



PUTTING JUSTICE FIRST

Legal strategies to combat human trafficking in India

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FOUNDATION



FRONT COVER PHOTO Mithun, 11, carries a container full of dust on his shoulder at a laterite brick mine in Ratnagiri district, about 360km (224 miles) south of Mumbai. He is paid two Indian rupees (\$0.04) per brick and carries an average of 100 bricks out of the mine each day. Each brick costs between 10–14 rupees (\$0.22–\$0.31), and weighs around 40 kg. REUTERS/Danish Siddiqui

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The Freedom Fund is a new philanthropic initiative designed to bring much-needed financial resources and strategic focus to the fight against modern slavery. With an expert team and global perspective, the Freedom Fund aims to raise \$100 million for smart anti-slavery investments in the countries and sectors where it is most needed.

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FOREWORD

Slavery didn't end in the late 1800's. In fact there are more than 30 million men, women and children trapped in modern slavery around the world today, fuelling a business worth 150 billion dollars per year. India is home to some 14 million of those trapped by this crime. Modern slavery in this context includes human trafficking, forced labour, debt bondage and forced marriage. The common denominator for victims is vulnerability: they are insecure and at risk, they don't know their rights, and are unable to seek justice.

Despite being universally illegal, too often modern slavery is a crime that goes unpunished, including in India. The Thomson Reuters Foundation partnered with the Freedom Fund to investigate the impediments to justice for victims of trafficking. In parallel, Luthra & Luthra Law Offices analysed the legal framework in India, reviewing legislation to inform the research. The findings are presented in Putting Justice First.

The comprehensive research found significant impediments preventing victims of trafficking from using the courts: from the lack of specialised legal assistance, to the absence of protection for those abused. The report also highlights the confusion related to the applicability of the existing anti-trafficking laws, the gaps in data collection, and the weakness of the NGO sector, which despite being at the frontline of the fight against trafficking, remains disconnected from law enforcement and chronically under-funded. Putting Justice First also shares practical recommendations based upon research conducted among survivors, lawyers, and anti-trafficking NGOs. The report identifies 17 recommendations to help bring victims to the heart of the legal system, while also prosecuting the perpetrators of these odious crimes.

Putting Justice First recommends specialised training for lawyers dealing with human trafficking cases, and the need for effective data collection for the purpose of prosecution. The report also stresses the need to empower paralegals and NGOs workers in order to foster strong community engagement and to improve the legal outcomes for the victims of human trafficking. In particular, the study highlights the big, unaddressed need for legally trained staff, particularly female staff, to provide paralegal and counselling support at the community level.

We believe Putting Justice First has the potential to become a seminal report in the fight against trafficking in India, but we are also aware that in order for these recommendations to be put into practice we need to enlist new allies, partners and funders willing to join us on this complex journey. Our goal is bold: we want every victim of human trafficking and slavery across India to find protection and justice in the rule of law. It is possible.

Monique Villa
CEO, Thomson Reuters Foundation

Nick Grono
CEO, The Freedom Fund





EXECUTIVE SUMMARY

REUTERS/Parivartan Sharma



India is home to an estimated 14 million victims of human trafficking. Despite being illegal, forced and bonded labour are widespread and commercial sexual exploitation and child labour persist, often with impunity for perpetrators and limited legal recourse for victims.

Victims often require legal assistance from non-governmental organisations (NGOs) and independent lawyers. This assistance is wide-ranging, from ensuring claims are registered by the police through to briefing public prosecutors or pursuing other remedies for victims. However, legal resources and capacity are extremely limited and there is huge scope to scale up the fight against trafficking through the use of strategic legal initiatives.

This report examines the legal challenges faced by victims of human trafficking in India and makes key recommendations on legal strategies to combat trafficking and improve legal outcomes for victims. The report considers how trafficking victims, NGOs, independent (non-government) lawyers and other stakeholders navigate the criminal justice system in India, highlighting the challenges they face, from the initial filing of a claim through to trial. The introduction presents the scale of trafficking in India, the research methodology and key legal definitions. The key findings of the report are highlighted in Chapter 2 and recommendations for funders are discussed in Chapter 3. The recommendations focus on practical legal strategies to combat trafficking and obtain justice for victims. Chapter 4 presents examples of trafficking case studies in India. For a comprehensive summary of the legal framework in India, including key legislation and case law, see Appendix 1.

While prosecutions alone will not bring an end to trafficking, there is immense potential to use legal strategies to deliver justice to victims, deter potential perpetrators and put traffickers out of business.

SUMMARY OF FINDINGS

NGOs play a vital role in improving legal responses to human trafficking and forced labour in India. However, there are only a limited number of NGOs assisting with prosecutions or undertaking strategic litigation.

NGOs and their private lawyers undertake a range of legal work to tackle human trafficking and assist victims, including:

- Assisting with prosecutions: NGOs identify and rescue victims of trafficking, lodge criminal cases and subsequently assist victims throughout the trial process
- Helping victims to access legal entitlements and compensation
- Taking legal action to seize assets of crime or close establishments
- Undertaking strategic public interest litigation (PIL) on key issues to push for large change in policy, procedure and law.

“ We strongly feel that without prosecuting the perpetrators, fighting modern-day slavery becomes extremely difficult. ”

NGO worker, Bihar

NGOs stated that work on trafficking was not complete without legal work, and that, in addition to assisting to improve prosecutions, legal work to achieve systemic change through PIL and to affect the economic assets of traffickers was critical. However, the research and literature highlighted that out of prevention, protection and prosecution (the 'three P' areas), prosecution is the subject of the least attention by NGOs, with a limited number undertaking strong legal action. NGOs that do provide legal support have limited capacity and are only able to support a small percentage of cases.

It is a key time to take legal action against traffickers and slaveholders: A new anti-trafficking law, section 370 of the Indian Penal Code, has expanded the definition of trafficking and increased penalties.

The section prohibits human trafficking for the purpose of "physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude and the forced removal of organs". S370 offers significant potential to address all forms of slavery in India, especially forced labour – which, prior to the introduction of s370 was not treated as a serious offence and carried very weak penalties. However, NGOs are having varying success in using the provision, noting that while s370 is being used for offences traditionally viewed as "trafficking" such as sex and child trafficking, it is more difficult to get police to register bonded labour cases under the section. As this section holds so much potential, it is vital that NGO staff and lawyers share strategies, are trained on how to ensure maximum use of the provision, and that experienced lawyers undertake important cases that will make use of the section to its fullest extent.

Victims face vast challenges throughout the criminal justice process. NGOs provide critical legal support and protection to victims, and are likely to improve the chances of a successful prosecution.

NGOs stated that after victims are rescued and a criminal case is lodged, often the subsequent police investigation and prosecution does not result in a conviction. Victims are often harassed, intimidated, and become vulnerable to social stigma, on top of poor investigations, slow trials and insensitive court environments, resulting in the victim feeling further victimised. Whilst NGOs and private lawyers do not replace the police or public prosecutors, they can support and assist victims at every step of the process, ensuring greater accountability and better outcomes for victims. This support improves the victim experience of the criminal justice system, and is likely to improve the chance of a conviction

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We felt that nothing was happening in the courts – traffickers are not punished, the victim feels nothing has happened and there is no justice, rehabilitation is a grey area and nothing happens – so we felt that we should intervene legally. So we started to follow up on all our cases.”

NGO President and Senior Lawyer,
Delhi

NGOs assist the victim by:

- > hiring lawyers to represent the rights of the victim throughout the process.
- > helping victims and/or relatives to lodge complaints with the police.
- > ensuring that officials follow the correct process at rescue and collect sufficient evidence.
- > ensuring that victims are treated appropriately by the authorities and counselled before providing statements.
- > providing comprehensive protection and support to the victim throughout the process, including through use of community groups, community witness protection schemes, provision of aftercare and livelihood support.
- > opposing bail of the accused so they remain in jail and are unable to intimidate the victim. preparing the victim for testimony in court and assisting with travel and accommodation costs in interstate cases.
- > assisting the public prosecutor throughout the trial by preparing comprehensive written submissions based on precedent.
- > applying for maximum victim compensation.

NGOs undertake important strategic public interest litigation to push for systemic change in policy and laws. Although NGOs recognise the importance of running such cases, they are resource-intensive and require access to experienced lawyers in senior courts. Ensuring the directives and orders of these landmark judgements are implemented in practice remains challenging. Follow-up advocacy of government officials, and where necessary court action, is necessary. Additional funding and human resources for this work are required.

Few NGOs are undertaking legal action to affect the business of traffickers. Despite both the literature and qualitative research noting the importance of making the human trafficking trade less profitable, a limited number of NGOs focus on seizure of assets of traffickers or the sealing of places of business. Legal action to affect the assets and profits of traffickers is key, particularly when arrest of one member of the trafficking chain may not act as a sufficient deterrent. This may, in part, be explained by a lack of awareness of existing legislation, jurisprudence or lack of ability for NGOs to undertake further legal work on top of current caseloads. Training and know-how materials must be developed to increase legal action in this area.

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The main motive of the perpetrators ...is unjust enrichment by exploitation of the poor. Only when the perpetrators think that practising a bonded labour system and trafficking human beings is not economically viable and has a high risk of incarceration - will they desist from practising it.

”

Senior Lawyer, National NGO

NGOs need access to more junior and senior lawyers to ensure better legal outcomes.

The legal fight against trafficking requires committed and sensitive lawyers who are connected to the communities they represent, and NGOs do not always have access to appropriate lawyers to ensure optimum outcomes.

A number of gaps were identified:

- NGOs have difficulties finding committed lawyers who can undertake cases at an affordable cost or pro bono.
- NGOs lack access to high quality legal advice.
- Junior lawyers need mentoring by senior criminal lawyers.
- District level NGOs require more junior lawyers to provide support to senior lawyers at the community level and help run cases more efficiently.
- NGOs require lawyers to undertake cases in the higher courts, including opposing bail, running appeals and undertaking public interest litigation.
- NGO staff sometimes cannot access legal advice after-hours when rescues take place.

Some NGOs that undertake rescues and lodge first information reports (FIRs, the complaint to police which starts the criminal justice process) for the victim would like to provide further legal support, however they lack access to legal expertise and other resources to support such work. Additionally, both NGO staff and lawyers need legal training and support to understand legal developments and procedures, as well as clear guidance on how to support each stage of a case, from rescue through to trial and appeal.

There is a large need for legally trained staff to operate at the community level.

Many NGOs have legally trained staff who help identify victims, conduct rescues, provide both legal and basic trauma counselling to the victim, prepare victims for making statements to the police or judges, liaise with the victim throughout the trial stage and assist NGO lawyers in working with public prosecutors. These staff members are critical in connecting with local communities and improving the efficiency of legal work. However, district-level NGOs noted it is likely that many trafficking victims at the community level do not seek assistance and may not report cases because they do not trust the government authorities and are unaware of NGO bodies that can assist them. A more visible and accessible presence at the tehsil/taluk (administrative centre of a city / town) level, such as through legal aid centres and the deployment of community paralegals, may increase the



Someone that is rooted in the community as a paralegal is a great deterrent

Senior Lawyer and Director,
National NGO



number of victims coming forward and the number of cases being undertaken. To address other gaps identified by the research, it is vital there is a strong contingent of female staff members at the community level to provide basic psychosocial counselling, especially in sex or child trafficking scenarios.

NGO collaboration is limited and needs dramatic improvement, especially in interstate cases.

There is a large gap in collaboration between NGO actors, with NGOs rarely requesting advice and assistance from each other. Collaboration between NGOs that have acquired legal experience, skill and know-how in pursuing cases would help increase prosecution rates and improve legal outcomes for victims. Collaboration is particularly important in interstate cases where NGOs do not always have the ability to undertake investigations and rescues in another state, or protect and prepare the victim for trial once they return to their home state. For example, where the rescue and trial occurs outside the home state of the victim, when victims are repatriated to their home state, an NGO in the home state could assist with rehabilitation and victim protection. Feedback suggests existing networks are not functioning well and need to be strengthened to be truly effective, or a new and stronger referral mechanism should be established.

There is a huge need for improved case management systems and collection of critical data.

Many NGOs do not have adequate case management and trial monitoring systems in place. Case management systems are critical in reminding staff of the actions to be undertaken at different times. Additionally, case management systems can assist in collecting data on the profile of victims and other important indicators. Many interviewees expressed the need for more information to assist in understanding trends, key vulnerable communities and to therefore plan targeted legal interventions.

The role of media can be important in trafficking cases. Media articles have been used to initiate writ petitions at court, to apply public pressure when authorities are unresponsive, and to increase awareness of the incidence and effects of trafficking. However, some reports were not covered sensitively and were damaging to cases. NGOs recognised the need to understand how to use media more effectively, as well as the need for journalists to undergo training on how to better cover trafficking.

SUMMARY OF RECOMMENDATIONS

Seventeen recommendations are presented within six subgroups to improve the legal outcomes for victims of human trafficking. These recommendations are indicative of the suggestions of local NGOs and other experts. It is hoped funders looking to support legal work against trafficking in India will further explore the feasibility and costs of the recommendations and identify potential collaborations according to their scope and interests.

Access to legal support (direct funding of NGOs)

1. Fund NGOs to engage lawyers. To expand the legal capacity of NGOs, funding is required to engage both senior and junior lawyers, as well as support NGO staff to manage and assist lawyers.
2. Fund NGOs to support witness protection, conduct interstate rescues and support victims to travel to court. Many prosecutions do not succeed because of the strain placed on victims and witnesses, including threats, harassment, intimidation and the need to travel long distances to appear in court.

Centralised legal support initiatives

3. Create state-level 'legal hubs' coordinated at the national level to: connect with relevant NGOs in the region and provide assistance with individual cases; connect to existing legal networks and develop a pool of lawyers to undertake trafficking cases; assist with strategic litigation; and provide assistance with High and Supreme Court matters. The national hub could act as a 'national resource centre' and provide access to up-to-date resources and case law (see Recommendation 14).
 4. Establish community-level legal assistance centres to provide legal assistance to victims who are unaware of, or unable to travel to, legal services at the regional level.
 5. Network of community-level paralegals and counsellors. Create a programme to recruit and train community members, especially females, as paralegals to operate at the village or tehsil/taluk level within identified districts. Paralegals would provide both legal support and a basic level of psychosocial counselling to victims.
 6. Leverage pro bono legal support. Existing pro bono networks, organised through the
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state (legal services authorities), NGOs and commercial law firms, should be expanded and mobilised to enable NGOs to access legal support for trafficking cases.

7. Legal helpline for trafficking victims and NGOs. A legal information and referral helpline should be established to provide individuals and NGOs with initial legal guidance and referrals to NGOs and other entities that provide legal assistance.

Knowledge and training

8. Anti-trafficking legal training course for NGOs and lawyers. In the past five years there have been a number of new legal and procedural developments in the anti-trafficking field. Both new and experienced staff require comprehensive training on relevant legislation and case law; the use of Standard Operating Procedures, protocols, guidelines, rules and compensation schemes; and on practical guidance on how to work with police, public prosecutors and the judiciary.
9. Legal know-how tools should be developed, or existing tools should be adapted, to provide guidance to NGO staff and lawyers. The tools should include 'how-to' handbooks, illustrative flowcharts and checklists that provide step-by-step guidance. Best practice and innovative case examples could also be compiled.

Strategic Litigation and Procedural Reform

10. Funding mechanism for strategic litigation. Create a 'Strategic Litigation Fund' to assist NGOs and lawyers wanting to pursue high potential cases and to conduct a review of important court orders that require further legal advocacy and court action.
11. Support enforcement of anti-trafficking Standard Operating Procedures (SOPs) and procedural protocols. NGOs and other stakeholders should be supported to work with relevant government ministries to develop new SOPs and protocols and to seek the enforcement of existing SOPs and protocols.

Data and technology

12. Legal 'Anti-Trafficking Index'. An India anti-trafficking index should be developed to collate, analyse and publish data on trafficking offences. Indicators should include number of FIRs, investigations, prosecutions, convictions, acquittals and pending cases.
13. Strengthen data collection and case management systems. NGOs manage heavy caseloads and while most have some form of case management and record keeping, these can be improved upon. A legal 'tech camp' consisting of a small working group of NGOs, lawyers and information solution providers should be organised to develop improved case management and data collection systems that can be tailored for individual NGOs.
14. Develop an anti-trafficking legal web-portal to facilitate NGO sharing of and access to reliable and updated information to assist with legal cases. The web portal should

provide access to legislation, judgements, court directives, SOPs and protocols, summaries of case law, know-how and training materials, and a 'solutions-exchange' platform.

Media

15. Media training for NGOs and journalist training. To leverage the power of media to fight trafficking, NGOs should be trained on how to use the national and regional media to push for outcomes and raise awareness. Both national and regional journalists should be trained on the effects of trafficking, the need for better responses, recent developments and sensitive reporting.

Building partnerships and strengthening collaboration

16. Establish an online NGO network or strengthen an existing network to assist NGOs to connect with other vetted organisations. The NGOs should assist each other to find and intercept victims, with legal assistance, aftercare and/or rehabilitation of victims, especially when a victim is repatriated interstate. The legal helpline (see Recommendation 7) should refer to network members.
17. Launch workshops or an annual anti-trafficking legal conference in India to promote collaboration, sharing of knowledge and to develop new strategies.
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INTRODUCTION





The purpose of this report is to analyse the work of NGOs, identify challenges and opportunities to improve the legal outcomes for victims of human trafficking. This report will be used to enable NGOs to learn from each other's strategies and practices, and to provide guidance to funders who would like to support legal interventions.

CONTEXT

According to the Walk Free Foundation Global Slavery Index 2014, India is home to an estimated 14 million victims of human trafficking, including victims of sex trafficking, bonded labour, child labour, domestic servitude and forced marriage. According to India's 2008 Integrated Plan of Action to Prevent and Combat Human Trafficking, the scale of the problem is enormous "both in [the] number of trafficked persons and increasing number of locations". Traffickers are motivated by high profits and the low risk due to weak law enforcement and low levels of prosecution. To tackle human trafficking, prosecution and punishment of offenders must be pursued as well as legal action to seize the assets and profits of traffickers.

Key in this struggle is the work of non-government organisations (NGOs). They and their lawyers support victims by reporting cases and throughout the prosecution process, by assisting people to access rehabilitation and compensation entitlements, and by undertaking legal action to affect the assets of traffickers. NGOs also carry out strategic public interest litigation to push for systemic change in laws and policy. Whilst NGOs do not replace the police or public prosecutors, they can assist and monitor every step of the process, ensuring greater accountability and protection of the rights of victims. The work completed by NGOs is often a critical factor in a successful prosecution.

It is a key time to support legal action in the anti-trafficking field: in 2013, a strong anti-trafficking section of the Indian Penal Code, section 370, was adopted. This law, based on the United Nations Palermo Protocol, has the potential to significantly increase prosecution and punishment of all forms of trafficking, creating a much more serious deterrent.

SCALE OF TRAFFICKING PROBLEM

Forced labour is by far the largest trafficking problem in India. The exact number of victims of forced labour is disagreed upon, with the U.S. Department of State's Trafficking in Persons Report suggesting there are an estimated 20 to 65 million people in forced labour, with men, women and children in bondage in various industries. Those in forced labour often suffer from physical and sexual violence as a form of intimidation, with approximately 20 per cent of domestic workers suffering sexual abuse. Despite the Indian National Human Rights Commission guidelines stating that employers must be prosecuted in relation to all cases of bonded labour to "affirm and publicise the determination of the government", the rate of release and prosecution is extremely low. For example, although 2,313 bonded labourers were identified and released between 1996 and 2005 in Uttar Pradesh – a state that has a population of approximately 200 million - only 225 prosecutions were initiated.

In relation to child labour, a 2011 census by the central government of India estimated that 4.35 million children under 14 were in child labour. A 2013 report estimates the number of sex trafficking victims in India to be approximately 16 million, with an estimated 40 per cent of victims under the age 18. In general, reports cite many problems with enforcement of laws and prosecution of all forms of trafficking in India, including lack of action and corruption by government officials, long investigation and trial times, and mistreatment of victims.

VULNERABLE POPULATIONS

The most socially and economically marginalised communities in India are the most vulnerable to trafficking and forced labour, especially women and children. They include those officially categorised as scheduled castes, members of tribal communities (Adivasis) and religious minorities. Despite steps taken by the government for affirmative action, there remain much higher degrees of poverty and illiteracy among these communities than in the general population. Additionally, they often lack viable livelihood opportunities and financial services, resulting in a culture of constant indebtedness. Laws do exist to protect these communities, however enforcement remains weak.

Domestic migrant workers are also highly vulnerable to trafficking. These workers often migrate from poor rural areas where they cannot make a sufficient livelihood and are susceptible to exploitation. Despite the existence of laws, these are rarely enforced and workers often do not have fair terms of employment, health insurance and access to other entitlements. Discrimination and differences in language and culture can compound these problems.

METHODOLOGY

The report is based on extensive research that included in-depth interviews with over 80 interviewees from June to October 2014 (see Appendix 2 for interviewees), analysis of legislation, recent case law and relevant literature (see Appendix 5 for literature reviewed).

Interviewees included representatives from 28 NGOs working in Delhi, Bihar and Uttar Pradesh, as well as lawyers, survivors, judicial officers, police officers, members of Child Welfare Committees, labour commissioners and members of legal services authorities.

Two broad categories of NGOs were interviewed:

1. NGOs engaged in legal work: those that provide legal support to victims and pursue a substantial number of legal cases through to trial.
2. NGOs interfacing with the criminal justice system but not engaged in legal work: NGOs that work to combat trafficking and forced labour, but do not yet provide comprehensive legal support to victims or pursue cases in court.

GEOGRAPHIC SCOPE

This report is based on primary field research undertaken in three states in India: Bihar, Delhi and Uttar Pradesh. Some NGOs interviewed operate nationally and provided data in additional states.

Bihar, Delhi and Uttar Pradesh were chosen based on overlapping incidence of human trafficking and forced labour; prevalence of trafficking source, transit and destination locations; representative range of forced labour practices and sectors; number of NGOs working to legally combat human trafficking and forced labour; and a minimum threshold of states to allow for a deep immersion into field realities to form concrete and realistic recommendations.

FORMS OF HUMAN TRAFFICKING AND MODERN SLAVERY

Recognising that all forms of human trafficking exist in India, this report primarily considers the role of NGOs and their lawyers in assisting in sex trafficking, bonded labour and child labour cases. These three forms of human trafficking are prohibited under the Constitution of India, Indian Penal Code and by a range of specialist legislation.

Note: Domestic servitude is primarily treated as an offence of bonded/child labour, although a separate bill to tackle domestic servitude had been drafted but not passed at the time of publishing. The research considered the use of forced or fake marriage for the purpose of sexual exploitation as a form of sex trafficking, however it did not explore all forms of child or forced marriage. The research did not find many NGOs that had undertaken extensive legal action in relation to organ trafficking.

TRAFFICKING DEFINITIONS

The international and Indian legal definitions of bonded labour, child labour and sex trafficking used throughout the report are highlighted in this section. Under the new section 370 of the Indian Penal Code, trafficking of persons for “physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude and the forced removal of organs” is prohibited. Cases covering a wide variety of forms of modern-day slavery have been registered under this section.

• FORCED LABOUR AND BONDED LABOUR

Forced and compulsory labour, defined as “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”, is prohibited under the International Labour Organisation Conventions 29 and 159, both of which India has ratified. Forced labour is also prohibited under Article 23 of the Constitution of India, whilst the Indian Penal Code prohibits trafficking for the purpose of physical exploitation as well as unlawful compulsory labour.

Bonded labour is the primary form of forced labour in India, and is specifically prohibited under the Bonded Labour System (Abolition) Act. Under this Act, a bonded labourer is defined as a person who has entered into an agreement to provide labour in forced circumstances. The elements of force within the relationship, and how the courts have defined bonded and forced labour is explained in further detail in Appendix 1..

• CHILD LABOUR

India has ratified the Convention on the Rights of the Child and is bound to “recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”. Within India, Article 24 of the Constitution prohibits the employment of children under the age of 14 in any factory or mine or engaged in any other hazardous employment.

Various specific laws also prohibit certain forms of labour. Under the Child Labour (Prohibition and Abolition) Act 1986 children under the age of 14 are prohibited from working in certain industries including domestic work, working in roadside restaurants, working in mines, factories and in other industries. The Juvenile Justice (Care and Protection of Children) Act 2000, which defines a juvenile as a person under the age of 18, criminalises anyone subjecting a juvenile to cruelty, employing a juvenile for begging and procuring a juvenile for the purpose of hazardous employment or for bonded labour.

• SEX TRAFFICKING

Since India signed the Palermo Protocol and amended its Penal Code, trafficking of persons for the purpose of sexual exploitation has been comprehensively prohibited. The Immoral Traffic in Persons Act 1956 also prohibits the procuring, inducing or taking of a person for the purpose of prostitution. The Protection of Children from Sexual Offences Act 2012 prohibits a range of sexual offences against children under the age of 18.



RESEARCH FINDINGS





1. NGOS AND THE LEGAL SYSTEM

NGOs undertaking legal work to fight trafficking strongly expressed the necessity of their work to bring justice to victims and create a strong deterrent against trafficking.

NGOs and their private lawyers undertake a range of important legal work to tackle human trafficking and forced labour, including:

- Assisting with prosecutions (Part A)
- Helping victims access legal entitlements and back-payment of wages (Part B)
- Taking legal action to seize assets of crime or to close establishments (Part C)
- Undertaking strategic public interest litigation on key issues to push for systemic change in policy, procedure and law and ensure adherence to fundamental rights (Part D).

Most NGOs interviewed that undertake legal activities work on the four areas outlined.

NGOs were found to have a beneficial impact in assisting in prosecutions. The work of NGOs is likely to both improve the chance of achieving a conviction and victim experience with the criminal justice system. Legal action to attack the business of trafficking was also cited as important to create an economic deterrent against trafficking. Literature reviewed for this report emphasised that traffickers are motivated by high profits made and the low-risk of prosecution. It was also recognised that, in addition to assisting to improve prosecutions, legal work must also be used to help achieve systemic change in law and procedure through public interest litigation, such as pushing for regulation of placement agencies and rehabilitation homes.

See Appendix 3 for legal process charts concerning bonded labour, child labour and trafficking, and human trafficking.

PART A: ASSISTANCE IN PROSECUTIONS

2. HOW NGOS PROVIDE ASSISTANCE IN PROSECUTIONS

2.1 NGOs and their lawyers can assist and represent the victim in the criminal justice process once the victim has signed a “vakalatnama” (a type of power of attorney). NGOs then use their own in-house lawyers or hire external lawyers to monitor the police investigation and assist the public prosecutor at the trial.

2.2 These independent lawyers do not replace the prosecutor but can assist and have a

role in ensuring the rights of the victim are protected.

2.3 NGOs stressed the necessity to assist in prosecutions through the police and prosecutors directly, highlighting the negative impact on the victim if the investigation and prosecution are poorly run. One interviewee explained “We felt that nothing was happening in the courts – traffickers are not punished, the victim feels nothing has happened and there is no justice, rehabilitation is a grey area and nothing happens – so we felt that we should intervene legally. So we started to follow up on all our cases.”

2.4 NGOs that do not assist with prosecutions also stated this was an important part of comprehensively fighting trafficking, with one stakeholder emphasising that “we strongly feel that without prosecuting the perpetrators, fighting modern-day slavery becomes extremely difficult”.

2.5 To achieve a conviction, interviewees stated the main influence was the work of the NGO and lawyer, specifically monitoring and assisting in every stage of the process, using precedent and preparing written submissions. The provision of protection and support to the victim throughout the process was cited as critical in ensuring ongoing victim participation, and accordingly, a successful prosecution.

2.6 The conviction rate is difficult to confirm due to a lack of data, however almost all interviewees stated they had a good success rate, with some stating that most of the cases they assisted on resulted in conviction. Some NGOs have only begun assisting in prosecutions in the last five to six years and have a limited number of outcomes as trials are ongoing. One NGO in Delhi stated they had achieved eight convictions in the past two years, an NGO based in Uttar Pradesh and Bihar had achieved one conviction in Uttar Pradesh and three in Bihar, whilst an NGO working in five states across India shared that out of the 118 prosecutions it had run, 63 are ongoing and convictions have been secured in seven cases.

3. NGO LIMITATIONS

Despite the importance of legal work, NGOs are limited in their reach and cannot assist all victims due to capacity and resource constraints.

3.1 The research and literature highlighted that out of ‘prevention, protection and prosecution’ (the three ‘P’ areas), prosecution is the subject of the least attention by NGOs, with a limited number undertaking strong legal action.

3.2 NGOs that do provide legal support have limited capacity and are only able to support a small percentage of cases. Of the NGOs interviewed that assist with prosecutions, the number of cases undertaken varies considerably: for example, one NGO is currently assisting in six prosecutions, whilst another had 145 ongoing cases and opens two to three new cases every month.

3.3 Some NGOs cannot assist all victims throughout the entire case, with one experienced Delhi-based national NGO explaining that it is providing comprehensive assistance in approximately 90 cases, despite actually rescuing and lodging FIRs for

approximately 900 victims in the same period. This NGO explained: “We follow up on every case until bail. We don’t follow up on every case through to trial unless it is very serious as we do not have enough resources, however if we had the resources we would want to do this for at least five years. A longer time frame is required to ensure we get as many convictions as possible”.

3.4 A number of NGOs that operate nationally expressed frustration with not having sufficient staff and/or lawyers on the ground in other states – particularly in states vulnerable to trafficking where many victims are sourced from, such as Assam, Jharkhand and Chhattisgarh. These states are highly vulnerable to trafficking and suffer from low conviction rates.

3.5 Some district-based NGOs wished to expand to address trafficking concerns in additional districts within the same state. For example, an NGO in Uttar Pradesh, the most populous state in India with a population of approximately 200 million, stated a desire to expand its work into more districts within the state.

3.6 Additionally, some district-based NGOs wished to also extend their presence within districts. NGOs are concerned that many trafficking victims within districts at the village level do not seek assistance and may not report cases because they do not trust the government authorities and are unaware of, or unable to travel to, relevant NGOs.

3.7 There is a lack of accessible and identifiable non-government legal assistance within districts at the community level. A more visible and accessible presence at the tehsil/taluk level, such as through identifiable offices and the deployment of community paralegals, may increase the number of victims coming forward and the number of cases being undertaken.

3.8 There are a large number of NGOs that help to rescue victims and report cases but do not otherwise assist victims with legal matters. They expressed a desire to build their legal capacity to enable them to support victims throughout the entire prosecution process. Some of these NGOs had lodged cases using important new legal provisions which, if supported, could result in improved outcomes for victims. NGOs wishing to assist in prosecutions expressed a desire to hire trial court lawyers, have access to a high court lawyer when required, paralegal staff to assist and monitor cases, and comprehensive case management and monitoring systems.

3.9 It is difficult to obtain funding for legal work, due to the length of trials (between two to six years on average), the difficulty in working within the inefficient and sometimes corrupt Indian justice system and the need to have comprehensive systems in place to support those rescued.

4. LEGAL SUPPORT PROVIDED BY NGOS

NGOs and their lawyers undertake a range of actions to improve victim experience in the criminal justice process and increase the chance of a successful prosecution. The research identified a number of key stages where NGOs provide assistance in the prosecution process, set out below. The process followed sometimes differs, therefore the stages set out are not

necessarily in consecutive order. Some stages, such as the 'Supporting the Victim' stage applies throughout the entire case, once the victim is rescued.

The process in bonded labour, child labour and sex trafficking cases also slightly differs (See the process flowcharts in Appendix 3). In bonded labour and child labour cases, the Executive Magistrate (which is usually the District Magistrate or Sub-Divisional Magistrate) is involved in identifying, rescuing and releasing victims and ensuring a police complaint is lodged. Labour Department officials also have a role in identifying victims, rescuing them and ensuring labour entitlements are paid, including back-payment of wages. In Delhi, child labour rescues are undertaken by a taskforce. Police officers are involved in rescue and in any subsequent criminal case. In sex trafficking cases, the police are usually the primary official body involved in coordinating rescues. In particular, Special Police Officers are required to attend sex trafficking rescues under the Immoral Traffic (Prevention) Act. Sometimes Child Welfare Committee members and representatives of the Executive Magistrate also attend.

STAGE 1: VICTIM IDENTIFICATION

- A. Many NGOs identify victims through community networks. The community networks include organised community vigilance committees, organised self-help groups and informal volunteer networks. These groups are trained to identify possible trafficking situations and to report to NGO staff and the relevant authorities.
 - B. Despite the benefits of community networks, they are informal in nature and do not reach all victims. Interviewees were concerned that many people affected by trafficking at the district level may not come into contact with community networks, or not feel comfortable in talking to them. Individuals may not be able to travel from rural areas to regional cities where NGO headquarters are often based to report possible cases. An NGO in Uttar Pradesh noted that identifying cases through community networks alone is not sufficient, and there is a need for recognisable centres at the tehsil/taluk level.
 - C. Outreach and awareness-raising with the local village governments and at the community level is also key, with reports of trafficking and forced labour cases sometimes coming from the local village Gram Pradhan (elected leader of the village governance structure), from other members of the panchayat (local self-government organisation) and the community.
 - D. NGOs identified the media as an important outreach and awareness tool, which is used throughout all stages of a prosecution case.
 - E. Many NGOs also have dedicated staff that periodically investigate or identify victims by focusing on known 'hot spots' such as transport hubs through which children are regularly trafficked, red-light areas and key labour sites such as brick-kilns and factories.
 - F. Identifying victims is becoming increasingly difficult as traffickers become more sophisticated and use different modes of transport and venues. For example, in sex-trafficking cases, girls are often kept in residential areas and are frequently moved around, making identification and planning of rescues almost impossible due to difficulties in
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THE ROLE AND IMPORTANCE OF THE MEDIA

NGOs stressed the importance of the media in raising awareness of the presence of anti-trafficking NGOs and to pressure authorities to act at the national and local level. In some cases, NGOs tell the media every time they have undertaken a rescue, lodge a petition at court or achieve a successful judicial outcome. One NGO lawyer explained “because our bonded labour case was published we got two more cases.

This is how we use the media – so that our works get out and we raise awareness”. To put pressure on authorities and traffickers, some NGOs invite the media to rescues if they believe

there might be some trouble (though this can put victims privacy at risk), or to the police station if the correct procedure is not being followed. In some cases, media reports have formed the basis of a writ petition at the Courts.

However, some NGOs reported that the local level media were sometimes “against” the victim or pursued unethical and irresponsible journalism that damaged cases and further traumatised victims. NGOs identified a need for greater training on how to use the media to ensure maximum impact, as well as training of journalists to increase and improve reporting of trafficking issues.

collecting evidence in residential areas, and community reluctance to report cases. In relation to child trafficking in Bihar, NGOs reported a rise in traffickers coercing parents or known family members to escort children on the initial part of a journey to avoid identification at train stations.

- G. Once aware of a trafficking situation, NGOs discretely investigate to verify, collect evidence (photographs, recordings), and plan the rescue with the victim. Where the slaveholder is living in the same location, or if the victim is fearful of the rescue outcome, the planning and counselling process can take up to two years.
- H. Investigation and planning is dangerous. NGOs stated that better equipment, such as cameras with longer lenses, would assist in undertaking these operations in a better and safer way.

STAGE 2: PREPARING A RESCUE

- A. After investigating, NGOs report the matter to the relevant authority, usually being careful not to provide information that would allow identification of the suspect or location and furthering that already heightened risk facing the victim. Many examples were given of victims being removed prior to the rescue, or otherwise suffering from repercussions, after information was leaked. Interviewees noted that NGO staff, and if necessary lawyers, should attend to report the matter with the victim or a relative of the victim.

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- B. Senior officers with authority should be approached to ensure greater accountability, and where senior officials are unresponsive, liaising with bodies such as State and National Human Rights Commissions. Reporting to the senior officials with evidence reduces the risk of information being leaked prior to any rescue.
 - C. To prevent pre-rescue leaks NGOs reported informing a station outside the area of the rescue, not providing the exact location until the day of the raid, and photocopying or photographing the order for the rescue.
 - D. All documents and evidence must be well-prepared to minimise the work for the official to take the case forward.

STAGE 3: RESCUE

- A. NGO workers, and where possible lawyers, attend rescues to ensure correct procedures are followed by the police, including the collection of evidence. Several NGOs in Uttar Pradesh noted that having lawyers present helps ensure the correct process is undertaken by the relevant authority. These NGOs found that officials were more likely to listen to and follow the advice of a lawyer than of other NGO staff. In the words of one NGO worker, “When the advocates speak on the spot, then even the officials will listen – they don’t listen to the NGO. These advocates tell them ‘this is wrong, this should happen this way’”.
 - B. NGOs stated that victims should always be informed about the rescue, their rights, next steps, and the official procedures to be followed.
 - C. Many NGOs stated that cases fail due to insufficient evidence, or because there was not an independent witness present during the recovery of evidence. NGO staff and lawyers photograph and document the rescue and evidence collection process to improve accountability and assist with trial preparation.
 - D. NGOs have called on community volunteers to act as independent witnesses, and they note that they usually participate well in the criminal justice process and appear in court. NGO staff can also be witnesses, and both the research and the literature notes that in general, these cases are stronger at court.
 - E. Staff counsel victims immediately after the rescue to prepare them before any statements are taken by the police or magistrate. These statements are critical for the case. Among other things, these statements must show that the offence took place. The window to prepare victims for their statement to the police or the magistrate is very limited after the rescue occurs. In particular, in sex trafficking cases, police statements are often taken immediately following a rescue at the police station. In the words of one interviewee, “this is a huge factor in acquittal as the statements tend to be untruthful”. Although victims can also make statements to magistrates – which are seen to be more reliable – the timing of this process is often determined by the police. Due to these factors, a number of interviewees stressed that it is important that staff attending rescues are trained and guided in asking victims simple questions that demonstrate that the offence has taken place.
 - F. NGOs reported that allowing time in between the rescue and making a statement is
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instrumental. When a statement is taken a few days after the rescue it tends to be more accurate and comprehensive, and ensures more of the relevant sections are included on the FIR. One NGO reported working with the relevant state government ministry to draft directives regarding when police should take statements after rescue.

- G. In relation to bonded labour rescues, one NGO in Uttar Pradesh noted that lawyers are often required at bonded labour rescues where statements can be taken at the labour site. NGO staff reported that when a statement is taken at the rescue site, officials are more likely to be influenced by the employer. Lawyers are required to make sure officials follow the correct process. Officials often 'agree' not to officially recognise the victim as a bonded labourer due to employer pressure or in exchange for payment of wages. To reduce the likelihood of pressure and protect the safety of labourers, NGOs try to ensure that labourers are removed from the site as soon as possible, and before making statements to the District Magistrate.
- H. If the person is not found to be a bonded labourer by officials, no release certificate is provided, denying the labourer access to compensation and government schemes. The release certificate also triggers the criminal justice process, so without one a prosecution is unlikely to take place.
- I. Some NGOs do not include lawyers in rescues, instead using staff trained in the relevant laws and processes. Staff contact lawyers frequently for advice during rescues and at the police station, however when rescues (usually sex trafficking rescues) occur at night, some interviewees are unable to access legal advice. It was identified that it would be useful to have a reliable legal source/helpline to access support on steps to be undertaken at rescue and offences applicable to be placed on the FIR.
- J. The need for female staff members to assist at rescues and throughout prosecution cases was also underscored, with one senior member of an anti-sex trafficking NGO stressing that "female victims don't trust the men-folk". A female survivor interviewed stated she felt more comfortable after talking to female staff members.
- K. The research identified a gap in female staff at the district level in Uttar Pradesh, with the majority of staff interviewed being male. This may mean that female victims may not be reporting on all offences, and one expert expressed concern that sexual assault of female bonded labourers is often not picked up, with cases focusing on labour exploitation only. Additionally, it was noted some NGO staff need training on basic psychosocial counselling. This is an area that has been overlooked and can inhibit the ability of NGO staff and lawyers to understand the needs and behaviour of victims.
- L. Almost all NGOs reported having been attacked at a rescue or being subject to severe intimidation. Although NGOs ensure that police officers accompany them to a rescue, this does not always guarantee protection. Where possible, NGOs try to document the rescue on video (while not making the video publicly available) and some reported including volunteers in rescues to shield victims until they are removed from the location.
- M. NGOs reported being the subject of a "counter case", where a criminal case is lodged against victims or NGO staff. NGO lawyers often are required to undertake these cases as well, with one lawyer interviewed stating that he had assisted in three such cases in the previous 12 months.

THE POTENTIAL OF PARALEGALS

All NGOs interviewed have staff that are not practising lawyers, but that are trained in legal processes and assist in many stages of trafficking cases (paralegals). These staff members assist at rescues, counsel the victim, prepare victims for statements to the police or magistrate, liaise with the victim throughout the criminal justice process and assist the lawyer in preparing the victim for court.

The literature emphasises the importance of paralegals, noting that “the most successful legal and judicial systems employ ‘victim-witness coordinators’ to work directly with individuals and their advocates to help them navigate the criminal justice system”. At the district level in Uttar Pradesh and Bihar, staff members tended to be community coordinators, whilst in Delhi many were qualified female social workers. Some national NGOs did not use paralegals and realised that such a “triage system”, whereby paralegals do much of the preparation work that lawyers are not technically required for, would be beneficial and allow lawyers to undertake more cases. At the district level more staff, particularly females, trained as paralegals and counsellors would be useful. Although some NGOs had volunteer community paralegals, full time, paid paralegals based at the community level are needed to provide regular connection with communities.

Additionally, interviewees reported the current staff could be further trained to provide improved support to lawyers and communities.

Many NGOs found that survivors operating from their local community become the best paralegals. Victims are more likely to feel connected and safe with someone who has a similar experience, and who is able to advise on the criminal justice system process from a survivor perspective. It was stressed that a survivor paralegal “rooted in the community...is a great deterrent” and, in addition to helping the victim (and lawyer) throughout the pre-trial and trial stages, can assist in ensuring that judgements are “taken on” by the community and implemented on the ground.

The Legal Services Authorities (the government legal aid system) are planning to introduce paralegals at the district level. Although these paralegals are not in place, and will take time to become operational, NGOs should ensure they monitor the developments and work of the LSAs, and where possible use their services. For example, if they offer to train all new paralegals on trafficking and provide relevant numbers for referrals then these LSA paralegals can become powerful outreach partners.

Taking a human rights-based approach

- N. Problems can arise at rescue and throughout the criminal justice process in ensuring the rights and choices of survivors are respected. In particular, the literature highlights the negative impact that the criminal justice process has had including: the mass rescue of women and girls by the police and placement indefinitely in poorly run rehabilitation homes without support; “rescue” and detention of adult consenting sex workers against their will; and the general re-traumatisation and intimidation that those who participate in criminal trials often face.
- O. Some NGO workers stated they try and ensure that the police only remove adults they believe are victims of trafficking. Interviewees stated the police are beginning to distinguish between consenting sex workers and trafficking victims. If NGOs determine the women are consenting sex workers they will ask the magistrate to release the women after the 21-day temporary custody period.
- P. Before undertaking rescues, NGOs must think carefully about the effects of rescue and the consequent criminal justice process on victims and the ability to assist and support victims with this process. Where possible, NGOs should establish a relationship before rescues to confirm whether a rescue should take place and establish the trust of the victims. Options to reduce victim exposure to further trauma or intimidation in the criminal justice process should also be pursued. Many of these actions, such as opposing bail and ensuring a speedy trial as far as possible, are being undertaken by NGOs already. Legal work that does not require as much victim participation, such as seizing assets of traffickers, could also be scaled up.

Adult sex trafficking victims

- Q. Some interviewees stated that adult women are treated differently by police and judicial officers, with some officers refusing to believe that adult women can be trafficked against their consent. Literature reviewed for this report estimates that 60 per cent of sex trafficking victims are adults, which may mean that a huge number of victims are overlooked. Many of these victims may have entered the system as minors.

Intercepting and rescuing interstate victims

- R. Many trafficking cases cross state borders and require collaboration between NGOs and other bodies in different stages of the case. Interstate rescues can be extremely resource-intensive, requiring both financial resources and management.
- S. In some cases, NGOs hear about people from their district and state being trafficked across a border and must coordinate with other actors, or travel themselves, to this state to investigate and carry out a rescue. In other cases, the victim is rescued in the NGO’s

state but has been trafficked from one state through various other states previously. In these cases, NGOs may face language problems and require translators, face difficulty in locating the relatives of the victim in another state or have trouble in obtaining sufficient evidence from the other states involved (see Case Study 1 on page 83). When a victim is moved across a state border the NGO will travel themselves to carry out a rescue, use government helplines such as ChildLine, or coordinate with other actors.

- T. However, in general there is a large lack of collaboration and referrals between NGOs. Some NGO networks have arisen to improve connectivity between states and allow NGOs to contact like-minded partners who may assist them. Nevertheless, all interviewees stressed the need for much better collaboration and connection to NGOs across India, indicating that the existing networks need strengthening, or a new and stronger referral mechanism should be established. The literature also underscores the need for NGO 'grids' and better 'systems thinking' on how to work together. Such collaboration could significantly improve action in interstate cases. For example, where a victim is trafficked interstate, an NGO from the home state can notify other NGOs to assist in intercepting and rescuing the victim and collecting relevant evidence. Additionally, as trafficking is considered a "continuing" offence, it is possible to lodge an FIR at the "source" point and to transfer the entire case to a reputable NGO in the home state of the victim. This will reduce the need for the victim to travel interstate and will ensure that the one NGO provides holistic support throughout the process (see Stage 6 on page 44).

STAGE 4: Lodging the first information report (FIR) and the police investigation

- A. All interviewees reported it was critical that NGO staff and/or lawyers attend the police station with the victims to ensure the FIR is registered with the appropriate, sufficiently serious offences. The FIR is the complaint made to the police which starts the criminal justice process.
- B. Most NGOs stated they had problems ensuring the FIR was registered, and as a result needed to push police for FIR registration. When the police fail to lodge an FIR, NGOs approach senior officials, and if there is still no action, apply to the Magistrates' Court for an order to register an FIR. If this action is unsuccessful, some lawyers lodge complaints directly to the High Court, which has ordered the police to lodge an FIR, investigate and report back to the High Court.
- C. It is critical that the relevant and sufficiently serious (and preferably non-bailable) offences are included on the FIR. NGO staff support identification of relevant offences by referring to relevant case law and/or the Act applicable to the facts, to show which offences are applicable.
- D. Some offences require special procedures that ensure the police investigation and trial is completed quickly such as the Protection of Children from Sexual Offence Act, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act or the amended sections of the Indian Penal Code. Offences under these Acts are also generally cognisable (within the jurisdiction of a court) and non-bailable. Additionally, using this
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legislation in addition to the specialist bonded and child labour laws can provide the opportunity to transfer cases to a normal criminal court , increase punishment against employers and improve the net amount of compensation available to victims. It is vital that NGOs and lawyers are comprehensively trained and have access to concise materials to help them identify which offences to push for on the FIR and why. Some interviewees reported difficulty in remembering all the relevant offences, protocols and steps involved in trafficking cases (see 'Vital training and 'know-how' material' on page xx) and reported missing opportunities to push for stricter penalties or obtain higher compensation for victims due to a lack of knowledge.

- E. Staff presence ensured victims were treated appropriately, taken for medical examinations on time to ensure forensic evidence is not lost , and that victims were presented before the right magistrate within the required time period (children must appear before the Child Welfare Committee within 24 hours, adults before a magistrate within certain timeframes depending on offences committed) .
- F. Some NGOs reported difficulty in attaining adequate treatment of victims by police. Methods of intimidation, such as having traffickers at the police station, and harassment were described. Relationships with senior police officials and the State and National Human Rights Commission are key at this stage, with many NGOs fostering these relationships to 'call in' contacts when local officers are not following the right process.
- G. NGO staff and lawyers follow up with the police throughout the investigation and ask the police to review the evidence and the charge sheet. When the charge sheet is brought before the court, NGO lawyers representing the victim can argue for additional charges to be included. Where the correct offences were not included in the FIR, this step can be critical.

VITAL TRAINING AND 'KNOW-HOW' MATERIAL

In the past two years there have been significant developments in the anti-trafficking field, from new and amended legislation including s370 and the Protection of Children from Sexual Offences Act, new Supreme and High Court case law, to development of important Standard Operating Procedures and establishment of victim compensation schemes.

Experienced anti-trafficking workers have noted the difficulty in recalling all the new procedures and understanding them within the already complicated legal framework (see Appendix 1 for an understanding of all legislation and case law). On the ground, gaps in knowledge were evident, particularly with NGO staff and lawyers who are new to the field.

Section 370 and Section 370A

- H. Section 370 'Trafficking of Persons' of the Indian Penal Code was introduced in mid-2013 as part of the wide-ranging amendments to the criminal law to address violence against women and children. S370 has the potential to significantly increase prosecution and punishment of offenders. The section prohibits trafficking for the purpose of physical and sexual exploitation, with exploitation defined to include "sexual exploitation, slavery or practices similar to slavery, servitude or the forced removal of organs". Although not interpreted by the courts, most legal experts believe that slavery and servitude would include situations of bonded and other forced labour – where a person does not have freedom of employment and is made to work. Prosecution and punishment of employers that use bonded labourers could dramatically increase, creating a much more serious deterrent.
- I. The new s370A criminalises those who engage a victim of sex trafficking and has the potential to affect customers and those organising the sexual exploitation of trafficked adults and children. According to one legal expert interviewed, section s370A is not being focused on as much as s370, and there needs to be more awareness and training on how s370A can be applied to affect the trafficking trade.
- J. NGOs are working to ensure s370 is included in FIRs. This is especially important in cases of child labour and bonded labour where, prior to the introduction of s370, the penalties for breaches were very weak, bail was automatic and the process of using the quasi-judicial labour courts or summary courts were not as effective as using the criminal courts. One interviewee stressed that, prior to the introduction of s370, bonded labour cases were treated "like a road traffic violation".
- K. NGOs are having varying success in using the provision. While s370 is being used for offences traditionally viewed as "trafficking", such as sex and child trafficking, it is more difficult to get police to register bonded labour cases under s370.
- L. NGOs at the district level in Uttar Pradesh reported it was more difficult to get s370 included in the FIR, especially when the victim was from the same village or town as the employer and not being transported to another district or state. Some stakeholders appear to hold a presumption that movement, or the intention to move a person, is required to meet the requirements of s370. However multiple legal experts agree that movement is not required, for as soon as one person recruits or receives another for the purpose of exploitation, then trafficking is established. For example, "For children born into intergenerational bonded labour – they are born on the labour site – then as soon as the employer comes along and asks that child to work, then recruitment for the purpose of exploitation under section 370 has occurred. As soon as the child begins to work, then exploitation has occurred".
- M. Some NGOs are having success in this area, In South India, one national NGO reported inclusion of s370 on the FIR and getting bail denied in cases where the labourers were from the neighbouring village. In Delhi, one NGO has lodged over 36 child labour cases where the child was not trafficked from another state, but living in Delhi when recruited and exploited for labour purposes.
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N. The research did not find any trafficking cases using s370 that had finalised. However stakeholders noted where s370 is included on the FIR or charge sheet, the accused was generally not granted bail, at least in the initial stages of the case. The denial of bail can lead to a faster police investigation and trial, which is of itself a great benefit. Additionally, the judiciary and police take the section more seriously.

STAGE 5: ARREST AND BAIL

- A. One problem cited by NGOs is that not all members of trafficking chains are arrested. NGOs reported that often only 'middle operators' get arrested and charged, as they are the ones that the victims can identify and testify against, but the criminals that organise the operation are generally not known to the victims or arrested. Although investigation and arrest is managed by the police, and NGOs are somewhat limited in influencing this process, one NGO did report recently undertaking significant investigations in one case and ensuring the arrest of dozens of members of one trafficking ring. Other NGOs should try to also undertake more investigations to ensure the maximum number of people are arrested in each case.
- B. NGOs stressed that opposing bail of traffickers is very important. Most NGOs stated they oppose the bail of those arrested through independent lawyers assisting the public prosecutor at the lower court and, where an order is appealed, lawyers appearing directly at the High Court. Bail is often denied in the lower courts when s370 is included in the FIR or charge sheet, or when other serious offences under the Protection of Children from Sexual Offences Act, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, or the Indian Penal Code are in place. If the offences placed on the FIR are less serious, or bailable, then bail is usually granted either by the police at the station or by the courts. This has usually been the case with bonded and child labour, however this may change if s370 is applied.
- C. A number of reasons were given as to why the denial of bail is beneficial:
- Victims feel more protected and are less likely to suffer from harassment if the accused is held in custody.
 - To stop the accused from absconding. One NGO from Bihar noted that towards the end of several trials, when it was evident a successful prosecution was imminent, the accused had absconded.
 - The police investigation process must conclude within 60-90 days if the person is being held in custody. However, if the investigation is not completed in this time, the accused automatically attains bail. .
 - Trial process is faster as the accused is being held in custody, with trial court dates being set for every 14 days. This allows the prosecution to lead evidence early, so the victim can testify as soon as possible.
 - One NGO stated that once bail is denied, there is a higher rate of conviction.
- D. Most NGOs emphasised the importance of having a lawyer assist the public prosecutor at the District Court to oppose bail. The public prosecutor often does not fully understand the technical laws of human trafficking and may need assistance to draft written

submissions. Interviewees stressed that written submissions that cited relevant case precedent increased accountability, were taken more seriously by judicial officers and improved the ability to oppose bail at a higher court if necessary.

- E. However, although noting the importance of opposing bail, some NGOs stated that they sometimes do not have access to lawyers at either the District Court (to assist the public prosecutor) or at the High Court (when the order is appealed to this court) to undertake this role.
- F. NGOs and lawyers reported not receiving notice when the accused has applied for bail, and this means that they are not able to assist in opposing bail. Some interviewees noted the importance of NGOs having access to clerks and paralegals to check court listings and the police station for notice of bail applications.

STAGE 6: SUPPORTING THE VICTIM

- A. Victims turning hostile during the criminal justice process is a key factor in acquittals, with some victims refusing to testify or changing their testimony in court.

Reasons for hostility include:

i. Intimidation and harassment – Throughout the police investigation and trial process the victim, witnesses and members of the victim’s family can be subjected to intimidation and harassment by the accused and law enforcement. In the words of one NGO Director, victim protection “is the most important ingredient in the trial – if her statement is diluted somehow then the whole case falls apart”. Another NGO stated “without a victim’s testimony, there is no chance of winning a case” and that aftercare and protection is critical in ensuring the victim feels safe and secure in testifying. NGOs use legal measures to stop harassment and intimidation of victims and witnesses. One NGO stated it makes written submissions to the police and the court requesting immediate intervention. The court can make orders to the police to ensure protection of the victim, witnesses, or those related to a victim/witness, and request reports back to the court on these measures. A High Court lawyer assisting an NGO in Uttar Pradesh stated that harassment by the accused is an automatic breach of bail conditions and an application to revoke bail can be made.

ii. Long trial time - One NGO stated that investigation and trial delays were the “biggest problem” in successfully prosecuting the case. Often the victim has other concerns, such as making a livelihood, and does not have the time, money or inclination to continue with the criminal justice process. In the pre-trial stage, delay can occur if the police fail to lodge an FIR or promptly investigate a complaint and file a charge sheet. Delay in the trial can occur when the defence requests, and is granted, adjournments, witnesses or the accused do not appear in court, or because of strikes or delays in the criminal justice system. In cases of long-term delay in the investigation process or trial, an appeal to the High Court can be made to expedite the case. This would

require the lower court to ensure the trial takes place within certain timeframes and to report to the High Court on progress. However, according to one High Court lawyer, the case must be considered sufficiently serious and there must have been a delay for a considerable time.

Adjournments are common tactics of the defence, enabling further time to convince the victim and his/her family to drop the case. As an adjournment can occur on the day of the hearing, victims and witnesses may have taken time off work/school and travelled to court, causing great inconvenience and additional cost. Interviewees emphasised that the public prosecutor and independent lawyer must oppose the adjournment. Additionally, cost orders can be applied so that the defence pay a fine for adjournments, or if travel is required, a request can be made to the judge that there can be no adjournment on the victim testimony date.

iii. Inability to travel to court – Trials sometimes do not proceed or result in acquittal due to the inability of victims and witnesses to attend the court. In particular, victims and witnesses who live far away or in another state have to take time out of their jobs or school and pay for travel and accommodation in another state or district. Sometimes the government provides money for travel costs, but often the costs of travel and accommodation are significantly higher. If a victim and a family member (or NGO representative) have to fly, the costs can increase dramatically. Some NGOs try and assist by providing travel and accommodation to victim-witnesses and their families, but many reported that they have limited funds to assist in this regard.

IV. Social stigma – In addition to physical violence, the accused threaten victims with social stigma, stating the ‘publicity’ brought by taking legal action in a public court will reduce the chances of marriage or employment in the area.

Victim and witness protection

- B. Although the police should provide protection to victims, some NGOs reported difficulty in obtaining sufficient police protection and devised their own victim and witness protection measures. One NGO in Uttar Pradesh established its own “witness protection scheme” made up of community volunteers. Once a person is rescued and released from state custody, the NGO places women with volunteer families if the victim is too scared to return home.
- C. Some NGOs in Uttar Pradesh and Bihar use Community Vigilance Committees (CVCs) to protect victims. Survivors of trafficking and forced labour are placed in CVCs after rescue and these groups provide assistance throughout the process - including a form of community protection due to the collective strength of the group. In some cases, these CVCs will collectively report harassment at the police station.
- D. Following the rescue, NGOs provide ‘aftercare’ to victims. This can include: ensuring victims can access all government schemes and entitlements; assistance with accessing rehabilitation support services or providing them themselves (accommodation, education); provision of psychosocial counselling; and encouraging victims to maintain

CASE MANAGEMENT AND DATA COLLECTION SYSTEMS

Police and courts are often not required to inform NGOs of the status of investigations and the trial. As a result, case management systems are critical in alerting NGO staff to the stages of the case and inputs required. However, many NGOs do not have adequate case management and trial monitoring systems in place.

Many stakeholders identified a need for data collection on the profile of victims, including where they were trafficked to and from to provide staff with a comprehensive picture of trafficking activities.

One Delhi-based NGO developed a legal database with 202 monitoring indicators, so they can;

- Monitor trial cases and identify action that needs to be undertaken;

- Document the working and living conditions of a victim, calculate wages owed and any payment of back wages;
- Track enforcement of legal orders; and
- Provide information during a trial in real time to the courts. For example, on the basis of data extracted from the database, the National Commission on Child Rights was able to provide an affidavit that provided data to the High Court on the total number of identified trafficking victims versus the number of rescue operations and rescued victims in Delhi.

participation in the criminal justice process. Livelihood support is also important, especially if the victim was unable to find alternative employment or obtain rehabilitation entitlements or government benefits.

Updating the victim and preparing for trial

- E. Victims must be kept up to date and understand the progress of their case. Most NGOs have a system whereby lawyers update NGO workers, who then liaise with the victim (see *The potential of paralegals*, page 38), or the lawyers and NGO staff update the victim together.
- F. Most NGOs follow up with victims and provide aftercare support for at least two years after rescue. However, as the average case lasts between two and six years, NGOs can lose contact with victims, especially ones who move across state borders. One NGO senior lawyer explained: “Victims are not available at time of trial – so we let go of cases. This happens in quite a few of our cases – we lose the victim. This is despite having post-rescue follow-up ...A relationship with other NGOs in other parts of India where the victim may return to would be helpful; if we could all work together in some way...” In this situation, and in other interstate scenarios (including intercepting victims, undertaking interstate rescues, see *Recommendation 2* on page 62), NGO collaboration could significantly assist. For example, where the rescue and trial are outside the home state of the victim, when victims are repatriated to their home state, an NGO in the home state could be contacted to assist with rehabilitation and victim protection. The two NGOs could also work together on updating the victim, preparing the victim for trial and facilitating interstate travel.
- G. The importance of preparing the victim to provide their testimony in court, such as through mock trials, reviewing statements and sharing additional information with the courts, was emphasised by all NGOs and lawyers.

STAGE 7: THE TRIAL

- A. Independent lawyers can represent victims and assist the public prosecutor in the prosecution case. This is beneficial as public prosecutors have extremely large caseloads and there is no system of accountability for the performance of the prosecutors in individual cases. Consequently, prosecutors have little incentive, and some interviewees noted they are vulnerable to corruption.
- B. Importantly, independent lawyers are needed to ensure the rights of the victim are protected throughout the trial. For example, some interviewees noted, at times, both judges and lawyers fail to follow correct victim-friendly court rules, such as ensuring that children are not aggressively questioned. Independent lawyers step in to ensure these victim-friendly measures are adhered to and generally try and reduce the trauma of the trial process.

Working with the Public Prosecutor

- C. The role of the private lawyer at the trial appears to depend on the court and the public prosecutor. Some interviewees noted public prosecutors were resistant to working with independent lawyers and tried to minimise their role throughout the case. Judges also
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EXISTING LEGAL NETWORKS AND PRO BONO OPPORTUNITIES

- The NGO Human Rights Law Network (HRLN) has offices in 28 states in India, staffed by approximately 170 HRLN staff members, of which approximately 100 are full time HRLN lawyers. Additionally, HRLN are connected to a further network of lawyers (not paid staff members) in each state.
- The government-run Legal Services Authorities (LSAs) are established at the national, state and district level to provide pro bono legal assistance to certain groups of people, including victims of trafficking and forced labour. Networks of empanelled lawyers have been developed to provide assistance to cases at all courts. LSAs are now establishing paralegals to provide assistance at the local level. Most interviewees noted that LSAs are not yet working well and are unreliable.
- There are law firms with strong criminal expertise in India that could be leveraged to provide pro bono legal services and assistance to fight trafficking. Whilst NGOs have shared that commercial law firms have traditionally not provided pro bono support to this type of social legal work, there is scope to explore the potential.

favoured the advice of the public prosecutor and were dismissive of the private lawyer. Conversely, a number of lawyers stated they generally had good relationships with the public prosecutor and that judges highly respected their input, allowing them to intervene regularly and at times sought their advice. NGOs and lawyers facilitate a working relationship with the public prosecutor by:

- contacting the public prosecutor early in the process, establishing a dialogue and briefing them on the matter;
- preparing for all stages of the case to ensure the public prosecutor can rely on the assistance provided;
- preparing written, comprehensive submissions based on precedent for the public prosecutor to sign and then hand directly to the judge; and

- Using experienced lawyers who can request the judge to intervene when required, regardless of the view of the public prosecutor.

NGO resource gaps at the trial stage

- D. Broadly, NGOs reported the need for more junior lawyers and senior lawyers to assist in trial cases and related high court matters. The junior lawyers are required to assist senior lawyers, and to eventually take on cases. This would enable NGOs to assist more victims throughout the criminal justice process.
- E. As trafficking cases are very complicated and district courts are a very difficult place to work – one interviewee described them as “like a fish market” - junior lawyers require assistance and mentoring from more experienced criminal lawyers, especially during the first few cases they undertake. It was observed that assistance from a senior criminal lawyer would also set examples of good practice in the relevant district courts, which could then be followed by more junior lawyers. For example, once a senior lawyer establishes that written submissions can and should be made, it will be easier for the junior lawyer to do the same in the future.
- F. Senior lawyers could also assist in important cases to set a district-level precedent – such as obtaining a conviction under s370 in a bonded labour case. However, although NGO staff might have access to High Court lawyers, they do not always have access to senior criminal lawyers.
- G. Interviewees noted the need to access a resource centre that provided updated case law, easy to use resources and the ability to seek advice from experienced legal staff in other parts of the country. Many suggested that having access to all resources online would be helpful, and some expressed a desire to have better access to legal resource databases.
- H. Beyond funding constraints, NGOs find it difficult to identify affordable, knowledgeable and sensitive lawyers to undertake cases. Some legal networks, including pro bono NGO and state networks, could be tapped to find and train suitable lawyers. Even if these lawyers were hired at an affordable cost, this would improve the number of trained, experienced and sensitive lawyers available to undertake trafficking cases. Such networks could be developed and managed within states at the district level.
- I. All stakeholders reported the need for lawyers to be committed to eradicating slavery, strongly connected to the communities they represent and NGO that they work for, and sensitive to the needs to victims. To enhance connectivity and commitment, interviewees suggested regularly exposing and including lawyers in all aspects of the case including rescue and rehabilitation, instituting systems to ensure regular communication between staff and lawyers and encouraging young lawyers into the social-justice field.
- J. Despite some NGOs having more legal experience, NGOs very rarely referred cases to each other or asked for assistance. Some NGOs with experience expressed a desire and ability to help other NGOs, with some establishing networks to undertake this work. There is great potential for NGOs to refer cases to others that have the capacity and ability to assist.

STAGE 8: COMPENSATION

- A. Under new state Victims of Crime Compensation schemes, victims of trafficking offences are entitled to a considerable amount of compensation upon conviction. In Delhi, victims of trafficking are entitled to 50,000 Indian rupees (INR) (812 U.S. dollars) and victims of rape of between 200,000-300,000 rupees (USD 3,250 – 4,875).
- B. The literature notes that compensation can be a factor in encouraging victims to participate in the criminal justice process and can assist them in rebuilding their lives. Lawyers interviewed noted that when it appears that they are likely to obtain a conviction, they ensure that they have applied for victim compensation.

PART B: ACCESSING ENTITLEMENTS & WAGES

Rehabilitation entitlements

- A. Some rehabilitation entitlements can be obtained regardless of whether a case is pursued in court, however NGO staff and lawyers are required to push for action to ensure entitlements are provided. In some cases, where entitlements are not granted, NGOs take the matter to court. For example, if a District Magistrate repeatedly refuses to rescue and release identified bonded labourers, NGOs can approach the High Court (see Case Study 3: Using the High Court to Release Bonded Labourers, page 87).
- B. Bonded labourers, both adults and children, are entitled to 20,000 INR (USD 325) after the relevant District Magistrate or Sub-Divisional Magistrate officially provides them with a 'release certificate'. The certificate is granted before an FIR is lodged, and pursuing a prosecution or obtaining a conviction is not required for the labourer to obtain the certificate. Release certificates also entitle bonded labourers to benefits from various government schemes.
- C. However, some states declare they are "bonded labour-free states" and in these states NGOs face great challenges in ensuring officials take action to identify, rescue and release labourers. Even in states that recognise that bonded labour exists, NGOs reported that officials are reluctant to provide certificates due to the additional paperwork required. Additionally as the FIR is only lodged once a release certificate is granted, there is pressure from the employer and trafficker not to grant it. One NGO in eastern Uttar Pradesh said that in the past year they have only been able to get release certificates in 50 per cent of cases.
- D. In child labour cases, the employer must pay 20,000 INR (USD 325) as a rehabilitation amount. The compensation is not paid to the child, it is kept by the state to be used for general child labour rehabilitation measures. In Delhi, the High Court ruled that the employer can be required to pay this 'fine' on the spot, meaning that a conviction is not required.
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E. After an FIR is lodged under an offence listed in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the victim is entitled to rehabilitation funds, which are paid in instalments throughout the criminal justice process. The first instalment is paid when the FIR is lodged, other amounts are paid during the police investigation and trial stage and the final instalment is paid if there is a conviction. This means that victims can obtain some compensation early in the process, and do not require a conviction.

Recovery of wages

- F. In forced labour cases, labour officials who attend the rescue are meant to ensure that withheld back wages of the labourer are paid. Generally, these are calculated on the day and a claim is initiated by the labour officials under the Minimum Wages Act. If the labour department does not attend the rescue, or refuses to calculate back payment of wages, NGO lawyers can file a claim with the Labour Tribunal. Payment of wages can take up to one year.
- G. Ensuring the payment of back wages in addition to a fine has great potential to affect the employer and act as a long-term economic deterrent against labour exploitation.

PART C: TARGETING ECONOMIC ASSETS OF TRAFFICKERS

A. Action to affect the assets of traffickers can occur at different stages depending on the type of case. A number of relevant laws and cases apply:

- i. **Seizure of assets:** There are several laws that can be used for the seizure or forfeiture of unlawfully acquired assets. This includes s105 of the Code of Criminal Procedure, the Prevention of Money Laundering Act, and specialist state laws, such as the Uttar Pradesh Gangsters and Anti-Social (Prevention) Act 1986 and the Maharashtra Control of Organised Crime Act 1999.
- ii. **Suspension of business licences:** In Delhi, the High Court has established that where a victim of child labour is rescued, the relevant business' licence can be suspended or cancelled and/or the premises can be sealed, until such time as back wages are paid to the victims or court fines, as applicable, are paid. A conviction is not required. One NGO recovered approximately USD 84,000 between 2010 and 2013 and has been responsible for the shutdown of 173 workplaces. NGOs outside Delhi have had limited success in convincing the authorities to seal businesses employing child or bonded labourers.
- iii. **Mandatory licences for placement agencies:** Under a recent Executive Order made in

“ The main motive of the perpetrators... is unjust enrichment by exploitation of the poor. Only when the perpetrators think that practising a bonded labour system and trafficking human beings is not economically viable and has a high risk of incarceration will they desist from practising it.

”
Senior lawyer for a national NGO.

compliance with an earlier High Court judgement in Delhi, “placement” or recruitment agencies in Delhi are required to register to obtain a licence or face shutdown. In addition, the penalty for non-compliance is USD 750.

iv. Regulation of brothels: In the case of sex trafficking, the Immoral Traffic (Prevention) Act 1986 provides for the closure of brothels and eviction of offenders from premises . If the owner of the brothel claims to be unaware that it was being used as a brothel, NGOs can request the court to supervise the lease of the property for a period of time.

- B. One NGO in Uttar Pradesh succeeded in seizing the assets of sex traffickers. Lawyers stated that they used the Prevention of Money Laundering Act, Code of Criminal Procedure, The Immoral Traffic Prevention Act (ITPA) and the Uttar Pradesh Gangsters and Anti-Social (Prevention) Act 1986. The NGO had INR 30 million, (USD 157,600) worth of assets seized, including over 25 brothels in Allahabad and nine brothels in Varanasi, bank accounts, land and fixed deposits.
- C. Cited examples of success are exceptions. Many NGOs do not pursue asset seizures or sealing of businesses. This may, in part, be explained by a lack of awareness of existing legislation, jurisprudence or limitations on their application outside of Delhi.
- D. Targeting economic assets creates additional legal work. In sex trafficking cases, legal action to recover assets or affect the property of traffickers cannot occur during a prosecution case. Generally, legal action is not taken until the end of the prosecution case, which may be six years later.
- E. NGOs may wish to avoid an adversarial approach with traffickers and their businesses, especially in rural areas where NGOs and victims already suffer from threats and intimidation. Some interviewees did not wish to undertake action that affects businesses where consenting adults continue to work.

PART D: PUBLIC INTEREST LITIGATION & HIGH COURT CASES

- A. Strategic public interest litigation (PIL) in the senior courts can be an important tool to create systemic change in anti-trafficking law and policy. In these cases, the High Court and Supreme Courts can pass orders and directives to ensure the protection of the fundamental rights set out in the Constitution. These directives are considered binding until relevant legislation is in place.
- B. Various NGOs have demonstrated the potential for significant change through strategic PIL, including recent cases that have resulted in a definition of trafficking, prompting the government to sign the Palermo Protocol, and the critical decisions on the treatment of missing children cases by police. Important landmark cases in the 1980s defined forced and bonded labour and resulted in rehabilitation measures for bonded labourers.
- C. A number of ongoing PILs could improve procedures and many of the NGOs interviewed were either preparing to lodge PILs or had PIL cases before the courts.
- D. NGOs also file writ petitions or habeas corpus petitions at the High or Supreme Courts when there has been a breach of fundamental rights of a person or a person is detained or missing. Lawyers often use these petitions when officials have not taken action to find trafficked people or release bonded labourers. These cases at the High Court have the potential to create systemic change as the Court may issue broader guidelines about the treatment of the class of victims in general. Additionally, these cases can relate to a large number of people, and therefore have the potential to create change for a large number of people through one legal proceeding.

RESOURCE GAPS

- E. NGOs recognise the importance of using High Court and Supreme Court lawyers in public interest litigation and senior court matters, however many do not have access to such lawyers. Even when senior lawyers provided assistance for free, or at a reduced rate, the NGOs struggled to meet travel and accommodation costs. Some NGOs reported not knowing appropriate High Court lawyers in their state.
- F. Strategic PIL should be based on strong evidence. Collating and analysing evidence requires time and resources. According to one NGO, a recent successful case regarding missing children required two years of research, a further two years to compile the research and prepare the case, and another year to run the case and reach a judgement.
- G. As PIL cases are resource-intensive and can be perceived to be combative by the government, a number of NGOs emphasised it can be quicker and more effective to obtain change in processes and protocols through working with the relevant government ministry. Once a change in process is agreed on, the government can pass an executive order formalising the protocol/process.

IMPLEMENTATION

- H. Implementation of the directives and orders of the higher courts that arise from PIL cases are problematic. To address this, some interviewees stated that, following the lodging of a petition at the court, they work closely with the government to agree on a way forward which is then presented to the court. This is to ensure that a realistic path is agreed on that the government is more likely to implement.
- I. Where an order/directive is not adhered to, some NGOs advocate for the government to adhere to it and, where this does not work, one or two NGOs have run successful cases against the government for contempt of court. According to one interviewee, the government is reluctant to be involved in contempt cases and therefore often ensures the directions and orders are followed. Overall, not many NGOs undertake legal action to ensure compliance with court directives. Some interviewees believed more action needs to be undertaken by NGOs in this area. One judicial officer emphasised this point, asserting that “no one is pushing the government” on these directives and orders.
- J. Many interviewees were preparing to lodge public interest litigation cases or are involved in cases that are before the courts. It was evident that better coordination between NGOs concerning public interest litigation could be hugely beneficial. This may not mean undertaking cases together, but rather strategising on systemic issues that need to be brought before the court so that planned action can be undertaken. The strength of the case often depends on evidence gathered from several cases and detecting larger patterns in them – if NGOs collaborated and shared information, then evidence from a greater number of cases could be used to strengthen the PIL case. In particular, if NGOs from various states are considering public interest litigation on the same matter, these NGOs can collaborate and bring an action in the Supreme Court. Action at the Supreme Court would allow each state actor to provide evidence from their state and would also result in a judgement/orders/directives that bind all states.
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RECOMMENDATIONS





17 recommendations are presented within six subgroups to improve the legal outcomes for victims of human trafficking. Each recommendation is listed with associated outcomes, estimated forecasts of costs and potential implementation approaches. All costs are general estimates based on feedback from the NGOs interviewed in the research phase. It is hoped funders looking to support legal work against trafficking in India will further explore the feasibility and costs of the recommendations and identify potential collaborations according to their scope and interests.

A SUMMARY OF THE RECOMMENDATIONS ARE:

ACCESS TO LEGAL SUPPORT

1. Funding NGOs to engage lawyers
2. Funding witness protection and travel for court appearances

CENTRALISED LEGAL SUPPORT INITIATIVES

3. National anti-trafficking initiative with state-level “legal hubs”
4. Community-level legal assistance centres
5. Network of community-level paralegals and counsellors
6. Leveraging pro bono legal support
7. Legal helpline for trafficking victims and NGOs

KNOWLEDGE AND TRAINING

8. Anti-trafficking legal training course for NGOs and lawyers
9. Legal know-how tools

STRATEGIC LITIGATION AND PROCEDURAL REFORM

10. Funding mechanism for strategic litigation
11. Supporting enforcement of Standard Operating Procedures (SOPs) and procedural protocols

DATA AND TECHNOLOGY

12. Legal “Anti-Trafficking Index” for India
13. Strengthening legal data collection and case management systems
14. Anti-trafficking legal web portal

MEDIA

15. Media training for NGOs and journalist training

BUILDING PARTNERSHIPS AND STRENGTHENING COLLABORATION

16. Strengthening NGO networks
17. Launching workshops or an annual anti-trafficking legal conference in India

ACCESS TO LEGAL SUPPORT

1. FUNDING NGOS TO ENGAGE LAWYERS 1. FUNDING NGOS TO ENGAGE LAWYERS

RECOMMENDATION	OUTCOMES	COST
<p>Funding should be provided to NGOs to expand their legal capacity and enable them to engage:</p> <ul style="list-style-type: none"> • Senior criminal and High Court lawyers to provide expert advice, mentor junior lawyers and undertake difficult and strategic cases. • Junior lawyers to assist senior lawyers, gather evidence, draft legal submissions and assist in court. <p>Funding could be utilised to employ full-time or part-time legal staff, or to pay for lawyers' fees to assist on cases as required (depending on the size and legal needs of the NGO).</p> <p>Funding should be conditional on NGOs sharing information on legal developments and strategies (possibly through the NGO networks suggested in Recommendation 16).</p>	<ol style="list-style-type: none"> 1. NGOs run more successful prosecutions and faster trials. 2. NGOs are able to pursue strategic litigation cases to clarify the application of new laws (s370, POCSO and other relevant legislation) so they can be utilised to their full potential. 3. NGOs undertake much stronger trial monitoring, more successful prosecutions and faster trials, particularly at the district level. 3. A new cadre of young, trained lawyers emerges at the national, state and district level to fight trafficking cases. 	<p>Legal capacity support: USD 120,000/ annual</p> <p>According to NGO estimates, legal costs for lawyers per case could range from:</p> <ul style="list-style-type: none"> • Supreme Court lawyer: USD 750-1,500; • High Court lawyer: USD 450-750 • District level lawyer: USD 150-450 • Funding 10 organisations to undertake 20 cases each per year (total 200 cases) at high quality: approximately USD 82,000. <p>(Note: This assumes each case requires support from a district level lawyer and occasional support from a High Court or Supreme Court lawyer).</p> <p>Institutional overhead costs for each organisation including administration, NGO supervision of lawyers and database management: USD 3,800 per organisation, per year. Total: USD 38,000.</p>

IMPLEMENTATION:

An initial assessment should be completed by a funding agency to identify which NGOs require high-level legal expertise and/or support from junior lawyers on a continuous basis. Based on the needs identified, lawyers should be hired at the District, High and/or Supreme Court level to assist NGOs.

Since legal culture is very contextual and geography-specific, the lawyers at High Court level should be identified appropriately with local experience and know-how. This assessment should also determine which geographic areas require particular assistance (Note: a preliminary assessment in Uttar Pradesh indicates that a pilot could be introduced in Jaampur, Sonbhadra and Bhadohi). Recruitment of female junior lawyers should be prioritised to support female and child victims, particularly in cases of sex trafficking or forced labour where sexual offences have occurred.

The next three to five years are a crucial time: new laws will be tested in court and it is critical that cases are run appropriately to set legal precedent at the district, state and national level. Hence, a funding agency should have a longer-term view while investing in creating a pool of high-level legal expertise for NGOs. For NGOs that do not do legal work, but require legal support to fight cases, an initial assessment will be required to determine which NGOs and cases require immediate support and to determine their capacity to fight cases. Any lawyers identified will require training.

2. FUNDING WITNESS PROTECTION AND TRAVEL FOR COURT APPEARANCES

RECOMMENDATION	OUTCOMES	COST
<p>Provide funding to NGOs to:</p> <ul style="list-style-type: none"> • Improve systems of witness protection in order to protect victims before, during and after rescue, and during the trial. • Undertake interstate rescues and assist interstate victims. • Provide assistance to victims of trafficking and their families with expenses related to court appearances, including travel, accommodation and opportunity costs (such as missing daily wages). 	<ol style="list-style-type: none"> 1. More victims testify in court, resulting in a higher rate of successful prosecutions. 2. Fewer victims become hard to locate due to distances involved. 3. Victims and family members are more likely to attend court appearances, resulting in improved legal outcomes. 	<p>Funding to support protection of victims/witnesses: USD 7,500-15,000/annual</p> <p>Funding to support interstate rescues: USD 75,000/annual</p> <p>Support to 10 NGOs to undertake interstate rescues or otherwise assist victims and families from interstate to travel to attend court:</p> <p>Travel/accommodation costs per NGO staff and victims: USD 6,000 per NGO: Approximately USD 60,000 per year.</p> <p>Management/ administration costs of additional USD 1,500 per NGO per year: USD 15,000.</p> <p>Alternatively, fund one NGO to support other NGOs. Smaller NGOs would apply/request funding from this organisation on an as-needs basis. For example, some larger NGOs provide financial assistance to smaller NGOs for travel costs in legal cases. Funding of USD 75,000 could be provided in Year 1, with assessment/reporting of all NGOs assisted in time period. If successful, further annual funding could be provided.</p>

IMPLEMENTATION: A funding agency should conduct an initial assessment regarding resource requirements to provide victim and witness protection, fund travel costs and run interstate cases more successfully. Note: This could be administered as a component of direct funding to NGOs to engage lawyers under Recommendation 1.

In the initial phase, funding could be provided to approximately 10-15 NGOs that actively fight legal cases for trafficking victims. Eligibility criteria should also be developed for NGOs to receive funding for costs associated with victim and witness protection, rescue and care, and interstate cases. The fund could also be tapped to train NGOs on how to develop strong witness protection mechanisms. Alternatively, one NGO could be funded to support other NGOs, and smaller NGOs could apply for funding on an as-needs basis as set out in the Costs column above.

CENTRALISED LEGAL SUPPORT INITIATIVES

3. NATIONAL ANTI-TRAFFICKING INITIATIVE WITH STATE-LEVEL “LEGAL HUBS”

RECOMMENDATION	OUTCOMES	COST
<p>A national anti-trafficking legal initiative should be established with state-level “legal hubs”. The state-level hubs would consist of full-time lawyers and staff that:</p> <ul style="list-style-type: none"> • Connect with relevant NGOs in the region and provide assistance with individual cases; • Undertake strategic public interest litigation in collaboration with relevant national, state and district level actors; • Provide assistance with High Court matters; • Help ensure enforcement of High and Supreme Court judgements, standard operating procedures (SOPs) and protocols on trafficking. <p>The hubs should establish a pool of affordable lawyers trained on trafficking to carry out trafficking cases in the state, at both the state and district level. When the hub full-time lawyers are unable to assist, and NGOs need assistance identifying lawyers, the NGO can contact the hub for support (Similar to Recommendation 6, but these lawyers are not pro bono).</p>	<ol style="list-style-type: none"> 1. Increased prosecution and conviction rates of traffickers and slaveholders in states highly vulnerable to trafficking. 2. Increased number of bail applications opposed at the High Court, increased number of appeals at the High Court. 3. NGOs undertake more cases. 4. Strategic litigation results in important court directives, legal precedent and systemic change to counter trafficking at the state level. 5. Better enforcement of court directives, SOPs and legal protocols and guidelines at the state level. 6. New laws are widely utilised at the state level, reducing confusion as to their application and broadening the range of laws that can be used to prosecute cases. 	<p>Scoping study and establishment costs: Estimated USD 14,000-23,000</p> <p>Hire a consultant to commence a scoping study, including evaluation of previous and existing similar programmes. Identify best hub model based on research and identify implementer/s: USD 9,000-18,000 (three to six-month period).</p> <p>Travel/accommodation costs: USD 5,000.</p> <p>Ongoing costs for state hubs: USD 180,000 per year for three states (USD 60,000 per hub)</p> <p>Estimated costs for employing two junior lawyers (USD 18,000), one senior lawyer (USD 18,000) and administration staff (USD 12,000) full time for one year = USD 48,000 per hub. Note: costs will be lower if part-time or on case-by-case basis.</p> <p>Operating costs of hub, including travel, bills, meetings, organising training of network lawyers if required: Up to USD 12,000/annual.</p> <p>National hub/coordination: Estimated costs based on state hub as above: USD 60,000</p>

IMPLEMENTATION: Conduct a scoping study to identify pilot states based on vulnerability, availability of existing legal networks, and a potential hub manager (such as an existing organisation) to outline how hubs will operate in practice (three to six months). Preliminary research findings suggest Chhattisgarh, Assam and Jharkhand are vulnerable to trafficking and could be potential Hub locations, while Uttar Pradesh and Bihar are also vulnerable to trafficking and have some existing legal infrastructure which would be worthwhile to tap into.

Hubs will be staffed by lawyers (junior and senior) and management staff. They will be coordinated at the state and national level. The national level will enable connection to the Supreme Court, national experts and other national level NGOs. Formal partnerships and links can be facilitated under the pilot programme with local NGOs to strengthen their legal work. If an existing legal NGO with links in multiple states is the chosen platform to launch the pilot programme, then full-time lawyers can be identified within three months. A limited number of states should be considered initially, with the option of scaling up on evidence of success.

4. COMMUNITY-LEVEL LEGAL ASSISTANCE CENTRES

RECOMMENDATION	OUTCOMES	COST
<p>Community-level legal assistance centres should be established to provide legal assistance to victims unable to travel to a regional city for legal support.</p> <p>The legal assistance centres should provide the following:</p> <ul style="list-style-type: none"> • Assistance in reporting cases, lodging FIRs and throughout the criminal justice process. • Support to victims facing threats or intimidation, and support to defend false or counter-claims lodged against the victim. • Assist bonded labour victims to have debts “cancelled” if unable to pursue a rescue-and-release process. • Raise awareness on legal rights and entitlements. • Act as a referral service to NGOs and government legal aid services. • Provide assistance to victims to obtain economic benefits to which they are legally entitled. 	<ol style="list-style-type: none"> 1. Increased reporting of trafficking cases at the community-level. 2. Increased number of cases being pursued through to trial due to victim support. 3. Increased number of bonded labour rescues and obtaining of release certificates, and back wages. 4. Increased number of victims at the community level receiving assistance to have debts ‘cancelled’ (if they want this assistance) and/or accessing back wages and other requested assistance. 5. Local communities and victims become active agents in accessing rights. 6. Victims receive legal assistance through referrals to other NGOs and state legal service authorities. 	<p>Set up costs: USD 30,000 for three centres</p> <p>Second-hand vehicle, computers, furniture and other equipment: USD 10,000 per centre (Note: Costs will be significantly reduced if a vehicle is not required).</p> <p>Operating costs: USD 60,000/annual (for three centres in pilot phase)</p> <p>USD 20,000 per legal aid centre.</p> <p>Based on:</p> <ul style="list-style-type: none"> • One paralegal full-time, one junior lawyer part-time: USD 8,000 for each centre. • Administration and management: USD 7,000 per centre (Note: Some management costs can relate to all three centres). • Running costs: USD 5,000.

IMPLEMENTATION: Implementation: Community legal assistance centres should be established, on a pilot basis, in three districts in Uttar Pradesh. Based on a preliminary assessment of requirements and “on-the-ground” realities Allahabad, Sonbhadra and Varanasi should be considered. Sonbhadra is a hotspot for trafficking and forced labour, and government offices are at least 80 km (50 miles) away. The person managing the centre should be part of the community or have strong experience in grassroots anti-trafficking legal work. This individual could be a community paralegal (discussed further in Recommendation 5) and could operate from an office at the taluk/tehsil level. The centre should be a self-reliant unit resourced with internet, a phone line, printer and fax. On a pilot basis, in Year 1, three centres can be established in the indicated districts. If successful, the initiative can be expanded in Year 2 to other districts, or other parts of these districts, in Uttar Pradesh or Bihar.

5. NETWORK OF COMMUNITY-LEVEL PARALEGALS AND COUNSELLORS

RECOMMENDATION	OUTCOMES	COST
<p>Create a district-level programme to recruit and train community members as paralegals to provide legal support and advice to victims. Their responsibilities should include:</p> <ul style="list-style-type: none"> Identifying victims of trafficking and forced labour Assisting and accompanying NGO staff on rescues Gathering legal evidence Ensuring victims feel safe and protected Assisting victims to prepare for statements to the police and magistrate Accompanying victims to court to testify Preparing victims for trial Improving community legal awareness <p>The paralegals should be given professional training in trauma and psychosocial counselling. Paralegals should be trained to support child victims; follow “do no harm” principles while supporting victims; provide trauma counselling (with focus on potential trauma from interactions with law enforcement and the criminal justice process); support recovery of related mental health problems; and refer for additional mental health care. Ideal candidates for recruitment are survivors of trafficking, preferably female.</p>	<ol style="list-style-type: none"> A strong network of community paralegals emerges at the district level to provide legal assistance to survivors. Victims feel more comfortable engaging with the criminal justice system and are willing to testify, particularly in cases of sex trafficking. Greater number of forced-labour cases where sexual offences have taken place are registered and carried forward. More FIRs are registered in trafficking and forced-labour cases at the community level, with a correspondingly higher level of prosecution. Survivors have improved recovery and coping mechanisms concerning trauma, depression, anxiety and other mental health consequences of trafficking. Whole communities become legally empowered. 	<p>Year 1: USD 190,000</p> <p>Note: Ongoing support will be more cost effective as less training will be required.</p> <p>Year 1 legal training costs for 10 paralegals in three districts (total of 30): USD 10,500 (2 x 5-day training)</p> <p>Annual cost of support to community-based paralegals: USD 67,500 (USD 2,300 per paralegal x 30) including travel and team meetings.</p> <p>10-day initial mental health training, provided by international trainers: USD 52,000 (may include preliminary analysis of key mental health needs in the area).</p> <p>Five-day follow-up training: USD 15,000.</p> <p>Ongoing supervision/mentoring by in-state mental health support agency: USD 30,000.</p> <p>Management and administration: USD 15,000.</p>

IMPLEMENTATION: On a pilot basis, identify, recruit, train and deploy community paralegals in three districts in Uttar Pradesh. Suggested districts include Mirzapur, Varanasi and Bhadohi. The paralegals require training modules on: anti-trafficking, labour and other related legislation; responsibilities of a community paralegal (including case documentation, legal procedures and how to access socio-economic and citizenship entitlements); psychosocial counselling to victims; gender/caste sensitivity; and child protection. At least two rounds of training will be required per year for legal and psychosocial care skills. Paralegals need mentorship, training and supervision from NGO staff, lawyers and mental health professionals.

6. LEVERAGING PRO BONO LEGAL SUPPORT

RECOMMENDATION	OUTCOMES	COST
<p>Pro bono networks should be expanded and mobilised to enable NGOs to access legal support for trafficking cases. This includes:</p> <ul style="list-style-type: none"> • NGO legal networks: Build partnerships with Indian NGO legal networks that provide pro bono legal assistance to poor and vulnerable citizens and to NGOs, especially concerning strategic litigation. Explore possibilities to scale-up their pro bono activities on trafficking or, at a minimum, link them to NGOs doing active anti-trafficking work. • Independent lawyers: Identify and match independent lawyers with strong criminal expertise and experience in trafficking cases with NGOs requiring pro bono assistance. • State Legal Aid Services: Liaise with state legal service authorities to match government pro bono lawyers with victims who have not found legal assistance through an NGO. If required, provide training to the state pro bono lawyers (refer to Recommendation 9 on joint trainings) to ensure the quality of legal assistance to victims. An initial assessment will be required of the legal service authority to determine what pro bono legal services are running, functioning well or can function well with training support. • Commercial law firms: Build partnerships with five to 10 reputed commercial law firms in India with strong criminal expertise and enlist their pro bono legal assistance and services for trafficking victims and NGOs actively fighting trafficking. 	<ol style="list-style-type: none"> 1. Increased number of cases undertaken by NGOs with the assistance of pro bono lawyers identified through an NGO network. 2. Increased rate of referrals (by NGOs or others) and cases undertaken by government legal aid lawyers. 3. Increased specialist assistance from commercial law firms to NGOs in need, such as summarising relevant cases, providing legal research support and providing legal advice/lawyers on specialist cases. 	<p>Establishment costs: USD 65,000</p> <p>In Year 1, plan and establish network/partnership between NGOs and pro bono providers (NGO, government and commercial law firms) in two states.</p> <p>Two consultants for six months: USD 32,000.</p> <p>Consultant travel/accommodation costs: USD 7,000.</p> <p>Meetings to initiate pro bono and NGO partnership in each state, including travel costs of meeting participants (if required): USD 10,000.</p> <p>Training of lawyers: Three two-day trainings in each state, including travel costs of participants: USD 15,000.</p> <p>Ongoing costs: USD 45,000 per year (Support fund for partnership-building, training, outreach and support to access pro bono legal services).</p> <p>Part-time (two days per week) 'pro bono partnership' officer for 10 NGOs and administration/management: USD 20,000 per year.</p> <p>Additional / alternative lawyer or project manager: USD 7,500 per year for each state, USD 15,000 total.</p> <p>Meetings with pro bono lawyer network/ NGOs, travel and administration costs of lawyer/project manager: USD 7,500 each. Total USD 15,000.</p>

IMPLEMENTATION: In Year 1, plan and establish network/partnership between NGOs and pro bono providers (NGO, government and commercial law firms) in two states and hire part-time 'pro bono partnership' officers in each NGO.

Hire two consultants to research, undertake initial consultation with a range of NGOs in identified states, undertake consultation with pro bono providers and prepare partnership/network plan and operating documents. Consultants will also undertake initial SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis of state legal services authorities in the two states, organise any trainings and other meetings that need to occur. In preparing and undertaking the SWOT analysis, the consultant should consider the 2012 UNDP Needs Assessment of Selected Legal Services Authorities. The consultant should organise further meetings as required and organise training of lawyers.

Alternatively or additionally, a part-time lawyer/project manager could be hired in each state to undertake meetings and coordinate network/collaboration between NGOs and pro bono providers. For example, commercial law firms that agree to summarise recent case law could send summaries to the coordinator, who then distributes to all NGOs in network.

7. LEGAL HELPLINE FOR TRAFFICKING VICTIMS AND NGOS

RECOMMENDATION	OUTCOMES	COST
<ul style="list-style-type: none"> Legal helpline for trafficking victims and NGOs A legal information and referral helpline should be established to provide the following assistance to trafficking victims and NGOs (including to existing helplines): <ul style="list-style-type: none"> Initial legal guidance: Provide information on the process for registering an FIR, providing statements to the police or magistrates. Referral mechanism for individuals: Provide a list of NGOs in the area that victims can contact to seek legal assistance. Referral mechanism for NGOs: Provide a list of NGOs in the area to which other NGOs can refer victims when they cannot provide assistance due to resources or location in the case of interstate cases. 	<ol style="list-style-type: none"> Victims and NGOs supporting victims are quickly able to access reliable legal information. Increased number of FIRs. Better servicing of victims in areas where NGOs cannot provide legal support. Development of a more active legal "referral culture" among NGOs, lawyers and other key stakeholders. 	<p>Adding to an existing helpline: USD 44,500-53,000 for Year 1; less for later years</p> <p>Creating a new helpline: Up to USD 129,100 for Year 1; less for later years</p> <p>Additional cost of public-awareness campaign: Up to USD 50,000</p> <p>NGO staff/consultant costs to manage project. (Note: The project may take up to 12 months to initiate. A full-time employee may not be required for this entire period)</p> <p>Estimate USD 15,000-20,000.</p> <p>Travel and assessment of NGOs and other entities suitable and able to accept referrals (Note: This is an action in Recommendation 16, where vetting and assessment of suitable NGOs will take place), development of tools to assess NGOs and other entities, travel and accommodation costs for two people: USD 12,000.</p>

IMPLEMENTATION: The legal information and referral helpline should be toll-free, and ideally operate 24 hours a day (given rescues occur at night). Staff answering the helpline should be trained to provide the initial legal guidance and referral knowledge (i.e. lists of NGOs operating in different areas). To set up, a list of all NGOs that provide legal assistance to victims of trafficking needs to be compiled, along with easy-to-use reference materials for the phone-line operators, and a database to monitor referrals made.

As the purpose of the helpline is to provide general guidance and a referral service, staff could be well-trained paralegals or junior lawyers. Helpline workers must speak Hindi, and preferably have another commonly used Indian language, as well as having access to interpreters for other key languages. After the pilot phase, other language options should be considered, such as diverting calls to state level units of the helpline. A campaign would also be required to spread awareness about the helpline and its purpose

Some existing helplines in India do not receive many calls due to insufficient public awareness, whilst other helplines have not been designed appropriately due to a lack of feasibility testing. Before embarking on the creation of a helpline, extensive discussions should be held with an entity such as the Childline Foundation to understand all the potential challenges and design the initiative accordingly.

Note: The Childline Foundation created the first child helpline in India, and has a public/private partnership with the government to run the 1098 child helpline. It has a presence in almost half (291) of India's districts and has 600 non-profit partners. It is a 24-hour helpline and all the NGOs interviewed for this report use the helpline. It has a mandate from the government to reach out to all 617 districts in India by 2017. Information on helplines can be found in Appendix 4.

KNOWLEDGE AND TRAINING

8. ANTI-TRAFFICKING LEGAL TRAINING COURSE FOR NGOS AND LAWYERS

RECOMMENDATION	OUTCOMES	COST
<p>Anti-trafficking legal training courses for NGOs and lawyers. Content to include:</p> <ul style="list-style-type: none"> Explanation of the relevant legislation and case law, including significant new amendments and laws, such as section 370, 370A of the Indian Penal Code and the Protection of Children from Sexual Offences Act. Explanation of Standard Operating Procedures, protocols, guidelines, rules and compensation schemes and how they can be used in common cases. Step-by-step guidance on how to support trafficking legal cases, including strategies on how to work with police, public prosecutors and the judiciary, and how to document progress and results of cases. How to pursue action to affect the business and assets of traffickers. <p>If required, District Court lawyers can be trained in High Court rules and procedures to oppose bail in the High Court.</p>	<ol style="list-style-type: none"> Improved knowledge, understanding and application of relevant laws, SOPs and protocols. Increased number of FIRs and charge sheets are filed which include all relevant offences, including those in laws such as s370, 370A and POCSO Act. NGOs/lawyers greatly improve their understanding of how to work more effectively with key stakeholders such as public prosecutors, law enforcement and government officials, resulting in better assistance and legal outcomes for victims. Lawyer performance and confidence at the District and High Court improves, increasing number of written submissions filed, adjournments opposed and interventions to protect the rights of victims. NGOs begin to actively pursue legal strategies for asset seizure of traffickers and slaveholders. 	<p>Legal training course: USD 45,000 per year* One two-day training event for approximately 12-15 participants may cost approximately USD 7,500 including professional trainer, management of training and development of tools, conference facilities, travel and accommodation costs of participants (assuming participants from across India and accommodation in Delhi). If six groups of NGOs are trained over a one-year period (some trainings may focus on different areas so the same group may attend two sets of trainings): USD 45,000.</p> <p>*There may be overlap between training content and development of know-how tools (under Recommendation 9). However, cost estimates provided do not double-count development of training material, as training will include other organisational costs and potentially fees for trainers.</p>

IMPLEMENTATION: Six groups of NGOs/lawyers, of approximately 12-15 people each, should be trained within one year. Since legal challenges can be geographically specific, trainings should be considered on a regional and/or state basis. Joint training modules should also be considered with public prosecutors due to their central role in running successful prosecutions, and, if possible, other key stakeholders (i.e. law enforcement, labour officials, judicial officers, Child Welfare Committees members and more). As some training materials already exist, the consultant/trainer should undertake an inventory and synthesis of relevant material. Where new training modules and material is required, a consultant/organisation can develop this. Practitioner insights and training deliberations should be distilled into brief reports to serve as reference and learning guides. Comprehensive training material and modules could take three to six months to develop, organise and roll out. Refer to Recommendation 9 for training material and know-how tools.

9. LEGAL KNOW-HOW TOOLS

RECOMMENDATION	OUTCOMES	COST
<p>A range of legal know-how tools should be developed to provide guidance to NGO staff and lawyers when undertaking trafficking and forced labour cases.</p> <p>The tools should include:</p> <ul style="list-style-type: none"> • ‘How-to’ handbooks: Handbooks that provide step-by-step guidance on how to undertake different stages of trafficking cases, from filing the FIR through to the prosecution and appeals process. Different handbooks would be developed for different trafficking case profiles (e.g. sex trafficking, bonded/forced labour, child labour). Handbooks should include information on how to obtain back-wages for victims, compensation, rehabilitation entitlements and to take action to affect the assets/business of traffickers. • Procedural flowcharts and checklists: Flowcharts to illustrate the legal procedural steps to be undertaken for different types of trafficking cases with short checklists for easy reference. • ‘Best practice’ case studies: Best practice and innovative cases undertaken by NGOs and lawyers, explaining how each stage of the case was undertaken and how the outcome was achieved. <p>Note: These tools could be used in training NGOs and lawyers (Recommendation 8); by the legal hubs or community legal centres suggested in Recommendation 3 and Recommendation 4 respectively; and could also be accessed on the web portal suggested in Recommendation 14.</p>	<ol style="list-style-type: none"> 1. Enhanced knowledge and skills among stakeholders to improve legal outcomes for victims of trafficking. This will result in: an increased number of FIRs lodged under all relevant offences; improved victim statements to police and magistrates as NGO staff and lawyers understand how to counsel victims better in this regard; and improved access to benefits for victims and more. 2. More efficient and faster legal workflows achieved by NGOs and lawyers in assisting victims with cases and compensation. 3. Enhanced understanding and knowledge among stakeholders on successful strategies to address recurring or common challenges by learning from each other’s work. 4. Increased amount of work undertaken to affect the assets and businesses of traffickers, prompted through clear guidance and research in this area. 	<p>Updating of existing materials: USD 20,000.</p> <ul style="list-style-type: none"> • Consultant fee (3 months): USD 9,000 • Consultant travel costs: USD 2,500 • Review by lawyer/experts: USD 500 • Translation costs: USD 4,500 • Design, publication and printing: USD 3,000 • Dissemination: USD 500 <p>Creation of new handbooks, flowcharts and checklists: USD 35,000.</p> <ul style="list-style-type: none"> • Consultant fee (8 months but not necessarily full time for this period): USD 20,000 (this may change depending on whether independent consultant or an organisation is contracted) • Travel costs to consult with local NGOs and Delhi-based NGOs: USD 4,000 • Translation costs (2 languages): USD 6,000 • Review by lawyer/experts: USD 1,250 • Design, publication and printing: USD 3,000 • Dissemination: USD 750 <p>Creation of new “best-practice” case studies compendium (10-15 key Indian ‘best practice’ cases studies): USD 27,500-33,500</p> <ul style="list-style-type: none"> • Consultant fee (4-6 months): USD 12,000-18,000. • Consultant travel costs: USD 7,500 • Translation costs (2 languages): USD 4,500 • Design, publication, printing: USD 3,000 • Dissemination: USD 500

IMPLEMENTATION: Many stakeholders interviewed reported that existing training materials and knowledge products could be used, modified and made more accessible. In some cases, entirely new material might need to be created to meet training and knowledge requirements of different stakeholders. Depending on their core expertise and comparative advantage, knowledge products can be developed or synthesised from existing products by NGOs themselves. Some of the most important knowledge products can be created within six months, whilst others may take longer. All knowledge products should be ideally translated into local language/s and, at a minimum, Hindi.

STRATEGIC LITIGATION AND PROCEDURAL REFORM

10. FUNDING MECHANISM FOR STRATEGIC LITIGATION

RECOMMENDATION	OUTCOMES	COST
<p>A "Strategic Litigation Fund" to:</p> <ul style="list-style-type: none"> Assist NGOs and lawyers wanting to pursue high-potential cases that require funding (this could include cases that have already begun but require funding); Fund new strategic litigation in areas where clear gaps are identified; and Conduct a review of important court orders that have not been enforced where legal advocacy and further court action is required by NGOs and lawyers. 	<ol style="list-style-type: none"> Strategic litigation results in favourable judicial interpretations and creates systemic change. Enhanced capacity of NGOs to run PILs. Improved enforcement of court orders and judgements secured through PILs. Improved collaboration between NGOs on strategic litigation results in stronger court judgements, avoidance of duplication and opens up space to tackle new or neglected areas. 	<p>USD 15,000-18,000 per year*</p> <p>*NGOs that run PILs shared that it costs anywhere from USD 600-1,500 per year. This feedback is from resourceful NGOs either at the national level or district level who have strong relationships with senior lawyers at the High Court or Supreme Court level and are able to get their legal services at nominal rates.</p>

IMPLEMENTATION: Establish a 'fund' that provides funding to NGOs. The fund should be designed to promote collaboration between NGOs, to reduce costs and improve effectiveness. The fund could be established within three months, based on an initial assessment of requirements and gaps. Alternatively, the funder could provide funds to one NGO to both pursue its own strategic litigation cases and provide lawyers to other NGOs to do so. The NGO would be required to update as many NGOs as possible throughout the country on litigation cases under way to promote collaboration. Whilst the one NGO and lawyers would run the case (as feedback suggests this is easier), research and information from other NGOs in other states could be provided and used in the case. One NGO specialising in and assisting in strategic litigation, and monitoring all cases throughout the country, would help in ensuring that cases which may set important precedents have sufficient expert legal expertise. Initially, this could be done over a three-year period.

11. SUPPORT ENFORCEMENT OF STANDARD OPERATING PROCEDURES (SOPS) AND PROCEDURAL PROTOCOLS

RECOMMENDATION	OUTCOMES	COST
<p>NGOs and other stakeholders should be supported to:</p> <ul style="list-style-type: none"> • Work with relevant government ministries to develop new SOPs and protocols where needed; • Identify existing SOPs and protocols that are not being enforced and seek to have them enforced through executive order or notification and, if required, through the courts by judicial order; • In cases where the court has previously directed the government to implement an SOP or protocol, consider follow-up legal action through contempt of court applications. 	<ol style="list-style-type: none"> 1. NGOs and other stakeholders develop a clear understanding of where the gaps exist in terms of enforcement of important SOPs and protocols to combat trafficking, and where new ones are required. 2. Enforcement of important existing SOPs on trafficking, particularly in states most vulnerable to trafficking. 3. Development and subsequent enforcement of new SOPs and protocols relevant to trafficking. 	<p>USD 10,000 per year</p>

IMPLEMENTATION: An agency/organisation should be contracted to conduct the review of SOPs, identify those that have not been enforced, areas in which new SOPs are required, and also help develop them. For executive follow-up, the agency should hold meetings with a range of NGOs and lawyers to agree on a collaborative advocacy approach. Where judicial follow up is required, lawyers will need to be engaged to carry out contempt of court petitions.

12. LEGAL “ANTI-TRAFFICKING INDEX” FOR INDIA

RECOMMENDATION	OUTCOMES	COST
<p>An anti-trafficking index should be developed to collate, analyse and publish reliable data at national, state and district levels categorised by type of trafficking (indicators may include number of FIRs, investigations, prosecutions, convictions, acquittals, pending cases).</p> <p>The index would be limited by what information is publicly available, and the cooperation of the relevant government bodies as it is unfeasible to lodge Right to Information requests on an ongoing basis.</p>	<ol style="list-style-type: none"> 1. Reliable data are made available on the number of cases initiated for all major forms of trafficking in India with key indicators on legal progress: number of FIRs, investigations, prosecutions, convictions, acquittals and pending cases. 2. State-wide data on all of the above enhance legal interventions and lead to more targeted efforts by all key stakeholders. 3. Policy momentum is created to prioritise, expand and improve anti-trafficking efforts by national and state governments across India. 	<p>USD 7,500-15,000 for initial development Ongoing maintenance of the index will require substantial additional funding.</p>

IMPLEMENTATION: An appropriate think tank, research institute, NGO or other agency could be contracted to undertake a scoping study and develop the index in close collaboration with the Indian government. It will take at least one year to develop a good quality index such as the one envisioned above. Whichever entity or individual helps develop the index, the funding agency should be careful to ensure that sound methodology, rigour and peer review methods are used to arrive at a credible index.

13. STRENGTHEN LEGAL DATA COLLECTION AND CASE MANAGEMENT SYSTEMS

RECOMMENDATION	OUTCOMES	COST
<p>Funding should be provided to explore ways to strengthen case management and legal data collection systems.</p> <p>One approach is a 'Legal Tech Camp', where a small group of NGOs, lawyers, information solution providers, mobile phone companies, specialists and technologists suggest affordable and tailored technology solutions to address critical legal case management and information system requirements.</p> <p>As part of this initiative, the working group could liaise with law enforcement to understand how the NGOs can best provide information to law enforcement about traffickers, repeat offenders and contractors engaging in bonded labour and child labour.</p>	<ol style="list-style-type: none"> 1. NGOs actively fighting legal cases are matched with affordable, good-quality technology solutions, resulting in enhanced legal case management and data collection systems. 2. Improved trial monitoring, resulting in improved legal outcomes. 3. Strong and improved NGO databases with vital, pooled information on traffickers, repeat offenders, slaveholders, contractors and trend analysis on the workings of traffickers and slaveholders, resulting in improved collaboration with law enforcement to prosecute offenders and legal outcomes. 	<p>Up to USD 50,000*</p> <p>*Costs to build or strengthen legal case management and data management systems are difficult to assess. Estimated costs and a breakdown of requirements are listed.</p> <ul style="list-style-type: none"> • Meetings and assessment of technology needs of six to 10 NGOs and their lawyers: USD 10,500 (including travel expenses). • Legal Tech Camp: USD 3,000-4,500. • Training: USD 15,000-18,000 per year. • Three follow-up site visits to NGOs to assist in establishing and using database/other tech solutions: USD 6,000. • Establish model database: USD 7,500 • Management information System Specialist: USD 500-1,500 per month. • Monitoring and Evaluation Specialist: USD 750-1,500 for a short period. • Domain and server costs: to be determined (TBD).

IMPLEMENTATION: A consultant/organisation should be identified to undertake a first round of meetings with participating NGOs and report on current case documentation systems and needs (approximately three months), as well as to host the tech camp to confirm and address the needs of the NGOs. Customised information and technology solutions would generally work better than standardised templates, particularly since NGOs are working in their own specific contexts. It is expected many NGOs will require assistance with documentation/case management systems; a provider/consultant could be engaged to develop a model database. Tech solutions to be implemented by service providers in collaboration with NGOs, and be supervised by the funding agency. Any legal tech solution developed (particularly implementing a model database) will also require ongoing training and mentoring.

14. ANTI-TRAFFICKING LEGAL WEB PORTAL

RECOMMENDATION	OUTCOMES	COST
<p>A web portal to facilitate access to reliable information on laws, judgements and data in one place. The web portal should include:</p> <ul style="list-style-type: none"> • Data on trafficking and forced labour FIRs and cases (similar to Recommendation 12) • Legislation, judgements, court directives, SOPs and protocols • Summary and analysis of case law • Know-how and training materials on providing legal assistance to victims and running trafficking cases • GPS mapping features to dynamically track or understand trafficking routes, hotspots, source, transit and destination points and interstate movement (if possible this could be combined with FIR and prosecution data) • A 'Solutions Exchange' platform for legal queries responded to by experts and practitioners. • A legal news tracker and bulletin board to post the latest legal developments online and inform stakeholders through email or mobile alerts and monthly newsletters. 	<ol style="list-style-type: none"> 1. Improved access to reliable, updated information and analysis on legal issues leading to better legal responses in all stages of cases. 2. Increased sharing of expert knowledge, improving legal outcomes across the country. 3. Stakeholders can access dynamic data and information on trafficking such as trafficking patterns, resulting in improved planning of legal interventions. 4. Enhanced collaboration among stakeholders. 	<p>Establishment costs: Approximately USD 11,000-15,000 Year¹</p> <p>Ongoing costs: USD 8,500 per year</p> <ul style="list-style-type: none"> • Web developer / firm (one-year contract): USD 2,500-4,500. • Consultant specialising in anti-trafficking / forced labour to provide technical, content-based and design input: USD 4,000-6,000. • Domain and Server costs – TBD. • Awareness-raising with NGOs and any training if required (on how to contribute/participate): USD 4,500. <p>Ongoing Costs:</p> <ul style="list-style-type: none"> • Consultant costs for updating content: USD 500/month (working four out of five days). • IT assistance: USD 200/month. • Total of USD 8,500 per year.

IMPLEMENTATION: The web portal should be developed as an independent platform, which could be developed and housed by a think tank, a social science institute or even a law school. However, there are merits to also considering a national NGO to help develop or house the portal, including reduced costs.

An initial web portal can be up and running within six months. It can be populated with further content and equipped with additional features as required over time. If an NGO is identified to develop and house the web portal, it would have to be positioned as a separate unbranded entity to encourage other NGO stakeholders to be forthcoming in use and proactive contributions. Sustainable funding of the portal must be built in to any project to ensure the portal remains updated.

15. MEDIA TRAINING FOR NGOS AND JOURNALIST TRAINING

RECOMMENDATION	OUTCOMES	COST
<p>To leverage the power of media in trafficking trials, the following actions should be taken:</p> <ul style="list-style-type: none"> • NGOs should be trained on how to use the national and regional media to push for legal outcomes and raise awareness, including sensitive and timely coverage of cases and legal developments. • A media toolkit should be developed as well as training for journalists from national and regional media houses on: <ul style="list-style-type: none"> • The effects of trafficking on victims; • The need for better responses from local and national authorities; • The latest legal developments and cases relevant to trafficking; • How to report on trials in a manner that is impartial, stays clear of ‘trial by media’ and is sensitive to the victims. 	<ol style="list-style-type: none"> 1. Enhanced reporting of trafficking cases to NGOs and improved legal outcomes for victims. 2. Timely and sensitive news reporting on trafficking. 3. Increased awareness of trafficking at the community level and national level. 4. Emergence of a network of court journalists or specialist journalists covering the trafficking cases at the national, state and district level. 	<p>USD 30,000-35,000</p> <p>Media toolkit:</p> <ul style="list-style-type: none"> • Consultant: USD 9,000. • Translation: USD 3,000. • Design and printing costs: USD 3,000. • Training of NGOs: <p>These costs should ideally be factored into training costs under Recommendation 8.</p> <p>Training of journalists: Initial three training events (one each in three states): Approximately USD 15,000-20,000 total.</p>

IMPLEMENTATION: NGOs with strong experience working with the media could be potential implementers for developing a media toolkit and providing training to other NGOs and journalists. Additionally, experienced lawyers who can provide training to NGOs and journalists should also be identified. Some training modules could be held in collaboration with law enforcement officials and other stakeholders. It would take a minimum of three to six months to develop a good media toolkit and to prepare the training modules for NGOs and journalists. When developing the media toolkit, it should be coordinated so that it will be ready for distribution and use as a learning tool during the training.

16. STRENGTHEN NGO NETWORKS

RECOMMENDATION	OUTCOMES	COST
<p>To assist in collaboration with particular legal cases, an online ‘open network’ should be established, or alternatively an existing network could be strengthened. The network would assist NGOs to connect with other vetted organisations to share information and assist each other with:</p> <ul style="list-style-type: none"> • Finding and intercepting victims that have been trafficked interstate; • Aftercare and rehabilitation of victims once repatriated to their home state; • Assistance with legal cases when a victim has been repatriated to their home state, such as through regularly updating the victim on the status of their case and assisting with preparing the victim for statements and trial, and; • Actively referring victims to organisations able to provide specialised care. For example, an NGO that primarily assists with rescue or release of victims, could refer the later criminal case and provision of ongoing care and support to another vetted NGO. • The legal helpline (Recommendation 7) should refer to this online network when assisting people to connect to NGOs. 	<ol style="list-style-type: none"> 1. Higher number of victims identified, rescued, repatriated and legally supported in interstate cases. 2. Increased number of traffickers being intercepted and victims being rescued by NGOs once trafficked across states. 3. Increased number of victims receiving post-rescue care and legal support from NGOs. 	<p>To begin a new network: feasibility and set-up costs, Year 1: USD 24,000</p> <ul style="list-style-type: none"> • Research and preparation of documents outlining how NGO network will operate and preparation of vetting tools: USD 9,000. • Outreach in key states to identify relevant NGOs, the services they provide, and conduct initial vetting of NGOs. Based on travel to 10 states in India, and travel within those 10 states for two people. Approximate cost of 10 return flights for two people: USD 5,000. Travel costs within states, accommodation: USD 7,000. Total of USD 12,000. • Development of database/online network: USD 3,000. • Ongoing costs: USD 39,000 per year • Staff to manage network and database: USD 15,000 per year. • Administration costs: USD 1,500 per year. • Re-assessment of NGOs/inclusion of new NGOs from other states, outreach to NGO partners: USD 7,500 per year. • Additional funding for NGO managing network to assist NGOs when no other ‘network partner’ can (assistance with legal cases, rescues, aftercare): USD 15,000.

RECOMMENDATION	OUTCOMES	COST
		<p>Strengthen an existing network: USD 48,000 (9,000 of this is a one-off cost)</p> <ul style="list-style-type: none"> • Evaluation of existing network: USD 9,000 (one-off cost). • Funding to implement changes, and to support staff and management: USD 15,000 per year. • Administration/tech costs: USD 1,500 per year. • Re-assessment of NGOs/inclusion of new NGOs/outreach or other assistance to NGO partners: USD 7,500 per year. • Additional funding for NGO managing network to assist other NGOs when no other 'network partner' can (assistance with legal cases, rescues, aftercare): USD 15,000.

IMPLEMENTATION: A number of national NGOs should be approached to discuss establishing a vetted network or strengthening an existing network. In determining an appropriate partner organisation, consideration should be given to: whether the NGO has an existing network that can be built upon, even if informal; its relationship with other NGOs (likelihood that other NGOs will approach the network/NGO for assistance); commitment and ability to manage such a network in the long-term; and ability to step in and provide legal assistance or aftercare in cases where there is no network NGO that can assist. Once a partner is identified, it can lead initial research/ feasibility study and conduct outreach with NGOs across the country to determine NGOs suitable to be part of the network. If feasible and established, ongoing funding for support staff, outreach, vetting and ongoing management can be provided.

17. LAUNCH WORKSHOPS OR AN ANNUAL ANTI-TRAFFICKING LEGAL CONFERENCE IN INDIA

RECOMMENDATION	OUTCOMES	COST
<ul style="list-style-type: none"> • Convene an annual anti-trafficking legal conference or a series of state and/or national workshops to promote collaboration and sharing of knowledge and to develop new strategies. • The conference or workshops would be held with key stakeholders including NGOs, lawyers, law enforcement, prosecutors and judges to discuss key issues, create task forces to tackle key legal challenges and to share legal expertise and resources. 	<ol style="list-style-type: none"> 1. NGOs and lawyers learn new strategies to fight trafficking, and have an increased awareness on important new legal and procedural developments. 2. Generate collaboration on cases, strategic litigation and inform all stakeholders of important networks. 3. Motivate and inspire NGO lawyers and staff, leading to greater commitment and retention of staff. 	<p>USD 15,000-60,000 per year</p> <p>Note: NGOs estimated that smaller or regional-level workshops would cost USD 3,000-7,500 each. If a larger national conference is planned, it would cost at least USD 15,000. If a scholarship fund is designed, an estimate of USD 7,500 would be required.</p>

IMPLEMENTATION: For a national conference, it may be useful to partner with a well-regarded national NGO that is viewed as objective and independent. For smaller workshops, NGOs can also be considered to organise events, particularly those that are active in multiple states. Any event should be organised by an agency or NGO that is careful to collaborate with and acknowledge the contribution of all actors in the field. The first round of meetings should be organised in a 'low-key' manner due to the difficulties of collaboration and an underlying competitive culture in the sector. It would take a minimum of six months to organise smaller-scale workshops and one year for a national conference.



CASE STUDIES



1. TRAFFICKING FROM ASSAM TO DELHI

The case highlights the challenges of tracing victims, undertaking legal action and strategies used in interstate cases.

An NGO explains how a girl was trafficked from Assam to Delhi and sold to a placement agency. She was forced to work as a domestic servant, where she was sexually exploited. The case demonstrates how, after the girl had been missing for three years, the NGO successfully traced her and pursued legal action against offenders.

A woman came to our office here in Delhi from Assam. She had with her a piece of paper – it was a pamphlet we had distributed two years ago from a child trafficking campaign we had run in Assam. She came here to our Delhi office and said, “My daughter has been missing for three years, can you help me?” We couldn’t quite understand each other - we had an issue with language - so we called a translator. She said, “You have to find my daughter in 11 days”.

There were discrepancies in her story and eventually we realised that she was the aunt of the girl, not the mother. We told her – we can’t find your niece in 11 days. We were a bit annoyed that she had come to us with such a demand. Then we continued to speak to her about how the girl was lost. In her statement things did not match up. She had no idea of days or time. All she had was one small piece of paper with the number of the man she said was the trafficker. Eventually the whole story unravelled, but it took about an hour and a half. This is her story.

When her niece went missing three years ago, the woman had found out from others in the village that a particular man had been roaming around with the girl and had since disappeared. She found the man when he came back to Assam and she kept asking him questions. Eventually he told her that her niece had wanted to work, so he had taken her to Delhi - to a placement agency.

The woman then travelled to Delhi and went to the placement agency. When she got there she was beaten up by the agent and told that he didn’t know where the girl was. She then went to the police, but the police refused to listen. She told us that the police told her, “If you already know your niece ran away, and you know this man, then you find out where she is”.

So she left Delhi, as she had no more money to stay, and went back to Assam. Then she remembered the pamphlet of our organisation. She got the pamphlet at the end of 2012 – in our first major campaign on trafficking in the North East. For this campaign we had all government agencies involved, the legal service authorities and the Chief Justice. We distributed public-awareness materials via pamphlets, the newspaper and the radio.

But by the time she remembered our pamphlet, she had no money to return to Delhi again.

She approached her manager at work for money. He told her that if she continued to work in the tea plantation for one and a half years without taking leave then she would get 3,000 rupees. She did this, received the money and travelled to Delhi again. She had worked out that 3,000 rupees was only enough money to stay for 11 days.

This is why she wanted us to find her niece in 11 days.

So we made arrangements for her to stay at our shelter for free and we started to investigate. The placement agency man had disappeared. The number that she had given us was not in operation. So we followed up on the handset registration number and we managed to get an address in Haryana. The address was vague, however, and covered around 17 other houses in the area too. Eventually we managed to find the house of the man, the placement agency man.

By the time we found her, the man had taken her from the house – he must have found out someone was on his trail. He actually took her to the police – his plan was for the police to take official custody of her and then they would probably just send her back to Assam. He told the police that he was her uncle – and because the child was scared she agreed of course. He said that she had run away from her village and that she should be sent back.

The girl was left at the station and the man left. When we found her at the station we said to the police, “How can you let him leave the station? You are under an obligation.”

The man was found and arrested in Delhi.

Then the girl spoke to the authorities and made a statement. She had been raped by a lodger whilst working as a domestic servant. This man was charged with rape and the placement agency man with trafficking under section 370. Unfortunately the District Court did not agree to frame charges against the man for trafficking, and only the rape trial proceeded. The lodger was convicted and sentenced to 10 years in jail. We also applied for victims of crime compensation towards the end of the trial, so that the compensation would be paid on conviction. The Court ordered 250,000 INR compensation for the girl (approximately 4,000 USD). At least this is a success – the girl has been granted a large amount of compensation that will assist her in moving forward.

The lodger also told his wife about the sexual assault of the girl. We are taking action to get the wife charged under Protection of Children from Sexual Offences Act 2012 as she did not mandatorily report this assault as required under this law.

We are also appealing the dropping of charges against the placement agency man. However there are a few difficulties in proving trafficking in this case. By the time the man was arrested, there was no evidence apart from the girl’s statement. Also the original trafficker, the boy, has disappeared from the village, so we can’t get a statement. The aunt also did

not witness any of these events, she just found out about them through investigating. We then tried to focus on putting pressure on the employer of the girl to make a statement. This has worked and he has made a statement to the police about how he employed the girl through the placement agency. This statement and the girl's statement might be enough to prosecute the agent. However another problem is that, when the girl was originally trafficked from Assam, s370 was not yet an offence. We were unable to convince the District Court that trafficking is a continuing offence – that the offence continued right up until she was rescued. But we are appealing.

2. INTERSTATE CHILD TRAFFICKING – 176 CHILD LABOURERS RESCUED

This case highlights how investigations are carried out in interstate cases and how people can be arrested and tried in source and destination states.

In March 2014, 176 child labourers were rescued from Jaipur in Rajasthan and returned to their home state of Bihar. The children were identified and rescued because of the work of an NGO in Bihar who, after tracking one missing child, uncovered a further 175 trafficked children who were being forced to work. The children were between the ages of seven and 16 and were working in the bangle, stone polishing and embroidery industries.

How did the NGO find out about the case?

We have a coolie at the railway station who is part of our community network. He came to our office for help one day. He told us that three years ago, a man approached him and told him that if he allowed his son to travel with him to Jaipur, the son would be given an education. The coolie agreed to this, to give his son a better chance in life. After the boy was taken he had no communication with his son. The employer in Jaipur was also not allowing his son to return home.

How did you investigate the matter and then rescue the children?

We sent two people and the father to Jaipur and we found the address. We then went to the police and got their help. With the police, we rescued four children initially. One was his son. Then we found out there were so many child bonded labourers working in the same conditions who were not allowed to go home. So we conducted advocacy with the Rajasthan officials and worked with the Jaipur Anti Human Trafficking Unit. In the end, we rescued 176 child labourers in three phases. Some of the children were not from Bihar and we had trouble locating NGOs and other services to assist them in their home state. A network of vetted NGOs that we could access would be useful in situations like these.

Did the police lodge a criminal case against the traffickers?

We then lodged an FIR, using the new section 370. The FIR was lodged early July 2014. Four or so people were arrested in the region here in Bihar, whilst more were arrested here in Jaipur. The case is now being investigated but the charge sheet has not been filed. Bail was denied in the first instance for the traffickers arrested here in Bihar – this happens easily here at the Sessions Court level – but bail was then granted on appeal by the High Court. The people arrested in Jaipur are still being held in Jaipur and have not asked for bail. The case is ongoing.

3.

USING THE HIGH COURT TO RELEASE BONDED LABOURERS

This case highlights the challenges in securing official action to rescue and release bonded labourers and how the High Court can be used to obtain action

In Uttar Pradesh, one NGO lawyer has had success ensuring the rescue and release of many bonded labourers using the High Court. Her story is below.

In February 2014 a local village Pradhan (village elected leader) came to our office with a man. The man had escaped from a brick kiln where he and others had been kept as bonded labourers. The Pradhan told me that, after the bonded labourer escaped and reported the situation to him, he had made an application to the District Magistrate to rescue and release the bonded labourers. The District Magistrate is the authority that is mandated to identify, rescue and 'release' bonded labourers. But the District Magistrate was under the influence of the brick kiln owner, and he didn't do anything. The Pradhan also tried to tell the police, to lodge a case, but the police would not register the case.

So the Pradhan then sent a reminder application to the District Magistrate the following month. When there was still no action they approached us and said, "We want to do an application to the court as no one is listening and our people are dying".

I filed a petition in the High Court – a writ public interest petition citing a breach of fundamental constitutional rights. Article 21 of our Constitution forbids breaches of personal liberty. Article 23 also forbids trafficking and forced labour. The petition was on behalf of 11 people, including the man that had escaped. He had told us about the other people.

The first hearing was held and the Court ordered that, as the allegations were serious, the District Magistrate would have to enquire into the matter and report back to the Court on whether people were in a situation of bonded labour or not.

The District Magistrate enquired into the matter and submitted a good report, saying that there weren't just 11 bonded labourers at the brick kiln – there were more. So at the next hearing an order came to rescue and give the Release Certificates to all the people, and then the FIR was lodged against the brick kiln owner. The High Court also ordered that this criminal case be run through a fast-track court – the court can decide this when they believe something needs immediate attention.

It is good that the High Court ordered the District Court to fast-track the matter. The District Court does not view the matter of bonded labour as serious, they are not very interested in talking about these cases. They are not interested, sensitive and knowledgeable – and they delay cases. They give dates and dates and dates.

It is a prevalent practice that even after the rescue, release certificates are not issued. This is because the District Magistrate and other authorities try to reduce their work and the official numbers of bonded labourers in the state. In the absence of the release certificate, we encounter immense problems in ensuring compensation and rehabilitation for labourers as well as successfully prosecuting the case in a court of law.

There is large scope to work for the eradication of this slavery system if lawyers and social organisations work together.

4.

INTERCEPTING CHILDREN BEFORE THEY ARE TRAFFICKED

This case highlights the importance of community networks in identifying cases of trafficking and the challenges faced and strategies used in lodging criminal cases when victims are rescued before travelling to a destination point.

In this case study an NGO informer spots a case of child trafficking, the children are rescued and the NGO staff and lawyers ensure a case under the right offences is lodged. The case also highlights challenges faced in tracking bail applications, and strategies used, as well as common causes of delay in the trial.

Spotting a trafficking offence – how community networks are key

A community volunteer spotted a group of nine boys at the railway station having lunch with an unknown person. The volunteer, who was part of the NGO community network and had been trained on identifying trafficking and forced labour, was suspicious when he saw the group as he knew some of the boys but did not know the other man. When the man left the boys by themselves for a moment, he went over and spoke to them, asking them a range of questions including why they were at the station and where they were going. When the suspected trafficker came back, he gave different answers and appeared to be covering up the situation. The community volunteer was confident that it was a situation of trafficking and immediately rang the local NGO coordinator for that particular district. The NGO coordinator guided the volunteer on the next steps over the phone – advising him to contact the police station and the NGO private lawyer for the district immediately.

Rescuing and looking after the children

After contacting the police, the police rescued the children. The designated police child protection officer was present and ensured that the children were protected during the rescue. The children were taken to a child protection home initially. The following day the NGO coordinator and private lawyer followed up with the police and explained that the children also needed to be presented before the Child Welfare Committee to determine care and custody whilst trying to locate the family. After the rescue and before presenting the children before the Child Welfare Committee, the NGO staff met the children, interviewed them to collect all relevant information and counselled them. The children themselves were reluctant to be stopped from travelling as they wanted to earn money and did not understand that they were going to be exploited upon arrival at their destination. The NGO volunteers, coordinator and advocate had to explain the situation to the children.

Getting the police to lodge a complaint

As the police had not lodged an FIR, the Child Welfare Committee ordered the police to lodge an FIR. However the police still did not lodge an FIR for some time as they were unable to establish if a crime had actually been committed. This is because the children were intercepted before travelling anywhere, and the police were not sure of the relationship between the suspected trafficker and the children. Therefore the NGO coordinator and advocate followed up with the children themselves and their families. The NGO coordinator and lawyer were able to establish the chain of events, and that the suspected trafficker had approached the children in their village with the promise of work in a major city and convinced them to leave without the knowledge of their parents.

After following up with the children and the children's families, the NGO took the children and their parents to the police station in order to persuade the police to lodge a police case (FIR). The police officers at the local station were still reluctant to lodge an FIR, so the NGO sent a letter to the superintendent. The superintendent then gave the order to the lower officials to lodge FIR. It took almost 20-25 days to get an FIR registered but eventually it was. The NGO lawyer also spoke to the Investigation Officer and convinced him that s370(5) should be included in the initial FIR. This provision is part of section 370 – trafficking in persons – which carries strong penalties and an entitlement to compensation. Subsection 5, trafficking of more than one minor, carries an even stronger penalty, a minimum of 14 years' imprisonment.

Unable to track bail applications at the High Court

The accused was arrested then applied for bail at the Sessions Court. This was denied but then he appealed to the High Court, which granted bail. The NGO High Court lawyer did not receive any notice of the bail application in the High Court and therefore was unaware of the hearing and did not appear. The NGO now tracks the High Court listings every day to check for any court listings in their cases.

Delay in the trial

The police charge sheet has been filed before the court but the court is not able to confirm the charges as the accused has stated he doesn't have a lawyer (despite having one at the High Court to apply for bail). The court has to appoint a lawyer before the charges can be framed, so there is a delay. At the time of writing, the charges have still not been framed against the accused.

"We have many challenges regarding delay –in this case the charge sheet was delayed and not filed in time – and the fact that the people do not turn up to court (government witnesses often do not turn up) – so these are the problems that we are trying to deal with."
NGO Worker.

5.

GETTING POLICE TO ACT: OBSTACLES INVOLVED IN A SEX TRAFFICKING CASE

This case highlights the immense challenges faced, and strategies used, to try and ensure prompt action and proper treatment by officials in sex trafficking cases.

An NGO in Uttar Pradesh has detailed 100 cases of sex trafficking, child prostitution and rape where the police have not taken sufficient action, and, in some cases, broken the law. The case highlighted below demonstrates how the police refused to investigate and recover a sex trafficking victim, and then, once recovered, kept the girl in the police station for over 10 days.

In 2012, a minor girl was kidnapped and sold into prostitution in a red-light area of a major regional city. As well as being forced into prostitution and repeatedly raped, the girl was also physically tortured by the brothel owner.

After she was kidnapped, her father found out that it was a likely case of kidnapping and trafficking and he approached the local police station to register a complaint (FIR). The police officers initially refused to register the case. After repeated requests, the police officer convinced the father to sign blank pieces of paper and lodged a 'missing report' instead of an FIR. As an official FIR was not lodged, there was no requirement for the police to conduct an investigation.

Note: In 2013 (after this case) the Supreme Court has ordered that the police must lodge an FIR in all cases of missing children – under the offence of kidnapping.

The father then sent an application to the National Commission for the Protection of Child Rights, Ministry of Women and Child Development, the State Director General of Police, Deputy Inspector General of Police in the relevant city and the police superintendent in charge of the relevant Anti Human Trafficking Unit. This application set out that his daughter had been kidnapped and trafficked, and was not merely missing, and requested the lodging of an FIR and a full police investigation.

No action was taken on this application either, so the father made an application to the Magistrates' Court under section 156(3) of the Criminal Procedure Code. The Court accepted the application and passed an order directing the police to register a case of kidnapping and trafficking.

In order to comply with the order, the police just converted the missing report into an FIR

with a case crime number. However, there was still no investigation undertaken by the police. The father himself searched transport hubs in the district and posted photographs of his daughter throughout the area. After seeing a photograph of the girl, a person contacted the father and informed him that he had seen the girl in a brothel in a city in Uttar Pradesh. The father immediately informed the police, however the police said that they would only act after he verified that the girl was in the brothel.

So the father travelled to the regional city and went to the brothel. He did find his daughter there and tried to rescue her, but the brothel owners/traffickers forcefully stopped him and threatened him with dire consequences if he came back again. Again the father immediately informed the police about these events. This time the police station that he had been dealing with – the local police station for his area – stated that, since the girl was being held in another district, the police station within that area would have to act.

By this stage, the father had learnt about the work of the anti-trafficking NGO in Uttar Pradesh and approached them for assistance. The NGO immediately took the father to the National Commission for Protection of Child Rights to explain the matter and an affidavit requesting the immediate rescue of his minor daughter from the brothel was given by the father. The Commission organised a rescue operation in coordination with senior police officials together with the NGO.

However, the rescue did not go according to plan. Despite the father pointing out the brothel where his daughter was being kept, the senior police officials did not search it during the rescue operation. The operation rescued 29 other girls, but not the man's daughter. The brothel-keepers/traffickers were successful in escaping with the daughter of the man while this rescue operation was undertaken.

Fortunately, one month after the rescue operation, when some of the traffickers were transporting the girl to some other place by train, the girl herself managed to escape and reached a village where the villagers helped her contact her father. The father, police from the local police station and members of the NGO all travelled to the village. The girl was taken into the custody of the police and brought back to the local police station (in the district from where the girl was originally trafficked).

Whilst at the police station the victim was questioned by male police officers in uniform and was not provided medical assistance or counselling support. The victim was kept at the general police station for 10 days before her father applied to the court for her release and to take custody of the girl. The court ordered the release of the girl into the custody of her parents. These actions of the police grossly violate the Juvenile Justice (Care and Protection of Children) Act 2000, which stipulates that minors and children must be taken for a medical examination and then brought before the local Child Welfare Committee within 24 hours of being in police custody.

The girl was taken before the magistrate to make a statement. This witness statement (under section 164 of the Criminal Procedure Code) is important evidence in the later trial. The girl provided the name of the person who had kidnapped and sold her, and the names and addresses of the brothel owners who had bought her and forced her into prostitution. However, despite providing this information, the investigating officer filed a final report to the magistrate in the case without taking any action against the first procurer and the brothel owners.

6. BONDED LABOUR IN UTTAR PRADESH: GETTING THE RIGHT OFFENCES ON THE FIRST INFORMATION REPORTS

This case highlights the importance of NGO lawyers working with the police to ensure all of the relevant offences are placed on the FIR.

In this case, an NGO in Uttar Pradesh is successful in lodging a bonded labour case under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act but unsuccessful in also ensuring the case is filed under s370 of the Indian Penal Code.

A bonded labourer escaped from a brick kiln and met the local community group of this NGO. The NGO community liaison officer sat with the labourer and found out all the relevant details. With the NGO lawyer that works in that particular district, the NGO liaison officer and bonded labourer brought an application to the District Magistrate for rescue of the other bonded labourers at the brick kiln. The application was filed and the District Magistrate ordered a rescue for the following day.

Rescue

The next day, the raid of the brick kiln and rescue and release of bonded labourers occurred. Those present at the raid included the labour enforcement officer, police officer in charge of the local station, community liaison officer of the NGO and the NGO lawyer. Fifty-two bonded labourers, including some child bonded labourers, were rescued and given release certificates.

Case lodged against brick kiln owner

On the same day an FIR was lodged against the brick kiln owner under sections of the Bonded Labour System (Abolition) Act and ss374, 504 and 506 of the Indian Penal Code. The NGO lawyer, upon learning that the released bonded labourers were from a scheduled caste, then worked very hard to convince the police to include s3(1)(6) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ("SC/ST Act"). This section creates an offence for those that compel a member of a scheduled caste or tribe to undertake bonded or forced labour. Sometimes NGO staff have difficulty in convincing the police to include offences under the SC/ST Act as it creates entitlements to compensation, increasing the paperwork of the police. They are reluctant to create more work for themselves.

However, in this case, the lawyer went to the police station personally and explained clearly how the situation meets the elements of the offence under the SC/ST Act. He was successful

in convincing the police. In the experience of this NGO, if the lawyer doesn't talk to the police, then the police are more likely to include weaker offences that result in a less severe punishment of the owner and less entitlements for the labourers.

The lawyer also tried to get them to include s370 of the Indian Penal Code on the FIR – trafficking in persons – which carries a higher penalty, and upon conviction, a higher amount of compensation. Unfortunately, he could not convince the police to include this provision. When the case comes before the magistrate for the framing of charges, the lawyer will argue for section 370 to be included as a charge against the brick kiln owner.

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Dasra, UN Hummingbird Trust, Kamonohashi Project, UN Women 'Zero Traffick: Eliminating Sex Trafficking In India', 2013, 47.

³Walk Free Foundation, 'The Global Slavery Index' 2014 at <http://www.globallslaveryindex.org/country/india>. Other reports cite different numbers: The United States Trafficking in Persons Report 2014 estimates that there are between 20-65 million bonded labourers in India, whilst the Dasra, UN Hummingbird Trust, Kamonohashi Project, UN Women 'Zero Traffick: Eliminating Sex Trafficking In India' 2013 report estimates that there are 16 million victims of sex trafficking in India.

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⁵Integrated Plan of Action to Prevent and Combat Human Trafficking (2008)

⁶Dasra, above note 2, 12. The report estimates the profitability margin of human trafficking to be over 70 percent.

⁷Save the Children India, 'Socio Legal Factors Impacting Prosecution of Trafficking Crimes In Maharashtra', 2014, 20.

⁸Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000

⁹United States Department of State, Trafficking In Persons Report 2014, June 2014, 203.

¹⁰Ibid.

¹¹National Human Rights Commission, 'Know Your Rights: Bonded Labour', 2010, 22.

¹²Centre for Education and Communication, 'Report On Bonded Labour in Uttar Pradesh: Analysing the Effectiveness of the Programmes for the Eradication of the Bonded Labour System', 2007, 12.

¹³'Number of child labour has reduced by 65 percent: Govt', Zee News, 9 July 2014 at http://zeenews.india.com/news/nation/number-of-child-labour-has-reduced-by-65-percent-govt_946349.html

¹⁴Dasra report, above note 2, 4.

¹⁵Scheduled Caste is an official designation given to various groups of historically disadvantaged people in India.

¹⁶As of 2010, the acquittal rate under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was 70 per cent and number of pending cases was approximately 80 per cent, according to former Home Minister, P. Chidambaram, 30 August 2010 at http://164.100.47.132/LssNew/psearch/Result15.aspx?dbsl=3161&ser=&smode=t#3000*25; see Appendix 1, the Legal Framework.

¹⁷ Migration Policy Institute 'Internal Labor Migration in India Raises Integration Challenges for Migrants', 3 March 2014 at <http://www.migrationpolicy.org/article/internal-labor-migration-india-raises-integration-challenges-migrants>; according to World Bank data, In 2010, 29.8 per cent of the population lived below the national poverty line, with 33.8 per cent of the rural population living below the national rural poverty line.

¹⁸ Additionally one NGO interviewed, Freedom Firm, operates primarily in Maharashtra state. This NGO was interviewed as it assists in a large number of prosecution cases.

¹⁹ Sections 370 and 374 Indian Penal Code, 1860

²⁰ Article 32, Convention on the Rights of the Child (Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990)

²¹ Of the 28 NGOs interviewed, 12 undertake legal work as set out above. Of the remaining 16 NGOs, one has set up legal aid centres in bonded labour communities and assisted victims to cancel debts and obtain access to land or leases, rather than pursue prosecutions. The remaining NGOs interviewed do not currently undertake extensive legal work, but assist victims with the initial stages of the criminal justice process up to the lodging of the FIR, provide some basic legal counselling and some carry out research.

²² Save the Children India, 'Socio Legal Factors Impacting Prosecution of Trafficking Crimes In Maharashtra', 2014,

²³ United States Department of State, 'Trafficking in Persons Report' June 2014, 16.

²⁴ Dasra, UN Hummingbird Trust, Kamonohashi Project, UN Women 'Zero Traffick: Eliminating Sex Trafficking In India', 2013, 12. The report estimates the profitability margin of human trafficking to be over 70 percent.

²⁵ s301(2) Code of Criminal Procedure, s40 Protection of Children from Sexual Offences Act, 2012

²⁶ Interview with senior member of national NGO, Delhi, August 2014.

²⁷ Interview with member of NGO, Bihar, July 2014.

²⁸ Dasra, UN Hummingbird Trust, Kamonohashi Project, UN Women 'Zero Traffick: Eliminating Sex Trafficking In India', 2013, 47.

²⁹ Current status of victim service providers and criminal justice actors in India on anti-human trafficking. United Nations Office on Drugs and Crime (UNODC), 2013.

http://www.unodc.org/unodc/en/frontpage/2013/July/india_new_assessment_of_victim_assistance_and_criminal_justice_initiatives_against_human_trafficking.html

³⁰ In Delhi, under the Action Plan for the Abolition of Child Labour in Delhi, and due to directives of the Court (Save the Childhood Foundation vs. Union of India and Others [WP (CrI) 2069/2005]), child labour rescues are normally undertaken by a taskforce including District or Sub Divisional Magistrate, labour officials and police. If the case involves a certain number of children, then the Child Welfare Committee also attends the rescue or meets the

children in a common place after the rescue. The Delhi High Court has also ordered FIRs to be lodged in all cases of child labour.

³¹ Section 100(4) Code of Criminal Procedure

³² Section 161 Code of Criminal Procedure

³³ Section 164 Code of Criminal Procedure

³⁴ Interview with sex trafficking legal expert, July 2014.

³⁵ United States Trafficking in Persons Report 2014, 17.

³⁶ Interview with Director and Senior Lawyer of national NGO, Delhi, September 2014.

³⁷ Taftesh, A Sanjog, GGBK and Kamomohashi Initiative, 'An Exploratory Study on Effectiveness and Impact of Law and the Criminal Justice System in Addressing Human Trafficking', 2014, 64-65; and Human Rights Law Network, Trafficking and the Law (Second Edition), November 2011, 25 and 27.

³⁸ Dasra report, above n1, 4.

³⁹ One NGO in Uttar Pradesh stated that approximately 20 per cent of their cases involve an interstate element.

⁴⁰ For a list of NGO networks see Appendix 4.

⁴¹ Taftesh, A Sanjog, GGBK and Kamomohashi Initiative, 'An Exploratory Study on Effectiveness and Impact of Law and the Criminal Justice System in Addressing Human Trafficking', 2014, 64; NHRC-UNIFEM-ISS, 'Trafficking of Women and Children in India', 2004, 297.

⁴² Section 5(3) of the Immoral Traffic (Prevention) Act; see Nair PM, 'Trafficking Women and Children in India: A Handbook for Law Enforcement Agencies in India', supported by United Nations Office of Drugs and Crime and UNIFEM (the U.N. women's fund) 2007, 11-12.

⁴³ Under s156(3) Code of Criminal Procedure

⁴⁴ Cases only filed under the BLA or CLA can be heard in quasi-judicial labour or summary courts, however if a section under the IPC, SC/ST or POCSO Act is included, the matter should be heard before a normal criminal court.

⁴⁵ Victims that may have suffered from sexual assault must be taken to a medical centre to confirm sexual assault, check for sexually transmitted diseases and to determine the age of the victim - Section 15(5-A) Immoral Traffic (Prevention) Act

⁴⁶ Once a person under 18 is rescued, he/she must be taken before the relevant Child Welfare Committee (CWC) within 24 hours for a decision about the custody (care and protection) of the child to be made – s24 Juvenile Justice (Care and Protection) Act 2000.

⁴⁷ Classified as non-cognisable and bailable offences

⁴⁸ Interview with lawyer assisting national NGO, September 2014.

⁴⁹ Interview with senior lawyer for national NGO, Delhi, July 2014.

⁵⁰ At the High Court, independent lawyers can directly appear – they do not assist the public prosecutor.

⁵¹ Code of Criminal Procedure. However it was noted that although police officers should do

