

HIV, Human Rights, and Sex Work in Canada

Submission to the Office of the UN High Commissioner for Human Rights pursuant to Human Rights Council resolution 47/17 entitled “Human rights in the context of HIV and AIDS” (adopted July 13, 2021)

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I. Introduction

The [Canadian Alliance for Sex Work Law Reform \(CASWLR\)](#) is a coalition of 25 Canadian sex worker rights groups across Canada seeking to create a unified and cohesive response to law reform, and to strengthening the capacity of sex workers to engage with legislative processes that impact their lives. 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, and is a member group of CASWLR. Since its inception, the HIV Legal Network has worked with sex workers to advocate for laws and policies that uphold their human rights. We are grateful for the opportunity to make this submission to the Office of the High Commissioner for Human Rights (OHCHR) regarding human rights and sex work in Canada, in the context of HIV and AIDS.

II. HIV, human rights, and sex work

A growing body of research confirms that the criminalization of any aspect of sex work, including the criminalization of clients, sex workers, and third parties in sex work, violates sex workers’ human rights and is in itself a social determinant of health by creating barriers to accessing health care services and building relationships with health care providers.ⁱ As the Global Commission on HIV and the Law found, “Criminalisation, in collusion with social stigma makes sex workers’ lives more unstable, less safe, and far riskier in terms of HIV.”ⁱⁱ Similarly, UNAIDS has recognized that “Intersecting forms of structural and societal stigma and discrimination, including punitive laws, policies and practices, create significant inequalities and prevent sex workers from being able to protect their health, safety and well-being.”ⁱⁱⁱ As such, UNAIDS recommends “ending the criminalization of all aspects of sex work, including the purchase, sale and management of sex work; extending labour protections; protecting sex workers against state and private actor violence; and ending stigma and discrimination.”^{iv}

Numerous recommendations made by the Human Rights Council resolution on “Human Rights in the context of HIV and AIDS” (hereinafter “Resolution 47/17”) are relevant to human rights, sex work, and HIV. In particular, Resolution 47/17 calls on States to “take all steps necessary to ensure respect for and the protection and fulfilment of all human rights and to prevent and eliminate stigma, discrimination, violence and abuse in the context of HIV as an essential part of efforts to achieve the goal of universal access to HIV prevention, diagnosis, treatment, care and support”^v and to “bring their laws, policies and practices ... fully into compliance with their obligations under international human rights law, and to review or repeal those that are discriminatory or that adversely affect the successful, effective and equitable delivery of, and access to, HIV prevention, diagnosis, treatment, care and support programmes for all persons living with, presumed to be living with, at risk of or affected by HIV, including key populations.”^{vi} Resolution 47/17 also stresses that “the lack of respect for and of

protection and fulfilment of all the human rights of all women and girls and their sexual and reproductive health and reproductive rights ... and of their enjoyment of the right to the highest attainable standard of physical and mental health, aggravates the impact of the epidemic among them” and urges States to “eliminate all forms of sexual and gender-based violence ... by adopting and enforcing laws, changing gender stereotypes and negative social norms, perceptions and practices, and providing tailored services that address multiple and intersecting forms of discrimination and violence faced by women living with, at risk of or affected by HIV.”^{vii}

III. Canada’s implementation of Resolution 47/17

Since 2014, human rights violations against sex workers in Canada have escalated with the passage of the *Protection of Communities and Exploited Persons Act*, which criminalizes sex workers, those who purchase sexual services, third parties such as managers, security, receptionists, drivers, translators, peers, and partners involved in sex work, and those who advertise sexual services.^{viii} Criminalizing sex work exacerbates sex workers’ experiences of marginalization, stigmatization and discrimination, reduces their access to health services, and is a 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.^{ix}

Numerous studies have concluded that so-called “end demand” laws that attempt to abolish sex work by banning the purchase of sexual services have 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.^x In Canada, research has demonstrated that police targeting clients has not decreased rates of violence against sex workers or enhanced sex workers’ control over their sexual health, including HIV prevention measures.^{xi} In British Columbia, for example, researchers found significantly reduced odds of sex workers accessing health services when needed after the implementation of the new law.^{xii} By facilitating the removal of sex workers from public spaces, such tactics have merely perpetuated labour conditions that subject sex workers to greater risk of violence and poor health.^{xiii}

The criminalization of third parties also forces sex workers to work away from support networks and without proven safety mechanisms, a finding confirmed by the Supreme Court of Canada in *Canada (Attorney General) v. Bedford*.^{xiv} Evidence has demonstrated the role of 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.^{xv} A legal framework that subjects all third parties to criminal sanction without evidence of abuse drives the sex industry underground where labour exploitation can flourish, and deters sex workers from reporting when they experience violence, for fear that they or their employer may be charged with prostitution-related offences.^{xvi} At the same time, the Canadian government’s conflation of sex work with trafficking^{xvii} has increased anxiety, moral panic and racism against racialized migrants and sex workers.

As Resolution 47/17 urges, States are to “address the multiple and intersecting forms of discrimination and the specific health-care needs experienced by migrant and mobile populations.”^{xviii} 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.^{xix} In Canada, anti-trafficking enforcement efforts such as raids by law enforcement agencies including the RCMP, Canada Border Services Agency (CBSA) and municipal police put women from the most marginalized groups, including Indigenous and migrant women, in danger. Law enforcement agencies across Canada have regularly participated in mass, indiscriminate efforts to identify trafficking victims in the sex industry such as Operation Northern Spotlight, during which police have detained and harassed numerous sex workers where there has been no evidence of coercion, exploitation, or human trafficking.^{xx} The routine conflation of sex work and trafficking results in the over-policing of sex workers, especially those who are Indigenous or migrant. When

police have raided sex work establishments or posed as clients in their efforts to “rescue” human trafficking victims, sex workers have repeatedly experienced this as a form of intimidation, harassment, surveillance and a gross violation of privacy that has further entrenched fear and distrust of police services.^{xxi}

Decriminalizing sex work is in line with recommendations made by UN Special Procedures and other UN agencies. Mr. Anand Grover, the previous UN Special Rapporteur on the right to health, has concluded that criminalizing sex work diminishes sex workers’ bargaining power in choosing clients and negotiating condom use, impedes sex workers’ access to health services, and denies them protections that legal work requires, such as occupational health and safety standards.^{xxii} Mr. Grover has also described the negative ramifications of criminalizing third parties, criticized the conflation of sex work and trafficking, and called for the decriminalization of sex work.^{xxiii} As he notes, decriminalizing sex work “forms a necessary part of a right-to-health approach to sex work, and can lead to improved health outcomes for sex workers.”^{xxiv}

Similarly, the Global Commission on HIV and the Law has recommended that States “repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex” and refrain from using trafficking laws “against adults involved in consensual sex work” in order to ensure an “effective, sustainable response to HIV that is consistent with human rights obligations”.^{xxv} The UN Special Rapporteur on violence against women has also 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”^{xxvi} while UN Women has expressed its support for decriminalizing sex work, acknowledging 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.”^{xxvii}

IV. Recommended actions

- Immediately repeal all sex work–specific criminal laws, including the offences in the *Protection of Communities and Exploited Persons Act*, which endanger sex workers’ lives, health, and safety;
- Immediately repeal all immigration regulations that prohibit migrant people from working in the sex industry, and have led to the detention and deportation of migrant sex workers;
- Stop raids, detentions and deportations of sex workers through anti-trafficking, anti-sex work and immigration laws and ensure Canada Border Services Agency is never involved in anti-trafficking investigations, because their involvement exacerbates migrant workers’ fears of detention and deportation and inhibits reporting of violence if it occurs;
- Put in place legislative measures, including occupational health and safety legislation, to ensure that sex workers’ rights, safety, and dignity are respected, guaranteeing that sex workers and their allies are consulted in doing so;
- Fund programs and services that are developed by people who have lived experience selling sexual services, ensuring that such measures are made available to everyone; and
- Support measures to improve the safety of individuals selling sexual services, including by providing significant resources for income support, poverty alleviation, housing, childcare, education and training, and support or treatment for people who use drugs or alcohol, including for youth, Indigenous Peoples, and migrants.

ⁱ C. Benoit et al., *Working paper for Building on the Evidence: An International Symposium on the Sex Industry in Canada*, 2014; Canadian HIV/AIDS Legal Network, *Sex, Work, Rights: Reforming Canadian Criminal Laws on Prostitution*, 2005; L. Jeffrey & G. MacDonald, “It’s the Money, Honey: The Economy of Sex Work in the Maritimes,” *Canadian Review of Sociology and Anthropology* 43: 3, 2006: 313-328; J. Lewis & F. Shaver, *Safety, Security and the Well-Being of Sex Workers: A Report Submitted to the House of Commons Subcommittee on Solicitation Laws*, 2006; Pivot Legal Society, *Beyond Decriminalization: Sex Work, Human Rights and a New Framework for Law Reform*, 2006; and HIV Legal Network, *The Perils of Protection: Sex Workers’ Experiences of Law Enforcement in Ontario*, 2019.

ⁱⁱ Global Commission on HIV and the Law, *Risks, Rights, and Health*, July 2012, pp. 36-37.

ⁱⁱⁱ UNAIDS, *HIV and Sex Work: Human Rights Fact Sheet Series*, 2021.

^{iv} Ibid.

^v Human Rights Council, “Human rights in the context of HIV and AIDS (Human Rights Council resolution 47/17),” 13 July 2021, at para. 4.

^{vi} Ibid at para. 7.

^{vii} Ibid at paras. 12-13.

^{viii} *Protection of Communities and Exploited Persons Act* (S.C. 2014, c. 25).

^{ix} See M. Decker et al., “Human rights violations against sex workers: burden and effect on HIV,” *Lancet* 385:9963 (2015): pp. 186–199 and K. Shannon et al., “Global epidemiology of HIV among female sex workers: Influence of structural determinants,” *Lancet* 385:9962 (2015): pp. 55–71.

^x 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, The Hague, Netherlands, March 3–4, 2011; U. Bjørndah, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Municipality of Oslo, 2012; and Amnesty International, *We live within a violent system”: Structural violence against sex workers In Ireland*, 2022.

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

^{xii} E. Argento et al., “The impact of end-demand legislation on sex workers’ utilization of HIV care, health and community-led support services in a Canadian setting,” abstract presented at AIDS 2018 and J. McDermid et al., “The impact of end-demand criminalization on occupational health and experiences of violence among sex workers in Vancouver, Canada,” presented at American Public Health Association AGM, October 2020.

^{xiii} 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).

^{xiv} *Canada (Attorney General) v. Bedford*, 2013 SCC 72.

^{xv} A. Krüsi et al., “Negotiating Safety and Sexual Risk Reduction with Clients in Unsanctioned Safer Indoor Sex Work Environments: A Qualitative Study,” *American Journal of Public Health* 102 (6), 1154–1159 (2012).

^{xvi} CASWLR, *Pimps, Managers and Other Third Parties: Making Distinctions Between Third Parties and Exploitation*, 2014.

^{xvii} For example, the Government of Canada’s *National Action Plan to Combat Human Trafficking*, 2012 claims the “demand for sexual services can be a contributing cause of human trafficking” and the preamble of the PCEPA indicates “the Parliament of Canada has grave concerns about the exploitation that is inherent in prostitution and the risks of violence posed to those who engage in it.”

^{xviii} Resolution 47/17 at para. 23.

^{xix} See J. Fudge et al., *Caught in the Carceral Web: Anti-trafficking Laws and Policies and their Impact on Migrant Sex Workers*, 2021; Butterfly (Asian and Migrant Sex Workers Support Network), *Behind the rescue: How anti-trafficking investigations and polices harm migrant sex workers*, 2018; and Butterfly (Asian and Migrant Sex Workers Support Network), *Survey on Toronto Holistic Practitioners’ Experiences with Bylaw Enforcement and Police*, May 2018.

^{xx} CASWLR, “Sex Worker Human Rights Groups Oppose Police Operation Northern Spotlight Press Release,” October 8, 2018.

^{xxi} Centre for Feminist Research York University, *Challenging Trafficking in Canada: Policy Brief*, 2017.

^{xxii} Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, UN Doc. A/HRC/14/20, 2010.

^{xxiii} Ibid.

^{xxiv} Ibid at para. 46.

^{xxv} Global Commission on HIV and the Law, *Risks, Rights, and Health*, July 2012 at p. 43.

^{xxvi} Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, UN Doc. A/HRC/26/38/Add.1, 2014.

^{xxvii} UN Women, *Note on Sex Work, Sexual Exploitation and Trafficking*, October 9, 2013.