



NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

WORKING DRAFT STANDARD OPERATING PROCEDURE

for

RESCUE, REHABILITATION & REPATRIATION OF CHILD LABOUR

National Commission for Protection of Child Rights (NCPCR) is developing an SOP for Rescue, Rehabilitation & Repatriation Of Child Labour . Therefore, NCPCR welcomes all suggestions/comments on working draft of the SOP to improve it further. The draft SOP is uploaded alongwith.

You are requested to give us your valuable suggestions/comments on Working Draft SOP on Rescue, Rehabilitation & Repatriation of Child Labour to this Commission by 5th June, 2019 at member-cl.ncpcr@nic.in .



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1. List of Abbreviations

CARA	Central Adoption Resource Authority
CCI	Child Care Institution
CWC	Child Welfare Committee
CPP	Child Protection Plan
DCPO	District Child Protection Officer
DCPU	District Child Protection Unit
DM	District Magistrate
DWCD	Department of Women and Child Development
FIR	First Information Report
ICPS	Integrated Child Protection Scheme
JJ Act	Juvenile Justice (Care and Protection of Children) Act 2015
JJB	Juvenile Justice Board
MWCD	Ministry of Women and Child Development
NCPCR	National Commission for Protection of Child Rights
NFPA	National Foster Parent Association
NGO	Non-Governmental Organization
POCSO	Protection of Children from Sexual Offences
PO-IC	Protection Officer Institutional Care
SAA	Specialized Adoption Agency
SCPCR	State Commission for Protection of Child Rights
SJPU	Special Juvenile Police Unit
SOP	Standard Operating Procedure
UN	United Nations

2. “Child in Need of Care and Protection”

Section 2 (14) of the Juvenile Justice (Care and Protection of Children) Act, 2015 defines Child in need of care and Protection as a child:

- (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
- (iii) who resides with a person (whether a guardian of the child or not) and such person—
 - (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
 - (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
 - (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
- (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
- (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
- (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
- (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

- (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
- (x) who is being or is likely to be abused for unconscionable gains; or
- (xi) who is child of or affected by any armed conflict, civil unrest or natural calamity; or
- (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage.

3. Standard Operating Procedure for Rescue, Repatriation and Rehabilitation of Child Labour

Rescue of the child by any person, organization- governmental or non-governmental, any committee, task force or any other person or institute; whether under the Child Labour Act, 1986; Bonded Labour Act, 1976; Juvenile Justice Act, 2015; The Immoral Traffic Prevention Act, 1986 or any other law for the time being in force shall be done in accordance with this SOP and the following steps must be followed in order.

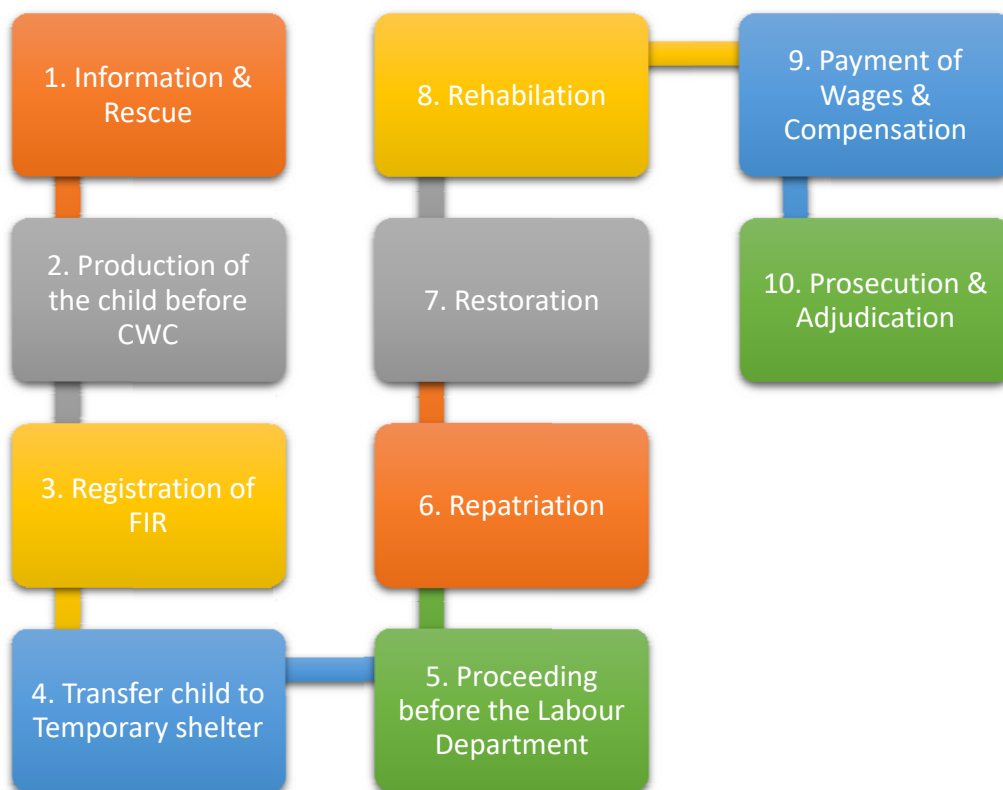


Figure 1: Standard Operating Procedure

Step 1: Information and Rescue

The first step for effective rescue, repatriation and rehabilitation of a child in need is of information and rescue. It is important to first get the information which may be obtained from any primary source such as a child labour or relative of a child labour or any person on behalf of the child or through secondary sources like surveys conducted under Sarva Shiksha Abhiyan, surveys conducted by the Department of Labour or community micro-planning.

The child can be rescued by any person who is competent to produce the child before CWC as under Section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2015 namely:

- (i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;
- (ii) any public servant;
- (iii) Child-Line Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;
- (iv) Child Welfare Officer or probation officer;
- (v) any social worker or a public spirited citizen;
- (vi) any nurse, doctor or management of a nursing home, hospital or maternity home
- (vii) A team constituted by NCPCR, SCPCRs, Child & Adolescent Labour Act, 1986, Bonded Labour Act, 1976 or any other Law for the time being in force.
- (viii) CWC itself

Step 2: Production of the Child before the Child Welfare Committee (CWC)

The child shall be produced before the Child Welfare Committee within 24 hours of his/her rescue, as given under Section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

- i. As soon the child is produced before the CWC the statement of the child has to be recorded. Section 27(9) of the Juvenile Justice (Care and Protection of Children) Act, 2015 empowers the Committee to function as a bench of Metropolitan Magistrate or as the case may be, a Judicial Magistrate of First Class and accordingly, shall have the powers conferred by the Code of Criminal Procedure, 1973. Thus, the statement of the Child before the CWC shall be such as recorded under Section 164 of the Code of Criminal Procedure. The CWC shall ask the questions as provided in **Annexure A**.
- ii. In case a translator is required to understand the language of the Child and record his/her statement, then the CWC will make a request to the State through the District Magistrate to make arrangements for a translator. The expenses of the translator will be borne in accordance with Section 110(2)(vii) of the Juvenile Justice (Care and Protection of Children) Act, 2015.
- iii. After recording the statement of the Child, if any violation is found by CWC under Child Labour Act, 1986 and Bonded Labour Act, 1976, then CWC should give a direction to the Police for registration of First Information Report (FIR). A copy of the Statement should also be sent to the District Legal Service Authority (DLSA) for further coordination and compliance of the provisions under CrPC.
- iv. A direction should be sent to the Labour Department by the CWC along with the copy of the statement as recorded, for ascertaining the Back Wages of the rescued child. A copy of the same should also be sent to the District Magistrate who presides over the task force as provided under

Rule 17C of the Child Labour (Prohibition and Regulation) Amendment Rules 2017. The District Magistrate to also ensure compliance of Rule 17 (C) Clause iii of the Child Labour Amendment Rules 2017 in so far as rehabilitation of children rescued are concerned.

- v. CWC shall conduct due inquiry as prescribed under Section 36 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The inquiry before the CWC is for the purpose of restoration and rehabilitation of the Child and is independent of the investigation by the Police. While the inquiry before CWC is ongoing , the Police is to continue its investigation in accordance with the procedures prescribed by Law, as the inquiry before CWC is not in contravention and interference of the investigation by the Police on the matter.

Step 3: Registration of First Information Report

The next step registration of the First Information Report (FIR).

- i. On receipt of the direction/order from the CWC in respect of a cognizable offence against a child, the police shall register an FIR to register the FIR immediately on the basis of the statement of the child given before CWC or on the directions given by the CWC thereof. A copy of the FIR shall be sent to the District Magistrate & CWC within 24 hours of the direction/order of the CWC. The District Magistrate will exercise his duties as provided under Rule 17C of the Child Labour (Prohibition and Regulation) Amendment Rules 2017.
- ii. While filling the FIR due care shall be taken to ensure that all provisions that apply, across different statutes, are incorporated in the FIR/Complaint. *[Note: Provisions under Child Labor Act, 1986, Bonded Labour Act, 1976, Juvenile Justice Act, 2015 and POCSO Act, 2012 ,*

Plantation & Labour Act, 1954 , Mines & Mineral Act, 1956 , Factories Act, 1948 , IPC 1860 or any other Act should be incorporated in the FIR]

- iii. The FIR shall be uploaded on the official website of the Police within 24 hours of the registration of the FIR as directed by the Hon'ble Supreme Court of India in ***Youth Bar Association of India v. Union of India***, AIR 2016 SC 4136. However, there should be no disclosure of the identity of the child. [Ref. Section 74 of the JJ Act, 2015 & Section 23 of POCSO Act, 2012]
- iv. The Police shall hold an independent investigation as per the Code of Criminal Procedure for initiating prosecution against the offenders. [Note: The investigation being undertaken by the Police to implicate the offender and the inquiry being conducted by CWC are independent of each other. It is to be understood that the inquiry before CWC and the investigation by the Police can process simultaneously without affecting each other as the purpose of the investigation by the Police is to inquire into the violations and apprehend the offenders and the purpose of the inquiry by CWC is to restore, repatriate and rehabilitate the child while keeping in view the best interest and welfare of the child.
- v. Once the investigation is done by the Police, a charge sheet shall be prepared and the judicial proceedings under the Code of Criminal Procedure, 1973 shall be initiated.

Step 4: Transfer of Child to Temporary Shelter

If the parents, family or guardian of the child were present with the child at the time of rescue or were present before the CWC, then restoration of the child shall be done as per the discretion of the CWC. The Parents/Family/Guardians of the child present should not be in contravention of laws themselves.

In case parents, family or guardian of the child are not present, then the child should be taken to a shelter/home.

Step 5: Proceeding before the Labour Department

- i. Upon receiving the direction/order from the CWC, the Labour Department shall ascertain the wages of the child based on his/her statement made to the CWC within 7 days of the child's rescue.
- ii. Once the amount is ascertained by the Labour Department, then the same shall be recovered by the Labour Department from the offender within 10 days of ascertaining the amount. The money shall be recovered in form of a Demand Draft (DD) in the name of the child.
- iii. It is the responsibility of the District Magistrate to ensure that recovery is done in a time bound manner and in case of any delay in recovering the amount, the District Magistrate will issue appropriate orders at the request of the CWC, the parent, guardian of the child, at the instance of the child or the District Magistrate may *suo-motto* issue such orders.

Step 6: Repatriation

In case the child belongs to the same district as of the rescuing CWC, then steps will be taken for restoration of the child.

However, if upon inquiry it is found that the child is from a State/District other than the District of rescue then, the rescuing District CWC shall make arrangements to send the child to his family under escort. The Repatriation should be done in accordance with Section 95 and 96 of the Juvenile Justice Act.
[Note: Another SOP for Repatriation will be developed]

Step 7: Restoration

The concerned CWC will ensure restoration of the child with his family, relatives or guardian. It is the duty of the State to ensure that the child is restored with his/her family. In case the whereabouts of the child's family are unknown or if the CWC is of the opinion that it is in the best interest of the child to send the child to a shelter/home, then the CWC will ensure the child is placed accordingly.

Step 8: Rehabilitation

Rehabilitation of the child should be done through an "Individual Care Plan" wherein a special plan is created for the child to rehabilitate him/her. The rehabilitation plan must include measures that are sustainable and include both the short term rehabilitation needs as well as long term integration needs of the child and his/her family.

As provided under Section 14B of the Child Labour Act, 1986, the appropriate Government shall constitute a Fund in every district or for two or more districts to be called the "Child and Adolescent Labour Rehabilitation Fund". Payment to the child labour is to be made in accordance with Rule 16A of Child Labour Rules, 2017. This is to be ensured by the District Labour Department and supervised/monitored by the State Labour Department.

Step 9: Payment of Wages and Compensation

Once the child is restored with his family or placed at an appropriate home/shelter, the CWC under whose jurisdiction the child is restored will ensure payment of wages and compensation to the child.

- i. The CWC under whose jurisdiction the child is restored will open a bank account for the child.
- ii. The Demand Draft received from the employer of the child shall be deposited in the bank account of the child.

The CWC under whose jurisdiction the child has been rescued shall make an immediate compensation of INR 20,000/- has to be given to the child as per the decision of the Supreme Court of India in ***M.C. Mehta vs State Of Tamil Nadu And Others***, AIR 1997 SC 699.

The District Administration is to ensure that the compensation shall be given to the child in accordance with Clause 5 of the Central Sector Scheme for Rehabilitation of Bonded Labourer – 2016. District Magistrate may pass any appropriate orders as it may think fit. The benefits prescribed in the scheme shall be, in addition to, other cash or non-cash benefits, which a beneficiary under the scheme is entitled to, by or under any other scheme or law applicable for the time being in force.

Step 10: Prosecution and Adjudication

The matter should be prosecuted and adjudicated by the competent authority having jurisdiction to adjudicate the matter.

4. ANNEXURE A

The statement is to be recorded in compliance with Section 164 of Cr.P.C. Any such confession shall be recorded in the manner provided in Section 281 of Cr. P.C for recording of examination of an accused person and shall be signed by the person making the confession. The Magistrate shall make a memorandum at the foot of such record to the following effect-

“I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed)

Chairperson/Member of CWC

Questions to be asked while recording the statement of a rescued child:

A. General Information

Child's name, age, nationality, family, address etc.

B. Recruitment

- i. What is the child's native place?
- ii. What location was the child last residing in?
- iii. How long was the child residing at that location?
- iv. How old was the child when he/ she left the native community?
- v. Do members of the family know the child's whereabouts?
- vi. Was the child forcibly transported to another location in his/her native place?
If yes, how?
- vii. Who recruited the child?
- viii. What was the purpose of the recruitment?

- ix. Was initial contact with recruiter voluntary or not?
- x. If not, was the child forcibly transported out of his/her place of origin? If so, how?
- xi. When did the child start receiving salary/wages?
- xii. Was there any advance given to the child before commencement of work?

C. Use of Force or Threat

If force was used in the recruitment, please ask the following questions:

- i. Was the child abducted or kidnapped?
- ii. Was the child threatened with harm to his or her self or family?
- iii. Was the child sold? By whom?
- iv. What were the circumstances of the forcible removal?
- v. Who initiated the contact? How?
- vi. What was the method of recruitment (e.g. by advertising, acquaintance, family, study, training, etc.)

D. Employment

If the recruitment was for employment, please ask the following questions:

- i. What kind of work was offered to the child or what activities did the child believe she/he would be engaged in following arrival at the new location?
- ii. How much money was promised to the child and by whom?
- iii. Did the child sign a contract? (e.g. an employment contract) If so, what are the terms of the contract? Does the child know them (e.g. was the contract in a language the child understood)?
- iv. Does the child possess a copy of the contract?
- v. Was the child coerced into signing the contract? How?
- vi. Was anyone paid a fee for recruiting the child for work?

E. Identity Documents

- i. Does the person have any identity proof? If so, is it his own legitimate document or is it a fraudulent one?
- ii. How did he acquire this document?
- iii. Was it provided to him by the Employer?
- iv. What kind of employment authorization was promised to the child and by whom?

F. Working Conditions (Exploitation)

- i. Does the child believe that she/ he is subject to some form of debt bondage?
- ii. Does the child believe that she/ he owes money to recruiters/ transporters/ exploiters?
- iii. Was the child paid and at what rate?
- iv. Who has the possession of these earnings now?
- v. How many hours a day did the child work?
- vi. Was the child allowed any time off? Allowed to rest if sick?

G. Restriction of Freedom

- i. Was the child unable to quit working for the employer and get a job somewhere else?
- ii. Was the child's movement restricted? How? (e.g. did the child have a key of the house)
- iii. Was the child allowed to communicate with family members? Other workers?
- iv. Was the child living and working at the same place?

H. Living Conditions

- i. What were the living conditions of the child? (e.g. no. of rooms, no. of people living together)
- ii. Did the child have friends?
- iii. Did the child have money?
- iv. Could the child buy his/ her own belongings?
- v. Was the child given proper food, clothing, shelter etc.?

I. Physical Coercion

- i. Was the child subject to physical assaults or torture? (pinching, hitting, slapping, punching, kicking, shaking, burning, branding, chained, etc.)
- ii. Was the child subject to sexual assaults? (forced sexual contact, rape, forced prostitution etc.)
- iii. Was the child forcibly confined or isolated?
- iv. Was the child denied essential medical care?
- v. Was the child denied food/ clothes and other basic necessities including ability to maintain basic hygiene?

J. Psychological Coercion

- i. Was the child threatened with violence, harm or retaliation against child or the child's family members (or friends)?

- ii. Were there threats to report the child to authorities?
- iii. Did the child view or hear others being physically or sexually assaulted?
- iv. Was the child deceived regarding the employment, activities or basic conditions of his or her employment?
- v. Was the child subject to verbal abuse, name calling, degrading remarks about child's ethnicity/social group?
- vi. Was the child photographed and filmed while being physically or sexually assaulted, humiliated or degraded?