while Black people make up less than 10% of the city’s population, they account for 35% of those arrested for personal drug possession.<sup>ii</sup> Similarly, 2003-2013 data from Toronto police indicate Black people with no history of criminal convictions were three times more likely to be arrested for possession of small amounts of cannabis than white people with similar backgrounds.<sup>iii</sup>

The Greater Toronto Area is also the site of numerous human trafficking campaigns, where Asian migrant women and their workplaces are racially profiled as hubs of human trafficking. After the introduction of Toronto’s anti-trafficking plan, licensing enforcement descended on the racialized massage sector, conducting investigations on massage businesses that resulted in a dramatic spike in fines and prosecutions. From 2013-2017, investigations of Toronto massage businesses skyrocketed from 3,000 per year to more than 20,000 investigations in a single year.<sup>iv</sup> Despite the fact that there is no evidence that human trafficking occurs in these workplaces, these campaigns have led to the shutdown of massage parlours where predominantly Asian migrant women work — removing an important source of livelihood for women living in economic precarity.<sup>v</sup>



**What are the key trends in racism, racial discrimination, xenophobia and related intolerance, including systemic racism, in Canada, including the experiences of those, such as women, persons from religious minorities, people with disabilities, LGBTI persons and/or migrants, who have faced intersectional discrimination?**

The Canadian government has introduced legislation and policy that builds upon a narrative of migrants and refugees as threats to public services. In October 2025, the federal government introduced Bill C-12.<sup>vi</sup> Despite widespread criticism, the bill was rushed through Parliament,<sup>vii</sup> passed in March, and will come into force soon. It will significantly restrict access to refugee protection, expand government powers to cancel immigration application, and increase surveillance — all of which will disproportionately impact racialized communities, women fleeing gender-based violence, and LGBTI+ people.

Beginning May 2026, the federal government will also introduce co-payments (requiring out-of-pocket payments) under the Interim Federal Health Program for refugee claimants and other people without permanent status, including 30% co-payment for mental health care, rehabilitation, and medical supplies.<sup>viii</sup> These costs create new financial barriers to care for disproportionately racialized communities, many of whom already face systemic discrimination, poverty, and difficulties navigating Canada’s healthcare system.

After 12 consecutive years of decline, the rate of police-reported drug offences increased 13% from 2023 to 2024 — a troubling trend that has a disproportionate impact on Black, Indigenous, and other racialized populations in Canada, who are racially profiled and disproportionately charged and incarcerated for drug offences. This is especially concerning in the context of an ongoing toxic drug crisis, which has already killed 53,308 people since 2016,<sup>ix</sup> and research demonstrating the way drug prohibition hampers their access to vital harm reduction and other health services.

**What are the key civil and political rights issues affecting those from marginalised racial and ethnic groups? What are the key economic, social and cultural rights issues affecting those from marginalised racial and ethnic groups?**

*The rights of people who use drugs*

Canada’s continued “War on Drugs” has contributed to the mass incarceration of Indigenous, Black, and other racialized communities in Canada.<sup>x</sup> A 2022 report analyzing non-cannabis simple drug possession arrest data from police services in Canada indicated that Black people were three times more likely in Ottawa, four times more likely in Toronto, and 6.6 times more likely in Vancouver to be arrested for drug possession than their representation in the population would predict. Indigenous people were six times more likely in Regina, five times more likely in Saskatoon, and eight times more likely in Vancouver to be arrested for drug possession than their representation in the population would predict.<sup>xi</sup> Notably, more than half of Black women in federal prisons are incarcerated for a drug offence.<sup>xii</sup>

Yet, Canada continues to adopt a punitive approach to drugs, including prohibitions on personal drug possession and drug trafficking, which limit the establishment and operation of harm reduction services



(such as supervised consumption services) and force people to use drugs in isolation, increasing their risk of overdose-related injury and death and deterring access to healthcare. This has disproportionately harmed Indigenous communities, who have higher rates of HIV via injection drug use and are more likely to die from the toxic drug supply. 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.<sup>xiii</sup>

#### *The rights of sex workers*

All aspects of sex work are prohibited under the *Protection of Communities and Exploited Persons Act* (PCEPA) which forces sex workers to work in isolation, limits their ability to work from fixed indoor locations, access safety-enhancing third parties, and screen clients — ultimately increasing their risk of targeted violence. Indigenous, Black, trans, and migrant sex workers are disproportionately targeted by police and immigration law enforcement, with migrant sex workers subject to the threat of both detention and deportation.<sup>xiv</sup> Numerous studies have concluded that PCEPA's prohibitions have contributed to increased risk of violence against sex workers.<sup>xv</sup> In a 2019 study involving 299 sex workers, for example, 26% reported negative changes after PCEPA's passage; these experiences were more pronounced for racialized, migrant workers.<sup>xvi</sup>

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,<sup>xvii</sup> disproportionately affecting migrants given immigration prohibitions on sex work.<sup>xviii</sup> 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.<sup>xix</sup> 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. 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.<sup>xx</sup>

#### *The rights of people living with HIV*

Under the law of sexual assault, Canada continues to criminalize people living with HIV for alleged non-disclosure to sexual partners. People living with HIV in Canada have a legal duty to disclose their status before sex even if there was no transmission, they had no intention to harm their sexual partner, and they took reasonable precautions to prevent transmission.<sup>xxi</sup> People are often charged with aggravated sexual assault; if convicted, they face a sentence of up to life imprisonment and possible registration as a sex offender.

More than 230 people have been criminally charged to date in relation to their HIV positive status.<sup>xxii</sup> 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.<sup>xxiii</sup> HIV criminalization in Canada also disproportionately affects Black people. While Black people currently make up 4.3% of the population in Canada,<sup>xxiv</sup> they represent at least 22% of those criminally charged to date in cases of alleged HIV non-disclosure.<sup>xxv</sup>



**What legislative, policy and institutional frameworks, are in place to address different forms of racism, racial discrimination, xenophobia and related intolerance at both the federal level and at the level of the provinces and territories?**

In 2022, the federal government passed a law in order to fulfill its “commitment to address systemic inequities, including the overrepresentation of Indigenous Peoples, Black, and marginalized Canadians, in the criminal justice system.”<sup>xxvi</sup> Among other things, this law repealed all mandatory minimum penalties of imprisonment for drug offences and promote the use of diversion for personal drug possession.<sup>xxvii</sup> Despite resulting in a decrease in police-reported drug offences for several years, the rate increased in 2024 — disproportionately affecting Black, Indigenous, and other racialized populations, and fueled by prominent voices, including law enforcement, calling for more punitive approaches to drug offences.

**How do the legacies of the past, including slavery and colonialism, impact contemporary forms of racism, racial discrimination, xenophobia and related intolerance?**

In Canada, immigration applications can be refused where an anticipated healthcare cost exceeds a prescribed threshold pursuant to the “excessive demand” provision.<sup>xxviii</sup> The provision reflects a long legacy of discriminatory immigration policies that exclude people deemed undesirable on racial, health, or economic grounds.<sup>xxix</sup> Under this “excessive demand” regime, people are subject to mandatory medical examinations, stigma, delays, and potential refusal of status. This provision discriminates against people with HIV and other health conditions or disabilities, reducing their value to projected healthcare costs.

Despite recommendations in 2017 from a Parliamentary Committee and in 2025 from the UN Committee on the Rights of Persons with Disabilities that the “excessive demand” regime was discriminatory and should be repealed,<sup>xxx</sup> Canada has yet to do so.<sup>xxxi</sup> The provision thus continues to exist, and continues to disproportionately impact racialized individuals.<sup>xxxi</sup>

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<sup>i</sup> Statistics Canada, *2021 Census of Population*, November 15, 2023.

<sup>ii</sup> S. Chu and G. Kolla, “Op-Ed: Take Toronto police out of the drug decriminalization equation,” *NOW Toronto*, October 3, 2021.

<sup>iii</sup> J. Rankin and S. Contenta, “Toronto marijuana arrests reveal ‘startling’ racial divide,” *Toronto Star*, July 6, 2017.

<sup>iv</sup> C. Gallant and E. Lam, “For migrant sex workers, police are the ‘most dangerous gang’ in the business,” *The Breach*, March 3, 2025.

<sup>v</sup> C. Gallant and E. Lam, “Anatomy of an anti-trafficking policy campaign,” *Briarpatch*, May 9, 2022.

<sup>vi</sup> Parliament of Canada, *C-12: An Act respecting certain measures relating to the security of Canada’s borders and the integrity of the Canadian immigration system and respecting other related security measures*.

<sup>vii</sup> See, e.g., HIV Legal Network, *Bills C-2 and C-12: The Wrong Prescription for Canada’s Health and Safety*, 2026; Amnesty International, *Canada: Asylum seekers and migrants at risk*, November 2025; Canada Bar Association, *Open letter to all senators re: Bill C-12*, February 2026; and *Open Letter to the Right Honourable Mark Carney, Prime Minister of Canada Re: Bill C-12, the Strengthening Canada’s Immigration System and Borders Act*.

<sup>viii</sup> HIV Legal Network, *Introducing co-pays under IFHP will push people away from care*, 30 January 2026.

<sup>ix</sup> Government of Canada, *Opioid- and Stimulant-related Harms in Canada*, 2025.

- <sup>x</sup> 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)
- <sup>xi</sup> R. Browne, “Exclusive Data Shows Canadian Cops Target More Black and Indigenous Folks for Drug Arrests,” *Vice News*, April 19, 2022.
- <sup>xii</sup> 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.
- <sup>xiii</sup> 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.
- <sup>xiv</sup> Canadian HIV/AIDS Legal Network, *The Perils of “Protection”: Sex Workers’ Experiences of Law Enforcement in Ontario*, 2019.
- <sup>xv</sup> 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.
- <sup>xvi</sup> 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.
- <sup>xvii</sup> 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.
- <sup>xviii</sup> S. Machat et al, *supra*.
- <sup>xix</sup> 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.
- <sup>xx</sup> 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.
- <sup>xxi</sup> *R v Mabior*, 2012 SCC 47.
- <sup>xxii</sup> 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.
- <sup>xxiii</sup> *Ibid*.
- <sup>xxiv</sup> N. Domey and N. Patsiurko, *The Diversity of the Black Populations in Canada, 2021: A Sociodemographic Portrait*, Statistics Canada, October 25, 2024.
- <sup>xxv</sup> *HIV Criminalization in Canada*, *supra*.
- <sup>xxvi</sup> Department of Justice Canada, *Bill C-5: An Act to amend the Criminal Code and the Controlled Drug and Substances Act*, November 27, 2023.
- <sup>xxvii</sup> *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*, S.C. 2022, c. 15, 2022.
- <sup>xxviii</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s. 38(1)(c); HIV Legal Network, *Medical Inadmissibility*.
- <sup>xxix</sup> See, e.g., V. Capurri, “Not Good Enough for Canada: Canadian Public Discourse around Issues of Inadmissibility for Potential Immigrants with Diseases and/or Disabilities 1902-2002,” *University of Toronto Press*, 2020.
- <sup>xxx</sup> Government of Canada, *Building an inclusive Canada : bringing the Immigration and Refugee Protection Act in step with modern values*, 2017.
- <sup>xxxi</sup> United Nations Committee on the Rights of Persons with Disabilities, *Concluding observations on the combine second and third periodic reports of Canada*, 15 April 2025, CRPD/C/CAN/CO/2-3.
- <sup>xxxii</sup> OCASI, Chinese and Southeast Asian Legal Clinic, South Asian Legal Clinic of Ontario, *Joint Submission to Standing Committee on Citizenship and Immigration*, 2017; A.J. Withers & A. Tufford, *Submission to the Standing Committee on Citizenship and Immigration regarding “Medical Inadmissibility” in the Immigrant and Refugee Protection Act*, November 2017.