Review of Canada's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women

Submission to the United Nations Committee on the Elimination of Discrimination Against Women

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The Canadian HIV/AIDS Legal Network promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research and analysis, advocacy and litigation, public education and community mobilization.

Le Réseau juridique canadien VIH/sida fait valoir les droits humains des personnes vivant avec le VIH/sida et vulnérables à l'épidémie, au Canada et dans le monde, à l'aide de recherches et d'analyses, de plaidoyer, d'actions en contentieux, d'éducation du public et de mobilisation communautaire.

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INTRODUCTION

The Canadian HIV/AIDS Legal Network ("Legal Network") submits this briefing to the United Nations (UN) Committee on the Elimination of Discrimination against Women ("Committee") in advance of its review of the periodic report of Canada, held during its 65th session from 24 October to 18 November 2016.

The Legal Network promotes the human rights of people living with and vulnerable to HIV and AIDS, in Canada and internationally, through research and analysis, advocacy and litigation, public education, and community mobilization. We envision a world in which the human rights and dignity of people living with HIV and those affected by the disease are fully realized and in which laws and policies facilitate HIV prevention, care, treatment and support.

In this submission, the Legal Network sets out its concerns about Canada's implementation of the Convention on the Elimination of All Forms of Discrimination against Women ("Convention"), including (i) the rights of women living with HIV; (ii) the rights of women who use drugs; (iii) the rights of women in sex work; and (iv) the rights of incarcerated women.

THE RIGHTS OF WOMEN LIVING WITH HIV

The Committee asks:
Health
15. Please indicate measures planned to ensure full and unhindered access to health care for […] women affected by sexually transmitted infections, including HIV/AIDS […].
Women in detention
18. Please provide information on measures taken by the State party to address the issue of the high and rising incarceration rates of aboriginal women and African- Canadian women in federal and provincial prisons across Canada […].

In Canada, with more than 180 people charged to date for not disclosing their HIV-positive status to their sexual partners, the country has the dubious distinction of being a world leader in prosecuting people living with HIV.[1] The current state of the law allows for an overly broad use of the criminal law against people living with HIV, who are usually charged with aggravated sexual assault — an offence that carries a maximum penalty of life imprisonment and mandatory registration as a sexual offender for a minimum of 20 years.

Numerous human rights and public health concerns associated with the criminalization of HIV non-disclosure, exposure or transmission have led the Joint UN Programme on HIV/ AIDS (UNAIDS) and the UN Development Programme (UNDP),[2] the UN Special Rapporteur on the right to health,[3] the Global Commission on HIV and the Law,[4] and women's rights advocates (including leading Canadian feminist legal academics),[5] among others, to urge governments to limit the use of the criminal law to cases of *intentional transmission* of HIV (i.e., where a person knows his or her HIV-positive status, acts with the intention to transmit HIV, and does in fact transmit it). The UN Special Rapporteur on the right to health has pointed out that criminalizing HIV transmission infringes on not only the right to health, but also other rights, including the rights to privacy, equality and non-discrimination.[6] More recently, the Committee on Economic, Social and Cultural Rights in its General Comment No. 22 (2016) on the "Right to sexual and

reproductive health" called on States "to reform laws that impede the exercise of the right to sexual and reproductive health. Examples include laws criminalizing abortion, *HIV non-disclosure, exposure and transmission*, consensual sexual activities between adults or transgender identity or expression" [emphasis added].[7]

However, based on the paired 2012 Supreme Court of Canada decisions in *R. v. Mabior*, 2012 S.C.C. 47 and *R. v D.C.,* 2012 S.C.C. 48, a person living with HIV in Canada is at risk of prosecution for non-disclosure of their HIV-positive status even if there was no transmission, the person had no intention to harm their sexual partner, and the person used a condom or had an undetectable viral load. The decision was widely criticized for being at odds with international recommendations and human rights standards, as well as the medical evidence on HIV. Indeed, when used correctly and no breakage occurs, condoms are 100% effective at preventing the transmission of HIV.[8] Also uncontested, condomless sex with a person living with HIV under effective antiretroviral therapy poses, at most, a negligible risk of transmission.[9]

Criminalization is often described as a tool to protect women from HIV infection and enhance women's dignity and autonomy in sexual decision-making. This perception is reinforced by (i) the fact that the vast majority of people who have been charged to date are men who had sex with women and (ii) the application of sexual assault law in those cases. However, a gendered analysis of the current use of the criminal law with respect to HIV reveals that criminalization is a blunt, punitive and inflexible approach to HIV prevention that does little to protect women from HIV infection, violence, coercion or sexual objectification. Moreover, the use of sexual assault law in the HIV non-disclosure context — where the sexual activity is consensual — is a poor fit and can ultimately have a detrimental impact on sexual assault law as a tool to advance gender equality and renounce gender-based violence.[10]

In particular, the criminalization of HIV non-disclosure can have a serious, adverse impact on women living with HIV, especially if facing challenges due to their socioeconomic status, discrimination, insecure immigration status, or abusive or dependent relationships.[11] An overly broad use of the criminal law puts women at increased risk of violence and prosecution by providing a tool of coercion or revenge for vindictive partners.[12] As illustrated by the *D.C.* case (where the defendant turned to the police for protection from her violent partner prior to the allegation of HIV non-disclosure),[13] the criminalization of HIV non-disclosure can affect women in abusive relationships or who occupy marginalized positions in society. Some of the women convicted of HIV non-disclosure in Canada were survivors of violence and sexual violence; some were living in socioeconomic insecurity; some had insecure immigration status or were members of Indigenous and racialized communities who continue to suffer from the effects of colonization, slavery and racism.[14]

Research on the impact of the criminalization of HIV non-disclosure on women living with HIV is currently ongoing in Canada. In particular, researchers are studying the impact of HIV criminalization on women's access to care and women's decisions to engage in sexual relationships. Evidence already suggests that the criminalization of HIV non-disclosure may represent a structural barrier to health care engagement for some people living with HIV in Canada, discouraging access to HIV testing and linkage to HIV care services required to achieve viral suppression, which is important to promote both individual and community health.[15] Studies have also reported high rates of sexual abstinence among women living with HIV[16] which are driven partly by concerns about HIV criminalization and fear of HIV disclosure.[17]

The criminalization of HIV non-disclosure undermines the rights of women living with HIV and public health. It is time for federal and provincial authorities to take action to limit the scope and application of the criminal law, in keeping with best practice and international, evidence-based recommendations.

RECOMMENDED ACTIONS

The Legal Network recommends that Canada

- **limit the use of the criminal law to the intentional transmission of HIV;**
- **ensure that the criminal law under no circumstances is 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; and**
- **mandate that the offence of sexual assault not be applied to HIV non-disclosure as it constitutes a stigmatizing and harmful misuse of this offence.**

THE RIGHTS OF WOMEN WHO USE DRUGS

The Committee asks:
Health
15. Please indicate measures planned to ensure full and unhindered access to health care for women drug users and alcohol abusers, as well as women affected by sexually transmitted infections, including HIV/AIDS. Please provide information on measures envisaged to address the punitive approach of the 2007 National Anti-Drug Strategy, which has had negative consequences for the health of women drug users and discriminatory effects on disadvantaged and marginalized groups of women, especially aboriginal, African-Canadian and migrant women.

In recent years, Canada's record on drug policy has been exemplified by a focus on prohibition and punishment. The previous federal government removed harm reduction from its 2007 National Anti-Drug Strategy, cut funding to harm reduction programs, introduced minimum mandatory prison terms for certain drug offences and rejected proven harm reduction measures such as supervised consumption services and heroin-assisted treatment — many of which have had a disproportionate impact on women.

According to Statistics Canada, women report higher rates of consuming both psychoactive pharmaceutical drugs and sedatives than men, which are linked to substance use problems that are exacerbated by the failure of available services to provide appropriate, integrated services for women with co-existing mental health, substance use and trauma histories.[18] Also widely acknowledged is that women who are heavy substance users rarely use a single substance, exacerbating their risk of overdose and death.[19] As the UN Office on Drugs and Crime (UNODC) acknowledged in its World Drug Report 2016, women are more likely than men to engage in the use of a range of drugs, including the non-medical use of opioids and tranquilizers.[20] UNODC has also stated that women affected by drug dependence and HIV are more vulnerable and more stigmatized than men, as well as more likely to suffer from co-occurring mental health disorders and have been victims of violence and abuse. Women often

bear a heavy burden of violence and deprivation associated with the drug dependence of family members, hindering the achievement of the sustainable development target of eliminating all forms of violence against all women and girls.[21]

In 2012, the federal government passed the *Safe Streets and Communities Act*, which introduced a number of punitive reforms, including mandatory minimum sentencing for non-violent drug offences. Despite purporting to only target those who traffic in drugs while offering alternatives to incarceration for those struggling with drug dependency — including through the expansion of drug treatment courts (DTCs) — the burden of harsher enforcement still falls most heavily on those with drug dependency, particularly those who may engage in small-scale dealing to support their own drug use.[22] Moreover, DTCs present serious problems with accessibility, with research revealing the inability of such courts to engage women, Indigenous people, racialized minorities and youth, as well as difficulties in retaining them once they have entered.[23] The excessive use of incarceration as a drug-control measure has led to an increase in Canada's prison population, where a lack of harm reduction and other health measures has led to significantly higher rates of HIV and hepatitis C (HCV) in prison compared to the community as a whole — a harm that has been disproportionately borne by the rapidly growing population of women behind bars.[24]

In 2015, despite widespread criticism from public health, human rights and medical bodies,[25] the federal government passed the *Respect for Communities Act*, which established excessive and unreasonable requirements for health authorities and community agencies looking to open or continue operating supervised consumption services (SCS) for people who use drugs. SCS are proven to be effective in reducing the risk of transmission of blood-borne diseases such as HIV and HCV, reducing deaths from overdose, and connecting people to other needed health services.[26] The safer injection education that is typically offered at SCS has particularly benefited women who inject drugs, who have a greater tendency than men to require assisted injection.[27] Furthermore, research suggests that SCS have provided women who inject drugs with refuge from routine harassment within the male-centred street culture, as well as refuge from violence, including intimate partner violence and confrontations with the police.[28]

The need to reform Canada's drug policy regime is particularly acute due to a mounting, nation-wide opioid overdose crisis. Over the past several months, Canada has witnessed a massive spike in reports of rising opioid fatalities and injuries.[29] This deadly drug epidemic has become so severe and widespread that the province of British Columbia declared a public health emergency in April 2016. Evidence of a large-scale, unprecedented opioid crisis has been documented also in Ontario,[30] Alberta[31] and Quebec,[32] among other provinces.[33] The epidemic has been called "the worst drug safety crisis in Canadian history."[34] The increase in drug overdose deaths across the country underscores the importance of developing a coordinated, evidence-based national strategy to address the harms related to pharmaceutical and illicit opioids, with particular attention to the impact of the crisis on women.

After decades of waging a failed and expensive "war on drugs," the punitive approach to drug policy continues to devastate people and communities in Canada, with women often bearing a disproportionate impact. Indigenous women, as well as women with mental health issues, are particularly vulnerable and affected by criminalization and criminal justice approaches that flow from this policy.[35] The continued criminalization of people who use drugs in Canada also undermines efforts to address the health needs of people struggling with problematic drug use, and thereby undermines public health more broadly. According to the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, States should

"[e]nsure that all harm-reduction measures and drug-dependence treatment services, particularly opioid substitution therapy (OST), are available to people who use drugs, in particular those among incarcerated populations."[36] The UN Special Rapporteur on the right to the highest attainable standard of health has stated, "[a]t the root of many health-related problems faced by people who use drugs is criminalization itself, which only drives issues and people underground and contributes to negative public and individual health outcomes."[37] The *Vienna Declaration*, the central policy position articulated at the XVIII International AIDS Conference, also clearly states that "there is no evidence that increasing the ferocity of law enforcement meaningfully reduces the prevalence of drug use."[38]

RECOMMENDED ACTIONS

The Legal Network recommends that Canada

- **reinstate harm reduction as a key element of Canada's federal strategy on drugs, and reduce the gaps in health service delivery related to drug use, and for people living with HIV or HCV, by scaling-up and ensuring access to culturally appropriate harm reduction services, including needle and syringe distribution programs, supervised consumption services, opioid substitution therapy and naloxone, drug dependence treatment and support services, particularly in remote and rural communities, and prisons;**

- **repeal the *Respect for Communities Act*, and institute a straightforward process for exemptions permitting the operation of supervised consumption services without risk of criminal prosecution of clients or staff;**

- **repeal mandatory minimum sentences for minor, non-violent drug crimes;**

- **decriminalize the possession of cannabis for personal use, follow through on the commitment to examine appropriate models for the legalization and regulation of cannabis, and extend this examination to include other currently illegal substances, as part of an evidence-based, public health approach to drug policy;**

- **take measures to prevent overdose deaths across Canada, including through the passage of "Good Samaritan" legislation giving immunity from arrest to those who, in the presence of an overdose, call 911 to get assistance; and**

- **ensure and support the full involvement of civil society organizations, including organizations and networks of people who use drugs, in the elaboration, implementation and evaluation of drug policy and services for people who use drugs.**

THE RIGHTS OF WOMEN IN SEX WORK

The Committee asks:
Trafficking and exploitation of prostitution
9. It is indicated in the combined reports that more than $1.3 million was allocated to support projects addressing human trafficking at the federal and provincial levels (paras. 84, 114 and 115). Furthermore, reference is made to the adoption of the *Protection of Communities and Exploited Persons Act* (2014), which reflects a fundamental paradigm shift towards the treatment of prostitution as a form of sexual exploitation and violence that has a disproportionate and negative impact on women and children, especially aboriginal women and girls, as well as the adoption of programmes to support grass-roots organizations that have a proven record of helping prostitutes to leave the sex trade (para. 68) …. Please provide information on the number of investigations, prosecutions and convictions and the type of sanctions imposed for trafficking and exploitation of prostitution, especially of aboriginal women and girls, under Bill C-49, an *Act to amend the Criminal Code (trafficking in persons)* (2005); Bill C-268, an *Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of 18 years)* (2010); or any other relevant legislation. Please indicate what measures have been taken to provide systematic and adequate training to law enforcement officials and prosecutors with a view to protecting all women and girl victims of trafficking and prostitution and improving the enforcement of existing legislation.

As this Committee has noted, the recently enacted *Protection of Communities and Exploited Persons Act* (PCEPA) reflects a "fundamental paradigm shift towards the treatment of prostitution as a form of sexual exploitation and violence." Yet the law, which reflects the so-called 'Nordic approach' to prostitution (in which the purchase of sex is prohibited, while the sale of sex is technically not), continues to criminalize sex workers, who continue to be arrested,[39] as well those who purchase sex and third parties involved in sex work.[40] Numerous studies of the Nordic approach 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.[41] In Canada, research has demonstrated that police targeting of clients (and third parties) rather than sex workers has not affected rates of violence against sex workers or enhanced sex workers' control over their sexual health and HIV prevention.[42] By facilitating the removal of sex workers from public spaces, such tactics have merely perpetuated labour conditions that render sex workers at increased risk for violence and poor health.[43]

At the same time, criminalizing third parties (such as managers, security, receptionists, drivers) who work with or for, or employ sex workers forces sex workers to work in isolation, away from social support networks and without proven safety mechanisms — a finding confirmed by the Supreme Court of Canada in *Canada (Attorney General) v. Bedford*.[44] Evidence has demonstrated the role of safer work environments and supportive housing through supportive managerial and venue-based practices, which allow sex workers to work together and promote access to health and support services, in reducing violence and HIV risks among sex workers.[45] Third parties — who in some cases are sex workers themselves — can be helpful resources for other sex workers, especially migrant sex workers who may have limited resources and face language barriers.[46] Nevertheless, third parties are routinely described as exploitative 'pimps' or 'traffickers'. A legal framework that subjects all third parties to criminal sanction without evidence of abuse or exploitation does not promote sex workers' health and safety. Instead, it drives the sex industry underground where labour exploitation can flourish, and deters sex workers from the criminal justice system when they experience violence, because they may fear

that they and/or their employer may be charged with prostitution-related offences.[47] Migrant sex workers, in particular, are reluctant to seek help from police for fear of deportation.[48]

Moreover, since the passage of the PCEPA in 2014, criminalizing sex work has been deemed to be a central strategy to protect women from human trafficking and has resulted in inaccurately equating all selling of sexual services with human trafficking.[49] This strategy has enabled law enforcement to intensify police surveillance and other policing initiatives against sex workers.[50] Greater surveillance of migrant and Indigenous women who leave their communities has undermined their relationships with family members or others who may offer safety or support to them, including in circumstances where they may be selling sex. Migrant sex workers are under constant threat of detention and deportation, thus deterring them from critical health and support services, and the police for fear of being labeled victims of trafficking.[51] Such policing initiatives have not resulted in more protection or safety for trafficked persons. As Amnesty International has noted, "coercive or overreaching interventions, such as raids or 'rescues' solely on the basis that commercial sex is conducted, have resulted in sex workers being driven away from established sex work collectives or forced to move from one place to another. This undermines the connections and social fabric that can help keep them safe" and "can impede trafficked persons from reaching out for legal protection and support."[52] The conflation of sex work with sex trafficking also suppresses discussion about the rights of sex workers, results in decreased funding for sex worker organizations, shuts out the voices of people who sell or trade sex who do not equate their experience with pure victimization,[53] and further obscures the specific conditions that enable situations of exploitation and abuse to persist, including a political and legal environment that is hostile to migrants, sex workers and Indigenous peoples.[54] An effective anti-trafficking strategy should prioritize support to people at risk or who wish to seek help, rather than employing law enforcement measures as a method of protection.

Criminalizing sex work is a profound violation of sex workers' right to health, as well as their rights to life, security of the person, freedom from torture and cruel, inhumane and degrading treatment, work, privacy, equality and non-discrimination.[55] Decriminalizing sex work is in line with recommendations made by UN Special Procedures of the Human Rights Council and other UN agencies which have considered the human rights implications of criminalizing sex work. The UN Special Rapporteur on the right to health has described the negative ramifications of criminalizing third parties such as brothel owners and explicitly called for the decriminalization of sex work, as well as spoken out against the conflation of sex work and human trafficking.[56] 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."[57] Similarly, UN Women has expressed its support for the decriminalization of sex work, acknowledged that sex work, sex trafficking and sexual exploitation are distinct, and that their conflation leads to "inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights."[58] The Global Commission on HIV and the Law, as well as international human rights organizations including Amnesty International[59] and Human Rights Watch[60] have also recommended the decriminalization of sex work (including clients and third parties) and called for laws and policies to ensure safe working conditions for sex workers.[61]

RECOMMENDED ACTIONS

The Legal Network recommends that Canada

- **immediately repeal all sex work–specific criminal laws, which endanger sex workers' lives, health and safety;**

- **put in place legislative measures to guarantee that sex workers' rights, safety and dignity are respected, protected and fulfilled, ensuring that sex workers and their allies are consulted in doing so;**

- **stop raids, detentions and deportations of sex workers by using anti-trafficking, anti–sex work and immigration laws in the name of protection;**

- **fund and support programs and services that are developed by people who have lived experience trading or selling sexual services, including sex worker–led outreach, ensuring that such measures are made available to everyone — not only to people who identify as "trafficked"; and**

- **support concrete measures to improve the safety of individuals selling sexual services and to assist those who wish to transition out of the sex industry, including by providing significant resources for income support, poverty alleviation, housing, childcare, education and training, and treatment and support for substance use, including for youth, Indigenous persons and migrants.**

THE RIGHTS OF INCARCERATED WOMEN

The Committee asks:
Health
15. Please indicate measures planned to ensure full and unhindered access to health care for women drug users and alcohol abusers, as well as women affected by sexually transmitted infections, including HIV/AIDS. Please provide information on measures envisaged to address the punitive approach of the 2007 National Anti-Drug Strategy, which has had negative consequences for the health of women drug users and discriminatory effects on disadvantaged and marginalized groups of women, especially aboriginal, African-Canadian and migrant women.
Women in detention
18. Please provide information on measures taken by the State party to address the issue of the high and rising incarceration rates of aboriginal women and African- Canadian women in federal and provincial prisons across Canada […].

As noted in the section "The rights of women who use drugs" above, a heavy emphasis on drug prohibition rather than treatment and support for people who use drugs has led to a significant increase in Canada's prison population. According to Canada's prison ombudsperson, women are now the fastest-growing prison population in the country, with the number of women being sentenced to federal prisons increasing by 66 percent over the last decade.[62] During the same period, the number of Indigenous women being sentenced to federal prisons increased by 112 percent.[63] Moreover, an estimated 80 percent of federally incarcerated women in Canada are reported to have a history of substance use,[64] and approximately one-third of all federally incarcerated women are serving sentences for drug-related offences.[65] This figure rises to over one-half among Black women in federal institutions, many of whom were carrying drugs across borders as a way to alleviate their situations of poverty.[66]

Behind bars, a lack of harm reduction and other health measures has led to significantly higher rates of HIV and HCV in prison compared to the community as a whole — a harm that has been disproportionately borne by the rapidly growing population of women in prison.[67] While HIV and HCV prevalence among federal prisoners is at least 10 and 30 times higher, respectively, than the population as a whole, these rates are even higher among women in prison.[68] A national study of federal prisoners suggested that approximately 10 percent of Indigenous women in federal prisons are living with HIV and almost 50 percent with HCV.[69] In provincial institutions (where people serve a sentence of less than two years), 30% of women compared to 15% of men are infected with HCV, and up to 9% of women are infected with HIV, compared to about 2% of men.[70] But access to HCV treatment remains inadequate, and only a small proportion of prisoners who are eligible for treatment are able to access it.[71]

A principal driver of high rates of HIV and HCV in prison is injection drug use among prisoners and the sharing of used needles to inject drugs. In a national study of people incarcerated in federal institutions, 14 percent of women admitted to injecting drugs while in prison, many of whom shared their injection equipment.[72] Yet in spite of the overwhelming evidence of the health benefits of prison-based needle and syringe programs and opioid substitution therapy (OST), no Canadian prison currently permits the distribution of sterile injection equipment to prisoners and a number of provincial and territorial prisons do not offer OST to prisoners.[73] Correspondingly, in a study of federally incarcerated women, 1 in 4 women were reported to have engaged in tattooing and 1 in 4 had unprotected sex while in prison.[74] However, safer tattooing programs do not exist in any prison in Canada, and a number of provincial and territorial prisons still do not make condoms and other safer sex supplies available to prisoners.[75]

Federal prisoners are further subject to the recently enacted *Drug-Free Prisons Act*, a law that empowers correctional authorities to (1) cancel an individual's parole if they test positive for illicit drugs or fail or refuse to provide a urine sample and (2) stipulate that a condition of an individual's release include abstention from the use of drugs or alcohol.[76] Yet women with substance use issues often do not have adequate access to appropriate services in prison. For example, the federal correctional service offers an "Aboriginal Offender Substance Abuse Program", a high-intensity program geared toward Indigenous men who have a history of drug use, which has demonstrated more beneficial effects for Indigenous men than mainstream substance use programs.[77] But the program is only available to Indigenous men, and research is lacking on its potential benefits for Indigenous women. More broadly, research has shown that current programs and services available to incarcerated women living with and vulnerable to HIV and HCV have been marked by inconsistent implementation and accessibility, both within individual institutions and across the system as a whole.[78]

The UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) recommends that prisoners enjoy the same standards of health care that are available in the community.[79] A number of UN agencies, including the UNODC, UNAIDS and the World Health Organization (WHO) have also recommended that prisoners should have access to a series of key interventions, including needle and syringe programs, condoms, drug dependence treatment including OST, programs to address tattooing, piercing and other forms of skin penetration, and HIV treatment, care and support.[80] Not only should these interventions be made available, but also incarcerated women should have access to gender-specific health care that is at least equivalent to that available in the community.[81] The failure to provide prisoners with equivalent access to health services, including key harm reduction measures, is a violation of their rights to life, health, equality and non-discrimination.

RECOMMENDED ACTIONS

The Legal Network recommends that Canada

- **minimize custodial sentences for women who commit non-violent offences and develop appropriate health and social support, including gender-appropriate treatment of drug dependence, for those who need it;**

- **expand evidence-based alternatives to incarceration for people who use drugs, taking into account the need for culturally appropriate care, including for women, Indigenous people, racialized minorities and youth;**

- **implement key health and harm reduction measures in all prisons in Canada, including prison-based needle and syringe programs, opioid substitution therapy, condoms and other safer sex supplies, and safer tattooing programs in consultation with prisoner groups and community health organizations to ensure operational success, taking into account the need for culturally appropriate and gender-specific programs; and**

- **expand care, treatment and support services in prison for women living with and vulnerable to HIV and HCV, including peer health programs, and ensure such support is developed and implemented to meet the specific needs of women in each institution and made consistently accessible across the country.**

[1] 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).

[2] UNAIDS/UNDP, *Policy Brief: Criminalization of HIV Transmission*, August 2008. Available at www.aidslaw.ca/site/wp-content/uploads/2014/02/1.UNAIDSUNDPposition.pdf.

[3] UN 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*, Report on the 14th session, UN General Assembly, agenda item 3, UN Doc. A/HRC/14/20, April 27, 2010. Available at www.aidslaw.ca/site/wp-content/uploads/2014/02/4_R.Special2010EN.pdf.

[4] Global Commission on HIV and the Law (UNDP HIV/AIDS Group), *HIV and the Law: Risks, Rights & Health*, July 2012. Available at www.hivlawcommission.org/index.php/report.

[5] See the perspectives articulated in the documentary film, *Consent: HIV non-disclosure and sexual assault law* (Goldelox Productions & Canadian HIV/AIDS Legal Network, 2015). Available at www.consentfilm.org.

[6] UN Human Rights Council, paras 2, 51.

[7] UN Committee on Economic, Social and Cultural Rights, *General comment No. 22 (2016) on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights),* UN doc. E/C.12/GC/22, May 2016, para. 40.

[8] M. Loutfy, M. Tyndall et al., "Canadian consensus statement on HIV and its transmission in the context of the criminal law," *Canadian Journal of Infectious Diseases & Medical Microbiology* 25, 3 (2014): pp. 135–140. Available at www.aidslaw.ca/site/wp-content/uploads/2014/06/Canadian-statement1.pdf.

[9] A.J. Rodger et al., "Sexual activity without condoms and risk of HIV transmission in serodifferent couples when the HIV-positive partner is using suppressive antiretroviral therapy," *JAMA* 316, 2 (July 12, 2016): pp. 171–181; M. Loutfy, M. Tyndall et al., "Canadian Consensus Statement on HIV and its transmission in the context of the criminal law," *Canadian Journal of Infectious Diseases & Medical Microbiology* 25, 3 (2014): pp. 135–140.

[10] Canadian HIV/AIDS Legal Network, *What does consent really mean? Rethinking HIV non-disclosure and sexual assault law meeting report*, 2014. Available at www.consentfilm.org/resources-and-publications/.

[11] 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.

[12] UN Human Rights Council, para. 71.

[13] B. Myles, « De bourreau à victime; de victime à criminelle », *Le Devoir*, February 15, 2008

[14] See, for instance, C. Kazatchkine and L. Gervais, "Canada's newest sex offenders," *Winnipeg Free Press*, March 8, 2016; Canadian HIV/AIDS Legal Network, "Women and the Criminalization of HIV Non-Disclosure," info sheet, 2012.

[15] S.E. Patterson et al., "The impact of criminalization of HIV non-disclosure on the health care engagement of women living with HIV in Canada: a comprehensive review of the evidence," *Journal of the International AIDS Society* 18, 1 (2015): 20572. Available at http://jiasociety.org/index.php/jias/article/view/20572.

[16] A. Kaida et al., "Sexual inactivity and sexual satisfaction among women living with HIV in Canada in the context of growing social, legal and public health surveillance," *Journal of the International AIDS Society* 18, Supplement 5 (2015): 20284. Available at http://jiasociety.org/index.php/jias/article/view/20284.

[17] According to preliminary results of the Canadian HIV Women's Sexual & Reproductive Health Cohort Study (CHIWOS), 240 (41%) participants personally reported recent intentional sexual abstinence. 54 (23%) reported that abstinence was driven by concerns about HIV criminalization and 84 (35%) reported that abstinence was driven by fear of HIV disclosure. These preliminary results were presented by Valerie

Nicholson, one of the peer associate researchers involved in CHIWOS, at a workshop being held at the HIV Is Not a Crime training academy, in Huntsville, Alabama, in May 2016. It is our understanding that the results have yet to be published.

[18] N. Poole and C.A. Dell, *Girls, Women and Substance Use*, 2005, p. 10. Available at www.ccsa.ca/Resource%20Library/ccsa-011142-2005.pdf.

[19] Ibid., p. 1.

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