
SOP **FIELDBOOK**

STANDARD OPERATING PROCEDURES FOR
FIGHTING HUMAN TRAFFICKING IN NEPAL

SOPS FOR RELEASE OF BONDED LABOUR VICTIMS

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HUMAN TRAFFICKING FIELDBOOK
SOP's for Sex Trafficking Interventions
Procedure for Release of Bonded Labour Victims

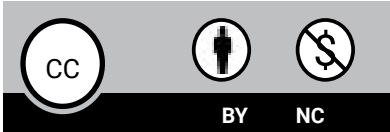
From
Human Trafficking Legal Refrence Toolkit
Standard Operating Procedures to Fight Bonded Labour and Sex Trafficking

A Handbook for NGOs and their Lawyers

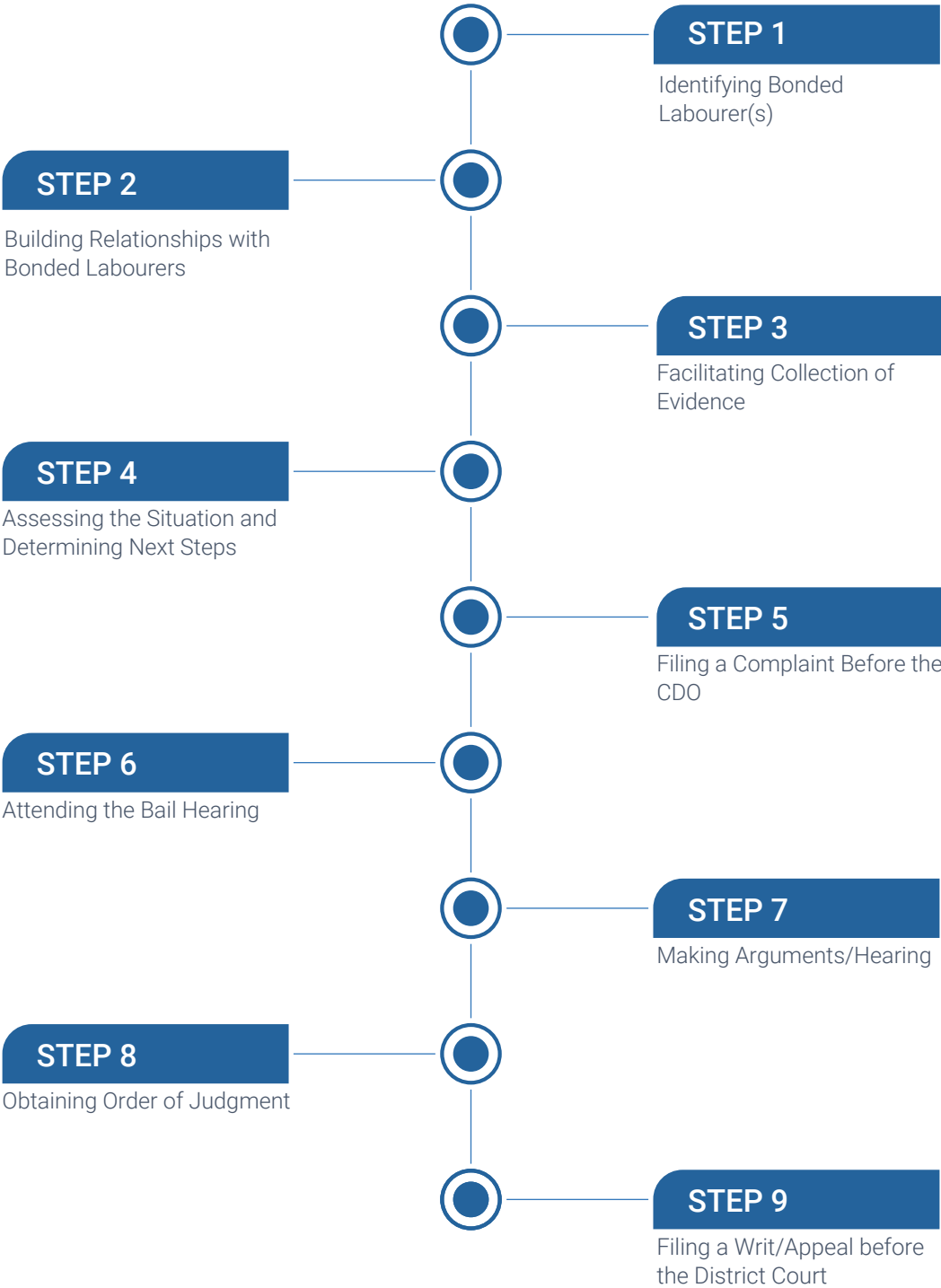
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OVERVIEW OF PROCEDURE FOR RELEASE OF
BONDED LABOUR VICTIMS



Step 1 Identifying Bonded Labourers

NGO	ADVOCATE
The NGO should identify the bonded labourer(s) who are in need of support.	The Advocate should confirm whether the facts gathered support the legal elements of bonded labour under the Bonded Labour (Prohibition) Act, 2002/2058 (BLA) and other offenses set forth in the Human Trafficking and Transportation (Control) Act, 2007/2064 (HTTCA).

Step 2 Building Relationships with Bonded Labourers

NGO	ADVOCATE
The NGO should visit the bonded labourers and initiate community mobilization.	The Advocate should assist the NGO by visiting the community when possible to inform bonded labourers of their rights, including the availability of legal aid.

Step 3 Facilitating Collection of Evidence

NGO	ADVOCATE
Upon receiving information of the occurrence of bonded labour, the NGO should facilitate the collection of evidence.	The Advocate should explain what evidence is required and advise the NGO about the procedure for collecting and preserving such evidence.

Step 4 Assessing the Situation and Determining Next Steps

NGO	ADVOCATE
The NGO should conduct a situational analysis through internal meetings on the basis of their repeated visits, communication and relationship built	The Advocate should be present at these meetings to provide legal input and determine whether the best course of action is to pursue a civil remedy under the BLA or criminal prosecution.

Step 5 Filing a Complaint Before the CDO

NGO	ADVOCATE
If the violation is one that relates to minimum wages, freedom of movement, or any other provision under the BLA, the NGO should collect information and evidence to formulate a complaint before the CDO.	The Advocate should draft the complaint and be present at the CDO office to ensure that the complaint is accepted.

Step 6 Attending the Bail Hearing

NGO	ADVOCATE
The NGO should assist the bonded labourers in presenting testimony at their bail hearing.	The Advocate should prepare the bonded labourers for their court appearance by asking them mock questions prior to the hearing.

Step 7 Making Arguments/Hearing

NGO	ADVOCATE
The NGO should assist the Advocate in compiling the points to be presented at the hearing and inform the bonded labourers to be present when arguments are made.	The Advocate should plead and make arguments on behalf of the bonded labourers.

Step 8 Obtaining Order of Judgment

NGO	ADVOCATE
The NGO must be present to ensure the CDO’s order is translated to the bonded labourers.	The Advocate should obtain copies of the order after it is delivered.

Step 9 Filing a Writ/Appeal Before the District Court

NGO	ADVOCATE
The NGO should assist in filing a writ petition or appeal against the decisions of the District Administration Office or other quasi-judicial bodies.	If the CDO (or other quasi-judicial body) refuses to accept the bonded labour complaint or otherwise makes an adverse decision, the Advocate should draft and file a writ petition/appeal before the District Court.

PROCEDURE FOR RELEASE OF BONDED LABOUR VICTIMS

Step 1 Identifying Bonded Labourers

NGO
The NGO should identify the bonded labourer(s) who are in need of support.
NGO COMMENTARY
<p>The NGO should help to gather and verify facts supporting the existence of bonded labour. The NGOs having a local network will be able to identify which bonded labourers are being exploited, based on evidence of the following occurrences:</p> <ol style="list-style-type: none">1. Minimum wage not being provided2. Difficulty in obtaining legal documents3. Child labour4. Verbal abuse or threats5. Forced labour, i.e. being forced to do a task that the labourer is uncomfortable doing or being forced to work when he/she is unwell6. Labourers being made to work without a schedule or time limit7. No freedom of movement8. Being charged usurious interest rates <p>Though all are in fact being exploited, only a few will come forward to share their plight. Information about bonded labourers can be obtained from the following sources:</p> <ul style="list-style-type: none">• Local partner organizations working in the field.• Violence reported in the newspaper• Information from victim/family of victims• Community animators/social activists• Other sources
ADVOCATE
The Advocate should confirm whether the facts gathered support the legal elements of bonded labour under the Bonded Labour (Prohibition) Act, 2002/2058 (BLA) and other offenses set forth in the Human Trafficking and Transportation (Control) Act, 2007/2064 (HTTCA).
ADVOCATE COMMENTARY
<p>The Advocate should ascertain if the bonded labour is being rendered to pay back a debt, as defined in Section (2)(a) of the BLA.</p> <p>The Advocate should ascertain if the bonded labour is being rendered to pay back a debt, as defined in Section (2)(a) of the BLA.</p>

ADVOCATE COMMENTARY
<p>The Advocate should also ascertain whether the information gathered shows the existence of agreements of the nature described under Section 6 of the BLA.</p> <p>The Advocate should advise the NGO representatives to promptly report the information to the appropriate authorities.</p> <p>If there is physical violence being perpetuated against the labourers, then the Advocate should advise that a complaint should be filed before the Police (See Section C.2 on Prosecution for more information).</p>
POINTS TO NOTE
<p>Notice of NGOs services at District Administrative Office: When the H/C visit the District Administration Office for any purpose, they may obtain information about NGOs working to protect the rights of H/C and learn about the NGO’s services. When the NGO is contacted by the H/C for a pro bono service, the NGO will then be aware of the H/C’s exploitation by a landlord and can help them obtain a citizenship card.</p> <p>Other sources of information: NGO representatives may also obtain information about the incidence of bonded labour through these means:</p> <ul style="list-style-type: none">• Source area: Collect intelligence on victims and potential victims in source areas. Victims include vulnerable persons, vulnerable communities, people in difficult situations, etc. The NGO should sensitize and motivate the community members to keep watch in the community for irregular movements of victims. Intelligence in source areas can also be gathered from interviews with survivors.• Transit points: Depute team at transit points to collect intelligence on victims and perpetrators in transit. Transit points include bus stops, airports, immigration/ custom offices at borders, tourist destination, restaurants, etc.• Demand areas: Collect intelligence at areas/activities where demand for bonded labour is high (e.g.,in the Tarai region of Nepal where H/C labourers are in high demand and exploited).• Media: Collect intelligence from media reports and advertisements in newspapers about placement agencies, parlours, etc.• Decoy operations: Information may be obtained by conducting decoy operations. A decoy operation occurs when a person goes undercover (such person is called a “decoy”) and uses his/her guise to obtain information about the incidence of bonded labour and where it is being committed. The decoy also helps gather any other information that could be useful to conduct a rescue operation but might not be procured without such an operation. <ul style="list-style-type: none">• Who can be employed as a decoy: A decoy can be a representative of the NGO or any other person willing to be sent as a decoy.• Who can a decoy be disguised as: A decoy can pose as a middleman, a contractor, an employer, etc. <p>Brief the decoy: The decoy must be sensitized on the plight of the victims and the risks involved in carrying out such operations. The decoy must be made aware of the vulnerability of the trafficked person and should neither traumatize the victim further by his or her presence nor take advantage of the situation. The decoy should be carefully trained about how to respond in the different circumstances that might arise.</p> <p>Fact finding about landlord/owner: Include a fact finding about the landlord/owner to understand his nature, his history, and his connections within the local administration.</p>

Maintain confidentiality: Information relating to the victims, the rescue site to be searched, and the owners must remain confidential. The NGO representatives/Advocates should not disclose information to persons not relevant to the operation.

Gathering of information in a lawful manner: NGO representatives involved in this process must ensure that the information is gathered in a lawful manner and without endangering the safety of the victims. NGO representatives must remember that they are not law enforcement officials and therefore are not empowered to search a premise, seize items or evidences, carry out arrest or unlawfully detain any person. The Advocate should guide NGO representatives in ensuring compliance with the law during this process.

Preparing the victims for release: During the pre-release stage of investigation into the bonded labour, the victims should be briefed about their release from bonded labour and how they may be required to respond to the questions of the Chief District Officer (CDO). Information regarding the time and date of rescue should not be divulged in case this leads to leakage of information. Preparation of victims prior to rescue is important to ensure successful witness testimony and to maintain a good relationship with the victims, who should not be caught off guard with the questions put forward to them.

Advising victims of their rights: Upon being rescued, the victims should be advised on the illegality of bonded labour and their right to be free under the BLA, so that they can make informed decisions on their liberation and rehabilitation.

If the NGO representative/Advocate or informant receives information from any source regarding persons trapped in bonded labour, alert any one of the relevant authorities promptly. *Do not attempt to release or rescue a bonded labourer on your own.*

Step 2 Building Relationships with Bonded Labourers

NGO
The NGO should visit the bonded labourers and initiate community mobilization.

NGO COMMENTARY
NGOs should initiate contact with the bonded labour community through organized trainings, such as women savings and credit groups, self-help groups, health camp, etc.
Repeated trainings and awareness programs with a community can help the NGO to build a relationship with the bonded labour local communities.

ADVOCATE
The Advocate should assist the NGO by visiting the community when possible to inform bonded labourers of their rights, including the availability of legal aid.

ADVOCATE COMMENTARY
The Advocate can prepare resource material for the trainings on legal rights and advocacy. The Advocate should also use this opportunity to talk about legal aid and introduce the concept to the bonded labourers.

POINTS TO NOTE

Importance of savings and credit group/Cooperative Finance: An NGO could organize different local groups, including women’s savings and credit group (or any other form of a self-help group such as Cooperative Finance) with the H/C, which could be an avenue to identify H/C who want to be liberated.

Language translator: The NGO and Advocate may need support of the local translator during the entire process, which could be managed by NGOs working in local area. Media: NGOs can play an important role in informing the media about the situation of bonded labourers with their consent. They can do this through radio, leaflets, posters, conferences and information sessions. They may want to use materials produced in a different language by the court or this guide.

Avoid using legal jargon: It may be difficult for commoners and bonded labour communities to understand technical legal language, and therefore they may be hesitant to come to the judiciary or to government mechanisms for legal or judicial recourse even if they are facing injustice and violence. Thus, NGOs and Advocates should facilitate the understanding of legal jargon and create awareness among the victims.

Interpretation in court: The Constitution of Nepal guarantees the right to fair trial, including the right to interpretation in court process. The Supreme Court of Nepal has designed guidelines on the use of Service of Interpretation in Court cases, 2015. Justice seekers could ask for this support in case of an inability to understand Nepali official language.

LEARN MORE AND TAKE ACTION

Legal aid: Legal aid plays a vital role in protecting the rights of bonded labourers by encouraging them to seek legal and judicial recourse. Most bonded labourers may believe that because they are in extreme poverty, they must tolerate whatever injustice is caused. The Legal Aid Act, 2054, was enacted to make legal aid available for those persons who are unable to protect their rights for financial and social reasons. A person having less than NRs. 40,000 in annual income will be entitled to legal aid. A Nepali citizen who intends to seek legal aid is required to submit an application in the format prescribed by the Rules. The application must include a recommendation from the respective ward chairperson of the rural municipality or the municipality, as set forth in the Rules. If the person seeking Legal Aid does not know how to fill out the application form or is unable to go to the Ward Office to fill out the application form, then another person can submit an application to the Ward Office. The committee is required to register the application after making the required inquiry and to attach the recommendations. See Annexure 6 for a sample legal aid application.

Provision on court-paid lawyer: There is a provision for the appointment of a court-paid lawyer in each court to provide legal aid to those who are poor and marginalized. Judges of the bench hearing the case, the Registrar of the Court or the needy party to a case can request that the appointed court provide legal aid to him/her. There is a format for application for legal aid according to Rule 96 of the District Court Regulation, 2052 BS.

Step 3 Facilitating Collection of Evidence

NGO
Upon receiving information of the occurrence of bonded labour, the NGO should facilitate the collection of evidence.
NGO COMMENTARY
<p>By meeting with the bonded labour community, the NGO can facilitate the collection of evidence of human rights violations, through affidavits of victim’s statements and reports of interventions required.</p> <p>The NGO should facilitate collection of proof of bonded labour, which may include a denial of refund of property taken as mortgage or guarantee, a denial of minimum wages, and other indicators of violence and discrimination against bonded labourers.</p>
ADVOCATE
The Advocate should explain what evidence is required and advise the NGO about the procedure for collecting and preserving such evidence.
ADVOCATE COMMENTARY
The Advocate must advise the NGO representatives on the legal procedure relating to collection of material evidence. Under no circumstances should the NGO representatives collect material evidence by themselves.
POINTS TO NOTE

Important documents to collect: NGO representative should ensure the collection of the following materials as evidence:

- documents pertaining to ownership or tenancy
- ledgers
- books of accounts
- electricity, telephone, water and other bills
- citizenship card
- travel documents
- license or no objection letter from government local authority
- photographs, medical reports and any other documents that prove the existence of bonded labour

Witness: The NGO should also provide information about persons who have witnessed bonded labour and know where to find incriminating evidence.

Burden of proving no debt: The BLA provides that if a question arises as to whether a deed or agreement has been prepared for the purpose of paying back a debt, the onus of proof lies with the person who claims that the deed or agreement has not been prepared in exchange for such repayment. BLA, Sec. 20.

Evidence of age of child labourers: If there is a dispute as to the age of a child employed as a labourer, the age set forth in the birth certificate shall be deemed the real age. If the child does not have a birth certificate, the age shall be ascertained by an examination by a medical practitioner.¹

Register book for child labourers: Any establishment employing children must maintain a register book with information about each child being employed, including his age, date of employment, nature of work, hour of work, rest time, remuneration and other facilities. Such book must be produced for inspection on demand to employees deputed by the Labour Office.²

Step 4 Assessing the Situation and Determining Next Steps

NGO
The NGO should conduct a situational analysis through internal meetings on the basis of their repeated visits, communication and relationship built.
NGO COMMENTARY
The NGO should first attempt the peaceful settlement (civil remedy) of disagreements between the bonded labourers and landlord through mediation or other means. If the landlord is unwilling to provide minimum wages and other rights, the next step is to file a proceeding before the CDO.
ADVOCATE
The Advocate should be present at these meetings to provide legal input and determine whether the best course of action is to pursue a civil remedy under the BLA or criminal prosecution.
ADVOCATE COMMENTARY
The Advocate should advise the NGO and the victims based on the information provided to determine whether criminal proceedings must be initiated.
POINTS TO NOTE

Assessment methods: The NGO may carry out individual case studies or a focus group discussion at their internal meeting to analyze the situation. At these meetings, the lawyer may be present. The lawyer can share legal advice and information on how to move forward. NGO and lawyers should also conduct informal interviews with bonded labourers about their situation and ask whether they are ready to bring their case before any governmental institutions or the court for redress. They can be informed about the process of redressing their problems and the support provided by NGOs and lawyers and alternative means of survival.

¹ Child Labour (Prohibition and Regulation) Act, 2000, Ch. 3, Sec. 12.
² Ibid.

Step 5 Filing a Complaint Before the CDO

NGO
If the violation is one that relates to minimum wages, freedom of movement, or any other provision under the BLA, the NGO should collect information and evidence to formulate a complaint before the CDO.
NGO COMMENTARY
<p>The NGO should collect information regarding the bonded labour and ensure that the bonded labourers are present on the designated date for filing the complaint before the CDO.</p> <p>The NGO should also confirm that there has been a meeting with the CDO and that the complaint has been submitted to the CDO in writing. This will insure that the complaint is officially registered with the CDO.</p>
ADVOCATE
The Advocate should draft the complaint and be present at the CDO office to ensure that the complaint is accepted.
ADVOCATE COMMENTARY
<p>According to the BLA, if someone employs anyone as a bonded labourer, denies the refund of property taken as mortgage or guarantee, or fails to pay minimum wages, a complaint can be lodged before the CDO. The Advocate should draft the complaint with information regarding the violation of bonded labour and related criminal laws.</p> <p>It is the Advocate’s responsibility to ensure that the CDO is able to comprehend the complaint being filed. The Advocate should also ensure that the proceedings are being interpreted to the bonded labour communities.</p>
POINTS TO NOTE

Filing complaint before NHRC: The complaint may also be filed before the NHRC, which has wide powers to ensure implementation of bonded labour laws and can serve as a crucial partner, especially when hurdles are caused by bureaucracy or corruption at the State or District Level.

Procedure: The CDO follows the procedure prescribed by the Special Court Act, 2002. BLA, Sec. 19. Therefore, the CDO can serve a 15-day summons to the accused to appear before the CDO office; if the accused is outside the country, a 30 day-summons may be served. The NGO can assist the CDO office by showing the accused’s place of residence for the purpose of serving a summons to appear in the office. According to procedure prescribed by the Special Court Act, if any opponent parties or witnesses do not present at the CDO office when they are summoned, the CDO can issue an arrest warrant for their presence.

Submission of complaint: Section 15 of the BLA provides that a complaint can be made (either in writing or verbally) by the victim or a member of his/her family, union, institution or an official of a local body, before the CDO along with the evidence so collected in this regard to take action against the guilty and punish according to law. This provision also requires submitting proof of bonded labour, which can include the written agreements to work in exchange for

the debt, deeds of mortgage, or even a verbal agreement accepted by the landlord. In the case of a verbal complaint, the Chief District Officer can ask the staff to create a document with the signature of such informer.

Power to impose fine and punishment: The CDO is empowered to impose a fine of not less than fifteen thousand rupees and not exceeding twenty-five thousand rupees and shall provide twice the minimum wages as determined pursuant to this Act for each day of employment of the victim from such employer.

Punishment for failure to refund the property taken as a mortgage: For failure to refund property taken as a mortgage or guarantee, the CDO is empowered to impose a fine on the landlord of not less than ten thousand rupees and not exceeding fifteen thousand rupees and shall order a refund of the said property to the concerned person. Punishment for wages lower than the minimum rate: The Adjudicating Authority is also empowered to impose a fine or to provide two-fold the amount of minimum wages to the victim from such employer (offender) in case the employer has not paid wages or paid less than minimum wages.

NGO duties for complaint: Ensure that once the complaint is submitted, the NGO retains a copy of the complaint with a duly signed acknowledgment from the CDO’s office of receiving the complaint. Further, the NGO must note the complaint registration number. Make a separate file for each document for the case, including the complaint, statements, rejoinder of accused, and other relevant records and documents.

The bonded labourer(s) will be expected to sign where the registration of the complaint is being made. Section 15(3) states the complainant shall not be obliged to appear on the date for the trial of the case.

LEARN MORE AND TAKE ACTION

Punishment for false charges: If a person knowingly/willingly or with an intention to cause trouble to anyone lodges a fake complaint, the Chief District Officer shall impose a fine of not less than one thousand rupees and not exceeding three thousand rupees. BLA Sec.16(6).

Punishment for repeat offense: Further, if a person who has committed an illegal act holds an office of public profit or a person who has already been punished under the BLA commits the same act, the Chief District Officer shall impose a two-fold punishment. BLA Sec.16(7)

Step 6 Attending the Bail Hearing

NGO
The NGO should assist the bonded labourers in presenting testimony at their bail hearing.
NGO COMMENTARY
The NGO should prepare the bonded labourers to provide evidence on the violations committed by the landlord. During the bail hearing, the NGO and Advocate should be present to ensure that the statements of the landlord are not fabricated.
ADVOCATE
The Advocate should prepare the bonded labourers for their court appearance by asking them mock questions prior to the hearing.

ADVOCATE COMMENTARY
The Advocate should ensure that the bonded labourers are well prepared and aware of the procedure for collecting evidence or giving statements. The Advocate can brief the facts of the case to the CDO. The Advocate should be prepared to cross examine, if given the opportunity to do so.
POINTS TO NOTE

Authority of CDO when Accused is in Custody: The Special Court Act, 2002 empowers the CDO to proceed with the case with the accused in custody if evidence shows the accused is guilty of a crime. The Act also authorizes the CDO to proceed with the case on remand in case the evidence does not show the accused is guilty of crime at the time of bail hearing.

Evidence to be collected: The NGO representative should ensure that all possible evidence is collected, including documents pertaining to ownership or tenancy, ledgers, books of accounts, electricity bills, telephone, water and other bills, citizenship card, travel documents, license or no objection letter from government local authority.

Because the NGO representatives are often close to the victims and witnesses, they can play an important role in accompanying victims and witnesses throughout the process of providing evidence to the court and prosecutors. They can inform victims and witnesses about procedures at the court and prepare them. If the victims or witnesses are being harassed or threatened by the perpetrators, the NGO can file a protection order with the local police station (see sample in Annexure 7). The Attorney General of Nepal has issued Guidelines for Assistance to Crime Victims and Witness, 2016 which may be relevant for the protection of witnesses and bonded labour survivors as well.

Recording of bonded labour statements: There are also other roles for NGOs and Advocates during the recording of BL statements and the testimony. They can ensure that recording is done promptly in a safe and victim-friendly environment, and they can also provide translation services where needed. They should also remand for an in-camera hearing process in case victims need protection and privacy as per Nepali laws.

LEARN MORE AND TAKE ACTION

Laws regarding the taking of statements and evidence: The following laws – Special Court Act, 2002, National Criminal Code 2017, and Evidence Act, 1974 - guide complainants about the procedure for the taking of statements and evidence by the District Administration Office. The Advocate can prepare the bonded labourers to give statements before the court boosting their confidence.

Step 7 Making Arguments/Hearing

NGO
The NGO should assist the Advocate in compiling the points to be presented at the hearing and inform the bonded labourers to be present when arguments are made.
NGO COMMENTARY
The NGO should be present to assist the Advocate at the time of making arguments before the CDO. The NGO should confirm the time and venue of the hearing with the publication cause list in the CDO office

ADVOCATE
The Advocate should plead and make arguments on behalf of the bonded labourers.
ADVOCATE COMMENTARY
The Advocate should make arguments to persuade the CDO of the existence of bonded labour.
POINTS TO NOTE

Open hearing: The trial will be conducted in open hearing unless the law requires an in-camera hearing.

Burden of proof: The BLA provides that if a question arises as to whether a deed or agreement has been prepared for the purpose of providing debt, the onus of proof lies with the person who claims that the said deed or agreement has not been prepared for providing the debt. BLA Sec. 20.

Seek release order: The Advocate should argue that in addition to any other penalty, the CDO should make a release order in the judgment declaring that the bonded labourers are hereby freed from bonded labour, pursuant to BLA Sec. 3.

Step 8 Obtaining Order of Judgment

NGO
The NGO must be present to ensure the CDO’s order is translated to the bonded labourers.
NGO COMMENTARY
The NGO must be present when the order is passed and make a translated copy available to the bonded labourers.
ADVOCATE
The Advocate should obtain copies of the order after it is delivered.
ADVOCATE COMMENTARY
The Advocate may make application for certified copies of the order of judgment after it is delivered.
POINTS TO NOTE

When mediation is recommended by CDO: Sometimes, the CDO will recommend that the two parties privately settle the matter through mediation. If the bonded labourers are agreeable to this, they may settle and the matter is closed therein. The Advocate and NGO must ensure that they explain the terms of the settlement to the bonded labourers.

Ensure judgment contains release order: The Advocate should ensure that the judgment contains a declaration that

the bonded labourers are hereby freed from bonded labour and are no longer bonded labourers, pursuant to BLA Sec. 3.

Appeal of order: In the absence of a settlement or favorable judgment, the CDO’s order can be appealed to the Court of Appeal within 35 days of the CDO’s decision. BLA Sec. 18.

Step 9 Filing a Writ/Appeal Before the District Court

NGO

The NGO should assist in filing a writ petition or appeal against the decisions of the District Administration Office or other quasi-judicial bodies.

NGO COMMENTARY

The NGO may assist the Advocate during the preparation of appeal or petition by collecting evidence and helping with notice for appeal.

ADVOCATE

If the CDO (or other quasi-judicial body) refuses to accept the bonded labour complaint or otherwise makes an adverse decision, the Advocate should draft and file a writ petition/appeal before the District Court.

ADVOCATE COMMENTARY

The Advocate should prepare legal documents such as an appeal or petition with the information and evidence received from the bonded labour survivors.

POINTS TO NOTE

Article 151 of the Constitution of Nepal provides that a district court shall have the power to hear appeals from decisions made by quasi-judicial bodies and to hear appeals from decision made by local level judicial bodies formed under State law.

Section 7 of Judicial Administration Act, 2016 provides the following jurisdiction for the District Court:

- Except as otherwise provided by the existing law of land, District court has jurisdiction to hear appeal on the decision made by quasi-judicial bodies and judicial bodies established by law at local level.

