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The Justice Policy Guide – Exploring What Works to End Modern Slavery: A Survivor-Centric Approach to Justice

Ruth Juliet Nyambura Gachanja

Advocate of the High Court of Kenya

Peter Williams

Principal Advisor on Modern Slavery for
International Justice Mission (IJM)

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INTRODUCTION

The Justice Policy Guide produced by Delta 8.7 (“the Guide”) is designed to identify for decision makers and leaders the most effective approaches and interventions to identify and restore victims and deter the crime of trafficking. . The Guide puts forth three dozen of Hypotheses, encompassing criminal justice, civil justice, international justice, survivor engagement and support, and health policy and practice. Each Hypothesis is supported with studies from around the world.

“Justice” in this context is understood as encompassing criminal justice, civil justice, international justice, survivor engagement and support, and health policy and practice. Readers of the Guide will note a strong theme throughout each of these dimensions of justice: the importance of survivor¹ well-being in the application of justice policies and interventions. Our paper examines this theme within each of these five justice dimensions.

The Guide highlights strong evidence that keeping survivors at the center of interventions leads to better outcomes.. The evidence includes such studies as an independent, external evaluation of IJM’s anti-trafficking program in Cambodia, which states: “90.9% of respondents thought the quality and range of services provided to child sex trafficking victims supported victim rehabilitation and recovery and reduced victim’s risk of being re-trafficked.” The Guide’s insistence on evidence for this and dozens of other anti-trafficking interventions should encourage governments and donors to invest in them.

Throughout the discussion below the authors consider the potential uses of the Guide within justice responses to modern slavery and how a survivor centric lens to policy implementation can be maintained as the best approaches and policies are put into practice. This paper will seek to answer what works to end modern slavery through justice systems and will aim to show that having survivor-centric mechanisms in justice interventions contributes

effectively to combating modern slavery. It draws upon and sites the studies contributed by Members of the Justice Policy Working group for the Delta 8.7 Justice Policy Guide.¹

CRIMINAL AND CIVIL JUSTICE

PETER WILLIAMS

Criminal and civil justice policy makers and those leading modern-slavery programs can draw very specific principles and approaches from the Justice Guide’s hypotheses. The Guide will be extremely relevant when policy makers are drafting new laws or amending old ones, developing or revising National Action Plans, designing Standard Operating Procedures to bring practical meaning to legislation, agreements, and plans, and when officials are implementing all these laws, procedures, and policies in real cases with real consequences for the individuals involved.

Given the excellent body of standards and training materials already available, why might Government authorities in slavery-burdened countries adopt and implement these latest additions? The answer is that there is compelling evidence that the Guide’s recommendations are achievable, and that they work. They are based on the actual experience of government and civil society in combatting trafficking and modern slavery. In other words, the hard work of trial and error has – regarding many interventions and ideas – already been done. The gift of this Guide is in its gathering of collective wisdom and evidence in a comprehensive manner. Questions remain unanswered but the Guide is the best of what currently exists in the fight to end modern slavery. The introduction to the Justice Policy Guide notes that “effective measures in the context of justice require serious consideration of **how** interventions are delivered, and **not only what** measures are adopted.”² For example, the Guide cites numerous “very high confidence” studies to support its first hypothesis: “Legal and policy frameworks and practice that ensure survivors are not criminalized for offences committed in connection to their experiences of modern slavery are critical to effective victim identification, survivor participation and well-being, and the prosecution of offenders.”

Our thesis in this paper is that the “how” must promote **survivor wellbeing** – the implementation of any policy must uphold the best interests of survivors of modern slavery. An examination of the body of modern slavery research in the civil and criminal justice fields reveals a clear link between the extent to which an intervention prioritizes the needs of survivors and its ultimate efficacy.

The *willing participation* of survivors of modern slavery in the criminal justice process is essential if the processes is to produce optimal outcomes for both perpetrator accountability and survivor access to justice in the form of remedy. Justice system responses that are designed to

¹ Delta 8.7 Justice Policy Guide, UN University, Centre for Policy Research. http://collections.unu.edu/eserv/UNU:8067/Delta87_JusticePolicyGuide.pdf

² Justice Guide, introduction, p. 1

secure that willing participation end up with far better case outcomes for both the survivor themselves and the community at large. The Justice Guide provides clear evidence supporting numerous practices and policies centered around improving the survivor’s experience of the justice system. An illustration is the evidence in the Guide that supports its Hypothesis 5 (“Ensuring survivors receive appropriate support and criminal justice processes are victim-centred increase victim cooperation with investigations and prosecutions, improving the likelihood of success”) with an evidence base of 13 separate studies. The evidence includes data from such varied slavery cases as European sex trafficking cases, forced laborers from Thailand and Cambodia, and child victimized by on-line sexual exploitation in the Philippines.

Specifically, the evidence contained in the Guide should prompt justice policy-makers to apply modern slavery interventions that support survivors by: targeting first-responder capacity and lowering barriers to entry at the identification stage (Hypotheses 1 and 2, supported by more than 15 studies); simplifying and clarifying modern slavery definitions and processes (Hypotheses 4 and 6, supported by more than 20 studies); providing focused and targeted training to both specialized and non-specialized teams and departments (Hypothesis 2, supported by 16 studies); enhancing coordination between social service and criminal justice professionals (Hypothesis 3, supported by 16 studies); and mitigating rather than exacerbating the effects of trauma (Hypothesis 5, supported by 13 studies).

Access to justice: the crucial first response

The most devastating “barrier to entry” often occurs when a victim of modern slavery first engages a government official. In my own experience having pursued hundreds of modern slavery cases, I’ve found this first engagement with a justice system to be highly determinative of long-term outcomes. If a survivor finds receptivity from officials along with support and substantial action in their favor, their ongoing and willing participation in the justice process is far more likely. Likewise, their own recovery is set on the right track from an early stage. Unfortunately, the opposite is equally, and frequently, true as well.

The studies in the Guide support the experience of anti-slavery practitioners: three of the Guide’s 12 criminal justice hypotheses confirm the importance of victim-centered justice services, including access to interpreters, specialized screening, and victim support throughout trauma-informed justice processes.

Given the circumstances often surrounding modern slavery (such as irregular migration and illicit industries), a survivor of modern slavery can easily be mistaken for a criminal offender by officials. Ensuring a person who needs care and support because of their experience of modern slavery is not treated as a criminal seems like a very low bar to set. I have, however, witnessed the opposite many times. In one egregious example I witnessed in Southeast Asia, a 14-year-old girl was detained in adult prison for several months on immigration charges, when in fact she had been trafficked and was entitled to non-prosecution protections (not to mention aid and support as a victim of trafficking) under the country’s trafficking law. Unfortunately, such

fundamental and harmful errors are common worldwide. A recent case in which UK authorities arrested, detained, and convicted two Vietnamese migrants on drug charges after failing to identify them as victims of trafficking was taken to the European Court of Human Rights. The ECHR found that UK authorities had failed to properly apply the elements of trafficking to the circumstances, that the migrants should have been – as victims of trafficking – entitled to the non-prosecution protections contained in UK trafficking law and awarded damages in their favour.³

As the Guide demonstrates in its first Hypothesis – law and practice must not criminalize victims of slavery - and these examples bear out, a justice systems' failure at first instance is most often caused by overly narrow or strict interpretations of trafficking and other modern slavery definitions,⁴ and exacerbated by unreasonably high evidentiary burdens/standards of proof at the identification stage⁵ and/or a lack of training for first-responding officials.⁶

Regardless of the legislative framework, whenever officials presume that survivors are criminals, the onus falls on the survivor to rebut that presumption. For someone who finds themselves in a threatening situation facing loss of liberty at the hands of the government, who is still likely suffering trauma from their experience, and who is most often alone and lacking any resources, this is entirely unreasonable.

For true access to justice to occur, first-responder officials must apply a basic presumption in exactly the opposite direction: that a person who makes a credible claim to have experienced modern slavery *has* experienced modern slavery.⁷ The official must then use that presumption in their decision-making. Officials should consider whether there is a 'reasonable possibility' (or some other low standard of proof) that the person before them has experienced modern slavery, and if so, trigger whatever state mechanisms exist to protect that person. Those

³ *V.C.L. and A.N. v. The United Kingdom (applications nos. 77587/12 and 74603/12)*, ECLI:CE:ECHR:2021:0216JUD007758712, Council of Europe: European Court of Human Rights, 16 February 2021

⁴ Justice Guide, hypothesis 6, p. 19 (e.g. Katherine Solits and Rebecca Walters, "What's in a Name?": Mislabeling, misidentification, and the US government's failure to protect human trafficking survivors in the Central American refugee crisis," *Anti-Trafficking Review* 11 (2018). .

⁵ Justice Guide, hypothesis 1, p. 6 (e.g. Lorena Arocha, *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons* (London: Anti-Trafficking Monitoring Group and Anti- Slavery International, 2010). .

⁶ Justice Guide, hypothesis 2, p. 8 (e.g. Claire M. Renzetti, Amy Bush, Marissa Castellanos and Gretchen Hunt, "Does training make a difference? An evaluation of a specialized human trafficking training module for law enforcement officers," *Journal of Crime and Justice* 38, 3 (2015).

⁷ Above n.3 (VCL & AN v The UK); Carolina Villacampa and Núria Torres, "Human Trafficking for Criminal Exploitation: The Failure to Identify Victim," *European Journal on Criminal Policy and Research* 23 (2017): 393-408. FLEX (2015); PRO-ACT: Identification and Support for Victims of Trafficking for Labour Exploitation in The Netherlands, the UK and Romania. Focus on Labour Exploitation (FLEX). <http://www.labourexploitation.org/sites/default/files/publications/ProAct%20Research%20Report.pdf>; Lorena Arocha, *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons* (London: Anti-Trafficking Monitoring Group and Anti-Slavery International, 2010).

protections should remain in place unless and until there is evidence to rebut the presumption that the person was a victim of modern slavery.

These are not unrealistic standards for government duty-bearers when dealing with modern slavery cases. Consider the example of “release certificates” used by the government of India in bonded labor cases. In South Asia, bonded labour, though illegal, remains widespread. Twenty years ago, examples of effective government intervention in bonded labor cases were few and far between, and bonded laborers had little reason to turn to the justice system for help. But local officials in the Indian states of Tamil Nadu and Karnataka began to engage the problem, one case at a time.

One of their first innovations was creating an official “Release Certificate”. Now recognised under Indian law and procedure, a Release Certificate identifies a person as having been a bonded labourer, prevents the ‘owner’ from enforcing any illegal bonded debt against the identified victim, entitles the victim to state-sponsored rehabilitation funds, and opens the door to various social welfare schemes such as ration cards and land allotments. Release Certificates are an outcome of initial identification. In other words, this process occurred at the very beginning of a case and was often a bonded laborer’s first experience of government action.

More important than the “what” of this approach is the “how”. Intervening officials were empowered to issue Release Certificates to bonded labor victims following a *basic and rapid inquiry* of the laborers with a *low standard of proof* (without the need, for instance, to interview suspected perpetrators) and a *presumption* that a person claiming to have been bonded had, in fact, been bonded.⁸

The Guide affirms the concept, noting: “Similarly, creating too onerous a standard of proof at the identification stage (e.g., using small inconsistencies in the victim’s account to question the credibility of the whole account, or rejecting claims because of a lack of corroborative evidence) can open the door to victim criminalization.”⁹

Those first releases and survivors’ access to protection and services created something of a virtuous flywheel. As they returned to their home communities by the dozens, hundreds, and eventually by the thousands, the released labourers were a living testament to the legitimacy of the state to enforce the law, and the benefits of reporting bonded labour. Former bonded workers became leaders in their own communities, advocating for benefits and advising against accepting loans that are the engine for debt bondage and labour exploitation throughout South Asia. For the prosecutors reading this, it will not be surprising to know that these leaders were also far more willing to participate in bonded labor trials and testify against their exploiters than those who did not receive Release Certificates at the outset of their case.

⁸ See the Bonded Labour System (Abolition) Act, 1976 (India), s.15: “**Burden of Proof.**—Whenever any debt is claimed by a bonded labourer to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.”; In the Supreme Court of India case *Bandhua Mukti Morcha v. Union of India A.I.R. 1984 S.C. 802*, His Honor Justice Bhagwati held: “The State Government cannot be permitted to repudiate its obligation to identify, release and rehabilitate the bonded labourers on the plea that they must show in an appropriate proceeding conducted or adversary system of justice that they are bonded labourers.”

⁹ Delta 8.7 Justice Policy Guide at p. 7.

It has taken decades for authorities in southern India to develop models and tools for identification and release of survivors, provision of Release Certificates and access to services. But their hard-won experience is available to duty bearers around the world. Others need not re-invent the process, re-create trainings and tools, or repeat setbacks and mistakes.¹⁰

Holistic and integrated interventions

The Guide points to the need to ensure that the provision of services to survivors runs in parallel to, and is not contingent upon, a survivor’s participation in the criminal justice process.¹¹ These are two distinct (but related) streams of government action and response: social services and criminal justice. Both have the same origin – the identification of an instance of modern slavery involving at least one victim and at least one perpetrator. Thus, the various interventions flowing from that single origin ought to be well integrated and coordinated.

Unfortunately, the ideal of integration is often twisted into manipulation.¹² Participation in criminal proceedings should never be a gateway through which a person must pass to receive the social protections and benefits to which they are entitled, but regrettably this is still common practice in many jurisdictions. A number of studies cited in the Guide support the de-linking of services from victim cooperation with law enforcement. One study of cross-border trafficking into the Thai Fishing industry, notes: “Guideline 6 of the OHCHR Guidelines specifies that the provision of shelter “should not be made contingent on the willingness of the victims to give evidence in criminal proceedings”. However, according to informants, in Thailand, the granting of the official status of “victim of trafficking” and its associated benefits is contingent upon cooperation with law enforcement.”¹³

Some countries even *detain* survivors until their participation in criminal proceedings is completed (often a years-long process). Unsurprisingly, the quality of evidence obtained from survivors in detention is low, and convictions of perpetrators are rare.

In the best responses I have seen, survivor recovery *and* perpetrator accountability flow from identification in an integrated way. Social workers and case managers have strong working relationships with police and prosecutors and understand the criminal procedures, helping survivors navigate them. Conversely, police and prosecutors include social service providers in decision-making and seek their involvement throughout investigation and trial.

¹⁰ See, for example, the Release Certificate template at p.7 of the Central Sector Scheme for Rehabilitation of Bonded Labourers, 2016: https://labour.gov.in/sites/default/files/OM_CSS_Rehab_BL_2016_1.pdf

¹¹ Justice Guide, hypothesis 5, p. 17 and evidence cited therein including: Iffat Idris, Interventions to Support Victims of Modern Slavery. Knowledge, Evidence and Learning for Developments (Brighton, UK: Institute of Development Studies, 2017).

¹² Anette Brunovskis and May-Len Skilbrei, "Two Birds with One Stone? Implications of Conditional Assistance in Victim Protection and Prosecution of Traffickers," *Anti-Trafficking Review* 6 (2016).

¹³David Rousseau, Review of Models of Care for Trafficking Survivors in Thailand (Washington DC: Winrock International, 2019).

This is a holistic approach to justice in individual cases, and the evidence compiled in the Guide bears out its efficacy.¹⁴ This approach reaches into the non-criminal sphere as well. There are often numerous avenues for survivor remedy and protection outside of the criminal justice system, such as through the implementation of labor rights and immigration protections.¹⁵

Governments can most effectively integrate these mechanisms through the creation of inter-ministerial bodies designed to coordinate and align legislation, policy, and implementation within a larger modern slavery framework. I have seen these bodies create a more holistic response in countries from Southeast and South Asia, and IJM projects in Africa and Eastern Europe attest to the effectiveness of centralized coordination for this purpose.

An example of a holistic response is the use of wage repayments in labor legislation alongside the aforementioned government rehabilitation funds for bonded labor survivors in India. The administration of *both* sources of economic recovery enables survivors (often with support from social workers using community-based treatment plans) to find economic stability outside the bonded labor system. Their engagement with criminal justice proceedings and their ability to recover from trauma and productively re-enter their communities can then occur from a stable economic base, and the risk of them re-entering bonded labor situations dramatically reduces.

Skills, knowledge, and specialization

As a modern slavery case continues its journey through a justice system, the need for specialized skill and knowledge grows. To effectively support survivors through the criminal justice process, social service practitioners (government and non-government) need to understand the criminal justice system. Likewise, law enforcement and legal professionals must be equipped with knowledge of trauma-informed practices and be able to combat common myths and assumptions about the experience of modern slavery as they investigate, build evidence, and prosecute at trial.

This is where IJM has seen the great efficacy of training and capacity-building efforts – both for specialised teams and for non-specialised justice system actors. In the Philippines, for instance, IJM's long-term partnership with anti-trafficking teams within the police, prosecutorial and social service arms of government have led to a more survivor-centered and holistic response. Consistently classified a Tier 1 country by the US Department of State in their annual

¹⁴ Justice Guide, hypothesis 7, p. 21 (and evidence cited therein, for example: Abigail Swenstein and Kate Mogulescu, "Resisting the Carceral: The need to align anti-trafficking efforts with movements for criminal justice reform," *Anti-Trafficking Review* 6 (2016): 118-122). and hypothesis 10, p. 26 (including studies such as: Peter Williams, *Labor Trafficking in Cambodia: A Review of the Public Justice System's Response* (Washington DC: International Justice Mission, 2016) and Victor Boutros and John Cotton Richmond, "Investments in Human Trafficking Prosecutions are Indispensable," *Anti-Trafficking Review* 6 (2016): 107-110.

¹⁵ Justice Guide, hypothesis 16, p. 34.

Trafficking in Persons Report,¹⁶ the Philippines has ensured its front-line officials are trained in trauma-informed practices when working with survivors of trafficking.¹⁷ This has led to increased confidence in, and reliance upon, the justice system within vulnerable populations. In turn this has led to higher arrest and conviction rates and declining prevalence of trafficking in the country, particularly trafficking of children for sexual exploitation.¹⁸ The same is true of similar efforts in Cambodia.¹⁹

In IJM’s experience, specialization and designated law enforcement units is an effective anti-trafficking approach because the smaller number of officers in units allow for concentrated training and deployment and 1-1 mentoring and oversight that contribute to early successes in identifying victims and arresting perpetrators. Corrupt or complicit officers are easier to identify and isolate in a smaller unit, and unit cohesion is greatly enhanced. Creation and deployment of designated anti-trafficking law enforcement units, while highly recommended, should always be combined with basic training for all criminal justice duty bearers in anti-trafficking law and proper treatment of survivors, witnesses, and suspects.

Specialized policies and procedures can also support more effective and healthier survivor engagement in justice processes. Thailand, for instance, implemented a policy that allowed migrant trafficking survivors to return to their home country after giving their initial statements to law enforcement rather than having to wait to testify at trial.²⁰ Similarly, IJM teams in Romania and the UK are working with authorities to implement video-link testimony procedures to allow survivors to give evidence from their home country rather than having to return to the place they were exploited to testify.

System-wide trauma-informed practices

The Guide’s compilation of evidence shows that **trauma-informed** justice processes and restoration services offer many benefits to survivors, to their case, and to their community. Fortunately, there is much evidence in literature and practice of the importance and efficacy of a

¹⁶ US Department of State, *Trafficking in Persons Report*, June 2021, pp. 454-457.

¹⁷ For example: “Seven regional task force victim-witness coordinators provided trauma-informed support and assistance, including by providing continuous support throughout the criminal justice process, to 130 victims.” (US Department of State, *Trafficking in Persons Report*, June 2021, p. 456)

¹⁸ Robin Haarr, *Evaluation of the Program to Combat Sex Trafficking of Children in the Philippines: 2003-2015* (Washington DC: International Justice Mission, 2017)

¹⁹ Robin Haarr, *External Evaluation of IJM’s Program to Combat Sex Trafficking of Children in Cambodia, 2004-2014* (Washington DC: International Justice Mission, 2015).

²⁰ US Department of State *Trafficking in Persons Report* June 2021, p. 545.

trauma-informed approach.²¹ The Guide emphasises the need for trauma-informed practices not just within social service provision but for law enforcement officials, prosecutors, judges, and first-responders.

In Cambodia, trauma-informed practices began in the mid 2000's with survivor shelter facilities, where practitioners were working directly on trauma recovery with children who had experienced commercial sexual exploitation. With the support of civil society partners and NGOs, the Cambodian justice system expanded trauma-informed practices beyond the shelters into police and courtroom procedure, and into labour trafficking cases involving children and adults, men, and women.²² I recall a case in 2016 involving a large group of Cambodian men who had been trafficked in the Thai fishing industry. On their return to Cambodia the men were promptly provided psychological debriefing in coordination with the Cambodian Ministry for Social Affairs and the International Organisation for Migration (IOM). The Police interviews took place after several days (allowing the men time to reorient and rest) in a neutral location (not a police station) and police wore plain clothes. NGO social workers were permitted to be present before and after the interviews. As a result, the men not only had a great start to long-term recovery but provided much more detailed statements to police than they had provided to authorities in other countries before their repatriation.

Trauma-informed systems help to increase accuracy of referrals, engagement in mental health services and reduce dropout rates from supportive services.²³ Trauma-informed systems increase collaboration among service providers and reduces bias in order to provide higher levels of care for the survivor and stronger participation in prosecutions. And peer support built into trauma-informed systems contributes to survivor agency and hope. At IJM, we have seen that the research bears out: When survivors have positive, trauma-informed interactions with justice officers of good will, are given choices and can collaborate with service providers about care options, the likelihood of survivors' full restoration and recovery increases.

²¹ See Hypothesis 2: "Providing modern slavery and human trafficking training to law enforcement and criminal justice actors improves identification, investigation and prosecution of modern slavery offences." and evidence cited therein, such as: Katarina Schwarz and Jing Geng, "Reasserting Agency: Procedural Justice, Victim-Centricity, and the Right to Remedy for Survivors of Slavery and Related Exploitation," *Journal of Modern Slavery* 4, 2 (2018): 93-120 and Anita Franklin and Lisa Doyle, *Still at risk: A review of support for trafficked children* (London: The Children's Society and The Refugee Council, 2013).

²² Peter Williams, *Labor Trafficking in Cambodia: A Review of the Public Justice System's Response* (Washington DC: International Justice Mission, 2016) at P. 26.

²³ Iffat Idris, *Interventions to Support Victims of Modern Slavery* (Brighton, UK: Institute of Development Studies, 2017); Katarina Schwarz and Jing Geng, "Reasserting Agency: Procedural Justice, Victim-Centricity, and the Right to Remedy for Survivors of Slavery and Related Exploitation," *Journal of Modern Slavery* 4, 2 (2018): 93-120.