

Nepal Anti-Human Trafficking Legal Reference Toolkit



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Abbreviations

BS	Bikram Sambat (Nepali Calender)
BL	Bonded Labour(ers)
BLA	Bonded Labour (Prohibition) Act, 2002
BLR	Arresting Persons Accused of Human Trafficking Offenses
NCPC	Appointing Separate Private Lawyer (<i>Wakalatnama</i>)
CDO	Seizing Brothel Property
CRC	Filing for Human Trafficking Victim Compensation
DAO	Filing of Human Trafficking Charge-sheet
DCCHT	Opposing the Bail Application of Accused Perpetrators
FIR	Collaborating with the Prosecution Through-out Case Process
H/C	Registering the Human Trafficking First Information Report (FIR)
HTTCA	Appearance of Survivors before the District Court
IO	Recording Human Trafficking Victims' Statements
ILO	Arresting Persons Accused of Human Trafficking Offenses
LCCHT	Appointing Separate Private Lawyer (<i>Wakalatnama</i>)
NCC	Seizing Brothel Property
NCPC	Filing for Human Trafficking Victim Compensation

PIL	Public Interest Litigation
SOP	Standard Operating Procedure
UN	United Nations
UNODC	United Nations Office of Drugs and Crimes
WPC	Women Police Constable



NOTE: Inside Nepal, it is common for the term “human trafficking” to refer specifically to trafficking for the purposes of forced prostitution or sexual exploitation. By contrast, “bonded labour” may be considered a different form of slavery or exploitation that is not necessarily thought of as human trafficking. This manual contains Standard Operating Procedures for sex trafficking and bonded labour trafficking, both being considered forms of human trafficking. In this manual, we use the international definition and understanding of the term human trafficking, which is broader and includes any situation where:

men, women, or children are brought into a situation of exploitation through the use of violence, deception or coercion and forced to work against their will. The purpose of the trafficking may be for many different forms of exploitation, such as forced prostitution, forced labour, forced begging, forced criminality, domestic servitude, forced marriage, forced organ removal, etc.

Bonded labour:

“Bonded labour” is a form of slavery or human trafficking. When a person becomes a bonded labourer, his/her labour is obligated as a means of repayment for a loan. The person is then forced or coerced into working for very little or no pay for the individual who provided the loan. The value of his work invariably becomes greater than the original sum of money borrowed from the landlord. The term refers to a person who is working as a bonded labourer in the name of *Bhaisawar, Gaiwar, Bardikar, Chhekarwar, Harwa, Charuwa, Hali, Gothlo, Kamalariya* or by any other similar name.

Bonded debt:

“Bonded debt” means cash, commodity or payment in kind obtained by a bonded labourer from a creditor and includes “*Sauki*” or other debt. Labour is required to repay the debt, and the duration may be undefined. Bonded debt can be passed on from generation to generation, with children obligated to pay off their parents’ debt.

Forced labour:

“Forced labour” is any work or service which people are coerced into doing against their will under the threat of some form of punishment and with restriction on their freedom. “Forced labour” is also used to describe all types of slavery and may include institutions not commonly classified as slavery, such as serfdom, conscription and penal labour. Almost all slavery practices, including trafficking in people and bonded labour, contain some element of forced labour.

Domestic violence:

“Domestic violence” means any form of physical, mental, sexual and economic harm perpetrated by a person to another person with whom he/she has a family relationship, and this can include acts of reprimand or emotional harm.

Child labour:

“Child labour” refers to the employment of children below the legal minimum age. Not all employment of children is illegal, but such employment can hinder children’s education, development, and future livelihoods. Thus, the employment of children who are below the legal minimum age is prohibited by law.

Minimum wage:

“Minimum wage” is the minimum amount required to be paid by a landlord or an employer to labourers or staff for their work or service provided. There is a minimum wage prescribed by the Government of Nepal to be paid for agricultural labourers for their services rendered, which is published in the Nepal gazette. For labour matters pertaining to factories, the Labor Law provides Minimum Wage Fixation Committees which recommend minimum wages applicable to factory labourers and staff.

Human trafficking:

“Human trafficking” involves men, women and children being brought into a situation of exploitation through the use of violence, deception or coercion and forced to work against their will. People can be trafficked for many different forms of exploitation, such as forced prostitution, forced labour, forced begging, forced criminality, domestic servitude, forced marriage, forced organ removal, etc.

When children are trafficked, no violence, deception or coercion is required, as simply bringing them into exploitative conditions constitutes trafficking.

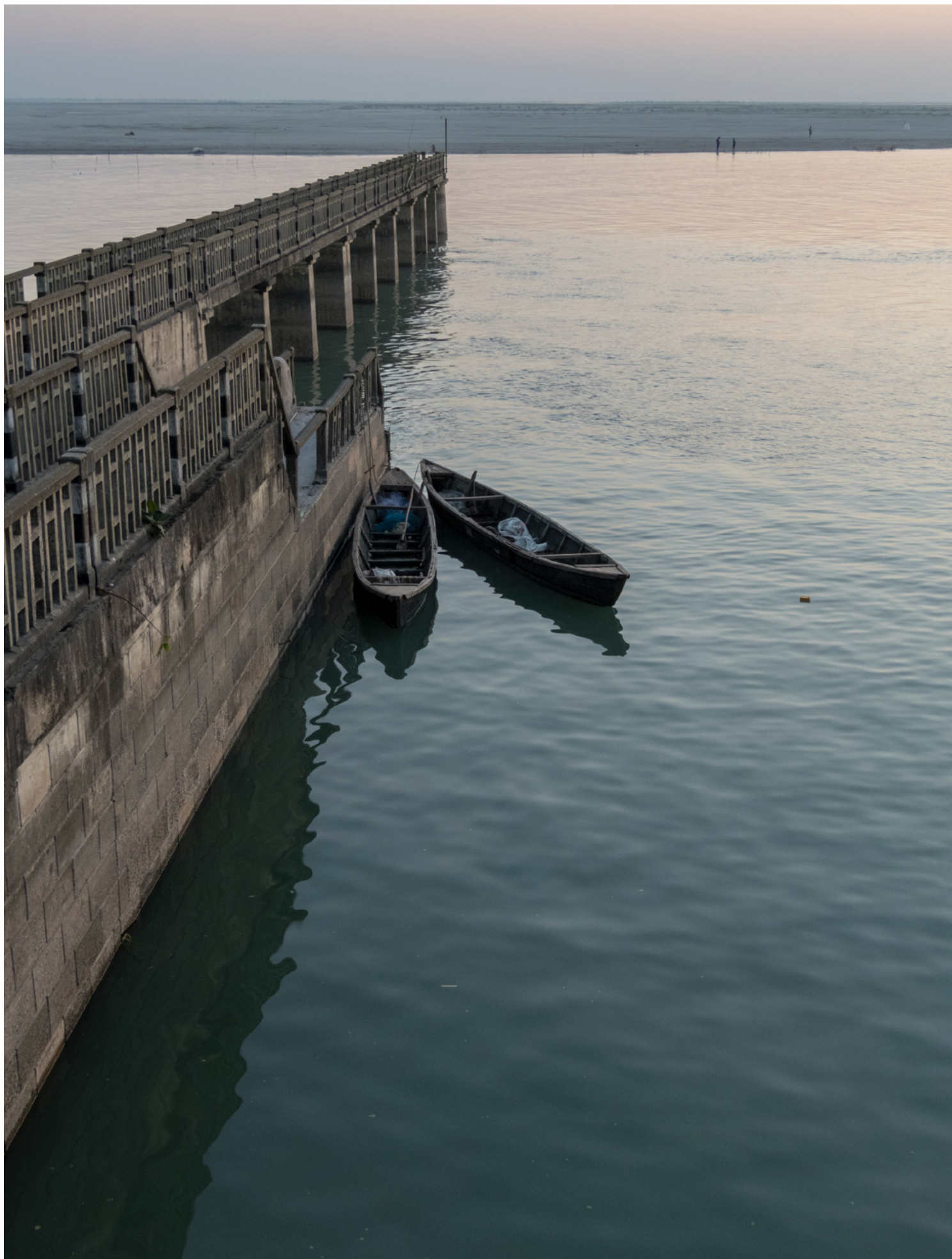
Kamaiya system:

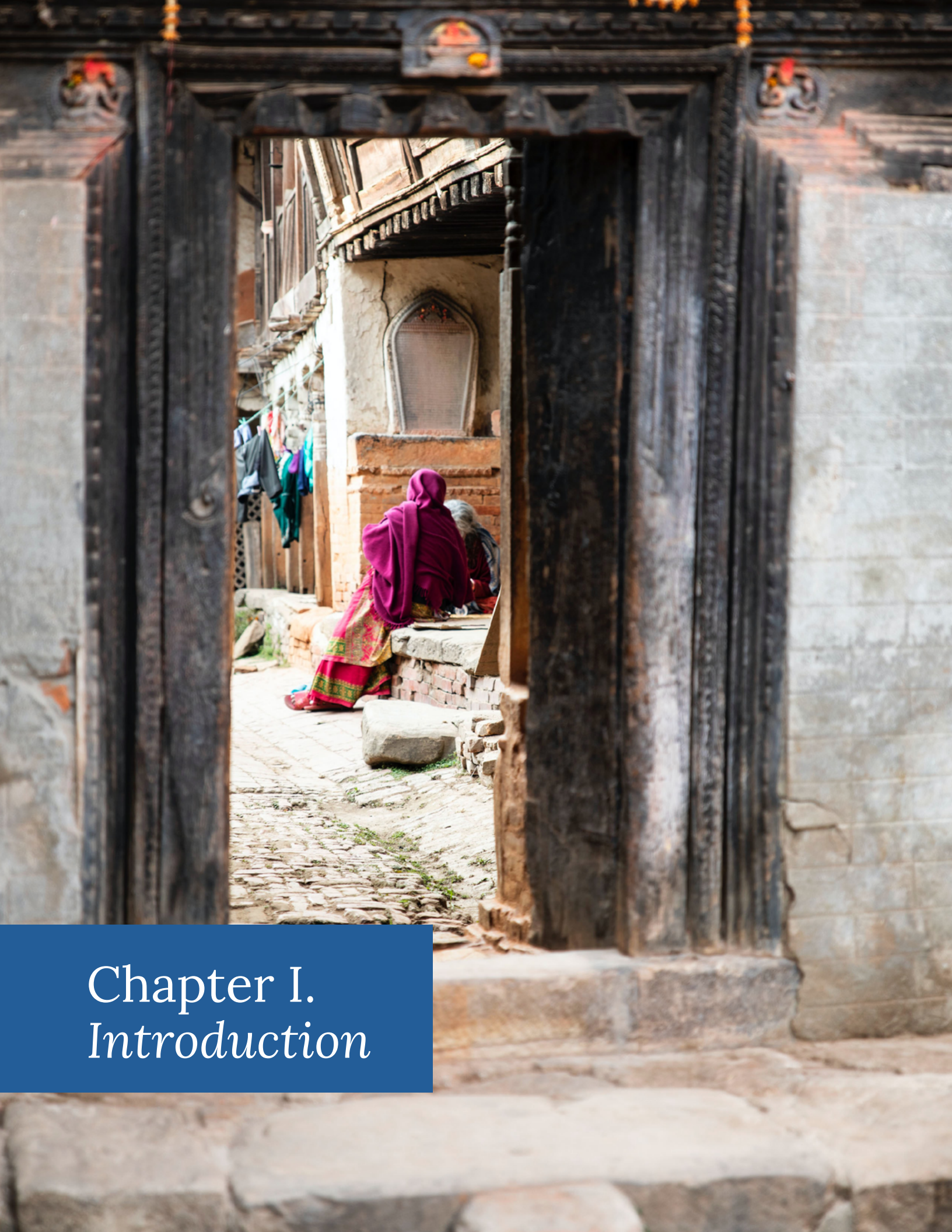
This is a form of bonded labour practiced in the middle and far western parts of Nepal, namely in Dang, Banke, Bardiya, Kailali and Kanchapur. It is basically associated with indigenous Tharu culture and is a system that allows for the virtual buying and selling of labourers by landlords.

Harwa/Charuwa:

This is a form of bonded labour prevalent in the western, middle and eastern Tarai regions of Nepal. It is similar to the Kamaiya system in terms of its caste-based nature, means of wage payment, time and method of contract and the nature of work done. For more information on this form of bonded labour, see Chapter II.

The Order for the Formation of Freed Harwa Charuwa Rehabilitation Commission, 2072 BS defined “Harwa” as a worker who works on the land of landlords for little or no wages on account of having borrowed money from or settled on the land of the landlord. A “Charuwa” is a worker who herds cattle and performs other household tasks for little or no wages on account of having borrowed money from, or settled on, the land of the landlord.





Chapter I. *Introduction*

A. About the Toolkit

Human trafficking is a form of slavery affecting over 40.3 million lives across the globe.¹ It is estimated that over 171,000 persons living in Nepal are enslaved, which includes being trapped in bonded labour or sex trafficking.² Bonded labour is a form of modern slavery that consists of the exploitation of persons forced to work for little or no payment. Most of the bonded labourers in Nepal are agricultural workers, although the names given to them may vary depending on the region. Human trafficking occurs within Nepal's borders but trafficking victims can be transported to other destinations, such as India. They may be held in brothels or other locations like dance bars, halls or massage parlors.

This Toolkit has been developed as a comprehensive guide for the NGOs in Nepal and their lawyers who are fighting human trafficking. These practical tools may also be useful to other frontline organizations working with legal counsel for justice and the restoration of trafficking survivors in Nepal.

Chapter I discusses the overall structure and contents of the Toolkit and outlines the Standard Operating Procedures (SOP) for the rescue of trafficking victims and the interception of potential victims at border crossings. Chapter II sets forth the dynamics of modern day slavery, key concepts related to the issue, and an overview and context of modern day slavery in Nepal.

Chapter III outlines the SOPs that should be followed in rescuing human trafficking and bonded labour victims, prosecuting traffickers, rehabilitating victims, as well as SOPs for the types of trafficking addressed.³ The SOPs provide a list of steps to be taken by the NGO and its Advocate providing legal assistance. Under each step there is a commentary that further explains the specific step. In addition, there is a "Points to Note" section highlighting key issues to be considered in executing the step. Finally, some of the steps also include a "Learn More & Take Action" section pointing the reader to related sections in the Toolkit and the Annexures where NGOs and Advocates can find further practical and legal information.

Chapter IV provides information on the international and national laws pertaining to human trafficking, and Chapter V provides information on government mechanisms, the judiciary and other institutions that exist to support the rights of trafficking victims. Finally, Chapter VI includes relevant case law from Nepal.

Since the SOPs are central to this handbook, Chapter I includes a ready reference to the SOPs without commentary and additional information. Please note that while the SOPs are listed as steps in the order most likely to occur, such steps may not necessarily occur sequentially. Some steps may occur simultaneously or in a different sequence.

1 "2018 Findings/Highlights," Global Slavery Index 2018, <https://www.globalslaveryindex.org/2018/findings/highlights/>

2 Global Slavery Index 2018 – Nepal, <https://www.globalslaveryindex.org/2018/data/country-data/nepal/>

3 The SOPs for border monitoring interventions were adapted in large part from the step-by-step interception protocol developed by Love Justice International.

B. Standard Operating Procedures (without commentary)



Procedure for Release of Sex Trafficking Victims

- Step 1.1** Identifying Sex Trafficking Victims
- Step 1.2** Submitting the Sex Trafficking FIR
- Step 1.3** Preparing the Sex Trafficking Rescue Plan
- Step 1.4** Conducting a Pre-Rescue Meeting with Police
- Step 1.5** Initiating the Sex Trafficking Rescue
- Step 1.6** Securing the Sex Trafficking Rescue Site
- Step 1.7** Separating Sex Trafficking Victims from the Accused
- Step 1.8** Gathering Sex Trafficking Evidence
- Step 1.9** Ensuring Protective Custody for Survivors

Step 1.1 Identifying Sex Trafficking Victims

NGO

The NGO should gather and verify facts supporting the existence of human trafficking.

Advocate

The Advocate should confirm whether the facts gathered support the legal elements of human trafficking under the Human Trafficking and Transportation (Control) Act, 2007/2064 and other applicable legal provisions.

Step 1.2 Submitting the Sex Trafficking FIR

NGO

The NGO should use the facts gathered to draft a sex trafficking first

Advocate

The Advocate should review the draft FIR and ensure it presents a persuasive

information report (FIR) to be submitted to the police office.

legal argument for initiating a sex trafficking rescue and assist the NGO in submitting the FIR to the police office.

Step 1.3 Preparing the Sex Trafficking Rescue Plan

NGO

The NGO should prepare a comprehensive sex trafficking rescue plan in consultation with the police, Advocate and relevant authorities, which must include a detailed physical map of the site.

Advocate

The Advocate should advise and assist the NGO in preparing the rescue plan, ensuring it includes the presence of an adequate number of decoy customers and independent witness.

Step 1.4 Conducting a Pre-Rescue Meeting with Police

NGO

The NGO should conduct a pre-rescue meeting in accordance with the rescue plan where roles and responsibilities are assigned to team members.

Advocate

The Advocate should advise and assist the NGO during the pre-rescue meeting by sensitizing the NGO and government representatives (including members of the National Committee and District Committee formed pursuant to the HTTCA) on legal provisions and important information relating to the rescue to be undertaken.

Step 1.5 Initiating the Sex Trafficking Rescue

NGO

The NGO should initiate the sex trafficking rescue with the police and other stakeholders according to the rescue plan.

Advocate

The Advocate should participate in the sex trafficking rescue to ensure that it is carried out according to the law.

Step 1.6 Securing the Sex Trafficking Rescue Site

NGO

The NGO should assist the Police with securing the rescue site to ensure all victims are rescued and safe during the process.

Advocate

The Advocate should advise the NGO and Police (if required) regarding the legal procedures for securing the rescue site.

Step 1.7 Separating Sex Trafficking Victims from the Accused

NGO

The NGO should assist the police in immediately separating the sex trafficking victims from the perpetrators and assuring survivors of their safety.

Advocate

The Advocate should advise the police that sex trafficking survivors should be separated from the perpetrators so as to avoid threat and ensure a safe and legal inquiry.

Step 1.8 Gathering Sex Trafficking Evidence

NGO

The NGO should ensure that the Police collect all available evidence relevant to identifying and proving sex trafficking.

Advocate

The Advocate should advise the NGO on the laws related to the collection of evidence about human trafficking and ensure that the Police seize all available evidence.

Step 1.9 Ensuring Protective Custody for Survivors

NGO

The NGO should accompany the rescued persons while they are produced before the court to certify their statements.

Advocate

The Advocate should advise and assist the NGO and victims while the survivors are produced before the court.



Procedure for Prosecution of Sex Trafficking Perpetrators

Step 2.1 Registering the Sex Trafficking First Information Report (FIR) 16

- Step 2.2** Appearance of Survivors before the District Court
- Step 2.3** Recording Sex Trafficking Victims' Statements
- Step 2.4** Arresting Persons Accused of Sex Trafficking Offenses
- Step 2.5** Appointing Separate Private Lawyer (*Wakalatnama*)
- Step 2.6** Seizing Brothel Property
- Step 2.7** Filing for Sex Trafficking Victim Compensation
- Step 2.8** Filing of Sex Trafficking Charge-sheet
- Step 2.9** Opposing the Bail Application of Accused Perpetrators
- Step 2.10** Collaborating with the Prosecution Through-out Case Process
- Step 2.11** Preparing Sex Trafficking Witnesses to Testify
- Step 2.12** Submitting Final Arguments to Prove Sex Trafficking
- Step 2.13** Obtaining the Judgment
- Step 2.14** Filing of Appeal

Step 2.1 Registering the Sex Trafficking First Information Report (FIR)

NGO

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.

Advocate

The Advocate should ensure that the police register the FIR with all applicable sex trafficking and other offences included.

Step 2.2 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.

Advocate

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

Step 2.3 Recording Sex Trafficking Victims' Statements

NGO

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

Advocate

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

Step 2.4 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.

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.

Step 2.5 Appointing Separate Private Lawyer (Vakalatnama)

NGO

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.

Advocate

The Advocate should obtain the consent of sex trafficking survivors to submit a vakalatnama to the court as their legal representative.

Step 2.6 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.

Step 2.7 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.

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.

Step 2.8 Filing of Sex Trafficking Chargesheet

NGO

The NGO should follow up with the Advocate regarding the filing of a 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.

Step 2.9 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.

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 2.10 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.

Advocate

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

Step 2.11 Preparing Sex 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.

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.

Step 2.12 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.

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.

Step 2.13 Obtaining the Judgment

NGO

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

Advocate

The Advocate should help to obtain copies of the final judgment.

Step 2.14 Filing of Appeal

NGO

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

Advocate

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



Procedure for Providing Rehabilitation Support to Sex Trafficking Survivors

- Step 3.1** Ensuring Immediate Access to Medical Care
- Step 3.2** Placing Survivors in Safe Custody
- Step 3.3** Facilitating Access to Counseling Services
- Step 3.4** Submitting a Victim Impact Report
- Step 3.5** Securing Survivor Compensation
- Step 3.6** Repatriating or Rehabilitating Sex Trafficking Survivors
- Step 3.7** Facilitating Access to Government Entitlements
- Step 3.8** Facilitating Access to Private Sector Resources
- Step 3.9** Ensuring Survivors Enjoy Permanent Freedom

Step 3.1 Ensuring Immediate Access to Medical Care

NGO

The NGO should ensure that the sex trafficking survivors receive a medical examination and any required medical care and treatment.

Advocate

The Advocate should ensure that medical examinations are carried out and urgent care is provided, with respect accorded to the survivor's right to privacy and other rights.

Step 3.2 Placing Survivors in Safe Custody

NGO

The NGO should ensure that the survivor is safely transferred to a protective shelter home.

Advocate

The Advocate should advise and assist the survivor and the NGO before government authorities to ensure that survivor is safely transferred to a protective shelter home.

Step 3.3 Facilitating Access to Counseling Services

NGO

The NGO should provide the survivor with access to trained and qualified female counsellors to help promote the healing process after obtaining due permission from the concerned authority.

Advocate

The Advocate should advise the survivor and the NGO about the survivor's right to counselling and other aftercare services.

Step 3.4 Submitting a Victim Impact Report

NGO

The NGO should prepare detailed notes concerning the impact of the offence on the victim.

Advocate

The Advocate should prepare a victim impact report for the prosecuting authority, detailing the damage or impact to the victim by the offence, prior to the filing of the charge sheet for the trafficking crime. The report should include the compensation sought.

Step 3.5 Securing Survivor Compensation

NGO

The NGO should assist the Advocate with filing compensation applications and accompany survivors when called to appear before court.

Advocate

The Advocate should ensure that the charge sheet contains a demand for victim compensation.

Step 3.6 Repatriating or Rehabilitating Sex Trafficking Survivors

NGO

The NGO should assist with safe repatriation of survivors.

Advocate

The Advocate should advise and assist the survivor and the NGO on legal matters related to repatriation of the survivor.

Step 3.7 Facilitating Access to Government Entitlements

NGO

The NGO should assist sex trafficking survivors with accessing government entitlements that is compensation.

Advocate

The Advocate should help to get compensation from the rehabilitation fund.

Step 3.8 Facilitating Access to Private Sector Resources

NGO

The NGO should assist the sex trafficking survivors with accessing available private sector (NGO and business) resources related to education, employment, health care, counselling, and other entitlements.

Advocate

Step 3.9 Ensuring Survivors Enjoy Permanent Freedom

NGO

The NGO should maintain an ongoing relationship with the sex trafficking survivor for at least 24 months from rescue to ensure sustained rehabilitation and permanent freedom of survivors.

Advocate

The Advocate should remain accessible to the survivor to provide advice and counsel regarding the survivor's rights in the community.



Procedures for Border Monitoring Interventions

- Step 1** Monitoring the Border
- Step 2** Stopping a Girl for Questioning
- Step 3** Border Interview and Red Flags
- Step 4** Booth Interview
- Step 5** Police Permission
- Step 6** Shelter Arrival
- Step 7** Filing of First Information Report (FIR)
- Step 8** Shelter Care
- Step 9** Victim Interview
- Step 10** Transitioning Victims Out of Shelter

Step 1 Monitoring the Border

NGO

The NGO should stand alert and look for signs of human trafficking.

Advocate

The Advocate should be available to answer questions and advise the NGO on legal issues that arise.

Step 2 Stopping a Girl for Questioning

NGO

If signs of trafficking are observed, NGO staff should approach the suspected trafficee, present their ID card, and ask preliminary questions.

Advocate

The Advocate should advise the NGO staff on what actions they are legally entitled to take upon stopping individuals to avoid violating the rights of people who are not engaged in illegal activity.

Step 3 Border Interview and Red Flags

NGO

If NGO staff notice a red flag in the initial questioning, they should take the girl to the booth for further questioning.

Advocate

The Advocate should advise the NGO staff on what actions they are legally entitled to take when interviewing in order to avoid violating the rights of people who are not engaged in illegal activity.

Step 4 Booth Interview

NGO

At the booth, NGO staff should continue to follow the Questioning Protocol, complete the IRF, and attempt to contact the girl's family.

Advocate

The Advocate should advise and assist the NGO staff while they are questioning the girl.

Step 5 Police Permission

NGO

Once NGO staff makes a positive determination that a girl is being trafficked, they should contact the police.

Advocate

The Advocate should accompany the NGO staff and victim to the police station to ensure that proper procedures are followed and the victim is treated fairly.

Step 6 Shelter Arrival

NGO

The NGO staff should follow safety protocol in travelling with the girl to the shelter and register her with the shelter upon arrival.

Advocate

The Advocate should advise and assist the NGO to ensure the girl is safely transferred to the shelter home.

Step 7 Filing of First Information Report (FIR)

NGO

The NGO should complete a Case Exploration Form and file a First Information Report (FIR) with the police station.

Advocate

The Advocate should ensure that the FIR is registered with the applicable trafficking and other offenses included.

Step 8 Shelter Care

NGO

At the shelter, the NGO staff should provide care, education, and assistance in accessing services and new opportunities.

Advocate

The Advocate should follow up with the girl while she receives care at the shelter and keep her informed about the progress of her case.

Step 9 Victim Interview

NGO

A female NGO staff member should conduct a detailed interview with the girl and complete the Victim Interview Form.

Advocate

The Advocate should review the record of the interview for information relevant to the case.

Step 10 Transitioning Victims Out of Shelter

NGO

The NGO staff should conduct a Home Situational Assessment to determine an appropriate place to repatriate the girl.

Advocate

The Advocate should ensure that procedures are followed in repatriating the girl or taking her to protective custody.



Procedure for Release of Bonded Labour Victims

- Step 1.1** Identifying Bonded Labourer(s)
- Step 1.2** Building Relationships with Bonded Labourers
- Step 1.3** Facilitating Collection of Evidence
- Step 1.4** Assessing the Situation and Determining Next Steps
- Step 1.5** Filing a Complaint Before the CDO
- Step 1.6** Attending the Bail Hearing
- Step 1.7** Making Arguments/Hearing
- Step 1.8** Obtaining Order of Judgment
- Step 1.9** Filing a Writ/Appeal before the District Court

Step 1.1 Identifying Bonded Labourers

NGO

The NGO should identify the bonded labourer(s) who are in need of support.

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).

Step 1.2 Building Relationships with Bonded Labourers

NGO

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

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.

Step 1.3 Facilitating Collection of Evidence

NGO

Upon receiving information of the occurrence of bonded labour, the NGO should facilitate the collection of evidence.

Advocate

The Advocate should explain what evidence is required and advise the NGO about the procedure for collecting and preserving such evidence.

Step 1.4 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.

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.

Step 1.5 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.

Advocate

The Advocate should draft the complaint and be present at the CDO office to ensure that the complaint is accepted.

Step 1.6 Attending the Bail Hearing

NGO

The NGO should assist the bonded labourers in presenting testimony at their bail hearing.

Advocate

The Advocate should prepare the bonded labourers for their court appearance by asking them mock questions prior to the hearing.

Step 1.7 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.

Advocate

The Advocate should plead and make arguments on behalf of the bonded labourers.

Step 1.8 Obtaining Order of Judgment**NGO**

The NGO must be present to ensure the CDO's order is translated to the bonded labourers.

Advocate

The Advocate should obtain copies of the order after it is delivered.

Step 1.9 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.

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.

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Procedure for Criminal Prosecution of Bonded Labour Perpetrators

Step 2.1 Registering the First Information Report (FIR)

Step 2.2 Arresting the Accused

Step 2.3 Investigating After the FIR

- Step 2.4** Monitoring the Border
- Step 2.5** Stopping a Girl for Questioning
- Step 2.6** Border Interview and Red Flags
- Step 2.7** Booth Interview
- Step 2.8** Police Permission
- Step 2.9** Shelter Arrival
- Step 2.10** Filing of First Information Report (FIR)
- Step 2.11** Shelter Care
- Step 2.12** Victim Interview
- Step 2.13** Transitioning Victims Out of Shelter
- Step 2.14** Filing a Writ/Appeal before the Supreme Court

Step 2.1 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.

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.

Step 2.2 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.

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.

Step 2.3 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.

Advocate

The Advocate should provide necessary legal support to police during the investigation process.

Step 2.4 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.

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.

Step 2.5 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.

Advocate

The Advocate should obtain the consent of the bonded labour survivors to act as their separate legal practitioner for all proceedings.

Step 2.6 Filing of Bonded Labour Chargesheet

NGO

The NGO should work with the Advocate to ensure the chargesheet is properly submitted according to law.

Advocate

The Advocate should ensure that the chargesheet is filed within the stipulated time by working closely with the Police and the Government Attorney.

Step 2.7 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.

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 2.8 Closure of Bonded Labour Facility

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.

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.

Step 2.9 Preparing for and Presenting Testimony

NGO

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

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.

Step 2.10 Making Arguments/Attending Hearing

NGO

The NGO should assist the Advocate in preparing pleading notes and attend the hearings.

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.

Step 2.11 Obtaining Judgment and Securing Release Order**NGO**

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

Advocate

The Advocate should carefully review the judgment and its implications.

Step 2.12 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).

Advocate

The Advocate should draft and file a complaint based on the information provided by the NGO and victims.

Step 2.13 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.

Step 2.14 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.



Procedure for Providing Rehabilitation Support to Bonded Labour Victims

- Step 3.1** Ensuring Immediate Access to Medical Care
- Step 3.2** Obtaining Legal Documents
- Step 3.3** Applying for ID card
- Step 3.4** Determining Government Entitlements
- Step 3.5** Conducting Training on Education of Basic Rights and Entitlements
- Step 3.6** Assisting Bonded Labourers to Receive Government Entitlements
- Step 3.7** Facilitating Access to Private Sector Resources
- Step 3.8** Ensuring Survivors Enjoy Permanent Freedom

Step 3.1 Ensuring Immediate Access to Medical Care

NGO

The NGO should ensure that the bonded labour survivors receive a medical examination and other required medical care.

Advocate

The Advocate should ensure that medical examinations are carried out and urgent care is provided, with respect accorded to the bonded labour survivor's right to privacy and other rights.

Step 3.2 Providing Short-Term Provisions

NGO

The NGO shall facilitate the provision of basic short-term essentials such as food, clothing, temporary shelter, and transportation upon their release.

Advocate

Step 3.3 Securing Survivor Compensation

NGO

The NGO should assist the Advocate with filing compensation applications and accompany survivors when called to appear before court.

Advocate

The Advocate should insure that the charge sheet contains a demand for victim compensation.

Step 3.4 Obtaining Legal Documents

NGO

The NGO should counsel the bonded labour survivors about the importance of having legal documents, which are required to access government entitlements.

Advocate

The Advocate should explain the process for obtaining legal documents and assist with the process for securing them.

Step 3.5 Providing Education on Available Government Entitlements

NGO

The NGO should provide education and training to survivors on government entitlements that are available to them.

Advocate

The Advocate should provide any necessary legal assistance to the NGO and survivors in understanding government entitlements.

Step 3.6 Facilitating Access to Government Entitlements

NGO

The NGO should assist bonded labour survivors in applying for and receiving government entitlements.

Advocate

The Advocate should provide legal assistance to the NGO and bonded labour survivors in petitioning government agencies to provide government entitlements if such entitlements are wrongly denied.

Step 3.7 Facilitating Access to Private Sector Resources

NGO

The NGO should assist the bonded labour survivors with accessing available private sector (NGO and business) resources related to food, clothing, shelter, land rights, education, employment, health care, counseling, and other entitlements.

Advocate

The Advocate should help to prepare documents and coordinate with concerned agencies to ensure rights of bonded labour survivors.

Step 3.8 Ensuring Survivors Enjoy Permanent Freedom

NGO

The NGO should maintain an ongoing relationship with the bonded labour survivor for at least 24 months from the point of withdrawal to ensure sustained rehabilitation and permanent freedom of survivors.

Advocate

The Advocate should advise the NGO representatives to ensure that the restoration process is carried in accordance to procedures established by law and not by force.







Chapter II. *Overview and context of slavery in Nepal*

A. Definition and Dynamics of Modern Day Slavery

Although the slave trade has been abolished and is universally recognized as illegal, it continues to exist in a modern form. At present, there are more than 40.3 million people trapped in modern slavery, in an industry generating \$ 150 billion per year.

Prior to its abolition, slavery involved the owning of a person by another and rendering of the slave as a marketable good. However, modern forms of slavery can be found in the practices of domestic servitude, bonded labour or debt bondage, serfdom (when a person must live and work for another person on his/her land), forced labour, child slavery, and marital and sexual slavery.

“Human trafficking” is a term often used interchangeably with modern day slavery. According to the United States State Department’s Trafficking in Persons Report (“TIP Report”) 2020, the terms “trafficking in persons”, “human trafficking” and “modern slavery” are umbrella terms encompassing recruiting, harbouring, transporting, providing, or obtaining a person for compelled labour or commercial sex acts through the use of force, fraud, or coercion⁴. Human trafficking thus involves not merely the movement of persons but also the concept of enslavement.

International Definition of Human Trafficking

Human trafficking has become, in financial terms, the third largest organized crime internationally, after arms and drug trafficking. In a widely adopted definition, the Palermo Protocol (The U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children) defines “trafficking in persons” as:

“the recruitment, transportation, transfer, harbouring or receipt of persons, using threats or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

According to this definition, human trafficking consists of three elements:

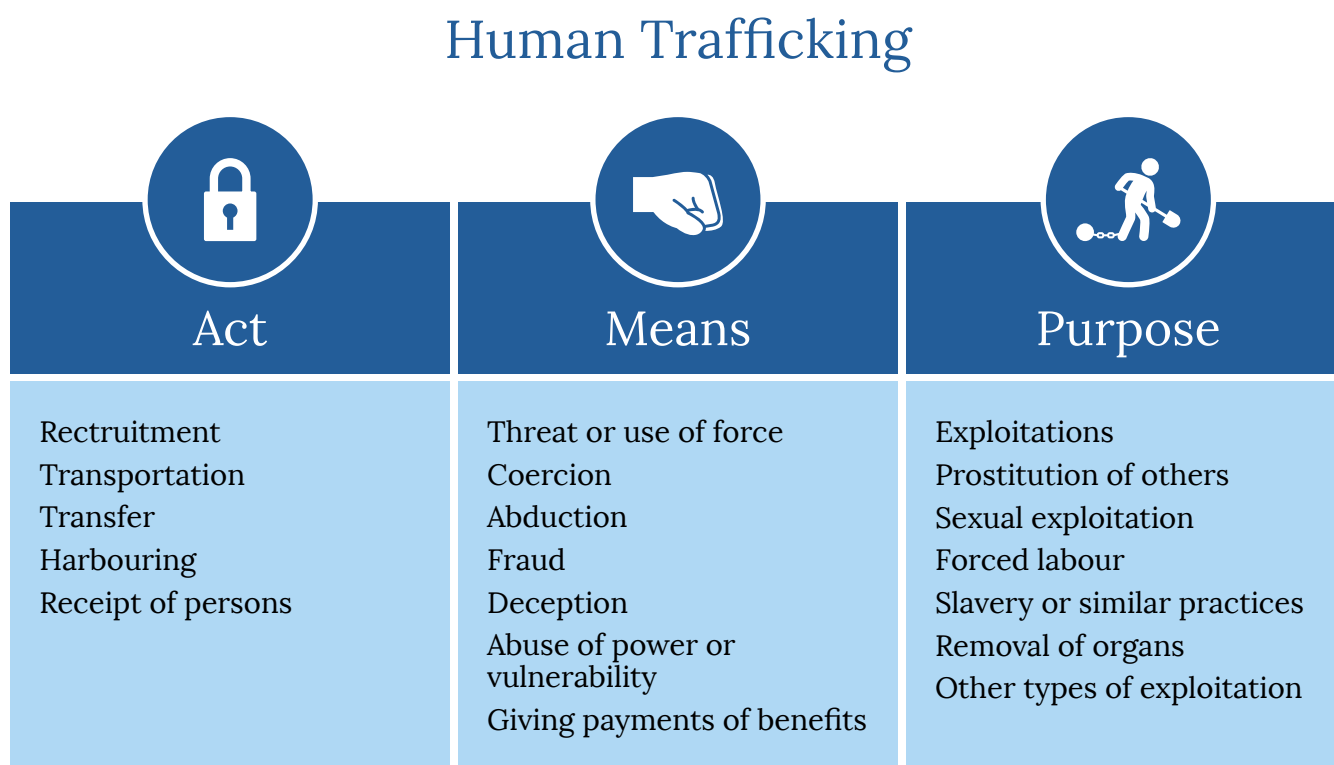
1. The act (what is done): Recruitment, transportation, transfer, harbouring, or receipt of persons;
2. The means (how it is done): Threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of

⁴ <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; and

3. The purpose (why it is done): For the purpose of exploitation, which shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

These three elements are depicted graphically below.



Forms of Human Trafficking Recognized Globally

According to the United Nations Office on Drugs and Crime’s Global Trafficking in Person’s Report 2018⁵, the two most common forms of trafficking are forced labour and sexual exploitation. Interpol recognizes these two predominant forms of trafficking, in addition to trafficking for human tissue, cells, and organs. Human trafficking varies depending upon which form of exploitation undergirds the trafficking. Broadly, the following are the most common types of human trafficking globally:

⁵ “2018 Findings/Highlights,” Global Slavery Index 2018, <https://www.globalslaveryindex.org/2018/findings/highlights/>

Sex Trafficking / Commercial Sexual Exploitation

When an adult is forced, threatened or fraudulently coerced into engaging in a commercial sex act, such as prostitution.

Child Sex Trafficking / Commercial Sexual Exploitation

When a child (a person under 18 years of age) is used in a commercial sexual act.

Forced Labour and Bonded Labour

When victims of forced or exploitative labour are trafficked for the purpose of working in domestic work, the textiles or garment industry, brick kilns, agriculture, etc.

Bonded labour is an outcome of indebtedness that exploits economically weaker sections of society. It occurs when a person agrees to render services to a lender in lieu of a debt. Sometimes there are several generations working under bondage to repay a meagre amount borrowed at a high rate of interest.

Begging

Traffickers source women and children and place them in various areas to beg. Because disabled child beggars generate greater profits, traffickers sometimes maim children to enhance their value as beggars.

Organ Transplantation

Traffickers often exploit persons to transplant organs for profit. In some cases, the victim is unaware his/her organs are being removed and in some cases persons agree to removal of their organs due to dire economic needs.

Minimum wage:

“Minimum wage” is the minimum amount required to be paid by a landlord or an employer to labourers or staff for their work or service provided. There is a minimum wage prescribed by the Government of Nepal to be paid for agricultural labourers for their services rendered, which is published in the Nepal gazette. For labour matters pertaining to factories, the Labor Law provides Minimum Wage Fixation Committees which recommend minimum wages applicable to factory labourers and staff.

Dynamics of Human Trafficking

Trafficking is catalyzed by several factors varying from region to region. However, two factors are common to trafficking in general and can be found across the world.

Push factors exert pressures on victims to enter forms of modern slavery:

- Poverty/economic hardship
- Family breakdown/dysfunctional families
- Oppression
- Lack of social or economic opportunity
- Dangers from conflict, violence, or political instability
- Lack of social safety net
- Religious or ethnic persecution or discrimination
- Natural disasters

These factors cause potential victims to enter situations of slavery or migrate under risky circumstances, pushing them into the control of traffickers. Unstable conditions that could lead to the destabilization and displacement of populations also increase their vulnerability to exploitation and abuse. Orphans and children are especially targeted.

Pull factors attract people to move, such as the attraction to places that offer better conditions (job, education, advantageous marriage, etc.). While on the move they become more vulnerable to traffickers. Often, upon arrival the better condition is discovered to be a ploy and the destination is no better than the original source location.

Often, intermediaries serve as a crucial bridge between a prospective employer and migrants. A labourer's dependence on the intermediary or labour broker to make arrangements to get the migrant to his/her place of employment increases the migrant's vulnerability to trafficking, as these recruiters sometimes make false promises or directly facilitate trafficking.

The TIP Report observes that each of the following increases a person's vulnerability to trafficking:

- Debt manipulation: A person incurs a huge debt that they believe they can repay upon employment, thus rendering the person vulnerable to trafficking. However, once employment starts, hiked rates of interest, minimal payment conditions, and the terms of employment render repayment of the debt impossible or infeasible.
- Contract fraud or switching: When the conditions of work arbitrarily change or when the contract of employment is not adhered to, rendering the worker vulnerable to forced labour.
- Confiscation of documents and abuse of the legal process: Traffickers often use the identity documents of the victims to exploit and abuse them into staying at a particular place of employment.

4Ps and the Strategy to Combat Modern Day Slavery

The United Nations in the Palermo Protocol established a four-fold response to trafficking in persons (known as the “4Ps”) which involves Prevention, Protection, Prosecution, and Partnerships. The 4Ps provide a strategic framework to tackle trafficking of persons where each of the four strategies addresses issues of supply and demand. The following are examples of relevant actions:

Prevention

- Adopt or improve legislation to prevent trafficking of persons.
- Develop national child protection systems and active participation of children in development of preventive measures.
- Promote coherence among public policies related to trafficking in persons (migration, crime prevention, education, employment, health, security, non- discrimination, economic development, protection of human rights, child protection, gender equality, among others)
- Develop and/or strengthen measures to reduce vulnerability to trafficking by addressing its root causes
- Conduct a needs assessment for an impact evaluation for prevention strategies and programmes.

Protection

- Establish or improve victim identification process
- Adopt or amend legislative measures to protect and assist victims
- Develop victim protection and assistance measures in compliance with international standards
- Adopt measures ensuring return, if desired by trafficking victims, with appropriate risk assessment.

Prosecution

Develop, strengthen, and implement comprehensive national frameworks aligned with the Palermo protocol, including:

- Recognize trafficking in persons as a criminal offence.

- Criminalize other crimes related to trafficking in persons, such as corruption, money laundering, obstruction of justice and participation in an organized criminal group.
- Make penalties and sanctions appropriate and proportionate to the gravity of the crime and confiscate proceeds of trafficking.
- Ensure the rights of victims, including the rights of victims and witnesses to protection before, during and after prosecution, and foster effective collaboration between law enforcement, social welfare, and civil society.
- Develop proactive investigative techniques without relying on victim testimony and implement judicial procedures to avoid re-victimization of trafficked persons, in particular children, during the judicial process.
- Enforce national anti-human trafficking legislation.
- Establish specialized institutions such as specialized police units and judicial structures.

Partnership

1. National coordination and cooperation

- Develop and implement evidence-based policies on trafficking in persons, which are coherent with other policies.
- Establish a system of multi-disciplinary cooperation and coordination among various stakeholders, such as government institutions, non- governmental organizations, victim service providers, health institutions, child protection institutions, trade unions, workers' and employers' organizations and the private sector.
- Monitor and evaluate national strategies and/or plans of action to assess progress and impact.

2. International coordination and cooperation

- Create legal basis for international cooperation including promotion of cooperation agreements
- Develop or strengthen national capacity in extradition, mutual legal assistance, transfer of sentenced persons, joint investigations, and international cooperation to confiscate trafficking proceeds.
- Develop or strengthen national capacities for the identification, return, risk assessment and reintegration of victims of trafficking, with special consideration to the best interest of the child, and establish cooperation between countries of destination, transit and origin.

- Establish communication procedures, information and data exchange.
- Coherence in policy recommendations and technical assistance provided by international and regional organizations.
- Ensure cost effective division of labour.
- Promote cooperation and joint programming among international and regional organizations in developing and implementing common strategies and programmes.

The 4P strategy is now a globally recognized response to trafficking in persons.

B. Clarification of Concepts

Women who have been trafficked for sexual exploitation should be distinguished from women who voluntarily enter the sex trade.

Sex Trafficking

According to the 2020 TIP Report, a victim of sex trafficking has the following characteristics:

- Is an adult who engages in a commercial sex act, such as prostitution, which may occur within debt bondage (where individuals are forced to continue in prostitution to repay a debt, which the trafficker claims has been incurred from costs incurred during their transportation, recruitment, or their crude “sale”—which exploiters insist they must pay off before they can be free);
- As a result of circumstances involving force, threats of force, fraud, coercion, or any combination of such means; and
- Who has been recruited, harboured, enticed, transported, provided by, obtained by or maintained by a person, known as the trafficker, for the purpose of exploiting the victim to engage in a commercial sex act.

In the above situations the adult’s “consent” to participate in prostitution is not valid. When a child is engaged similarly to perform acts of commercial sex, it is referred to as child sex trafficking.

Sex Work

Sex work is the provision of sexual services for money or goods. While sex trafficking

results in sex work, sex work need not be the result of trafficking. There are instances where women voluntarily join the sex trade. It is the perpetrators of commercial sexual exploitation who are punishable under the Palermo Protocol and national law. Hence it is trafficking for sex work that is punishable, and not sex work per se.

Trafficking vs. Migration

Trafficking and migration are distinct concepts but often represent overlapping criminal problems. Migration means the movement of people from one place of residence to another, which could be between districts, states, or different countries. It may be seasonal and temporary, or permanent. Migrants may move of their own accord to seek better prospects. When traffickers move victims, by contrast, they employ fraud, threats, coercion, intimidation and violence. The intent and consequence of these movements of people cannot always be understood during the period of movement, even for the individual worker who is in the process of migration or trafficking. It is often the outcome of the movement which determines whether it was safe migration or trafficking. Voluntary migration should not be confused with trafficking.

Bonded labour vs. Child labour

Under the Bonded Labour (Prohibition) Act, 2058/2002 (“BLA”), bonded labour is a type of forced labour that involves the victim providing labour to: (1) pay back a debt obtained by the victim or his/her family, (2) pay back a debt obtained by the victim’s ascendant, or (3) pay back the bonded debt of a bonded labourer for which the victim has given a guarantee before the creditor. In Nepal, a child below the age of 14 is not allowed to work as a labourer. Child labour takes on different forms and while all forms of bonded child labour are child labour, not all forms of child labour are bonded labour. While bonded labour can occur among children, it is not the only form of child labour.

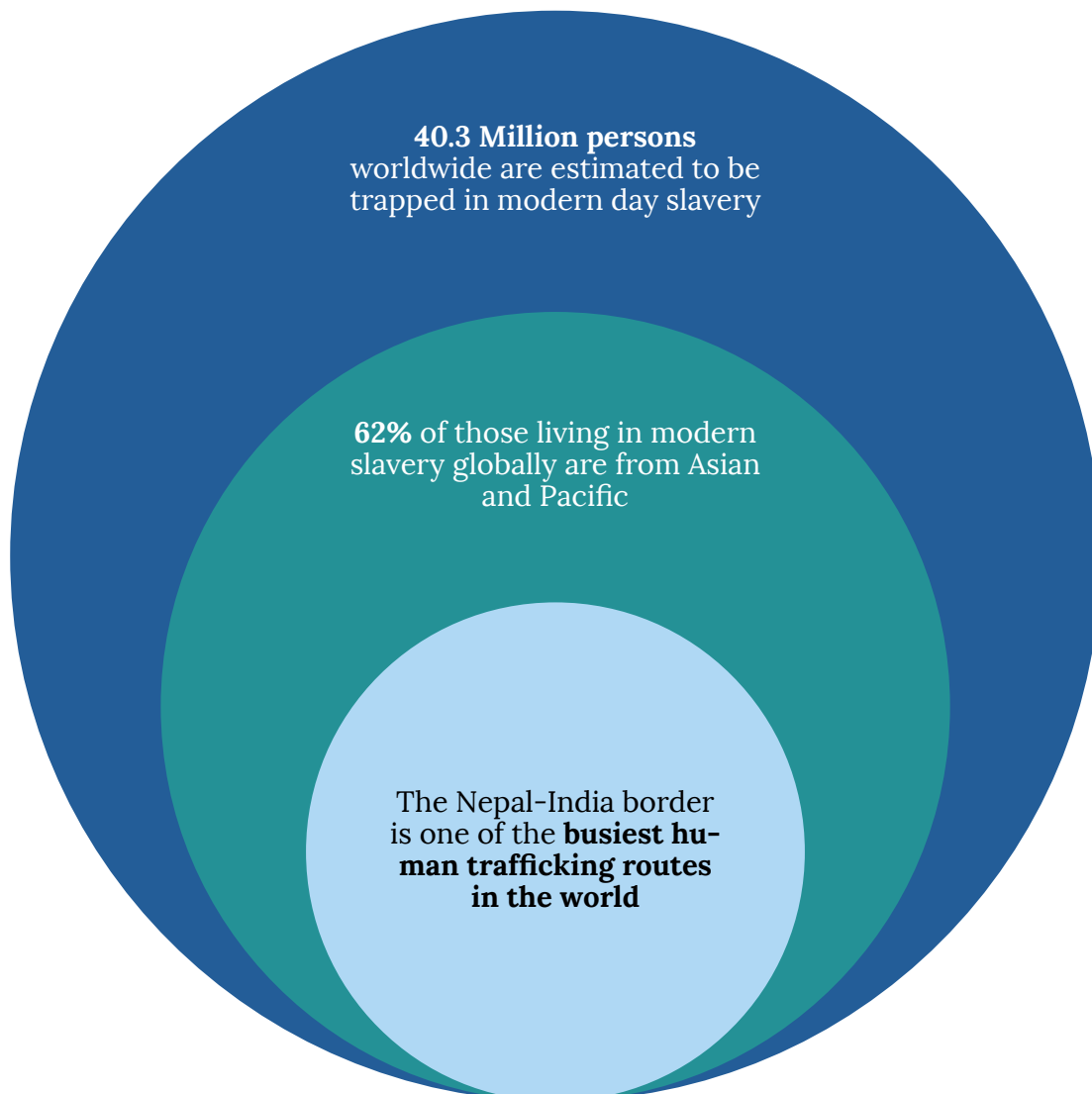
The concept of consent

As long as a trafficker intends to procure, transport, buy or sell people for the purpose of exploitation, “consent” is not a valid defense to the crime of trafficking. Trafficking may involve types of coercion other than overt force. Traffickers maintain the submission of their victims through a variety of means– including fraudulent promises, debt bondage, physical, and psychological abuse, rape, torture, threats of arrest or threats to the victim’s family. The concept of “honour”, especially to a victim of sex trafficking often prevents victims from seeking help or leaving their conditions even when escape may be possible. Trafficked persons are often afraid to leave their situation for fear of public humiliation, and possible further victimization by society and their families.

As they are almost always economically vulnerable and may have no other immediate means of survival, leaving is not a viable option for them.

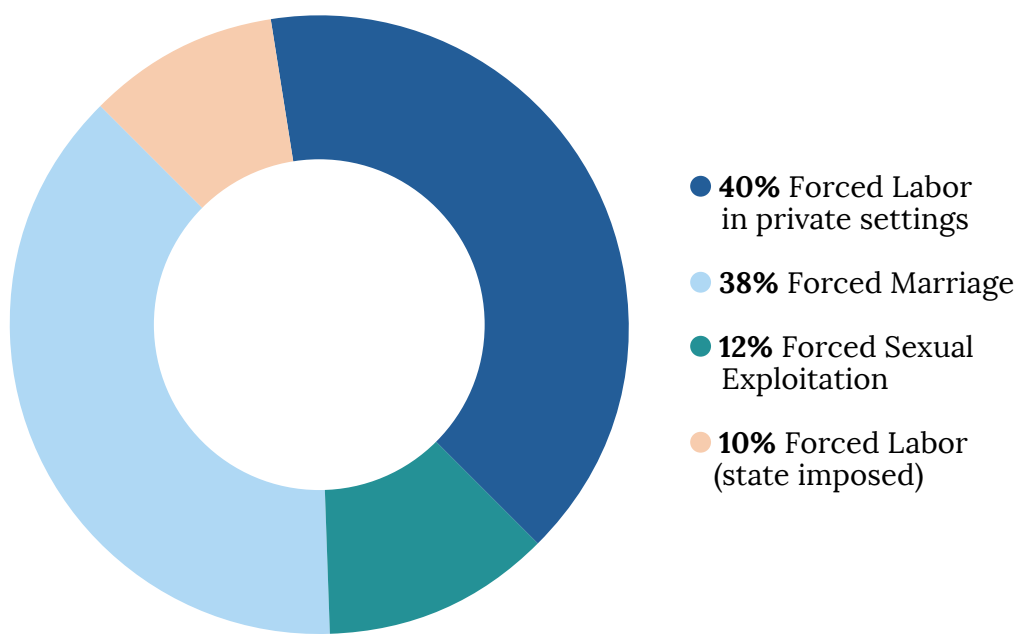
C. Statistics

Global Slavery Index findings



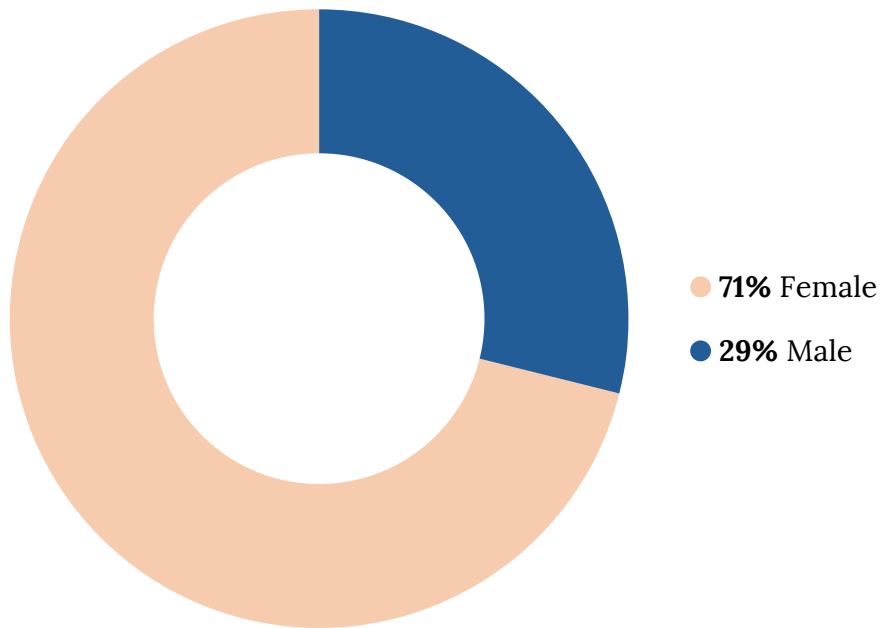
Given below are a few facts and figures according to I.L.O.:

Worldwide breakdown of modern slavery by sector

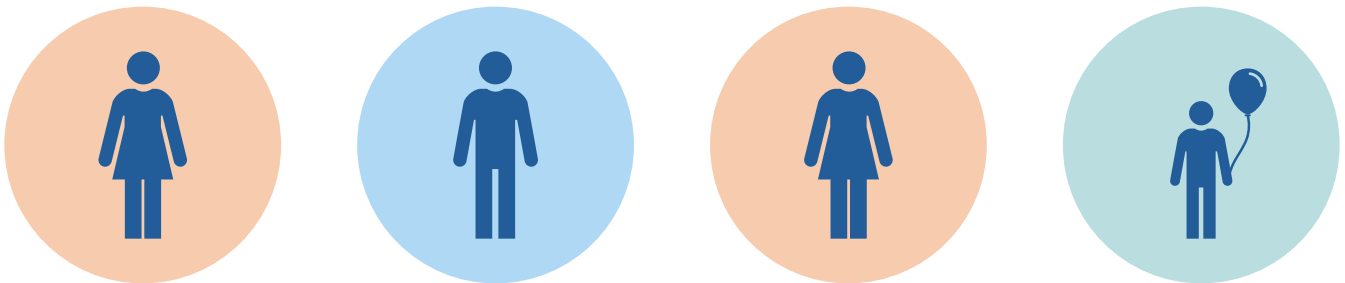


1. For every 1,000 people in the world there are 5.4 victims of modern slavery.
2. Women and girls are disproportionately affected by forced labour, accounting for 99% of victims in the commercial sex industry, and 58% in other sectors.
3. In the private economy forced labour is estimated to generate about \$150 billion in illegal profits per year. While sexual exploitation generates profits, forced labor saves costs.
 - \$99 billion generated from commercial sexual exploitation
 - \$34 billion in construction, manufacturing, mining and utilities
 - \$9 billion in agriculture, including forestry and fishing
 - \$8 billion dollars is saved annually by private households that employ domestic workers under conditions of forced labor

Victims of modern slavery by gender



One in four victims of modern slavery are children.



Dispersion of victims trapped in modern slavery regionally



D. Sex trafficking in Nepal

Human trafficking is a significant problem in Nepal, particularly as a source country. Women and girls are often trafficked from rural to urban areas or across the border into India. Girls and women from Nepal are also trafficked to the Middle East, Malaysia, China, Hong Kong, South Korea, Kenya and South Africa.

As Nepal evolves from a country with many areas of relative isolation to an increasingly connected participant in international commerce, both new opportunities and new problems arise. The Nepal/India border provides easy access to job or marriage prospects that may sound enticing to Nepalese citizens looking for a way to support themselves and find a better life. But the rapid recent increase in these cross-border opportunities means that education and awareness of potential dangers have not caught up to the current circumstances. Many women and children in Nepal are especially vulnerable to human trafficking because they lack resources in three common areas: skills and education, non-familial social networks, and economic assets and opportunities.⁶

⁶ See Causes, Processes and Vulnerability of Sexual Trafficking in Nepal, United Mission to Nepal (UMN), 2017

Unemployment and poverty in urban areas, in addition to rising domestic violence, have increased the number of internal migrant women involved in the sex profession, despite the social stigma and effects on reproductive health⁷. Without opportunities within their home towns, many are forced to look to the outside world for the first time in their life. Unfortunately, many are unprepared to navigate these paths on their own.

Traffickers often offer seemingly lucrative job opportunities and use other coercive and fraudulent means to trick women and girls into traveling with them. When they reach the intended destination, the traffickers turn them over to brothel owners or sell them into other exploitative circumstances. Inside Nepal, sexual exploitation is prominent in the entertainment sector including the film and music industries and theatre arts but also establishments such as dance bars, *dohoris*, *gajal*, *rodhi gar*, massage parlour, spas and *khaja ghar* (eateries). Women may be convinced by brokers to work in the entertainment sector with promises of being a well-paid waitress, a cook or a dancer/singer when in fact they will be sexually exploited.

The 2015 earthquake has had a significant effect on the country's economy, exacerbating already difficult situations for the disadvantaged and making recovery difficult. The earthquake had a measurable effect on the poor and vulnerable of Nepal in the area of trafficking – a reported 40% increase in the rates of human trafficking in the years following the quake.⁸

The government of Nepal has enacted targeted legislation to prohibit human trafficking, including sex trafficking. Section 213 of the Country Penal Code, 2017 criminalized and specified penalties for the selling, trafficking, enslaving, subjecting to forced labor, and engaging in prostitution, of any person. More recently, the government of Nepal passed the Human Trafficking and Transportation (Control) Act of 2007 (HTTCA), a comprehensive legal framework to address trafficking in Nepal. The act includes in its definition of human trafficking “to use someone into prostitution, with or without any benefit.” In addition to criminal legislation, in 2007 the government put forth the National Plan of Action against Trafficking in Children and Women for Sexual and Labour Exploitation, which includes a report on the state of trafficking in Nepal, risk factors, initiatives and recommendations. The Plan highlights the importance of prevention, specifically awareness campaigns and education, border monitoring, and improving the situations of the poor and vulnerable in Nepal.

7 “Women Vulnerability in Informal Entertainment Sectors in Kathmandu: A Human Rights Perspectives,” Ghanashyam Niroula FPAN, Family Planning Association of Nepal, RIMCIS – International and Multidisciplinary Journal of Social Sciences, Vol. 6 No.1 March 2017 pp. 23-46.

8 Id.

E. Bonded Labour in Nepal

The system of bonded labour as a form of slavery has existed since before the Rana regime. During and prior to the Rana Regime, people from different parts of Nepal were brought in to work at the Palace and care for upper class families. This practice was called the Kamara Kamari, and sometimes girls were brought in and sexually exploited. In this way, the practice of slavery was deeply rooted at the Palace and within the upper class families. Attempts for the abolition of slavery-like practices were made at the time of King Prithvi Narayan Shah, and later in 1862 BS, King Rana Bahadur Shah issued an order for the abolition of such practices of slavery.

King Rajendra Vikram Shah also issued an order for the abolition of slavery, but since such practices were deeply rooted in society these attempts for slavery abolition were futile. During the Rana Regime, in 1903 Prime Minister Janga Bahadur Rana attempted to abolish sati and the system of slavery but was unsuccessful. Prime Minister Chandra Shamsher in 1981 BS prohibited the practice of slavery⁹ and made a provision to compensate victims from the Government exchequer. The same provision was included in the General Code of 1990 BS as a Chapter on Human Trafficking. However, the family-based, oligarchic, and despotic Rana rule failed to abolish untouchability, the caste system, child marriage, old age marriage, the dowry system and polygamy.¹⁰

Presently, a large number of Nepali workers go abroad to work due to the lack of job opportunities in Nepal. During this process, Nepali men, women and children are trafficked into neighboring India as well as to other countries such as Syria, South Korea, China, Malaysia, United Arab Emirates, Mexico, the United States, Kenya and South Africa.

Human traffickers have also utilized the India-Nepal open border as a human trafficking route.¹¹ Labour recruitment agencies and job brokers also exploit Nepali workers with attractive offers of overseas travel and job opportunities. A large proportion of Nepali workers work overseas, many of whom are deceived about their prospective working and living conditions. In this sense, Nepal is a source country for men, women, and children subjected to forced labor and human trafficking.

There is a practice of forced labour and debt bondage that persists particularly within the agricultural, forestry, construction, and manufacturing sectors of Nepal. Many Nepali become trapped in exploitative situations after borrowing money from lenders, who then force borrowers to work to repay their debt. Those in debt bondage do not have the freedom to work for another employer without the landlord's permission and work long hours

9 An appeal for the abolition of slavery in Nepal was made on Friday the 14th Marga 1981 (28th November 1924.)
Please visit at www.lawcommission.gov.np

10 See at <http://www.globalslaveryindex.org/country/nepal/> (Accessed on Sept, 25, 2016)

11 See at <http://www.globalslaveryindex.org/country/nepal/> (Accessed on Sept, 25, 2016)

for below minimum wage. Individuals who eventually pay off their debt are at risk of falling back into modern slavery, due to limited job opportunities.¹² It is estimated that there are 171,000 people trapped in modern slavery in Nepal. A 2013 ILO report that examined conditions in 12 districts in Nepal where agricultural bonded labour systems are most prevalent found that 12% of the estimated 942,000 households were affected by forced labour, meaning that at least one person in such family had worked under forced labour conditions. On examining the situation of the H/C and *Haliya* households, the study found that the percentage was much higher, at 94%.¹³ Child labour is also a common problem, with many children engaged in hazardous work across the country, for little or no pay. A Labour Force Survey conducted by the Central Bureau of Statistics found that 17% of forced labourers in Nepal are children.¹⁴

There are many *Kamaiya*, *Haliyas*, *Kamalaiya* and H/C who live a life of slavery with deprivation of human rights in Nepal. There are bonded labourers in brick kilns and in other industries such as factories, stone quarries, hotels, restaurants, dance bars, massage parlors, domestic households, and the agricultural sector. The Government of Nepal enacted various laws, policies and guidelines and launched programs with a goal to provide rehabilitation support to the *Kamaiyas* and *Haliyas*. However, those programs benefited the bonded laborers who were in the Mid and Far Western part of Nepal and had no impact on thousands of H/C bonded labourers dwelling in eastern and central *Tarai* including the Saptari, Siraha and Dhanusha districts of Nepal.

After the restoration of democracy in Nepal in 1990, increasing protests against the *Kamaiya* system organized by the “*Kamaiya movement*” led to its abolition in 2000. On 17 July of that year, the Government of Nepal banned the *Kamaiya* system and all *Kamaiyas* were freed and their debts cancelled. In 2001, the Bonded Labour (Prohibition) Act (“BLA”) was promulgated in order to liberate and rehabilitate all agricultural bonded laborers. Similarly, the Government declared freedom for *Haliya* on BS 2065/5/21 (31 August 2008).

F. Present Situation of H/C Communities

1. Importance of Land in Perpetuating the Bonded Labour System

Because agriculture is a dominant source of income in Nepal, the ownership of agricultural land determines one’s social status and power in agrarian relations. This relationship enables exploitation of the labour of the lower classes of society by the upper

12 <https://www.globalslaveryindex.org/2018/data/country-data/nepal/>

13 See at http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_218496/lang--en/index.htm

14 <https://kathmandupost.com/national/2019/11/21/nepal-reaffirms-commitment-to-eliminating-forced-labour-human-trafficking-and-child-labour>, April 2019

classes, and thus the discussion about labor exploitation in the agricultural sector is related to the discussion on land rights and land reform.¹⁵ The labourers under the *Kamaiya*, *Haliya* and *Harwa* systems are bonded to live and labour on others' land for a specified period, usually for a year. They are not free to change their status during this period due to an agreement that has been made between the labourer and landlord. Out of the 4,253,220 households in Nepal, about 1,030,000 households do not own land for cultivation, and moreover 217,000 households do not even own a piece of land. Although the initiative for land reform and redistribution of land started over sixty years ago, it is still in the process of being implemented and people are fighting for land rights. Therefore, today's practice of slavery is linked with the land and its production.

2. Inequality in Land Holding

The exploitative practices that occur in Nepal vary among regions. In the far western and Tarai regions, labor exploitation for agricultural purposes such as *Kamaiya*, *Haliya* and H/C is a deeply ingrained practice. The H/C system is also prevalent in western Tarai, especially in the Rupendehi, Kapilvastu and Nawalparasi districts.¹⁶ Despite the government's declaration eliminating bonded labour, it persists in the agricultural sectors in different parts of the country, due to an inequality in land possession that is similar to what exists in other agrarian economies of the developing world.¹⁷

Government statistics indicate that 68.63% of households own in the aggregate only 30.5% of the total cultivated land, with each household owning less than 1 hectare. By contrast, ownership of 50.8% of the total cultivated land is concentrated in the hands of 27.68% of the households, with the wealthiest 2.51% of households controlling over 18.70% and owning more than 4 hectare each in 1991.¹⁸ Recent trends suggest that the size of large landholdings has decreased due to the land ceiling imposed under the Land Reform Act, 1962 which led to landlords registering land in false names and sometimes in the names of *Kamaiyas*, *Haliyas*, H/C and sharecroppers. Therefore, both the total area of land controlled by landlords and actual number of landless people could be greater than reported by official statistics. Indeed, concentration of land in the hands of a few elite classes and severe exploitation of the peasantry through labor expropriation have been a characteristic of the Nepali political economy throughout history, and this semi-feudal agrarian relationship has led to landlessness and agricultural underdevelopment.¹⁹

15 Review of land-related Legislation in Nepal in Preparation of an Integrated Land Law, Food and Agriculture Organization of the United Nations, Nov. 2013, p. 1.

16 Lekh Nath Bhattarai, Bonded Labour system in Nepalese Agriculture: A Study of Haruwa System in Rupendehi, Tribhuvan University Journal, Vol. XXIII, No. 1, Jun. 2001, p. 26.

17 Arjun K Karki, Movements from below: Land Rights Movement in Nepal (Inter South Asia Cultural Studies (Volume 3, Number 2, August 2002)

18 Central Bureau of Statistics, Agricultural Census of Nepal (1991), Kathmandu: HMG/N. 1.

19 *ibid.*

3. Exploitation of H/C Communities

Within H/C families, men work as *Harwa* (i.e., tiller) and women, children and the elderly work as *Charwa* (i.e., cattle herder and domestic servant). The vast majority of H/C families are landless or have insufficient land and thus labour for nominal wages. They are trapped in inter-generational debt with exorbitant interest rates charged by the landlord to whom they are bonded both by custom and by debts. More than 75% of H/Cs are from the Dalit community (traditionally considered as “untouchables”), and their employers are mid-size or large landowners from high castes.

Although the BLA prohibits all forms of bonded labour, there is no substantive government initiative in regard to protection and promotion of the rights of H/Cs. According to an ILO study, H/C communities work with landlords for wages that are far lower than the prevailing rates in the labour market. Almost half of them were paid daily with three kilograms of paddy, amounting to 40 to 50 Nepali rupees (up to fifty US cents), while 30% of them were paid annually in cash or kind, at a rate equivalent to NPR 10,000 and 12,000 (roughly USD 100–130).²⁰ Some work under arrangements called *laguwa* in which the worker receives a piece of land or a share of the harvest, or works for an annual payment or to pay off interest on a loan. In these cases, the worker’s wife and children are forced to work for the landowner under threats of violence, losing their house, and being refused further loans.²¹ More than 45% of the H/C labourers do not have any contracts at all and continue to work for their landlords under different systems of payment. But they suffer from exploitation in various forms, including wage deductions if they are sick and cannot work, as well as physical or verbal abuse.²²

4. Socio-Economic Status of H/C

H/C communities are comprised of the most marginalized people, with the majority being landless. Often entire families are bound to work as unpaid labourers to a landlord if the father is engaged as a *Harwa*. Women and children of *Harwas* work at the landlords’ house, with the wife or young daughter performing household tasks such as carrying water, taking care of children, herding cattle, cooking and washing clothes and dishes etc.²³ The H/C community is generally neglected by the state. Reports²⁴ indicate that H/Cs lack access to safe residence, landholding, safe drinking water, toilet facilities, electricity, food security, etc. Overall, one-third of H/C households reside in places other than their own house, while 37% of households are landless and another 40% near landless.

20 See at http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_218496/lang--en/index.htm (Accessed on Sept, 25, 2016)

21 See at http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_218496/lang--en/index.htm (Accessed on Sept, 25, 2016)

22 See at: http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_218496/lang--en/index.htm (Accessed on Sept, 25, 2016)

23 Ibid.

24 Forced Labour of Adults and Children in the Agriculture Sector of Nepal, ILO Country Office for Nepal-Series no. 11

Very few household members of H/C families receive skills training (2%) while only 8% participate in development and social organizations. Adult literacy is very low, especially among women (2%). The nature of work, working conditions, working hours and mode of payment all revealed that H/C are marginalized and compelled to work without remuneration or with low remuneration for the landowners on a wide range of farm activities.

Family is fortunate to obtain a mobile phone from India

Siran Sada, 55, Badagama VDC, Saptari states that his grandfather became a *Harwa* after taking a loan and that his family is still working on paying off this debt, although he doesn't know how much remained. In light of the fact that the landlord is charging exorbitant interest rates there is probably little hope of ever getting out of poverty.

Siran has a home on public land on a river bank. He has had opportunities for daily wage jobs, which pay little more than 5-6 kg of rice/day, but the landlord is pressuring him to work their land. Siran was given four *kattha* land, which is insufficient to grow food for the full year. He has also taken a loan from his landlord. Siran has had few options for educating his children and the life of a *Harwa* has now been passed down to a fourth generation, through his son. Siran's family is one of the fortunate few among the group in that his son brought home a mobile phone from India.

H/C pay 60% interest for medical treatment

Sonawati Sada, 34, Hanuman Nagar, Siraha had borrowed NPR 4,000 from her landlord, but has had to borrow more than NPR 40,000 from six money lenders who charge 60% interest rates for medical treatment for her and other family members. If the family doesn't pay anything they will get evicted but some of the male family members have gone to India for temporary work in order to pay something towards the loan. Sonawati has three daughters, with the oldest, 12, taking care of the family home, meaning that she is no longer in school and will have little livelihood opportunity.

5. H/C and Their Children

There is a high rate of child trafficking into India and high rates of unsafe migration. Given the seriousness of the issue of child labour in Nepal, there are several organizations that are based in Nepal that tackle the problem of child labour through improving educational standards. In 2013, the U.S. Department of Labor reported that children in Nepal are engaged “in agriculture and the worst forms of child labor in commercial sexual exploitation.”²⁵ The incidence of child abuse, discrimination, neglect, exploitation and gender-based violence persists as an outcome of ignorance, poverty, powerlessness, poor health and vulnerability. They become vulnerable to commercial sexual exploitation. Consequently, children are subjected to forced labour in the country, especially in domestic work, brick kilns, and the embroidered textile, or zari, industry.

Free Education Policy Not Implemented for Dalit Children

Latar Sada, Sishawani, 63 VDC, Siraha stated that educating the young might eliminate the *Harwa* system, but he has insufficient resources to send his children to school and he doesn't have enough food for his family. He indicated that children are leaving school early due to discrimination, e.g. non-*Dalits* were provided with new books, while *Dalits* were given old books, or *Dalits* had to sit in the back of the classroom. But it is also a question of having the money for exam fees and stationary items and although schools are advertised as free for *Dalits* children, in fact there are costs.

G. Exploitation of Migrant Workers

From 2006-2015, there has been large scale labor migration in Nepal. One recent study estimated that 2.5 million Nepali workers live abroad, remitting USD 38 billion to Nepal (equivalent to over 30 percent of GDP). Most Nepali migrant workers are males engaged in unskilled and low-wage jobs, with Malaysia and the Persian Gulf countries being major destinations. Nepali workers seeking employment abroad are highly vulnerable to forced labor and trafficking, beginning with job recruitment in Nepal at the village level and continuing on the job in the receiving country. Most of the documented abuses of migrant workers are related to recruitment agents in the villages or recruitment agencies in Kathmandu, who deceive migrants about working conditions in receiving countries.

25 See https://en.wikipedia.org/wiki/Child_labour_in_Nepal#cite_note-7.

Workers often accept their situation due to fear of reprisal or losing their jobs, which would render them unable to repay debt incurred to migrate.

The Foreign Employment Act (FEA) of 2007 delineates the role of the government in the management of foreign employment through the regulation of recruiting-agency licenses. It also defines the process of recruitment for foreign employment; sets minimum wage, labor contract, and insurance requirements; establishes pre-departure orientation skills trainings; sets procedures for filing complaints for compensation; and establishes the Foreign Employment Promotion Board and the Welfare Fund. Many labor trafficking victims prefer to submit claims for restitution through the FEA in lieu of lengthy criminal prosecutions under the Human Trafficking and Transportation (Control) Act of 2007, citing the desire to avoid the stigma associated with trafficking, the higher potential for compensation through the 2007 FEA, and the lack of time and funding to access the centralized institutions charged with providing redress.







Chapter III. *Standard operating procedures*

A. Scope and Objectives

The Standard Operating Procedures (SOP) provide an orderly sequence of actions for local level organizations working in the field of human trafficking. The SOPs address the release of victims, the prosecution of perpetrators, and the provision of rehabilitation support. The objectives of the SOPs are to provide information and guidance to local partner organizations that conduct activities and advocacy on the rights and interest of human trafficking survivors and their family members, including liberation and rehabilitation. Our objectives are:

- To equip NGO and their Advocates with skills by discussing the process for release and rehabilitation, including enhancing access to justice for all; and
- To enable local partner organizations to seek justice for crimes and violence against trafficking victims.

B. Structure

The SOP is divided into three parts: release of human trafficking victims, prosecution of human trafficking perpetrators, and provision of rehabilitation support to human trafficking survivors.

C. SOPs for Sex Trafficking Interventions



Procedure for Release of Sex Trafficking Victims

Step 1.1 Identifying Sex Trafficking Victims

Step 1.2 Submitting the Sex Trafficking FIR

Step 1.3 Preparing the Sex Trafficking Rescue Plan

- Step 1.4** Conducting a Pre-Rescue Meeting with Police
- Step 1.5** Initiating the Sex Trafficking Rescue
- Step 1.6** Securing the Sex Trafficking Rescue Site
- Step 1.7** Separating Sex Trafficking Victims from the Accused
- Step 1.8** Gathering Sex Trafficking Evidence
- Step 1.9** Ensuring Protective Custody for Survivors

Step 1.1 Identifying Sex Trafficking Victims

NGO

The NGO should gather and verify facts supporting the existence of sex trafficking.

Advocate

The Advocate should confirm whether the facts gathered support the legal elements of human trafficking under the Human Trafficking and Transportation (Control) Act, 2007/2064 and other applicable legal provisions.

Commentary

The NGO may receive information from one of the following sources:

- Victims or Victims' Family/ Community/ Survivor
- NGOs/ Community leaders
- Media reports
- District Committee on Combating Human Trafficking (DCCHT) or Local Committee on Combating Human Trafficking (LCCHTs)
- Child Rights Committee at state and local levels
- Child rights officer at local level
- Informant
- Any other person having knowledge of the crime

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- Victims or Victims' Family/ Community/ Survivor
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- Media reports
- District Committee on Combating Human Trafficking (DCCHT) or Local Committee on Combating Human Trafficking (LCCHTs)
- Child Rights Committee at state and local levels
- Child rights officer at local level
- Informant
- Any other person having knowledge of the crime

The NGO may also acquire information through intelligence gathering at source and transit points and demand areas. In communicating information about the trafficking, the victim's identity must be kept secret.

The Advocate should also advise the NGO on matters related to decoy operations and confidentiality while gathering information. In communicating information about the trafficking, the victim's identity must be kept secret.

Points to Note

HTTCA: Under the Human Trafficking and Transportation (Control) Act, 2007/2064 (HTTCA), a person is deemed to have committed human trafficking when he/she undertakes:

- a. To sell or purchase a person for any purpose;
- b. To use someone into prostitution, with or without any benefit;
- c. To extract human organ except otherwise determined by law; or
- d. To go for in prostitution.

The following acts are deemed to constitute human transportation:

- a. To take a person out of the country for the purpose of buying and selling; or
- b. To take anyone from his/her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurement, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into one's custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation.

Who is a “victim” under the HTTCA: A “victim” under the HTTCA is a person who is sold, transported or put into prostitution. A “child” is defined as any person who has not reached the age of eighteen years.

Means of gathering information and intelligence. The following are means and places from which information on the incidence of commercial sexual exploitation can be identified:

- **Source Area:** Collect intelligence about victims and potential victims from source areas such as domestic worker industry, entertainment sectors, and informal sectors (garment factory, brick kilns, etc.), Keeping a close watch on vulnerable places and communities will help prevent vulnerable victims from being trafficked. The NGO should sensitize and motivate local activists and community leaders to keep a watch in the community for irregular movements of victims. Intelligence from source areas can also be gathered from interviews with survivors.

- **Transit Points:** Collect intelligence about victims and potential victims from source areas such as domestic worker industry, entertainment sectors, and informal sectors (garment factory, brick kilns, etc.). Keeping a close watch on vulnerable places and communities will help prevent vulnerable victims from being trafficked. The NGO should sensitize and motivate local activists and community leaders to keep a watch in the community for irregular movements of victims. Intelligence from source areas can also be gathered from interviews with survivors.
- **Destination Areas:** Collect intelligence from areas or activities where commercial sexual exploitation may be carried out, such as entertainment sectors (cabin restaurants, massage parlors, dance bars, khaja ghar, and dohori), brothels, hotels etc.
- **Decoy Operations:** Information may be obtained by conducting decoy operations.

Precautions to be taken. While obtaining information, the following precautions ought to be taken:

- **Maintain confidentiality:** Information relating to the victims, the rescue site to be searched, and the brothel owner or pimp must remain confidential. The NGO representatives or Advocates should not disclose information to any other persons who do not need to know.
- **Contact the local police:** If you believe you have identified someone or have received information from any source about a victim of human trafficking, alert the local police station immediately. Do not attempt to rescue or help the victim on your own. An NGO or any person cannot conduct a rescue on its own and needs assistance from law enforcement agencies.

Border monitoring: If the trafficking victim is identified while crossing the Indo-Nepal border, the NGO should refer to the SOPs set forth in the “Border Monitoring Intervention SOPs,” Chapter III(D).

Award for informants: Under Sec. 19 of the HTTCA, if an informant provides information leading to the rescue of a victim or arrest of a perpetrator, the informant shall receive 10% of the fine levied on the perpetrator as a punishment under Sec. 15. These awards to informants shall be granted only after the final verdict has been passed.

Punishment for contrary statements: Under Section 15(6) of the HTTCA, if a person involved in reporting an offence gives a statement contrary to a statement given earlier or if he/she does not appear before the court on its notice or does not assist to the court, he/she shall be liable for three months to one year of imprisonment.

Destination Areas: Collect intelligence from areas or activities where commercial sexual exploitation may be carried out, such as entertainment sectors (cabin restaurants, massage parlors, dance bars, khaja ghar, and dohori), brothels, hotels 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 occurrence of commercial sexual exploitation. The decoy also helps gather any other information that could be useful to conduct a rescue operation but cannot be procured without such an operation. Decoy operations are dangerous and only a trained person should be deployed as a decoy.

Who can be employed as a decoy: A decoy can be a police official, 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 bogus customer.
- **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 presence nor take advantage of the situation. Before deploying the decoy, document his participation in order to prevent the possibility of his being mistaken as an accused and getting arrested.

Role and Importance of Decoy Customer in trafficking interventions: The decoy customer is also known as bogus customer, who ensures that the targeted victim is present in the brothel during the rescue operation. Due to decoy operations strong evidence about the girl being sexually exploited is obtained. Recovery of marked transaction money in the presence of independent witness from the brothel keeper/ manager/ owner implicates them in the crime. Even if the victim is not traced during the trial, there are chances of conviction for running brothel based on the testimony of decoy and independent witness without which in the absence of the victim the trial will not move forward.

Important Points for decoy customer: The following points must be kept in mind by the decoy customer.

- Decoy customer should be of good reputation with no criminal background.
- He should not be a very young man.
- He should preferably be from the NGO.
- He should be familiar with human trafficking or the working of the red light area.
- He should be introduced to the special police officer before he is sent to the brothel.
- During the pre-rescue report, the details of the decoy customer should be mentioned. He should be frisked and a note of all his possessions should be made.
- The importance of the operation should be explained to the decoy customer. He should be briefed about the do's and don'ts by the senior police officer.
- The marked money for the transaction is to be given by the police to the decoy customer in the presence of the independent witnesses. The decoy customer should pay the marked/noted money to the brothel keeper/manager/owner.
- He should not engage in sexual activities with the victim.
- As soon as the transaction is done he should inform the police in a predetermined code.
- As the police approach the brothel he should try and keep the girl with him and not allow her to leave the room.
- If he is forced to leave the girl (may be because of suspicion of raid/tips off), then he should accompany the girl so that he can see where the girl is hidden.
- The statement of the decoy customer should be reduced to writing by the police officer.
- The decoy customer should depose before the court during trial.

Learn More and Take Action

Document the existence of human trafficking: The NGO representatives should carefully document the existence of human trafficking.

Step 1.2 Submitting the Sex Trafficking FIR

NGO

The NGO should use the facts gathered to draft a sex trafficking first information report (FIR) to be submitted to the police office.

Advocate

The Advocate should review the draft FIR and ensure it presents a persuasive legal argument for initiating a sex trafficking rescue and assist the NGO in submitting the FIR to the police office.

Commentary

The NGO should discuss the information in detail with the informant to verify the genuineness of the information. However, the NGO at all times should be alert to report the information to appropriate authorities immediately as time is of the essence. Decoy operations or reconnoiter visits may be carried out to authenticate the available information received from informants.

The Advocate should ascertain if the elements of trafficking as defined in the HTTCA are satisfied and come to a conclusion on whether the person is trafficked or not and if other offences have been committed against the victim. The Advocate should ensure that the FIR filed by the NGO contains information on the commission of one or more offenses under the HTTCA.

The Advocate should be present in person at the Police Station where the FIR is being submitted, to ensure that the appropriate sections of law are included in the FIR. The Advocate may prepare a written request to the police for the protection of victims, witness and related proofs and evidence. Advocate should get the registration number for the FIR.

Points to Note

Procedure for filing FIR: Section 4 of the National Criminal Procedure Code (NCPC), 2017 requires anyone with knowledge of a crime to file an FIR: “A person who knows that any offence set forth in Schedule-1 has been committed, is being committed, or is likely to be

committed shall, as soon as possible, make a first information report in writing or give information verbally or through electronic means, on such offence, along with whatever proof or evidence which is in his or her possession or which he or she has seen or known, to the nearby police office in the form set forth in Schedule-5.” If the person making the FIR or giving information does not give it in writing, the concerned police employee must document such information in the form set forth in Schedule-5 and cause it to be signed by the person. Any FIR received must be forwarded to the separate investigating authority specified by law in relation to such report or information and, failing the specification of such separate investigating authority, to the concerned District Police Office.

Who is the complainant: As per Section 5 of the HTTCA, anyone who knows that the offence of human trafficking and/or transportation is being or may be committed can report it to the nearest police office.

Complaint for refusal to register FIR or information: Section 5(1) of the NCPC states that if the concerned police office refuses to register an FIR, the person making such FIR may make a complaint setting out such matter, accompanied by the FIR or information, to the concerned district government attorney office or the police office higher in level than the police office required to register such first information report or information.

Identity of informant: The informant’s identity should be clearly documented in the FIR in the event he/she needs to be presented as a witness for the case in the future.

Step 1.3 Preparing the Sex Trafficking Rescue Plan

NGO

The NGO should prepare a comprehensive sex trafficking rescue plan in consultation with the police, Advocate and relevant authorities, which must include a detailed physical map of the site.

Advocate

The Advocate should advise and assist the NGO in preparing the rescue plan, ensuring it includes the presence of an adequate number of decoy customers and independent witness.

Commentary

The NGO should prepare a strategic plan for the rescue operation. The plan should include details of the location, physical layout of the rescue site, entry and exit points, hideouts, sketch map of the rescue site etc. The above details must be obtained and compiled during reconnoiter of the place to be searched.

The Advocate may assist the NGO representatives in the preparation of a rescue plan and ensure that the rescue operation is planned in accordance with procedures laid down by law.

Points to Note

Risk assessment: The NGO must conduct a systematic risk assessment and have a plan to prevent and minimize the risks involved in a rescue. Other important information such as the location of the place to be searched, the profile of the traffickers and the social standing of the accused, must be examined to assess the risks. Possible responses to mitigate risks along with a contingency plan in case of unforeseen circumstances must be planned with great care.

Avoid sharing rescue site information: The physical map of the rescue site should be kept confidential from as many as possible. Instances of victims going missing have taken place when information has leaked from various sources. It would be best to avoid sharing the information with too many stakeholders.

Learn More and Take Action

Pre-rescue plan: Contact JVI for a sample pre rescue plan that lists out the roles and responsibilities of team members.

Human Trafficking Intervention Checklist: Annexure 1 has a Checklist for a Human trafficking/CSE intervention rescue operations.

Step 1.4 Conducting a Pre-Rescue Meeting with Police

NGO

The NGO should conduct a pre-rescue meeting in accordance with the rescue plan where roles and responsibilities are assigned to team members.

Advocate

The Advocate should advise and assist the NGO during the pre-rescue meeting by sensitizing the NGO and government representatives (including members of the National Committee and District Committee formed pursuant to the HT-TCA) on legal provisions and important information relating to the rescue to be undertaken.

Commentary

Appoint team leader who shall explain the strategy and steps to be taken during the rescue. The team leader shall assign responsibilities and explain the role of participants in the rescue operation. Divide participants into groups, depending on the targeted number of rescue locations and expected number of victims.

Appoint a team leader for each group. Share the names and contact details of each participant, team leaders and roles and responsibilities of each group.

Prior to participating in the rescue, team members must be familiar with the laws related to trafficking and commercial sexual exploitation of persons.

Note: Under no circumstances should the team that was involved in identification/verification/intelligence gathering be involved in the rescue so as to

The Advocate should be present at the pre-rescue meeting with the police and representatives from the NGO to convince the police to act swiftly.

During this meeting, the Advocate should sensitize NGO and government representatives on various issues related to trafficking, legal provisions on trafficking and myths and realities with regard to trafficking.

The Advocate should also explain the process of assembling an independent witness. The Advocate must advise police officers to exercise caution while selecting witnesses. Identify representatives of local bodies or otherwise those present at the time of activity as witnesses.

The Advocate should finally request the police to provide decoy customers for the rescue operation. In the event the

protect their identity and to ensure an effective rescue operation.

police are unable to do so, the Advocate in consultation with the NGO may provide a decoy customer. The decoy customers should be introduced to the independent witness. The police should give the transaction money to be given to pimp/brothel owner during the rescue in the presence of the witness.

Points to Note

Composition of rescue team for the arrest and investigation: The rescue team should consist of a police officer of the rank of Sub inspector or higher or the trafficking police officer, NGO representatives and social worker, one of which must be a woman.

Responsibilities of District Committees: Under Section 7(f) of the HTTCA Rules, the District Committee must relieve the persons who are in danger of being trafficked in that district.

Appoint a team leader: Appoint a team leader who will explain the strategy and steps to be taken during the rescue. The team leader should assign responsibilities and explain the role of participants in the rescue operation. Divide participants into groups, depending on the targeted number of rescue sites and expected number of victims. Appoint team leaders for each group. Share the names and contact details of each participant, names and contact details of team leaders and the roles and responsibilities of each group.

Pre-Rescue Checklist

Prepare a rescue kit: The kit is to include stationery, cameras, torches, batteries, video cameras, refreshments (drinking water, snacks), a first aid kit, vehicles, printer and cartridges, laptops and chargers, reference materials such as case laws and bare acts, list of the districts villages, and police stations within the jurisdictions to which the victims belong, clothing, toiletries, food, drinking water, activity books, crayons, and colored pencils (in the event there are children among the rescued victims). Appoint a point of contact for arrangement of logistics well in advance before the rescue.

Alert shelter homes: Alert credible Government run/NGO shelter homes at the place of rescue regarding the approximate number of persons likely to be rescued and the date when they are likely to be brought to the home. Ensure that NGO-run shelter homes are

licensed by the Government. This should be done in total confidentiality so that information about the rescue operation is not leaked. It is important for NGO representatives to identify credible shelter homes and maintain a database. NGO representatives must provide the list to the concerned district committee where the Chief District Officer (CDO) is chair of committee and the Advocate so that the victims are sent to credible shelter homes. In the event the shelter homes cannot be made immediately available to survivors, care must be taken to ensure that the district committee makes alternate arrangements for their stay and safety.

Security of rescue team: Ensure that the sub inspector involves adequate police personnel depending on the size of the rescue operation. In case of sensitive or high risk locations, the Advocate with the Sub inspector must ensure that the rescue team is accompanied by sufficient police personnel. Under no circumstances should a rescue operation be carried out without police protection. The Sub inspector or officer of higher rank must ensure police presence in relevant numbers depending on the size of the rescue.

Become familiar with useful questions: NGO representatives participating in the rescue must familiarize themselves with standard rescue protocol before going on a rescue.

Collaboration with government on rescues: Section 14 of the National Minimum Standard for Victim Care and Protection, 2011/2068 recommends that an NGO can collaborate with the District Committee in the following ways:

- Include representatives from local government, district police, health institution, and other service providers in the rescue team
- Collect information about potential and suspicious victims and perpetrators including suspicious places
- Rescue groups should be flexible in case of need to adjust the size of the team
- Clarify the role and responsibilities of members of the rescue team before heading for rescue. Members need to be clear about the privacy, confidentiality, and protection about the team and victims
- Include women police on the team; a representative from women police is compulsory.

Based on the situation, police can choose whether to use uniforms.

Step 1.5 Initiating the Sex Trafficking Rescue

NGO

The NGO should initiate the sex trafficking rescue with the police and other stakeholders according to the rescue plan.

Advocate

The Advocate should participate in the sex trafficking rescue to ensure that it is carried out according to the law.

Commentary

On the day of rescue, the NGO representatives may do the following:

- **Prior to rescue, meet at common location and wait for signal:** Rescue team members must meet at a common location well before the rescue and wait for the decoy or independent witnesses to give signal. The strategy that would be adopted for the rescue operations and its various steps should be explained at this time. To each team member, explain his/her roles in the rescue operation and clear any doubts that she/he may have.
- **Stationing of surveillance team:** A surveillance team must be stationed at strategic location near the place of rescue to provide information about any suspicious activity/tip offs.
- **On receiving signal enter site of rescue:** The NGO participant on reaching the strategic location as pre planned must immediately enter the rescue site where the victim is confined or kept and ensure that the site is fully searched. The victims may be kept hidden in boxes, attics, toilets, cubicles, cupboards,

On the day of rescue, the following tasks are the Advocate's responsibility:

- **Advise on collection of material evidence:** The Advocate must advise the NGO representatives on the legal procedures relating to the collection of material evidence. Under no circumstances should the NGO representatives collect material evidence by themselves.
- **Refrain from physical force:** The Advocate must also advise the NGO representatives to refrain from using physical force and violence on any person while conducting the rescue.
- **Police formalities:** The Advocate must ensure that all police formalities are completed.

An Advocate who is a witness cannot represent victims at trial: The Advocate can be a part of the rescue operation but cannot represent the victim during the pre-trial and trial process if he/she is made a witness.

false ceilings, wall panels, bathrooms etc. The NGO can take the help of rescued persons in locating other hidden victims, children, offenders and other incriminating materials.

- **Video/Photos of the scene of crime to be captured by the Police:** The NGO representatives must also ensure that videography / photography of the scene of crime and offenders are carried out by the police. Ensure that no one from the NGO captures photos or videos of victims or in the brothel area without appropriate permissions.

Points to Note

Rescue provisions under the HTTCA: HTTCA Sec. 7 gives extensive authority for investigation of actions that violate the HTTCA. A police officer of the rank of Sub-inspector or higher may carry out a rescue, investigation and arrest if there is reason to believe that trafficking is occurring and there is a chance that the offender will escape and/or evidence be will destroyed if action is not taken.

Custody of phones: To prevent leakage of information, prior to the actual rescue operation, mobile phones and any other instruments of communication belonging to the rescue operation team members including government officials may be taken into custody by the police officer leading the rescue.

Ensure legal composition of rescue team: Make sure that the composition of your rescue team is in accordance with law. Ensure the team has at least one police officer who is legally empowered to conduct a rescue.

Best practices upon rescue: Section 14 (4) of the National Minimum Standard for Victim Care and Protection, 2011/2068 provides that the rescue team should do the following:

- Help to collect and protect evidence/documents related to the identity of victims/affected persons.

- Always accompany victims/ affected persons who have come to the contact at the time of searching and rescuing.
- Exhibit respectful and gender-friendly behavior with the victims/affected person.
- Immediately arrange food and clothing for victims/affected persons.
- Make available emergency health services immediately to victims/affected persons if necessary.
- Avoid using mobile when exchanging information related to victims/affected persons which were used before rescue.
- Do not let suspicious perpetrators escape at the time of searching.
- Do not disclose the related information before submitting for legal action.

Recheck rescue kit: Ensure that your entire rescue tool kit is in place (details mentioned under Points to Note 1.5).

Ensure that shelter homes have been alerted: Ensure that credible and licensed Government /NGO shelter homes are ready to take in the number of survivors estimated (details mentioned under Points to Note 1.5).

Ensure security of rescue team: Ensure that the team is accompanied with sufficient police personnel, including women police constables (WPC). Under no circumstances should rescue operation be carried out without police protection.

Accused not to be present while moving rescued persons: NGO representatives must ensure that the accused persons are not present while the victims are being taken to a safe location.

Media engagement: Media should be engaged only after the rescue. While engaging with the media the following points should be kept in mind:

- State accurate facts. While giving numbers, it is important to cite sources as it gives credibility to the information being provided.
- Draft an organisation media policy that lists out the names of representatives who should speak to the media. It is important to appoint a designated person having experience to speak to the media.
- When wrongly quoted, the NGO representative must place a request for a correction in writing.
- It is always helpful to provide the media with a press release after the rescue operation has been successfully completed.
- The objective of sharing stories must always be to create awareness about trafficking, sensitize the general public and take action against human trafficking. While giving stories, ensure that the story does not receive a political colour or draw attention

to the victim's identity.

- NGO representatives must strive to build relationship with credible media houses. It is useful to prepare an internal database of media in your respective districts.
- Do not offer a story to the media if the survivor or victim is uncomfortable and does not want to share her story. Be sensitive to the power difference and to the lack of experience with the idea of consent that might mean that the victim expresses willingness without really being comfortable or understanding the implications. The safety of the victims and his family must be given primary consideration. Do not disclose information (such as names, photos or home villages).
- The NGO must familiarise themselves with standard international guidelines on reporting on children and develop an internal Child Protection Policy in conformity with these guidelines.

Best interest of victims: Section 16 (3) of the National Minimum Standard for Victim Care and Protection requires that the best interest of victims be considered during the publishing of information and that victim privacy be maintained.

Never share a story without obtaining consent from the victim or survivor. Under HTTCA Sec. 25, no one should publish or broadcast a victim's name, photograph or other information without her consent. Develop a consent form and read and explain to the survivor before taking her signature/thumb print. **The actual name of victims should never be mentioned.** It is extremely important to also note that:

- The engagement of the media must never jeopardize a rescue.
- NGO representatives must never coerce or force a victim/survivor to share his/her stories without informed consent.
- An alias name can be used for the purpose of reportage.

Survivors should not be coerced: NGO representatives and/or Advocates should never coerce or force a victim/survivor to share her stories.

Step 1.6 Securing the Sex Trafficking Rescue Site

NGO

The NGO should assist the Police with securing the rescue site to ensure all victims are rescued and safe during the process.

Advocate

The Advocate should advise the NGO and Police (if required) regarding the legal procedures for securing the rescue site.

Commentary

The NGO representatives should be careful to secure the site of the rescue so as to avoid losing important material evidence.

The Advocate must assist the rescue team in securing the rescue site and must advise the NGO representatives about the legal procedures while conducting the rescue.

Step 1.7 Separating Sex Trafficking Victims from the Accused

NGO

The NGO should assist the police in immediately separating the sex trafficking victims from the perpetrators and assuring survivors of their safety.

Advocate

The Advocate should advise the police that sex trafficking survivors should be separated from the perpetrators so as to avoid threat and ensure a safe and legal inquiry.

Commentary

NGO representatives must assist the police to immediately separate the victims from the accused to prevent harassment and intimidation.

NGO representatives must ensure that the victims are being treated with dignity and sympathy and not as criminals.

NGO representatives must encourage the women police constables to interact with the potential rescue victims at the site.

NGO representatives must also be aware of their body language and should not make any unnecessary contact or use physical force on any victims in the brothel. They should

The Advocate must advise the NGO representatives to refrain from using physical force and violence on any persons during the rescue.

The Advocate should help facilitate the safe custody of victims with female social workers/counsellors and thereafter to protective government custody.

sensitize the police officials and ensure that the police personnel do not use vulgar or inappropriate language or cause physical harm to inmates in the brothel.

NGO representatives must also ensure that male members in the rescue team do not touch female victims.

Points to Note

Treat victims with dignity: Victims have the right to be treated with dignity. NGO representatives and the Advocate must ensure that any action initiated by the law enforcement agencies must be based on victim-friendly procedures and must be engaged by a woman police constable (WPC) during the rescue process. The victim should always be made aware of her rights and should not be subject to harassment. The victims must be kept informed about various stages of information and must be extended help and assistance during all stages of intervention.

Do not get offended if the victims use abusive language or are uncooperative during the rescue process as they are under trauma.

Ensure that WPC and NGO social workers escort the victims throughout the process and until they are in safe custody in a government or private licensed shelter home. The rescue team must include a professional counsellor or a social worker who is trained in managing trauma symptoms. This will help to allay the fears of the victim and help them understand that they are being assisted to leave the brothel site for their own safety, freedom and protection.

Best interest of victim is paramount: Do not force victims to disclose details of offences or abuse that they are not willing to share. The victim must be provided counselling by a trained counsellor. Use translators so that the victim is able to give her statements in her own language.

Step 1.8 Gathering Sex Trafficking Evidence

NGO

The NGO should ensure that the Police collect all available evidence relevant to identifying and proving human trafficking.

Advocate

The Advocate should advise the NGO on the laws related to the collection of evidence about human trafficking and ensure that the Police seize all available evidence.

Commentary

The NGO representatives should ensure that all material evidence (such as diaries and registers in the brothel, ledgers, books of accounts showing networking with other traffickers, cash, electricity bill, telephone, water and other bills, ration card, municipal tax receipts, travel documents, photographs, albums, condoms (used/unused) and other physical evidence) are collected by the police in the presence of independent witnesses like representatives of local bodies as they would form important piece of material evidence in the Court.

The NGO may ask police to collect material for forensic examination.

The Advocate must advise the NGO representatives on the legal procedures relating to the collection of material evidence. Under no circumstances should the NGO representatives collect material evidence by themselves.

The Advocate should assist the police in gathering material evidence and make sure that all relevant evidence is included in the seizure memo.

The Advocate must ensure that the Police make a seizure memo and a site map in the presence of independent witnesses on the spot. This must be duly signed by two or more witnesses, one of whom must be from the locality where the search is situated.

The Advocate must also ensure that at least one of the witnesses is a female. The female witness need not be from the same locality where the rescue operation is conducted. The Advocate should advise the police to involve a female witness from an NGO.

Points to Note

Seizing evidence: Section 6 (7) and (8) of the NCPC state that the police employee shall take possession of exhibits and other proofs, evidence or things related to the offence, if any, found on the spot and execute a deed thereon, as required, in the presence of the eye witnesses, if any, present on the spot. Such thing, place or spot shall be protected as it is until the completion of the execution of such deed pursuant to the sub-section.

Preventing destruction of evidence: The police are empowered to take “necessary and effective” arrangements to prevent the destruction or disappearance of evidence relating to a crime. NCPC Sec. 6(1). Any police employee or investigating authority may ask any authority or person to render assistance in preventing the disappearance or destruction of any evidence related to an offence, and it shall be the duty of such body, authority or person to render necessary assistance wherever such assistance is so requested. NCPC Sec. 6(5).

Evidence provisions of HTTCA: Section 7 of the HTTCA provides that if there is a chance that evidence relating to an offence will disappear or be destroyed if immediate action is not taken, a police officer of the rank Sub-inspector or higher may prepare a report and carry out any of the activities listed below at any time:

- Enter, search or seize a house, land, place or vehicle;
- Break or open windows or doors in order to carry out the necessary activities in case he/she faces obstruction and opposition in performing the duties;
- Arrest or take a body search of a person engaged in such activity without an arrest warrant; or
- Seize and take in custody evidence found in such house, land, place or vehicle.

While carrying out such activity under Sub-section (1), police personnel shall, if possible, identify representatives of local bodies or otherwise those present at the time of activity as witnesses and provide a copy of the details of the activity to the owner of the house, land, place or vehicle. HTTCA Sec. 7(2).

Step 1.9 Ensuring Protective Custody for Survivors

NGO

The NGO should accompany the rescued persons while they are produced before the court to certify their statements.

Advocate

The Advocate should advise and assist the NGO and victims while the survivors are produced before the court.

Commentary

The rescued victim(s) must be handed over to the protective/children home that is either run by an NGO or the government. Survivors are to be counseled by the aftercare staff about their stay in protective custody and that they have been placed there for their own safety and well-being on a temporary basis.

The NGO Aftercare staff must accompany the rescued victim whenever she travels to and from her place of safety.

Protection for Victims: HTTCA Sec. 26 provides a right to security for victims who have reasonable grounds to request it. The NGO should advise victims that they are entitled to ask police for security, especially if they are receiving threats from the offenders. Providing security is important for effective prosecution, as victims who feel safe are less likely to withdraw their statements or otherwise cease pursuing a case.

The Advocate should ensure that the brothel is locked and the keys are kept in safe custody of the police in order to ensure safe custody of the premise. The Advocate must ensure the rescued persons are escorted by the police.

In the event the rescue is conducted after sunset the rescued person must be transferred to a shelter home or children's home run by the NGO who is involved in the rescue with the permission of the local police.

The Advocate may prepare a letter to the police requesting security for the victims.

Under no circumstances should the rescued person be kept in the Police Station overnight.

The Advocate must also ensure that the FIR is promptly registered and that survivors receive a copy of the FIR.



Procedure for Prosecution of Sex Trafficking Perpetrators

Step 2.1 Registering the Sex Trafficking First Information Report (FIR)

Step 2.2 Appearance of Survivors before the District Court

Step 2.3 Recording Sex Trafficking Victims' Statements

Step 2.4 Arresting Persons Accused of Sex Trafficking Offenses

Step 2.5 Appointing Separate Private Lawyer (*Wakalatnama*)

Step 2.6 Seizing Brothel Property

Step 2.7 Filing for Sex Trafficking Victim Compensation

Step 2.8 Filing of Sex Trafficking Charge-sheet

Step 2.9 Opposing the Bail Application of Accused Perpetrators

Step 2.10 Collaborating with the Prosecution Throughout the Case Process

Step 2.1 Registering the Sex Trafficking First Information Report (FIR)

NGO

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.

Advocate

The Advocate should ensure that the police register the FIR with all applicable human trafficking and other offences included.

Commentary

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.

The NGO should seek the help of an advocate should the police fail or refuse to register an FIR.

The Advocate should ensure that the FIR filed by the NGO is properly registered by the police station.

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.

Important information that should be included in an FIR:

- If rescue has not occurred, the date and location of the crime with evidence, witnesses and other legal documents

Commentary

- 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.

The Advocate should ensure that the information is recorded by the officer-in-charge at the police station and that the FIR is registered under Section 4(3) of the National Criminal Procedure Code, 2017/2074 (NCPC).

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.

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).

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).

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.

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.

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 2.2 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.

Advocate

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

Commentary

NGO representatives must accompany the victims before the police officer to provide their statements and ensure that the victims are treated with

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

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.

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 2.3 Recording Sex Trafficking Victims' Statements

NGO

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

Advocate

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

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.

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.

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 2.4 Recording Sex Trafficking Victims' Statements

NGO

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

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.

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.

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.

The Advocate should advise the IO to immediately arrest the offender without any delay.

The Advocate may follow up with legal process to protect the NGO, family and witness from the threats of perpetrators.

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 2.5 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.

Advocate

The Advocate should obtain the consent of human trafficking survivors to submit a *wakalatnama* to the court as their legal representative.

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.

The Advocate should obtain a copy of the *wakalatnama* 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 2.6 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.

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 immovable 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 2.7 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.

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.

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.

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.²⁶

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;

²⁶ Amendment to the National Criminal Code in 2019 by the Act Amending Some Nepal Laws 2019.

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.

Step 2.8 Filing of Sex Trafficking Chargesheet

NGO

The NGO should follow up with the Advocate regarding the filing of a charge sheet.

Advocate

The Advocate should ensure that the chargesheet is filed within the stipulated time by working closely with the Police and the Government Attorney.

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.

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.

The Advocate should also ensure that:

- The accused had been charged with the appropriate sections of the HT-TCA.
- 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.

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.

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 2.9 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.

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.

Commentary

The NGO representatives must inform the Advocate whenever they have information about bail applications of the accused.

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 2.10 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.

Advocate

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

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.

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 2.11 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.

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.

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.

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,
7. To get, free of cost, a copy of the documents including the decisions and orders made by the investigating authority or Juvenile Court,
8. To get police protection for safety against the probable threat that may be caused from the offender or his or her party,
9. To have his or her case heard in camera,
10. 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 2.12 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.

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.

Commentary

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

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 2.13 Obtaining the Judgment

NGO

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

Advocate

The Advocate should help to obtain copies of the final judgment.

Commentary

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

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 2.14 Filing of Appeal

NGO

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

Advocate

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

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.

The Advocate should assist the government attorney in filing an appeal within 30 days from the date of knowledge of the judgment. NCPC Sec. 134(1).

Points to Note

Time period for appeal: Once the trial has ended, the Advocate must be vigilant in ensuring that an appeal filed by the accused is not missed and that an appeal filed on behalf of survivors is timely filed. According to Sec. 134 (1) of the NCPC, a party not satisfied with a judgment or final order can appeal within thirty days from the date of knowledge of the judgment, provided, however, that if an appealing party provides reasonable evidence of being unable to make an appeal within that time-limit, a thirty-day extension may be granted.

If an appeal is filed by the accused, the Advocate must be ready to oppose the appeal.

Learn More and Take Action

The Advocate must be aware of the formats of appeal as per the requisite Court of jurisdiction. A memorandum of appeal must be made in the form referred to in Schedule-45 of the NCPC.



Procedure for Providing Rehabilitation Support to Sex Trafficking Survivors

- Step 3.1** Ensuring Immediate Access to Medical Care
- Step 3.2** Placing Survivors in Safe Custody
- Step 3.3** Facilitating Access to Counseling Services
- Step 3.4** Submitting a Victim Impact Report
- Step 3.5** Securing Survivor Compensation
- Step 3.6** Repatriating or Rehabilitating Sex Trafficking Survivors
- Step 3.7** Facilitating Access to Government Entitlements
- Step 3.8** Facilitating Access to Private Sector Resources
- Step 3.9** Ensuring Survivors Enjoy Permanent Freedom

Step 3.1 Ensuring Immediate Access to Medical Care

NGO

The NGO should ensure that the sex trafficking survivors receive a medical and any required medical care and treatment.

Advocate

The Advocate should ensure that medical examinations are carried out and urgent care is provided, with respect accorded to the survivor's right to privacy and other rights.

Commentary

The NGO should request that the court do the following:

- Order age-verification, medical examination, HIV test (to be taken only with informed consent of the survivor including pre-test and post-test counselling) and STI testing to be done at a hospital
- Request the court to order the administration of sexual abuse tests
- Allow Aftercare staff to accompany the survivors for medical examination
- Order property recovery of all the survivors with the help of the police, accompanied by NGO staff.

The NGO should also suggest placement of the survivors in the best possible aftercare home.

The Advocate should request that a record be maintained of all documents related to medical treatment.

The victims' details should be mentioned only as needed in the health examination and otherwise kept confidential.

Points to Note

Medical examinations are conducted after obtaining an order from the court following the rescue process and the recording of the victim's statements. NGO aftercare staff will escort the rescued victims to the hospital for the medical exam along with a WPC and then escort them to the shelter home for safe custody. Informed consent of the survivor must be obtained prior to performing the medical examination.

What to do in the absence of a female doctor: In the absence of a female doctor, the Advocate should ensure that a female official or a female representative from the NGO is present during the process of medical examination. The Advocate must ensure that the rescued person is treated with dignity.

Age verification test: The Advocate must ensure that the age verification test is carried out as per the law. Section 83 of the Act Relating to Children, 2018 states that the

that the following matters shall be taken as the basis for determining the age of a child:

- a. (a) The date of birth recorded in the child's birth registration issued by the hospital;
- b. If the date of birth referred to in (a) is not available, the date of birth recorded in the child's birth registration certificate issued by the Local Ward Office of related Municipality;
- c. If the certificate referred to in (b) 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;
- d. If the certificate referred to in clause (c) or the date of birth is not available, the date recorded in the certificate of age issued by the hospital; and
- e. If the certificate referred to in (d) is not available, the age recorded in the *Janmakundali* (birth chart), *Cheena* (document prepared about a newborn baby by an astrologer on the basis of horoscope which mentions the exact date and time of birth), notes, or the age disclosed by the father, mother, guardian or any other family member of the child or similar other relevant evidence.

Step 3.2 Placing Survivors in Safe Custody

NGO

The NGO should ensure that the survivor is safely transferred to a protective shelter home.

Advocate

The Advocate should advise and assist the survivor and the NGO before government authorities to ensure that survivor is safely transferred to a protective shelter home.

Commentary

Rescued victim must be handed over to the shelter home for minors managed by either NGO or government. Victim should be counseled by the aftercare staff about her temporary stay in protective custody and that she has been kept there for her safety and well-being.

The Advocate should coordinate with the social worker to ensure that the victims are safely placed in a shelter home.

The Advocate must also ensure that the child rescued is produced before the local child rights committee. In the event the age of the victim cannot be ascertained, the Advocate should assist the police in deciding whether to produce

Aftercare staff must accompany the rescued victim whenever she leaves the home for visits to the court or local child rights committee.

the victim before the local child rights committee.

The NGO should ensure that the survivor gets orientation about the available services in shelter home, including healthy and psycho-social counseling services.

Points to Note

Services and Support to Survivors. Section 36 of the Rehabilitation Center Operation Guideline, 2068 provides for the types of services that should be available to survivors:

- Healthcare services
- Immediate (within one week) test for HIV/AIDS, any transformative disease, TB, and any other sexual disease
- Arrangement of continual physical and mental health checkups and treatments
- If possible, same-gender health workers need to be available
- Separate rooms for primary health care for emergencies
- Vehicles to take survivors to hospital in case of emergency
- Must arrange expenditures for health treatment in case family is not available.
- Essential health care and vaccines should be available for children
- Collaboration with nearby hospital
- Socio-psycho social counseling and mental health treatment
- Arrangement of legal aid and counseling without any conditions
- Legal aid at the time of coordination and collaboration, investigation, pleading and implementation of decision
- Prior consent of survivor to appoint a guardian to present to the court on behalf of survivor
- Support for protecting evidence and prepare all required legal documents to be submitted to the court
- Entertainment activities, library for study and newspapers, radio and television use
- Rehabilitation and Family Integration; Priority for family integration with necessary counseling to family before sending home
- Victims can be provided shelter for a maximum six months
- Child victim must be referred to children center
- Shelter must ensure that victim can integrate back into family

- Shelter should give necessary support to victims before social and family integration, such as legal documents, skills training, economic support and monitoring institution

When unsure if rescued person is a minor: Whenever in doubt, the victim must be treated as a minor. There is a medical examination known as bone ossification test that is conducted for the victim based on which the physician will determine if she is a minor or major.

Step 3.3 Facilitating Access to Counseling Services

NGO

The NGO should provide the survivor with access to trained and qualified female counsellors to help promote the healing process after obtaining due permission from the concerned authority.

Advocate

The Advocate should advise the survivor and the NGO about the survivor's right to counselling and other aftercare services.

Commentary

Once the rescued victim is admitted at the protective home, the aftercare team must visit the victim preferably within 24-48 hours of admission. The counsellors should have official permission from the home before providing after care support. The counsellors should also immediately be available upon any emergency requirement. Male counsellors should strictly be prohibited from providing counseling services.

Counselors must develop individualized counseling plans for each survivor. Counsellors and social workers/case managers must visit the survivor regularly at the aftercare homes to provide counselling and psychosocial support.

The Advocate should coordinate with the social worker to ensure that the victims are safely placed in a shelter home.

The Advocate should work in close collaboration with the NGO case managers/social workers to develop treatment plans for each individual survivor. The Advocate will have to provide regular updates to the court about the progress of the rescued victim.

Case managers must develop treatment and recovery support plans for each survivor and share them with the shelter home staff.

Case managers will utilize their linkages with education, vocational and counselling organizations to help victims access these services to prepare them for entry into mainstream society or repatriation back to their home states.

Case managers will also liaise with NGOs in survivor's home states for their continued aftercare in their respective shelter homes.

Step 3.4 Submitting a Victim Impact Report

NGO

The NGO should prepare detailed notes concerning the impact of the offence on the victim.

Advocate

The Advocate should prepare a victim impact report for the prosecuting authority, detailing the damage or impact to the victim by the offence, prior to the filing of the charge sheet for the trafficking crime. The report should include the compensation sought.

Commentary

The Crime Victim Protection Act provides that a victim is entitled to submit a victim impact report prior to the filing of the chargesheet or, if prevented from doing so by a force majeure event, within one month from the filing of the chargesheet. The court can use the victim impact report as the basis for making its sentencing determination.

Points to Note

Damages: Pursuant to Section 2(m) of the Crime Victim Protection Act, damages caused by an offense against a victim can include:

- Physical deformities
- Pregnancy because of rape
- Transformative disease
- Mental trauma
- Damage to physical, intellectual, sexual and reproductive capacity
- Impact on social, cultural and family prestige of victims of rape
- Physiological and mental damage
- Economic and physical damage
- Damage on beauty of victims

Compensation: Section 17 of the HTTCA provides:

1. A court shall issue order to provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender.
2. If the victim dies before receiving the compensation under sub-section (1) and if he/she does have children below the age of 18, the children shall receive the compensation. If the victim does not have any children, the dependent parents shall receive the compensation.
3. If there are no dependent parents and minor children to receive compensation under sub-section (2), the amount should be accrued in the Rehabilitation Fund.

Step 3.5 Securing Survivor Compensation

NGO

The NGO should assist the Advocate with filing compensation applications and accompany survivors when called to appear before court.

Advocate

The Advocate should ensure that the charge sheet contains a demand for victim compensation.

Commentary

NGO representatives must ensure that compensation is provided at the earliest possible and must provide the

Section 17 of the HTTCA provides for compensation to the victim, which shall not be less than half of the fine levied

Advocate with all the information required to make any applications.

as a punishment on the offender. The Advocate should be familiar with victim compensation laws at the state and central government level. The Advocate should also ensure that such applications are made and compensation received as expeditiously as possible.

Points to Note

Demand compensation in chargesheet: The Government Attorney must demand victim compensation in the appropriate section of the charge sheet, *otherwise compensation will not be provided later*.

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. For the treatment of the victim or providing compensation or relief amount immediately, the court can order for getting such amount from the fund. The accused person pays the amount of compensation or relief amount to the fund within 35 days from the date of judgment. The court may order that a reasonable amount to be paid as compensation to the victim while making final settlement or judgment.

Interim Compensation: Section 29 of the Crime Victim Protection Act empowers a court to make an order for interim compensation where a victim requires medical treatment or any kind of relief amount immediately. Where such an order is made, the victim is provided with compensation from the Victim Relief Fund.

Compensation amount: As per the HTTCA, compensation to the victim should not be less than half of the fine levied as punishment to the offender. If the victim dies before receiving compensation, the victim's children below the age of 18 should get that compensation.

Step 3.6 Repatriating or Rehabilitating Sex Trafficking Survivors

NGO

The NGO should assist with safe repatriation of survivors.

Advocate

The Advocate should advise and assist the survivor and the NGO on legal matters related to repatriation of the survivor.

Commentary

No rescued victim should be sent back to family without ensuring social acceptance and family support, to prevent re-trafficking and further exploitation. In case family is unfit to provide care and protection to the victim, the court may order extending the stay at protective home for further rehabilitation in form of counseling, education, and vocational training.

The NGO may assist in the administrative process by helping the concerned aftercare home to gather all needed documents and to put pressure on the government to follow up on the process.

Points to Note

Cross-border/Inter-state trafficking: In the case of cross-border or inter-state trafficking stakeholders and NGO of both the countries must undertake effective measure to ensure quick repatriation of rescued victims of trafficking to its country of origin.

Responsibilities of National Committee on Combating Human Trafficking: Pursuant to Section 4(c) of the HTTCA Rules, the National Committee is obligated to assist those stranded in foreign countries and to return them to Nepal on their consent.

Repatriation procedures: The Nepali government has not yet established standard procedures with regard to the repatriation of trafficked victims back to India. There are some provisions set forth in the “Minimum Standard of Care and Protection of Trafficked Victims/Survivors,” but this was formulated in 2011 and needs to be updated. The Alliance against Trafficking of Women and Children in Nepal (AATWIN), a network of NGOs working against human trafficking, is currently working on a draft set of repatriation procedures to be completed by the end of 2020. Thus, currently NGOs in the countries involved with a repatriation matter are using a case-by-case approach.

How the rehabilitation center can assist: The rehabilitation center should search for the victim's family to arrange a family reunion. A separate record should be kept for each victim. Victims should stay in the rehabilitation center until their rehabilitation or family reunion. The rehabilitation center should make arrangements for skills training and facilitate information regarding the employment market and employment training.

A minor victim should be transferred to child center after being in a rehabilitation center for six months.

Step 3.7 Facilitating Access to Government Entitlements

NGO

The NGO should assist sex trafficking survivors with accessing government entitlements that is compensation.

Advocate

The Advocate should help to get compensation from the rehabilitation fund.

Commentary

The NGO can play a key role in helping survivors access government entitlements. The NGO should request the Advocate to provide trainings for the victims on accessing government entitlements.

The Advocate should work towards empowering the survivors by sensitizing them about their rights and ways to access them.

Points to Note

Compensation provided under HTTCA: Sec 17 provides for a victim to be compensated at least half the amount that the accused is fined. This doesn't always work in practice, though. Often, the victim is not kept informed of the trial so she is not aware that a fine has been imposed; thus, it is important for the NGO to keep the victim informed of the trial progress. In addition, often the accused does not have any money or other means to pay the fine so it goes unpaid.

Step 3.8 Facilitating Access to Private Sector Resources

NGO

The NGO should assist the human sex survivors with accessing available private sector (NGO and business) resources related to education, employment, health care, counselling, and other entitlements.

Advocate

Commentary

The NGO should facilitate access to private facilities by networking with partner organizations and relevant stakeholders who can provide specialized care in the form of alternate livelihoods, interim shelter, assistance with obtaining documentation, education, health care, counseling and other assistance.

Step 3.9 Securing Survivor Compensation

NGO

The NGO should maintain an ongoing relationship with the human trafficking survivor for at least 24 months from rescue to ensure sustained rehabilitation and permanent freedom of survivors.

Advocate

The Advocate should remain accessible to the survivor to provide advice and counsel regarding the survivor's rights in the community.

Commentary

The NGO should work closely with the government authorities in providing them relevant information and documentation so as to prevent re-trafficking and ensure reintegration of

The Advocate should assist with preparing training material for survivors to ensure they are aware of legal rights and not re-trafficked.

of survivors. The NGO should do necessary follow up as required from time to time.

The NGO should conduct family assessments, draft individualized treatment plans, work closely with the district administration to ensure that rescued survivors can access their welfare benefits and compensation.

Survivors should also be assisted with opening their individual bank accounts as government compensation cheques are deposited in these accounts.



D. SOPs for Border Monitoring Interventions

The border between Nepal and India is known as one of the busiest human trafficking gateways in the world, with many victims hidden in plain sight among the tens of thousands of people who cross the border every day. Indian and Nepali nationals often travel across the border for seasonal or longer-term work. Many people fall prey to a trafficker's deceptive promise of a good opportunity that awaits them on the other side of the border and willingly follow them to an unknown destination. Unfortunately, many times this "good opportunity" turns out to be an exploitative situation with little or no pay and few chances to escape.

Crossing the border is relatively straightforward, as Indian and Nepali citizens do not need passports or visas to enter each other's countries. Border monitoring stations are set up at transit points near the borders, where trained observers scan the border crossing point for red flags that could indicate a high-risk situation or potential trafficking. Border monitoring personnel intervene and question suspicious travelers and can ultimately involve law enforcement to intercept potential victims and stop traffickers from carrying out their crimes.

Border monitoring is an effective method of fighting human trafficking because it stops the trafficker after there is evidence of trafficking but before the victim is trapped in an exploitative situation. Through border monitoring we can identify traffickers and prevent further suffering. The following SOPs provide an idea of the work required and the processes needed to protect the rights of all the parties involved.

- Step 1** Monitoring the Border
- Step 2** Stopping a Girl for Questioning
- Step 3** Border Interview and Red Flags
- Step 4** Booth Interview
- Step 5** Police Permission
- Step 6** Shelter Arrival
- Step 7** Filing of First Information Report (FIR)
- Step 8** Shelter Care
- Step 9** Victim Interview
- Step 10** Transitioning Victims Out of Shelter

Step 1 Monitoring the Border

NGO

The NGO should stand alert and look for signs of human trafficking.

Advocate

The Advocate should be available to answer questions and advise the NGO on legal issues that arise.

Commentary

Signs to look for:

- Girls walking slowly, looking hesitant or nervous;
- A well-dressed man or woman with a girl from a village town;
- A village girl looking uncomfortable in new clothes;
- A girl looking drugged or drowsy;
- A girl carrying a baby;
- People who look nervous, scared, confused, or in a hurry to cross the border;
- A girl looking like she's waiting or looking for someone;
- A girl in new clothes with a typical village look; and
- An Indian man with a Nepali girl.

Usually the trafficker will not be travelling with the girl. She will be travelling alone or with a local agent hired to bring her across the border

Points to Note

Strategies traffickers use to deceive the victim:

- *False Marriage:* One common technique used by traffickers is to marry a girl and then shortly thereafter, or on their honeymoon, take the girl to India. The girl will often not realize she is being taken to India or will think she is going there for some other reason. Then suddenly she will be abandoned and imprisoned in a brothel.
- *False Jobs:* Traffickers will offer girls lucrative jobs in India without informing them of the nature of the job.
- *Education:* Traffickers may deceive girls by promising them a good education in India.
- *Becoming an Actress:* Traffickers may even offer girls a chance to become an actress.

Techniques used to get girls across the border:

- *Claim They're Visiting:* Traffickers may coach victims to give different reasons for crossing the border when they are stopped by border staff, including medical treatment, visiting relatives, going on a tour, or going shopping.
- *Pretend to be Brother and Sister:* Traffickers will claim to be a brother, sister, or other relative of the girls with whom they are travelling.
- *Carrying a Baby:* The trafficker will ask a local mother with a baby to allow the trafficked girl to carry the baby across because if any monitors are watching, they would not assume that a girl with a baby would be a trafficking victim.
- *Different Times and Places:* Traffickers will seek to cross the border when there are no NGOs monitoring (early in the morning, such as 3-5 AM) or during times of heavy traffic at the borders.

Don't be overly visible. While you are monitoring the border, it is important not to make yourself overly visible. If you are too visible, word may quickly spread among traffickers and they will begin avoiding that route. Remember that traffickers can easily see and avoid border monitors who are well-known or highly visible.

Step 2 Stopping a Girl for Questioning

NGO

If signs of trafficking are observed, NGO staff should approach the suspected traffickee, present their ID card, and ask preliminary questions.

Advocate

The Advocate should advise the NGO staff on what actions they are legally entitled to take upon stopping individuals to avoid violating the rights of people who are not engaged in illegal activity.

Commentary

When approaching the suspected “trafficked person” and trafficker, look for signs of avoidance, nervousness, and fear. Hold up your ID badge and say, “Excuse me, I am working for the NGO _____ and I would like to ask you a few questions. Would you mind?” If the person does not cooperate with you, you will need to involve the police. Without the police, you do not have the authority to forcefully stop people from crossing the border.

Points to Note

Do’s and do not’s when stopping people for questioning:

- DO NOT demand documents. Instead, politely ask to see them. You can look at documents, but do not take them.
- DO NOT search people’s bags. You may ask to see what is inside, but you don’t have the authority to search it yourself.
- DO NOT be rude, as you are serving these people and most of the people you stop are probably not being trafficked. You should not take up any more of their time than necessary.
- DO NOT call to people from far away but walk up to them and politely question them.
- DO NOT blame victims for what happened.
- DO say “excuse me” when you stop people.
- DO thank people after you have finished talking with them.
- DO have your ID out when you are stopping someone.

Questioning. Trafficked girls are trained by their trafficker on what to say in order to avoid suspicion. You will have to question her carefully, following up each answer with more questions to determine whether she is telling the truth. The first questions to ask are, “Where are you going and why?” As you go through the questioning process, look for signs of agitation, nervousness, fear, or being in a hurry. Extreme nervousness and agitation, strong indicators of lying, or directly catching them in a lie, are all red flags that should lead you to suspect that trafficking may be occurring.

The Questioning Protocol. The NGO should develop a “Questioning Protocol” for all Border Monitors that includes a list of visual red flags that may indicate a girl is a trafficking victim and a line of questioning that will confirm such suspicions or provide further evidence of trafficking. The Questioning Protocol should be found on the front of the Interception Record Form (IRF) and provide instructions on how to question people who are stopped. An individual should be familiar with the Questioning Protocol before working as a Border Monitor. NGO staff should practice the Questioning Protocol by taking turns acting as the victim and the Border Monitor.

Step 3 Border Interview and Red Flags

NGO

If NGO staff notice a red flag in the initial questioning, they should take the girl to the booth for further questioning.

Advocate

The Advocate should advise the NGO staff on what actions they are legally entitled to take when interviewing in order to avoid violating the rights of people who are not engaged in illegal activity.

Commentary

The first few questions asked after stopping a girl make up the border interview. This interview should be as short as possible, only seeking enough information to determine if a girl may be being trafficked (red flags).

If the border staff get a red flag or are suspicious that the girl may be being trafficked, the NGO should separately interview each individual in the party and ask them questions. This is the best way to find out if they are lying or have been coached to give certain answers. For example, if a girl says that the man is her husband, ask her what his mother or brother’s name is. Then separately ask the suspected trafficker

the same question, and see if the answers match.

Note: when you separate the victim from the trafficker, never let the trafficker out of your sight or allow him to run away!

In the Questioning Protocol, a red flag is a sign that the case you are assessing may be a real trafficking case. Below are some examples of responses that are red flags warranting a booth interview.

Points to Note

Signs of lying. The following signs may be indications of lying:

Verbal signs:

- Denying lying, and making excessive claims to be telling the truth
- Unnatural pauses, and non-word sounds (“uh....” etc.)
- Speech errors
- Stuttering, stammering, and becoming tongue-tied
- Clearing their throats and making other noises
- Averting their gaze, avoiding eye contact
- Closing their hands / interlocking fingers
- Crossing their arms as if creating a barrier
- Shrugging their shoulder and flipping their hands palms up
- Hand-to-face grooming, touching face, hair, ears, nose
- Handling objects
- Frequent licking of the lips, puckering and tightening of the lips
- Sighing and taking deep breaths
- Smiling or laughing inappropriately

Nonverbal signs:

- Averting gaze, avoiding eye contact
- Closing their hands / interlocking fingers
- Crossing their arms as if creating a barrier
- Shrugging their shoulder and flipping their hands palms up
- Hand-to-face grooming, touching face, hair, ears, nose

- Handling objects
- Frequent licking of the lips, puckering and tightening of the lips
- Sighing and taking deep breaths
- Smiling or laughing inappropriately

Step 4 Booth Interview

NGO

At the booth, NGO staff should continue to follow the Questioning Protocol, complete the IRF, and attempt to contact the girl's family.

Advocate

The Advocate should advise and assist the NGO staff while they are questioning the girl.

Commentary

At the booth, the NGO should fill out the IRF and complete the answers to the Questioning Protocol, marking the red flags that come up.

During the booth interview, NGO staff should avoid congregating and make an effort to minimize the questioning process. Avoid making the girl feel uncomfortable about public probing into the details of her personal life. You only need to seek enough information in this interview to determine whether the girl is in fact being trafficked. Further details of the case can be learned later on, during the Shelter Interview.

Attach pictures to the IRF of all victims and all traffickers who are in the intercepted group.

As part of the Questioning Protocol, you will make phone calls to verify the girl's claims.

For example, depending on the nature of the case, you may need to call the place where she is supposed to be working, an educational institute, or a hospital. You should call the girl's family to inquire about the case and to make sure that they know she is going to India. You should cross-check the name of the victim(s) and trafficker(s) in the NGO database, to see if they have been involved in previous incidents at this or other border stations.

Points to Note

Interception Record Form (IRF). An IRF is used to record all the information obtained during an interception and should be completed for each girl encountered during an interception. The Questioning Protocol should appear on the front of the IRF to provide a handy reference for Border Monitors.

Counselling and convincing. Most trafficked girls do not know where they are going and have no idea of the awful fate that awaits them if they end up in a brothel. Make sure to speak clearly and convincingly, explaining that you wish to help her, and describe the life that awaits those who are trafficked. Educate her with written materials about trafficking, with pictures of girls who have been trafficked. Tell their stories and show the film “The Day My God Died.” Emphasize the deception in the traffickers’ promises, the horrors of life in a brothel, and the imprisonment and deadly diseases that can result from it.

Common signs that indicate trafficking:

- Newly married or couple that has eloped (the parents don't know)
- The girl does not know where she is going
- The girl is lying about something
- She is travelling with a person who is not with her while she is crossing the border
- The girl was offered a job by an agent in a suspicious manner (for example, he is not charging her a fee, etc.)

Each of the above is a red flag. These signs suggest that a girl may be being trafficked for sexual exploitation. But none of them alone necessarily indicate that.

You will have to learn as much as you can about the situation to determine what type of case it is. Other information that may play into your decision include:

- Whether she has the relevant documents
- Her age, caste, appearance, etc.
- Her manner (whether she is scared, acting strange, confused, etc.)
- Information you gain from interviewing her or contacting her relatives

How to prevent border crossing in a suspicious case. After your investigation, you will have to make an evaluation about whether to try to stop her. Remember, you don't have the legal authority to prevent her from going. But if you believe she is being trafficked, you can stop her in the following ways:

- Convince her of the dangers of trafficking and that you have good reason to believe she is being trafficked. Tell her that many girls in her position don't believe that they are being trafficked. But then they end up being tricked and trapped, and their lives are ruined.
- Involve the police. If she is going to a Gulf country for work (which is illegal) or if your investigation has revealed evidence of trafficking, the police can use their authority to prevent her from crossing the border.
- Contact her family. Her family is very concerned about her welfare (unless they were involved in trafficking her), and they have the moral and legal authority to forbid her from crossing the border.

Traffickers may try to escape. Once they realize that you've caught them trying to traffic someone, traffickers may use all sorts of tricks to try to escape. For example, they may say that they need to go to the bathroom, to buy cigarettes, or a recharge card, and then run away. To avoid this, don't let traffickers out of your sight during an investigation.

Being resourceful in stopping trafficking:

- Border monitoring staff in one area discovered that many victims being trafficked were coached to say that they were going to visit a certain hospital across the border. The NGO learned the names, specialties, and schedules of doctors in that hospital in order to verify such claims.
- If a victim of trafficking is crossing the border alone, the NGO can follow the girl to the bus stand in India and catch her trafficker there. Or they can go with the girl to her village and find out from the villagers who her real trafficker is. The villagers can also be trained through awareness programs to call the staff to catch traffickers.

Step 5 Police Permission

NGO

Once NGO staff makes a positive determination that a girl is being trafficked, they should contact the police.

Advocate

The Advocate should accompany the NGO staff and victim to the police station to ensure that proper procedures are followed and the victim is treated fairly.

Commentary

When the girl is ready, the NGO should escort her to the local police station and stay with her for as long as the police will allow. At the police station, the NGO will do the following:

- Obtain police permission before taking a girl to the shelter.
- Obtain the police's signature on the IRF to verify the intercept.

At the police station, the Advocate should ensure that the victim is treated fairly and not harassed by the police while she is giving her statement. If the victim is willing to file an FIR at that point, the Advocate should do so.

Points to Note

Preparing victim for police questioning. If the victim is willing to file a case against the trafficker, prepare her for what will happen at the police station. Explain to the victim that the police will be asking her questions about what happened and that she should be honest in telling her story.

Informing the NGO about the intercept. After you have finished at the police station, you should contact the NGO to provide information about the intercept, including:

- The number of victims intercepted;
- Their ages;
- The type of intercept; and
- The status of the traffickers (whether they are in custody, etc.).

Determine which type of intercept has occurred and note on IRF:

- *Gulf Countries:* Since it is illegal and very dangerous for women to go to Gulf Countries for work, all such women should be stopped. In these cases, check the box

- *Indian Trafficking*: You can never be certain that a girl is being trafficked for sexual exploitation, but there are signs that indicate it is likely. If you are more than 50% sure, you should check the box for “Human trafficking.”
- *Indian Circus*: In some cases, you may find children being trafficked to work in the Indian circus.
- *Runaway*: If a girl has run away from home and is going to India, there is a good chance she could be acting under the direction of someone who is trying to traffic her.

Send IRF to NGO office. The IRF should be scanned and sent by email to the NGO office the same day, as this will allow them to identify any repeat traffickers (or a repeat victim) who may have been involved in an intercept at another station. This may help you to more effectively file a case against a trafficker (i.e., if there is written evidence that he has trafficked before). It will also allow the NGO or Investigations Department to ask any additional questions they might have while she is still in your custody.

Police corruption: Police may be susceptible to bribes and corruption, so make sure to stay involved in the process as much as possible.

Step 6 Shelter Arrival

NGO

The NGO staff should follow safety protocol in travelling with the girl to the shelter and register her with the shelter upon arrival.

Advocate

The Advocate should advise and assist the NGO to ensure the girl is safely transferred to the shelter home.

Commentary

The girl should be transported to the shelter on a motorcycle if possible, using a pre-planned indirect route. In the middle of this route, you should stop and wait, looking back and checking to make sure that you are not being followed. At the shelter, her information should be registered in the Shelter Logbook.

Points to Note

Arriving at the shelter. The following should take place when a girl arrives at the shelter for the first time:

- Her mobile phone should be taken away and put somewhere safe by NGO staff. Her phone should be labeled and marked in the Shelter Logbook. Explain to her that this is shelter policy intended for her safety and that her mobile will be returned to her when she leaves.
- Fill in the Shelter Logbook.
- Introduce the girl to the other girls and shelter staff. She should be made comfortable and given food. Do not overwhelm her with questions about her case when she first arrives. Take the time to earn her trust before conducting interviews.

Step 7 Filing of First Information Report (FIR)

NGO

The NGO should complete a Case Exploration Form and file a First Information Report (FIR) with the police station.

Advocate

The Advocate should ensure that the FIR is registered with the applicable trafficking and other offenses included.

Commentary

The Case Exploration Form (CEF) should be completed with the victim at the shelter and used to determine if an FIR should be filed.

The Advocate should ensure that the FIR contains information of the commission of one or more offenses under the HTTCA and is filed with the officer-in-charge of the police station.

Points to Note

See Step 1.2 of the human trafficking SOPs of this Toolkit for more information on filing a human trafficking complaint.

Case Exploration Form (CEF). The NGO should develop a CEF that can act as a guide to determine whether a case should be filed against the perpetrator. The CEF should elicit information that will assist the NGO in making a legal analysis about the strength of a case and whether an FIR should be filed. If it is determined that a case should not be

Attach FIR to CEF. A copy of the FIR should be attached to the CEF.

What to do if the police do not file the case. If a victim says she was trafficked, the police are legally required to take her to the district court to certify her statement as soon as possible; if the case is a foreign employment complaint, the police or NGO must ensure the case is lodged with the Department of Foreign Employment. If the police do not follow these procedures, the Advocate should take the matter to their senior police officers. If that does not work, you should take the matter to the CDO.

Step 8 Shelter Care

NGO

At the shelter, the NGO staff should provide care, education, and assistance in accessing services and new opportunities.

Advocate

The Advocate should follow up with the girl while she receives care at the shelter and keep her informed about the progress of her case.

Commentary

Education. Offer the girl a chance to watch the films “The Day My God Died,” “Chori,” “MTV Exit,” and the Nepalese Homes video about trafficking. Read “Precious Daughter” to her and provide a brochure about trafficking.

Accessing opportunities. If the girl has nowhere to go or no prospects for the future, the NGO should assist in finding a job, vocational training, a school, or a place to stay. Give her a copy of the book “Top Jobs for Women,” and help her to choose a job path that she can pursue.

Foreign employment training. The girl should be given a training about Foreign Employment and receive a certificate to become a trainer about Foreign Employment in her village.

Points to Note

Medical treatment: In some cases, the NGO will pay for the girl to receive medical testing or treatment at a Nepali Government hospital if the Aftercare Coordinator believes that she has had sexual relations with her trafficker or someone else during the process of her being trafficked. Girls can receive medical treatment in other cases, but your station must receive permission from the NGO before taking the girl for treatment.

Step 9 Victim Interview

NGO

A female NGO staff member should conduct a detailed interview with the girl and complete the Victim Interview Form.

Advocate

The Advocate should review the record of the interview for information relevant to the case.

Commentary

After gaining the girl's trust, the NGO should conduct the victim interview and complete a Victim Interview Form (VIF), which is a form recording all the information obtained during the interview. This interview should take place in a private room with no more than two female staff present. The interview should be recorded (with the girl's consent) and kept private except for official use.

The Advocate should review the VIF for information that may assist in the prosecution of the trafficker, if an FIR has been filed.

Points to Note

Confidentiality of interview records. VIFs are strictly confidential and should not be shared with anyone except NGO staff and the police. The records should be stored in a safe place. Audio recordings should be labelled (according to VIF #s) and stored in a safe place for at least two years after the girl's interview. Inquiries into a girl's case should not take place in the presence of anyone other than shelter staff.

Importance of VIFs to NGO. Like IRFs, VIFs should be scanned and sent by email to NGO staff on the same day that they are completed. The VIF is important because the information can be used by the NGO to identify trafficking rings, safe houses, and other important structures in the Nepal trafficking industry.

VIF for each girl. If a group of girls is intercepted at the same time, only one IRF needs to be filled out but a VIF should be completed for each girl.

Step 10 Transitioning Victims Out of Shelter

NGO

The NGO staff should conduct a Home Situational Assessment to determine an appropriate place to repatriate the girl.

Advocate

The Advocate should ensure that procedures are followed in repatriating the girl or taking her to protective custody.

Commentary

The Home Situational Assessment is a section of the VIF that requires the NGO to make a recommendation on whether the girl should be returned home. Generally, a girl can go home if:

- She has parents or guardians who are willing and able to care for her
- Her parents or guardians were not involved in her trafficking.

If it is determined that the girl should not return to her family, the Advocate should ensure the girl is presented to the Child Welfare Board for protective custody.

Points to Note

Sending girls home. In most cases, girls should go home within a few days of being intercepted. The NGO should arrange for someone to escort an intercepted girl back home, such as her immediate family members or other relatives (with the permission of her guardians). If no one can be found to take her home but the NGO still believes she should be taken home, the NGO staff should take her home or arrange for police escort.

Long-term cases. In the following cases, the girls cannot or may not want to go home:

- Their parents were involved in trafficking them;
- They have filed an FIR and they are afraid of the traffickers;
- They were abused along the way and fear that their family will reject them; or
- They are uneducated older women with no options who fear their family will not accept them back.

It is important (especially in the latter two cases) to do everything possible to convince the girls to go home or the family to accept them back. But in a case where that is not possible, the NGO should arrange for an alternate place for the victim. A border station shelter does not provide a good long-term environment, and no one should stay at a border station shelter for more than a few weeks.

Special cases. There are also two special cases:

- Girls who have serious trauma or psychological needs that NGO staff are not qualified to address should be transferred to another NGO with the training and experience necessary to effectively handle these cases. Contact the NGO National Engagement Coordinator for help arranging this.
- Girls with ongoing legal cases who are being bribed or threatened by traffickers to change their story may have another option, such as a witness protection home.



E. SOPs for Bonded Labour Interventions

1. Procedure for Release of Bonded Labour Victims

- Step 1.1** Identifying Bonded Labourer(s)
- Step 1.2** Building Relationships with Bonded Labourers
- Step 1.3** Facilitating Collection of Evidence
- Step 1.4** Assessing the Situation and Determining Next Steps
- Step 1.5** Filing a Complaint Before the CDO
- Step 1.6** Attending the Bail Hearing
- Step 1.7** Making Arguments/Hearing
- Step 1.8** Obtaining Order of Judgment
- Step 1.9** Filing a Writ/Appeal before the District Court

Step 1.1 Identifying Bonded Labourers

NGO

The NGO should identify the bonded labourer(s) who are in need of support.

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).

Commentary

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

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.

bonded labourers are being exploited, based on evidence of the following occurrences:

1. Minimum wage not being provided
2. Difficulty in obtaining legal documents
3. Child labour
4. Verbal abuse or threats
5. 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 unwell
6. Labourers being made to work without a schedule or time limit
7. No freedom of movement
8. Being charged usurious interest rates

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:

- Local partner organizations working in the field.
- Violence reported in the newspaper
- Information from victim/family of victims
- Community animators/social activists
- Other sources

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.

The Advocate should also ascertain whether the information gathered shows the existence of agreements of the nature described under Section 6 of the BLA.

The Advocate should advise the NGO representatives to promptly report the information to the appropriate authorities.

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).

Points to Note

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.

Other sources of information: NGO representatives may also obtain information about the incidence of bonded labour through these means:

- **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.
 - **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.
 - **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.

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.

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 1.2 Building Relationships with Bonded Labourers

NGO

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

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.

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.

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.

Commentary

Repeated trainings and awareness programs with a community can help the NGO to build a relationship with the bonded labour local communities.

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 1.3 Facilitating Collection of Evidence

NGO

Upon receiving information of the occurrence of bonded labour, the NGO should facilitate the collection of evidence.

Advocate

The Advocate should explain what evidence is required and advise the NGO about the procedure for collecting and preserving such evidence.

Commentary

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.

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.

Commentary

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.

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.²⁷

²⁷ Child Labour (Prohibition and Regulation) Act, 2000, Ch. 3, Sec. 12.

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.²⁸

Step 1.4 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.

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.

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.

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.

²⁸ Ibid.

Step 1.5 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.

Advocate

The Advocate should draft the complaint and be present at the CDO office to ensure that the complaint is accepted.

Commentary

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.

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.

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.

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.

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 1.6 Attending the Bail Hearing

NGO

The NGO should assist the bonded labourers in presenting testimony at their bail hearing.

Advocate

The Advocate should prepare the bonded labourers for their court appearance by asking them mock questions prior to the hearing.

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.

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 1.7 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.

Advocate

The Advocate should plead and make arguments on behalf of the bonded labourers.

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.

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 1.8 Obtaining Order of Judgment

NGO

The NGO must be present to ensure the CDO's order is translated to the bonded labourers.

Advocate

The Advocate should obtain copies of the order after it is delivered.

Commentary

The NGO must be present when the order is passed and make a translated copy available to the bonded labourers.

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 1.9 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.

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.

Commentary

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

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.

2. Procedure for Prosecution of Bonded Labour Perpetrators

At any point during the above steps, or independent of the above steps, the landlord may create a situation where the bonded labourer's rights are violated. Despite the enactment of the BLA and prohibition against bonded labour, such practices exist and bonded labourers face violation of their basic human rights, including the following:

1. Minimum wage not being provided
2. Physical and mental abuse
3. Difficulty in obtaining legal documents
4. Child labour
5. Gender-based violence including sexual harassment
6. Verbal abuse or threats
7. 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 unwell
8. Being forced to work without a schedule or time limit
9. No freedom of movement
10. Being charged unreasonably high interest rates

Where a crime has been committed that falls under Schedule 1 or 2 of the National Criminal Procedure Code (NCPC), a criminal complaint should be filed with the police. If filing a complaint with the police is not effective, a complaint can be filed with the Office of Higher Police, District Administration Office, National Human Rights Commission (NHRC) and, as a last resort, with the High Court.

Step 2.1 Registering the First Information Report (FIR)

Step 2.2 Arresting the Accused

Step 2.3 Investigating After the FIR

Step 2.4 Submitting Opinion and Case File to Prosecutor

Step 2.5 Appointing Separate Private Lawyer (*Vakalatnama*)

- Step 2.6** Registering the First Information Report (FIR)
- Step 2.7** Arresting the Accused
- Step 2.8** Investigating After the FIR
- Step 2.9** Submitting Opinion and Case File to Prosecutor
- Step 2.10** Appointing Separate Private Lawyer (*Vakalatnama*)
- Step 2.11** Obtaining Judgment and Securing Release Order
- Step 2.12** Filing a Complaint in the Office of Higher Police, District Administration Office, or National Human Rights Commission (NHRC)
- Step 2.13** Filing a Writ/Appeal before the High Court
- Step 2.14** Filing a Writ/Appeal before the Supreme Court

Step 2.1 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.

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.

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.

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.

Commentary

The FIR should include the following information:

- 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.

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.

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.

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.

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.

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 2.2 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.

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.

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.

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.

²⁹ Child Labour (Prohibition and Regulation) Act, 2000, Ch. 5, Sec. 21(1).

³⁰ Child Labour (Prohibition and Regulation) Act, 2000, Ch. 3, Sec. 21(2).

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 2.3 Investigating After the FIR

NGO

The NGO should help the police to locate the address of accused and assist in the investigation process, including co-ordinating the extraction of information about the case and collecting evidence.

Advocate

The Advocate should provide necessary legal support to police during the investigation process.

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.

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 2.4 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.

Commentary

The NGO should insist that the police opinion be filed within the time frame.

The Advocate should follow up with the police to ensure that the opinion is filed in a timely manner.

Step 2.5 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.

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.

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 2.6 Filing of Bonded Labour Chargesheet

NGO

The NGO should work with the Advocate to ensure the chargesheet is properly submitted according to law.

Advocate

The Advocate should ensure that the chargesheet is filed within the stipulated time by working closely with the Police and the Government Attorney.

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.

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 2.7 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.

Commentary

The NGO representatives must inform the Advocate whenever they have information about bail applications of the accused.

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 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.

When can bail be cancelled? Section 71(1) of the NCPC 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 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.

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.

Step 2.8 Closure of Bonded Labour Facility

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.

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.

Commentary

The Advocate should use HTTCA Sec. 18 to argue for closure of the bonded labour facility. Sec. 18 provides that any moveable or immovable 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.

Step 2.9 Preparing for and Presenting Testimony

NGO

The NGO should help prepare survivors for their witness testimony by counseling them to testify boldly, accurately and with clarity.

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.

Commentary

The taking of witness and victim statements is a hearing where the Court

The Advocate should work with the NGO to prepare the survivors for the process

gathers evidence and admits the evidence produced before the court. In addition to counseling the bonded labour survivors to be descriptive and detailed in their testimony, the NGO can coordinate with government agencies for travel allowance and necessary protection for the witness as per the existing laws.

The NGO can also coordinate with other NGOs for economic and social support for the victims. 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.

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.

Witnesses: Witnesses include the victims of bonded labour, the I.O., and persons present at the witness (possibly representatives of the NGO present at the rescue).

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 from 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 2.10 Making Arguments/Attending Hearing

NGO

The NGO should assist the Advocate in preparing pleading notes and attend the hearings.

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.

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.

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.

If the case is required to be heard in camera then remind for the same.

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 2.11 Obtaining Judgment and Securing Release Order

NGO

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

Advocate

The Advocate should carefully review the judgment and its implications.

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.

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.

The Advocate should communicate the judgment to the bonded labourers and prepare for appeal in case the judgment is not in their favour.

Step 2.12 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).

Advocate

The Advocate should draft and file a complaint based on the information provided by the NGO and victims.

Commentary

The NGO should provide information about the bonded labour violations to the Advocate for filing of the complaint.

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 2.13 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 2.14 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.

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.

3. Procedure for Providing Rehabilitation Support to Bonded Labour Victims

Step 3.1 Ensuring Immediate Access to Medical Care

Step 3.2 Obtaining Legal Documents

Step 3.3 Applying for ID card

Step 3.4 Determining Government Entitlements

Step 3.5 Conducting Training on Education of Basic Rights and Entitlements

Step 3.6 Assisting Bonded Labourers to Receive Government Entitlements

Step 3.7 Facilitating Access to Private Sector Resources

Step 3.8 Ensuring Survivors Enjoy Permanent Freedom

Step 3.1 Ensuring Immediate Access to Medical Care

NGO

The NGO should ensure that the bonded labour survivors receive a medical examination and other required medical care.

Advocate

The Advocate should ensure that medical examinations are carried out and urgent care is provided, with respect accorded to the bonded labour survivor's right to privacy and other rights.

Commentary

The NGO must ensure that the rescued persons are extended immediate medical care without delay and are treated with dignity.

The Advocate must ensure the NGO representative is permitted to be present during this process and that the rescued person is treated with dignity. The Advocate should request that a record be maintained of all documents related to medical treatment. The victims' details should be mentioned only as needed in the health examination and otherwise kept confidential.

Points to Note

Medical needs of a child: Attention must be paid to the medical needs of the child before referring to Child Rights Council, Provincial Child Rights Committee or Local Child Rights Committee, especially in instances where the child has been rescued without a family member or guardian.

Victim centric approach: Treat victims with dignity. Inform victims about what is happening as the employers often threaten them. The rescue team must be trained to meet all challenges such as language barrier, social and cultural differences, and must make immediate efforts to win the confidence of the victim.

Confidentiality: The identity of the bonded labourer should be kept confidential. Under no circumstances should the name, photograph and information be disclosed and published in any print and visual media.

Medical examination of female victim: The Advocate must ensure that the medical examination, in case of a female victim, is conducted by or under the supervision of a female doctor. In the absence of a female doctor, the Advocate should ensure that a female police official or a female representative from the NGO is present during the process of medical examination. Informed consent of the victim must be obtained prior to conducting the medical examination. The NGO representatives may counsel the survivor regarding the importance of this step.

Step 3.2 Providing Short-Term Provisions

NGO

The NGO shall facilitate the provision of basic short-term essentials such as food, clothing, temporary shelter, and transportation upon their release.

Advocate

Commentary

The representatives of the NGO should assist the rescued labourers by ensuring that they are able to obtain access to food, clothing, temporary shelter and transportation after their release.

Step 3.3 Securing Survivor Compensation

NGO

The NGO should assist the Advocate with filing compensation applications and accompany survivors when called to appear before court.

Advocate

The Advocate should insure that the charge sheet contains a demand for victim compensation.

Commentary

NGO representatives must ensure that compensation is provided at the earliest possible and must provide the Advocate with all the information required to make any applications.

Section 17 of the HTTCA provides for compensation to the victim, which shall not be less than half of the fine levied as a punishment on the offender. The Advocate should be familiar with victim compensation laws at the state and central government level. The Advocate should also ensure that such applications are made and compensation received as expeditiously as possible.

Points to Note

Demand compensation in chargesheet: The Government Attorney must demand victim compensation in the appropriate section of the charge sheet, *otherwise compensation will not be provided later.*

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. For the treatment of the victim or providing compensation or relief amount immediately, the court can order for getting such amount from the fund. The accused person pays the amount of compensation or relief amount to the fund within 35 days from the date of judgment. The court may order that a reasonable amount to be paid as compensation to the victim while making final settlement or judgment.

Interim Compensation: Section 29 of the Crime Victim Protection Act empowers a court to make an order for interim compensation where a victim requires medical treatment or any kind of relief amount immediately. Where such an order is made, the victim is provided with compensation from the Victim Relief Fund.

Compensation amount: As per the HTTCA, compensation to the victim should not be less than half of the fine levied as punishment to the offender. If the victim dies before receiving compensation, the victim's children below the age of 18 should get that compensation.

Step 3.4 Obtaining Legal Documents

NGO

The NGO should counsel the bonded labour survivors about the importance of having legal documents, which are required to access government entitlements.

Advocate

The Advocate should explain the process for obtaining legal documents and assist with the process for securing them.

Commentary

The NGO should raise awareness among the bonded labourers about how to register personal events to obtain birth certificates, marriage certificates, death certificates, migration certificates, divorce registration, and citizenship and identity cards.

The Advocate should advise the NGO and assist the survivors in petitioning government authorities to issue basic identification documents.

The Advocate should ensure that the NGO and government authorities collect details from the survivors to facilitate the rehabilitation process, such as their name, age, and address of the village where they would like to relocate.

Points to Note

Registration of Personal Events: Registration of personal events is an essential step to obtaining government services and entitlements. For this purpose, the Government of Nepal enacted the **Birth, Death and Other Personal Events (Registration) Act, 1976**³¹ to provide for the registration and issuance of certificates of birth, death, marriage, divorce and migration (change of residence). The Act provides that the following information should be given to the Ward Office of the Municipality in the prescribed form within thirty-five days of the occurrence of such event:

Notice of birth or death, by the head of the family, and in his/her absence, by one of the major member of the family

- Notice of birth or death, by the head of the family, and in his/her absence, by one of the major member of the family
- Notice of marriage, by both the husband and wife

31 Available here: <http://www.docr.gov.np/sites/default/files/birth-death-and-other-personal-events-registration-act-2033-1976.pdf>

- Notice of divorce, by husband or wife
- Notice of migration by the head of the family in the case of migration of a family and by the person in the case of migration of an individual
- If any such personal event occurs abroad, a person with a duty to report such information shall do so within sixty days of arrival in Nepal
- The person with a duty to forward such information may appoint a representative to do so.

The Local Authority shall issue a registration certificate, free of cost, to the concerned person after registration of the personal event. If the registration certificate so issued is lost or damaged for any reason, an application can be submitted to the concerned Local Authority for issuance of a copy of the registration certificate (upon payment of a fee).

Importance of ID Card: Bonded labour survivors need an ID card to enjoy government services and facilities that are designed for survivors, such as land allotments, loans, foreign employment, settlements, employment and other activities relating to income generation, etc.

Bonded labour Welfare Officer: Section 10 of the BLA provides that the Government of Nepal can designate any of its officers to work as a Welfare Officer in order to perform work in respect of the rights and interests of freed bonded labourers. The Act further provides that the functions, duties and powers of the Welfare Officer include maintaining the record of the freed bonded labourers and performing the work as directed or assigned by the Rehabilitation and Monitoring Committee. Furthermore, Rule 13 of the Bonded Labour (Prohibition) Rules, 2010 (BLR) authorizes the Welfare Officer to conduct income generating programmes for survivors in coordination with different governmental and non-governmental organizations and institutions.

Categories of freed bonded labourers: BLR 2012 (2068) establishes four categories of bonded labourers - class A (those who do not possess a house or land in his/her name or family name), class B (those who do not possess land in his/her name or family name and are settling on public or government land), class C (those who possess up to two *Kaththa* land and a house in his/her name or family name), and class D (those who possess more than two *Kaththa* land and a house in his/her name or family name). Identity cards are issued based on their classification (red cards to class A, blue cards to class B, yellow cards to class C, and white cards to class D).

Step 3.5 Providing Education on Available Government Entitlements

NGO

The NGO should provide education and training to survivors on government entitlements that are available to them.

Advocate

The Advocate should provide any necessary legal assistance to the NGO and survivors in understanding government entitlements.

Commentary

The NGO should identify government programs providing benefits and vocational training for survivors and educate survivors on these programs. The NGO should also identify other organizations that work to empower and provide services to human trafficking survivors.

The Advocate should help explain the legal process and procedure for obtaining governments packages for survivors.

Points to Note

Entitlements training and advocacy for bonded labour survivors: A primary role of the NGO is to create awareness of entitlements and facilitate the government's delivery of services. Bonded labourers, particularly H/C, are from a low economic and social background and are unaware of their rights. Thus, NGOs should conduct rights-based training, create informative publications, conduct radio media programs, and perform advocacy through memoranda to government organizations at local and central level. Informative materials such as pamphlets, news stories, interactive programs, and radio/street dramas of bonded labourers can educate the general public and government authorities about their situation. These kinds of activities will encourage those concerned to work for the liberation and rehabilitation of bonded labour victims, including H/C.

The Government of Nepal, through the District Development Committee, conducts awareness raising program focusing on the rights of *Dalit* communities in cooperation with the representatives of National *Dalit* Commission in the districts. However, those programs have not been found effective in reaching targeted groups, and therefore NGOs can collaborate with the District Development Committee to improve its efforts.

Government entitlements for bonded labour survivors:

- **Land:** The Government may provide land necessary for settlement and cultivation. Rule 6 of the BLR states that the Government of Nepal shall allot a maximum of five *Kaththa* land from the lands recommended by the Rehabilitation and Monitoring Committee to those who do not possess a house and land in his/her own name or his/her family name and also to those who are settling in public or government land.
- **Loans:** Under Rule 17 of the BLR, the Government of Nepal may provide a loan for a one-time procurement of up to two *Kaththa* of land to a freed bonded labourer of class “A” and “B” (those who do not have any land). See Annexure 5 for a sample loan application
- **Foreign employment:** Under Rule 16 of the BLR, the Government of Nepal may make adequate provision to send freed bonded labourers to a foreign country for employment.
- **Registration of Group:** Under Rule 14 of the BLR, bonded labour survivors may register a group with the Land Revenue Office for the purpose of conducting income-generating activities. See Annexure 3 for a sample registration application and Annexure 3 for a sample Certificate of Group Registration.
- **Other support:** According to Rule 11 of the BLR, the Government of Nepal may also provide materials and timber for construction of houses.

Step 3.6 Facilitating Access to Government Entitlements

NGO

The NGO should assist bonded labour survivors in applying for and receiving government entitlements.

Advocate

The Advocate should provide legal assistance to the NGO and bonded labour survivors in petitioning government agencies to provide government entitlements if such entitlements are wrongly denied.

Commentary

The NGO should assist the bonded labour survivors with accessing government entitlements related to land rights, employment, education, health care and transportation. The NGO should fill in the gap between government support

The Advocate should provide legal advocacy support if applications for entitlements are wrongly denied.

support programs and the receipt of such support by survivors by facilitating the process of applications and distribution of support.

Points to Note

Name registration required: Government benefits and services can be received by bonded labour survivors if their names have been registered with the concerned authorities. The BLA provides for a Rehabilitation and Monitoring Committee with power and authority to register their names to concerned government authorities.

Entitlements involving land

- The Land Act 2021: Section 7 of the Land Act 2021 created a land ceiling system, whereby excess land was acquired from landlords for redistribution to the landless or actual cultivators, with priority given to freed bonded labourers, Dalit, the indigenous and local landless people.
- Land distribution by the Rehabilitation and Monitoring Committee: Pursuant to the BLR, the Freed Bonded Labourer Rehabilitation and Monitoring Committee makes recommendations for distribution of land to landless people along with the area of land and possibilities of settlement of landless people. The BLR outline the procedural aspects for land distribution along with other options such as foreign employment, providing loans, and the monitoring of effectiveness of such land distribution programs.
- Settlement certification: Settlement certification is important for survivors settling on the land of landlords (in exchange for payment) or government and public lands, as the certification offers proof of their entitlement to the land so that they cannot be evicted. Local bodies such as the rural municipality or municipality can certify such settlements.
- Land of Village Block: There are a few village blocks in the Tarai district where most H/C communities have been living for a long time. The H/C have possession over such lands though there may not be proof of ownership. In this case, the Government of Nepal's Survey Department may conduct a land survey of such land and provide certificate of ownership based on such survey.

Learn More and Take Action

Government Entitlements Manual: For a detailed step-by-step guide for accessing government entitlements Nepal, see JVI's publication "Government Benefits for Nepali People" available [here](#).

Legal Aid: If the NGO is unsuccessful in assisting the survivor with securing access to certain government entitlements, the NGO and the survivor may avail free legal aid from the local Legal Aid office. To learn more about the role of Legal Aid, see the notes under Step 1.2 of the Standard Operating Procedures.

Step 3.7 Facilitating Access to Private Sector Resources

NGO

The NGO should assist the bonded labour survivors with accessing available private sector (NGO and business) resources related to food, clothing, shelter, land rights, education, employment, health care, counseling, and other entitlements.

Advocate

The Advocate should help to prepare documents and coordinate with concerned agencies to ensure rights of bonded labour survivors.

Commentary

The NGO should facilitate access to private facilities by networking with partner organizations and relevant stakeholders who can provide specialized care in the form of alternate livelihoods, interim shelter, assistance with obtaining documentation, education, health care, counseling and other assistance.

The Advocate may provide its assistance in any relevant legal area.

Step 3.8 Ensuring Survivors Enjoy Permanent Freedom

NGO

The NGO should maintain an ongoing relationship with the bonded labour survivor for at least 24 months from the point of withdrawal to ensure sustained rehabilitation and permanent freedom of survivors.

Advocate

The Advocate should advise the NGO representatives to ensure that the restoration process is carried in accordance to procedures established by law and not by force.

Commentary

The NGO representative must make efforts to restore the labourer back to the family/native place after release. In case of a child labourer, orders from Child Rights Committee must be sought prior to restoration. The NGO should do necessary follow up as required from time to time. The NGO should conduct family assessments, draft individualized treatment plans, and work closely with the district administration to ensure that rescued survivors can access their welfare benefits and compensation. Survivors shall also be assisted in opening their individual bank account as the government compensation cheque is deposited in these accounts.

Advocate should ensure freedom of bonded labour survivors by preparing legal documents in order to obtain government service or compensation for the victims of bonded labour.

Points to Note

Adequate Counseling: It is important to ensure that the released bonded labourers are counseled and not coerced into leaving for their native village if they do not wish to. In case of a minor, an individual care plan must be prepared and submitted to the appropriate body. The NGO can maintain a care plan for the survivors also and submit this to the CDO or Court if asked to do so. The NGO representative must also make efforts to reintegrate the labourer back into family and community.

Goal of restoration: The goal of restoration is to ensure that a released labourer reaches a place of sustainability, where he/she is able to provide for herself/himself.

Planning: The reintegration and repatriation of victims of trafficking is a long process that must be planned, taking into account the specific short and long-term needs and expressed priorities of individual victims. Efforts must be non-punitive and aimed at protecting the rights of the victims.





Chapter IV. *Laws on human trafficking*

A. International Laws

International law is a powerful tool for combating modern slavery as it provides the framework within which a State defines its laws in order to address the problem effectively. However, compliance with international law is subject to the individual country (“State Party”) signing and ratifying the Convention.

The United Nations (U.N.) is an international organization comprised of 193 countries, including Nepal. Conventions and other instruments adopted under the auspices of the United Nations are among the main sources of international law and convention. The International Labor Organization (ILO) is a specialized agency of the UN that focuses on labor and employment issues.

There are several relevant conventions and instruments on modern slavery that form a part of the legal framework relevant to the fight against modern slavery. Nepal has ratified all of the conventions unless noted otherwise:

Slavery Convention of 1926³² and Protocol Amending that Convention: Article 2 states that each party is obligated to prevent and suppress the slave trade and to abolish slavery in all forms. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practice Similar to Slavery, 1956³³ obligates countries to take all practicable and necessary legislative and other measures to abolish debt bondage and serfdom practices.

Forced Labour Convention: Article 1 of the Convention concerning Forced or Compulsory Labour (C29 Forced Labour Convention, 1930)³⁴ obligates members to suppress the use of forced or compulsory labour in all its forms. Further, the Abolition of Forced Labour Convention, 1957 (C105) requires that each member undertakes not to make use of any form of forced or compulsory labour as a means of racial or religious discrimination.

Universal Declaration of Human Rights, 1948³⁵: Article 4 prohibits slavery and all forms of slave trade.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementing UN Convention against Transnational Organized Crime

32 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>

33 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1957, Available here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx> (Accessed on Sept, 25, 2016)

34 Note: Date of coming into force: 01:05:1932 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

35 <https://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx>

2000³⁶ (Palermo Protocol): This is one of the three Palermo protocols, entered into force in 2003. Article 3 defines the following elements of human trafficking:

1. **ACT:** Human trafficking involves the recruitment, transportation, transfer, harboring and/or receipt of a person.
2. **MEANS:** The threat or use of force, deception, abduction, the abuse of power or a position of vulnerability, or other forms of coercion.
3. **PURPOSE:** The purpose of human trafficking is exploitation, which can include the forced prostitution of others, forced labor, slavery or servitude.

This Protocol has not been ratified by Nepal but has been under consideration by the national assembly as recently as January 2020.

Protocol against the Smuggling of Migrants by Land, Sea, and Air Supplementing UN Convention against Transnational Organized Crime, 2003³⁷: This is another of the three Palermo protocols. Unlike human trafficking, people smuggling is characterized by the consent between customer and smuggler – a contractual agreement that typically terminates upon arrival in the destination location. However, smuggling situations can nonetheless in reality descend into situations that can best be described as extreme human rights abuses, with smuggled migrants subject to threats, abuse, exploitation and torture, and even death at the hands of smugglers.

International Covenant on Civil and Political Rights, 1966³⁸: Article 8 abolishes the practice of slavery and servitude.

International Covenant on Economic, Social and Cultural Rights, 1966³⁹: Article 6 recognizes the right to work which includes the right to freely choose or accept employment. Article 7 further recognizes the right of everyone to the enjoyment of just and favorable conditions of work, including fair wages, safe and healthy working conditions, and equal opportunities for work.

Convention on the Elimination of All Forms of Discrimination against Women, 1979⁴⁰: Article 11 obligates parties to take appropriate measures on broader aspects of women's rights and safety in working conditions. Article 14 obligates parties to take into account the particular problems faced by women in rural areas.

36 <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

37 https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18

38 <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

39 <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

40 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

Convention on the Rights of the Child, 1989⁴¹: Article 4 requires states to undertake all appropriate legislative, administrative and other measures to ensure that children are not hindered in their development, including protection from sexual abuse and exploitation.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990⁴²: Article 11 states that no migrant worker or member of his or her family shall be held in slavery or servitude. Article 25 establishes that migrant workers shall enjoy treatment no less favorable than that accorded to nationals (not ratified by Nepal).

Abolition of Forced Labour Convention, 1957⁴³(C105): Article 1 states that each member of the ILO which ratifies the Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—
as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

- a. as a method of mobilising and using labour for purposes of economic development;
- b. as a means of labour discipline;
- c. as a punishment for having participated in strikes;
- d. as a means of racial, social, national or religious discrimination.

The following instruments also address the rights of bonded labourers, women and children:

- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Convention on the Worst Forms of Child Labor
- Convention concerning minimum age for admission to employment (Convention No. 138), of the International Labour Organization
- Convention concerning migration for employment (Convention No. 97), of the International Labour Organization (not ratified by Nepal)
- Convention concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers (Convention No. 143), of the International Labour Organization (not ratified by Nepal)
- Convention concerning private employment agencies (Convention No. 181), of the International Labour Organization (not ratified by Nepal)

41 <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

42 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>

43 https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105

- Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees (not ratified by Nepal)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention concerning decent work for domestic workers (not ratified by Nepal)
- Indigenous and Tribal Peoples Convention, 1989 (No. 169)

B. National Laws

1. Constitution of Nepal⁴⁴: This is another of the three Palermo protocols. Unlike human trafficking, people smuggling is characterized by the consent between customer and smuggler - a contractual agreement that typically terminates upon arrival in the destination location. However, smuggling situations can nonetheless in reality descend into situations that can best be described as extreme human rights abuses, with smuggled migrants subject to threats, abuse, exploitation and torture, and even death at the hands of smugglers.

The Constitution defines fundamental rights as those rights which are mandatory and which the state is responsible to fulfill, protect and promote. Further, the Constitution guarantees the right against exploitation and forced labour and prohibits human trafficking and bonded labour. Violation of these provisions is punishable by law and the victims of such an act are provided the right to compensation from the perpetrator.⁴⁵

The Constitution further guarantees the right to labour, which includes the right to practice proper work and receive appropriate remuneration, facilities and contributory social security.⁴⁶ The Constitution guarantees rights relating to education⁴⁷, health care⁴⁸, food⁴⁹ and housing⁵⁰, children⁵¹, social justice⁵² and the security⁵³ of every citizen of Nepal and a constitutional remedy in case of violations.⁵⁴

The 2015 Constitution of Nepal is progressive in that it establishes rights against exploitation and guarantees to every person the right to live with dignity.

44 <http://www.lawcommission.gov.np/en/archives/category/documents/prevailing-law/constitution/constitution-of-nepal>

45 Article 29

46 Article 34

47 Article 35

48 Article 35

49 Article 36

50 Article 37, Constitution of Nepal (2015).

51 Ibid., Article 39

52 Ibid., Article 42

53 Ibid., Article 43

54 Ibid., Article 46

The Preamble declares the intention of ending all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance, and elimination of discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability. The Constitution in the fundamental rights chapter also guarantees following rights:

Fundamental Rights Contained in the Constitution

Right to live with dignity: Article 16 guarantees the right to live with dignity and prohibits capital punishment.

Right to freedom: Article 17 guarantees various freedoms such as personal liberty.

Right to equality: Article 17 guarantees equality before the law and equal protection of the law to all citizens, including the H/Cs. The constitution further guarantees no discrimination on the grounds of origin, religion, race, caste, tribe, sex, physical conditions, economic condition, language or geographical region among others.

Right against exploitation: Article 29 prohibits exploitation on the basis of religion, custom, tradition, culture, practices or any other bases. It further prohibits human trafficking, forced labor and bonded labor and declares such acts punishable by law and ensures that a victim of such act will get compensation from the perpetrator.

Right to education: Article 31 guarantees the right to compulsory and free basic education and free education up to the secondary level in its mother tongue.

Right to employment: Article 33 guarantees the right to employment and to select employment.

Right regarding labor: Article 34 guarantees the right to proper labor practices, including the right to appropriate remuneration, facilities and contribution-based social security.

Right to health care: Article 35 guarantees the right to seek basic health care services from the state and to seek emergency health care. It also provides the right to be informed about one's health condition and to access clean water and hygiene.

Right to food: Article 36 guarantees the right to food and food sovereignty.

Right to housing: Article 37 guarantees the right to appropriate housing and prohibits eviction from housing except in accordance with law.

Rights of Women: Article 38 guarantees every woman the rights to equal lineage without gender-based discrimination and to safe motherhood and reproductive health, irrespective of their caste and class. Every woman has a right against physical, mental, sexual, psychological or other form of violence or exploitation on religious, social, cultural, traditional, or any other grounds. Women also have the right to obtain special opportunities in education, health, employment and social security on the basis of positive discrimination.

Rights of children: Article 39 guarantees every child the right to education, health care, nurturing, appropriate upbringing, sports, recreation and overall personality development. It also provides a right to formative child development and participation. The Constitution prohibits exploitation and any form of torture in the name of religious or cultural practices.

Rights of Dalit: Article 40 guarantees special rights for the Dalit community. The state can make special provisions for the empowerment, representation and participation of the Dalit community in public services as well as other sectors of employment, as well as provisions for free education with scholarship from primary to higher education (including technical and vocational education).

Right to Constitutional Remedies: Article 46 guarantees the right to obtain constitutional remedies through the extraordinary jurisdiction of the Supreme Court, which exists for the enforcement of these fundamental rights.

Duties of the citizens: Under Article 48 every citizen must abide by the Constitution and law.

Rights of crime victims: Article 21 provides a right to obtain information about the investigation and proceedings of cases in which an individual is a victim and a right to social rehabilitation and compensation in accordance with law.

Constitutional Remedy

The constitution has provided extraordinary power to the Supreme Court of Nepal to have any law or any part thereof declared void on the ground of inconsistency with this Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by the Constitution or on any other ground, or any law formulated by the Provincial Assembly that is inconsistent with the law formulated by the

Provincial Assembly that is inconsistent with the law formulated by the Federal Parliament or any law formulated by a Municipal Assembly or Village Assembly that is inconsistent with the law formulated by the Federal Parliament or Provincial Assembly. Similarly, every Nepali citizen has a right to file a petition in the Supreme Court or High Court for the enforcement of the fundamental rights conferred by this Constitution, for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective, or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern.

The Supreme Court with a view to imparting full justice and providing the appropriate remedy has the extraordinary power to issue necessary and appropriate orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warrant to enforce such rights or settle or dispute.

Implementation of Constitution

The Constitution has imposed a duty on the state to ensure the implementation of fundamental rights. The state is required to make legal provisions within three years of the commencement of the Constitution for the enforcement the fundamental rights guaranteed by the constitution. Nepal has been in the process of such law making since the promulgation of the Constitution in 2015. Numerous laws have been passed relating to human trafficking and bonded labour for the implementation of the fundamental rights provisions of the Constitution.

2. Statutes Criminalizing Acts Relating to Human Trafficking and Modern Slavery

National Criminal Code, 2074/2017⁵⁵:

The government replaced the outdated national legal code, known as the *Muluki Ain*, with a new criminal code and civil code that came into effect in August, 2018. This criminal code expressly prohibits actions that are often involved in the commission of human trafficking crimes and should thus be invoked when prosecuting such crimes:

- Section 119 of the Code criminalizes the solicitation of prostitution
- Section 120 criminalizes knowingly providing a house, land or means of transport for the purpose of prostitution
- Section 162 criminalizes forced labour
- Section 163 criminalizes slavery
- Section 164 of the Codes further prohibits serfdom or debt bonded labour

55 <http://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Criminal-procedure-code-Revised.pdf>

- Section 171 criminalizes forced marriage (marriage without the consent of both parties)
- Section 173 criminalizes the marriage of anyone below the age of 20
- Section 213 criminalizes kidnapping or the taking of a hostage
- Section 219 criminalizes rape and any sexual intercourse with a girl below the age of eighteen
- Section 224 criminalizes sexual abuse
- Section 225 criminalizes child sexual exploitation

Human Trafficking & Transportation Control Act, 2064/2007⁵⁶: To prohibit human trafficking and transportation and to protect and rehabilitate victims, the Government of Nepal has promulgated the Human Trafficking and Transportation Control Act, 2064. The Act gives the Nepali government jurisdiction not only over crimes committed inside Nepal but also over crimes committed outside Nepal against Nepali citizens. The Act provides a broad definition of human trafficking and states that if anyone commits any of the following acts such person shall be deemed to have committed human trafficking:

- a. To sell or purchase a person for any purpose,
- b. To use someone into prostitution with or without any benefit,
- c. To extract human organ except otherwise determined by law,
- d. To go for in prostitution.

“Human transportation” means:

- a. To take a person out of the country for the purpose of buying and selling,
- b. To take anyone from his /her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurements, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into one’s custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation

A victim is compensated with half of the amount of any fine imposed on a trafficker. If the perpetrator is not able to pay the fine, the court can order the payment of compensation from a rehabilitation fund which was established by the Government of Nepal to operate rehabilitation centers and to provide victim compensation.⁵⁷

The Act needs to be amended to reflect the changing governance structure of the country. Furthermore, several provisions of the Act should be amended to align with the

⁵⁶ <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/human-trafficking-and-transportation-control-act-2064>)

⁵⁷ <http://www.lawcommission.gov.np/en/archives/12259>

Palermo Protocol, including the sections on: (I) extraterritoriality (extra-territorial jurisdiction),⁵⁸ (II) definition of trafficking,⁵⁹ (III) acts considered to be human trafficking and transportation,⁶⁰ (IV) provision of translator or interpreter,⁶¹ and (V) acts relating to rescue⁶² and rehabilitation.⁶³ The Act also needs amendment regarding the establishment and utilization of a victim's fund.⁶⁴

Human Trafficking and Transportation (Control) Regulation, 2065/2008: In order to implement the HTTCA, this regulation establishes National and District Committees to plan, formulate and implement policies, projects and programs related to anti-trafficking. The Committees oversee the rescue of externally and internally trafficked persons and oversee and monitor rehabilitation centers. District Committees can establish and operate centers for trafficking victims in collaboration with NGOs. The regulation needs to be amended to reflect the changing governance structure of the country; in particular, the Regulation should provide for mechanisms at the Federal, Provincial and Local Levels and assign powers, roles and responsibilities to each level.

Bonded Labour (Prohibition) Act, 2058/2002⁶⁵: The Bonded Labour (Prohibition) Act was enacted in 2002 to ban bonded labour (Kamaiya Shram), to rehabilitate freed bonded labourers and to take necessary steps to uplift their living standard.⁶⁶ It defines a bonded labourer as a person who is working as a bonded labourer in the name of Bhaisawar, Gaiwar, Bardikar, Chhekarwar, Harwa, Charuwa, Hali, Gothalo Kamalariya or by any other similar name. The Act provides that every bonded labourer, from the time of the commencement of this Act is, ipso facto, freed from bonded labour⁶⁷ and that no bonded labourer shall be obliged to pay back the bonded debt obtained by him/her from any creditor.⁶⁸ Further, the Act voids all agreements between a creditor and a bonded labourer in respect of a debt.⁶⁹ The property taken as a mortgage or guarantee, if any, in the course of providing a debt is required to be refunded to the concerned bonded labourer within a period of three months.⁷⁰ The Act also provides for the Constitution of a Rehabilitation and Monitoring Committee to work in respect of the rehabilitation of a freed bonded labourer.

58 HTTCA, 2007, Sec. 1(3).

59 Ibid. Sec. 2(e).

60 Ibid. Sec. 4.

61 Ibid. Sec. 11.

62 Ibid. Sec. 12.

63 Ibid. Sec. 13.

64 Ibid. Sec. 14.

65 <http://www.lawcommission.gov.np/en/archives/14163>

66 Preamble, Bonded Labour (Prohibition) Act, 2058/2002.

67 Section 3

68 Section 5

69 Section 6

70 Section 7

The Act contains mechanisms for the complaint, penalty and appeal for any violation of its provisions. A bonded labour victim him/herself or a member of his/her family, union, institution or an official of a local body may lodge a written complaint or forward a verbal notice before the adjudicating authority along with the evidence so collected.⁷¹ In case of a violation of any provision such adjudicating authority may impose a fine of not less than fifteen thousand rupees and not exceeding twenty five thousand rupees and shall provide two-fold the amount of the minimum wage as determined pursuant to this Act for each day of employment to the victim from such employer (offender).⁷² See also implementing legislation: Bonded Labour (Prohibition) Regulations, 2067/2010.⁷³

3. Other Relevant Statutes

Statutes Addressing Labour

Child Labor (Prohibition and Regulation) Act, 2056/2000⁷⁴: The Child Labor (Prohibition and Regulation) Act, 2000 was enacted to prohibit the employment of children in factories, mines or similar risky places of work and to make necessary provisions with regard to their health, security, services and facilities. The Act defines a “child” as a minor not having completed the age of sixteen years.⁷⁵ However, the Act further provides that no child who has not attained the age of 14 years shall be engaged in works as a laborer. This means that a child between 14 years to 16 years could be asked to engage in works as a laborer, but no child can be engaged in work as a laborer against his/her will by way of persuasion, misrepresentation or by subjecting him/her to any influence, fear, threat, coercion or by any other means. The Act also provides punishment of imprisonment, or a fine in varying ranges (depending on the seriousness of the infringement), or both. For this purpose the following persons and organizations may file a complaint at the concerned labor office within one year from the date of commission of the Act⁷⁶:

- a. Employees inspecting an enterprise
- b. Police of the concerned area,
- c. The concerned child or his/her father, mother or guardian,
- d. The concerned Village Development Committee /Municipality,
- e. Trade union of enterprise level, or
- f. Any agency or non-governmental organization established pursuant to prevailing law and engaged in protection of rights and interests of the child.

71 Section 15.

72 Section 14.

73 <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/rules-and-regulations/bonded-labour-prohibition-rules-2067-2010-ad>

74 <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/child-labor-prohibition-and-regulation-act-2056-2000>

76 Section 2(a) provides same definition for the children.

As discussed above, child labour is prohibited by law and the Office of Labour may send supervisors to monitor whether child labourers are being employed in any establishment. In a case where a child is found to be engaged in child labour, the supervisor may hand over such child to his parents. Further, if a parent is not found and cannot be identified, such child can be sent to the child welfare house or to any organization taking care of children.⁷⁷ Section 20 of the Child Labour (Prevention and Regulation) Act, 2000 requires the complaint to be filed at the Office of Labour for child labour within one year of such act. The Office of Labour can impose a fine for such misdeed and if in case of punishment of imprisonment, the office must take prior approval from the Labour court.

The Right to Employment Act, 2075/2018⁷⁸: This Act sets forth the necessary provisions to ensure the right of every citizen to employment, including terms and conditions of employment and unemployment support. Section 3 establishes the right to employment to every citizen of Nepal. Section 4 provides that every citizen shall have the right to choose employment; the right to voluntarily engage in employment according to one's qualification and leave such employment at will. This Act also reiterates that no person shall engage or employ any citizen in employment against his or her will, or in employment that he or she does not choose, or force or compel him or her to engage in such employment.⁷⁹

Labour Act, 2074/2017⁸⁰ and Labour Regulations 2075/2018⁸¹: Section 28 of the Labour Act provides that no worker or employee shall be deployed in work for more than eight hours per day or forty-eight hours per week and that they shall be provided one day as weekly holiday for every week.⁸² Similarly, Chapter 8 (Sections 34-39) provides that payment of remuneration, allowances and facilities is the responsibility of the concerned employer. Chapter 12 (Sections 68-83) contains provisions relating to occupational health and safety. Section 5 prohibits employing a child in any work that is contrary to law. The Act also provides for the appointment of “inspectors,” including a senior labour inspector, labour inspector, senior occupational safety and health inspector and occupational safety and health inspector appointed by the government of Nepal. The Act ensures the rights and interests of labourers in the workplace and regulates work facilities, as well as the rights and duties of employers. The Act provides minimum wages and other benefits for workers. The Labour Regulations 2075/2018 has been enacted for the implementation of the Labour Act 2017.

77 Section 16 of Child Labour (Prevention and Regulation) Act, 1999

78 <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/the-right-to-employment-act-2075-2018>

79 Right to Employment Act, 2075/2018, section 4(3).

80 <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/03/The-Labor-Act-2017-2074.pdf>

81 [lawcommission.gov.np/en/wp-content/uploads/2021/01/श्रम-नयिमावली-२०७५.pdf](http://www.lawcommission.gov.np/en/wp-content/uploads/2021/01/श्रम-नयिमावली-२०७५.pdf)

82 Section 40, Labour Act 2017.

Foreign Employment Act, 2064/2007

Many Nepalese are smuggled and trafficked to various countries on the false promise of a good job and wages. The Foreign Employment Act, 2007 was enacted to regulate foreign employment, promote worker safety, and protect the rights and interests of those who seek foreign employment.⁸³ The Act criminalizes wrongdoing by recruitment agencies and employers in the course of foreign employment but fails to address the connection between foreign employment and human trafficking. Section 7 of the Act prohibits children below 18 from being sent abroad for foreign employment, and pursuant to Section 45 any license holder sending a minor for foreign labour is punished with imprisonment of three to seven years and a fine of 300,000 rupees. There is gap in the definition and legal proceedings regarding cases where an individual embarks upon foreign employment but ends up in a trafficking situation. The current practice is for such cases to be addressed as violations of the Foreign Employment Act and not as a trafficking case.

Other Statutes

The Act Relating to Children, 2075/2018⁸⁴: The Children Act was enacted to further the physical, mental, and intellectual development of children in Nepal. It protects children from sexual exploitation and provides rights to child victims during the criminal prosecution process. Section 66(3) sets forth the actions that constitute “sexual abuse against children.” Section 72 prescribes punishment for sexual abuse and rape; for other forms of exploitation, punishment may range from NRs. 150,000 fine and up to 15 years of imprisonment. Section 73 provides for interim compensation and adequate compensation from the Children’s Fund if the compensation cannot be recovered from the perpetrator or the amount retrieved from the perpetrator is insufficient. Section 68 obligates a father, mother, guardian, or other person taking care of children (such as a teacher or health worker) to inform the police if aware of violence or sexual abuse being committed against children.

Domestic Violence (Control) Act, 2066/2009: Although this Act is not directly related to human trafficking, it can be invoked where any commercial sexual exploitation-related offence occurs within the context of domestic relations. Section 2(e) defines “sexual harm” as “sexual misbehavior, humiliation, discouragement or harm in self-respect of any person; or any other act that hampers safe sexual health” and “sexual torture” as “sexual misbehavior, insult or using anything that could go against safe and secure sexual health.” Section 13 further provides that a perpetrator can be fined with an amount ranging from NRs. 3,000 to 25,000, six months of imprisonment, or both.

83 Preamble of the Foreign Employment Act, 2007.

84 <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/the-act-relating-to-children-2075-2018>

An Act Relating to Caste Based Discrimination and Untouchability (Offence and Punishment), 2068/2011⁸⁵: This Act was passed to promote dignity for people from so-called lower castes, who comprise a large percentage of bonded labourers in the agricultural and other sectors. The provisions contained in the Act are an extension of the provisions made in General Code Miscellaneous Section 10 regarding caste-based discrimination which has been repealed by the National Penal Code 2017. The statute defines “violation” as the commission of any act or causing to commit any act motivated on the ground of custom, tradition, religion, culture, ritual, caste, race, descent, community or occupation with the intent to:

- Prevent, control or restrict anyone in any way from entering, attending or participating in a public sphere; or
- Expel anyone individually or collectively from public place or public occasion or to commit social exclusion or discrimination of any kind or to impose a restriction on such act or to demonstrate any other kind of intolerant behavior.

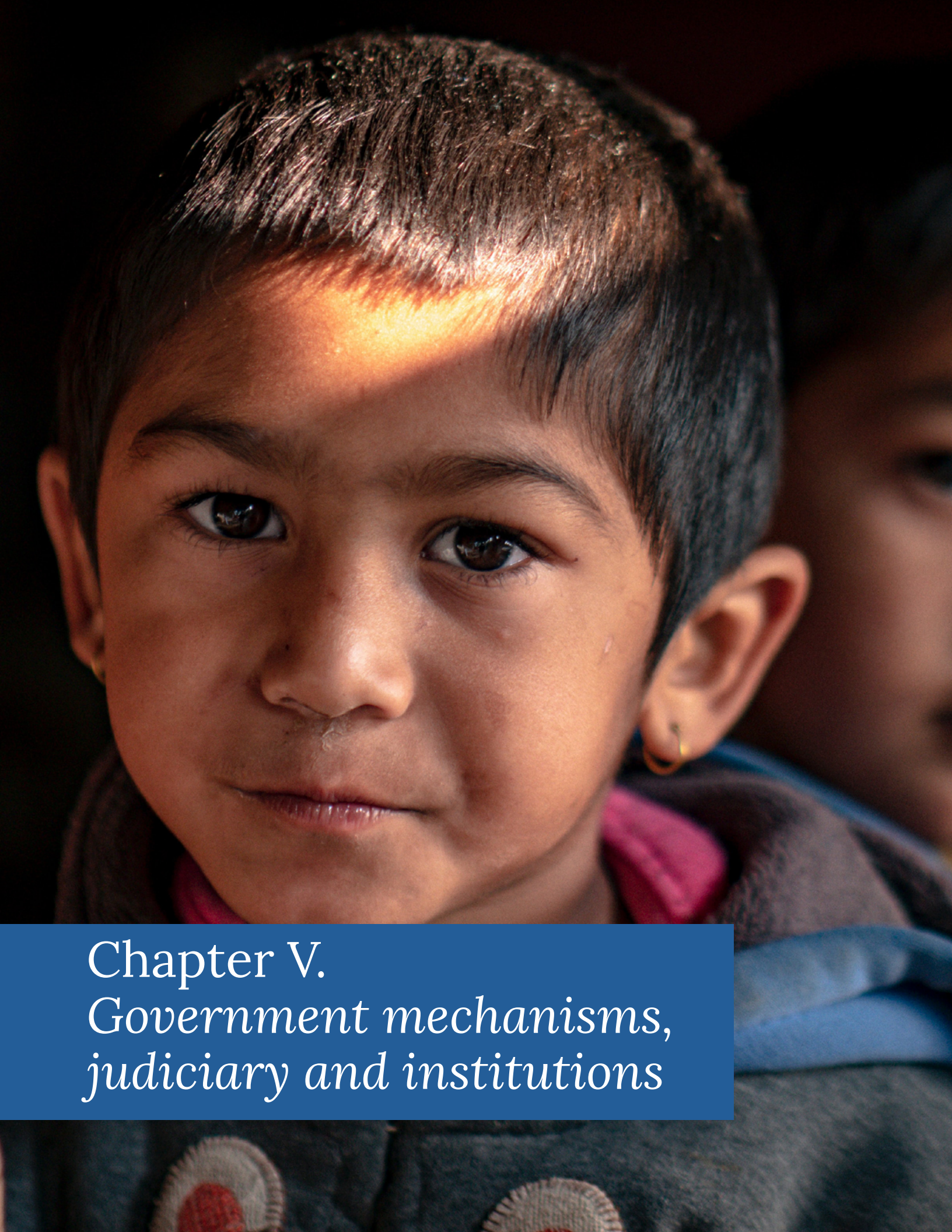
Funds for Prevention of Gender based Violence (Operation) Rules: This Rule creates a fund for rescuing the victims of gender-based violence and providing treatment, legal aid, counseling, loans for livelihood, and rehabilitation.

Crime Victim Protection Act 2075/2018

The Act gives numerous rights to victims of abuse and exploitation to encourage them to lodge complaints without fear and to assure protection of privacy and speedy justice.

The Act provides the right to fair treatment; right against discrimination; right to privacy; right to information relating to investigation, prosecution and court proceedings; right to be safe; right to express an opinion; right to appoint a lawyer; right to be present at and participate in hearings; right to be in a separate room during hearing; right to regain property; right to appeal decisions; and right to compensation and social rehabilitation.

85 <http://www.lawcommission.gov.np/en/archives/15846>



Chapter V.
*Government mechanisms,
judiciary and institutions*

A. Government Mechanisms

1. Anti-Trafficking in Persons Bureau (Anti-TIP Bureau)

The Anti-TIP Bureau was established by a decision of the Council of Ministers, Government of Nepal on 10 June, 2018⁸⁶ to control human trafficking in Nepal. The Anti-TIP Bureau works under the leadership of the Senior Superintendent of Police (SSP). The Bureau was formed for the purpose of investigating and preventing illicit human trade. The Seventh amendment to the Police Regulation published in the Nepal Gazette on 30 September, 2019 prescribed the powers and responsibilities of the Anti-TIP Bureau.

2. Ministry of Women, Children and Senior Citizens (MWCSC) and Nepal Police

The government has assigned the responsibility of curbing human trafficking mainly to the Ministry of Women, Children and Senior Citizens (MWCSC).⁸⁷ The MWCSC released and updated the National Plan of Action against Trafficking in Children and Women for Sexual and Labour Exploitation, which is credited with an increase in reporting cases across the country. The Nepal Police and Women, Children, and Senior Citizen Service (Women Cell) Centers are actively operating under the direct supervision of the Women, Children and Senior Citizen Service Directorate (WCSCSD) in all 77 districts including three Ranges, nine Circles, and three Sectors under the Metropolitan Police Office in Kathmandu Valley and 122 Area police offices, seven Provinces and Federal Police offices totaling to 240 units across the nation at present.

The Ministry of Home Affairs, Ministry of Labour, Employment and Social Security and Ministry of Foreign Affairs are also responsible in the fight against human trafficking.⁸⁹

3. National Human Rights Commission

The NHRC is a constitutional body established as an independent human rights watchdog.⁹⁰ It pays special attention to the violation of human rights, including human trafficking. It publishes a yearly report on the status of combatting trafficking in Nepal.⁹¹

86 Information available at: <https://www.nepalpolice.gov.np/index.php/anti-human-trafficking-bureau-1>

87 Women, Children and Senior Citizen Service Directorate (<https://cid.nepalpolice.gov.np/index.php/cid-wings/women-children-service-directorate>)(<https://www.nepalpolice.gov.np/index.php>)

88 https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf

89 <https://thehimalayantimes.com/kathmandu/nepal-falls-behind-in-combating-human-trafficking-says-nhrc/> Visited on 8/26/2019

90 Article 248, Constitution of Nepal (2015).

91 nhrcnepal.org/index.html

4. Committees for Controlling Human Trafficking

Committees have been set up pursuant to the HTTCA Rules at the district and national level to control human trafficking. There are also committees at the local level formulated according to the Guideline for Formation and Mobilization of Local Committees against Human Trafficking, 2070. These committees coordinate the activities conducted by the Nepal Government and NGOs, prepare an integrated report, and play a coordinating role in rescuing and providing support to survivors. However, after the restructuring of the state from a unitary system to federal, these district and local level committees became less functional and under the recent amendment of the HTTCA Rules in 2020, the National Committee may coordinate with provincial, district and local committees where they exist.

5. Freed *Kamaiyas* Rehabilitation and Monitoring Committee

This Committee recommends to the Ministry of Land Reform and Management land to be used for settling down and cultivation by freed bonded labourers, including H/C. This Committee is also mandated to conduct surveys of bonded labourers including giving the details of the following for land for distribution to H/C:⁹²

- a. Land registered in the name of the Government of Nepal, government companies, Committees formulated by the Government of Nepal, commissions or committees formulated pursuant to Development Committee Act, 2013 (1956 AD), but not used by the Government of Nepal, such a Committee or Commission;
- b. Public or private land, devoid of dense forest and vegetation;
- c. Land of community or forest area devoid of dense forest and vegetation;
- d. Leftover land of public or government after separating the river-sides and river boundaries;
- e. Public or government land located at the boundary of the plot of any person;
- f. The land brought into the possession of the Government of Nepal again pursuant to Rule 10 after allotting it one-time to the freed bonded labours.

Notwithstanding, the Nepal government is the final authority on distributing not more than 5 Kathha land based on the recommendation of the Committees to the freed Bonded labour (H/C) who fall under category of A and B. The priority of land for the distribution to freed H/C is the land on which they are presently settled. In case it is not possible to distribute such land, only then will the Committee recommend that other land be provided to the bonded labourer even after purchasing by the Government. While allotting land to the freed bonded labourers, allotment shall be made in the following manner:⁹³

92 Rule 5(3) of Bonded Labour (Prohibition) Rules, 2010

93 Rule 7 of Bonded Labour (Prohibition) Rules, 2010

- a. Maximum one *Kaththa* in the municipalities or bazaar areas adjoining the national highways.
- b. Maximum two *Kaththas* in the areas adjoining the national highways other than those of the division (a).
- c. Maximum five *Kaththas* in areas other than those of the divisions (a) and (b).

6. National Action Plan

Since there is no separate legislation pertaining to H/C, the Bonded Labour (Prohibition) Act, 2002 is applicable to H/C. The BLA includes as bonded labourers a person working in the name of *Harwa*, *Charuwa*, *Bhaisawar*, *Gaisawar*, *Bardikar*, *Chaukidar*, *Hali*, *Gothalo*, *Kamalariya* or other similar names. It covers all categories of bonded labour which have been practiced in different parts of the country under various names. However, the Act had been implemented only with respect to the rights and interest of *Kamaiyas* and other larger categories such as *Haliyas*, *H/Cs*, *Kamalariyas*, and thus many others were left out. Thus, the Government of Nepal issued an order for the establishment of the Commission for Rehabilitation of *Harwa Charuwa* in 2015. However, this Commission could not bring about the expected results.

A separate law entitled Bill on *Haliya* and Labour Relating to Bonded Labour, 2011 was drafted to abolish *Haliya* and a comprehensive legislation entitled Bill on Bonded Labour (Prohibition, Prevention and Rehabilitation) to cover all categories of bonded labour. The BLA defines *Harwa*, *Charuwa*, *Bhaisawar*, *Gaisawar*, *Bardikar*, *Chaukidar*, *Hali*, *Gothalo*, *Kamalariya* or other similar labourers as “bonded labourer.” This Act deals with the classification of bonded labor, creation of a fund for social security, dispute resolution mechanisms, and rehabilitation of bonded labourers including mechanisms for coordination and monitoring and provisions for complaints and punishments. Importantly, the Act also mandates humane treatment from landlord and employers to prevent actual bonded labour in practice. The key provisions set forth in the Bonded Labour (Prohibition) Act, 2002 are as follows:

a) Classification of Bonded Labour

Although there was no mechanism to address the rights and interests of bonded labourers before the enactment of BLA in Nepal, this Act has brought significant change by protecting the rights and interests of and offering rehabilitation support to the *Kamaiyas* and *Haliyas*. First of all, the BLA acknowledges the categories of bonded labor provided under Rule 3 of the Bonded Labour (Prohibition) Rules, 2067 (2010 AD). The classification is carried out upon the recommendation of the Rehabilitation and Monitoring Committee. Then, the Ministry of Land Reform and Management will classify the freed bonded labourers in order to make their settlements, employment and engagement in activities relating

to income generation as follows:⁹⁴

- i. Class “A” for those who do not possess a house and land in his/her own name or his/her family name.
- ii. Class “B” for those who are settling in public or government land and do not possess any land in his/her own name or his/her family name.
- iii. Class “C” for those who possess up to two *Kaththa* land and a house in his/her own name or his/her family name.
- iv. Class “D” for those who possess more than two *Kaththa* land and a house in his/her own name or his/her family name.

The Welfare Officer⁹⁵ is responsible for the issuance of identity cards based on the classification prescribed in Rule 3; red cards shall be issued to class A, blue cards to class B, yellow cards to class C, and white cards to class D.

b) Distribution of Land Ownership Registration Certificate

Following a decision of the Government of Nepal to allot land, the Welfare Officer may issue Land Ownership Registration Certificates to the freed bonded labourers. The Certificates shall state that such land cannot be mortgaged to secure a loan or transferred for any reason.⁹⁶ However, there shall be no restriction on sharing of the property by the freed bonded labourer or transferring ownership to his/her heirs after his/her demise. Rule 10 provides that if any of the following situations occur, the land allotted to the freed bonded labourer shall be removed from the name of the freed bonded labourer and registered in the name of the Government of Nepal:

- i. After allotment of the land, it comes to light that somebody had obtained the land by submitting false documents based on the identity card of a freed bonded labourer;
- ii. If the person himself/herself or his/her family does not settle in the land allotted to the freed bonded labourer, or if the land is not occupied for a period of three consecutive years or more;
- iii. There was a condition that a person could not be settled in the land set for the freed bonded labourers prior to these Rules coming into force. In the event of this situation, the freed bonded labours may be allotted land elsewhere.

Those freed bonded labours of class A and free bonded labours of class B without a house or having houses but being displaced from a place, who have been allotted land pursuant to these Rules, shall be provided money and timber for construction of a house as decided by the Government of Nepal as a cost for construction of the house.

94 Rule 3, Bonded Labour (Prohibition) Rules, 2067 (2010).

95 Section 10 of the Bonded labor Act has provided a provision of Welfare officer to work as a Welfare Officer in order to perform the work, as may be required, in respect of the right and interest of the freed bonded labourers.

96 Rule 9, Bonded Labour (Prohibition) Rules, 2067 (2010).

c) Formation of Freed Bonded Labourer Rehabilitation and Monitoring Committee and its Functions, Duties and Powers

In order to work in respect of the rehabilitation of freed bonded labourers, Section 8 of the BLA provides for the formation of a Committee at the district level. It requires the formation of a Freed Bonded Labourer Rehabilitation and Monitoring Committee in the districts as prescribed by the Government of Nepal. The composition of the Committee shall include a Chairperson, a Chief District Police Officer, a Chief of the District Education Office, an Officer of DAO, a Chief of Labour Office, a Chief of District Agriculture, and various other members.⁹⁷ Section 9 of the Act provides that the functions, duties and powers of the Committee shall include preparing records of freed bonded labourers, arranging for their rehabilitation, and monitoring whether anyone is engaging in illegal bonded labour. Section 10 of the Act sets forth the duties of the Welfare Officer, which include implementing the Committee's decisions.

d) Order for Formation of Commissions for Freed H/C (2015)

The Government of Nepal declared liberation of *Kamaiya* on July 17, 2000 and *Haliya* on September 6, 2008 and promulgated Bonded Labour (Prohibition) Act and Rules for the liberation, rehabilitation and implement government programs. Since there was a feeling of lack of any plan and programs for *Harwa/Charuwa*, the Government of Nepal passed an order for the constitution of a Commission for Freed H/C in 2015.

The order created a 17 member-commission under the head of the Minister or State Minister for Land Reform and Management. The Commission is mandated to work in nine districts, namely, Sunsari, Siraha, Saptari, Dhanusha, Mahottari, Sarlahi, Rautahat, Bara and Parsa from Tarai region. The order also provides for an implementation committee at the national level and a committee at the district level for implementation of decisions. The order also provides for identification of *Harwa/Charuwa*, collection of data, record keeping and categorizations. Moreover, the order provides a rehabilitation package for freed H/C by providing lands and other schemes. This Commission is also mandated to distribute land free of cost and provide grants for the purchase of land for settlement after classifying the H/C in different categories as per the order.

Further, this commission is supposed to work for formation of policy and institutional management along with implementation of programs and management of the budget from the Government of Nepal. The Government of Nepal has planned for the rehabilitation of H/C after classification as per the order and allocated budget in fiscal year 2073/74 BS. However, the Government of Nepal has yet to form a commission as prescribed by the order with office, staff and resources.

97 Bonded Labour (Prohibition) Act, 2058 (2002), Sec. 8.

B. Judiciary and its Initiatives

The Constitution of Nepal (2015) guarantees human rights as fundamental rights and provides mechanisms for enforcement of such rights were violated. The judiciary is a guardian of the rights and liberties of people. Therefore, powers relating to justice in Nepal are exercised by courts and other judicial bodies in accordance with the Constitution, other laws and the recognized principles of justice. All must abide by the orders or decisions made by the Supreme Court. The Nepali judiciary is being reformed in accordance with the Strategic Plan of the Nepali Judiciary. In order to make the judicial process more accessible to the poor and marginalized, the Access to Justice Commission was established in 2015 and is chaired by the Chief Justice of Nepal.

Som Prasad Paneru, on behalf of FNC v. Government of Nepal, Office of Prime Minister and Council of Ministers (Nepal Law Reporter 2063 BS, Vol. 5, Decision No. 7705)

Supreme Court of Nepal passed an order of Mandamus in the name of Nepal Government for the effective implementation of Bonded Labour (Prohibition) Act, 2002 as the practice of Kamlariya violate rights of children guaranteed by the Articles 9, 14, 15, 16, 18, 19, 28, 29, 31 and 32 of the Convention on the Rights of Child.

It is impossible to abolish child labour by merely having in place the provisions of CRC and promulgating legislation. Nepali society is still based on convention, superstition, poverty, illiteracy and lack of awareness as there is no curriculum to educate on these fundamental rights.

Hence, Supreme Court has passed a directive order in the name of Government of Nepal to manage curriculum for the school children that cover basic rights listed in the CRC, ICCPR and ICESCR of which Nepal is a party.

1. The Supreme Court

The Supreme Court is the court of record in the sense that its decisions are recorded for perpetual reference. The Supreme Court hears appeals from decisions of High Courts. In addition, the Supreme Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto. The Supreme Court shall have the final authority to interpret the Constitution and laws.

2. Subordinate Courts

Below the Supreme Court, there are seven High Courts and eleven other branches of High Courts in Nepal. The High Court has jurisdiction to hear appeals from District Courts and it shall, for the purpose of enforcement of the fundamental rights conferred by this Constitution, issue appropriate orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto. There are 77 district courts, one in each district of Nepal, functioning as trial courts. District Courts have original jurisdiction in civil and criminal matters and also hear appeals from cases decided by the local judicial committees. Apart from the judiciary, there are some quasi-judicial bodies which also have jurisdiction to hear minor disputes relating to property and petty crimes.

Uttar Tamata v. Government of Nepal, Office of Prime Minister and Council of Ministers (Nepal Law Reporter 2064 BS, Vol. 10, Decision No. 7895)

It is a major responsibility of the State to enact laws including special economic packages and policies for the protection, empowerment and development of all freed bonded laborers.

The formation of a Committee is required for empowerment, development and rehabilitation of freed bonded labourers without any discrimination based on caste or any other grounds, taking account of the provisions of State policies.

Although the Constitution and laws declared emancipation from such bonded situations for all bonded laborers, they could not be in a position to enjoy rights and freedom guaranteed as they have been exploited and deprived of these rights and educational opportunities for centuries. Hence, protection from the State for certain period is required.

Proviso clause of Article 11 of the former Constitution and Article 13 of the present Constitution have provided a special provision treating freed bonded labourers as special protective categories.

Supreme Court issued an order of Mandamus for the formation of Committees in order to achieve objective of laws and to protect rights and interest of bonded labourers of all categories without any discriminations as provided by the Constitution.

3. Access to Justice Commission

The Supreme Court of Nepal established the Access to Justice Commission on 26 July, 2015⁹⁸, realizing the importance of easier access to justice for marginalized communities and sections of the country. The main objectives of the Access to Justice Commission are to increase access to justice for special categories of people and the poor. A nine-member Access to Justice Commission was formed under the Convener-ship of Chief Justice of Nepal as per 13(e) of the Supreme Court Rules. The following are the other objectives of the Commission:

- To enhance awareness among the people about the judicial process;
- To tender suggestions and feedback for reform of the judicial system;
- To coordinate and collaborate with concerned agencies for enhancing easy access to justice;
- To conduct awareness campaigns focusing on rights of women, poor, helpless and incapable groups;
- To prepare and implement a Strategic Plan for enhancement of access to justice;
- To take necessary steps for reduction of obstacles to easy access to justice;
- To provide recommendations for policy reform.

The Commission has prepared formats of different types of applications filed with the court with the aim of supporting easy access to justice. The court staff is available to support illiterate clients in completing applications. The complaints can be lodged on service of Courts directly to the Chief Justice and Registrar of the Supreme Court.

C. Local and Government Institutions

The following institutions are charged with the responsibility of ensuring the rights and protection of trafficking victims.

1. Rural Municipality and Municipality

These agencies have been entrusted to hear and settle cases at the local level. They are also mandated to discern whether anyone is engaging in bonded labour and required to submit its report to the freed bonded labour rehabilitation and monitoring committee every six months. These agencies also have been authorized to keep the records of vital registration of its areas and provide recommendations on birth, marriage, migration, divorce, and death registration which would be useful for verification of family relationship, providing citizenship certificates, etc.

98 <http://supremecourt.gov.np/a2jc/Page/about>

There will be a three-member Local Judicial Committee at the rural municipality and municipality to be coordinated by its Vice chairperson in the case of a rural municipality and its Deputy Mayor in case of a Municipality in order to settle disputes under their respective jurisdiction. The Local Judicial Committees are authorized to hear cases relating to divorce and domestic violence including mediation and arbitration.

2. District Administration Office (DAO)

The DAO has a broad role. In each district, it operates as an agent of the Nepal Government for public service delivery. Its primary objective is providing security to the life and property of citizens by maintaining peace, security, and good governance in its district. Anyone can file a petition to maintain peace and security, and the DAO can receive a complaint if a police office does not accept a duly lodged FIR in their office. The DAO is also mandated to look into and decide upon cases relating to public nuisance. The Chief District Officer (CDO) is the highest administrative officer in the DAO.

3. District and Area Land Revenue Office

Land Revenue Act, 1976 authorizes collection and realization of dues on land revenue including land cultivation. The Act also provides definitions of government land and public land. The District and Area Land Revenue Office is also mandated to buy and sell and transfer ownership of land and immovable properties. The office also keeps records of land, registration of land and other matters relating to land. Though this Act forbids the cultivation of land which does not belong to personal property, the Act provides for an application to be filed for cultivation subject to approval from the prescribed Committee under the Act.

4. Survey Office

This office is responsible for keeping records of land and documents relating to cadastral. The service relating to cadastral and copies of land maps can be obtained from the office. One who is not satisfied with a decision of this office can approach the court for a remedy.

5. Land Reform Office

This office is responsible for keeping records of tenants, owner of land, authorization of tenants and their changes, and limitation of land, etc. If there is a dispute relating to tenancy rights, an application is filed in the District Land Reform Office.

6. District Police Office

The District Police office has a broad mandate to maintain peace and security in the district including dealing with cases in which the Government of Nepal is a party.

They conduct investigations into cases of murder, rape, theft, human trafficking, battery, caste-based discrimination and exploitation, witch craft, and public nuisance after an FIR has been lodged by the aggrieved parties or any other persons. In this process, they register the FIR, arrest the person suspected of the crime, and take statements of victims and the accused, including witnesses and experts. During this process, they also collect and protect evidences. Finally, they forward the case file to the District Government Attorney with their opinion on prosecution within the stipulated time period provided by the respective legislation.

7. Office of the District Government Attorney

This office is responsible for deciding whether or not to prosecute cases submitted by the police after investigation. The District Government Attorney represents the Government of Nepal in a case where the Government is a party. The Government Attorney has a decisive role in the investigation at different stages. It can direct investigating police officers during the stages of investigation. The Government Attorney is responsible for providing information on the cases to the victims of crimes and for ensuring the rights and protection of the victims.

8. Labour Office

This office hears disputes between labourers and management relating to child labour, wages and other matters.

9. District Legal Aid Committee

The Legal Aid Act, 2054 B.S. establishes District Legal Aid Committees, which provide legal aid to indigent persons at the district level and a list a panel of lawyers who provide legal aid. The Government Attorney chairs the Committee. According to the Legal Aid Act and Rule 2055 B.S., a person who has an annual income of less than the NRs 40, 000 (Forty Thousand) shall be entitled to legal aid as per the recommendation made by the rural municipalities and municipalities.

10. Provincial and Local Child Rights Committee

The Act Relating to Children, 2075/2018 has provisions for the establishment of Provincial Child Rights Committee in each province, to be chaired by the Minister of the Province overseeing the matters related to children and Local Child Rights Committee in each Local Level, to be chaired by the member of the Rural Municipality/Municipality designated by the Vice-Chairperson or Deputy-Mayor of such Rural Municipal Executive or Municipal Executive Respectively. The Act has also provision for the appointment of a Child Welfare Authority at the Local Level in order to, inter alia, respect, protect and promote the rights

of the child to carry out child protection acts.





Chapter VI. *Relevant case law*

These are some landmark cases related to trafficking and prosecution of trafficking crimes:⁹⁹

GoN v. Sita Ram Thing, Makawanpur District Court (2012): A woman who had been sold to a Mumbai brothel escaped and returned to Nepal after five years. The accused were charged with both trafficking and transportation, pursuant to HTTCA Sections 3, 4(1), and 4(2). Penalties were sought under Section 15(1) and compensation under Section 17. All three perpetrators were convicted and sentenced to 20 years' imprisonment and a fine of 2 lakh rupees each. In addition, the victim was ordered to be compensated 1 lakh rupee from each perpetrator, to be paid from the fine and rehabilitation fund.

GoN v. Bajir Singh Tamang, Sindhupalchok District Court (2012): The accused was convicted of trafficking six women/girls from Sindhupalchowk and was sentenced by the District Court to a 170-year jail term.

Majari Shah (code name) vs. Ram Kumar Sonam, District Court Makawanpur (2012): A woman was trafficked by a perpetrator who sold her to a brothel in India. The prosecution filed a case against the perpetrator for both trafficking and forced prostitution, and the perpetrators were sentenced to 20 years for trafficking and 14 years for forced prostitution. This was a landmark case because in the past, the Nepali prosecution used to practice a single charge only (i.e., trafficking) and ignored the other crimes committed against survivors, but in this case the judiciary used victim-centric jurisprudence by utilizing the different provisions under the legal framework to sentence the perpetrators for various crimes.

GoN v. Ashish Thapa, Rupandehi District Court (2012): An orphan home director accused of sexual exploitation of resident girls was penalized with 15 years' imprisonment and ordered to provide NRs. 100,000 to each survivor as compensation.

Advocate Sapana Pradhan Malla Vs Government of Nepal, Prime Minister's Office Writ No. 3561 of 2006: A Supreme Court case that includes guidelines for maintaining confidentiality of victim in access to justice process.

Suresh Lama et. al. V His Majesty Government, Human Trafficking, (NLR, 2005, Dec. No. 7571, Pg. No. 877): 2013 Supreme Court directive to adopt a "fast-track" system for human trafficking cases. Unlike other criminal acts, there may not be witnesses or by-standers in the cases of sexual exploitations against women. Therefore, the victim's testimony and the reports of her physical examination constitute the evidence. Clever, deceitful and selfish people are found to be the perpetrators of this organized crime whereas under aged, immature, illiterate, ignorant women/girls are the victims.

⁹⁹ See <https://asiafoundation.org/resources/pdfs/GONreportonantihumantraffickinginitiativesFY20122013.pdf> for information on cases.

Prakash Mani Sharma Vs. Nepal Government (NKP 2008/2065, Dec. No. 7995): This case sought to prevent sexual and economic exploitation and harassment of women working at places like dance restaurants, dance bars, cabin restaurant, massage parlor, Dohari shaja etc. More than 80% of those employed in this sector are women. The Supreme Court issued an order of mandamus to enact specific legislation to legally regulate such businesses. Moreover, the Supreme Court set guidelines enabling it to regulate such establishment unless specific legislation enacted, indicating that the role of the judiciary is to protect the socio-economic rights of women.

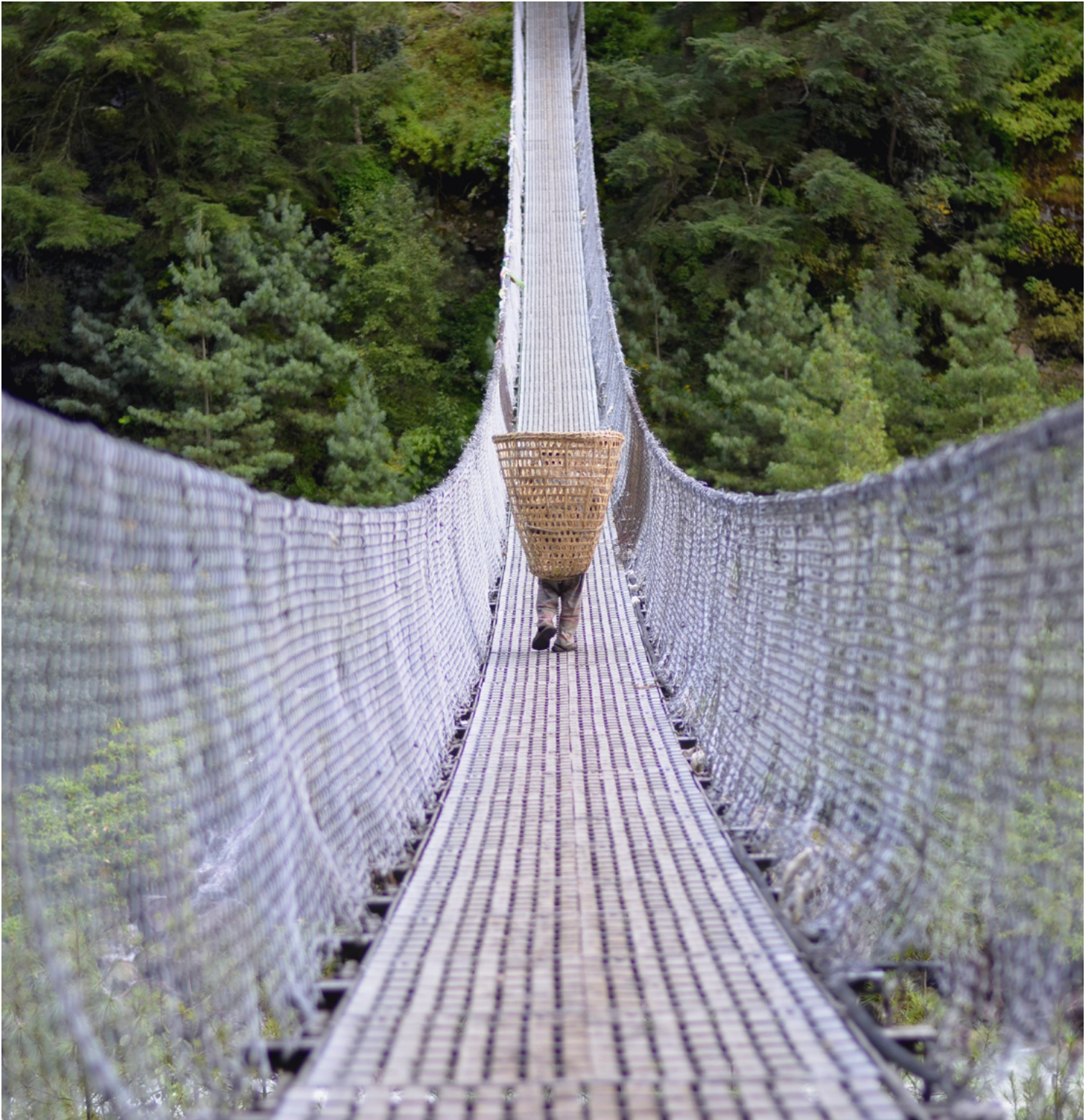
Lok Bahadur Karki v. Nepal Government (NKP 2015/2072 BS, Issue 2, Decision No. 9346): It is not necessary to complete the action of trafficking and transporting a person to commit a crime under Section 4(2)(b) of the HTTCA. A crime can occur where one is taken from his/her house, place, or parental custody to another part of the country, even if the ultimate destination is not reached.

Depak alis Dependra Pathak v. Nepal Government (NKP 2018/ 2075, Issue, Decision No. 10052): In a trafficking case, the victim's statement is important evidence regarding whether the victim remained in the control of the traffickers, as the victim herself is the evidence that she was trafficked. The charge sheet can be proved from the evidence of the trafficking and the statement of the accused from the case file. In this case, the onus of proof remained with the accused to show that the incident was fake and the charge was wrongful.

Shyam aka Rup Bahadur Chhetri v. Nepal Government (NKP 2011/2068 Issue 12, Decision No. 8732): Shyam aka Rup Bahadur Chhetri was charged with forcing two girls into prostitution. Upon rescue, the survivors made a statement before the court that Rup Bahadur held them in a hotel room, did not let them leave the hotel, and forced them into prostitution. Later, during the trial proceeding, the survivors changed their statement and said that they were not forced into prostitution or rescued from the hotel and that the statement made initially was based on coercion and influence by the police. Despite the fact that the survivors changed their initial statement, the Supreme Court convicted Rup Bahadur Chhetri, stating that the court could not trust that the statement made by the survivors in front of the adjudicating judge or the court was based on coercion or influence. The initial statement made before the court was to be used as evidence and could not be considered otherwise, even if the survivors subsequently changed their statements. The Court also recognized the possibility of undue influence or threat by the perpetrator during the time leading up to trial.

Nepal Government V. Sanman Nepali (NKP 2013/2070 BS Issue 10, Decision No. 9064):

The statement of a victim taken right after the incident of trafficking should be considered as direct proof as per Section 10(1)(b) of the Evidence Act, 2031 BS. In this case, the victim testified as to her statement given to the Police Office after escaping from the place where she had been sold, and she also gave a similar statement in the court. In this context, the denial of the accused was insufficient to prove his innocence.





Annexure 1 Checklist for Conducting Human trafficking Intervention

1. Have you secured the victim in a dignified manner?
2. Have you separated the victim and the accused?
3. Have you conveyed to the victim that the operation is to rescue her and not to convict her?
4. Have you ensured that no intimidating questions are asked by the police and that statement is recorded by a woman police officer in the presence of a female social worker?
5. Have you ensured that victim has collected all her property/belongings before leaving the brothel?
6. Have you ensured that victim is provided with immediate assistance like clothing, food medical needs etc.?
7. Have you produced the victim before the local child welfare authority?
8. Have you ensured that victim is sent to a safe custody of shelter home?
9. Have you ensured that victim receives counselling from a trained professional counsellor?
10. Have you noted down the family details of the victim to initiate tracing of family?
11. Have you shared all relevant facts with regards to trafficking and abuse as disclosed by the victim to the concerned Investigation Officer?
12. Have you shared all facts and details with regards to court proceedings with the victim?
13. Have you identified the risk factors before repatriating / re - integrating victim back to family?
14. Have you taken necessary steps to re-integrate the victim back to society and make her self-reliant either through education or vocational training or employment options?

Annexure 2 Checklist for Conducting Human trafficking Intervention

To be filled up by police office

Registration no.:

Registration Date:

First Information Report Filed in (or submitted to)

Police Office (Name and address of Police office)

1. Name, surname and address of the informant (person submitting the application or notice):
2. Designation of the case:
3. Name, surname, address and identification marks of the accused:
4. Place, date and time of the occurrence of crime or place where crime occurred or will occur:
5. Description of the application or Information:
6. Evidence relating to the crime, if any:
7. Other description relating to the crime:
8. The statements mentioned above are true to the extent of my knowledge and, if proved false I shall abide by the law. I will present before the court during the proceeding of the case or when asked by the police in the course of investigation.

Date:

Signature of the applicant or informant

Annexure 3 Format of Complaint by Victims of Domestic Violence Submitted to

Complaint

I (victim) aged years, resident of district Municipality/Village Development Committee, Ward No, submit this complaint letter requesting necessary action against, aged resident of district Municipality/ Rural Municipality, Ward No for committing an offence of domestic violence upon mentioning the following details.

1. Where domestic violence has taken place or is going to take place or is taking place:
 - a. Place,
 - b. Date,
 - c. Time,
2. Nature of domestic violence:
 - a. Physical torture,
 - b. Mental torture,
 - c. Sexual torture,
 - d. Financial torture,
 - e. Other
3. Consequence of domestic violence on victim.
4. If anyone other than the victim has seen or has knowledge of domestic violence his/her name and address:
 - a.
 - b.
 - c.
5. Evidence, if any:
6. If complaint is lodged in any other Complaint Hearing Body, name of such body and date of such complaint.
7. The statement mentioned above is true and correct, if proved otherwise I shall abide by law.

Complainant's Name:

Signature:

Name:

Address:

Date:

Annexure 4 Format of application to be submitted for seeking legal aid

Shree Legal Aid Committee

Subject: To provide Legal Aid

I need Legal aid so I hereby request to be entitled for legal aid mentioning the following details.

1. A short detail about the subject matter for which legal aid has to be provided:
2. The details of family status:
3. The details of economic status: My major occupation is except that I am not engaged in any job/business/occupation. Even though I have other job/business/occupation my net annual income does not exceeds Forty Thousand Rupees.

To establish the details mentioned above, the original and duplicate copies of the following documents are attached herewith.

- 1.
- 2.
- 3.

The detail mentioned above is true if proved false I shall bear the obligation of prevailing law.

Applicants

Signature:

Full Name, Surname:

Address:

Annexure 5 Format of written submission/argument

Submitted to Court

Written Submission/Argument

For the year of Case No

..... Bench

Honorable Judge

Mr./Ms., Government Attorney,, on behalf of Written
Submission Presenter/Prosecutor/Opponent

v.

.....

Defendant/ Petitioner/Opponent

Case/Writ:

I humbly present this written submission/ argument before this honorable bench of court as per order of the court dated or the Rule of the Regulation with the points mentioned below:

1. The facts of the case have been not been reiterated hers as it is there in the case file.
2. Main arguments of the prosecutor/petitioner
3. Written reply/defendant's argument in brief
4. Main points made or presented during the pleading by the defendant lawyers. If there is an order by the court to the parties to present written submission/argument.
5. Questions for the decision to the court
 - a.
 - b.
 - c.
6. The following arguments, with the point wise, have been presented on behalf Nepal government as per the questions for decision to the court mentioned on above serial no 5.
 - a.
 - b.
 - c.
7. I hereby humbly request to the honorable court to do following decision/order

On behalf of written submission/
argument presenter

Signature

Full name

Designation

Done on (date)

Annexure 6 Format of the First Information Report

To be filled up by police office

Registration no.:

Registration Date:

First Information Report Filed in (or submitted to)

Police Office (Name and address of Police office)

1. Name, surname and address of the informant (person submitting the application or notice):
2. Designation of the case:
3. Name, surname, address and identification marks of the accused:
4. Place, date and time of the occurrence of crime or place where crime occurred or will occur:
5. Description of the application or Information:
6. Evidence relating to the crime, if any:
7. Other description relating to the crime:
8. The statements mentioned above are true to the extent of my knowledge and, if proved false I shall abide by the law. I will present before the court during the proceeding of the case or when asked by the police in the course of investigation.

Date:

Signature of the applicant or informant

Annexure 7 Format of the Complaint by Victims of Domestic Violence

Submitted to

Complaint

I (victim) aged years, resident of district Municipality/Rural Municipality, Ward No, submit this complaint letter requesting necessary action against, aged resident of district Municipality/Rural Municipality, Ward No for committing an offence of domestic violence upon mentioning the following details.

1. Where domestic violence has taken place or is going to take place or is taking place:
 - a. Place,
 - b. Date,
 - c. Time,
2. Nature of domestic violence:
 - a. Physical torture,
 - b. Mental torture,
 - c. Sexual torture,
 - d. Financial torture,
 - e. Other
3. Consequence of domestic violence on victim.
4. If anyone other than the victim has seen or has knowledge of domestic violence his/her name and address:
 - a.
 - b.
 - c.
5. Evidence, if any:
6. If complaint is lodged in any other Complaint Hearing Body, name of such body and date of such complaint.
7. The statement mentioned above is true and correct, if proved otherwise I shall abide by law.

Complainant's Name:

Signature:

Name:

Address:

Date:

Annexure 8 Format of Application to be Submitted for Registration of a Group (*Relating to Sub rule (2) of Rule 14*)

The Welfare Officer,
Land Revenue Office,
Subject: Request for Group Registration

Whereas, we intend to register a Group to conduct an income generating business in union, we have submitted this application with the following details along with the fee required for the application.

1. Name of Group:
2. Contact Address of Group:
 - a. District:
 - b. Municipality/Rural Municipality:
 - c. Ward No.:
 - d. Phone No.:
3. Proposed number of families in the Group:
4. Proposed work of the Group:
5. Financial Resource of the Group:
6. Other details:

Of the Chief Member of the Group

Signature
Name, Surname:
Address:
Date:

Documents to be enclosed with the application:

1. Two copies of the Rules and Regulation of the Group
2. Copy of the decision made for the Group registration.
3. Citizenship Certificates of the members of the Group and copies of identity cards of the freed bonded labourers.

Annexure 9 Certificate of Group Registration (Relating to Sub rule (3) of Rule 14)

M/S.....
.....(Group)

Following the decision dated, this certificate has been issued to you on registration of the Group of freed bonded labourers, named

Welfare Officer's:

Signature:

Name, Surname:

Office Stamp Designation:

Date:-

Renewal of the Certificate

Date of Renewal Period of Renewal	Validity	Renewal Fee	Signature of the Renewing Authority

Annexure 10 Format of Application for Requesting Loans (Relating to Sub rule (1) of Rule 18)

The Welfare Officer,
Land Revenue Office
Subject: Request for Loan

Dear Sir/Madam,
As I/we are in a need of Rupeesto dowork, I/we have submitted this application with the following details with a request to make avail of the amount as a loan.

1. Of the freed bonded labour or Group:
 - a. If a person, Name Surname:-
 - b. No. of Identity Card and Class:-
 - c. Address:-
 - d. If included in a Group, name of the Group:-
2. Purpose of Loan Request,-
 - a. If going to purchase land,-
 - i. Whether land has been acquired or not pursuant to these Rules:-
 - ii. Region of the land intending to purchase and the area of the land:-
 - b. If going to do business,-
 - i. Name of Business:-
 - ii. Location of business operation:-
 - iii. Estimated Cost:-
 - iv. Market that will consume produced goods:-
 - v. Time required for profit earning from the produced goods:-
 - vi. Estimated profit in a year:-
 - c. If requesting loan to purchase an aero plane ticket for going to foreign employment,-
 - i. Country Intending to Go for Employment:-
 - ii. The Company Working with and Description of Work:-

iii. Remuneration to Receive for the Work:-

3. Purpose of Loan Request,-

- a. Amount of loan taken:-
- b. For what business purpose the loan was taken:-
- c. Date of loan paid off:-

4. Purpose of Loan Request,-

Applicant's,-

Signature:-

Name Surname:-

Date-

Documents to be submitted with the Application:-

- 1. Copy of Identity Card of the freed bonded labour,
- 2. Copy of Nepali Citizenship Certificate,
- 3. Copy of the training certificate, provided one has received such training,
- 4. If intending to run a business on behalf of a Group, recommendation from the Group,
- 5. If intending to go to foreign employment, the proof of Visa receipt from the concerned country.

Annexure 11 Format for the Application to be submitted seeking Legal Aid

Shree Legal Aid Committee

Subject: To provide Legal Aid

I need Legal aid so I hereby request to be entitled for legal aid mentioning the following details.

1. A short detail about the subject matter for which legal aid has to be provided:
2. The details of family status:
3. The details of economic status: My major occupation is except that I am not engaged in any job/business/occupation. Even though I have other job/business/occupation my net annual income does not exceeds Forty Thousand Rupees.

To establish the details mentioned above, the original and duplicate copies of the following documents are attached herewith.

- 1.
- 2.
- 3.

The detail mentioned above is true if proved false I shall bear the obligation of prevailing law.

Applicants

Signature:

Full Name, Surname:

Address:

Annexure 12 Harassment Protection Letter

Sub-Inspector Police Station

District Date

Subject: Provision to Protect Released Bonded Labourers

Sir,

On the basis of the complaint given by....., it was found that the following persons were treated as bonded labourers by....., the operators/owners of the

.....

.....are released from the bonded labour system byand are going to stay in their native village at

We apprehend that there may be threats and harassment from eitheror their associates. We request you to provide the victims with appropriate protection, enabling them to live in their village without any fear.

Yours faithfully,.....

COPIES OF RELEASE CERTIFICATES ATTACHED

Annexure 13 Format of the First Information Report

To be filled up by police office

Registration no.:

Registration Date:

First Information Report Filed in (or submitted to)

Police Office (Name and address of Police office)

1. Name, surname and address of the informant (person submitting the application or notice):
2. Designation of the case:
3. Name, surname, address and identification marks of the accused:
4. Place, date and time of the occurrence of crime or place where crime occurred or will occur:
5. Description of the application or Information:
6. Evidence relating to the crime, if any:
7. Other description relating to the crime:
8. The statements mentioned above are true to the extent of my knowledge and, if proved false I shall abide by the law. I will present before the court during the proceeding of the case or when asked by the police in the course of investigation.

Date:

Signature of the applicant or informant

The background of the entire page is a photograph. The top half shows a clear blue sky. The bottom half shows a dense urban landscape with multi-story buildings in various colors (red, orange, grey). In the far distance, a range of rugged mountains with patches of snow or light-colored rock is visible under the blue sky.

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