
SOP **FIELDBOOK**

STANDARD OPERATING PROCEDURES FOR
FIGHTING HUMAN TRAFFICKING IN NEPAL

SOPS FOR PROSECUTION OF SEX TRAFFICKING PERPETRATORS



HUMAN TRAFFICKING FIELDBOOK
SOP's for Sex Trafficking Interventions
Procedure for Prosecution of Sex Trafficking Perpetrators

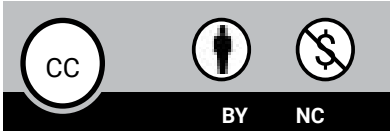
From
Human Trafficking Legal Refrence Toolkit
Standard Operating Procedures to Fight Bonded Labour and Sex Trafficking

A Handbook for NGOs and their Lawyers

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**OVERVIEW OF PROCEDURE FOR PROSECUTION OF
SEX TRAFFICKING PERPETRATORS**



Step 1 Registering the Sex Trafficking First Information Report (FIR)

NGO	ADVOCATE
The NGO should file or support the victims in filing the First Information Report (FIR) at the police station in the jurisdiction where the sex trafficking took place.	The Advocate should ensure that the police register the FIR with all applicable human trafficking and other offences included.

Step 2 Appearance of Survivors Before the District Court

NGO	ADVOCATE
The NGO should ensure that rescued victims are presented before the District Court to certify their statements about the trafficking.	The Advocate should provide any advice needed to victims while they provide their certified statements

Step 3 Recording Sex Trafficking Victims’ Statements

NGO	ADVOCATE
The NGO should assist the police with recording the statements of the sex trafficking victims.	The Advocate should brief the victims about their rights before the process of recording their statement begins.

Step 4 Arresting Persons Accused of Sex Trafficking Offenses

NGO	ADVOCATE
The NGO should assist and coordinate with the police in immediately arresting all of the accused concerned with the sex trafficking offences.	The Advocate should assist the police with the immediate arrest of the accused under relevant provisions of the NCPC and HTTCA and encourage the police to move forward swiftly with the investigation.

Step 5 Appointing Separate Private Lawyer (Vakalatnama)

NGO	ADVOCATE
The NGO should ensure that the sex trafficking survivors provide necessary information for the appointment of a private lawyer and that qualified female counsellors or female legal guardians are present when survivors meet with the Advocate.	The Advocate should obtain the consent of sex trafficking survivors to submit a vakalatnama to the court as their legal representative.

Step 6 Seizing Brothel Property

NGO	ADVOCATE
The NGO should provide sufficient information to enable the Advocate to move petitions for seizure of the property on which trafficking has occurred.	The Advocate should mention seizure of property in the FIR and make a petition to proper authorities for the seizure of the property on which trafficking occurred.

Step 7 Filing for Sex Trafficking Victim Compensation

NGO	ADVOCATE
The NGO should assist the Advocate in moving applications for compensation before the courts under Section 17 of the HTTCA.	The Advocate should move an application for compensation on behalf of the survivors of human trafficking before the courts, under Section 17 of the HTTCA.

Step 8 Filing of Sex Trafficking Chargesheet

NGO	ADVOCATE
The NGO should follow up with the Advocate regarding the filing of a charge sheet.	The Advocate should ensure that the chargesheet is filed within the stipulated time by working closely with the Police and the Government Attorney.

Step 9 Opposing the Bail Application of Accused Perpetrators

NGO	ADVOCATE
The NGO representatives should be proactive in immediately passing on any information received regarding bail applications filed by the accused to the Advocate.	The Advocate should attend all bail hearings to oppose bail orally and by written application and to argue for stringent bail conditions, should bail be granted.

Step 10 Collaborating with the Prosecution Throughout Case Process

NGO	ADVOCATE
Once the trial begins, the NGO should support victims by getting information from court and public prosecutors.	The Advocate should attend every court hearing and be ready to assist the Government Attorney at every stage of the trial.

Step 11 Preparing Sex Trafficking Witnesses to Testify

NGO	ADVOCATE
During the trial, the NGO should help prepare survivors for their witness testimony by counselling them to testify boldly, accurately and with clarity.	The Advocate should assist the government attorney in preparing the government witnesses for chief examination and cross-examination so as to enable them to testify accurately, boldly and with clarity

Step 12 Submitting Final Arguments to Prove Sex Trafficking

NGO	ADVOCATE
At the latter stage of the trial, the NGO should provide as much information as possible to help the Advocate file comprehensive written submissions.	The Advocate should collaborate with the Government Attorney to draft and submit written submissions for final arguments to be submitted before the court through the Government Attorney (or directly to the court if the Government Attorney refuses to cooperate). The Advocate should also present final oral arguments when allowed by the Court.

Step 13 Obtaining the Judgment

NGO	ADVOCATE
The NGO should assist the victim in obtaining certified copies of the final judgment from the Court	The Advocate should help to obtain copies of the final judgment.

Step 14 Filing of Appeal

NGO	ADVOCATE
NGO should assist the Advocate with the preparation of an appeal, if required.	The Advocate should collaborate with public prosecutors to file an appeal to the high court on an adverse judgment, if required.

PROCEDURE FOR PROSECUTION OF SEX TRAFFICKING PERPETRATORS

Step 1 Registering the Sex Trafficking First Information Report (FIR)

NGO
<p>The NGO should file or support the victims in filing the First Information Report (FIR) at the police station in the jurisdiction where the sex trafficking took place.</p>
NGO COMMENTARY
<p>The NGO representatives should ensure that the FIR is filed before the police station and includes all relevant offences. Remember that when in doubt about whether a survivor is a minor, she should be treated as a minor.</p> <p>The NGO should seek the help of an advocate should the police fail or refuse to register an FIR.</p>
ADVOCATE
<p>The Advocate should ensure that the police register the FIR with all applicable human trafficking and other offences included.</p>
ADVOCATE COMMENTARY
<p>The Advocate should ensure that the FIR filed by the NGO is properly registered by the police station.</p> <p>Any person can file a complaint or information with regard to human trafficking offences for registration of an FIR. The Advocate may encourage the Government officials, the victim, the family of the victim, or anyone present to file the FIR.</p> <p>Important information that should be included in an FIR:</p> <ul style="list-style-type: none">• If rescue has not occurred, the date and location of the crime with evidence, witnesses and other legal documents• Date and location of the rescue• Time of the rescue• Distance of the site from the Police Station• Names and ages of the victims rescued• Place where the offences occurred• Name and addresses (if known) of the brothel owner/trafficker• Details of the offences that occurred• Brief description of the rescue site and the materials seized• Details of the rescue team who conducted the operation.

ADVOCATE COMMENTARY
<p>The Advocate should ensure that the information is recorded by the officer-incharge at the police station and that the FIR is registered under Section 4(3) of the Natioanl Criminal Procedure Code, 2017/2074 (NCPC).</p> <p>Steps to be taken if an FIR is not being registered by the Police: If the information is not being recorded or an FIR is not being registered, the Advocate should send the information in writing and by post to the concerned district government attorney office or a higher-level police officer, pursuant to Section 5 of the NCPC. The district government attorney or higher police officer shall forward such information to the concerned police office for action.</p> <p>If the information is still not being recorded as an FIR, the Advocate should file an application before the Chief District Officer seeking an order that the information be recorded and an investigation commenced. However, if the Chief District Officer himself or herself is designated as the investigation authority and refuses to register such information, such complaint may be made to the Ministry of Home Affairs. NCPC Sec. 5(4).</p> <p>Upon receipt of any complaint referred, the concerned Chief District Officer or the Ministry of Home Affairs shall decide within three days as to whether or not to register such complaint and give direction to the concerned office to take, or cause to be taken, action accordingly. NCPC Sec. 5(5).</p> <p>If the FIR does not identify offences supported by the facts, the Advocate should submit a letter along with an affidavit or other supporting documents for inclusion of additional offences.</p>
POINTS TO NOTE

Anyone can make a complaint to file a FIR: Any person who has knowledge about the offence can file a complaint to register a First Information Report of a human trafficking offence. The complainant may be a police officer, the NGO, the local Child Welfare Authority, parents/relatives of the victim, primary care givers of the victim, any other person who has knowledge of the said crime, and the victim herself.

As per section 1(3) of HTTCA, anyone committing an offence against a Nepali citizen under this Act from foreign territory shall also remain within the scope of this Act.

Name of Investigating Officer must be recorded in the FIR: The name of the I.O. registering the FIR along with his designation must be recorded legibly in the FIR. The I.O. is an important part of the trial, and hence details of the I.O. must be legibly stated in the FIR.

Mandatory duty to register an FIR: A police officer in charge of a Police station is bound to register an FIR for cognizable cases under Section 4 (3) of the NCPC. The FIR is also to be signed by the person giving information.

Push for investigation under Section 7 of the HTTCA: The Advocate should encourage the police to move forward with the investigation under Section 7 of the HTTCA and arrest individuals suspected of commission of a cognizable offence. If the police do not move forward with an investigation, seek to expedite the process pursuant to Section 6 of the NCPC by arguing the likelihood of the accused escaping or destroying evidence.

POINTS TO NOTE

Victim’s right to be informed about investigation: Section 7 of the Crime Victim Protection Act, 2018/2075 provides that the investigation authority should provide information, where the victim so demands, about the details of the prosecuting body, investigation authority, the suspects, progress report of investigation, enquiry process and so on, unless such is likely to adversely affect the investigation into the offence or create a threat to body, life and property of suspect.

LEARN MORE AND TAKE ACTION

Sample FIR: Contact your local police station or get in touch with JVI to see what an FIR looks like. To obtain a draft of a Petition to be filed before the High Court to register FIR, contact JVI.

Step 2 Appearance of Survivors Before the District Court

NGO

The NGO should ensure that rescued victims are presented before the District Court to certify their statements about the trafficking.

NGO COMMENTARY

NGO representatives must accompany the victims before the police officer to provide their statements and ensure that the victims are treated with utmost sensitivity and dignity. The police officer will take the statement and then the victims will be taken to the nearest district court to certify their statements.

NGO aftercare workers must accompany the rescued victims along with a woman police constable for a medical examination and then escort them to the shelter home where they are placed.

ADVOCATE

The Advocate should provide any advice needed to victims while they provide their certified statements.

ADVOCATE COMMENTARY

The Advocate must ensure that the victim statements are properly recorded by the police officer and assist the victims in certifying their statements in the district court, pursuant to HTTCA Sec. 6.

The Advocate should ensure that victims are not forced by the police to give a statement against their interest and that the police treat the victim with dignity.

POINTS TO NOTE

Procedure for and purpose of certifying victims’ statement under HTTCA Sec. 6: If an FIR is registered by the victim, the police officer must take the statement immediately and take the victim to the nearest district court to certify the statement. The district court judge must certify the statement, even if the offense does not fall within the jurisdiction of the district court, upon reading it aloud and nothing whether there is a difference in the statement. If a victim’s statement is properly certified, a court can accept the statement as evidence, even if the victim does not appear in further court proceedings.

Oppose custody applications: The Advocate should also oppose custody applications filed by parent or relatives of minors whenever there is an indication of violence at home or when a Home Verification Report is pending.

Safeguards with regard to the rescue team: Under no circumstances should the rescue team be detained in the police station or neglected and thus exposed to further risks.

When a rescued victim looks like a minor: In case of uncertainties regarding the age of the rescued victim, the victim should be referred to the child welfare authority, pursuant to Section 70 of Act Relating to Children 2018/2075, which provides that when a child is rescued from an act of violence or sexual abuse, the police must refer the child to a temporary protection service. If the child welfare authority is in doubt regarding the age of the person brought before it, it shall seek to determine the age of the person by seeking evidence of the following, pursuant to Section 83 of the Act Relating to Children:

- The date of birth recorded in the child’s birth registration issued by the hospital
- If the date of birth referred to above is not available, the date of birth recorded in the child’s birth registration certificate issued by the Local Registrar’s Office
- If such certificate is not available, the date of birth recorded in the child’s school character certificate or the date of birth recorded at the time of child’s admission to the school.
- If a school character certificate or the date of birth is not available, the date recorded in the certificate of age issued by the hospital.
- If the certificate of age is not available, the age recorded in the Janmakundali (birth chart), Cheena (horoscope), notes, or the age disclosed by the father, mother, guardian or any other family member of the child or similar other relevant evidence, such as school admission documents

Production before the District Court or Child Welfare Authority and arrest of the perpetrator: Both Step 2.2 and Step 2.3 could take place simultaneously, and in some cases (e.g., when the rescue takes place at night) Step 2.3 would precede Step 2.2.

LEARN MORE AND TAKE ACTION

Child in need of care and protection: A rescued child will be considered a child in need of special protection under the Act Relating to Children, Sec. 48 and will fall within the jurisdiction of the Child Welfare Authority. The Child Welfare Authority has the authority to place the child in temporary protection service and make arrangements for providing necessary services, including entrusting a social service provider to deliver such services. See Act Relating to Children, Section 50 for more information.

Order of Child Welfare Authority to give custody of child to parent: The Child Welfare Authority is responsible for the welfare of the child and to restore the victim. Under Section 50(5) of the Act Relating to Children, it is the Child Welfare Authority who can order the restoration of the child into the custody of her parent or guardian, on consideration of the

inquiry report and taking into account the child’s wishes in case the child is sufficiently mature to take a view.

Representatives of the NGO and the Advocate must ensure that the child is being handed over to her parent(s)/ guardian and must oppose her release if they fear or are certain that the person seeking custody will re-traffic the child.

JVI can provide more information on how to oppose the release of a child or minor to a suspected trafficker.

Step 3 Recording Sex Trafficking Victims’ Statements

NGO

The NGO should assist the police with recording the statements of the sex trafficking victims.

NGO COMMENTARY

NGO representatives must ensure that the victim is not forced to speak and that counselling is provided to the victim by a trained counsellor. The NGO representative must also ensure that arrangements for appropriate translators for victims who speak in a different language are made.

The NGO representative should build a good rapport with victims and obtain detailed information as to how they were trafficked, where they were trafficked to and how long they were abused.

ADVOCATE

The Advocate should brief the victims about their rights before the process of recording their statement begins.

ADVOCATE COMMENTARY

The Advocate must ensure that a detailed interview of the victim is taken in order to secure information such as personal details, age, address, family history, etc. The Advocate must further ensure that the interview is carried out by a women police officer or in the presence of female representatives of an NGO.

As per HTTCA Section 6, the police officer should take the victim’s statement immediately after the rescue or reporting of the crime, and the victim should be taken to the nearest district court to certify the statement as soon as possible.

Since the statement of the victim has to be verified by the court, the victim should be informed that the same statement should be given in the court and also be briefed about the court procedures.

The certified statement is taken as evidence by the court even if the victim does not appear in the court in the course of further court proceeding.

ADVOCATE COMMENTARY

The Supreme Court has spoken on this matter in various cases, including Lok Bahadur Karki vs Government of Nepal, Ne.ka.pa 2072 part 2, decision number 9346; Goma Panchkoti vs Government of Nepal Ne.Ka.Pa 2072 part 1,decision number 9333.

POINTS TO NOTE

General guidelines for recording statements:

- Rapport building with the survivor:** Rapport building with the survivor is a crucial element in obtaining truthful statements. One of the most important elements of building rapport is to spend time with the survivor. Still, there are a few general ways to build rapport: making sure the survivor is comfortable while sharing her story, explaining the full process of obtaining the statement and explaining why it is important for the survivor to speak the truth.
- Working together with the police and Probation Officer:** In order to obtain a truthful statement NGO Legal Staff also has to work closely together with the police and/or the Probation Officer.
- Confidentiality:** In order to build trust with the rescued person, confidentiality is an important part. However, for the sake of a good and truthful statement it is equally important to encourage the rescued victim speak up and share her story. With this said, a rescued victim should never be pressured in an unethical way to share her story.
- The detailed identity of the perpetrator, such as his/her features, photos, etc. should be disclosed.
- As per Section 11 of HTTCA, if the working language used by the concerned court and office in dealing with an offence under this act is not understandable by the victim, he/she may seek a translator.

Safety of victims: At the rescue spot, ensure safety and security of all victims.

Be cautious when there is history of violent abuse by accused: Take special care in cases where the complaint suggests a history of violent abuse by the accused

LEARN MORE AND TAKE ACTION

Contact JVI for more information on how to record a survivor’s statement with sensitivity and accuracy.

Step 4 Arresting Persons Accused of Sex Trafficking Offenses

NGO

The NGO should assist and coordinate with the police in immediately arresting all of the accused concerned with the sex trafficking offences.

NGO COMMENTARY

If the NGO has any information from the survivors regarding the identity of the accused, the information must be immediately passed on to the police and the Advocate.

ADVOCATE
The Advocate should assist the police with the immediate arrest of the accused under relevant provisions of the NCPC and HTTCA and encourage the police to move forward swiftly with the investigation.
ADVOCATE COMMENTARY
<p>The Advocate should also ensure that all arrests and further investigation are done in accordance with law. The Advocate should encourage the police to move forward with the investigation under Section 7 of the HTTCA and Section 9 of the NCPC and arrest individuals suspected of commission of a cognizable offence.</p> <p>The Advocate should advise the IO to immediately arrest the offender without any delay.</p> <p>The Advocate may follow up with legal process to protect the NGO, family and witness from the threats of perpetrators.</p>
POINTS TO NOTE

Arrest under HTTCA: Pursuant to Sec. 7 of the HTTCA, a police officer of the rank of Assistant Sub-inspector or higher may cause an arrest of a person if a criminal act of trafficking or transportation is being or may be committed or attempted in a house, land, place or a vehicle and there is a chance the offender will escape or evidence relating to the offense will disappear or be destroyed if immediate action is not taken. In such a case, the police can make an arrest without a warrant and is further permitted to enter, search, or seize the place where the crime is being committed.

Arrest under NCPC: Section 9 of the NCPC states that if, in the course of investigation into any offence, it is necessary to arrest any person immediately, an application, along with the reason for such arrest, and the details disclosing the identity of the person to be arrested, shall be made to the adjudicating authority for permission to issue a warrant of arrest. If an application is made and the reason for arresting appears to be reasonable, the adjudicating authority may, on the same application, give permission to issue a warrant of arrest. However, if there is reasonable ground to believe that a person not arrested at once may abscond, escape or destroy evidence, such person shall be arrested immediately upon issuing an urgent warrant of arrest, and the matter shall be submitted to the adjudicating authority, along with the person so arrested, for permission.

Production and detention of accused: Under Section 14(1) of the NCPC, when a person is detained after an arrest, he must be served with a warrant for detention, setting out the place where he was arrested and the reason for detention. Thereafter, pursuant to Section 14 he must be produced before the adjudicating authority within 24 hours of the arrest, unless an application for remand is made by the investigating authority stating the grounds for detention. If the application is granted, the adjudicating authority may remand the person for a maximum of 25 days, if deemed necessary for purposes of investigation.

Accused in Custody During Prosecution: According to Section 8 of the HTTCA, if the immediate evidence gathered shows the accused is likely to have committed such crime, the court shall keep the accused in custody while prosecuting trafficking cases, other than cases filed under HTTCA Sec. 4(1)(d).

In case of arrest of a women offender: The Advocate should advise the police to follow the procedures laid down in NCPC Sec. 9(11), which provides that a woman is to be arrested by a female police officer as far as possible. If a female police officer is not available, a male police officer may make the arrest, as long as it is done in a manner that respects her physical sensitivity and does not undermine her dignity.

Step 5 Appointing Separate Private Lawyer (Vakalatnama)
NGO
The NGO should ensure that the human trafficking survivors provide necessary information for the appointment of a private lawyer and that qualified female counsellors or female legal guardians are present when survivors meet with the Advocate.
NGO COMMENTARY
In case of a child victim, the caretaker of the shelter home must sign the wakalatnama and the NGO should assist the Advocate in this process.
ADVOCATE
The Advocate should obtain the consent of human trafficking survivors to submit a wakalatnama to the court as their legal representative.
ADVOCATE COMMENTARY
The Advocate should obtain a copy of the vakalatnama to represent the survivor as soon as she has settled into protective custody. In case of a child victim, the caretaker of the shelter home must sign the wakalatnama. A wakalatnama is the document empowering the Advocate to act for and on behalf of the client in court.
POINTS TO NOTE

Victim’s right to legal practitioner: Under the Crime Victim’s Protection Act, 2075, a victim is entitled to appoint a separate legal practitioner in the criminal justice process if he/she wishes.

An Advocate can make the following applications on behalf of survivors:

- For a medical examination of a rescued victim;
- For an order for the protection of victims and witnesses during the case proceedings, under Section 114 of the NCPC and Section 26 of HTTCA;
- For an order for in-camera proceedings under Section 129 of the NCPC and Section 27 of HTTCA; and
- For an order for daily allowance and travel expenses for witnesses whose presence is required, pursuant to Section 113 of the NCPC.

Step 6 Seizing Brothel Property

NGO
The NGO should provide sufficient information to enable the Advocate to move petitions for seizure of the property on which trafficking has occurred
ADVOCATE
The Advocate should mention seizure of property in the FIR and make a petition to proper authorities for the seizure of the property on which trafficking occurred.
ADVOCATE COMMENTARY
The Advocate should use HTTCA Sec. 18 to argue for eviction of offenders and closing of the brothel. Sec. 18 provides that any moveable or immoveable property acquired as a result of an offense under the HTTCA shall be seized. Moreover, if it is proved that anyone uses or provides for someone else's use any house or land for any offense under the Act, such house or land shall be seized.

Step 7 Filing for Sex Trafficking Victim Compensation

NGO
The NGO should assist the Advocate in moving applications for compensation before the courts under Section 17 of the HTTCA.
NGO COMMENTARY
The NGO representatives must follow up with the Advocate for filing of victim compensation and accompany victims when called to appear before appropriate forums.
ADVOCATE
The Advocate should move an application for compensation on behalf of the survivors of human trafficking before the courts, under Section 17 of the HTTCA.

ADVOCATE COMMENTARY

The Advocate must file a compensation claim on behalf of victim before appropriate forum. This request for victim compensation must be filed with the charge sheet. NCPC Sec. 32.

As part of the trial, the victim is entitled to compensation. The Advocate must ensure that after the trial, compensation is ordered from the Court under Section 17 of the HTTCA.

POINTS TO NOTE

Request for interim compensation: Under NCPC Sec. 48, where it is necessary to provide immediate medical treatment, compensation, or any type of relief amount to a person who is the victim of an offense, the court can order the person accused of such offense to provide such interim compensation amount. If the accused is unable to pay such compensation, it must be paid from a victim relief fund established for this purpose. However, if the occurrence of the crime is not established or the person receiving the compensation or relief aid had made false accusation, the court may order the refund of such compensation amount or the relief fund.¹

Compensation that can be granted by the judiciary to a victim of human trafficking: Under Section 17 of the HTTCA, if the accused is convicted, the court shall issue an order for compensation to the victim, which must be at least half of the fine levied as punishment to the accused. Because a conviction is required before compensation can be recovered, the victims must endure lengthy trial proceedings before an award for compensation can be made. Pursuant to NCPC Sec. 32(m), the amount of compensation sought for the offense must be included in the charge sheet.

Compensation for child victims: The Act Relating to Children 2018/2075 establishes a Children's Fund to provide compensation to child victims where such compensation cannot be recovered from the perpetrator.

Offender Unable to Pay: The 2015 amendments to the HTTCA provides in Sec. 17A that if the accused is unable to pay the fine for whatever reason, the court can order that the amount be paid from the rehabilitation fund established under the HTTCA.

Right to Compensation and Social Rehabilitation: Section 19 of the Crime Victim Protection Act ensures the following rights:

1.

The victim shall have the right to obtain compensation for the damage he or she has sustained;

2.

For the social rehabilitation of the victim, the Government of Nepal, Provincial Government and Local Level may, with mutual coordination, conduct necessary plan and program based on the available resources and means.

Preservation of accused's property: The property or the inventory of the property of an accused are required to be collected during the investigation process, and a request that no transfers of property be made to others should be submitted with the charge sheet.

¹ Amendment to the National Criminal Code in 2019 by the Act Amending Some Nepal Laws 2019.

Step 8 Filing of Sex Trafficking Chargesheet

NGO
The NGO should follow up with the Advocate regarding the filing of a charge sheet.
NGO COMMENTARY
The NGO representatives should follow up with the Advocate to ensure that the chargesheet is filed without delay and must assist where necessary in making applications to police authorities for an expeditious filing of chargesheet.
ADVOCATE
The Advocate should ensure that the chargesheet is filed within the stipulated time by working closely with the Police and the Government Attorney.
ADVOCATE COMMENTARY
The Advocate should ensure that the Government Attorney files the chargesheet within the stipulated time in the NCPC. The chargesheet should mention the compensation amount to which the victim is entitled, pursuant to HTCAA Sec. 17. In addition, if the victim wants to file a victim impact report pursuant to the Crime Victim Protection Act, such report should be filed before the chargesheet.
ADVOCATE COMMENTARY
<p>The Advocate should also ensure that:</p> <ul style="list-style-type: none">• The accused had been charged with the appropriate sections of the HTTCA.• The name and other details of the accused has been appropriately mentioned.• A claim of moral turpitude has been made.• A claim for the compensation has been made• There is continuous hearing in the case of all accused who have already been arrested• The confidentiality of the victims’ identity is maintained. <p>If the charge sheet is not filed on time, the Advocate should approach the Office of the High Attorney or the Office of the Attorney General for further action.</p>
POINTS TO NOTE

What should be included in chargesheet: See Sec. 32 of the NCPC for the information that the government attorney must include in the charge sheet.

Copy of a chargesheet: The Advocate should obtain a copy of the chargesheet. If the chargesheet does not include all of the charges supported by the facts, the Advocate should make an application with the government attorney to file a supplementary charge sheet with the appropriate charges.

Victim’s Right to be Informed About Prosecution and Judicial Proceedings: Under Sections 8 and 9 of the Crime Victim Protection Act, the victim has the right to information relating to the prosecution and judicial proceedings, including the date, venue and time of hearing to be held by the court, detention of the accused, description of the terms and conditions set by the court while releasing the accused on bail.

Step 9 Opposing the Bail Application of Accused Perpetrators

NGO
The NGO representatives should be proactive in immediately passing on any information received regarding bail applications filed by the accused to the Advocate.
NGO COMMENTARY
The NGO representatives must inform the Advocate whenever they have information about bail applications of the accused.
ADVOCATE
The Advocate should attend all bail hearings to oppose bail orally and by written application and to argue for stringent bail conditions, should bail be granted.
ADVOCATE COMMENTARY
The Advocate should submit a written opposition to bail, contesting the granting of bail to the accused.
POINTS TO NOTE

Bail order: After submission of the charge sheet to the court by the Government Attorney, an order for bail is made by the court after a hearing at which the accused’s statement is taken.

Remand: Remand is in reference to the detention of the accused in police or judicial custody prior to the start of the trial. The Advocate should attend each remand hearing and make sure bail is denied. Pursuant to NCPC Sec. 67, a court should remand an accused if (1) he has no permanent abode in Nepal and that he might abscond, (2) he has defaulted on making required a court appearance without providing reasonable explanation, or (3) the accused had been convicted of an offence and sentenced to imprisonment during the three-year period preceding the charge at hand.

Opposing grant of bail: The Government Attorney may file an application to the High Court (as per Section 83 of the NCPC) against an order of bail, in case the court has released the accused from custody on bail or on simple date to appear (Samanya Tarekh) for further investigation or other court procedure. In case the Government Attorney does not file an application on such bail order, the Advocate may file an application to High Court on behalf of the victims. The High Court may instruct the District Court to furnish details about a bail order, and the High Court may quash or invalidate a bail order made by the District Court after receiving the details about the case and hearing from both side lawyers.

Right to be notified of bail applications: Section 9 of the Crime Victims Protection Act, 2018 entitles a victim to information pertaining to whether an accused is being detained or released, the conditions of such detention or release, and information regarding bail applications made.

Step 10 Collaborating With the Prosecution Throughout Case Process

NGO
Once the trial begins, the NGO should support victims by getting information from court and public prosecutors.

NGO COMMENTARY
The NGO should send a representative knowledgeable about the facts of the case and the latest updates to help the prosecution answer any questions put forward by the court, particularly with regard to the testimony of survivors.

ADVOCATE
The Advocate should attend every court hearing and be ready to assist the Government Attorney at every stage of the trial.

ADVOCATE COMMENTARY
The Advocate should be present at every stage of the trial and meet with the Government Attorney before every hearing as far as possible.

POINTS TO NOTE

The Section 10 of the HTTCA allows the victim to appoint his or her own lawyer if he/she wishes. Thus, the Advocate may represent the victim in court formally by registering an application for the appointment of lawyer from the victim. See Step 2.5.

Step 11 Preparing Human Trafficking Witnesses to Testify

NGO
During the trial, the NGO should help prepare survivors for their witness testimony by counselling them to testify boldly, accurately and with clarity.

NGO COMMENTARY
NGO representatives who were made witnesses during filing of FIR must depose before the court according to their statement.
NGO representatives must accompany victims to the court. Representatives should ensure that outstation victims are brought safely to the court to depose as witnesses. NGO representatives should ensure that the witnesses are not influenced by the accused persons.
Trained and qualified counsellors from the NGO must prepare the survivors for chief and cross examination so that they may be able to boldly and accurately testify in spite of the trauma caused by the process, particularly questions put forward by the defence counsel.
The NGO staff must also debrief the survivor and her family (if present) after she has testified.

ADVOCATE
The Advocate should assist the government attorney in preparing the government witnesses for chief examination and cross-examination so as to enable them to testify accurately, boldly and with clarity.

ADVOCATE COMMENTARY
The Advocate should work with the NGO to prepare the survivors for the process of examination in chief and cross-examination. This preparation should ideally be done at a place that is comfortable for the survivor.
The Advocate should explain clearly to the persons testifying about the importance of their statements in creating evidence and keep them updated about the case. The Advocate should also obtain a copy of the testimony of all prosecution witnesses.
The Advocate should file an application to conduct the case at fast track court whenever applicable.
The Advocate must explore the opportunity of recording the evidence of the victim through video conferencing in the event the victim is unable to appear in person before the court.
The Advocate must attend all court proceedings in respect to evidence (cross and chief examination). The same Advocate who prepared the victim should accompany her to court. This allows continuity and helps to build trust with the rescued victim.

POINTS TO NOTE

Mock trial and courtroom visit: The NGO and Advocate should work towards making the survivor comfortable by taking the survivor to a courtroom so they will not be entering a court for the first time when they have to testify. This helps reduce the tension. Secondly, by holding a mock trial at a place of convenience, the survivor will be better prepared to depose against the accused.

Support of Government Attorney and police: The victims and witnesses should consult with the Government Attorney regarding the case and the facts of the case. The victim may also approach the Police Office in case the

victim feels the need for security during a visit to the court for giving of testimony or hearing the case proceedings.

Separate chamber for victims: Section 14 of the Crime Victim Protection Act, states that in the course of a hearing of an offence, the court may provide a separate chamber for the victim so that he/she can stay separately from the accused, persons related to the accused, and witnesses of the accused. Where it is not possible and practical to provide a separate chamber, the court must make necessary arrangements for the victim’s safety so that the accused, persons related to the accused, and witnesses of the accused cannot contact the victim, except as otherwise ordered by the court.

Rights of child victim: Pursuant to Sec. 25 of the Act Relating to Children, a child victim shall have the following rights during every stage of investigation, prosecution and judicial process:

1. To get information in the language he or she understands,
2. To participate or be involved,
3. To keep the details of personal identification confidential,
4. To get recovery of reasonable compensation from the offender,
5. To get free legal aid and socio-psychological counselling service as required and to appoint a separate legal counsel if he or she so wishes,
6. To get free service of a translator, sign language expert or interpreter if the victim does not understand the language used by the investigating authority or Juvenile Court, SanoK2021To get, free of cost, a copy of the documents including the decisions and orders made by the investigating authority or Juvenile Court,
7. To get police protection for safety against the probable threat that may be caused from the offender or his or her party,
8. To have his or her case heard in camera,
9. To have the indirect presence of the defendant in the course of hearing of the case as required.

Examination in chief: During the main examination, the Advocate may assist the public prosecutor by submitting written questions to be asked to the witnesses.

Cross Examination: The purpose of cross-examination is to create flaws in the prosecution story. It would be good to do a mock cross-examination so the witnesses are not perturbed by the process and are prepared to handle the questions from the defense advocates.

Burden of Proof: Under Sec. 9 of the HTTCA, the burden of proof is on the accused to provide evidence that he/she did not commit the offense.

LEARN MORE AND TAKE ACTION

Familiarity with procedure: An Advocate must be familiar with the various stages of a trial under the NCPC and the Evidence Act, 2031 . Be sure to read Sections 50-52 of the Evidence Act, 2031 for provisions specific to chief examination and cross examination of witnesses.

Day to day examination of witnesses to ensure expeditious trial: Under Section 106 of the NCPC, “The deposition of all witnesses in attendance on the date appointed for appearance for the examination of witness shall be taken; and only where it is not possible because of the time factor to complete the taking of the deposition of all witnesses in attendance on that day, the deposition of such witnesses shall be taken on the next day on which the court remains open.”

Step 12 Submitting Final Arguments to Prove Sex Trafficking

NGO

At the latter stage of the trial, the NGO should provide as much information as possible to help the Advocate file comprehensive written submissions.

NGO COMMENTARY

The NGO should provide as much information as possible to the Advocate for the written submissions.

ADVOCATE

The Advocate should collaborate with the Government Attorney to draft and submit written submissions for final arguments to be submitted before the court through the Government Attorney (or directly to the court if the Government Attorney refuses to cooperate). The Advocate should also present final oral arguments when allowed by the Court.

ADVOCATE COMMENTARY

The Advocate should draft and file written submissions (whether final or interim) before the Court in the appropriate format as necessitated before the court.

The Advocate should be present at the Court to assist the Government Attorney in making final oral arguments to persuade the Court on the veracity of the entire prosecution’s case

POINTS TO NOTE

Supplement written submissions with case law and appropriate extractions: The written submissions should be supplemented with sufficient case law and relevant extracts of witness evidence to prove the prosecution’s case.

LEARN MORE AND TAKE ACTION

Format for written submissions: Refer to Annexure 5 for a format for written submissions.

Step 13 Obtaining the Judgment

NGO

The NGO should assist the victim in obtaining certified copies of the final judgment from the Court.

NGO COMMENTARY

After the judgment is pronounced, the NGO should assist the Advocate in obtaining certified copies of the final judgment.

ADVOCATE

The Advocate should help to obtain copies of the final judgment

ADVOCATE COMMENTARY

The Advocate should make applications for certified copies of the final judgment from the Court.

POINTS TO NOTE

As per Sections 7, 8, and 9 of the Crime Victim Protection Act, the victim is entitled to receive information regarding the investigation and prosecution of crimes and other judicial processes.

Step 14 Filing of Appeal

NGO

NGO should assist the Advocate with the preparation of an appeal, if required.

NGO COMMENTARY

If the NGO representatives along with the victims want to appeal the judgment of the Court, they must approach the Advocate for the same.

ADVOCATE

The Advocate should collaborate with public prosecutors to file an appeal to the high court on an adverse judgment, if required.

