



HUMAN TRAFFICKING FIELDBOOK

PROCEDURES FOR RESCUING
BONDED LABOUR VICTIMS

HUMAN TRAFFICKING FIELDBOOK

SOP's for Bonded Labour Interventions

Procedures for Rescuing Bonded Labour Victims

From

Human Trafficking Legal Reference Toolkit

Standard Operating Procedures to Fight Bonded Labour and Sex Trafficking

A Handbook for NGOs and their Lawyers

2nd Edition, October 2019

If you find this manual useful in your advocacy, please feel free to share it with any others working in India. It is copyrighted under a limited Creative Commons license that permits the copying and distribution of this manual without permission, as long as no financial gain is realized and credit is given to Justice Ventures International. If you're reading this as a hard copy, you can obtain a soft copy by contacting us at info@justiceventures.org.

This work is licensed under a creative commons Attribution NonCommerical 4.0 International License.



Produced by:

Justice Ventures International

www.justiceventures.org

REFER TO HUMAN TRAFFICKING HANDBOOK FOR APPENDICES



SUMMARY OF PROCEDURES FOR RESCUING BONDED LABOUR VICTIMS



IDENTIFYING BONDED LABORERS

District Administration (DA) inquires into existence of bonded labour based on evidence provided by NGO

1.1

1.2

SUBMITTING THE BONDED LABOUR COMPLAINT

DA (or appointee) receives complaint; Police, AHTU and Labour Dept can also receive complaint but must coordinate with DA prior to investigation.



1.3

PREPARING THE BONDED LABOUR RESCUE PLAN

Rescue team (DA, Police, Labour and Revenue Dept.) attend pre-rescue meetings with NGO to schedule rescue date and review checklist of responsibilities.



1.4

INITIATING THE BONDED LABOUR RESCUE

DA oversees and conducts inquiry / identification / release at rescue site; Labour Dept. records victim statements; Police arrests accused. If child labour involved, involve Task Force on Child Labour.



1.5

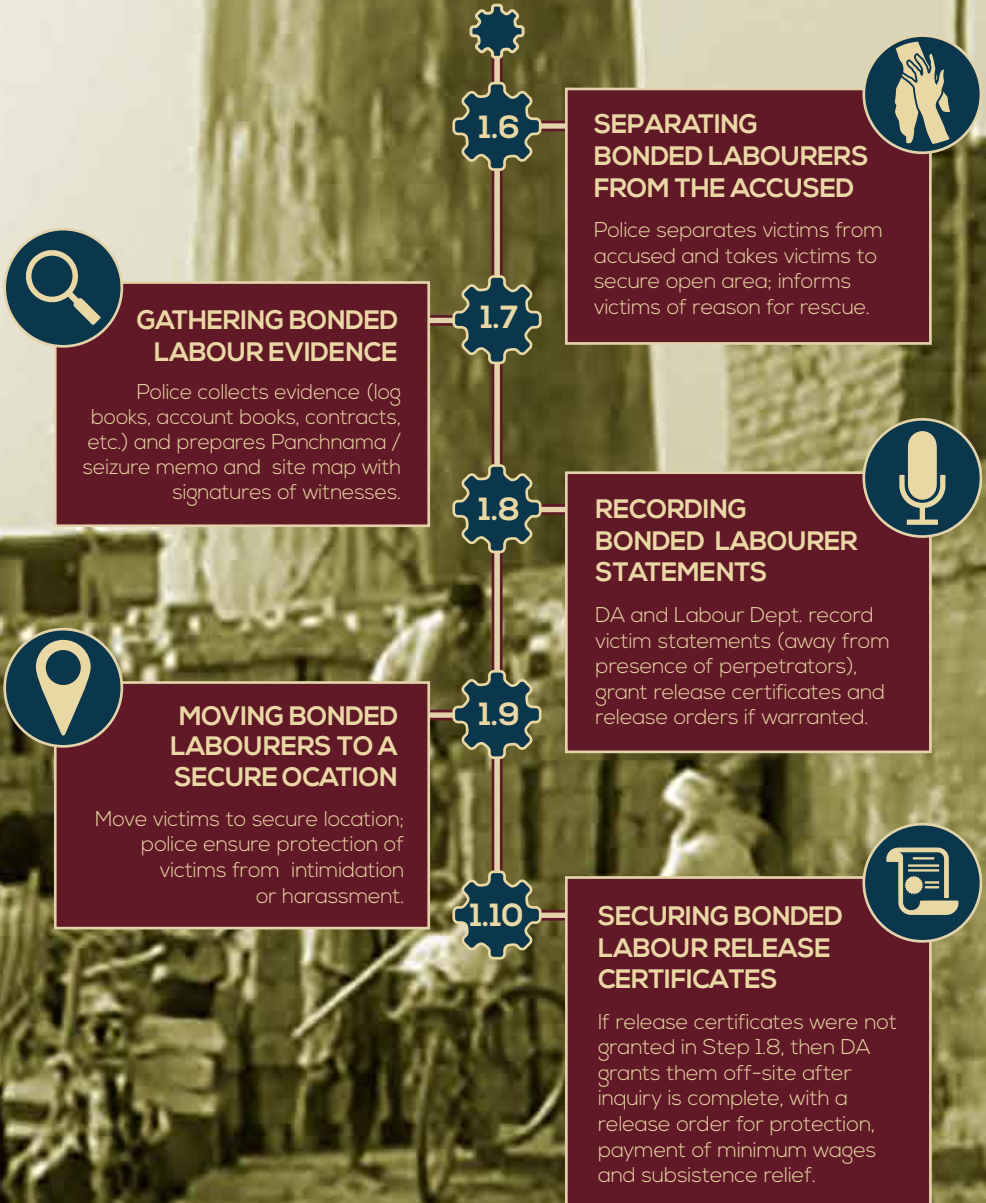
SECURING THE BONDED LABOUR RESCUE SITE

Police secures perimeter of the rescue site and prevents hiding or removing of evidence; Labour Dept. shuts down facility if child labour practiced.



Continued on the next page.

Continued from the previous page.





RESCUING BONDED LABOUR VICTIMS

STEP

1.1

IDENTIFYING BONDED LABOURERS



NGO

The NGO should gather and verify facts supporting the existence of bonded labour.

ADVOCATE

The Advocate should confirm whether the facts gathered support the legal elements of bonded labour and related offences under the Bonded Labour Act, 1976.

STEP

1.2

SUBMITTING THE BONDED LABOUR COMPLAINT



NGO

The NGO should use the facts gathered to draft a bonded labour complaint to be submitted to the applicable District Magistrate and the Magistrate's subordinates.

ADVOCATE

The Advocate should review the bonded labour complaint to ensure it presents a persuasive legal argument for initiating a bonded labour rescue and assist the NGO in submitting the complaint to the District Magistrate and the Magistrate's subordinates.

STEP

1.3

PREPARING THE BONDED LABOUR RESCUE PLAN



NGO

The NGO should prepare a bonded labour rescue plan.

ADVOCATE

The Advocate should assist in the preparation of the bonded labour rescue plan by advising the NGO on legal provisions and concepts relating to bonded labour.

STEP

1.4

INITIATING THE BONDED LABOUR RESCUE



NGO

The NGO should initiate the bonded labour rescue with other stakeholders according to the rescue plan.

ADVOCATE

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

STEP

1.5

SECURING THE BONDED LABOUR RESCUE SITE



NGO

The NGO should assist the Police in securing the rescue site to ensure no incriminating evidence is lost.

ADVOCATE

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

STEP

1.6

SEPARATING BONDED LABOURERS FROM THE ACCUSED (SAME DAY OF RESCUE)



NGO

The NGO should assist the Police in separating the victims of bonded labour from the perpetrators and moving them to an open area on the site of incidence.

ADVOCATE

The Advocate should ensure a fair inquiry and safety of the victims by making sure they are separated from the perpetrators and the police are advised in this process if necessary.

STEP

1.7

GATHERING BONDED LABOUR EVIDENCE (SAME DAY OF RESCUE)



NGO

The NGO should ensure that the Police collect all available evidence pertaining to the existence of bonded labour.

ADVOCATE

The Advocate should advise the NGO on the legal collection of evidence about bonded labour and ensure that the Police include all available evidence in the Panchnama/seizure memo.

STEP

1.8

RECORDING BONDED LABOURER STATEMENTS (SAME DAY OF RESCUE)



NGO

The NGO should assist the government officials with recording the statements of the bonded labour victims.

ADVOCATE

The Advocate should advise the government officials on preliminary questions to ask the victims to determine the existence of bonded labour and should brief the victims about their rights before the process of recording their statement begins.

STEP

1.9

MOVING BONDED LABOURERS TO A SECURE LOCATION (SAME DAY OF RESCUE)



NGO

The NGO should ensure that bonded labourers gather their belongings and are moved to a secure location.

ADVOCATE

The Advocate should file a protection order to protect the bonded labourers from threats and harassment from the perpetrators.

STEP

1.10

SECURING BONDED LABOUR RELEASE ORDER (1 TO 3 DAYS)



NGO

The NGO should make an application to the SDM or the designated officer under him/her requesting the prompt issuance of a Release Order and Release Certificates.

ADVOCATE

The Advocate should accompany the NGO to the SDM's office to ensure the prompt issuance of a Release Order and Release Certificates for all bonded labourers as required by law.

STEP 1.1 IDENTIFYING BONDED LABOURERS

Timeline: The process of identifying bonded labourers could take 2 months to 8 months

NGO	ADVOCATE
The NGO should gather and verify facts supporting the existence of bonded labour	The Advocate should confirm whether the facts gathered support the legal elements of bonded labour under the Bonded Labour Act, 1976 and other related offences.
Commentary	
<p>The NGO and/or the Advocate may receive information about the incidence of bonded labour from one of the following sources:</p> <ul style="list-style-type: none"> • Victim or Victim's Family/Community/ Survivor; • NGO/ Community Leaders; • District Administration/Village Panchayat/ Other department's e.g. Labour Department; • Anti-Human Trafficking Units (State and District level); • Any person having knowledge of the crime; • Informants 	<p>The Advocate should ascertain whether the information gathered shows existence of agreements of the nature described under Section 2(g) of the Bonded Labour Act.</p> <p>The Advocate should also ascertain if information gathered shows elements of forced circumstances as per Section 2 (g) of the Bonded Labour Act.</p> <p>The Advocate should advise the NGO representatives to promptly report the information to the appropriate authorities</p>

Points to Note

Responsibility of District Administration: It is the responsibility of the District Administration, through the Revenue Divisional Officer (RDO) or Sub-Divisional Magistrate (SDM)¹ to inquire into the existence of Bonded Labour². The main role of

¹ Also called SDO (sub divisional officer) or AC (Assistant commissioner) in some jurisdictions such as Karnataka.

the NGO and Advocate therefore is to bring to the District Administration's attention the existence of Bonded Labour.

Identification of area: It is important to identify the area where children or women are entrapped.

Sources of information: NGO representatives may find 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 a 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 to include bus stops, railway stations, airports, immigration/ custom offices at borders, tourist destination etc.

Demand Areas: Collect intelligence at areas/activities where demand of bonded labour is high (e.g. brick kilns, stone quarries, carpet industries, agricultural lands, mines, power plants, construction sites, sugar mills, rice mills, factories, domestic servitude etc.).

Enmity: Personal enmity or rivalry between the owner of a facility and the informant can lead to identification of bonded labourers.

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 cannot be procured without such an operation.

- **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 middleman, a contractor, a labour employer, etc.

²Please see sections 10 to 12 of the BLA through which the State Government may authorize the DM to empower sub-ordinate officers such as RDO or SDM's to be implementing authorities of the BLA.

- **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.

Victim documentation: Statements of the victims should be taken so as to understand the nature of abuse or forced circumstances. Statement of as many number of victims to be taken in order to make your case strong. If possible, get signed affidavits of the victims regarding their situation. (Where ever possible get a video or audio recording of the victim statement)

Fact finding about owner: Include a fact finding about the owner to understand his nature, his antecedents, 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 strictly 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 rescue: During the pre-rescue stage of investigation into the incidence, the victims should be briefed about the rescue and how they would be required to respond to the questions of the Magistrate. 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 a successful witness testimony and maintain a good relationship with the victims who should not be caught off guard with the questions put forward to them.

If the NGO representative/Advocate or informant receives information from any source regarding persons trapped in Bonded Labour, promptly alert any one of the relevant authorities (DM, SDM, AHTU, NHRC or the Police). **Do not attempt to rescue a**

bonded labourer on your own.

A rescue requires the permission and the presence of the DM/SDM/Police along with the NGO and their representatives.

Step 1.2 Submitting the Bonded Labour Complaint

Timeline: The process of gathering information could take between 2 to 8 months, while drafting and submitting a complaint could take 2 to 8 days.

NGO

The NGO should use the facts gathered to draft a bonded labour complaint to be submitted to the applicable district magistrate and the magistrate's subordinates.

ADVOCATE

The Advocate should review the bonded labour complaint to ensure it presents a persuasive legal argument for initiating a bonded labour rescue and assist the NGO in submitting the complaint to the district magistrate and the magistrate's subordinates.

Commentary

Once the NGO representatives compile the information gathered from the facility in which bonded labour systems are practiced, they must with Advocate assistance draft and submit a complaint or a detailed Legal Intervention Report before the District Magistrate ("D.M.") or officers subordinate to him/her.

In the event of the D.M. or subordinate official's unavailability a complaint may be made to the Local Police or the Anti – Human Trafficking Unit if constituted.

However, the police or the AHTU do not have the jurisdiction to conduct an inquiry into the incidence of bonded labour. Hence, if the complaint or the LIR is to be submitted before the Police/AHTU, the Advocate and NGO

The Advocate must ensure that an effort is made to present the complaint of bonded labour before the District Administration first. If for some reason the complaint cannot be made before District Administration, the Advocate should ensure that the complaint is made before the Police, who must be encouraged to contact the district administration immediately. Simultaneously, the Advocate may also assist the NGO in making out a complaint before the National Human Rights Commission.

If the District Administration is unable to receive the complaint, the Advocate must ensure that it is

must guide them to coordinate with the D.M or an authority designated by him to conduct the inquiry and be present at the time of rescue.

Once the complaint or LIR is filed before District Magistrate, the D.M. will depute a subordinate officer from the Revenue side if the D.M. is unable to inquire on his/her own. The subordinate officer could be the – Additional District Magistrate, Sub – Divisional Magistrate or Tahsildar/Sub-Registrar from the Revenue Department.

It is important to note that a complaint regarding bonded labour may also be submitted directly before the NHRC. – The Advocate should draft the written complaint or detailed Legal Intervention Report to assist the NGO. The written complaint must document violation of bonded labour and related criminal laws that took place.

presented before the Police/AHTU. However, since they do not have the jurisdiction to inquire into the incidence, the Advocate must ensure that the Police immediately inform the District Administration.

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 to work with especially when hurdles are caused by bureaucracy or corruption at the State or District Level.

Points to Note

Legal Intervention Report (LIR): Some organizations prefer to submit the Legal Intervention Report as a complaint to the D.M. A list containing the name of victims with other details such as address, name of family members, age, caste that the labourer belongs to along with other relevant details should also be submitted with the Intervention Report. While submitting the Intervention Report, the NGO representatives must sensitize the government official to keep the list confidential and must obtain an acknowledgement copy to prove that the government has received the Report. The report must be kept confidential to ensure that there is no tip off to the labour site owners prior to the actual rescue intervention process. This will ensure that the bonded labourers will be freed and the perpetrators can be apprehended on site during the actual rescue intervention. The Complaint/LIR may be submitted in the name of the victim/victim's family.

Whom can a bonded labour complaint be submitted to? : A complaint or LIR can be made to the DM/SDM, the police, the AHTU or the SHRC/NHRC. However any rescue

carried out without the presence of the DM/SDM will be futile since only the DM/SDM have the power to conduct inquiries or oversee implementation under the BLA. It is therefore imperative that law enforcement agencies like the Police must co-ordinate with the DM/SDM when conducting rescues.

Anti-Human Trafficking Unit: The AHTU's are responsible for conducting rescues in trafficking cases. The AHTU may lead the operation with the assistance of local police. AHTU's may be approached only if constituted at the State or District Level.

Local Police: The requirement for an officer-in-charge of the police station upon receiving complaint about bonded labour is the same as for any cognizable offence. Once information on bonded labour is received, the officer-in-charge of the police station has the power to investigate the case. The police officer must also forward the complaint without delay to the concerned official in the District Administration.

State/District Task Force on Child Labour: In case of bonded child labour, the NGO representatives must inform the State Level/District Level Task Force on Child Labour. In the event the Task Force has not been constituted, the NGO may approach the District Magistrate or the local police.

SHRC/NHRC: The Supreme Court has appointed the National Human Rights Commission (NHRC) to monitor the progress of implementation of the BLA at the national level and the State Human Rights Commission (SHRC) to do the same at the state level. An NGO may also approach the SHRC or NHRC at all times and in the event other authorities mentioned above are not willing to act. The NHRC has wide powers to ensure implementation of bonded labour laws and can serve as an extremely crucial partner to work with especially when hurdles are caused by bureaucracy or corruption.

High Court/Supreme Court: If all authorities mentioned above fail to act, the NGO should contact an Advocate and request that he/she file a Writ Petition in the High Court in the victim's name.

Checklist before approaching authorities: Before approaching the authorities the NGO representatives must:

- (i) Determine which authorities to approach (depending on the urgency of the case, expected response from the authorities, severity of the case)
- (ii) Contact the authorities to receive an appointment

NGO representatives meeting the authorities must be well versed with laws and

procedures relating to bonded labour. It is useful to carry a legal manual and judgements on Supreme Courts on Bonded labour, in the event the authorities are not aware of the same.

Acknowledgment: NGO representatives as far as possible must submit the information/complaint in writing and obtain a written acknowledgement of the same. In the event the information cannot be made in writing, it may also be given orally to the police officer. The police officer must, if the information is given orally, reduce it to writing and have it signed by the informant. The Advocate must further ensure that the officials give due cognizance to the complaint made by the NGO representatives and that the NGO representative is involved in all stages of the rescue.

Role of NGO in identification of bonded labour: The Advocate should draw attention to Supreme Court judgements that emphasize on the role of NGOs in identification, release and rehabilitation of bonded labour.

Production of victim before authorities: Whenever possible, the Advocate should produce the victim before the relevant authorities. The safety of the victim must be given prime importance.

Learn More & Take Action

Who can make a complaint: A Bonded Labour complaint can be made by an NGO, Bonded Labourer, Government Official or Third Party since any of these persons can be sources of information³. The victim or the victim's family can also be the main complainant (Note that this complaint refers to information given regarding the existence of Bonded Labour and is different from a formal complaint made under Section 2 (d) of the Cr.P.C). A formal complaint for the institution of the F.I.R. can be made by the District Authority or the Police officials. The victims can also be made complainants. If the complaint is being written by someone other than the complainant, the complaint must be clearly explained to the Complainant.

Implementing Authority for action against Bonded Labour: As per the BLA, the implementing authority is the D.M or any subordinate officer designated by the D.M⁴.

³Refer to guidelines on intelligence collection under Section 3.1 of the UNODC Standard Operating Procedures on investigation of crimes of Forced Labour, (2008 Publication jointly with Government of India and BBA), at Page 13

⁴BLA Sections 10,11 and 12

Violation of Fundamental Right: Remember Bonded Labour violates fundamental rights guaranteed under Article 21 and 23 of the Indian Constitution⁵.

Laws relevant to Bonded Labour: The acts most commonly relevant to Bonded Labour include the BLA, IPC, CrPC, the Evidence Act, Minimum Wages Act, JJA and SC/ST Prevention of Atrocities Act (if the victim is from a SC or ST and the perpetrator is not). Other relevant laws such as the Inter State Migrant Labour Act, The Contract Labour Act, National Holidays Act, the Equal Remuneration Act, the Building Construction Act and the Provident Fund Act may also be applicable depending on the facts and circumstances of a case⁶. Legal provisions covering assault, false imprisonment, kidnap, rape and other provisions that may be relevant can be added.

Supreme Court judgments relevant to Bonded Labour interventions can be found in **Chapter V**.

Sample Documents and Practice Aids: Various relevant documents include:

1. **Legal Intervention Report:** The format for a Legal Intervention Report can be found in **Appendix 6**. This format can be used to submit a complaint of Bonded Labour to the DM, the Police and any other officials.
2. **Bonded Labour Identification Form:** A bonded labour identification form can be found in **Appendix 7**.
3. **Complaint before NHRC:** The format for filing complaint with NHRC is also provided on their website⁷. The guidelines on how to file a complaint with NHRC are provided in **Appendix 2**. Complaints before NHRC can be registered online on their website. Complaints can also be made in writing and sent by post or fax.
4. **Complaint before SHRC:** Complaints before SHRC can also be made in writing and sent by post or fax. The format for filing complaint with SHRC along with

⁵*Neeraja Chaudhary v. State of Madhya Pradesh*, AIR 1984 SC 1099

⁶This is not an exhaustive list and Advocates must be vigilant in applying other applicable laws. Elements of other crimes in the Indian Penal Code and or other legislation in relation to assault, false imprisonment, kidnap and rape may be relevant.

⁷Website of National Human Rights Commission: <http://nhrc.nic.in/>

the guidelines for filing complaint is provided in **Appendix 3**.

5. **Format for complaint before NHRC/SHRC:** A format of a written representation to NHRC/SHRC is provided in **Appendix v 2 & 3**.

Step 1.3 Preparing the Bonded Labour Rescue Plan

Timeline: The process of planning the rescue could take 2 days.

NGO	ADVOCATE
The NGO should prepare a bonded labourer rescue plan.	The Advocate should assist in the preparation of the bonded labour rescue plan by advising the NGO on legal provisions and concepts relating to bonded labour.

Commentary

The NGO should plan two different types of meetings:

- (i) Internal strategy meeting;
- (ii) Pre – Rescue Meetings with Government officials.

(i) Internal strategy meeting: The NGO must prepare an internal strategic plan for the rescue operation. NGO representatives must also plan the rescue operation in advance and hold a case opening meeting internally to discuss the internal plan for the rescue operation. At this meeting the NGO representatives must determine which government officials and NGO's should be invited to participate in the rescue. The plan should also include location details of the rescue facility, 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 (detailed survey) of the place to be searched.

- (ii) Pre – Rescue Meetings with Government officials: The NGO must organize at least two pre rescue meetings within 2-3 days from the

The Advocate should work with the NGO representative to carefully plan the bonded labour inquiry and ensure that the rescue operation plan is in accordance with procedures prescribed by law.

The Advocate must brief the officials about the procedures relating to the following:

- Receiving of complaint/legal intervention report
- Keeping it confidential
- Procedure for detailed inquiry

The Advocate should sensitize the NGO and government representatives on various issues and legal provisions related to bonded labour. Such issues discussed should include the process of identification of bonded labour and myths and realities surrounding bonded labour.

date of the opening meeting of the case. The best practice is for representatives from the Revenue Department, police and rescue team to be present together in at least one pre rescue meeting.

The NGO representative must request the government official leading the rescue to call for a pre rescue meeting and to direct other government representatives to be present for a pre rescue meeting. In the event the representatives are not sensitive to the issue of bonded labour, the NGO representatives must take the opportunity of educating the officials on bonded labour laws and procedures during this meeting.

Once the scheduled rescue dates have been fixed by the government officer the NGO representatives must call for another internal pre rescue meeting.

There must be at least 2-3 strategy meetings with the government officials.

Points to Note

COMPLAINT: During the pre-rescue meeting a complaint on the incidence of Bonded Labour may be made to the District Magistrate or to one of their duly authorized subordinates by submitting a Legal Intervention Report or a written complaint. The Advocate should assist the NGO in making the complaint. The main complainant, as pointed out under Step 1.2 can be either the victim, victim's family, the District Administration or the Police. If the complaint is against child labour, the Labour Department can be made the main complainant.

DATE OF RESCUE: The date of rescue is decided by the D.M. and Revenue Department along with the NGO representatives. The information regarding the rescue date is to be kept confidential. It is the responsibility of the D.M. to involve the Labour Department at the time of rescue. As way of best practise, a rescue date

being scheduled within 24 hours from the filing of the complaint will serve as ideal.

RISK ASSESSMENT: The NGO must also conduct systematic risk assessment and planning in order to prevent and minimize the risks involved in a rescue. Various indicators 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 contingency plan in case of unforeseen circumstances must be planned with great care. The NGO representatives must obtain maximum information about the movable and immovable property of the accused. This may provide useful information to authorities during seizure process.

APPOINT A TEAM LEADER: Appoint team leader who will explain the strategy and steps to be taken during the rescue. The team leader should assign roles and responsibility of participants in the rescue operation and must be a point of contact for concerned government officials. Divide participants into groups, depending on the targeted number of rescue sites and expected number of victims. Appoint team leader for each group. Share name and contact details of each participant, team leaders, roles and responsibilities of each group.

FAMILIARIZE ON BONDED LABOUR LAWS: Prior to participating in the rescue, rescue team members must familiarize themselves with laws on bonded/forced labour and incidental laws.

NON – INVOLVEMENT OF TEAM: Under no circumstances should the team involved in identification/verification/intelligence gathering be involved in the rescue.

PRE – RESCUE CHECKLIST:

- ***Prepare rescue kit:*** Kit to include stationery, camera, torch, battery, video camera, refreshments (drinking water, snacks), first aid kit, vehicles, printer and cartridge, laptops and charger reference materials such as case laws and bare acts, list containing names of districts, villages, police stations where the victims belong including clothing, toiletries, food, drinking water, activity books, crayons, colour pencils (in the event there are children among the rescued victims). Appoint point person for arrangement of logistics well in

advance before the rescue.

- ***Alert Shelter Homes:***⁸ 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 such a list to the District Magistrate/ CWC and Advocate to ensure victims are sent to credible shelter homes after a rescue. NGO must strengthen its partnership with credible shelter homes by entering into a MOU whenever possible. Further, NGO representatives must approach the District Magistrate to make arrangements for stay where shelter homes are not available. In the event the shelter homes cannot be immediately found for survivors, care must be taken to ensure that the District Magistrate makes alternate arrangements for their stay and safety.
- ***Security of Rescue team:*** Ensure that the District Magistrate involve police personnel depending on the size of the rescue operation. In case of sensitive or high risk locations, the Advocate with the District Magistrate must ensure that the rescue team is accompanied with sufficient police personnel. Under no circumstances should rescue operations be carried out without police protection. The District Administration must ensure police presence in relevant numbers depending on the size of the rescue.
- ***Voluntary exit:*** It is essential for NGO representatives to determine whether the identified bonded labourers wish to leave the worksite or not. In the event the labourer does not express to be released, the NGO representatives must sensitize the labourers of their rights and entitlements under law and highlight that the labourer's rights are being violated. Care must be taken not to coerce the labourers to leave or into giving false details. The information should be sought gently, sensitively and correctly.

⁸This is applicable to interventions relating to bonded child labour, or where children are employed at bonded labour facilities without their parents.

- **Security of Complainants:** Ensure the safety and security of bonded labour complainants.

BECOME FAMILIAR WITH USEFUL QUESTIONS: NGO representatives participating in the rescue must familiarize themselves with useful questions to ask before going for rescue. Ensure that you record the names correctly and you are familiar with the native language of the victim. For example, if the victim pronounces his name to be 'Guddu', clarify with the victim if that is his real name on any identification card. This is for the purpose of ensuring that names of the victims in the Release Certificate are identical to those on their identification cards.

ADVOCATE TO REMIND AUTHORITIES: The Advocate must highlight points for the authorities to keep in mind while identifying bonded labour⁹, such as :-

- Forced labour does not necessarily mean use of physical force.
- Bonded labourers could be of any age.
- Bonded labour could be of any duration.
- BLA does not stipulate any documentary evidence.
- The burden of proof is on the owner to disprove any claim of bonded debt¹⁰.
- The Labour Department may initiate action against the employer/owner, especially in the case of child labour.

ADVOCATE ASSISTING NGO NOT TO BE MADE WITNESS: The NGO should take care to ensure that the Advocate who will assist the Public Prosecutor at the stage of trial should not be made a witness at the time of rescue. For this purpose it is recommended that another Advocate be present at the time of rescue, to ensure that the Advocate who will be assisting in the trial is not made a witness. Advocate who will assist at the stage of trial need not be present at the rescue.

Learn More & Take Action

Can the Police or an Anti-Human Trafficking Unit or the CBI carry out a rescue without the order or presence of the SDM/DM? – Yes, the Police or the AHTU can carry out a

⁹Refer to information on who is a victim of bonded labour under Section 2.3 of the UNODC Standard Operating Procedures on investigation of crimes of Forced Labour, (2008 Publication jointly with Government of India and BBA), at Page 11

¹⁰Section 15, BLA

rescue in the absence of such an order and without the SDM/DM. However, any rescue carried out without the presence of the SDM/DM will be futile since only the DM/SDM (or designated labour officials) have the power to conduct inquiries or oversee implementation under the BLA¹¹.

Bonded Labour in Bihar and Uttar Pradesh: To learn more about the problem of bonded labour in Bihar and Uttar Pradesh, refer to Chapter II.

Sample Documents and Practice Aids: Various relevant documents include:

- 1. **A sample pre rescue planning meeting form** listing out roles and responsibilities of each member is provided in **Appendix 4**.
- 2. **To learn more on the myths and realities of Bonded Labour** that can be shared with Government officials, refer to **Appendix 5**.
- 3. **Appendix 7** is a format for **Bonded Labour Identification Form**, which contains a list of useful questions to ask to identify situations of bonded labour.

Step 1.4 Initiating the Bonded Labour Rescue

Timeline: The rescue, from meeting at the site to carrying out the rescue could take 1 day.

NGO	ADVOCATE
The NGO should initiate the bonded labour rescue with other stakeholders according to the rescue plan.	The Advocate should participate in the bonded labour rescue to ensure that it is carried out according to the law.
Commentary	
Meet prior to rescue: Rescue team members comprising of NGO representatives and government officials must meet at a common location at least	As described in the steps below, the Advocate can play a vital role in ensuring that the rescue operation is conducted in compliance with applicable laws and is otherwise

¹¹Step 5 under Section 4.1 (Steps to be taken), Ibid, at Page 15.

2 hours before the rescue.

successful.

Team Leader to reiterate strategy, rescue plan and roles:

The Team Leader should explain the strategy that would be adopted for the rescue operations and its various steps at this time. The Team Leader must also explain the roles and responsibilities of each team member in the rescue and clear any doubts that may arise. A surveillance team consisting of NGO representatives must be stationed at a location near the place of rescue to provide information about any suspicious activity or tip offs.

Points to Note

Beginning of Inquiry: It is at the rescue site that the D.M/SDM begins the inquiry into the incidence of Bonded Labour.

DM/SDM who identifies who the bonded labourers are – It is the DM/SDM who will identify who the bonded labourers are and who are solely authorized to conduct an inquiry on the basis of any complaint/legal intervention report made.

WHO GOES FOR THE RESCUE?: The composition of rescue team in case of adult bonded labour rescue must ideally be as follows:

- At least one official from District Administration (SDM/SDO, Tahsildar or any other Revenue officers who have been vested with the powers of an Executive Magistrate),
- Officials from police department and representatives from NGO (depending on the size of the rescue).
- In the case of a child labour rescue the rescue team shall consist of members of the Task Force on Child Labour consisting of at least one officials from Labour Department, and District Administration (SDM/SDO, Tahsildar or any other Revenue officers who has been vested the power of Executive Magistrate), representatives from NGO and officials from police department and representatives from NGO (depending on the size of the rescue) must all be part of the rescue team.

- Rescue team must also be adequately represented by female members (in case of female victim).

Check list for police: The NGO representatives must provide a check list to the District officials and the police officials accompanying the rescue operation. The checklist should contain the roles and responsibilities of each official.

Media Engagement: The media should be engaged with only after the successful completion of the rescue, as prior intimation could lead to leakage of information. While engaging with the media regarding the release of the bonded labourers 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, listing 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 correction in writing.
- It is always helpful to provide the media a press release.
- The objective of sharing stories on bonded labour must always be to create awareness, empower bonded labourers, shape public opinion and establish the existence of bonded labour. While giving stories, ensure that the story does not receive a political colour.
- 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/victim are uncomfortable and does not want to share his/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) that would endanger the victims

- NGO must familiarise themselves with standard international guidelines on reporting on children and develop an internal Child Protection Policy in conformity with these guidelines.
- Never share a story without obtaining consent from the victim/survivor. Develop a consent form and read and explain to the victim/survivor before taking his/her signature or thumbprint.

It is extremely important to 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.
- Prior informed consent from the victim/survivors must be taken before a story involving them is published.

Learn More & Take Action

Key strategies during a rescue¹²: Ensure that the rescue team cordons off strategic areas, secures entry and exit points, locates hide outs and identifies a safe place where rescued persons can be kept while the rescue operation is being carried out.

Sample Documents and Practice Aids: An Advocate's case opening checklist for bonded labour interventions can be found in **Appendix 1**. The advocate and the NGO may refer to this document to assist the Government officials before, during and after the rescue operation.

ROLES OF VARIOUS AGENCIES:

The Administration (DM/SDM/Tehsildar): After receiving the complaint, the DM/SDM/Tehsildar are to constitute a team for a swift inquiry to identify, release and rehabilitate the bonded labourers. They will also instruct the local police having jurisdiction to register an FIR and investigate into the crime. The DM/SDM to conduct

¹²Step 2 under Section 4.1 (Steps to be taken), UNODC Standard Operating Procedures on investigation of crimes of Forced Labour, (2008 Publication jointly with Government of India and BBA), at Page 15

Summary Trial under the provisions of the BLA.

Labour Officers: The labour officers are to assist the DM/SDM/Tehsildar during inquiry and record the statements of the labourers to initiate prosecution of violations provisions of various labour related laws, like the Minimum Wages Act, the Contract Labour Act, the Interstate Migrant Workmen Act, the Payment of Wages Act, the EPF Act, the Equal Remuneration etc., the National Holidays Act, etc.

Police Officers: The concerned police officer is to assist and accompany the inquiry officer and keep watch on the law and order situation during the inquiry. They need to conduct search and seizure at the spot and collect evidence. They will arrest the suspected accused and take up the investigation.

Members of the Vigilance Committee: The members of the vigilance committee to assist and accompany the inquiry officer.

The NHRC: Direct complaint can be filed before the NHRC for spot inquiry, release and rehabilitation of bonded labourers. The NHRC makes sure that the local administration does all the needful as per the provisions of various laws.

Step 1.5 Securing the Bonded Labour Rescue Site

Timeline: The process of securing the site of rescue could take 1 day.

NGO

The NGO should assist the Police with securing the rescue site to ensure no incriminating evidence is lost.

ADVOCATE

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

Commentary

NGO representative with the help of police personnel may prevent accused from removing or hiding incriminating evidence, removing the victims from the place of rescue, trying to form a mob or destroying evidence. NGO representatives must further ensure

The Advocate should assist the NGO and police to secure the inquiry site. In the event the Advocate does not participate in the rescue, the Advocate should advise the NGO about the legal procedures while conducting the rescue.

that the police personnel immediately secure the perimeter of the rescue site¹³ to keep third parties from entering. To prevent leakage of information, the NGO representatives should advise the police to take into custody mobile phones belonging to the accused, contractors, victims, etc.

Step 1.6 Separating Bonded Labourers from the Accused

Timeline: The process of separating the bonded labourers from the accused should take place on the same day of the rescue.

NGO

The NGO should assist the Police in separating the victims of bonded labourers from the perpetrators and moving them to an open area on the site of incidence.

ADVOCATE

The Advocate should ensure a fair inquiry and safety of the victims by making sure they are separated from the perpetrators and the police are advised in this process if necessary.

Commentary

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

Gather victims in an open area and arrange the number of labourers by family.

The Advocate must advise the NGO representatives to refrain from using physical force and violence on any person during this process.

The Advocate should help facilitate the safe removal of victims and government team to a secure open area on the facility.

Points to Note

First Response to Victims: While separating victims and moving them to a secure onsite location ensure that they are immediately informed as to what is happening.

¹³ Step 2 under Section 4.1 (Steps to be taken), UNODC Standard Operating Procedures on investigation of crimes of Forced Labour, (2008 Publication jointly with Government of India and BBA), at Page 15

why the Police and the others have come to the facility, and why he or she is being rescued¹⁴.

Taking victims to open area: NGO representatives must ensure that the accused persons are not present while the victims are being taken to an open area at a safe place.

Step 1.7 Gathering Bonded Labour Evidence

Timeline: The process of gathering bonded labour evidence should ideally be completed on the same day of the rescue, and varies based on the size of labourers rescued.

NGO	ADVOCATE
The NGO should ensure that the Police collect all available evidence pertaining to the existence of bonded labour.	The Advocate should advise the NGO on the legal collection of evidence about bonded labour and ensure that the Police include all available evidence in the Panchnama/seizure memo.

Commentary

NGO representatives must ensure that all the possible evidence including documents pertaining to ownership or tenancy, ledgers, books of accounts, electricity bill, telephone, water and other bills, ration card, municipal tax receipts, travel documents and other physical evidence, licenses or No Objection Certificate from appropriate authorities, hazardous items, tools, equipment etc. (if any) used by the victims are collected by the police in the presence of witnesses/independent witnesses.	<p>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.</p> <p>The Advocate must also advise the NGO representatives to refrain from using physical force and violence on any person while conducting the rescue.</p> <p>The Advocate must ensure (if present at the rescue) or advise the NGO</p>
--	---

¹⁴ Section 4.2 of UNODC Standard Operating Procedures on investigation of crimes of Forced Labour, (2008 Publication jointly with Government of India and BBA), at Page 16

representatives to ensure that Police prepares Panchnama/seizure memo and site map in the presence of witnesses at the spot and gets them duly signed by the witnesses.

The Advocate participating as a witness cannot represent the client as his/her legal counsel.

Points to Note

Witness: An NGO representative or social worker accompanying the rescue team can be made an independent witness for the purpose of search and seizure.

Search the entire rescue site: NGO representatives must also ensure that the rescue site is fully searched. The victims may be kept hidden in boxes, attics, toilets, cubicles, locked rooms, etc. The NGO can take help of rescued persons in locating other hidden victims, children, offenders and other incriminating materials.

Ensure police and government officials are made witnesses: The NGO representatives must insist that police officials and authorities present at the rescue are made witnesses.

List of material evidence to be collected: Familiarize yourself with the list of material evidence prior to the rescue so that you are aware of what evidence needs to be collected. You may share this list with the police officials present at the time of rescue.

Assistance to police officials: NGO representatives/advocate can only assist the police officials during the collection of evidence and cannot procure it by themselves.

Learn More & Take Action

Preserving crucial evidence: The NGO may assist the police in preserving crucial evidence such as account books, business records and other relevant documents by making a note of important documents on perusal as well as taking photographs. This can prevent the perpetrators from hiding or destroying crucial evidence if the Police are to return to seize such material during further course of a formal investigation.

What material evidence is to be collected? Learn about what material evidence needs

to be collected and its relevance for investigation by referring to **Appendix 8** for the above. After referring to the said appendix create a list of materials that would be relevant to an investigation and trial of bonded labour.

Step 1.8 Recording Bonded Labourer Statements

Timeline: The recording of statements should be done on the same day of the rescue.

NGO	ADVOCATE
The NGO should advise the government officials while recording the statements of the bonded labour victims.	The Advocate should advise the government officials on preliminary questions to ask the victims to determine the existence of bonded labour and should brief the victims about their rights before the process of recording their statement begins.

Commentary

<p>NGO representatives should ensure that the initial inquiry is conducted promptly and in a safe environment. NGO representatives should encourage the victims to speak up before the authorities without fear. The NGO representatives should also guide the authorities to adopt victim friendly approach while conducting the inquiry.</p> <p>NGO representatives must assist SDM/Labour officials during recording of statement of victims.</p> <p>Ensure that the statements answer important questions such as:</p> <ol style="list-style-type: none">1. What are your wages?2. How much has been received as an advance/loan?3. By what mode was the loan to be	<p>The Advocate should advise the officials in the rescue team on preliminary questions to ask the victim, in order to determine the existence of bonded labour circumstances. These include:</p> <ul style="list-style-type: none">• Did you take an advance?• Are you free to work elsewhere? Are you free to leave without paying your advance?• What are your wages?• Have you been abused and/or assaulted? <p>The Advocate should brief the victims about their rights before the process of recording their statement begins.</p> <p>The Advocate should immediately inform the labourers that bonded labour is illegal and they have a legal right to be freed</p>
---	---

repaid?

4. How long have they been serving there with the particular employer?
5. Have they been abused and/or assaulted?
6. Are you free to work elsewhere?
7. Are you free to leave without paying your advance?

Encourage the victims to speak boldly and truthfully. Point out specific information regarding abuses to the government officials and assist them in identifying criminal offenses such as sexual abuse, physical abuse, verbal abuse, abduction that are connected to bonded labour circumstances.

from circumstances of bondage.

The Advocate should also reassure the labourers that under law that they can be protected from the owner.

The Advocate should attempt to gather specific information regarding other offences such as abduction, assaults, and sexual abuse in order to invoke relevant provisions of law that have been violated.

The Advocate should ensure that the focus of the inquiry is whether forced labour circumstances are present based on the following:

- Wages or less than minimum wages
- Restricted freedom of employment and movement

Restriction on right to sell property or product at market value

Points to Note

Stages Of Inquiry: Depending on the circumstances of the rescue, an inquiry will be held either:

- i) **Wholly on the site of rescue:** In this case, the inquiry and statement recording (Steps 1.8 and 1.10) will take place at the site of rescue, followed by moving the rescued persons to a secure location (Step 1.9).
- ii) **On the site of rescue and offsite:** In this case, a preliminary inquiry is held on site wherein the Revenue Department Official/Tahsildar will ask questions about the circumstances of the bonded labourers. Following this important documents are gathered by the site of inquiry. After this the rescued labourers may be shifted to a secure location (Step 1.9) where their statements are recorded (Step 1.8) and release certificates are granted (Step 1.10).

When a rescued person is under the age of 18: There is no system of compulsory age determination of children rescued from a bonded labour facility. However, children rescued from such facilities broadly fall into two categories:

- i) **Children rescued along with parent/guardian:** If the child is rescued along with his/her family, then the child will remain and be released with his/her family.
- ii) **Children rescued without parent/guardian:** Due care has to be taken when the child is rescued and has been working in the facility without his/her parent or guardian. In such a case, where the person rescued is a child, who has been working in contravention of labour laws, on the facility without his/her parent or guardian, the child will then be considered as a “child in need of care and protection” under Section 2(14)(ii) of the JJA Act, and shall be referred to the district Child Welfare Committee, to determine his/her age and to initially place the child in a protective home, while undertaking the further required steps for due care. Attention must be paid to the medical needs of the child before referring to CWC.

The Child Welfare Committee: The Child Welfare Committee or the “CWC” is a statutory body that has been set up under Section 27 of the Juvenile Justice Act, 2015. Each district is required to set up at least one CWC. The CWC is meant to comprise of a chairperson and four members, at least one of who should be a woman. The chairperson is expected to be thorough in matters of child welfare. The CWC’s powers are equivalent to those of a metropolitan magistrate or a judicial magistrate of the first class. The CWC is the exclusive body responsible for determining the welfare of a child in need of care and protection. Anyone can present before the CWC a child, who is considered to be “in need of care and protection”. With the passing of the JJA 2015, the CWC is no longer the final authority in cases of children in need of care and protection. Section 27(10) of the JJA states that the District Magistrate shall be the grievances redressal authority for the Child Welfare Committee and anyone connected with the child, may file a petition before the District Magistrate, who shall consider and pass appropriate orders.

Grant of Release Certificates: If the DM/SDM finds from the inquiry that it is a case of bonded labour, then he/she will state that an inquiry has been conducted and that a certain number of persons have been identified and to these persons release certificates will be granted. The release certificates will be given to persons based on their statements.

A few points to note while the inquiry is conducted:

Provide the victims with food and beverage during the time of inquiry: The NGO and Advocate should ensure that those freed immediately receive some food and beverage, as they are likely to be hungry and this may impede their giving testimony. The taking of statements may take some hours, so further nourishments and places to be comfortable and rest should be provided as much as possible.

Treat victim with dignity¹⁵: Victims are entitled to access mechanisms of justice. NGO representatives and Advocate must ensure that any action initiated by the law enforcement agencies must be based on victim friendly procedures. The victim should always be made aware that he/she is a victim 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 as they are under trauma.

Best interest of victim is paramount: Do not force the victims to disclose details of offences 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 his statements in his/her own language.

Be careful about recording incorrect information: It is possible that the victims who are under threat may give wrong information at this stage. NGO representatives must ensure that the statements of the rescued bonded labourers are recorded only when the victim is willing and fit to give the statements. The NGO representatives must immediately inform the victim as to what is happening and attempt to remove any apprehensions/ doubts.

Adequate training of NGO representatives while recording statements: NGO representatives are often approached by government officials to participate in recording of statements. NGO should ensure that the representatives participating in

¹⁵ Refer to steps on working with victims, UNODC Standard Operating Procedures on investigation of crimes of Forced Labour, (2008 Publication jointly with Government of India and BBA), at Page 16

the rescue are trained in conducting inquiry. Whenever possible, NGO representatives conversant with the language of the victim may be sent for rescue.

Monitor questions being asked: The Advocate should monitor questioning by government officials to ensure questions are fair, questions are asked with sensitivity, answers are properly recorded, and the inquiry is completed promptly. Ensure that special procedures and special sensitivity is used during questions asked in relation to sexual abuse, assault or children.

Inquiry must be completed away from owners: The Advocate should ensure that a full inquiry is completed away from the owners at a secure location.

Learn More & Take Action

Purpose of an on-site inquiry during a rescue or raid: The Supreme Court in the case of Bhandua Mukhti Morcha¹⁶ held that the purpose of this inquiry is to identify bonded labourers, release them from their debts and set them on a path to rehabilitation. An Advocate must make sure that the inquiry is not conducted as a formal trial and that effective identification of bonded labourers takes place.

Key Inquiry Strategies that an Advocate must know: Firstly, remember the most crucial questions each labourer should be asked include i) Did you receive an advance? ii) Were you free to leave the facility? iii) Were you free to seek other work? iv) How much wages were you paid? ; Secondly ask open ended questions (For example, how did you come to work on this facility?); Thirdly, avoid closed questions (with a yes or no answers) as far as possible unless clarifying a specific point.

Inquiry must always be conducted without the presence of alleged perpetrators or managers of the facility: Again in the above case¹⁷, the Supreme Court held that the owners of a facility should not be present while bonded labourers are being interviewed in an inquiry.

The Court also went further in stating that such labourers are to be fully educated about their rights.

¹⁶AIR 1984 SC 802, Para 34

¹⁷AIR 1984 SC 802 Para 37

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

has suggested that the following measures be placed to protect the rights of the victims:

Victims should be treated with compassion and are entitled to access to mechanisms of justice (Principle 4)

Proper assistance to victims must be provided throughout the legal process (Principle 6 (c))

Measures must be taken to minimise inconvenience to victims and the privacy of the victims must be protected where necessary, along with their safety as well as their families and witnesses on their behalf, from intimidation and retaliation (Principle 6 (d))

Provisions for compensation to victims must be made (Principle 12 (a)).

Avoid unnecessary delay in disposition of cases and execution of orders granting awards to the victims (Principle 6 (e)).

The text of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power can be accessed [here](#).

Sample Document and Practice Aid for list of inquiry questions: A recommended list of questions is provided in **Appendix 7** in the format for bonded labour identification.

Step 1.9 Moving Bonded Labourers to a Secure Location

Timeline: The bonded labourers should be moved to a secure location on the day of/within 24 hours of the rescue.

NGO

The NGO should ensure that bonded labourers gather their belongings and are moved to a secure location.

ADVOCATE

The Advocate should file a protection order to protect the bonded labourers from threats and harassment from the perpetrators.

Commentary

NGO representatives must ensure that the bonded labourers are removed from the

The Advocate must seek a protection order, in the event the rescued victim

rescue site as quickly as possible, giving them adequate time to collect their belongings.

The victims must be moved to a secure location such as:

- The office of the Executive Magistrate,
- Government schools,
- Community hall, etc.

In the event where the rescued victims cannot be moved into another location. e.g. when the labourer does not want to leave their workplace and wants to continue working for the same employer or when the labourers are residing in the village itself (in case of agricultural labourers) ensure that there are sufficient police personnel available at the site to protect the rescued victims.

cannot be moved to another location.

For example, in the case of rescue in agricultural bonded labour, the labourers live in the hut or homestead land provided by their employer. In such cases, the Advocate should approach the police to ensure that adequate security is provided to the victims in order to prevent their owners (who live close by) from threatening and intimidating the victims.

The Advocate should file a harassment protection letter in the event the rescued victim expresses fear about the safety of his/her family members. All fears of the victims must be addressed and necessary actions should be taken immediately.

Points to Note

Ensuring Children's safety: In case the bonded labourer has a child, ensure that the child is not separated from the parents.

Ensuring safety and security: At the rescue spot, ensure safety and security of all victims. Take special care in cases where the complaint suggests a history of violent abuse by the accused.

Learn More & Take Action

Protection against eviction: Section 19 of the Bonded Labour Act provides safeguards to freed bonded labourers against eviction.

Harassment protection letter: On the day of release, a protection letter or memo may be filed in each victim's jurisdictional police station either by the victim or a social worker, so as to ensure continued protection from perpetrators. A sample of this letter can be found in **Appendix 9**.

Step 1.10 Securing Bonded Labour Release Order

Timeline: The process of obtaining the Release Order and Release Certificates for the labourers could take 1 to 3 days.

NGO

The NGO should make an application to the SDM or the designated officer under him/her requesting the prompt issuance of a Release Order and Release Certificates.

ADVOCATE

The Advocate should accompany the NGO to the SDM's office to ensure the prompt issuance of Release Order and Release Certificates for all bonded labourers as required by law.

Commentary

NGO representative should ensure that:

- A request is made in writing to the SDM to pass the Release Order and Release Certificates.
- The SDM or the officers designated by him issues a Release Order and provides Release Certificates to each rescued bonded labourer **immediately after** the rescue.
- The Release Order should list the name of each individual labourer and declare that they are officially released from bonded labour.

In the event the SDM is unwilling, the representative must approach the DM. If this does not work, the NGO representatives may file an RTI Application, asking reasons for the same.

NGO representatives may also approach the State Human Rights Commission or the National Human Rights Commission.

Finally, the NGO representatives may contact an Advocate to file a writ petition in the High Court or the Supreme Court.

The Advocate should accompany the NGO representatives to secure a Release Order and Release Certificates.

If the DM does not comply with the request to grant the order and issue certificates, the Advocate should file written complaints and writ petitions before appropriate forums. The Advocate should also file RTI applications asking reasons for such denial. The Advocate should advise the NGO representatives and assist him/her in securing Release Orders and Release Certificates.

Advocates should be prepared with drafts for applying for grant of release orders. A format of the release certificate should be referred to so as to ensure that all necessary details are included.

Points to Note

When and where should the Release Order be issued? The Release Order should be issued as soon as the inquiry is completed. If the inquiry is completed on site, the order is granted on site, but if the inquiry is completed off site, the order for release is granted off site (Refer Points to Note under Step 1.8 for more information).

When should the Release Certificates be issued? As a matter of best practice Release Certificates should be issued immediately upon rescue. However, take note that with the enactment of the Central Sector Scheme for Rehabilitation of Bonded Labourers 2016¹⁸ (hereinafter referred to as the "CSS BL 2016") there may be some confusion as to when Release Certificates are issued. Since the model form for a Release Certificate in the above scheme includes an entry for the date of conviction, certain officials may construe this to imply that Release Certificates are granted only after conviction of the perpetrators in the trial. This form should not, however, be construed as requiring that Release Certificates should only be granted post-conviction. Instead, administrative authorities should issue Release Certificates at the time of the Release Order and write 'pending' or 'awaited' in the field that seeks the date of conviction. This approach is clearly supported by Clause 6.3 of the CSS BL 2016 which provides that the release of rehabilitative funds can be made prior to completion of the trial. As per Annexure II to the CSS BL, the Release Certificates have to be attached to such a proposal, which demonstrates that the Release Certificates should be granted prior to completion of trial. In addition to the above, in light of the Supreme Court Judgment in *Santhal Pargana Antyodaya Ashram v. State of Bihar and Ors.*¹⁹ and the NHRC guidelines²⁰ it can be interpreted that the Administration is bound to issue Release Certificates as soon as the inquiry is completed. In any event, where the SDMs/DMs still refuse to grant Release Certificates than at least a Release Order must be pressed for at the time of rescue. *If the SDM/DM refuses to pass the Release Order, then the NGO and the Advocate should take immediate legal action as*

¹⁸ Central Sector Scheme for Rehabilitation of Bonded Labourers 2016, Page 12; Available here: < http://labour.gov.in/sites/default/files/OM_CSS_Rehab_BL_2016_1.pdf >

¹⁹ ***Santhal Pargana Antyodaya Ashram v. State of Bihar and Ors*** 1987 (1) SCALE 679, 1987 Supp(1) SCC 141, 1987 (Supp) SCC 141

²⁰ *Know your rights, Bonded Labour*, 2010, National Human Rights Commission, Available at: <<http://nhrc.nic.in/Documents/Publications/KYR%20Bonded%20Labour%20English.pdf>>

outlined above.

Inter-state Release Orders: The responsibility of giving the Release Order in an interstate rescue must be clear. According to Section 12 of the BLA it is the duty of the District Magistrate to inquire into the existence of bonded labour system occurring within his/her jurisdiction and accordingly take action to eradicate the enforcement of such forced labour. Therefore, under Section 12, the District Magistrate may grant the Release Orders to those migrant labourers found to be in a system of bonded labour within his/her jurisdiction.

The Freedom Speech: The NGO representatives must ensure the government official delivers a freedom speech letting the rescued bonded labourers know that they are freed from bondage, explaining their rights and the fact that they need to persevere in remaining free.

Interim Compensation: The Advocate should ensure that the Release Order directs the appropriate authorities to release interim relief of Rs. 1000/= to each victim of bonded labour as per guidelines of the Supreme Court of India. The advocate should further ensure that immediate assistance of Rs. 20,000/= be made available by the DM from District Bonded Labour Rehabilitation Fund to each rescued person under the newly revamped CSS²¹.

Further responsibilities of the administration: The NGO/Advocate should ensure that the administration removes all the labourers from the place of exploitation and makes adequate arrangements of their transportations, food, drinking water, train/bus fare, medical, escort, sending the survivors safely to their places of origin.

Learn More & Take Action

Ensuring Provision of Release Certificates and Interim Compensation: In *Santhal Paragana Antyodaya Ashram v. State of Bihar*²² the Supreme Court stated that Release Certificates should be given to the released bonded labourers 'simultaneously

²¹As per Office Memorandum dated 17th January 2017, issued by the Ministry of Labour & Employment, Government of India, the compensation to be awarded by the DM under the District Bonded Labour Rehabilitation Fund has been enhanced from Rs. 5,000 to Rs. 20,000.

²²[1987 (1) SCALE 679]

with their release'. The case further provides that Release Orders must direct the appropriate authorities to release interim relief of Rs. 1000/= to each victim of bonded labour.

Sample Documents and Practice Aids on Release Certificates: A sample of Written representation for grant of Release Certificates can be found in **Appendix 15**. A sample format of a Release Certificate is provided in **Appendix 16**.



JVI JUSTICE
VENTURES
INTERNATIONAL
Freedom, Justice & Restoration through Partnership

Prepared in collaboration with the Human Liberty Network.