



## **List of Issues Prior to Reporting in Canada: Submission to the United Nations Human Rights Committee**

Violations of Articles 1, 2, 3, 9, 17, 19, 22 and 26 of the  
*International Covenant on Civil and Political Rights*

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# INTRODUCTION

1. The [HIV Legal Network](#) (formerly the Canadian HIV/AIDS Legal Network) promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization. We envision a world in which the human rights and dignity of people living with HIV or AIDS and those affected by the disease are fully realized and in which laws and policies facilitate HIV prevention, care, treatment and support.
2. In advance of the adoption of the List of Issues Prior to Reporting for Canada's periodic review under the *International Covenant on Civil and Political Rights* ("ICCPR"), to be held during the 132nd session (28 June to 23 July 2021), the HIV Legal Network would like to provide information to the United Nations (UN) Human Rights Committee on violations of Articles 1, 2, 3, 9, 17, 19, 22 and 26 of the ICCPR with respect to the human rights of people living with HIV and sex workers in Canada.

## PEOPLE LIVING WITH HIV

### Violations of Articles 2, 3, 9, 17 and 26

3. By the end of 2020, there were at least 225 known prosecutions of people living with HIV for not disclosing their HIV-positive status to their sexual partners.<sup>1</sup> The law in Canada is known internationally for its severity.<sup>2</sup> People living with HIV 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 — for not disclosing their status, **a deprivation of the right to liberty (Article 9)**. Based on paired decisions of the Supreme Court of Canada in 2012, 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.<sup>3</sup> This is contrary to international recommendations and human rights standards on HIV criminalization, as well as the medical evidence on HIV and public health considerations.<sup>4</sup>
4. Criminalization is often described as a tool to protect women from HIV and enhance women's autonomy in sexual decision-making. However, a gendered analysis of current HIV criminalization reveals that it is a blunt, punitive and inflexible approach to HIV prevention that does little to protect women from HIV infection, violence or coercion. Research in Canada has shown that the criminalization of HIV non-disclosure exacerbates women's fear of disclosing their HIV-positive status and intensifies violence against them.<sup>5</sup> An overly broad use of the criminal law puts women living with HIV at increased risk of violence and prosecution by providing a tool of coercion or revenge for vindictive partners.<sup>6</sup> Research reveals that women who experience rape or sexual assault may also decide not to report to police for fear of non-disclosure charges.<sup>7</sup> 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.<sup>8</sup>
5. In particular, the criminalization of HIV non-disclosure can have a serious, adverse and

disproportionate impact on women living with HIV who face challenges due to their socioeconomic status, discrimination, insecure immigration status, or abusive or dependent relationships.<sup>9</sup> Canada's current approach is gender-blind to the power dynamics of negotiating male condom use, HIV disclosure and access to HIV care,<sup>10</sup> constituting a **deprivation of women's right to equality and non-discrimination (Articles 2, 3 and 26)**. Gender power dynamics can make it difficult for women living with HIV to negotiate condom use and marginalized women living with HIV may not be able to achieve an undetectable viral load that could protect them from criminal prosecutions if they cannot disclose. According to a study of 277 women living with HIV in Vancouver, B.C., at least 48% of the participants were at risk of criminal prosecution if they did not disclose because they could not maintain a suppressed viral load (<200 copies/ml). Recent homelessness, recent sex work and recent incarceration are correlated with increased odds of viral load suppression failure.<sup>11</sup> Studies have also demonstrated that HIV criminalization affects the sexual lives and well-being of women living with HIV, with high rates of sexual abstinence among women living with HIV<sup>12</sup> being driven partly by concerns about HIV criminalization and fear of HIV disclosure.<sup>13</sup>

6. The criminalization of HIV non-disclosure also disproportionately affects racialized people (particularly Black and Indigenous people), migrants and gay men, **violating their right to equality and non-discrimination (Articles 2 and 26)**. Between 2012 and 2016, for example, almost half of all people charged for whom race is known were Black men,<sup>14</sup> who have been represented in Canadian mainstream newspapers in profoundly stigmatizing ways. Black immigrant men in particular have been repeatedly represented in media as dangerous, hypersexual foreigners who pose a threat to public health and safety.<sup>15</sup> Indigenous women in Canada account for a large proportion of women charged, and the number of cases against gay men — who represent the largest proportion of people living with HIV in Canada — has also increased.<sup>16</sup>
7. Moreover, the criminalization of HIV non-disclosure has resulted in the use of medical records in criminal proceedings and people's HIV status made public in the media including through police press releases, resulting in **serious invasions of privacy (Article 17)**.
8. In its last review of Canada, the Committee on the Elimination of Discrimination against Women ("CEDAW Committee") denounced the "concerning application of harsh criminal sanctions (aggravated sexual assault) to women for non-disclosing their HIV status to sexual partners, even when the transmission is not intentional, when there is no transmission or when the risk of transmission is minimal," and it recommended that Canada "*limit the application of criminal law provisions to cases of intentional transmission of HIV/AIDS*, as recommended by international public health standards."<sup>17</sup> [emphasis added]
9. Numerous human rights and public health concerns associated with the criminalization of HIV non-disclosure, exposure or transmission have also led the Joint UN Programme on HIV/ AIDS (UNAIDS) and the UN Development Programme (UNDP),<sup>18</sup> the UN Special Rapporteur on the right to health,<sup>19</sup> the Global Commission on HIV and the Law,<sup>20</sup> and women's rights advocates<sup>21</sup> to urge governments to limit the use of the criminal law to cases of *intentional transmission* of HIV (i.e. where a person knows their HIV-positive status, acts with the intention to transmit HIV, and does in fact transmit it).
10. 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 the rights to privacy**

**(Article 17), equality and non-discrimination (Articles 2, 3 and 26).**<sup>22</sup> Meanwhile, the UN Committee on Economic, Social and Cultural Rights has called on States “to reform laws that impede the exercise of the right to sexual and reproductive health” including laws criminalizing “HIV non-disclosure, exposure and transmission”<sup>23</sup> and the UN Committee on the Rights of the Child has noted the need to review legislation “that criminalizes the unintentional transmission of HIV and the non-disclosure of one’s HIV status.”<sup>24</sup>

11. Since the CEDAW Committee’s last review, there have been positive developments in Canada to limit HIV criminalization. In December 2018, the federal Attorney General instructed federal lawyers to stop prosecuting people who have a suppressed viral load (i.e. under 200 copies/ml).<sup>25</sup> The directive also, *inter alia*, instructs federal lawyers to “generally” not prosecute someone who used a condom, took HIV treatment as prescribed, or just had oral sex, because “there is likely no realistic possibility of transmission” in these circumstances. But the directive only applies to Canada’s three territories. Most people live in the provinces, and provincial Attorneys General are lagging behind in adopting a similar approach.<sup>26</sup>
12. In addition to sound policies governing prosecutors in each jurisdiction, reforms to the federal *Criminal Code* are necessary to end unjust HIV criminalization, as recognized by the House of Commons Standing Committee on Justice and Human Rights in a June 2019 report.<sup>27</sup> In particular, the Standing Committee recommended removing HIV non-disclosure from the reach of sexual assault law and limiting HIV criminalization to actual transmission.

#### **Case study:**

In 2005, D.C. was charged in Quebec for not disclosing her status to her ex-partner before the first time they had sex. The couple had a relationship for four years after she disclosed her HIV status to him. The relationship became physically abusive, and the end of the relationship was marked by violence against D.C. and her young son. She turned to the police for protection, and her ex-partner was prosecuted for the physical assault — after which he complained to police that she had not disclosed her HIV-positive status before their very first sexual encounter. He said it had been “unprotected” (meaning without a condom); she said they had used a condom. Her viral load was undetectable at the time, so there was no possibility of transmission.

The trial judge explicitly noted that the accusation by D.C.’s ex-partner was motivated by his desire for revenge. HIV criminalization allowed him to weaponize the law of sexual assault against the woman he himself was convicted of assaulting. At trial, D.C. was convicted of aggravated assault and sexual assault and sentenced to 12 months’ house arrest and designated for life as a sex offender. She was ultimately acquitted in 2012 by the Supreme Court of Canada, but solely on a technicality; had it not been for the trial judge’s error in his handling of the evidence, D.C. would have been convicted and designated a sex offender for life.<sup>28</sup>

#### **RECOMMENDED QUESTIONS TO BE INCLUDED IN THE LIST OF ISSUES:**

- **Does the federal government commit to limit, through *Criminal Code* reform and in consultation with the HIV community, the use of the criminal law against people living with HIV to cases of *actual and intentional* HIV transmission by removing HIV non-disclosure from the reach of sexual assault laws, including the current mandatory designation as a sex offender?**

- Will the federal government establish a federal-provincial working group to develop a common prosecutorial directive to apply across Canada to limit the prosecution of people living with HIV to cases of actual and intentional HIV transmission?
- Does the federal government commit to reviewing the cases of all individuals who have been prosecuted or convicted of HIV non-disclosure who would not have been prosecuted based on a new common prosecutorial directive and/or new *Criminal Code* offence?

## SEX WORKERS

### Violations of Articles 1, 2, 3, 9, 19, 22 and 26

13. In 2014, Canada passed the *Protection of Communities and Exploited Persons Act* (PCEPA), a law predicated on the notion that sex work is inherently exploitative and making the exchange of sex for compensation illegal for the first time in Canada's history. In addition to prohibiting public communication for the purpose of selling sex, the PCEPA prohibits: the purchase of all sexual services; receiving a financial or other material benefit from the purchase of sexual services; "procuring" a person to offer or provide sexual services; and advertising the sale of sexual services.<sup>29</sup>
14. Nearly six years since the passage of the PCEPA, sex workers in Canada continue to live with the impacts of criminalization,<sup>30</sup> as do those who purchase sex and third parties involved in sex work.<sup>31</sup> Sex workers have been prosecuted under the 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,<sup>32</sup> **violating sex workers' right to liberty (Article 9)**. In particular, Indigenous women and youth, migrant, Black, racialized and trans women face targeted violence, stigmatization, hyper-surveillance and over-policing under the PCEPA.<sup>33</sup>
15. Numerous studies have concluded that banning the purchase of sexual services has contributed to violence against sex workers, who are forced to work in isolation and in clandestine locations, as well as to rush negotiations with potential clients for fear of police detection.<sup>34</sup> Predators are aware that in a criminalized regime, sex workers actively avoid police for fear of detection, apprehension and, in the case of migrant women, deportation. In a study involving 299 sex workers from Vancouver, B.C., over 26% reported negative changes after the passage of the PCEPA, including reduced ability to screen clients and reduced access to workspaces/clients.<sup>35</sup> Such tactics have perpetuated labour conditions that render sex workers at increased risk for violence and poor health.<sup>36</sup>
16. At the same time, research in Canada has shown that criminalizing third parties (e.g. drivers, security, translators, partners, peers, bookers, webmasters, business owners, receptionists) who work with or for sex workers, or who employ sex workers, forces sex workers to work in isolation, away from support networks and without proven safety mechanisms,<sup>37</sup> **violating sex workers' right of self-determination and to freely determine their economic development (Article 1)**. 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 health risks among sex workers.<sup>38</sup>

17. Third parties — who in some cases are sex workers themselves — can be helpful resources for other sex workers, for instance, in the case of migrant sex workers who may have limited resources and face language barriers.<sup>39</sup> A legal framework that subjects all third parties to criminal sanctions without evidence of abuse or exploitation drives the sex industry underground where labour exploitation can flourish, **violating sex workers' right to freedom of association (Article 22)**. This framework also deters sex workers from the criminal legal system when they experience violence, because they fear that they and/or their employer may be charged with prostitution-related offences.<sup>40</sup>
18. All of the criminal prohibitions on sex work also prevent communication and negotiation in various ways, which is essential to clear and ongoing consent to the sexual activities in which sex workers and clients engage. **This constitutes a violation of sex workers' right to freedom of expression (Article 19)**. Further, the prohibitions prevent sex workers from communicating and obtaining relevant and identifiable information that is vital for sex workers to establish safety practices from clients who fear detection and incrimination, as well as to negotiate and establish the terms of service and working conditions.
19. Acknowledging the harmful impacts of these prohibitions on sex workers, two courts in Ontario (in 2020 and 2021) determined that the third party and advertising prohibitions were unconstitutional because they violate sex workers' rights under Canada's *Charter of Rights and Freedoms*.<sup>41</sup>
20. The above challenges are compounded for migrant workers, who must also contend with immigration laws that prohibit everyone without Canadian citizenship or permanent resident status from working in the sex industry,<sup>42</sup> **violating migrant sex workers' right of self-determination and to freely determine their economic development (Article 1)**. These laws subject migrant sex workers to additional law enforcement surveillance and the threat of detention and deportation — deterring migrant sex workers from accessing health, social and legal supports.
21. As sex workers are predominately cis and trans women, and a disproportionate number of sex workers who work on the street are Black, Indigenous, racialized, trans, migrant, and/or have disabilities, **these criminal prohibitions also violate sex workers' right to equality and non-discrimination (Articles 2, 3 and 26)**.
22. Moreover, since the passage of the PCEPA, criminalizing sex work has been deemed to be a central mechanism used in human trafficking initiatives and has resulted in the conflation of sex work with human trafficking.<sup>43</sup> This strategy has enabled law enforcement to intensify police surveillance and other law enforcement initiatives against sex workers.<sup>44</sup> Greater surveillance of migrant and Indigenous women who leave their communities has undermined their relationships with family members or others who may offer them safety or support, including in circumstances where they may be selling sex. Migrant sex workers, who are legally prohibited from working in the sex industry are under constant threat of detention and deportation, thus hindering their access to health and support services and the police for fear of being labeled victims of trafficking.<sup>45</sup> Immigration restrictions prohibiting women from working in legal establishments offering sensual services, such as strip clubs, massage parlours and escort services, further serve to infantilize migrant women and treat

them as incapable of making their own life decisions. Such policing initiatives have not resulted in more protection or safety for trafficked persons.<sup>46</sup> An effective anti-trafficking strategy should prioritize support to people who wish to seek help, rather than employing law enforcement measures as a method of protection.

23. The COVID-19 pandemic has put many sex workers out of work and further entrenched sex workers into poverty, but unlike workers in other industries, sex workers have largely been unable to access Canada's emergency income supports because the criminalization of sex work isolates sex workers from formal income reporting mechanisms like filing taxes, and because many live and work in poverty and do not meet the income thresholds for emergency benefits. Still others will not engage with government institutions for fear of repercussions due to criminalization, stigma and discrimination. Since the beginning of the COVID-19 pandemic, UNAIDS has also called on countries to take immediate, critical action to protect the health and rights of sex workers, which include, among other steps, an "immediate halt to arrests and prosecutions for sex work-related activity."<sup>47</sup> In Canada, the Attorney General has the power to issue federal directives with respect to cases generally,<sup>48</sup> and in July 2020, sex worker rights and human rights organizations urgently called on the Attorney General to issue a federal directive to stop prosecuting the sex work-specific offences in the *Criminal Code*.<sup>49</sup> There has yet to be a response to this request.
24. In 2016, the CEDAW Committee expressed concern about the "potentially increased risk to the security and health of women in prostitution, particularly Indigenous women, brought about by the criminalization of prostitution under certain circumstances as provided for in the new legislation" and recommended that Canada "[f]ully decriminalize women engaged in prostitution and assess the impacts of the PCEPA, notably on the health and security of women in prostitution."<sup>50</sup>
25. Decriminalizing sex work is in line with recommendations made by numerous UN entities, including UNAIDS,<sup>51</sup> UNDP,<sup>52</sup> and the Global Commission on HIV and the Law.<sup>53</sup> The UN Special Rapporteur on the right to health has described the negative ramifications of criminalizing third parties such as brothel owners, called for the decriminalization of sex work, and denounced the conflation of sex work and human trafficking.<sup>54</sup> The UN Special Rapporteur on violence against women has noted the need to ensure that "measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers."<sup>55</sup> 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."<sup>56</sup> Human rights organizations such as Amnesty International,<sup>57</sup> Human Rights Watch,<sup>58</sup> the Global Alliance Against Traffic in Women<sup>59</sup> and the Center for Health and Gender Equity<sup>60</sup> have also studied the human rights implications of criminalizing sex work and have recommended the repeal of sex work-specific criminal laws, including those that criminalize clients and third parties.

### **Case study:**

Brandy, an Indigenous sex worker, has faced unrelenting police surveillance, racial profiling, harassment and interrogation when she works, including encounters with police posing as clients. In 2016, police officers arbitrarily stopped Brandy on the street while she was on her way to meet a client and demanded to know where she was going. When Brandy tried to leave, the officers restrained her, tackled her to the ground, hit her with a baton, tased her and

punched her, fracturing one of her ribs. Brandy was arrested and detained overnight. For Brandy and other sex workers, this was not an isolated incident, but reflects a systematic pattern of harassment and abuse that law enforcement officers — empowered by sex work–specific criminal and other laws — have perpetuated against sex workers since the passage of the PCEPA.<sup>61</sup>

#### **RECOMMENDED QUESTIONS TO BE INCLUDED IN THE LIST OF ISSUES:**

- **Does the federal government commit to repeal all sex work–specific criminal laws (i.e. sections 213, 286.1, 286.2, 286.3 and 286.4 of the Criminal Code), and to work with sex workers to develop a legislative framework that respects, protects and fulfills their human rights?**
- **In the interim, do the federal government and provincial governments commit to issuing a directive to stop federal and provincial Crown Attorneys from prosecuting sex work offences?**
- **Does the federal government commit to repeal all immigration regulations (i.e. sections 183(1)(b.1), 196, 200(3)(g.1) of the *Immigration and Refugee Protection Regulations*) that prohibit migrant people from working in the sex industry and have led to the detention and deportation of migrant sex workers?**
- **Will the federal government stop law enforcement activities including raids, detentions and deportations of sex workers that are justified through anti-trafficking and anti–sex work laws and policies?**
- **Will the federal government 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”?**
- **Will the federal government support concrete measures to improve the health and safety of individuals selling sexual services, including by providing significant resources for income support, poverty alleviation, housing, childcare, education and training, and treatment and support for substance use?**

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<sup>1</sup> C. Hastings, N. Massaquoi, E. Mykhalovskiy, C. Kazatchkine, and R. Elliott, 2021 (forthcoming).

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

<sup>3</sup> *R. v. Mabior*, 2012 S.C.C. 47 and *R. v D.C.*, 2012 S.C.C. 48.

<sup>4</sup> For example, when used correctly and no breakage occurs, condoms are 100% effective at preventing the transmission of HIV, and condomless sex with a person living with HIV under effective antiretroviral therapy poses no risk of transmission. See 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 and F. Barrée-Sinoussi et al., “Expert consensus statement on the science of HIV in the context of criminal law,” *Journal of the International AIDS Society*, 2018, 21:e25161, July 2018.

<sup>5</sup> WATCH, *Brief to the Standing Committee on Justice and Human Rights Study on the criminalization of non-disclosure of HIV Status*, April 29, 2019.



<sup>6</sup> S. Green et al., “How women living with HIV react and respond to learning about Canadian law that criminalises HIV non-disclosure: ‘How do you prove that you told?’” *Culture, Health & Sexuality* (2019), DOI: 10.1080/13691058.2018.1538489.

<sup>7</sup> Center for Gender and Sexual Health Equity, *Gendered Impact of Criminalization of HIV Non-Disclosure: Implications for Prosecutorial Guidelines in BC. Research for policy*, 2018. Notably, several women convicted of HIV non-disclosure in Canada are survivors of violence and sexual violence. See, for instance, C. Kazatchkine and L. Gervais, “Canada’s newest sex offenders,” *Winnipeg Free Press*, March 8, 2016 and Canadian HIV/AIDS Legal Network, “Women and the Criminalization of HIV Non-Disclosure,” info sheet, 2012.

<sup>8</sup> LEAF (Women’s Legal Education and Action Fund), *A Feminist Approach to Law Reform on HIV Non-Disclosure*, January 2019; Canadian HIV/AIDS Legal Network, *What does consent really mean? Rethinking HIV non-disclosure and sexual assault law meeting report*, 2014.

<sup>9</sup> See Center for Gender and Sexual Health Equity, *Gendered Impact of Criminalization of HIV Non-Disclosure: Implications for Prosecutorial Guidelines in BC. Research for policy*, 2019 and P. Allard, C. Kazatchkine and A. Symington, “Criminal prosecutions for HIV non-disclosure: Protecting women from infection or threatening prevention efforts?” in J. Gahagan (ed.), *Women and HIV Prevention in Canada: Implications for Research, Policy, and Practice* (Toronto: Women’s Press, 2013): pp. 195–218.

<sup>10</sup> A. Krüsi et al., “Positive sexuality: HIV disclosure, gender, violence and the law - A qualitative study,” *PLOS ONE*, 13(8): e0202776, 2018.

<sup>11</sup> A. Krüsi et al., “Marginalized women living with HIV at increased risk of viral load suppression failure: Implications for prosecutorial guidelines regarding criminalization of HIV non-disclosure in Canada and globally.” 22nd International AIDS Conference in Amsterdam, Netherlands, July 2018.

<sup>12</sup> 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.

<sup>13</sup> The Canadian HIV Women’s Sexual & Reproductive Health Cohort Study (CHIWOS) revealed that over half of women who participated in the study were sexually inactive, over three quarters of whom reported intentionally abstaining from sex; 21% reported that abstinence was driven by concerns about HIV criminalization and 30% reported that abstinence was driven by fear of HIV disclosure. See, A. Kaida et al., *CHIWOS, The influence of the criminalization of HIV non-disclosure on intentional sexual inactivity among women living with HIV in Canada*, presentation, CAHR 2017.

<sup>14</sup> Canadian HIV/AIDS Legal Network, *HIV Criminalization in Canada: Key Trends and Patterns*, March 17, 2017.

<sup>15</sup> E. Mykhalovskiy et al., “‘Callous, Cold and Deliberately Duplicious’: Racialization, Immigration and the Representation of HIV Criminalization in Canadian Mainstream Newspapers,” *SSRN Electronic Journal*, January 2016.

<sup>16</sup> Canadian HIV/AIDS Legal Network, *HIV Criminalization in Canada: Key Trends and Patterns*, March 17, 2017.

<sup>17</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, CEDAW/C/CAN/CO/8-9, 18 November 2016, at paras. 42 and 43.

<sup>18</sup> UNAIDS/UNDP, *Policy Brief: Criminalization of HIV Transmission*, August 2008.

<sup>19</sup> 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.

<sup>20</sup> Global Commission on HIV and the Law (UNDP HIV/AIDS Group), *HIV and the Law: Risks, Rights & Health*, July 2012.

<sup>21</sup> See the perspectives articulated in the documentary film, *Consent: HIV non-disclosure and sexual assault law* (Goldelox Productions & Canadian HIV/AIDS Legal Network, 2015).

<sup>22</sup> 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, paras 2, 51.

<sup>23</sup> 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.

<sup>24</sup> UN Committee on the Rights of the Child, *General Comment No. 20*, 2016.

<sup>25</sup> Attorney General of Canada, “Directive to Director of the Public Prosecution Service,” *Canada Gazette*, Part I, Vol. 152, December 8, 2018.

<sup>26</sup> Canadian HIV/AIDS Legal Network, *The Criminalization of HIV Non-Disclosure in Canada: Current Status and the Need for Change*, June 2019.

<sup>27</sup> House of Commons, *The criminalization of HIV non-disclosure in Canada*, Report of the Standing Committee on Justice and Human Rights, June 2019, 42nd Parliament, 1st session.

<sup>28</sup> B. Myles, « De bourreau à victime; de victime à criminelle », *Le Devoir*, February 15, 2008.

<sup>29</sup> *Protection of Communities and Exploited Persons Act* (S.C. 2014, c. 25).

<sup>30</sup> See, for example, Canadian HIV/AIDS Legal Network, *The Perils of “Protection”: Sex Workers’ Experiences of Law Enforcement in Ontario*, 2019 and B. Sawchuk, “Undercover cops take aim at sex trade,” *St. Catharines Standard*, July 20, 2016.

<sup>31</sup> See, for example, Hamilton Police Service, “Project Orchid Takes Aim at Illegal Massage Parlours,” June 3, 2019 and K. Nielson, “Waterloo police arrest man as part of province-wide ‘Operation Northern Spotlight’,” *Global News*, October 24, 2018.

<sup>32</sup> See, for example, E. Lam, *Behind the rescue: How anti-trafficking investigations and polices harm migrant sex workers*, Butterfly (Asian and Migrant Sex Workers Support Network), 2018 and *The Perils of “Protection”*, supra.

<sup>33</sup> E. Lam, *Survey on Toronto Holistic practitioners with bylaw enforcement and police*, Butterfly (Asian and Migrant Sex Workers Support Network), 2018; *Behind the rescue*, supra, and *The Perils of “Protection”*, supra.

<sup>34</sup> See, for example, J. Levy and P. Jakobsson, “Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers,” *Criminology & Criminal Justice* 1–15 (March 31, 2014); P. Östergren and S. Dodillet, “The Swedish Sex Purchase Act: Claimed success and documented effects,” paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges, March 3-4, 2011, The Hague, Netherlands; and U. Bjørndah, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Municipality of Oslo, 2012.

<sup>35</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>36</sup> A. Krüsi et al., “‘They Won’t Change It Back In Their Heads That We’re Trash’: The Intersection of Sex Work Related Stigma and Evolving Policing Strategies,” *Sociology of Health & Illness* (April 26, 2016).

<sup>37</sup> 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): pp.792-798.

<sup>38</sup> K. Shannon et al., “Global epidemiology of HIV among female sex workers: influence of structural determinants,” *Lancet* 385, 9962 (January 3, 2015): pp. 55–71.

<sup>39</sup> See B. McBride et al., supra; E. Lam, *Stop the harm from anti-trafficking policies & campaigns: support sex workers’ rights, justice and dignity*, Butterfly (Asian and Migrant Sex Workers Support Network), 2016; and *Behind the rescue*, supra.

<sup>40</sup> *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.

<sup>41</sup> *R. v. Anwar* 2020 ONCJ 103 and *R. v. N.S.* 2021 ONSC 1628.

<sup>42</sup> Sections 183(1)(b.1), 196, 200(3)(g.1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR), and the Ministerial Instructions on the issuance of work permit conditions pursuant to IRPR section 185(b).

<sup>43</sup> Indeed, the *National Action Plan to Combat Human Trafficking* makes the unsubstantiated claim that the sexual exploitation of women and girls is the most common manifestation of trafficking in Canada. See Public Safety Canada, *National Action Plan to Combat Human Trafficking*, 2012.

<sup>44</sup> A. Rose, “Punished for Strength: Sex Worker Activism and the Anti-Trafficking Movement,” *Atlantis* 37, 2 (2015): pp. 57-64; POWER (Prostitutes of Ottawa/Gatineau Work, Educate, and Resist), *Ottawa Area Sex Workers Targets of Intrusive Police Visits*, 2014; *The Perils of “Protection”*, supra.

<sup>45</sup> *Behind the rescue*, supra.

<sup>46</sup> Amnesty International, *Explanatory Note on Amnesty International’s Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers*, May 26, 2016, p. 42.

<sup>47</sup> UNAIDS, “Sex workers must not be left behind in the response to COVID-19,” April 8, 2020.

<sup>48</sup> Section 10(2) of *An Act respecting the office of the Director of Public Prosecutions* S.C. 2006, c. 9, s. 121 provides, “The Attorney General may, after consulting the Director, issue directives respecting the initiation or conduct of prosecutions generally. Any such directives must be in writing and be published in the *Canada Gazette*.”

<sup>49</sup> Canadian Alliance for Sex Work Law Reform, *Open Letter to Minister Of Justice: Stop Enforcing Sex Work Laws Immediately*, July 2020.

<sup>50</sup> CEDAW Committee, supra, paras. 32-33.

<sup>51</sup> UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work*, 2012.

<sup>52</sup> 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.

<sup>53</sup> *HIV and the Law: Risks, Rights & Health*, supra.

<sup>54</sup> 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.

<sup>55</sup> UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, Report on the 26th Session, UN General Assembly, agenda item 3, UN Doc. A/HRC/26/38/Add.1, 2014.

<sup>56</sup> UN Women, *Note on Sex Work, Sexual Exploitation and Trafficking*, October 9, 2013.

<sup>57</sup> Amnesty International, *Amnesty International Policy on state obligations to respect, protect and fulfill the human rights of sex workers*, May 2016.

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<sup>58</sup> J. Amon, "Canada's prostitution bill a step in the wrong direction," *Ottawa Citizen*, June 18, 2014.

<sup>59</sup> Global Alliance Against Traffic in Women, *Response to UN Women's consultation on sex work*, 2016.

<sup>60</sup> B. Roose-Snyder, P. Mitchum and D. Shea, *Between Her and Her Rights: Criminalization of Sex Work is the Barrier*, December 16, 2016.

<sup>61</sup> *The Perils of "Protection"*, supra.