
SOP **FIELDBOOK**

STANDARD OPERATING PROCEDURES FOR
FIGHTING HUMAN TRAFFICKING IN NEPAL

**SOPS FOR FOR CRIMINAL PROSECUTION OF
BONDED LABOUR PERPETRATORS**

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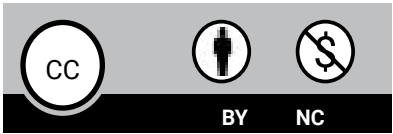


HUMAN TRAFFICKING FIELDBOOK
SOP's for Sex Trafficking Interventions
Procedure for Criminal Prosecution of Bonded Labour Perpetrators
From
Human Trafficking Legal Refrence Toolkit
Standard Operating Procedures to Fight Bonded Labour and Sex Trafficking

A Handbook for NGOs and their Lawyers

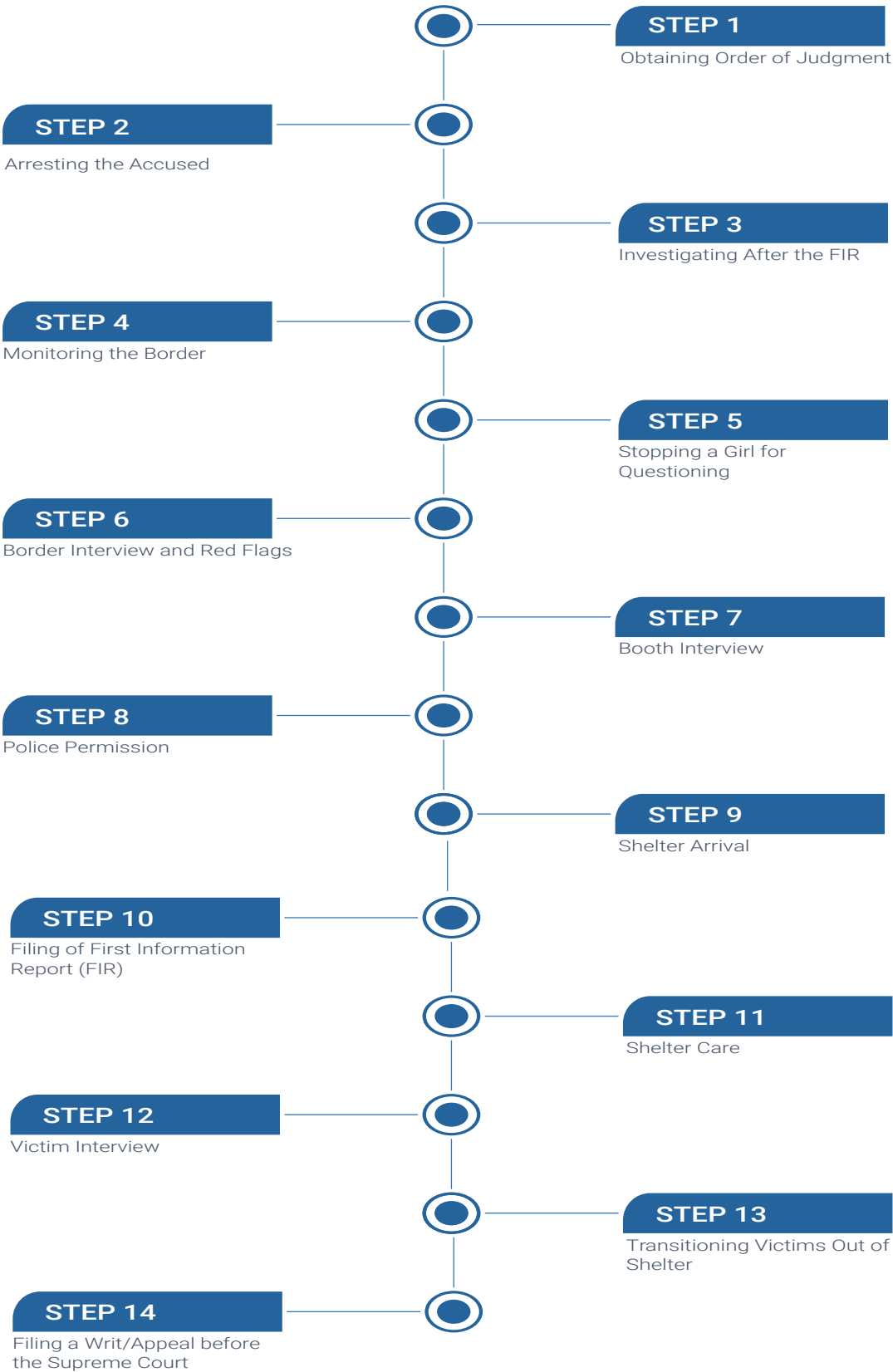
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OVERVIEW OF PROCEDURE FOR CRIMINAL PROSECUTION OF BONDED LABOUR PERPETRATORS



Step 1 Registering the First Information Report (FIR)

NGO	ADVOCATE
The NGO should draft an FIR in collaboration with the Advocate to submit before the concerned Police Office.	The Advocate should prepare the First Information Report (FIR) and ensure that it is registered by the concerned Police Office with all relevant offenses listed under the BLA, Human Transportation and Trafficking (Control) Act, 2064/2007, the National Penal (Code) Act, and any other applicable sections of law.

Step 2 Arresting the Accused

NGO	ADVOCATE
The NGO should assist the police in immediately arresting all persons accused of committing criminal offences, especially those accused of child labour.	The Advocate should assist the police with the immediate arrest of the accused and encourage the police to move forward swiftly with the investigation.

Step 3 Investigating After the FIR

NGO	ADVOCATE
The NGO should help the police to locate the address of accused and assist in the investigation process, including coordinating the extraction of information about the case and collecting evidence.	The Advocate should provide necessary legal support to police during the investigation process.

Step 4 Submitting Opinion and Case File to Prosecutor

NGO	ADVOCATE
The NGO should follow up with the Advocate regarding the submission by the police of its opinion, along with the case file, to the Public Prosecutor	The Advocate should ensure that the police opinion regarding the case is submitted to the Public Prosecutor within the stipulated time period in order to prepare and file the chargesheet

Step 5 Appointing Separate Private Lawyer (Wakalatnama)

NGO	ADVOCATE
The NGO should formally introduce the bonded labour survivors to the Advocate and encourage them to appoint the Advocate as their separate legal practitioner	The Advocate should obtain the consent of the bonded labour survivors to act as their separate legal practitioner for all proceedings.

Step 6 Filing of Bonded Labour Chargesheet

NGO	ADVOCATE
The NGO should work with the Advocate to ensure the chargesheet is properly submitted according to law.	The Advocate should ensure that the chargesheet is filed within the stipulated time by working closely with the Police and the Government Attorney.

Step 7 Opposing the Bail Application of the Accused

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 8 Closure of Bonded Labour Facility

NGO	ADVOCATE
The NGO should provide sufficient information to enable the Advocate to move petitions for seizure of the property on which bonded labour 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 bonded labour occurred.

Step 9 Preparing for and Presenting Testimony

NGO	ADVOCATE
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 10 Making Arguments/Attending Hearing

NGO	ADVOCATE
The NGO should assist the Advocate in preparing pleading notes and attend the hearings.	The Advocate should collaborate with the Public Prosecutor to prepare pleading notes or prepare separate pleading notes if necessary and permitted by the court.

Step 11 Obtaining Judgment and Securing Release Order

NGO	ADVOCATE
The NGO should assist the victim in obtaining certified copies of the final judgment from the Court.	The Advocate should carefully review the judgment and its implications

Step 12 Filing a Complaint in the Office of Higher Police, District Administration Office, or National Human Rights Commission (NHRC)

NGO	ADVOCATE
If the police do not accept the complaint in Step 2.1, the NGO should assist in filing a complaint with the Office of Higher Police, District Administration Office, or National Human Rights Commission (NHRC)	The Advocate should draft and file a complaint based on the information provided by the NGO and victims.

Step 13 Filing a Writ/Appeal before the High Court

NGO	ADVOCATE
The NGO should assist the victim in obtaining certified copies of the final judgment from the Court.	The Advocate should provide necessary legal support to police during the investigation process.

Step 14 Filing a Writ/Appeal before the Supreme Court (SC)

NGO	ADVOCATE
The NGO should undertake studies and assist lawyers for filing an appeal/Writ Petition/PIL as per law.	The Advocate should prepare the appeal/Writ Petition/ PIL for filing in the SC.

PROCEDURE FOR CRIMINAL PROSECUTION OF BONDED LABOUR PERPETRATORS

Step 1 Registering the First Information Report (FIR)

NGO
The NGO should draft an FIR in collaboration with the Advocate to submit before the concerned Police Office.

NGO COMMENTARY
The NGO representatives should ensure that the FIR is filed before the Police Station, detailing all information pertaining to the incidence of bonded labour.

ADVOCATE
The Advocate should prepare the First Information Report (FIR) and ensure that it is registered by the concerned Police Office with all relevant offenses listed under the BLA, Human Transportation and Trafficking (Control) Act, 2064/2007, the National Penal (Code) Act, and any other applicable sections of law.

ADVOCATE COMMENTARY
<p>The Advocate should ensure that the Complainant files information of the commission of one or more cognizable offences with the officer in charge of the Police Station. The Advocate must be present alongside the NGO at the Police Station during the lodging of the FIR and assist the Police.</p> <p>The FIR should include the following information:</p> <ul style="list-style-type: none">• Date, time and place of the crime committed or being committed or likely to be committed.• Name, address and description of the person committing the crime• Evidence relating to the crime• Nature of the crime and other descriptions relating to the crime• The Advocate should ensure that the information is recorded by the officer-in-charge at the police station as an FIR under Section 4 of the NCPC. <p>If the police personnel refuses to register the information of the crime, the Advocate may give the information of the crime to the concerned Chief District Officer or the upper level Police Office in that Office which is prescribed to register the information.</p> <p>Section 4 of the NCPC states that the Police Office receiving such information shall keep the record of this, and with necessary directions, forward in writing the information of such crime for necessary actions.</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

Lodging of FIR: According to Section 4 of the NCPC, the investigation of a crime generally starts with the lodging of information to the police office in the form of an FIR regarding the commission of crime. Any person who knows that a bonded labour offense has been committed or is being committed or is likely to be committed is entitled to make an FIR or give information on such offense verbally to a nearby police office. The verbal reporting of crime will be documented by the police with the signature of the informer. FIR can be lodged in the form of complaint at the nearest police office.

Other Criminal Provisions: The FIR should also contain offenses criminalized under the Human Trafficking and Transportation (Control) Act (HTTCA) and National Criminal Code (NCC). Under Section 5 of the HTTCA, anyone who knows that an offense of trafficking or transportation is being committed or may be committed may report the same to the nearest police office. “Trafficking” is defined to include the sale or purchase of a person for any purpose, and “transportation” is defined as taking a person from his/ her home and handing him/her to someone else for the purpose of exploitation (which includes the act of keeping someone as a slave or bonded labourer). The NPCA prohibits forced labour, slavery, and debt bonded labour (Sections 162-164).

Suo motu investigation: In addition to an FIR filed by others, the police itself can start an investigation by way of filing a report of the crime. The NGO can lobby or create pressure for the police to investigate a case suo motu if the case is serious.

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.

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.

Filing a complaint with the Office of Higher Police, District Administration Office, or National Human Rights Commission (NHRC): If the police does not accept the complaint or refuses to file an FIR, follow the procedure in Step 2.10 for filing a complaint to the Office of Higher Police, DAO, or NHRC. **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.

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.

Filing a complaint with the Office of Higher Police, District Administration Office, or National Human Rights Commission (NHRC): If the police does not accept the complaint or refuses to file an FIR, follow the procedure in Step 2.10 for filing a complaint to the Office of Higher Police, DAO, or NHRC.

LEARN MORE AND TAKE ACTION

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.

Refer to the Annex for an example of the FIR.

Complaints Regarding Child labour violations: In the case of violations of child labour laws, a complaint can be filed with the Labour Office, which has the power to punish the perpetrators with either imprisonment or a fine.²⁹ If the Labour Office awards a sentence of punishment, the matter will be referred to the Labour Court for a final order.³⁰ For more information on what constitutes child labour violations, see the section on the Child Labour (Prohibition and Regulation) Act, 2000 in Chapter V(B)(5) of this toolkit.

Step 2 Arresting the Accused

NGO

The NGO should assist the police in immediately arresting all persons accused of committing criminal offences, especially those accused of child labour.

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 and encourage the police to move forward swiftly with the investigation.

ADVOCATE COMMENTARY

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 9 of the NCPC and arrest individuals suspected of committing an offence.

POINTS TO NOTE

Arrest under HTTCA: Pursuant to Sec. 7 of the HTTCA, a police officer of the rank of 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).

Step 3 Investigating After the FIR

NGO
The NGO should help the police to locate the address of accused and assist in the investigation process, including coordinating the extraction of information about the case and collecting evidence.
NGO COMMENTARY
The NGO should assist the Police investigation of the offences committed by the landlord by providing information on the address of the accused and other information that may be relevant. The NGO should cooperate with the Police whenever possible in collecting evidence from the bonded labour site
ADVOCATE
The Advocate should provide necessary legal support to police during the investigation process.
ADVOCATE COMMENTARY
The Advocate should ensure that the police conducts a proper investigation of the crime scene and prepares the appropriate crime scene documents with the signatures of local people. The Advocate may also make sure that the investigation report is forwarded to the Government Attorney for review.
POINTS TO NOTE

Preservation of evidence: Section 6 of the NCPC states that if Police personnel receives information that a crime has been committed or is being committed or is likely to be committed, then s/he as soon as possible shall try to prevent (1) the crime, (2) the disappearance or destruction of evidence, and (3) the escape of the criminal. In case of the possibility of a crime taking place, evidence disappearing or being destroyed, or a criminal escaping or fleeing if immediate action is not taken, then the Police personnel may take any necessary action, including going to the jurisdiction of the next Police Office.

Police investigation of crimes: The Police are required to investigate the crime by visiting the crime scene and preparing crime scene documents with the signatures of local people. They should also search for evidence and take the statements of victims, witnesses and accused. The police can send such evidence to the laboratory or to the experts if required to establish proof of the crime; however, the police should maintain chain of custody of evidence to prevent the evidence from being tampered with or contaminated.

Role of Public Prosecutor: Investigation of a crime by the police is done under the close supervision of the Public Prosecutor. If the Public Prosecutor is not satisfied or feels that the law is not being complied with during the investigation, the Public Prosecutor can direct the investigation. After the completion of the investigation of the crime, the Police forwards a report of the investigation along with its opinion and case file to the Prosecutor for prosecution

Victim Protection: The NGO should identify whether the accused has made threats to the victims in the past. If so, the Advocate could file an application for protection of the victim at the concerned Police Station. See Annexure 7 for a sample Harassment Protection Letter. Section 26 of the HTTCA entitles a victim to protection if he/she can provide reasonable grounds for security against any type of retaliation for reporting a trafficking or transportation crime.

Step 4 Submitting Opinion and Case File to Prosecutor

NGO
The NGO should follow up with the Advocate regarding the submission by the police of its opinion, along with the case file, to the Public Prosecutor.
NGO COMMENTARY
The NGO should insist that the police opinion be filed within the time frame.
ADVOCATE
The Advocate should ensure that the police opinion regarding the case is submitted to the Public Prosecutor within the stipulated time period in order to prepare and file the chargesheet
ADVOCATE COMMENTARY
The Advocate should follow up with the police to ensure that the opinion is filed in a timely manner.

Step 5 Appointing Separate Private Lawyer (Wakalatnama)

NGO
The NGO should formally introduce the bonded labour survivors to the Advocate and encourage them to appoint the Advocate as their separate legal practitioner.

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. A wakalatnama is the document empowering the Advocate to act for and on behalf of the client in court.
ADVOCATE
The Advocate should obtain the consent of the bonded labour survivors to act as their separate legal practitioner for all proceedings.
ADVOCATE COMMENTARY
The Advocate should obtain the wakalatnama in order to represent the bonded labour survivors at court hearings and keep informed of the criminal case progress, while assisting the public prosecutor.
POINTS TO NOTE

Victim’s right to legal practitioner: Both the HTTCA (in Section 10) and the Crime Victim’s Protection Act (in Section 12) entitle a victim to appoint a separate legal practitioner to represent the case during court hearings.

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 Filing of Bonded Labour Chargesheet

NGO
The NGO should work with the Advocate to ensure the chargesheet is properly submitted according to law. The NGO should work with the Advocate to ensure the chargesheet is properly submitted according to law.
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 charge sheet 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, 2074, such report should be filed before the chargesheet. In the event the government attorney fails to file the chargesheet within the stipulated time period, the Advocate should approach the Assistance Commissioner of Police to seek his assistance for ensuring the immediate filing of the charge sheet. If the charge sheet is still not filed, the Advocate should approach the Court
POINTS TO NOTE

Procedure for submitting chargesheet: The Public Prosecutor on the basis of the investigation report submitted by the Police will take the case forward before the District Court in the form of a chargesheet. If the NGO and/or the Advocate can build a relationship with the Public Prosecutor, it will help in securing a favourable order later on.

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. The Advocate should review the chargesheet to ensure that:

- The accused had been charged with the appropriate sections of the BLA, HTTCA, and any other statutes
- 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.

Copy of 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 (see Sec. 36 of the NCPC).

Victim’s Right to be Informed About Prosecution and Judicial Proceedings: Under Sections 8 and 9 of the Crime Victim Protection Act, 2075, 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 7 Opposing the Bail Application of the Accused

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. necessary legal support to police during the investigation process.
ADVOCATE COMMENTARY
The Advocate should submit a written opposition to bail, contesting the granting of bail to the accused.
POINTS TO NOTE

Accused in Custody During Prosecution: According to Section 8 of the HTTCA, the court shall keep the accused in custody while prosecuting trafficking cases, other than cases filed under HTTCA Sec. 4(1)(d).

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 NCPCL 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.

When can bail be cancelled? Section 71(1) of the NCPCL provides that in the course of examining evidence, a court may, irrespective of the stage of proceedings and based on the circumstances of the case, remand the accused in detention. Thus, where an accused has been granted bail, the Advocate must be vigilant in assessing whether circumstances exist to justify canceling bail and move such applications.

Opposing grant of bail: The Government Attorney may file an application to the High Court (as per Section 83 of the NCPCL) 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.

Building a relationship with the Police and the Public Prosecutor: The Advocate should build close relationships with higher-ranking police officials and public prosecutor to get updates on bail petitions filed by the accused. It is important to maintain a relationship with the Police and Public Prosecutor as there are instances of the accused being granted bail during a bail hearing which has taken place without the knowledge of the NGO's Advocate, thus giving the accused a chance to abscond and stall the trial. If the Advocate somehow misses a bail hearing through being unaware of a bail petition, then the whole case is often lost. It is therefore important to maintain a relationship with the stakeholders involved in the trial.

NGO
The NGO should provide sufficient information to enable the Advocate to move petitions for seizure of the property on which bonded labour has occurred.
NGO COMMENTARY
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 bonded labour occurred.
ADVOCATE COMMENTARY
The Advocate should use HTTCA Sec. 18 to argue for closure of the bonded labour facility. 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 proven 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.

NGO
The NGO should help prepare survivors for their witness testimony by counselling them to testify boldly, accurately and with clarity
NGO COMMENTARY
The taking of witness and victim statements is a hearing where the Court gathers evidence and admits the evidence produced before the court. In addition to counseling the bonded labour survivors to be descriptive and detailed their testimony, the NGO can coordinate with government agencies for travel allowance and necessary protection or the witness as per the existing laws.
The NGO can also coordinate with other NGOs for economic and social support or the victims NGO representatives who were made witnesses during filing of FIR must depose before the court according to their statement.

NGO COMMENTARY

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 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.

Victim sensitive measures: Apart from making the survivor comfortable with the Court, the NGO and Advocate may encourage the Court officers to be sensitive to the history of the survivor.

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.

In Camera Hearing Procedure: If permitted by law and the victim's need to protect his/ her privacy, the Advocate/ NGO should request an in-camera hearing.

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:

- To get information in the language he or she understands,
- To participate or be involved,
- To keep the details of personal identification confidential,
- To get recovery of reasonable compensation from the offender,
- 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,
- 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,
- To get, free of cost, a copy of the documents including the decisions and orders made by the investigating authority or Juvenile Court,
- To get police protection for safety against the probable threat that may be caused cfrom the offender or his or her party,
- To have his or her case heard in camera,
- 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 defence advocates.

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."

Practice questions during trial: Contact JVI for a set of practice questions that can be asked in a trial with regard to trafficking for bonded labour.

Step 10 Making Arguments/Attending Hearing

NGO
The NGO should assist the Advocate in preparing pleading notes and attend the hearings.
NGO COMMENTARY
The NGO representative should be present at each hearing at the Court and support the Advocate to make arguments against the opposing party. The NGO should provide as much information as possible to the Advocate for the written information and put argument before the court.
ADVOCATE
The Advocate should collaborate with the Public Prosecutor to prepare pleading notes or prepare separate pleading notes if necessary and permitted by the court.
ADVOCATE COMMENTARY
<p>The Advocate should be present at the Court to assist the Government Attorney in making arguments to persuade the Court on the existence of bonded labour. The Advocate should also present final oral arguments if the Court allows.</p> <p>If the case is required to be heard in camera then remind for the same.</p>
POINTS TO NOTE

Pleading Notes: Pleading notes are occasionally requested by the court to be submitted after the hearing is completed. These are written points of pleading submitted to the court by the Advocate or government attorney, as determined by the court. It is not necessary to submit pleading notes in every case; generally, courts only request them where the case is complicated.

Though not required by law, it is strongly recommended that the Advocate prepare and submit written final pleading notes to ensure that the Court is well informed of the facts put forward. This can greatly persuade the Court to pass a fair judgment in favour of the survivor. The pleading notes should be supplemented with proof from the testimonies of the witnesses.

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.

Step 11 Obtaining Judgment and Securing Release Order

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. It will also assist the Advocate in securing release certificates from the court that conducted the trial.
ADVOCATE
The Advocate should carefully review the judgment and its implications.
ADVOCATE COMMENTARY
<p>The Advocate should make applications for certified copies of the final judgment from the Court. If release certificates have not been granted so far, the Advocate should assist the bonded labourers in securing the release certificates from the court that conducted trial.</p> <p>The Advocate should communicate the judgment to the bonded labourers and prepare for appeal in case the judgment is not in their favour.</p>

Step 12 Filing a Complaint in the Office of Higher Police, District Administration Office, or National Human Rights Commission (NHRC)

NGO
If the police do not accept the complaint in Step 2.1, the NGO should assist in filing a complaint with the Office of Higher Police, District Administration Office, or National Human Rights Commission (NHRC).
NGO COMMENTARY
The NGO should provide information about the bonded labour violations to the Advocate for filing of the complaint
ADVOCATE
The Advocate should draft and file a complaint based on the information provided by the NGO and victims.

ADVOCATE COMMENTARY

The Advocate should submit the complaint at regional offices of the NHRC or the central office in Kathmandu and follow the progress of the case

POINTS TO NOTE

NHRC procedure: Once the complaint is filed with the NHRC, the next steps are as follows:

Step 1: The NHRC takes cognizance of the complaint

- The NGO should coordinate with the bonded labour victims and prepare for the NHRC’s field investigation. The Advocate may join the NHRC team on the field visit and brief the case to the team.

Step 2: The NHRC will initiate a suo motu case and begin investigation

- The NGO should collaborate with the NHRC in its investigation and help compile information on human rights violations. The NGO should also help the NHRC to communicate with the victims. The Advocate should assist in making legal conclusions regarding the acts that constitute human rights violations.

Step 3: NGO should follow up on implementation of recommendations made by the NHRC.

Step 13 Filing a Writ/Appeal before the High Court

NGO

If necessary, the NGO should assist in filing a writ petition/appeal before the High Court as per existing law

ADVOCATE

The Advocate should draft and file a writ petition/appeal if necessary

POINTS TO NOTE

These are the steps for filing a writ petition before the High Court:

- The NGO should assist in serving of summons to opposing parties. The NGO should also ensure that records from other government offices are received by the court in a timely manner.
- The NGO should confirm the hearing date of the case with the court. The trial will be conducted in open hearing unless the law requires an in-camera hearing.
- The Advocate should represent the victims in court and coordinate with PP for preparation of pleadings.
- The NGO should help the bonded labour survivors get a certified copy of the judgment and explain the decision to them and NGO should assist in executing the judgment
- The Advocate can brief the bonded labourers about the judgment’s implications and prepare for an appeal if the judgment is against them.
- The NGO should assist in filing a timely application for the implementation of judgment.

Step 14 Filing a Writ/Appeal before the Supreme Court (SC)

NGO

The NGO should undertake studies and assist lawyers for filing an appeal/Writ Petition/PIL as per law

ADVOCATE

The Advocate should prepare the appeal/ Writ Petition/PIL for filing in the SC.

POINTS TO NOTE

There are three ways of approaching the SC:

- Filing an appeal against the decision of the High Court;
- Filing a Writ petition in case the prevailing legal remedy is ineffective and justice is denied; and
- Filing a public interest litigation (PIL) representing the rights and concerns of bonded labour communities.

Step 1: Evaluate whether an appeal to the SC is permissible

- Under the Administration of Justice Act, 1992, appeal may lie from judgments made by the Court of Appeals in cases that are tried and settled by the Court of Appeals under original jurisdiction, or where the Court of Appeals has reversed a decision of the original Court or other authority
- The Constitution of Nepal also permits any person to file a writ for the enforcement of any fundamental right conferred by the Constitution, through the filing of a PIL representing the aggrieved parties.
- Note that this is an extreme remedy of last resort.

Step 2: Follow Court procedure and be present at all hearings

- The NGO and Advocate should be present at hearings and follow all court procedures. Generally, no evidence is taken by the court if the case is taken as an appeal or writ petition, but the SC may direct concerned agencies and local bodies to furnish the case file.
- If any party fails to present in court on the prescribed date, the Advocate should file an application within 30 days to regularize such party’s presence in the court proceeding (Chapter on Court Management of Muluki Ain and SC Regulations).

Step 3: Arguments/Hearing

- The NGO should assist the Advocate in preparing arguments.
- The Advocate should argue the case before the SC, presenting the facts, legal provisions, and remedies sought.

Step 4: Implementation of Judgment

- The NGO should assist the bonded labour survivors in filing a timely application for the implementation of judgment. In case of non-implementation, the NGO should enlist the aid of the Advocate.

