



**United States of America's Compliance with the International Convention on
the Elimination of All Forms of Racial Discrimination
Suggested List of Themes Relating to Sex Trafficking and Transactional Sex Markets**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

for the 107th Session of the Committee on the Elimination of Racial Discrimination
8–30 August 2022

Submitted 16 May 2022

Founded in 1983, **The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence.

EXECUTIVE SUMMARY

1. Information in this report is excerpted in parts from the *Safe Harbor for All Strategic Planning Process Report (Safe Harbor Report)* (2018), which contains results from a statewide strategic planning process in the U.S. state of Minnesota committed to thinking about the significant harms of sex trafficking and commercial exploitation of children and adults.¹ Transactional sex can take many forms, including sex trafficking, commercial sexual exploitation, independent selling or trading sex, and sex work. The *Safe Harbor* report used a participatory engagement process to center the voices of diverse people engaged in transactional sex and also sought perspectives from advocates, service providers, police, prosecutors, people with tribal affiliation, people from Greater Minnesota and the Metropolitan area, and communities most impacted by sex trafficking in Minnesota. These include people of color, indigenous people, immigrants and refugees, LGBTQ communities, and others across the state.²
2. Research has demonstrated that the marketplace for sex is deeply intertwined with intersecting oppressions related to race, class, gender, sexuality, and disability, further complicating the lines between trafficking, exploitation, choice and force. Force, manipulation, violence, coercion, stigma, trauma, poverty and lack of options pose significant barriers to escaping trafficking or exiting transactional sex, making a framework of “choice” seem cruel. For indigenous and African American communities, racialized patterns, practices, and degradations in the purchase of sex are a direct extension of colonization and enslavement practices. Independent providers and sex workers are stigmatized, judged, and criminalized for trying to earn a living.³
3. People with lived experience in transactional sex experience harm as part of compounding oppressions from systemic racism. The United States fails to uphold its obligations under the Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) to combat

¹ The Safe Harbor For All Report was developed through a participatory engagement process led and authored by three agencies— the University of Minnesota's Urban Research and Outreach-Engagement Center (UROC), The Advocates for Human Rights (AHR), and Rainbow Research (RR). In this project, the partners gathered information about sex trafficking in Minnesota from 294 stakeholders across the state by using purposeful sampling methods to invite a wide range of opinions and perspectives from knowledgeable stakeholders from rural, urban, and suburban Minnesota.

² The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 4-5, <https://www.theadvocatesforhumanrights.org/res/byid/7532>. Just over half of the participants (58%) identified solely as White or European American. Just under half of the participants identified as indigenous or people of color (42%); some of them also identified as White or European American (9%). The percentiles add up to more than 100% because some participants selected more than one category. The majority of people with lived experience identified as people of color and/or indigenous. Only 38% of participants with lived experience identified only as White or European American. A Process Advisory Group guided the strategic planning process to assure practices and methods were open, transparent, inclusive, and respectful. The 35-member group reflected the key stakeholders we sought to engage in strategic planning. Sixty percent of the members self-identified as having personal lived experience in transactional sex and included victims and survivors of trafficking and exploitation, independent sellers/traders of sex, and sex workers. In the report, we refer to this as “lived experience.” Id.

³ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 11, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

racial disparities in access to healthcare, to protect migrant and immigrant workers from exploitation, to address violence against women, particularly American Indian and Alaska Native women, and to protect the rights of Indigenous people. These failures to comply with CERD compound harm for people with lived experience in transactional sex in a racially disparate manner.

The United States of America fails to uphold its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

4. The United States of America has failed to address the following concerns and recommendations listed in the 2014 Concluding Observations of the Committee on the Elimination of All Forms of Racial Discrimination (“the Committee”): Right to health and access to health care, Immigrants, Violence against women, and Rights of indigenous people.

1. **The United States fails to uphold the right to health and access to healthcare for people with lived experience in transactional sex (Concluding Observations paragraph 15 (b))**

5. In the 2014 Concluding Observations, the Committee expressed concern about the United States’ failure “to fully address racial disparities in access to affordable and quality health care.” The Committee recommended that the United States “eliminate racial disparities in the field of sexual and reproductive health.”⁴
 6. The United States, in its State Party Report, identified that increasing access to quality health care and combating health disparities are priorities for the United States.⁵
 7. Lived experience in transactional sex can lead to significant health and mental health needs that have been well-documented in research and practice.⁶ Participants [in the research] highlight the need for quality health and mental health care within any expansion of Safe Harbor,⁷ and they identified significant gaps and lack of services currently available for adults. Overall, stakeholders identified significant deficiencies in access and availability of medical

⁴ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9, (Sept. 25, 2014), ¶15(b).

⁵ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (Dec. 20, 2021), U.N. Doc. CERD/C/USA/10-12, ¶67.

⁶ This submission uses “lived experience” to refer to those people who have identified as having personal lived experience in transactional sex and includes victims and survivors of trafficking and exploitation, independent sellers/traders of sex, and sex workers.

⁷ Minnesota’s 2011 Safe Harbor for Sexually Exploited Youth Act removed youth under age 16 who violate Minn. Stat. 609.324, subd. 6 or subd. 7 from the definition of a delinquency offense, with an effective date of August 1, 2014. The Safe Harbor for Sexually Exploited Youth Act also directed the Minnesota Commissioner of Public Safety, together with the Commissioners of Health and of Human Services, to engage in a process to identify a victim-centered, trauma-informed response to sexually exploited youth and those at risk of commercial sexual exploitation. That process resulted in *No Wrong Door: A Comprehensive Response to Minnesota’s Sexually Exploited Youth*, which was presented to the Minnesota Legislature in 2013. That year the Minnesota Legislature began appropriating funding for the Safe Harbor No Wrong Door model. The Legislature also amended the 2011 Safe Harbor law to remove all youth under age 18 from the delinquency definition. Effective July 1, 2016, Safe Harbor services were made available to individuals age 24 and younger. *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*,” Minnesota Legislature (Oct. 2018), footnote 3.

care and health insurance. This included identification of stigma and discrimination in how people with lived experience are treated by healthcare providers.

8. **Stakeholders suggested that people of color, indigenous people, transgender individuals, and the LGBT community face specific stigma and discrimination in accessing high quality health care.** The larger issues of discrimination and unequal access to healthcare impact people with lived experience, especially since these groups are over-represented as victims of trafficking and involvement in transactional sex. In the Twin Cities metro area [in the state of Minnesota], and some other locations, participants identified only a few types of medical services that people with lived experience can access, these include sexual health, STI/HIV testing, condoms, reproductive rights, and some harm reduction services. Participants identified only a very small number of medical and dental clinics that provide free or low cost services. Lack of access to healthcare was described as particularly acute in Greater Minnesota, most notably in rural areas.⁸
9. Across stakeholder groups, participants talked about the need for individual therapy for people with lived experience. They suggested that therapy is critical because it addresses underlying issues of trauma. **Yet, participants also described a severe lack of mental healthcare services, especially individual therapy that is culturally responsive, trauma-informed, and relevant to the unique experiences within the affected population.** They described needs for therapists who are informed on the issue of transactional sex, know and use appropriate language, and who are equipped to treat complex trauma. Many described experiences of therapy that was harmful, shaming, or otherwise *bad* with a provider who was unprepared. Lastly, participants (especially those with lived experience) thought treatment of trauma related to transactional sex would be distinct from other sexual traumas. Many thought therapy would require work with the physical body.⁹
10. Some suggested that the mental health system itself, right now, is an oppressive force for victims of trafficking and exploitation, as well as others involved in transactional sex because of the systematic harms within the helping sectors. Particularly, some communities identified use of mental health diagnoses as a way to further stigmatize and silence victims. Some said that a mental health diagnosis will “follow them” around for their entire lives, allowing people to dismiss them and minimize their contributions. Further, it was described as a matter of equity. Many people involved in transactional sex would like access to alternative and complementary healthcare like acupuncture, massage, yoga, and other forms of body work. **Stakeholders identified the body work provider network in the Twin Cities [in Minnesota] as particularly non-judgmental and supportive of people of color and people involved in transactional sex. However, these services can be expensive and not covered by income-based insurance.** Participants with lived experience tended to see the lack of access to healthcare, including mental health services, as a problem of the system itself, citing

⁸ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 100, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

⁹ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 101-102, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

discrimination, marginalization, lack of knowledge and understanding among healthcare providers, financial barriers, and overall stigmatization. People without lived experience tended to view lack of access more as a public safety or public health risk and tended to focus on healthcare needs such as STI/HIV, access to insurance, and reproductive health.¹⁰

11. **Suggested questions** relating to the Right to health and access to healthcare:

- What measures will the state commit to eliminating stigma and discrimination, whether in policy or practice, for people of color, indigenous people, transgender individuals, and the LGBT community when accessing health care?
- What steps is the state taking to ensure that mental health services are accessible and affordable to people involved in transactional sex and inclusive of people of color and minorities?

II. The United States' immigration system adds to structural barriers that can push non-citizens into sex trafficking or transactional sex and creates barriers to protection for people with lived experience (Concluding Observations paragraph 18)

12. In the 2014 Concluding Observations, the committee expressed concern about the United States' failure to protect the rights of immigrants. Specifically, the committee highlighted that immigrant "workers entering the State party under the H-2B work visa programme are at high risk of becoming victims of trafficking and/or forced labour." The Committee recommended that the United States "review[] its laws and regulations in order to protect all migrant workers from exploitative and abusive working conditions."¹¹

13. In its State Party Report, the United States provided information on immigration regulations¹² and outlined awareness-raising trainings for Department of Homeland Security on human trafficking.¹³

14. Stakeholders reported complex dynamics facing immigrant and refugee communities with lived experience. **Lack of immigration status and employment authorization, fear of detention and deportation, language and cultural barriers, and fear for safety of family members back home all impede help-seeking from victims of trafficking and other people with lived experience.** These dynamics affect undocumented people, documented immigrants and refugees, and U.S. citizens who are part of immigrant or refugee cultural communities. Stakeholders identified barriers to living-wage employment for immigrant communities. Work

¹⁰ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 102, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

¹¹ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9, (Sept. 25, 2014), ¶18.

¹² Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (Dec. 20, 2021), U.N. Doc. CERD/C/USA/10-12, ¶84-100.

¹³ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (Dec. 20, 2021), U.N. Doc. CERD/C/USA/10-12, ¶91.

options for people who are undocumented are limited and often under-the-table, creating conditions ripe for labor exploitation and sexual exploitation. Lack of English language proficiency can also create barriers to employment. Stakeholders described these factors as structural barriers that can push people into trafficking and transactional sex, especially for those who struggle to provide income for their families in the United States or in their home countries.¹⁴

15. **United States Federal laws have provisions for a temporary visa for trafficking victims to participate in legal proceedings against a trafficker (known as the T Visa). But stakeholders identified many challenges to using this Visa, making it not widely used.** For example, the T Visa does not allay fears of deportation and harm to family members. In international trafficking cases, victims often fear for their family members' safety back in their home country and worry that much needed income will be lost or additional financial hardships will be placed on family members. All people with lived experience who are not United States citizens, including trafficking victims, face immigration consequences even if they are legally present in the United States as a permanent resident, refugee, visitor or other temporary status. Under federal immigration law, anyone who "is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status" is "inadmissible" to the United States and is defined as lacking "good moral character." A criminal conviction is not required to trigger these consequences. For those convicted of a prostitution crime, the offense remains a "conviction" for immigration purposes even if expunged. For people who enter the United States on tourist visas, any employment violates the conditions of their immigration status, which can be used to arrest and detain the victims even if no criminal charges are filed. Stakeholders noted that, for undocumented persons, any contact with the criminal justice system is likely to bring them into contact with federal immigration authorities and result in deportation, even if there is no charge or conviction.¹⁵
16. Several stakeholders reported recent upticks in numbers of Asian women being trafficked into [the state of] Minnesota. Stakeholders noted these situations were complicated by debt bondage, isolation, transience and threats against family members in the home country. Some stakeholders also noted that members of refugee and immigrant communities may face barriers to protection or services unrelated to their immigration status. **Stakeholders cited racial disparities in arrests, language barriers, lack of transportation, and insufficient implementation of community-based approaches to working with refugees and immigrants engaged in transactional sex.**¹⁶

¹⁴ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 37, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

¹⁵ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 37-38, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

¹⁶ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 39, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

17. **Suggested questions** relating to immigrants:

- What is the state doing to address drivers for immigrant and refugee populations vulnerable to trafficking and transactional sex, including but not limited to lack of immigration status and employment authorization, fear of detention and deportation, language and cultural barriers, and fear for safety of family members back home?
- What measures is the state undertaking to address racial disparities in working with refugees and immigrants engaged in transactional sex?

III. The United States fails to address intersecting oppressions, including racism, that influence violence against women, in particular violence against indigenous women with lived experience (Concluding Observations paragraph 19)

18. In the 2014 Concluding Observations, the Committee expressed concern about ongoing violence against women in the United States, calling attention to the disparate number of women from racial and ethnic minority populations who experience violence. The committee urged the United States “to prevent and combat violence against women, particularly American Indian and Alaska Native women, and ensure that all cases of violence against women are effectively investigated, perpetrators are prosecuted and sanctioned, and victims are provided with appropriate remedies.” Additionally, the Committee urged the United States to adhere to “its previous recommendation” by “provid[ing] sufficient resources for violence prevention and service programmes; provid[ing] specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors, judges and medical personnel; and undertak[ing] awareness-raising campaigns on the mechanisms and procedures available to seek remedies for violence against women.”¹⁷
19. In the State Party Report, the United States identified addressing violent crime against American Indian/Alaska Native women to be a longstanding concern. Most of the initiatives described in the State Party report address domestic violence and little information was provided on efforts to address sex trafficking. The Department of Justice and the Office on Violence Against Women provide grants under the Violence Against Women Act to address violence against American Indians/Alaska Natives.¹⁸ Only four grant programs include efforts to combat trafficking in AI/AN communities, amongst other priorities like domestic violence, by improving the criminal justice response. Only three programs provide culturally-specific services. Another program provides assistance to hold non-Indian domestic/dating violence perpetrators accountable.
20. Many stakeholders expressed concern that Minnesota’s strategic planning process to address sex trafficking, Safe Harbor for All, may not do enough to address the underlying oppression and inequity that drive exploitation within the transactional sex market. Particularly participants with lived experience expressed the opinion that the State’s approach should address transactional sex itself, broadly conceived. Participants described stigma and many harms associated with transactional sex as well as the complex ways that experiences in

¹⁷ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9, (Sept. 25, 2014), ¶19.

¹⁸ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (Dec. 20, 2021), U.N. Doc. CERD/C/USA/10-12, ¶104-106.

transactional sex are interwoven with different systemic oppressions, discrimination, poverty, and marginalization. These were strong themes among people with lived experience, as well as some service providers and criminal justice personnel.¹⁹

21. Some participants viewed widespread social stigma against people with lived experience as a direct cause of violence committed by sex buyers. Since society often judges people with lived experience as “bad” or immoral, some sex buyers commit violence, acting out of hate and judgement. **Societal hierarchies based on skin color, gender identity, class, and belonging to an immigrant community can impact how sex buyers treat the person providing sex. This is especially pronounced in violence against trans people of color with lived experience.** Further, stigma shapes our societal response to violence against people with lived experience through the creation of policies and practices, and how they are implemented (or not). Crimes committed against people with lived experience are often not taken seriously or addressed, thus denying access to safety and justice.²⁰
22. Some segments of the market have been found consistently to be more violent and dangerous to people with lived experience, such as street-based transactional sex and survival sex, whereas “indoor prostitution” may involve less violence. Research suggests that sex buyers’ behaviors and participation in these market segments are intertwined with their perceptions of the “value” of the person in those markets. **Thus, xenophobia, transphobia, racism, and prejudice impact the harms within transactional sex.** In addition, these structural oppressions impact *who* can be in these market segments in the first place. For example, stakeholders discussed how racism keeps women of color in street-based transactional sex and prevents them from accessing potentially safer market segments.²¹
23. People living in poverty, precariously housed, or who are homeless face very limited options for survival, and may engage in transactional sex simply to survive, meet basic needs, and provide for their families. Survival-based sex trading is, by definition, exploitation. Many stakeholders echoed the sentiment that transactional sex is a last resort for people living in poverty. Research in other locales supports these findings about survival sex. **Some stakeholders with lived experience suggested that involvement in transactional sex should be seen in the context of low wage labor, gender and race-based pay gaps, lack of meaningful living-wage work, and choices and trade-offs related to flexibility and ability to get fast money.** Poverty and its connection to homelessness and precarious housing were identified as critical drivers of lived experience, particularly for young people aging out of the foster care system, LGBTQ youth and other young adults who are forced to engage in survival sex to meet basic needs. For many, engaging in commercial sex for survival can be

¹⁹ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 28, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

²⁰ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 30, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

²¹ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 31, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

circumstantial and occasional, not a regular activity. **Native American stakeholders, and many others, identified housing insecurity for women with children as particularly perilous.**²²

24. **Many stakeholders, particularly people with lived experience and advocates, described transactional sex as related to male entitlement, ownership, and objectification of women, indigenous people and people of color.** Stakeholders described large power and privilege imbalances between sex buyers and people with lived experience that shape the ways sex buyers are involved in transactional sex. Those imbalances give sex buyers the power to take advantage of people with lived experience and to commit acts of sexual and physical violence, often with little risk to themselves. Stakeholders believe that many sex buyers are fully cognizant and aware that they are exploiting the many vulnerabilities of people with lived experience. **This was described as especially prevalent for black, brown and indigenous women and also for trans women of color.**²³
25. **Research and practice shows that black, brown and indigenous women in Minnesota are over-represented with lived experience in transactional sex and trafficking, while white men make up majority of people buying sex in Minnesota.** Many stakeholders named transactional sex itself as a form of systemic exploitation inherently based on race and gender. Black, brown, and indigenous survivors additionally described widespread normalization of abuse, disposability, sexual commodification, and intergenerational prostitution as drivers of exploitation in transactional sex that need to be addressed and healed. This should be seen in the broader context of many structural factors related to generational poverty. Several stakeholders talked at length about specific barriers faced by transgender people, and especially for trans people of color. The transgender community faces high levels of violence and discrimination from police, sex buyers, and society at large. These barriers can lead people to trade or sell sex because of discrimination, homelessness, and poverty.²⁴
26. **Historical and ongoing trauma, in addition to poverty and racism, were described as drivers for the disproportionately large percentage of people of color and indigenous people involved in transactional sex.** Stakeholders with ties to communities of color and indigenous communities named genocide of indigenous peoples and historical chattel slavery of African Americans and continuing practices of colonization and commodification of Black and Indigenous people (specifically women and two-spirit) as roots of the current manifestation of the transactional sex market. Stakeholders, particularly those with lived experience, described how sex buyers' mistreatment, violence and degradation of black, brown and indigenous people with lived experience in the marketplace is an extension of rape, and

²² The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 32-33, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

²³ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 33-34, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

²⁴ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 34-35, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

violence committed as part of enslavement and colonization. Indigenous stakeholders identified connections between transactional sex, sex trafficking and high rates of unsolved cases of missing and murdered indigenous women. Native women were described as both victimized at higher rates and simultaneously ignored by law enforcement.²⁵

27. There was near unanimity of opinion among all stakeholder groups across Minnesota that arresting people with lived experience actually decreases safety, harms health, strips people of dignity, and stymies justice for victims of trafficking and exploitation. Criminalizing prostitution harms victims and survivors of sexual exploitation and trafficking as well as independent providers and sex workers through long-term negative consequences of criminal records and decreases safety in the transactional sex marketplace. In addition to the harms of criminalization of prostitution in particular, people with lived experience face criminalization through other inter-related charges. Some stakeholders also described harmful interactions with law enforcement. People involved in transactional sex are unlikely to report crime victimization or participate in criminal investigations and proceedings due to fear of arrest or being arrested.²⁶
28. Nearly all stakeholders described significant, long-lasting and damaging harms of criminalization to all people with lived experience. Prostitution charges are stigmatizing and can cause negative, long-term, discriminatory effects on people with lived experience. An arrest and charge for prostitution is deeply shameful and stigmatizing. Many people with lived experience described an arrest as feeling like a societal “moral judgement” that is particularly damaging when the person is a victim of trafficking and exploitation. According to many with lived experience, the arrest procedures themselves are often humiliating and embarrassing, making people feel like a criminal even when they are in fact a victim of trafficking. The negative impact of a criminal arrest, charge, or conviction for selling sex is long-lasting, even after people have made changes in their lives. Stakeholders described Minnesota’s expungement process as difficult to navigate. They also noted that post-conviction relief to vacate convictions is extremely narrow, resulting in criminal records remaining with individuals indefinitely.²⁷
29. A criminal record for prostitution bars people from housing and employment. Again this was a nearly unanimous consensus across stakeholder groups. Many landlords, public housing, and transitional housing will not rent or provide housing to people with a prostitution record. Many jobs that could be skill appropriate, with living wage hourly pay and benefits are not available to people with a criminal record, specifically prostitution, such as childcare, healthcare, social work, criminal justice, hotels and hospitality, and some retail positions. The criminal record

²⁵ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 35-36, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

²⁶ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 39-40, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

²⁷ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 40, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

blocks recovery and exit from transactional sex and sex trafficking, locking people in a cycle of involvement and exploitation. It also opens the door to discrimination, harassment and abuse from landlords and employers who can use the charge to solicit sex or commit labor exploitation. Additionally, many women lose custody of their children or have open child protection cases as a result of prostitution charges. **Stakeholders were clear they believe the harms of criminalization impact all people with lived experience, but have a greater impact on communities that are subject to higher levels of criminalization overall, such as indigenous people, African American communities, new immigrants, the LGBTQ community (specifically trans people), and people living in poverty.** Individuals from these communities bear a disproportional impact of criminalization of prostitution because they are over- represented in involvement in transactional sex and trafficking due to intersectional oppressions and poverty, and disproportional and disparate involvement of law enforcement in their communities in general.²⁸

30. **Suggested questions** relating to Violence against Women:

- What steps is the state taking to reduce the burden of criminal liability on people with lived experience via other remedies, such as expungement, vacatur, diversion, and crime victims' rights?
- What steps will the state undertake to review relevant legislation to identify needed revisions to decriminalize the sale of sex in tandem with access to housing, services, and supports that are culturally appropriate and take into account historical traumas and racial discrimination?
- What measures is the state undertaking to ensure that buyers of sex are held criminally accountable, as well as those who commit crimes against people with lived experience, such as harassment, stalking, rape, assault, theft, and other crimes of violence and intimidation committed as part of purchasing sex?
- What steps is the state taking to ensure that people with lived experience, particularly people of color, have access to housing, employment, economic stability, medical and mental healthcare, chemical dependency treatment, and family stability?

IV. The United States fails to uphold the rights of indigenous people, adding to harm against people with lived experience in transactional sex (Concluding Observations paragraph 24)

31. In the 2014 Concluding Observations, the Committee expressed concern about the United States' failure to protect the rights of indigenous people. Specifically, the Committee highlighted that, for indigenous people, there has been a marked lack of legal and practical steps taken to guarantee the "prior and informed consent of indigenous people in policy-making and decisions that affect them."²⁹ The Committee recommended that the United States

²⁸ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 40-41, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

²⁹ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9, (Sept. 25, 2014), ¶24.

ought to “guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them, based on their free, prior and informed consent” and “take effective measures to eliminate undue obstacles to the recognition of tribes.”³⁰

32. The United States outlined efforts to improve tribal recognition, consultations with Indigenous societies, protections for sacred sights, and other anti-discrimination protections.³¹
33. The *Safe Harbor Report* indicated factors that limit indigenous women and girls' access to effective mechanisms to prevent their exposure to violence, as well as steps that can be taken to assist and protect victims of violence in a comprehensive manner. These factors were closely related to many of the factors that lead indigenous women and girls to become involved in transactional sex and put them at risk of sex trafficking, such as lack of access to a living wage,³² stigma and discrimination in accessing high-quality healthcare,³³ confusion and inconsistency with systems of support,³⁴ and ongoing conditions of racism and colonization that limit access to development of culturally-based and community-focused services for indigenous victims of violence.³⁵
34. **American Indian people are disproportionately impacted by sex trafficking and exploitation, and there are unique strengths for cultural and community healing.** Stakeholders were clear that the State should continue to address potential jurisdictional challenges, connect with tribal and community leaders, and fund indigenous people with lived experience to lead planning and implementation of any response. Stakeholders pointed out that past implementation efforts of Safe Harbor did not adequately engage tribal and indigenous communities. Safe Harbor expansion offers an opportunity to learn from the past and improve.³⁶ The State should continue to address potential jurisdictional challenges, connect

³⁰ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9, (Sept. 25, 2014), ¶24.

³¹ Committee on the Elimination of Racial Discrimination, *Combined tenth to twelfth periodic reports submitted by the United States of America under article 9 of the Convention, due in 2017*, (Dec. 20, 2021), U.N. Doc. CERD/C/USA/10-12, ¶128-134.

³² The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 91-92, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

³³ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 100, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

³⁴ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 84, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

³⁵ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 109, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

³⁶ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 112, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

with tribal and community leaders, and fund indigenous people with lived experience to lead planning and implementation of any response.³⁷

35. Stakeholders were clear: adults with lived experience should be treated with dignity and respect by police, attorneys, courts, child protection workers, social service providers, and all systems professionals.³⁸ A critical aspect of dignity and respect is recognition of cultural and community assets and resources that support healing. Some people with lived experience described how Minnesota's current social service environment is not helpful or may be harmful because it is geared toward western-oriented modes of service delivery that are seen as disrespectful of traditional cultural modes of healing. Further, stakeholders emphasized the importance of grassroots and community-based supports as alternatives, because not all those with lived experience will seek support through formalized service models. **Many American Indian participants described how indigenous healing practices, cultural connections, and community are critical to healing and dignity for native peoples exploited in transactional sex and sex trafficking.** They pointed to community strengths and the need for Safe Harbor expansion to recognize and fund culturally-based and community-focused services. In addition, hiring staff from diverse communities is important to building effective relationships.³⁹
36. Stakeholders, particularly those with lived experience, described significant challenges with Child Protective Services (CPS) and foster care. The legislation that created Safe Harbor called upon the child welfare system to view youth under age 18 who are victims of sexual exploitation as children in need of protection. Due to changes in state and federal law, sex trafficking is now viewed as a mandatory report of sexual abuse.⁴⁰ Stakeholders described numerous ways in which Minnesota's child protection and foster care systems themselves harm victims of trafficking and exploitation and undermine their ability to leave transactional sex. Many stakeholders described deeply painful and traumatic experiences of shame, racial discrimination and negative judgement, and ultimately losing their children and their will to recover. They identified that the child welfare system creates cycles of oppression and exploitation, punishes parents in poverty who have addictions, have experienced violence, and are homeless. For Native Americans, the trauma associated with the removal of children from the home is exacerbated by historical legacy of boarding schools and forcible removal of American Indian children from their families. **American Indian children in Minnesota are**

³⁷ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 6, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

³⁸ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 80, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

³⁹ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 81, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

⁴⁰ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 93, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

17.6 times more likely than white children to experience out-of-home placement by Child Protective Services. The rate of out-of-home placement for American Indian children in 2017 increased significantly from 2016.⁴¹

37. Suggested questions on the Rights of Indigenous People:

- What is the state undertaking to address potential jurisdictional challenges, including recognizing tribal sovereignty, engaging with each tribal nation individually, on a government-to-government level, to develop a plan for an effective legal response to sex trafficking, working with each tribal nation to identify how specific jurisdictional issues in the criminal and civil legal systems impact people with lived experience and funding each tribal nation to support this process and implement recommendations?
- What is the state doing to engage and fund indigenous individuals, especially those with lived experience, to lead culturally-based and community-focused services and the implementation of the Safe Harbor law expansion to all adults?
- What commitment will the state make to engage and fund urban Indian communities and Native-led non-profits to participate in the development and implementation of the Safe Harbor for All law?
- What is the state undertaking to reform longstanding harmful multi-systemic practices that disproportionately impact indigenous people that are linked to violence and transactional sex, including decreasing the disproportionate number of American Indian children who experience out-of-home placement compared to white children?

⁴¹ The Advocates for Human Rights, Rainbow Research, Urban Research and Outreach-Engagement Center, and University of Minnesota Driven to Discover, *Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota*, (Minnesota Legislature: Oct. 2018), 94, <https://www.theadvocatesforhumanrights.org/res/byid/7532>.