



**Submission to the UN Committee on the
Elimination of Discrimination against Women:
Review of Canada at 89th Session (October 7-25, 2024)**

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INTRODUCTION

1. The [HIV Legal Network](#) (“Legal Network”) make this submission to the Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) in advance of its review of Canada’s periodic report, detailing our concerns about Canada’s implementation of the *Convention on the Elimination of All Forms of Discrimination against Women* (“Convention”) with respect to the rights of: (i) sex workers; (ii) women who use drugs; and (iii) women living with HIV.

SEX WORKERS

In the “List of issues and questions prior to the submission of the tenth periodic report of Canada” (LOI), the CEDAW Committee asked of Canada:

15. Please update the Committee on steps taken to implement the Committee’s previous recommendations **to decriminalize prostitution and to assess the impacts of the *Protection of Communities and Exploited Persons Act* on women in prostitution** ... Please also respond ... to the reports that **anti trafficking initiatives have resulted in increased detentions, arrests and deportations of migrant women in prostitution** and explain how the State party ensures the safety of women in prostitution, especially women belonging to disadvantaged groups, such as indigenous women, migrant women or women with disabilities.

2. In 2016, the CEDAW Committee expressed concern about the “potentially increased risk to the security and health of women in prostitution” brought about by the *Protection of Communities and Exploited Persons* (PCEPA) and recommended that Canada “[f]ully decriminalize women engaged in prostitution.”¹ Ten years since PCEPA’s passage in 2014, sex workers in Canada continue to risk criminal prosecution for working in public space² and have been prosecuted for offences related to third-party benefits and trafficking when they work with, gain material benefits from, or assist other sex workers to enter or work in Canada. In particular, Indigenous, Black, and migrant women face targeted violence, stigmatization, hyper-surveillance, and over-policing under PCEPA.³
3. Numerous studies have concluded that PCEPA’s prohibition on purchasing sexual services has contributed to increased risk of violence against sex workers, who are forced to work in isolation and insecure locations and to rush negotiations with potential clients for fear of police detection.⁴ In a study involving 299 sex workers from Vancouver, B.C., 26% reported negative changes after PCEPA’s passage, including reduced ability to screen clients. These experiences are more pronounced for racialized, migrant workers given immigration prohibitions on sex work.⁵

4. Additionally, research in Canada has shown that criminalizing third parties who work with, for, or employ sex workers, forces sex workers to work in isolation, away from support networks and without proven safety mechanisms such as work environments that allow women to work together and promote access to health and support services.⁶ Third parties often provide essential supports for sex workers who have limited means. Laws that subject all third parties to criminal sanction without evidence of abuse drives sex work underground where labour exploitation can flourish and deters sex workers from the legal system when they experience violence because they fear charges for themselves and the people with whom they work.⁷
5. Moreover, since PCEPA's passage, criminalizing sex work has been deemed a central strategy to protect women from human trafficking — enabling law enforcement to intensify surveillance and other initiatives against sex workers.⁸ As migrant sex workers have reported, racial profiling and surveillance associated with anti-trafficking campaigns has heightened their risk of arrest, detention, and deportation, contributing to their further marginalization while increasing their mistrust of law enforcement.⁹
6. Correspondingly, greater surveillance of Indigenous women has undermined their relationships with family members or others who may offer them safety or support, including in circumstances where they may sell sex. As the National Inquiry into Missing and Murdered Indigenous Women and Girls concluded, Indigenous women in sex work who experience violence face risks in reaching out to police, including the risk of being charged themselves.¹⁰ In a 2021 study, 36.36% of Indigenous sex workers reported that they were unable to call emergency services due to fear of police detection of themselves or third parties.¹¹ The Inquiry thus recommended “recognizing and honouring the agency and expertise held by women” and providing “access to safe spaces to engage in sex work.”¹²
7. **Criminalizing and otherwise prohibiting sex work discriminates against women and fuels their exploitation in sex work, in contravention of Articles 2, 6, and 11 of the Convention.** Decriminalizing sex work is in line with recommendations made by UNAIDS,¹³ UNDP,¹⁴ the Global Commission on HIV and the Law,¹⁵ the UN Special Rapporteur on the right to health,¹⁶ the UN Working Group on discrimination against women and girls,¹⁷ and UN Women.¹⁸ Following his 2023 mission to Canada, the Special Rapporteur on contemporary forms of slavery expressed serious concern “that anti-trafficking rhetoric and implementation of antitrafficking efforts have had a negative impact on the human rights of sex workers,” concluded sex workers’ situation had worsened under PCEPA, and recommended fully decriminalizing sex work in law and practice.¹⁹
8. Similarly, a federal Parliamentary Committee studying PCEPA concluded in a 2022 report that PCEPA “causes serious harm to those engaged in sex work by making the work more dangerous.” It recommended that Canada repeal prohibitions on public communication and advertising of sex work as well as prohibitions against migrant sex work, which “put migrant sex workers at elevated risk of violence and danger by making them unable to report these incidents without fear of deportation.”²⁰

CANADA MUST:

- **repeal all sex work–specific criminal offences;**
- **repeal all immigration prohibitions on migrant sex work;**
- **critically review anti-trafficking approaches and programs that conflate sex work with trafficking and undermine sex workers’ attempts to protect themselves and counter violence;**
- **fund and support culturally appropriate programs and services that are developed by people who have lived experience selling sex, including:**
 - **safe spaces to engage in sex work; and**
 - **access to health care, counselling, legal services, income support, housing, childcare, education, training, and support for substance use.**

WOMEN WHO USE DRUGS AND GENDER-BASED VIOLENCE

In the LOI, the CEDAW Committee asked of Canada:

12. ... Please provide information on the implementation of the **strategy to combat gender-based violence, including its main objectives, the financial and human resources allocated for its implementation** and whether a monitoring mechanism will be put into place.

9. Violence against women (VAW) is among the “most pervasive health risks to women and gender-diverse people” in Canada.²¹ Since 2019, the country has seen increasing rates of femicides²² — borne disproportionately by certain populations, including Indigenous women²³ and women who use drugs.²⁴ This is in the context of an unprecedented overdose crisis in Canada that has claimed almost 45,000 lives since 2016,²⁵ with Indigenous women particularly affected.²⁶
10. Despite increasing recognition of the need to provide shelter and supports to women who use drugs,²⁷ several provinces continue to mandate zero-tolerance among their shelters or link drug use to dangerous behaviour.²⁸ As a result, women are often barred from admission if they are noticeably intoxicated or are forced to leave for having or using drugs.²⁹ A 2021 national survey found that, among 500 women and gender diverse people, those who used drugs were barred from shelters at a rate that was three times higher than those who did not.³⁰

11. Unsurprisingly, most shelters do not meet the needs of women who use drugs.³¹ In a survey of 203 low-barrier women's shelters, 79% of shelters reported that it was a "major challenge" to serve women who use drugs.³² Consequently, women are dying in shelters.³³
12. A major barrier to accessing shelter for women who use drugs is the criminalization of people who use drugs, which fuels stigma towards drug use and prevents women from seeking or obtaining protection. Blanket bans on substance use in shelters are justified on discriminatory and unfounded beliefs that people who use drugs are inherently dangerous to staff, other shelter participants, and children, or on the perceived need to minimize criminal liability for permitting prohibited drugs on site.³⁴
13. Following her 2018 visit to Canada, the Special Rapporteur on VAW called on Canada to establish an adequate number of, and sustainably fund, shelters and services for women fleeing violence, considering the needs of women belonging to vulnerable groups. At the time, there were 553 VAW shelters, which the Special Rapporteur concluded was insufficient. The Special Rapporteur also called on Canada to ensure that women are not criminalized when they seek protection.³⁵ As of 2020-2021, there are only 557 shelters, with hundreds of people turned away from shelters each day, and three in ten returning to the home in which their abuser lives.³⁶
14. **Failing to provide shelter to women who use drugs represents a clear violation of Article 2 of the Convention.** During its 2016 review of Canada, the CEDAW Committee recommended that Canada "reduce the gap in health service delivery related to women's drug use, by scaling-up and ensuring access to culturally appropriate harm reduction services."³⁷ Moreover, the CEDAW Committee has previously concluded that States Parties had breached their Convention obligations because they did not have sufficiently accessible VAW shelters,³⁸ including for women who use drugs.³⁹

CANADA MUST:

- **increase funding to all shelters for women fleeing violence;**
- **ensure that women are not barred from shelters on the basis of drug use;**
- **fund, scale-up, and ensure access to gender-sensitive and culturally appropriate harm reduction services for women who use drugs such as supervised consumption services, including in shelters;**
- **decriminalize the possession of all drugs for personal use and the sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safer supply.**

WOMEN LIVING WITH HIV

In the LOI, the CEDAW Committee asked of Canada:

22. ... Please also indicate whether a **gender perspective has been integrated into the existing programmes to combat HIV and other sexually transmitted infections.**

15. In Canada, approximately 225 people have been charged for not disclosing their HIV-positive status to sexual partners.⁴⁰ Most cases involve men who had sex with women, and a significant number of cases where women were charged involved Indigenous women.
16. In cases of non-disclosure, people living with HIV are usually charged with the offence of aggravated sexual assault, which carries harsh penalties including life imprisonment and sex offender registration. Prosecution can occur without HIV transmission, without any intent to harm, and where reasonable precautions were taken to avoid transmission.⁴¹
17. Some Canadian jurisdictions provide prosecutorial guidance to limit criminalization, including where a person has a suppressed viral load.⁴² However, the law is applied inconsistently across Canada, fuelling fear of continued threats of criminalization for people living with HIV.
18. Criminalization is a blunt and punitive approach to HIV prevention that does little to protect women from HIV infection, violence, or coercion. It exacerbates fear around disclosure and can be instrumentalized as a tool of coercion or revenge, particularly against women facing socioeconomic precarity or abusive relationships.⁴³
19. **HIV criminalization violates Article 2 of the Convention.** The CEDAW Committee has previously denounced the “concerning application of harsh criminal sanctions (aggravated sexual assault) to women for non-disclosing their HIV status to sexual partners,” and like many other international expert bodies,⁴⁴ recommended that Canada “limit the application of criminal law provisions to cases of *intentional transmission* of HIV/AIDS.”⁴⁵ The UN Committee on Economic, Social and Cultural Rights has also 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.”⁴⁶
20. Despite repeated acknowledgments from the Canadian government that HIV criminalization is problematic and requires legal reform, as of August 2024, no concrete legislative action has been taken to resolve this issue.⁴⁷

CANADA MUST:

- **remove HIV non-disclosure from the ambit of sexual assault law and restrict criminal penalties to cases of actual, intentional transmission;**
- **ensure that the criminal law does not apply in circumstances where there is no**

significant risk of transmission, such as sex with a condom, oral sex, or sex with a low or suppressed viral load;

- **review past convictions, allowing for a conviction to be expunged if it does not fit within new limitations on the scope of criminalization;**
- **invest in culturally appropriate and gender-sensitive supports that reduce the vulnerability of women living with HIV to gender-based violence, including universal basic income, housing assistance, paid sick leave, childcare, legal services, violence against women shelters, and harm reduction services.**

¹ CEDAW Committee, *Concluding Observations on the combined eighth and ninth periodic reports of Canada*, November 2016, at paras. 32 and 33.

² Section 213 of Canada's *Criminal Code* prohibits (1) impeding vehicles or traffic and (2) any communication in a public place near a school ground, playground or daycare centre to sell sexual services.

³ See, e.g., Canadian HIV/AIDS Legal Network, *The Perils of "Protection": Sex Workers' Experiences of Law Enforcement in Ontario*, 2019.

⁴ See, e.g., J. McDermid et al., "How client criminalisation under end-demand sex work laws shapes the occupational health and safety of sex workers in Metro Vancouver, Canada: a qualitative study," *BMJ Open* 2022;12:e061729 and B. McBride et al., "Harms of third party criminalisation under end-demand legislation: undermining sex workers' safety and rights," *Cult Health Sex* 2021; 23:1165–81.

⁵ 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.

⁶ See, e.g., B. McBride et al., "Third Parties (Venue Owners, Managers, Security, etc.) and Access to Occupational Health and Safety Among Sex Workers in a Canadian Setting: 2010-2016," *American Journal of Public Health* 109, 5 (May 2019): 792-798 and K. Shannon et al., "Global epidemiology of HIV among female sex workers: influence of structural determinants," *Lancet* 385, 9962 (January 3, 2015): 55–71.

⁷ *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.

⁸ See, e.g., A. Rose, "Punished for Strength: Sex Worker Activism and the Anti-Trafficking Movement," *Atlantis* 37, 2 (2015): 57-64 and Hamilton Police Service, "Project Orchid Takes Aim at Illegal Massage Parlours," June 3, 2019.

⁹ E. Lam and A. Lepp, "Butterfly: Resisting the harms of anti-trafficking policies and fostering peer-based organising in Canada," *Anti-Trafficking Review*, issue 12, 2019: 91-107.

¹⁰ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place*, Volume 1a, 2019 at pp. 663-4.

¹¹ A. Crago et al., "Sex Workers' Access to Police Assistance in Safety Emergencies and Means of Escape from Situations of Violence and Confinement under an "End Demand" Criminalization Model: A Five City Study in Canada," *Social Sciences* 10,1 (2021): 1-15.

¹² *Reclaiming Power and Place*, supra, at p. 672.

¹³ UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work*, 2012.

¹⁴ 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.

¹⁵ Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, July 2012.

¹⁶ 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, UN Doc. A/HRC/14/20, April 27, 2010.

¹⁷ UN Working Group on discrimination against women and girls, *Eliminating discrimination against sex workers and securing their human rights*, December 7, 2023.

¹⁸ UN Women, *Note on Sex Work, Sexual Exploitation and Trafficking*, October 9, 2013.

¹⁹ UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences Tomoya Obokata, *End of Mission Statement*, 6 September 2023.

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- ²⁰ Report of the Standing Committee on Justice and Human Rights, *Preventing Harm in the Canadian Sex Industry: A Review of the Protection of Communities and Exploited Persons Act*, June 2022.
- ²¹ House of Commons Standing Committee on the Status of Women, *Towards a Violence-Free Canada: Addressing and Eliminating Intimate Partner and Family Violence*, Report of the Standing Committee, June 2022 at p. 20.
- ²² Statistics Canada, *Number of victims of spousal homicide*, July 2023; D. Sutton, *Gender-related homicide of women and girls in Canada*, Statistics Canada, 5 April 2023, at p. 3; and Canadian Femicide Observatory for Justice and Accountability, *#CallitFemicide: Understanding sex/gender-related killings of women and girls in Canada, 2018-2022*, April 2023.
- ²³ See, e.g., Government of Canada, *Key statistics on gender-based violence in Canada*, 10 June 2024.
- ²⁴ See, e.g., E. Moir, “Hidden GBV: Women and substance use,” *Frontiers Psychiatry* 13 (2022); A. Hovey and S. Scott, “All Women Are Welcome: Reducing Barriers to Women’s Shelters With Harm Reduction,” *Partner Abuse* 10(4) (2019): 409-428; and A. Hovey, “Understanding the Landscape of Substance Use Management Practices in Domestic Violence Shelters across Ontario,” *Journal of Family Violence*, 35(2) (2019): 191-201.
- ²⁵ Government of Canada, *Opioid- and Stimulant-related Harms in Canada*, June 28, 2024.
- ²⁶ First Nations Health Authority, “First Nations Illicit Drug Deaths Rise during COVID-19 Pandemic, July 6, 2020 and CBC Radio Canada, “Les Premières Nations particulièrement touchées par les surdoses aux opioïdes,” December 3, 2019.
- ²⁷ See, e.g., K. Maki, *More Than a Bed: A National Profile of VAW Shelters and Transition Houses*, Women’s Shelters Canada, May 2019 and A. Boulanger et al, *Towards Access for All: Best and Promising Practices from Low-Barrier Harm Reduction Shelters in Canada*, HIV Legal Network, 20 February 2024.
- ²⁸ A. Boulanger et al., *ibid.*
- ²⁹ K. Maki, *supra*, at p. 34.
- ³⁰ K. Schwan et al., *The Pan-Canadian Women’s Housing & Homelessness Survey*, Canadian Observatory of Homelessness, 2021.
- ³¹ A. Hovey and S. Scott, *supra* at p. 409.
- ³² K. Maki, *supra*.
- ³³ See, e.g., Government of Yukon, *Government of Yukon implementing coroner’s inquest recommendations*, 12 July 2024 and Ontario Drug Policy Research Network, *Opioid-Related Toxicity Deaths Within Ontario Shelters: Circumstances of Death and Prior Medication & Healthcare Use*, June 2024.
- ³⁴ A. Boulanger et al., *supra*.
- ³⁵ *Visit to Canada: Report of the Special Rapporteur on violence against women, its causes and consequences*, 4 November 2019, A/HRC/41/42/Add.1, at para. 95(j).
- ³⁶ D. Ibrahim, *Canadian residential facilities for victims of abuse, 2020/2021*, Statistics Canada, 12 April 2022.
- ³⁷ CEDAW Committee Canada, *supra*.
- ³⁸ CEDAW Committee, *Report of the Committee on the Elimination of Discrimination against Women*, 18 March 2005, A/60/38, at pp. 27-39.
- ³⁹ CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, 31 October 2022, CEDAW/C/ UKR/CO/9, para. 30(e).
- ⁴⁰ C. Hastings et al., 2022. *HIV Criminalization in Canada: Key Trends and Patterns (1989–2020)*.
- ⁴¹ *R. v. Mabior*, 2012 S.C.C. 47.
- ⁴² HIV Legal Network, *Prosecuting HIV-related criminal cases in Canada: A Model Policy*, March 2022.
- ⁴³ See, e.g. 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) and P. Allard et al., “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): 195–218.
- ⁴⁴ UNAIDS, *Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission: critical scientific, medical and legal considerations*, Geneva, 2013; *Report of the Special Rapporteur Anand Grover*, *supra*; *Risks, Rights & Health*, *supra*; UN Committee on the Rights of the Child, *General Comment No. 20*, 2016.
- ⁴⁵ CEDAW Committee Canada, *supra*, at paras. 42 and 43.
- ⁴⁶ 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.
- ⁴⁷ See, e.g., Statement by Minister of Justice Jody Wilson-Raybould on World AIDS Day, December 1, 2016; Report by the House of Commons Standing Committee on Justice and Human Rights on the Criminalization of HIV Non-Disclosure in Canada, June 2019; News Release from Justice Canada on the launch of consultations on modernizing the criminal justice system’s response to HIV non-disclosure, July 27, 2022.