



To: Ms. Reem Alsalem, UN Special Rapporteur on Violence against Women
From: Rosalyn Park, Director, Women's Human Rights Program,
The Advocates for Human Rights
Re: Call for inputs – Report on violence against indigenous women and girls
Date: Jan. 27, 2022

The information provided within this commentary is based on two reports: 1) Safe Harbor For All Strategic Planning Process Report, published in 2018 by University of Minnesota's Urban Research and Outreach-Engagement Center (UROC), The Advocates for Human Rights, and Rainbow Research, which presents research conducted in Minnesota aimed at understanding the harms of sex trafficking and commercial exploitation of children and adults,¹ and; 2) Promoting Gender Diversity and Inclusion in the Oil, Gas and Mining Extractive Industries, published in 2019 by The Advocates for Human Rights, which assesses the conditions that contribute to violence against women in sex trafficking and extractive industries.² The responses below are drawn from both reports and reflect our findings on the specific manifestations of violence against indigenous women and girls. Excerpts from the reports have been lightly edited for flow and readability.³

¹ "Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota," *University of Minnesota's Urban Research and Outreach-Engagement Center (UROC), The Advocates for Human Rights, and Rainbow Research* (Oct. 2018), available at <https://www.theadvocatesforhumanrights.org/res/byid/7532>. Minnesota's Safe Harbor for Youth law, enacted in 2011, decriminalized youth who are trafficked or victims of commercial sexual exploitation. *Id.* at 4. The report sought opinions and recommendations on extending Minnesota's Safe Harbor system to include all adult victims and survivors of sex trafficking and exploitation, as well as the consequences of such an expansion (intended and unintended). *Id.* at 4. For this report, the three agencies gathered information about sex trafficking from 294 stakeholders from rural, urban, and suburban Minnesota. The project recognized that transactional sex can take many forms, including sex trafficking, commercial sexual exploitation, independent selling or trading sex, and sex work. The process centered 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. 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. Those who 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, we refer to as people with "lived experience." Our methods were designed to protect confidentiality, and where appropriate gather information anonymously.

² "Promoting Gender Diversity and Inclusion in the Oil, Gas and Mining Extractive Industries," *The Advocates for Human Rights* (January 2019), page 7, available at <https://www.theadvocatesforhumanrights.org/res/byid/7535>. At the request of the UN Group of Experts on Coal Mining Methane, The Advocates undertook research to investigate female inclusion in traditionally male-dominated, extractive sectors. The Advocates undertook desk research and interviews with experts to understand these issues. This report sets forth its findings in four sections: 1) benefits of women's participation in these industries; 2) government obligations in terms of legal and social barriers, 3) corporate roles and responsibilities, and 4) considerations for women in the broader and surrounding communities.

³ Throughout this submission, we note where excerpts are from either report. "Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota" is noted as "Excerpt: Safe Harbor for All Report," and "Promoting Gender Diversity and Inclusion in the Oil, Gas and Mining Extractive Industries" is noted as "Excerpt: Extractive Industries Report."

- 1. The different manifestations of violence experienced by indigenous women and girls, whether perpetrated by members of their community or non-members, including but not limited to domestic violence; sexual harassment and violence at the workplace (including domestic work); sexual violence; harmful practices; violence in the context of conflict; trafficking in persons; violence in the context of migration; violence related to land grabbing and violations of land rights; violence against indigenous women human rights defenders or defenders of land rights; obstetric violence and violations of indigenous women and girls sexual and reproductive health and rights.**

Excerpt: Safe Harbor for All Report:

When compiling the *Safe Harbor For All* report, the authors took the position that, for stakeholders with lived experience, the seemingly irreconcilable difference of perspectives on transactional sex is authentically rooted in differences of experience, viewpoint, and perception. We recognize this is not easy. It does cause deep pain, division, and strife. Survivors of trafficking and exploitation feel viscerally that transactional sex is wrong based on their experiences. Force, manipulation, violence, coercion, stigma, trauma, poverty and lack of options pose significant barriers to escaping trafficking or exiting transactional sex – making the framework of “choice” feel 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. Sex work, when experienced as chosen work, can offer flexibility, self-determination, and much higher pay compared to other low wage options. For some sex workers, sex work can be experienced as affirming of their identity. Many people with lived experience in transactional sex feel all of these perspectives and do not know where they fit. The process for our Safe Harbor for All report did not attempt to resolve these differences and disagreements. Rather, the team tried to hold space for all opinions and experiences around this issue, and allowed people to determine their own language and framing.⁴

By approaching these different and seemingly contradictory experiences together, the strategic planning team illuminated the different manifestations of violence experienced by indigenous women and girls as it relates to sexual violence, trafficking in persons, and histories of colonialism, racism, and violations of land rights. The unique manifestations of violence for indigenous women and girls were explained by stakeholders as an exploitation of vulnerabilities, a form of systematic exploitation based on race and gender, a result of the history of generational poverty in indigenous communities, continuing practices of colonization and commodification Indigenous people, and connected to the high rates of unsolved cases of missing and murdered indigenous women.

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

⁴ “Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota,” *University of Minnesota’s Urban Research and Outreach-Engagement Center (UROC), The Advocates for Human Rights, and Rainbow Research* (Oct. 2018), pages 11-12, available at <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

women of color. 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.⁵

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 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.⁶

Excerpt: Extractive Industries Report:

The Advocates' report on the oil, gas and mining extractive industries detailed the discrimination, lack of opportunity, environmental risk, and violence that indigenous women experience from the conditions created by extractive industries. Industries that strive to address female or other diversity must exercise caution to avoid falling into the "double blind" trap, where policies that include a gender dimension fail to address the needs of other diverse populations or policies that address other diversity fail to include factors aimed at female inclusion. Where largescale mining has negative effects on communities, indigenous women tend to experience them more so than indigenous men. For example, research in Australia indicates that common barriers all women may experience based on their sex are exacerbated for indigenous women when they have more caretaking duties for extended family, may have children at an earlier age, may be coming from difficult socio-economic circumstances, and of course, face an additional barrier of racism. On mining sites in Australia, indigenous women described the displays of unconscious bias levied at them as women minorities, such as heightened scrutiny for performance, provocations directed to them by men, and getting overlooked for promotions in favor of men or non-indigenous women. Similarly, in the Philippines, aggressive mining activities have had negative impacts on indigenous communities, particularly affecting indigenous women in rural areas. As caregivers, local women may experience difficulty gathering food and water for families as a result of displacement from their ancestral lands caused by deforestation and flattening of mountains conducted to make way for mining activities. As homemakers, they may also experience the effects of social disruptions, such as increased incidents of domestic violence, alcohol and drug addiction, gambling, infidelity, and prostitution. While women in these areas may be accustomed to having their own earnings from agriculture, they may find themselves economically displaced with their land used by mining companies.⁷

⁵ Id. at 33-35.

⁶ Id. at 35-36.

⁷ "Promoting Gender Diversity and Inclusion in the Oil, Gas and Mining Extractive Industries," *The Advocates for Human Rights* (January 2019), pages 25-26, available at <https://www.theadvocatesforhumanrights.org/res/byid/7535>.

The health of indigenous peoples may also be impacted by contamination of soils and rivers caused by mining accidents, which poses a reproductive health risk to women, such as spontaneous abortion and malformed infants. In particular, the Diwalwal area of the Philippines, has been beset by social and environmental problems since the discovery of gold in the early 1980s, where four indigenous peoples groups exercise their claim over parts of the Diwalwal Mineral Reservation. While women account for approximately 60 percent of the entire population in the Diwalwal area and are involved in the local mining industry as tunnel owners, entrepreneurs, workers in mines and processing plants, and providers of goods and services, there are no female officials in the field of local governance. Women assemblies established in preparation for the Diwalwal Direct State Development Project have expressed a number of socio-economic, environmental, health and education concerns stemming from mining in the community, including inadequate housing built on slopes and ravines, unsafe working conditions of miners, prevalence of drug addiction, lack of local hospitals, and disinterest in education in favor of livelihood and survival.⁸

2. Good practices and challenges on increasing indigenous women and girls' access to effective mechanisms to prevent their exposure to violence as well as to assist and protect victims of violence in a comprehensive manner.

The Safe Harbor For All report found several 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. These factors were intertwined with many of the factors that lead indigenous women and girls to be at risk of sex trafficking or become involved in transactional sex in the first place, such as lack of access to a living wage,⁹ stigma and discrimination in accessing high quality health care,¹⁰ confusion and inconsistency with systems of support,¹¹ and ongoing conditions of racism and colonization that limit access to and development of culturally-based and community-focused services for indigenous victims of violence.¹² Based on stakeholders' input, the Safe Harbor For All Report offers multiple recommendations for assisting and protecting indigenous victims of violence in a comprehensive manner to support safety, health, dignity, and justice.

Excerpt: Safe Harbor for All Report:

In interviews and convenings with stakeholders, they reported that many people exploited in transactional sex and trafficking first enter transactional sex because low-wage hourly work does not meet their basic needs and/or they cannot access work due to barriers in education, training, transportation, and experience of trauma. People who are not able to meet their basic needs are also more vulnerable to trafficking and exploitation. Further, many experience low-wage work as exploitative, demeaning, and inflexible for them to meet family obligations. Transactional sex was described as one of the few options available to many people that is flexible and allows them to pay rent, care for their families, and provide food.¹³ Additionally, stakeholders noted 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, and some other locations, participants identified only a few types of medical

⁸ Id.

⁹ "Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota," *University of Minnesota's Urban Research and Outreach-Engagement Center (UROC), The Advocates for Human Rights, and Rainbow Research* (Oct. 2018), pages 91-92, available at <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

¹⁰ Id. at 100.

¹¹ Id. at 86.

¹² Id. at 109.

¹³ Id. at 91-92.

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.¹⁴

Related to the issue of access to necessary services and offerings, some stakeholders identified confusion or inconsistency within Minnesota's Safe Harbor system because Regional Safe Harbor Navigators (community points of contact who connect sexually exploited youth with services) throughout the state use different approaches.¹⁵ Some provide direct service, while others function more as network managers. Further, there is significant variation in regional navigator region size and population. Stakeholders in this process pointed out difficulties with the initial approach to tribal nations and indigenous communities. As Safe Harbor becomes increasingly system-based with State resources, stakeholders noted challenges in balancing the much-needed expansion and provision of State services and resources with funding strong [local] community and non-profit services and supports. Many expressed concerns that any policy change will reflect or potentially exacerbate existing structural oppressions in society. Specifically, stakeholders advocated for up-front and deliberate planning to avoid leaving out or harming black, brown and indigenous people as well as new immigrants, both documented and undocumented, and LGBTQ members of the community within Safe Harbor expansion. Further, many stakeholders said that services and supports that are available through Safe Harbor or to adult victims/survivors of exploitation and trafficking miss the mark because they are too inflexible, hard to access, inconsistent or not available at the right times and places, and deficit-based.¹⁶

Stakeholders indicated that, in order for comprehensive responses to be successful, they needed to be culturally-based and community-focused to support the unique needs of indigenous victims. As such, they highlighted services for treating indigenous victims with dignity and respect, which requires 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.¹⁷ In addition, hiring staff from diverse communities is important to building effective relationships. Relatedly, stakeholders also identified the need to deal with racism, including the continuing effects of enslavement and colonization, in efforts to prevent trafficking and exploitation.¹⁸

The Safe Harbor for All report made a number of recommendations for providing accessible, culturally-focused comprehensive support for indigenous victims. These recommendations call for changes to Minnesota's criminal and civil statutes, as well as focused planning and more State funding to expand and enhance services and supports. We also recommend specific steps to recognize tribal sovereignty and fund tribal nations and indigenous communities to engage in planning and implementation within their communities. Change will require paradigm shifts and commitment, including deliberate efforts to reduce

¹⁴ Id. at 100-1.

¹⁵ Under Minnesota's Safe Harbor for Youth law, a statewide system of regional navigators with expanded and enhanced housing, services and supports called No Wrong Door went into full effect in 2014. Id. at 4.

¹⁶ Id. at 86.

¹⁷ Id. at 81-82.

¹⁸ Id. at 109.

stigma and discrimination against people with lived experience.¹⁹ Specifically, Recommendation #10 describes the need for funded and focused planning, as well as substantial increases in funding for whatever model or approach is developed. The State could explore legislation with a sunrise clause, as was done with Safe Harbor for Youth and No Wrong Door, with the addition of leadership from and engagement with diverse people with lived experience. The model should be implemented without age limits and funded. A statewide and funded planning process is needed to implement Safe Harbor expansion; this is described in Recommendation #11. Here we also provide direction from stakeholders that suggests that Minnesota should invest in long-term housing solutions, economic support, health care (including mental health), chemical dependency treatment, and healing from intersecting violence and trauma (such as sexual violence and domestic violence), combined with efforts to reduce stigma within Minnesota's system response. Additionally, outreach to people with lived experience is critical to increasing awareness and access to supports. Safe Harbor for All would serve as both prevention and intervention for people with lived experience. Recommendation #12 proposes a statewide prevention plan should include housing, economic stability, and foster care fixes in addition to education and culture change. Primary prevention should address racialized poverty and structural oppressions that are often at the root of exploitation in transactional sex.²⁰

Excerpt: Extractive Industries Report:

The Advocates' report about extractive industries also acknowledges the necessity of comprehensive protection of and services for indigenous victims. Recommendation #4 urges states to: ensure and support services for victims of discrimination and violence against women. Such services should be led by non-governmental organizations that best understand and serve women victim and survivors' needs. Ensure that services for marginalized populations, including migrant and indigenous female workers, are customized to address their specific needs.²¹

3. Good practices and challenges regarding the effective participation of women and girls that are at risk of violence or that have been subjected to violence in processes that affect their lives, including those that seek to protect them against violence.

Multiple factors hinder the effective participation of indigenous women and girls that are at risk of violence, such as lack of access to a living wage,²² stigma and discrimination,²³ limited and inconsistent access to support,²⁴ and ongoing conditions of racism and colonization.²⁵ However, based on conversations with stakeholders, the Safe Harbor for All report presents recommendations on enhancing the participation of indigenous women and girls at risk of violence. These include affirmation of tribal sovereignty, the inclusion of tribal nations and indigenous communities in planning and implementation of processes that seek to protect them from violence, funding for indigenous persons with lived experience to lead in the creation and implementation of responses, and reformation of harmful multi-systemic practices that disproportionately impact indigenous people.

¹⁹ Id. at 6.

²⁰ Id. at 116.

²¹ "Promoting Gender Diversity and Inclusion in the Oil, Gas and Mining Extractive Industries," *The Advocates for Human Rights* (January 2019), page 54, available at <https://www.theadvocatesforhumanrights.org/res/byid/7535>.

²² "Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota," *University of Minnesota's Urban Research and Outreach-Engagement Center (UROC), The Advocates for Human Rights, and Rainbow Research* (Oct. 2018), pages 91-92, available at <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

²³ Id. at 100.

²⁴ Id. at 86.

²⁵ Id. at 109.

Excerpt: Safe Harbor for All Report:

Recommendations made in the Safe Harbor For All report emerge from an understanding that tribal nations and indigenous communities must be engaged in planning and implementation of responses to sex trafficking. American Indian people are disproportionately impacted by sex trafficking and exploitation and there are unique strengths for cultural and community healing. 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.²⁶ The report makes several recommendations relevant to the effective participation of indigenous women and girls who are at risk of violence or that have been subjected to violence, which are presented below. Although these recommendations are specific to Minnesota, they may also be applicable to other contexts.

Recommendation #1: Provide funding to people with lived experience from diverse communities to lead in creation and implementation of Minnesota's response. Involvement should include designing the approach, participation in fine-grained implementation of recommendations, testifying before the Legislature, evaluating impact, and assessing new developments as they arise. In particular, black, brown, and indigenous people, as well as LGBTQ and gender non-conforming people, should be prioritized. Ensure diversity with respect to experience in transactional sex, including people who identify as victims and survivors, independent providers, sex workers, and other experiences in transactional sex. A diversity of perspectives and experiences among people with lived experience brings critical wisdom, knowledge, and experience to the table and can help avoid unintended consequences. Minnesota should prioritize inclusion of culturally-specific perspectives and providers. Guidance for implementation includes the following: Work with survivor advisory groups in Minnesota, network with other groups of people with lived experience (for example, regional task forces, support groups, and sex worker groups), identify ways to hire those with lived experience to design, implement, and hold system actors accountable, make sure that leadership opportunities are substantive, real, and paid, avoid tokenism. American Indian people are disproportionately impacted by sex trafficking and exploitation and they also have unique strengths for cultural and community healing. 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.²⁷

Recommendation #13: Minnesota must recognize tribal sovereignty. Each tribal nation is unique in its legal system, its jurisdiction, and its relationship to the State of Minnesota. The State of Minnesota should engage with each tribal nation individually, on a government-to-government level, to develop a plan for an effective legal response to sex trafficking. Minnesota should work with each tribal nation to identify how specific jurisdictional issues in the criminal and civil legal systems impact people with lived experience. Minnesota should provide specific funding to each tribal nation to support this process and implement recommendations. Minnesota should continue to support the work of tribal nations by funding multi-jurisdictional tribal sex trafficking task forces and work with that task force to develop specific implementation plans.²⁸

Recommendation #14: Fund indigenous people and tribes to lead implementation in their communities. American Indian people are disproportionately impacted by sex trafficking. At the same time, Native people are often excluded from organizing and funding designed to create solutions. The state can best address these harms by ensuring Native people lead the development and implementation of the response. The state should engage and fund indigenous individuals, especially those with lived experience, to lead

²⁶ Id. at 130.

²⁷ Id. at 130.

²⁸ Id. at 130.

the development and implementation of Safe Harbor expansion to all adults.²⁹ Funding should be sufficient to ensure meaningful participation by people from all tribal nations and urban Indian communities. People with lived experience must be paid to develop, implement, and evaluate systems and interventions. In particular, the state should engage tribal nations and indigenous communities, as well as other communities of color and marginalized groups, in planning and implementation. Immediate steps can be taken to limit harms resulting from criminalization and to begin to counteract stigma against people with lived experience.³⁰

Recommendation #15: Reform longstanding harmful multi-systemic practices that disproportionately impact indigenous people that are linked to violence and transactional sex. Separation of families, crimes against Native women, opioid addiction, and homelessness remain unaddressed despite epidemic rates staggeringly out of proportion to white Minnesotans. These harms are intertwined with transactional sex in Native communities. Minnesota cannot create an effective response to sex trafficking without addressing these systemic failures. Minnesota should take immediate steps to decrease the disproportionate number of American Indian children who experience out-of-home placement compared to white children. Review and reform the U.S.’ Indian Child Welfare Act interpretation and case law, in consultation with tribal governments. The state must prioritize the detection, investigation, and prosecution of missing and murdered indigenous women. As a first step, the Legislature should create a Task Force on Missing and Murdered Indigenous Women to examine and report on systemic causes and identify measures to protect indigenous women and girls from violence. Continue to fund efforts to prevent and treat opioid addiction throughout the state. Invest in stable, affordable housing in Native communities. Support accessible, culturally appropriate housing and services for people involved in sex trafficking and sex trading and their families.³¹

4. Good practices and challenges on indigenous women’s participation in transitional justice processes that address violence inflicted upon them, or in judicial communal or state systems more generally, as well as their access to effective reparations for past crimes committed against them.

In the Safe Harbor For All report research, indigenous women were asked about transitional, judicial, and state responses to sex trafficking and sexual exploitation in Minnesota and their responses indicated a need for reform and nuanced approaches to effective reparations for past crimes committed against them.

Excerpt: Safe Harbor for All Report:

The majority of stakeholders from across Minnesota from all stakeholder perspectives expressed support for partial decriminalization (if implemented in tandem with more and better services). We identified complex, informal barriers to services caused by laws and practices related to things like background checks, employment law, and housing policies. Real partial decriminalization, allowing fuller access to housing and economic stability, will also require identification, reform, and amendment of these statutes

²⁹ In 2011, Minnesota passed the Safe Harbor for Sexually Exploited Youth Act (Safe Harbor 2011), laying the groundwork for a victim-centered response to sexually exploited children and those at risk of sexual exploitation. Safe Harbor 2011 defined prostituted children as the victims of sexual exploitation, ended reliance on delinquency proceedings as the sole systems response to meeting the needs of these crime victims, and called for the creation of a framework for implementation of the changes to the delinquency definition, which become effective on August 1, 2014.

³⁰ “Safe Harbor For All: Results from a Statewide Strategic Planning Process in Minnesota,” *University of Minnesota’s Urban Research and Outreach-Engagement Center (UROC), The Advocates for Human Rights, and Rainbow Research* (Oct. 2018), page 136, available at <https://www.theadvocatesforhumanrights.org/res/byid/7532>.

³¹ *Id.* at 131.

as well.³² 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.³³ Participants with lived experience were divided on how partial decriminalization might differentially affect people by identity. Some predicted that partial decriminalization would be universally good for everyone or might even preferentially positively impact women of color, indigenous communities and LGBTQ people, who are survivors of sexual exploitation and trafficking at disproportionate rates. Others worried, that without deliberate attention, implementation would continue to have a disparate negative impact on people of color, indigenous people, LGBTQ communities, immigrants and undocumented people, and other marginalized groups.³⁴

With some exceptions, stakeholders supported continued criminal liability for buying sex. Some called for increased penalties for people who buy sex from trafficking victims. Indigenous and African American stakeholders who view transactional sex as a continuation of the harms of colonialism, settlement, and enslavement rejected the elimination of criminal liability for sex buyers. Other stakeholders worried that continued criminalization of buying sex might continue to keep transactional sex underground, stigmatized, and ripe for exploitation. They also thought it might create a “buyers’ market” where sellers would have to compete against each other for fewer buyers. These stakeholders tended to advocate for full decriminalization. This potential for partial decriminalization to restructure the market for transactional sex is why housing, family stability, living wage jobs, and other supports for people with lived experience must be enacted in tandem with partial decriminalization so people can choose to avoid transactional sex (if they want) and reduce vulnerabilities to exploitation and trafficking. Stakeholders also identified immediate ways to limit harms resulting from criminalization. Many stressed improved access to diversion and expungements, increased attention to investigating and prosecuting crimes against people who sell sex, dedicated efforts to make child protective services more trauma-informed, and an end to out-of-home placement of children based solely on involvement in transactional sex. These efforts can increase health, safety, dignity, and justice for those with lived experience. Amending the state’s statutes to eliminate stigmatizing language will also help ensure people are treated with respect and dignity.³⁵

In response to these insights from stakeholders with lived experiences, the Safe Harbor For All report provides seven specific recommendations related to relevant criminal issues: Recommendations #3 to

³² Id. at 115-16. Support for partial decriminalization was not a unanimous opinion. Some stakeholders expressed reservations, concerns, or opposition. Thus, moves in this direction must be taken with care, further deliberation, and concrete planning to avoid unintended consequences. Id. A wide cross section of stakeholders expressed positive opinions about not arresting people with lived experience for prostitution, including people with lived experience, criminal justice personnel, service providers and advocates. The majority of stakeholders anticipated that a partial decriminalization model would reduce harms inflicted by criminalization and would increase safety and access to justice for crime victims who are engaged in transactional sex. Despite this, most people who supported partial decriminalization also raised concerns, caveats and fears about what could happen. Stakeholders feared that partial decriminalization could lead more people into selling sex as well as more victimization in sex trafficking because they would no longer be arrested. They speculated this could have a particularly adverse effect on people in poverty and other marginalized communities. For this reason, many stakeholders only supported partial decriminalization if enacted in conjunction with effective prevention measures including housing, economic and family stability for people living in poverty. This was seen as essential to counteract the “push” factors of poverty by creating better options for people while also providing exit routes for people to escape trafficking and exit involvement in transactional sex. Id. at 49.

³³ Id. at 41.

³⁴ Id. at 53.

³⁵ Id. at 112.

#9.³⁶ This includes recommended changes to specific statutes, review and revision of other statutes, and emphasis for enforcement. Based on the strategic planning process, we recommend that Minnesota move toward reduction of criminal liability for people with lived experience. This includes expungement, vacatur, diversion, protection from arrest for reporting a crime, and increasing access to crime victims' rights for people with lived experience.³⁷ Recommendation 8 specifically addresses indigenous persons and is included below:

Recommendation #8: Continue to prosecute trafficking crimes. Without exception, stakeholders supported Minnesota's efforts to prosecute human trafficking crimes. Sex trafficking is a violent crime against persons and should continue to be classified among the most serious of crimes. We include this here as a recommendation to reflect the findings. We also recommend exploration of prosecution strategies and protocols that seek to reduce disparate impact on communities of color and indigenous people.³⁸

³⁶ Id. at 7.

³⁷ Id. at 115.

³⁸ Id. at 124.