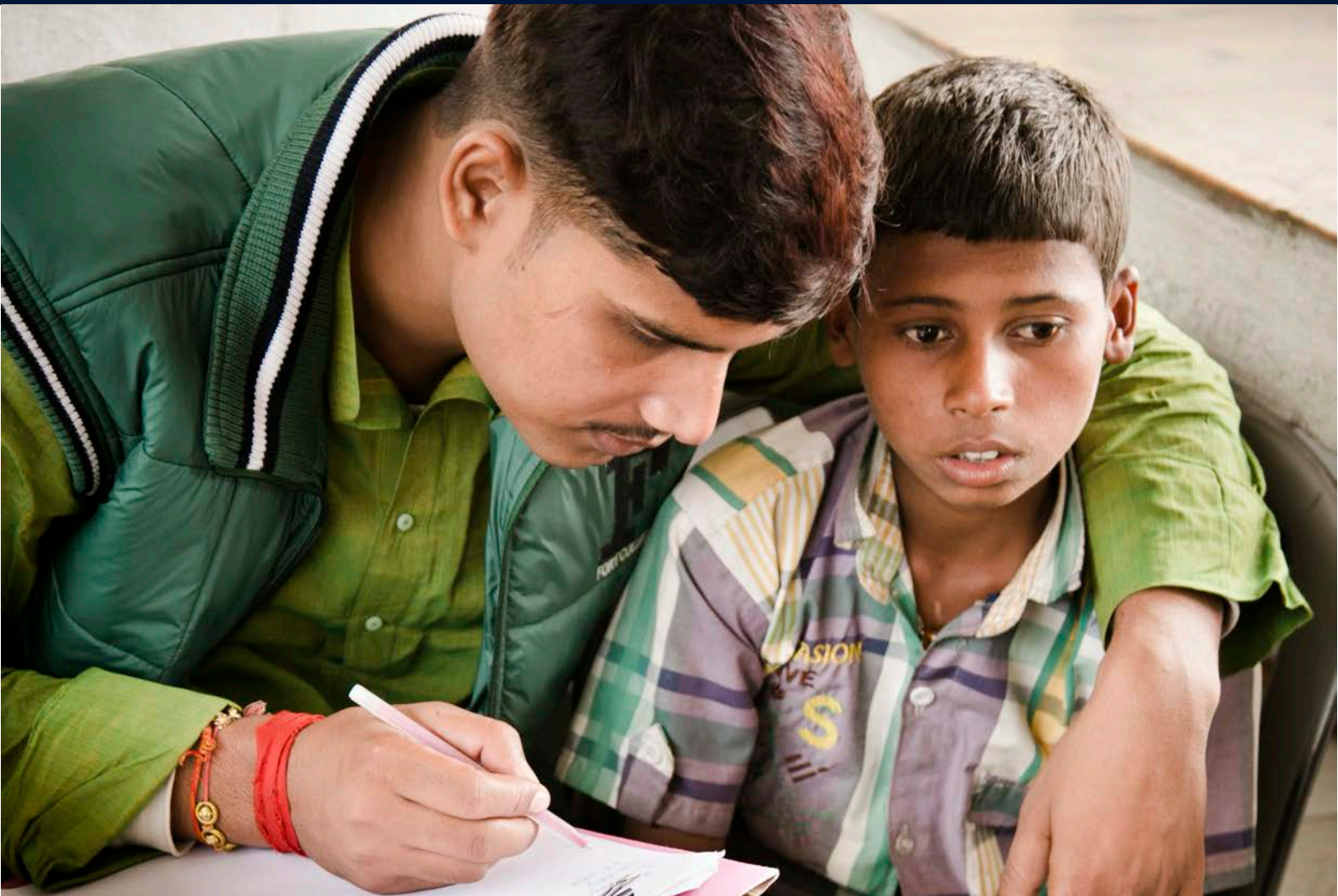




## Pathways to justice:

How grassroots organisations are harnessing the law to tackle modern slavery



The Freedom Fund is a leader in the global movement to end modern slavery. We identify and invest in the most effective frontline efforts to eradicate modern slavery in the countries and sectors where it is most prevalent. Partnering with visionary investors, governments, anti-slavery organisations and those at risk of exploitation, we tackle the systems that allow slavery to persist and thrive. Working together, we protect vulnerable populations, liberate and reintegrate those enslaved and prosecute those responsible.

Author  
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#### Acknowledgment

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# Executive summary

Modern slavery is a crime. The various manifestations of modern slavery – chattel slavery, servitude, forced labour, human trafficking, debt bondage and forced marriage – are all prohibited under international law.

Yet in 2016 approximately 40 million people were living in situations of modern slavery.<sup>1</sup> In the same year, however, fewer than 10,000 perpetrators of modern slavery crimes were convicted.<sup>2</sup> The gulf between these two figures highlights the immense challenges faced by the global movement to end modern slavery.

To date, governments and private donors have concentrated their assistance on efforts to bridge the gap between the number of people in situations of modern slavery and the number of people who are being brought to justice. For the most part, initiatives have focused on improving criminal justice responses to increase conviction rates and create a credible deterrent.

Yet, although these programs are critical, they are only one element of the fight against modern slavery. In essence, the anti-slavery community is only partially utilising the potential of the law.

Alternative legal strategies – including those being delivered by organisations working on the frontlines, in areas with the highest prevalence of modern slavery – have attracted less attention and fewer resources from the global anti-slavery community. Instead of a singular focus on law enforcement, these interventions span the full ‘prevention, protection and prosecution’ spectrum

and use the law in creative ways to challenge systems that allow slavery to persist. These other legal strategies, and the ways in which they have been implemented by grassroots civil society organisations, are the focus of this report. There is much to be learned from frontline NGOs that are harnessing the power of the law to tackle the scourge of modern slavery.

This report surveys the portfolio of legal work being carried out by the Freedom Fund’s NGO partners across seven modern slavery hotspots. Frontline legal interventions are classified into four key categories that respond to the issues that these organisations are trying to address – strengthening laws and regulations, supporting effective enforcement, building rights awareness and facilitating access to justice. The report focuses on the solutions that frontline NGOs have found, drawing out lessons from these interventions that are relevant to the wider anti-slavery community.

**The most obvious legal challenge in modern slavery hotspots is the absence of appropriate laws.** Although most countries have adopted national legislation criminalising slavery-related practices, many lack explicit legal provisions that protect victims or prevent forced or bonded labour. To address these gaps, Freedom Fund partner NGOs are collaborating to push for legislation that responds to the needs of communities vulnerable to slavery. While there have been many recent successes in this area, these campaigns require a long-term time horizon, patient funding and donors that are comfortable with the non-linear results that stem from advocacy.

**Where laws do exist, their impact is limited by systematic failures to implement and enforce them.** The effective operation of the law requires a legal system composed of actors and processes that can

interpret, advocate and ensure its enforcement. When it comes to modern slavery, government responses are characterised by insufficient resource allocation and lack of knowledge and understanding among officials charged with the implementation of laws and regulations. Our NGO partners are training officials to increase awareness of trafficking and related crimes, improve response rates and encourage the adoption of victim-sensitive practices. And they are collaborating with local government to activate prevention and protection systems, connecting survivors to services to aid their recovery.

**Citizens must be aware of legal protections in order to use them.** Members of disadvantaged communities that are most vulnerable to modern slavery tend to be among those with the least knowledge of their rights. This makes people in these communities less likely to seek legal remedy when they are exploited. In industries where legal rights are insufficient, workers need to be organised to lobby for additional protection. In practice, however, the absence of established legal rights occurs precisely in the informal sectors of the economy where workers have the least power to collectively organise. Through rights awareness training and informal worker mobilisation, our frontline NGO partners help at-risk individuals realise the protections they are accorded under the law. This strengthens their resilience to exploitation.

**Although more support to law enforcement agencies is needed to increase conviction rates, the anti-slavery community must recognise and address the other factors preventing access to justice.** Vulnerable individuals and survivors are nearly always confronted with barriers to accessing justice as a result of their ethnicity, caste, religion, gender or immigration status. Lengthy proceedings, limited victim protections

and a lack of legal representation not only prevent effective access to remedy in modern slavery cases but also contribute to a reluctance among vulnerable individuals to engage in formal judicial processes. Although NGOs play a vital role by supporting survivors to file cases and access compensation, the justice system remains stacked against those it is supposed to protect. It is unlikely that conviction rates will rise significantly without a systems-wide approach that invests in legal protection systems, educates officials on the complexities of modern slavery and supports the economic and social empowerment of the people who are most marginalised.

**Civil, family and labour law mechanisms are just as important as criminal justice solutions.** Evidence from our programs shows the limitations of an approach focused purely on law enforcement that neglects to dismantle the enabling environments that allow this crime to flourish. Most legal assistance provided by our partner NGOs focuses on resolving underlying legal issues that feed vulnerability to modern slavery. Their role is crucial because they provide legal aid, help migrants navigate immigration procedures, support compensation claims for road or workplace accidents and file claims for unpaid wages.

Our review of the frontline legal interventions delivered by our NGO partners highlights the enormous potential of the law to affect change. To harness this potential, the anti-slavery sector should broaden its horizons beyond prosecutions and convictions and look to other solutions that focus on securing the rights and protections of vulnerable populations. This strategy requires ambitious, long-term funding from the global donor community that places greater emphasis on supporting and learning from grassroots approaches to tackling modern slavery.

# Introduction

Modern slavery is not a legal concept. Instead, it is an umbrella term used to describe situations where individuals are used, controlled and exploited for personal or commercial gain. Modern slavery encompasses a range of practices – chattel slavery, servitude, forced labour, debt bondage, human trafficking and commercial sexual exploitation of children. Each of these forms of severe exploitation is prohibited under international law, establishing what is now an international norm against modern slavery practices.

The parameters of the prohibition of slavery have evolved over time. The 1926 Slavery Convention provided the first international legal definition of slavery as the exercise of the rights of ownership over another person.<sup>3</sup> Thirty years later, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery extended the range of practices analogous to slavery (and therefore expected to be abolished by States) to include debt bondage, serfdom, forced marriage and child servitude.<sup>4</sup> In 1930, a prohibition against forced and compulsory labour was introduced in the International Labour Organization's Forced Labour Convention. This Convention renders illegal "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".<sup>5</sup> Freedom from slavery is a human right enshrined in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.<sup>6</sup>

States' responsibilities under these key international conventions are limited to an obligation to abolish slavery and related practices within their borders. In 2000, the adoption of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons,

Especially Women and Children (Palermo Protocol) signalled a new intention among States to go further to tackle slavery-related practices. As the first legally binding global instrument on human trafficking, the Protocol gave new impetus to the fight against modern slavery by imposing new responsibilities on States to eradicate human trafficking. The obligation contained in the Protocol is threefold, following the '3P' paradigm: criminalise all forms of trafficking, investigate and prosecute cases of human trafficking and convict and sentence those responsible ('prosecution'); identify victims, provide them with services and support their rehabilitation ('protection'); and raise awareness and implement measures to reduce vulnerability to trafficking ('prevention'). This shift towards imposing obligations on States to tackle slavery is also reflected in the 2014 Protocol to the Forced Labour Convention, which outlines measures to be adopted in order to prevent forced labour, protect victims and prosecute perpetrators.<sup>7</sup>

Every country has adopted legislation abolishing slavery. Mauritania, in 2007, was the last country to enact an anti-slavery law. Following adoption of the Palermo Protocol, over the past two decades, more than 90% of countries have adopted specific anti-trafficking legislation.<sup>8</sup> Nevertheless, despite this relative progress, the scope of prohibitions of modern slavery practices varies globally. For example, significant gaps in legal frameworks to criminalise and prosecute forced labour persist in many countries. The existence of legal and policy gaps has contributed to a situation where modern slavery continues to thrive, despite government commitments to take action.

In Target 8.7 of the Sustainable Development Goals, States committed to taking steps to eradicate modern slavery by 2030.





With an estimated 40.3 million people living and working in situations of modern slavery in 2016,<sup>9</sup> reducing this number to zero by the end of 2030 would require removing 9,000 people from modern slavery every day.<sup>10</sup>

According to available data, this target is far from being achieved – the U.S. State Department estimates that globally only 100,400 victims of trafficking in persons\* were identified in 2017.<sup>11</sup> Moreover, while increased attention on modern slavery has led to more convictions of traffickers and slaveholders, these numbers remain extremely low. Just over 7,000 convictions were secured globally in 2017, a testament to the monumental challenges that the anti-slavery community faces in tackling this scourge.<sup>12</sup>

To date, States have primarily relied on the criminal justice system to spearhead efforts to tackle modern slavery. Interventions have focused on improving victim identification and rescue and prosecuting traffickers. Policies to provide long-term recovery and reintegration support for survivors often do not exist or are not implemented in practice. And few governments have enacted laws or adopted policies enshrining concrete prevention measures.

The donor community has also focused its anti-slavery efforts on criminal justice. On the whole, donors have seen the law primarily as a tool for rescuing survivors and delivering convictions of slaveholders. Accordingly,

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\* For the U.S. State Department, trafficking refers to “severe forms of trafficking in persons” defined in the Trafficking Victims Protection Act of 2000 as sex trafficking and the recruitment, harbouring, transportation, provision or obtaining of a person for labour or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

significant resources have been directed toward efforts to improve law enforcement and judicial responses in countries with a high prevalence of modern slavery. These efforts are undoubtedly critical to tackling modern slavery by remedying rights violations and creating a deterrence effect for would-be traffickers. Nevertheless, their impact is inherently limited as they operate after a crime has already occurred. Arguably, if the aim is to eradicate modern slavery, donors should also channel significant resources towards interventions that address its root causes and thereby prevent millions of individuals from entering slavery-related situations.

Across seven slavery ‘hotspots’ in four countries, the Freedom Fund partners with frontline civil society organisations to combat modern slavery in the areas where it is most prevalent. In India, Nepal, Thailand and Ethiopia, we invest in community-based organisations to support grassroots interventions that protect those at risk of slavery, liberate and rehabilitate those enslaved and prosecute those responsible.

Legal interventions are a core element of our hotspot programs. Although our local NGO partners are engaged in criminal justice efforts (e.g., working with law enforcement to improve anti-trafficking responses), this is only one of many ways they harness the potential of the law to tackle modern slavery in frontline communities. Civil society efforts to improve rights awareness within marginalised communities, advocate for victim-centred laws and policies, deliver legal aid and assistance to survivors and at-risk individuals, and activate government protection systems are just as critical to disrupting the systems that enable slavery to persist.

This report highlights a range of grassroots approaches to using the law to tackle modern slavery. It draws on the experiences of our local staff and 120 frontline NGO partners and documents some of the key lessons learned from their interventions. In sharing insights from our programs, we hope to broaden understanding among the anti-slavery community of the need to consider alternative legal solutions beyond criminal justice.

The report is structured in four parts that correspond to the activities of our frontline NGO partners: strengthening anti-slavery legislation; engaging with law enforcement and government officials to ensure that laws and policies are implemented; supporting rights awareness and legal empowerment of marginalised communities and vulnerable workers; and facilitating access to justice. For each of these areas, we provide examples of the types of interventions delivered by our frontline partners, identify promising strategies and highlight the continuing challenges in using the law to tackle slavery.



# Harnessing the law to tackle modern slavery: Lessons from frontline interventions

## STRENGTHENING LEGISLATIVE AND POLICY RESPONSES TO MODERN SLAVERY

Increased attention to modern slavery in the past decade has led to an explosion of new laws to combat and prevent this crime. According to the U.S. State Department's *2018 Trafficking in Persons Report*, more than 170 pieces of new or amended trafficking legislation have been enacted worldwide since 2011.<sup>13</sup> Although this wave of legislative activity demonstrates positive momentum among States, significant legal and policy gaps have hindered substantive progress towards addressing slavery practices. According to the United Nations Office on Drugs and Crime, gaps in human trafficking legislation have left at least 2 billion people around the world without adequate legal protection.<sup>14</sup>

Legislation criminalising modern slavery offences plays a critical role in government efforts. Criminal laws provide law enforcement agencies with the grounds to investigate and prosecute the perpetrators of human trafficking and forced labour. In practice, however, legislative responses need to go beyond making modern slavery illegal. Indeed, this is clearly stated in the Palermo Protocol, whereby States are also required to provide assistance to victims and establish measures to prevent and combat human trafficking. However, it is on this front that government efforts have failed to meet expectations. For example, it is common for anti-trafficking legislation to omit specific provisions on victim assistance such as residency status for survivors, recovery measures (housing, legal assistance, medical care) and repatriation assistance.

### Hotspot interventions:

-  Submission of evidence-based recommendations for policymakers at local and national levels
-  Providing grassroots feedback on modern slavery-related law and policy
-  Catalysing policy engagement within frontline anti-trafficking networks

Collectively, our frontline partners have contributed to 35 changes in public policy since 2015.

From the adoption of a National Master Plan on Child Labour in Nepal to the promotion of safer migration of migrant domestic workers by the Ethiopian government, grassroots NGOs are harnessing their frontline experience to advance the anti-slavery agenda at local, district and national levels.

Overall, legislative approaches to tackling modern slavery are narrow in scope and inconsistent in approach. State practice in legislating to tackle forms of slavery other than human trafficking – forced labour, bonded labour, commercial sexual exploitation of children – is relatively weak. This may reflect a lack of political will to engage with severe labour exploitation. According to research by the International Labour Organization, despite progress in strengthening the legal architecture around forced labour, only 83 countries have laws that define, criminalise and assign penalties for both forced labour and human trafficking.<sup>15</sup> Despite the prevalence of forced labour – estimated to affect 25 million people around the world<sup>16</sup> – relatively few countries have adopted measures to combat these practices or support survivors. Furthermore, where they exist, penalties for forced and bonded labour offences are often prescribed under labour rather than criminal law and consist of a fine or a very short prison sentence. These gaps undermine the role of the law as a credible

deterrent to individuals that seek to profit from the exploitation of others.

Beyond the adoption of comprehensive anti-slavery legislation, globally there is a need for States to establish broader national policy frameworks that target the systemic and structural issues that enable modern slavery practices to persist. Modern slavery is not just a crime. It is also a social and economic phenomenon that affects the most marginalised communities. Poverty, inequality, unemployment and lack of access to education are all root causes that drive vulnerable men, women and children to work in informal, unregulated and high-risk sectors. Government efforts need to reach beyond the realm of law enforcement and become integrated across policy spheres – employment, social protection, poverty reduction and immigration – to support a comprehensive, multi-agency approach to eradicating modern slavery.

Image: Sanjit Das, © Legatum Limited 2019



### Harnessing grassroots networks

Gaps in anti-slavery legal frameworks in our hotspot countries effectively deny victims and survivors adequate protection under the law. A core element of our hotspot programming therefore focuses on strengthening current government responses by supporting our local frontline partners to push for the adoption of comprehensive anti-slavery laws and policies. The individuals that are most vulnerable to modern slavery – migrant workers, marginalised rural communities, members of lower castes, and women and girls – have little opportunity to represent their interests to local officials, let alone political representatives. Through their presence in frontline communities, grassroots civil society organisations are well placed to engage on behalf of vulnerable groups during the formulation of anti-slavery law and policy. However, many of these organisations have limited (if any) experience in advocacy work, having been largely excluded from policy-making processes.

The Freedom Fund's intervention model facilitates grassroots advocacy by bringing together our frontline NGO partners into coalitions, supported through hotspot communities of practice. Through this collaborative approach, our local civil society partners have developed common policy goals and collectively pushed for the adoption of robust anti-slavery laws at national and state levels. A long-term strategy, grassroots advocacy requires the investment of substantial resources to develop the capacity of frontline NGOs. Progress towards policy goals is rarely linear and is highly dependent on political context. Nevertheless, in our hotspots we have noted the transformation of communities of practice into strategic advocates that have contributed to key legislative developments. Across our programs frontline NGO partners have secured multiple opportunities to deliver evidence-based recommendations and informed feedback to policymakers, providing information that is often lacking during legislative processes. For example, in Nepal, hotspot partner recommendations were included in revisions to the Criminal and Civil Codes and influenced at least eight other pieces of legislation connected to commercial sexual exploitation of children.

In some of our hotspots, these coalitions have expanded beyond the community of practice. In northern India, our partners established the Human Liberty Network (HLN), which includes 15 anti-human trafficking NGOs in Uttar Pradesh and Bihar. The network is now regularly called upon by government officials to provide recommendations to improve anti-trafficking and child protection legislation. Recently, the introduction of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill in India provided an opportunity to catalyse greater policy engagement coordination among anti-trafficking actors. Through the formation of the Interim Working Group (a national network of anti-trafficking and bonded labour NGOs, including the HLN, from 11 states), civil society organisations coordinated joint policy engagement around the bill, providing recommendations that drew from their grassroots experience working with at-risk populations.

The Freedom Fund has also supported the emergence of sector-based networks both within and beyond our hotspots. In southern India, we helped form the Tamil Nadu Alliance, a network collaborating for fair and equitable labour standards in the textile industry. The Alliance has coordinated previously fragmented efforts in this sector and has provided policy expertise to the state government to promote worker protections. In Thailand, there is a clear link between ecosystem decline in fisheries caused by illegal, unreported and unregulated fishing and the use of forced migrant labour on fishing vessels. Therefore, in the Thailand hotspot, we have supported the establishment of the CSO Coalition for Ethical and Sustainable Seafood that has brought together labour rights and environmental groups to facilitate joint advocacy around gaps in protection in the seafood industry.





### Spotlight: The potential of strategic litigation

Securing individual prosecutions of traffickers or employers who profit from the exploitation of their workers is essential. As an isolated strategy, however, this is unlikely to cause a disruption in the underlying systems that enable modern slavery to persist. Strategic litigation looks at the bigger picture by pursuing cases that have the potential to set important precedents, influence policy and ensure that governments are carrying out their responsibilities. Despite its potential, strategic litigation is an approach rarely pursued by grassroots organisations. High-risk and resource-intensive, strategic cases require specific legal expertise and often span many years, with no guarantee of securing a positive outcome for the plaintiffs.

Thailand is the only Freedom Fund hotspot program that currently supports strategic litigation. Our frontline partners Human Rights and Development Fund (HRDF) and Social Responsibility Law are spearheading efforts to pursue strategic cases to secure and improve legal protections for migrant workers in the Thai seafood industry. In particular, HRDF was instrumental in the prosecution of the landmark *Kantang* case. This case set two important precedents: it recognised debt as an element of forced labour and held that forced labour cases involving the use of violence and intimidation

could be construed as human trafficking under Thai law. *Kantang* was also the first human trafficking case in Thailand that secured full indemnification for the plaintiffs. Nevertheless, the continued challenge faced by HRDF in ensuring that the plaintiffs receive the money awarded exemplifies the considerable barriers to justice faced by victims of human trafficking in Thailand. Moreover, failure to secure positive judgments in other strategic cases – for example in the *Ranong* case, in which the court refused to believe the plaintiffs’ allegations of working 22 hours per day for 13 months – demonstrates the high-risk nature of this type of litigation.

Increasingly, we are seeking to identify ways to help grassroots organisations carry out strategic litigation in other Freedom Fund hotspots. One potential approach is supporting the development of a case pipeline, whereby frontline organisations are trained to identify potential strategic cases, which can then be referred to other NGOs or lawyers that have specific expertise in this area. Developing a network of lawyers engaged in strategic litigation, either nationally or regionally, could also encourage the emergence of a community of practice to share best practice in this area.

The experiences of modern slavery survivors are an incredibly powerful advocacy tool but are rarely – if ever – taken into account by policymakers.

Globally, greater investment is needed to provide platforms that amplify survivors' voices.

### Amplifying survivors' voices

The experiences of modern slavery survivors are an incredibly powerful advocacy tool but are rarely – if ever – taken into account by policymakers. Survivors of trafficking and forced labour have limited political agency to ensure their perspectives are reflected in anti-slavery laws and policies. Globally, greater investment is needed to provide platforms that amplify survivors' voices. This is a key priority for the Freedom Fund, both within our hotspots and throughout the wider anti-slavery movement. Supporting policy engagement by grassroots organisations is an initial step towards this goal. The nature of their work within frontline communities means that our local partners have first-hand knowledge and understanding of how gaps in current legislation affect the recovery and reintegration of survivors.

In some of our hotspots, NGO partners have mobilised survivors to provide input into key policy-making processes. In south-eastern Nepal, a system of agricultural bonded labour called Harawa-Charawa affects thousands of families, predominantly from the Dalit community. One of the key achievements of our hotspot program in this region is the development of the National Harawa-Charawa Rights Forum (NHCRF), the first national network of agricultural bonded labour survivors in Nepal. Most notably, the NHCRF successfully advocated for the government of Nepal to commit to tackling Harawa-Charawa as a national priority. It also secured commitments from different levels of government to implement a Harawa-Charawa rehabilitation program and deliver key services for Harawa-Charawa communities. Through their participation in the NHCRF, former and current bonded labourers have increased their agency by collectively raising their voices and asserting their rights. In India, the Interim Working Group coordinated an event during the consultation process for a proposed Trafficking of Persons Bill that brought together trafficking survivors from 11 states to speak to parliamentarians about their experiences. This event marked the first time that such a diverse group of survivor-leaders in India had come together to provide input into anti-trafficking policies, and represents a significant step towards ensuring that survivors' voices are taken into account in the law-making process.





with debts incurred during the recruitment process, and continuously accrue more debt in a situation of debt bondage that remains commonplace throughout the seafood industry. Although in recent years the Thai government has introduced many new laws to improve anti-trafficking responses and increase convictions of perpetrators, substantial progress has been hindered by the impact of hard-line immigration policies on vulnerable migrant workers. Efforts to manage migrant labour as a national security issue have led to the introduction of registration processes that are overly complex and expensive for workers. Rather than deterring migration, these policies have instead encouraged many workers

### Anti-trafficking and immigration legislation: the challenge of conflicting policy agendas

Migrants are particularly vulnerable to human trafficking and exploitation. However, State efforts to govern migration can undermine anti-trafficking efforts. Anti-trafficking discourse is often misused to justify restrictive migration policies and increased immigration enforcement, including deportation. 'Zero tolerance' immigration enforcement often has the effect of criminalising trafficking victims. For example, the introduction of hostile environment policies in the United Kingdom - administrative and legal measures designed to create an environment around illegal immigrants that is as hostile as possible, with the goal of getting migrants to leave voluntarily - has created a situation where victims of trafficking or forced labour are discouraged from reporting crimes because they fear arrest or detention for immigration offences.<sup>17</sup>

We have seen the effect of this in our hotspot programs. The majority of the fishing and seafood labour force in Thailand are migrant workers from Myanmar and Cambodia. These workers are vulnerable to trafficking and forced labour practices aboard fishing vessels and in the seafood processing sector. Most arrive in Thailand

to turn to brokers or traffickers. New migrant worker registration policies restrict freedom of movement and limit the ability of fishers and seafood workers to change employers. Rather than addressing the systemic causes of abuse in the seafood industry, this approach has had the opposite effect of exposing vulnerable migrant workers to the dangers of exploitation, debt and forced labour.

The precarious immigration status of migrant survivors of modern slavery also increases the risk of unfair criminalisation and arrest. When victims of trafficking are identified by authorities, limited options available for shelter and legal assistance mean that few migrants are willing to participate in legal action against their employers or traffickers. For example, a Thai government policy of requiring victims to remain in official state-run shelters while a case is investigated, during which time they are often unable to work, is a clear disincentive to reporting exploitation. For labour disputes such as claims for unpaid wages, migrant workers are eager to resolve these issues quickly; strict immigration regulations only allow migrants to stay in Thailand for a limited period without employment, making them more likely to accept less than they are entitled to under the law.

## CLOSING THE IMPLEMENTATION GAP

Governments are responsible for tackling modern slavery by taking action to protect survivors and prosecute perpetrators. Even outside of the legislative gaps identified in the previous section, the majority of laws and policies adopted by States have failed to move the needle towards a reduction in the number of victims of modern slavery.

Most anti-slavery laws that have been introduced by States, especially in our hotspots, have been reactionary. There has been little foresight or guidance provided by governments on how the laws would be implemented in practice. On the whole, this has resulted in new policies and initiatives that cannot be enforced effectively by government authorities and that are inaccessible and bring little relief to the majority of modern slavery survivors.

The lack of implementation and enforcement of legislation is a key factor behind the consistently low numbers of investigations, prosecutions and convictions of modern slavery-related offences that are recorded worldwide. Despite government commitments to eradicate modern slavery, impunity for these crimes remains commonplace. According to global law enforcement data from 2017, fewer than 18,000 individuals were prosecuted for slavery-related offences, and only 7,000 resulted in convictions.<sup>18</sup> Of these prosecutions, fewer than 5% were for labour trafficking.<sup>19</sup> Although data from the United Nations Office on Drugs and Crime demonstrates that globally there has been an increase in the number of convictions for trafficking in persons, these numbers remain staggeringly low.<sup>20</sup> The low level of prosecutions and convictions stands in stark contrast to the estimated prevalence of modern slavery, which affects approximately 40 million people globally.

Even though criminal justice is not a panacea, the adoption of a robust law enforcement approach to tackling modern slavery is crucial to ending impunity for this crime. An effective government response to addressing slavery is predicated on the ability of law enforcement to identify victims and intervene on their behalf. In order to do so, law enforcement agents must understand the nature and typology of modern slavery offences, have the appropriate skills

### Hotspot interventions:



Activating survivor support mechanisms in collaboration with police and government officials



Training and capacity building support on best practices in survivor identification, withdrawal and reintegration



Coordinating with government legal agencies to facilitate survivor access to remedy



Engaging with employers to encourage compliance with workplace standards and regulations

Despite government commitments to eradicate modern slavery, impunity for these crimes remains commonplace. According to global law enforcement data from 2017, fewer than 18,000 individuals were prosecuted for slavery-related offences, and only 7,000 resulted in convictions.<sup>18</sup>

to investigate these crimes and be sensitised to the specific needs of survivors. Unfortunately, this is not the reality in most countries. Whereas some States have established dedicated anti-trafficking police taskforces as a way to improve operational responses, often local law enforcement departments are expected to take on the additional responsibility of tackling modern slavery crimes in their communities. However, without additional human and financial resources or the benefit of dedicated training, police are limited in their ability to effectively enforce anti-trafficking laws.

Given the nature of modern slavery, the expertise required to address it effectively and the multiple needs of survivors, a multi-agency approach to implementation is essential. Customs and immigration officials, labour inspectorates, social workers and medical professionals are all likely to come into contact with at-risk individuals as well as survivors. They all play an important role in identifying and supporting victims. Many governments have established interagency taskforces and national referral mechanisms to coordinate anti-trafficking responses, bringing together representatives of law enforcement, service providers and regulatory authorities. Nevertheless, the effective implementation of these mechanisms is often limited in practice by organisational deficiencies and lack of resources. Globally, sustained funding, capacity building of frontline staff, and institutional buy-in from all government agencies are necessary for closing implementation gaps.

### Strengthening law enforcement responses

In the communities where our frontline partners work, local law enforcement agencies generally have limited capacity to effectively identify modern slavery crimes. Tasked with enforcing criminal laws, police may be unaware of or misunderstand anti-trafficking provisions. Social and cultural normalisation of modern slavery practices within high-prevalence communities can shape law enforcement attitudes towards tackling trafficking and exploitation. The power differential between police and survivors that live in marginalised communities can lead to victim complaints being dismissed for lack of credibility, or failures to arrest accused perpetrators. In our hotspots we have observed that local law enforcement agencies tend to prioritise investigations of sex trafficking and child trafficking over other modern slavery practices. This is often a reflection of government legislative and policy priorities, as well as a lack of sensitisation among police forces to other forms of modern slavery. Misunderstanding of the circumstances and indicators of severe labour exploitation such as debt bondage and forced labour not only hinders investigation and prosecution of these crimes but can also lead to cases being filed as less serious offences. When this happens, accused traffickers or employers receive minimal sentences, if any at all. Such a scenario contributes to a sense of impunity among perpetrators, who are free to continue to exploit workers with no fear of sanction.

Numerous anti-slavery donors have invested in initiatives to strengthen the enforcement of anti-trafficking laws in countries with a high prevalence of modern slavery. Key anti-trafficking stakeholders including the International Justice Mission work collaboratively with government authorities to improve the practical and technical capacity of police, prosecution services and courts to address and deter trafficking crimes.<sup>21</sup> This is also a core element of the Freedom Fund's hotspot programming. Many of our local NGO partners train local police and border officials to increase their awareness of trafficking and related crimes, improve response rates and encourage the adoption of victim-sensitive practices. There is clear evidence from our programs that capacity building interventions targeted at police can have a direct impact on their ability to effectively assist victims and enforce the law. For example, partners in the central Nepal hotspot reported that sensitisation workshops with local police in Kathmandu led to a reduction in the direct harassment of adult entertainment sector workers and increased awareness and understanding among police of commercial sexual exploitation of children. Furthermore, as a result of this collaboration, in this hotspot there has been an increase in case referrals post-rescue from police to hotspot partners to assist in survivor recovery and support.

Nevertheless, deep-rooted mistrust of police within marginalised communities leads to under-reporting of modern slavery crimes. Changing social norms around law enforcement in order to improve community-police relations in our hotspots is extremely challenging. In northern India, one of our local NGO partners, Aangan, has developed a promising initiative that harnesses community-level data to inform local policing priorities. In target villages in Bihar, community support groups developed action plans to identify and address priority safety issues, such as harassment of young girls walking to school. In response, local police increased community-level surveillance targeting priority areas. Police also carried out community outreach activities and encouraged community members to come forward to report trafficking and bonded labour. Results from the initiative have been positive: police response rates improved and community members reported increased levels of trust and confidence in law enforcement.





### Spotlight: Evidence collection and low conviction rates

Obtaining evidence is vital to securing a conviction. In our hotspots, weak evidence collection processes in human trafficking cases is one of the key factors contributing to low conviction rates. In India and Nepal, registration of a First Information Report (FIR) is the crucial first step in any criminal investigation. However, evidence from our programs shows that in many trafficking cases FIRs are often delayed or are never submitted by police, forestalling prosecutions. Local partners in the central Nepal hotspot note that police often use their discretion in registering a FIR, depending on whether they believe the victim's allegations. Furthermore, research into the low conviction rates in the northern India hotspot found that in the majority of trafficking cases surveyed police had taken up to four years to file a charge sheet, the investigative report sent to the court that sets a trial in motion. These delays undermine the criminal justice process. Years after they have left a situation of trafficking or bonded labour, survivors are likely to be reluctant to testify against their traffickers in court. Without robust evidence or witness testimony, perpetrators of slavery offences are able to walk free and continue their crimes.

Investigations into prosecutions of child trafficking and child labour in our Rajasthan hotspot uncovered serious weaknesses in evidence collection processes. An analysis of FIRs for rescues of trafficked children submitted by police stations in areas of high trafficking in Jaipur found that nearly half of these cases were closed by the district court for lack of evidence. According to the research, delays in the prosecution of these cases resulted in victim statements being recorded more than three years after trafficked children had been repatriated. During this time, survivors are likely to forget vital evidence. Requiring a child or adult survivor to recount their experience several years after it occurred can also lead to re-traumatisation. The challenges associated with obtaining child trafficking survivors' testimony makes it especially important for police to secure robust evidence against the accused. A key objective of the Rajasthan hotspot program is to improve the quality of evidence collection by law enforcement operating in areas of Jaipur with a high prevalence of child trafficking. NGO partners are therefore monitoring the content and quality of FIRs and charge sheets filed in child trafficking cases, as well as delivering training to local police to improve evidence collection.

### Catalysing government action with public interest litigation

Public interest litigation is an innovative judicial mechanism available in some South Asian countries – Bangladesh, India, Nepal and Pakistan – to enforce the legal rights of marginalised communities. Unlike in adversarial litigation, public interest legislation gives any person who can demonstrate ‘sufficient interest’ the opportunity to petition a court to seek the enforcement of a public duty or legal provision. This type of litigation can therefore be used to compel the government to take appropriate action to enforce existing law, and where laws do not exist, to take steps towards ensuring the fundamental rights of citizens are protected.

In India, some of our frontline NGO partners have supported public interest litigation efforts to ensure that legal protections for survivors and at-risk individuals are effectively implemented. This includes litigation in Bihar to compel the government to implement compensation schemes for bonded labourers and provide clarity on government land rehabilitation policy for survivors. And in Tamil Nadu, public interest litigation has been used to press the state government to ensure that legislation requiring the establishment of internal complaints committees is enforced. Under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, internal complaints committees (ICCs) are legally mandated in all workplaces with more than ten workers as a mechanism to receive sexual harassment complaints. After a freedom of information request uncovered that the majority of textile spinning mills in Tamil Nadu had not established ICCs, a public interest complaint was filed on the grounds that workers had been deprived of their right to remedy. In a decision of the Madras High Court, the state government was directed to take steps to ensure that the legislation mandating the establishment of ICCs was enforced – an important development towards securing the implementation of labour rights protections.

An active labour inspection regime is integral to States’ efforts to combat modern slavery practices, but around the world labour inspectorates are underutilised, underfunded and understaffed.

### Improving the performance of labour ministries

In addition to an effective criminal justice system, an active labour inspection regime is integral to States’ efforts to combat modern slavery practices. Labour inspectorates are responsible for enforcing and monitoring employment standards, including minimum wage and health and safety requirements. Through their ability to access workplaces, labour inspectors are ideally placed to identify early warning signs of forced labour. Yet, globally, labour inspectorates are underutilised, underfunded and understaffed. For example, a recent parliamentary report in the United Kingdom revealed that, based on current resources, businesses in the UK can expect a workplace inspection only once every 500 years.<sup>22</sup> Capacity building and adequate resources for supporting effective government labour agencies are prerequisites for upholding labour rights at the workplace and preventing the violations of these rights that can lead to forced labour.

Following reports uncovering the scale of trafficking and forced labour in the Thai seafood industry, the Thai government has in recent years carried out extensive regulatory reform of the fishing sector. A key element of the reforms has been the establishment of a strengthened labour inspection framework. The ‘Port In – Port Out’ (PIPO) system requires that fishing vessels over a certain size be inspected before and after every fishing trip. Inspection officers carry out physical and documentation checks to detect labour abuses and illegal fishing. However, reports from NGO partners cast doubt on the extent to which these reforms have led to progress. According to a recent survey of migrant fishers by the CSO Coalition for Ethical and Sustainable Seafood, the majority of individuals interviewed reported that they had not been interviewed by inspection officials about their job during at-sea or onshore inspections.<sup>23</sup> For those who had been interviewed, inspection officials had used





fishers' colleagues and employer representatives as interpreters, making them more reluctant to divulge information about their living and working conditions. In addition, research by Human Rights Watch has documented several instances where inspection officials failed to follow key interview and victim protection protocols, placing fishers at risk and undermining efforts to identify and address labour abuses at sea.<sup>24</sup>

In Tamil Nadu, many textile spinning mills run hostels to house women and adolescent girl workers. State legislation introduced in 2014 requires mill owners to obtain a hostel licence and undergo inspection by child protection authorities. However, to date few hostels have been registered and authorities have not effectively carried out verification of compliance with the law. In the southern India hotspot, some of our partners are engaging with mill owners to encourage their compliance with hostel registration requirements. In parallel, through the Tamil Nadu Alliance, they have coordinated workshops with district authorities and Child Welfare Committees to facilitate hostel registration. Even so, increased registration needs to be accompanied by an increase in the capacity of child protection officials to monitor conditions in hostels, and labour inspectors to ensure workplace standards within the mills. Some of our NGO partners are therefore

looking to engage more closely with district labour departments and child protection units to ensure that meaningful inspections take place.

#### Access to compensation

Most countries have introduced government compensation schemes for victims of trafficking and forced and bonded labour. Yet, in practice these compensation schemes are poorly implemented and remain largely inaccessible for many survivors. For example, it is common that the payment of compensation to victims under these schemes is contingent on securing a conviction against a perpetrator. This is the case for the Indian bonded labour rehabilitation scheme, where an interim payment is provided on the basis of a release certificate. However, given the extremely low conviction rate for bonded labour in India – between 2006 and 2015 only 1% of cases reached the stage of conviction<sup>25</sup> – this requirement effectively denies survivors access to remedy. Often the complexity of submitting a compensation claim deters survivors from even beginning the process. For instance, in Thailand a lack of clarity about which government agencies have responsibility for implementing the human trafficking compensation scheme has caused bureaucratic inertia, preventing claims from being resolved. Few awards



trafficking and bonded labour, with staff demonstrating increased willingness to carry forward these cases on behalf of survivors.

### Corruption hinders efforts to implement anti-slavery responses

Corruption among police and government officials is prevalent in some of the communities where our frontline partners work. Corruption undermines government efforts to eradicate modern slavery and has a chilling effect on the efforts of civil society to protect communities. The economic and political influence of businesses that profit from the severe exploitation of their workers manifests itself through bribes or donations to local police departments or labour officials.

for compensation to trafficking victims in Thailand have been awarded. And according to research by our Thai hotspot partner Human Rights and Development Foundation, in the nine years following the enactment of the Anti-Trafficking in Persons Act in 2008, no judgment for compensation has been successfully executed.<sup>26</sup>

Frontline NGOs are helping survivors overcome these barriers to accessing remedy. A significant element of their legal work focuses on assisting survivors to file compensation claims with relevant government agencies and navigate the complex procedures involved. To strengthen the capacity of government agencies to deliver access to remedy, some of our NGO partners in India collaborate with district and state legal services authorities, which are statutory bodies mandated to provide legal aid and services to marginalised communities. These institutions could play a critical role in helping trafficking and bonded labour survivors access compensation. However, a lack of experience among staff on handling these types of cases, compounded by inadequate resources to do so, has limited their capacity to intervene. Following a strategy of sustained coordination and cooperation between partner NGOs and district legal services authorities in some districts of Uttar Pradesh and Bihar, we have noted a shifting of norms regarding

This stymies enforcement action. As a result, sometimes lower-level police officers and other officials are unsure whether senior officials will endorse their efforts to fully enforce the law. It is therefore not uncommon that complaints alleging exploitation within workplaces affiliated with powerful business owners are either not pursued by police (who cite lack of evidence) or are subsequently dropped by prosecutors.

In the southern India hotspot, the political influence of business owners is often cited as a challenge to pursuing legal action on behalf of survivors of severe exploitation within textile spinning mills. Frontline NGO workers have reported numerous instances where it has been difficult to secure the cooperation of police during rescue operations in mills. To our partners, officials can sometimes appear more concerned with safeguarding the business and reputation of the mills than protecting workers. Corruption, even when limited to a small number of cases, leads to a situation where powerful business owners are perceived to be above the law and the exploitation of workers becomes a low-risk business activity. Corruption also deters survivors from reporting abuses and reinforces their sense of mistrust towards police, further marginalising some of the most vulnerable members of society.



## LEGAL EMPOWERMENT: BUILDING RESILIENCE THROUGH AWARENESS & ORGANISING

Government initiatives to tackle modern slavery, whether through the introduction of legislation or the prosecution of offenders, will have limited impact if individuals remain unaware of their legal rights. In areas with the highest prevalence of modern slavery, the most vulnerable individuals may be unaware that human trafficking, forced labour and debt bondage are illegal, especially when these practices are normalised within the community. Without knowledge of the protections they are entitled to under the law, people experiencing or at risk of modern slavery are unlikely to report exploitation to the authorities.

For migrant workers, lower awareness of their rights and subsequent associated vulnerability to slavery-related practices is exacerbated by economic and language barriers and cultural marginalisation. According to research from the CSO Coalition for Ethical and Sustainable Seafood, almost three-quarters of migrant fishers surveyed in Thailand felt underinformed about their rights at work, and a third said they had not accessed any information about their labour rights.<sup>27</sup> And for women and girls, gender discrimination, lack of access to education and the informal nature of their employment contributes to lower rights awareness, which increases their vulnerability to exploitation.

Legal empowerment programs work to strengthen the capacity of marginalised individuals and communities to exercise their rights. Through awareness-raising activities, individuals gain knowledge and tools that help them use the law, engage with the legal system and access legal services to protect and advance their rights and interests. Although most countries have undertaken awareness-raising measures, these tend to focus on the risks of trafficking and forced labour. Legal empowerment initiatives, on the other hand, focus on identifying tangible solutions to the daily justice problems encountered by vulnerable populations. Although it is widely understood that increasing the agency of at-risk populations is critical to eradicating modern slavery, the key role of legal empowerment programs – targeting vulnerable individuals and delivered by grassroots organisations – has been generally overlooked by donors.

### Hotspot interventions:



Conducting rights awareness training with community and worker groups



Training community paralegals and establishing legal aid centres



Facilitating access to legal entitlements and government welfare schemes



Community organising of worker-led peer networks

The most vulnerable individuals may be often unaware that human trafficking, forced labour and debt bondage are illegal, especially when these practices are normalised within the community.

Without knowledge of the protections they are entitled to under the law, people experiencing or at risk of modern slavery are unlikely to report exploitation to the authorities.

### Strengthening community resilience through rights awareness

Rights awareness in the communities where our frontline partners work is extremely limited. A core element of grassroots prevention work in our hotspots therefore centres on delivering awareness-raising programs to community-based groups. However, unlike many anti-trafficking awareness-raising programs, our partners' work to provide at-risk groups with information on their rights and legal protections is only the first step in a multi-year effort to build legal empowerment within communities. Training is unlikely to make any significant difference when community members remain unable to access legal services or lack the agency to ensure their rights are respected in the workplace. Through continued engagement with community groups, our frontline partners therefore support project beneficiaries to not just understand but also realise the protections they are accorded under the law. This in turn strengthens their resilience to exploitation.

Over the past four years of hotspot programming in source communities for trafficking and bonded labour, we have begun to witness the transformation of rights awareness-raising into collective action to address the root causes of exploitation. In northern India, frontline partners have worked with Community Vigilance Committees to raise awareness of key issues such as the right to a fair wage and the illegality of bonded labour practices under Indian law. Equipped with knowledge about their rights, community groups have subsequently pressured local brick kiln owners to increase wages and decrease working hours. Similar progress has been seen in the southern India hotspot, where community support groups have responded to workplace rights violations reported by community members by collectively approaching local textile mills to address these issues. Community groups across India are also invoking local governance mechanisms to address breaches in public service delivery that fuel vulnerability to modern slavery, for example by demanding access to health and education services in their villages.

### Accessing legal documentation

Access to civil registration processes has a significant impact on vulnerability to modern slavery. Birth certificates and citizenship documents are integral to accessing many key government services. Without the

necessary documentation, individuals from marginalised communities are denied access to capital, education and health care, which increases the likelihood of their taking out loans that can lead to situations of debt bondage. For example, research from the central Nepal hotspot found that a lack of access to citizenship and birth registration, necessary for employment in more formal industries, is one of the primary reasons that underage girls enter the adult entertainment sector.<sup>28</sup>

Frontline partners play a key role in reducing vulnerability to modern slavery by facilitating access to registration processes that enable members of at-risk communities to access legal entitlements. In the south-eastern Nepal hotspot, NGO partners have helped Harawa-Charawa gain citizenship certificates that enable them to access essential government services and claim their rights. Without citizenship, Harawa-Charawa are unable to access services such as education and health care. Beyond simply linking individuals to these services, partner NGOs in northern India have trained community members to secure access to vital documentation, including birth and marriage registration, and assist their peers in doing so. This approach has built capacity within the community to access government services independently, making the intervention more sustainable.

### Mobilising workers to push for reform

In sectors with a high risk of forced or bonded labour, workers are regularly denied basic labour rights and protections. In many cases, workers are excluded from labour laws, particularly in informal sectors characterised by a lack of government regulation. Freedom of association and collective bargaining are essential tools to protect workers' rights (e.g., the right to a minimum wage, health care, access to safety equipment and limits on overtime). Vulnerable workers who are organised are better able to assert their rights and resist exploitation than those who act alone. In the industries that our hotspot programs target – fishing and seafood processing in Thailand, textile spinning in Tamil Nadu, brick kilns in northern India and jewellery making in Jaipur – trade unions either do not exist or exclude from their membership workers who are most vulnerable to exploitation.



Promoting the role of trade unions in tackling modern slavery in frontline communities is a long-term goal of the Freedom Fund's programs. However, in light of the contextual challenges in our hotspots, some of our NGO partners are at the same time supporting the development of alternative, non-formal mechanisms to organise vulnerable workers outside of the trade union system. Under Thai law, migrant workers are largely excluded from joining existing trade unions and at the same time prevented from establishing their own. As part of their work, some of our frontline partners in the Thailand hotspot have harnessed worker peer networks and trained worker representatives to provide advice on labour disputes and support negotiations with employers. This initiative does not replace the overarching policy goal of ensuring that migrant fishers are provided with trade union representation. However, until that goal can be achieved, this effort is an innovative way to promote vulnerable workers' realisation of their rights.

In the southern India hotspot, one of our NGO partners has delivered rights awareness training within selected textile spinning mills. This peer-based worker rights education program provides a platform for female workers to voice concerns related to

working hours, minimum wages and lack of health and safety protections. As a result, worker groups are increasingly raising these issues with supervisors and mill management and securing their commitments to improve workplace conditions. Nevertheless, supporting worker mobilisation is one of the most challenging aspects of our frontline partners' work. These interventions require buy-in from workplace management, which can be extremely difficult to secure. For example, many spinning mill owners in the southern India hotspot do not allow local NGOs to enter their workplaces.

Worker empowerment cannot solely rely on pressure for reform from the bottom up. It needs to be driven by fundamental changes in the attitudes of employers towards their workforce, whether by creating a deterrent through effective enforcement of labour law, or via top-down pressure from international brands and retailers to respect labour protections within their supply chains. This makes grassroots efforts to engage with both employers and government to strengthen labour rights enforcement all the more critical.





### Spotlight: Strategic lawsuits against public participation

Vulnerable workers can face negative consequences by collectively asserting their rights, including harassment by workplace management and dismissal. In some extreme cases, businesses have used civil and criminal defamation laws to sue workers who have reported labour rights abuses to the authorities. Known as ‘strategic lawsuits against public participation’ (SLAPP), businesses in both developed and developing countries have brought these lawsuits to intimidate human rights defenders. Most SLAPP cases are meritless but aim to silence critics by burdening local communities, NGOs and journalists with the costs of litigation.

One of the most notable examples of the use of SLAPP to prevent workers from asserting their labour rights is that of the Thai poultry company Thammakaset. After 14 migrant workers filed a complaint alleging serious labour abuses at a company-owned poultry farm, Thammakaset filed criminal charges against the workers. Charges included defamation, giving false information to public officials and theft. Although these cases were eventually dismissed, the company has continued to pursue litigation against the workers on appeal and through civil lawsuits. Furthermore, Thammakaset has filed other SLAPP cases against

human rights defenders who have supported the migrant workers and publicly commented on the case using social media. This case has had significant implications in Thailand. Our NGO partners, some of which have been providing support to the Thammakaset workers, note the chilling effect on civil society. And given the risks associated with pursuing legal action against powerful businesses, survivors of trafficking and forced labour in Thailand may now be more reluctant to come forward with allegations.

## ACCESS TO JUSTICE: BEYOND CRIMINAL LAW SOLUTIONS

Traditionally understood as access to a court and to effective legal representation, access to justice also encompasses the ability of judicial institutions to deliver fair, impartial and enforceable solutions for all members of society.<sup>29</sup> Countries with a high prevalence of modern slavery often have justice systems that are remote, unaffordable, slow and incomprehensible to the public. This can in effect deny legal protection to the most marginalised communities – the very people who are most vulnerable to modern slavery.



Globally, most modern slavery survivors are prevented from exercising their rights and obtaining remedy for harm. This has a significant impact on survivors' recovery and rehabilitation. Barriers to justice also limit the ability of the state to hold perpetrators accountable, undermining the role of the law in deterring criminal conduct.

At the same time, civil remedies remain out of reach for many survivors of modern slavery. Even if national law provides a basis for survivors to seek restitution, procedural barriers can effectively prevent them from pursuing claims against perpetrators. Moreover, limited access to legal aid and representation and a lack of awareness of available legal remedies prevent vulnerable workers from filing claims to resolve labour rights violations. These issues perpetuate vulnerability to modern slavery because individuals are unable to use the legal system to address their exploitation.

### Tackling vulnerability by facilitating access to civil justice

For the anti-slavery sector as a whole, justice has generally been interpreted as criminal justice. In other words, apprehending, prosecuting and sanctioning criminal conduct. This is undoubtedly a critical element of combating modern slavery. Initiatives to increase the number of slavery-related prosecutions and convictions aim to tackle impunity associated with these crimes and create a credible deterrent for would-be perpetrators. Many of our frontline partners are involved in such initiatives, for example through referring trafficking cases to law enforcement and providing legal support to survivors.

### Hotspot interventions:

-  Filing cases with the police and representing survivors during the trial process
-  Providing legal assistance for at-risk communities in civil matters
-  Supporting survivors to access government compensation schemes
-  Employing non-judicial grievance mechanisms to resolve labour disputes

Since 2015, Freedom Fund NGO partners have supported 3,328 legal cases and played a role in 72 convictions of traffickers.

Nevertheless, this focus on criminal justice, especially among governments and donors, has arguably obscured the potential for other areas of the law to be used to tackle modern slavery.

The potential of civil justice to prevent modern slavery is rarely highlighted by the global anti-slavery movement yet it makes up the majority of legal assistance provided by our frontline partners. Access to civil and labour justice can play a crucial prevention role by resolving underlying legal issues as a way to address risk factors that may eventually escalate into situations of modern slavery. In practice, this means helping migrants navigate immigration processes, supporting their compensation claims for road or workplace accidents and filing claims for unpaid wages. In the India and Thailand hotspots, NGO partners have trained paralegals and created community legal aid centres to facilitate the delivery of this type of assistance in frontline communities. In Thailand, local partners have developed networks of migrant workers who act as

frontline volunteers; they provide assistance in wage disputes or accident cases, liaise with labour authorities and negotiate directly with employers on behalf of their peers. This model of community-based legal assistance enables grassroots NGOs to expand the impact of their legal support as it encourages individuals to come forward to report complaints to peers who have a deep understanding of the issues faced in their communities.

Access to civil justice can play a crucial prevention role by resolving underlying legal issues as a way to address risk factors that may eventually escalate into situations of modern slavery.

#### **Mental health and access to justice**

Access to justice represents only one part of the survivor recovery and reintegration process. The needs and interests of survivors should be the guiding direction of any legal intervention. In practice, this means ensuring that legal assistance is delivered in conjunction with economic and social support. Modern slavery survivors are often acutely traumatised by their experiences. In fact, research suggests that a law enforcement approach that solely focuses on 'raids and rescues' of survivors without due regard to the necessity of follow-up support may result in further harm and re-victimisation.<sup>30</sup> This approach could also have the unintended consequence of limiting the government's ability to prosecute perpetrators and secure convictions, if survivors are too traumatised to testify against their traffickers or subsequently withdraw from the legal process.

The majority of our frontline partners are involved in service delivery for survivors, including legal aid, counselling and health support. Access to psychosocial counselling is critical to enabling survivors to pursue justice, yet globally it is one of the areas where there are the most significant gaps in support. In Thailand, for example, the absence of effective psychiatric care for survivors of trafficking in government-run shelters – in which they are required to stay until legal proceedings have concluded – can make the stress and anxiety surrounding legal cases overwhelming. Although

under Thai law survivors are entitled to counselling and employment assistance within shelters, in practice these services are weak or non-existent. Without access to effective psychosocial support, many survivors abandon their cases or refuse to testify against their traffickers. Identifying the most effective methods to address the mental trauma of survivors is therefore a key priority in all our hotspot programs.

To ensure that legal, socio-economic and psychological assistance is delivered effectively, the central Nepal hotspot community of practice has developed an emergency-response mechanism to harness the expertise of partners within the network as soon as a survivor is identified. This mechanism was used in a recent case after one hotspot partner located in a source district in the Kathmandu valley identified ten girls who had been trafficked to the city. The NGO was able to call upon the resources of other hotspot partners in Kathmandu, and these partners provided the girls with shelter and psychosocial support. Simultaneously, another NGO that specialises in legal support worked with the public prosecutor to take the girls' testimony and register a trafficking case. This eventually led to the arrest of six individuals.

#### **Navigating structural barriers to justice**

Even with assistance from our frontline partners, access to justice remains out of reach for most survivors and individuals at risk of modern slavery. This is the result of systemic issues within the wider justice system that limit the ability of the State to effectively prosecute modern slavery and provide remedy to its victims.

A significant barrier to justice is the length of proceedings in trafficking cases. Delays in prosecuting cases vary in our hotspots. Whereas in Thailand a concerted push by anti-trafficking authorities to advance prosecutions has led to faster adjudication of cases, in India it can take up to seven years to secure a conviction for bonded labour. Court systems in our hotspot countries are overburdened and under-resourced, which hampers their ability to effectively prosecute crimes or process civil claims. Drawn-out trial proceedings not only delay the ability of survivors to access remedy but also serve as a powerful disincentive for them to report crimes in the first place. Furthermore, while their cases are pending, survivors receive little or no financial support and their ability to earn an income





is severely disrupted. Faced with a choice between justice and survival, many survivors choose survival and withdraw from the legal process. In light of their experiences in supporting these cases, our frontline partners can be hesitant to encourage individuals to pursue legal action given that it can take years to secure a verdict. Moreover, with limited remedies available even in successful cases, NGOs may find it hard to justify pushing survivors in this direction.

The cost of pursuing access to justice can be prohibitive, far beyond the means of individuals who come from disadvantaged communities. Even with assistance from local NGOs, the practical challenges of engaging with justice processes deter many potential claimants. For example, plaintiffs are often required to travel long distances – and, in the case of many trafficking victims, across the country – to provide testimony in court. Government legal aid is either not available or inaccessible to the majority of survivors. Where human trafficking compensation schemes do exist, the funds available are often insufficient to incentivise cooperation.

For survivors who do cooperate, the absence or non-implementation of victim-sensitive procedures

means that intimidation, the use of irrelevant lines of inquiry and harassment from judges and lawyers is commonplace. Local partners in India and Nepal noted numerous instances where victims were subjected to threats from perpetrators in the courtroom pressuring them to change their statement or withdraw from the case. Research in the Rajasthan hotspot found that it was commonplace for child trafficking survivors to be forced to give witness statements in crowded courtrooms. The lack of protections for these extremely vulnerable children was found to be directly linked to child trafficking cases being dropped for lack of evidence.

Combined, these barriers to justice encourage survivors to accept out of court settlements from their exploiters. In India and Nepal traffickers and their victims often come from the same village. The economic hardship experienced by survivors and their families may lead them to accept money from their traffickers as a pay-off, rather than report the crime, even if the sums offered are only a proportion of what could be awarded at trial.

The proximity between victim and perpetrator also increases the likelihood of harassment and intimidation that could force survivors to drop legal action for fear of retribution.



### The challenge of effective legal representation

Community paralegals and frontline NGO staff play a crucial role in providing legal assistance. However, more complex cases require assistance from lawyers. In our hotspots, partner NGOs have highlighted the challenge of finding committed and experienced lawyers willing to assist in litigating modern slavery cases. Among the pool of lawyers available, particularly in our hotspots that are located in rural areas, knowledge of trafficking and related issues remains limited. Available lawyers are often unwilling to commit to cases that are resource- and time-intensive yet deliver little pecuniary gain. For vulnerable individuals who generally have a deep mistrust of formal legal institutions, it is crucial for lawyers to not only be sensitised to the complexities of modern slavery cases but also actively ensure that survivors remain engaged throughout the legal process. In Thailand, partners report that the goals of the lawyers and their clients often do not match, which can lead to victims withdrawing from the case.

Furthermore, frontline partners in India link the high rate of acquittals and unfavourable judgments in trafficking and bonded labour cases to the attitudes of lawyers, who commonly fail to meet filing deadlines or follow up on case progress.



Within our hotspots, partner organisations are now developing new strategies to support more effective legal representation of survivors. The creation of national and local networks of experienced anti-trafficking lawyers is one possible model that could encourage sharing of best practices. A similar initiative has been developed by Thai partner HRDF that is harnessing its existing human rights lawyers' network to provide legal assistance to other NGOs in the hotspot community of practice. Another potential strategy involves developing a training program for young lawyers in high-prevalence areas where legal capacity is the weakest, to sensitise them to modern slavery issues. This could help improve the local justice ecosystem and build a new generation of lawyers willing to take on modern slavery cases.

Image: Atul Loke, © Legatum Limited 2019



# Conclusion

Criminal justice solutions should be combined with interventions that encourage legal empowerment of vulnerable populations, connect marginalised communities with local justice systems and improve the capacity of local officials to respond to modern slavery crimes.

This report has sought to highlight the vast potential of the law to combat modern slavery. Arresting and prosecuting perpetrators is critical to fighting impunity, but this approach alone will not address the systemic factors that enable these crimes to persist. Instead, criminal justice solutions should be combined with interventions that encourage legal empowerment of vulnerable populations, connect marginalised communities with local justice systems and improve the capacity of local officials to respond to modern slavery crimes.

States have a responsibility to adopt robust legislation that provides a comprehensive prevention, protection and prosecution framework for all forms of modern slavery – and then ensure that it is effectively implemented and enforced. Civil society has a fundamental role to play in ensuring that the rights of survivors and at-risk individuals are respected and protected and supporting them to claim those rights when violated. This grassroots approach to using the law places the needs of individuals at the centre of anti-slavery efforts, where their voices are rarely heard.

This report has highlighted emerging best practices from the Freedom Fund's community-based legal interventions. Over the past four years of programming, we have seen the potential of grassroots legal work to help marginalised communities access justice and disrupt the enabling environment around modern slavery. We believe that these interventions could be replicated elsewhere, beyond the limited confines of our hotspot programs. To this end, as we continue to support this work, we seek to build stronger links between frontline NGOs and the global anti-slavery community. Looking forward, we hope to open a broader conversation on how best to leverage the power of the law to eradicate modern slavery.

We have seen the potential of grassroots legal work to help marginalised communities access justice and disrupt the enabling environment around modern slavery.

We believe that these interventions could be replicated elsewhere.

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