

**Standard Operating Procedure for  
dealing with Children in Conflict  
with the Law**

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## FOREWORD

The Constitution of the Kingdom of Bhutan 2008 reaffirms our commitment to ensuring that children are protected against all forms of discrimination and exploitation including trafficking, prostitution, abuse, violence, degrading treatment and economic exploitation. The ratification of the Convention on the Rights of the Child (CRC), including its two Optional Protocols, further confirms the country's commitment to promoting and protecting the rights of children. The Parliament of Bhutan passed the Child Care and Protection Act 2011 (CCPA) to ensure the provision of effective and appropriate services for children who need care and protection of children in difficult circumstances and children in conflict with the law. To implement the Act and to establish a systematic and well-coordinated protection mechanism for children in collaboration with all relevant stakeholders, all actions concerning children shall be guided by the principle of the best interest of the child. The principle applies to all children including children in contact with the law since these decisions will have long-lasting impacts on the individual child.

Recognising the emerging protection issues related to women and children and the need for proper mechanisms and systems, the Standard Operating Procedures on Case Management for Children in Conflict with the Law (SOP) was reviewed to ensure the provision of effective, appropriate, systematic and timely services to prevent and respond to the protection issues faced by children who come in conflict with the law and also in contact with the law. The SOP contains integral roles and responsibilities including accountability of all the stakeholders involved in dealing with children in contact with the law.

## Standard Operating Procedure for dealing with Children in Conflict with the Law

The SOP was developed and reviewed jointly by the Royal Court of Justice (RCJ), Office of the Attorney General (OAG), Royal Bhutan Police (RBP), Bhutan National Legal Institute (BNLI), BAR Council of Bhutan, Jigme Singye Wangchuck Law School and the National Commission for Women and Children (NCWC).

Going forward, the onus of implementing and institutionalizing the child justice system and streamlining the approach to rehabilitate and reintegrate children in contact with the law lies with the commitment of all the key stakeholders.

A handwritten signature in black ink, appearing to read 'Tandi Dorji', written over a horizontal line.

Lyonpo Dr. Tandi Dorji

Chairperson

National Commission for Women and Children

## Introduction

A cardinal principle of child justice administration is that the best interest of the child shall be the primary consideration in all decisions taken concerning children. The traditional objectives of criminal justice such as retribution and repression must give way to rehabilitative and restorative objectives of child justice. The best interest of the child should be to ensure physical, emotional, intellectual, social and moral development of a child in conflict with law in order to ensure safety and wellbeing to enable each child to survive and reach his or her full potential.

In 1989 the United Nations set forth recommendations and guidelines for the international rights of children. The UN Convention on the Rights of the Child (CRC) came into force on November 20, 1989, and it acts as an umbrella for three other UN initiatives concerning children. These are the UN Guidelines for the Administration of Juvenile Delinquency (Riyadh Guidelines), the UN Standard Minimum Rules for the Protection of Juvenile Justice (Beijing Rules), and the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules). The CRC contains several provisions calling upon State parties to ensure effective child justice system to monitor and improve the conditions of child welfare and health.

Bhutan was among the first few countries to ratify the CRC in 1990 without any reservation and the country is mandated to recognize the importance of having an effective child justice system. Acknowledging the obligations under the CRC, the Child Care and Protection Act was enacted in 2011 to ensure care and protection in matters relating to a child in conflict with law and child in difficult circumstances. A standard operating procedure (SOP) for dealing with child in conflict with law was developed in 2018 to streamline the process for all institutions involved in child justice system when they interact with a

child in conflict with law. The existing SOP only provided guidance for dealing with children who come in contact with law as offenders and is silent on children who come into contact with law as victims and witnesses. This SOP seeks to strengthen the child justice system and enhance child-friendly mechanism, not only for children who come in conflict with law but also the victims and witnesses.

The SOP is based on the principles of presumptive innocence and the best interest of child, and a clear objective is to reduce incarceration by substituting alternative measures and protecting child in conflict with law from violence, abuse and exploitation. It has been designed to be a useful guide for all stakeholders while dealing with children who come in contact with the law viz. courts and police, prosecution, child protection authority, probation officer and child welfare officer.



## CHAPTER 1

### PRELIMINARY

#### Objective

1. The main objective of the SOP is to:
  - i) provide guidance in dealing with the child in conflict with the law (CICL) to ensure the best interest of the child;
  - ii) standardize the procedure for dealing with children who come in contact with law as offender, victims and witnesses to ensure accountability, transparency, consistency and uniformity.
  - iii) specify the respective roles of the key agencies involved in child justice administration; and
  - iv) enhance collaboration and coordination among the key agencies involved in administration of child justice.

#### Guiding Principles

2. In implementing this SOP, the key agencies and others must adhere to the principles enshrined in the Child Care and Protection Act 2011 (CCPA), which is in line with the Convention on the Rights of Child (CRC). The following are the guiding principles which would promote fairness and protect due process rights:
  - i) *Best interest of the child*

In any action concerning a child, the best interest of the child shall be the primary consideration. Determination of best interest of the child must amongst others include the following:

- the health, development, safety of the child;
- the importance of keeping children within their families;

- the taking of a child into custody only as a last resort; and/or
- the need to rehabilitate and reintegrate children back to the society and not to focus exclusively on punishment.

ii) *Non-discrimination*

A child must be treated fairly and equally with respect and dignity and shall not be discriminated against on the grounds of race, sex, language, religion, political or other status.

iii) *Participation*

A child must be provided with the opportunity to be heard in any judicial and administrative proceeding either directly or through a representative or an appropriate body by encouraging maximum participation during the proceedings.

iv) *Adoption of child friendly approach*

A child shall be treated with professionalism, fairness and respect. Fair and respectful treatment of children prevents unnecessary conflicts and distrusts.

v) *Arrest and Detention as a last resort*

A child must be subject to arrest and detention only as a measure of last resort and that too for the shortest possible period. Given the vulnerability associated with young age, subjecting children to arrest and detention can have very negative consequences. It separates children from their families, exposes them to abuse and association with criminals, disrupts their education and can adversely impact their health and nutrition.

vi) *Respect for privacy and confidentiality*

Confidentiality is paramount in all actions relating to children to protect them from public exposure and stigmatization. The privacy of children in conflict with the law must be respected and

information relating to a child shall be shared only with appropriate authorities.

## CHAPTER 2

### KEY INSTITUTIONS UNDER CHILD JUSTICE SYSTEM

#### Competent Authority

3. The CCPA identifies the National Commission for Women and Children (NCWC) or any other authority established by the government as the Competent Authority responsible for enforcing the provisions of the Act. Any matter pertaining to the care and protection of children must be taken up with the Competent Authority.

#### Women and Children Welfare Committee (WCWC)

4. The CCPA envisage the setting up of a child welfare committee to advice the Competent Authority with regard to establishment of homes, training and rehabilitation of children in conflict with law and coordination amongst the agencies involved. The WCWC is set up with the approval of the Cabinet to function as the technical body providing advisory support and expert services to the competent authority.

#### Dzongkhag/ Thromde Women and Children Committee

5. The formation of a Dzongkhag/Thromde Women and Children Welfare has been approved by the Cabinet in accordance with the provisions of the Child Care and Protection Rules and Regulations. The Committee is required to provide assistance to the Competent Authority and to render timely services to women and children in need of care and protection including CICL in their respective Dzongkhags and Thromdes.

### **Royal Court of Justice /Family and Child Bench**

6. The Act mandates the establishment of a Child Justice Court or bench to be presided over by a judge having knowledge of child psychology and child welfare.

### **Royal Bhutan Police (Woman and Child Protection Unit/Desk (WCPU/WCP Desk)**

7. The WCPU/WCP Desk is a specialized unit/desk under the Royal Bhutan Police created for the specific purpose of handling and dealing with victims of gender-based violence, women and children in difficult circumstances and children in conflict with the law. While the purpose of the WCPUs/Desks is to deal with issues pertaining to women and children, it is important to note that, unlike in the case of a child, not every case involving women shall be dealt with by the WCPU or Desk. The difference lies in the fact that while the law accords special protection for child offenders or children in conflict with the law (CICL), protection of women is accorded so long as they are victims/survivors of abuse and not otherwise.

### **Bhutan Food and Drug Authority (MoH)**

8. Bhutan Food and Drug Authority is the nodal agency established under Narcotics Drugs, Psychotropic Substances and Substance Abuse Act of Bhutan 2015. The Act mandates the Authority to provide treatment to minors with substance use disorder as per section 152 and 154 of the Act through Treatment Assessment Panel (TAP), Drop-in Centers and other institutions-based treatments.

## Office of the Attorney General (OAG)

9. The OAG as the central prosecuting agency of the State, reviews investigation and assessment reports referred by RBP and Probation Officer pertaining to a CICL. The OAG expedites processes relating to CICL and where possible, affords opportunities for corrective measures through alternative measures in place of prosecution.

## Homes

10. The CCPA requires the establishment of various homes by the government on its own or in association with Civil Society Organizations, for the purpose of providing care and protection to contribute effectively towards the rehabilitation of children in difficult circumstances and in conflict with the law.
11. The Act provides for the establishment of the following:
  - i) *Child Home* (for children in difficult circumstances to ensure the provision of education, health and other development services for the child based on the child's age, gender and ability).
  - ii) *Remand Home* (for temporary care and protection of the child during the period of inquiry or adjudication).
  - iii) *Special Home* (for the care of child in conflict with law by way of providing accommodation, facilities for development of child's character, abilities). The Youth Development and Rehabilitation Centre (YDRC) at Tsimasham is the closest example of such a facility.
  - iv) *Closed Facilities* (for the care of child in conflict with law involving an offence of third degree and above).
  - v) *Aftercare Home* (for temporary care of the child released from a home to ensure a smooth transition from detention to life outside the home). *Nazhoen Lamtoen* a civil society organization working with

children is the only organization catering to such support services for children coming out from rehabilitation facility.

### **Civil Society Organization (CSO)**

12. The CCPA provides for civil society organizations to effectively contribute toward the rehabilitation of children in difficult circumstances and in conflict with the law. Nazhoen Lamtoen is a registered CSO who provides aftercare services for children who come out of rehabilitation to ensure meaningful reintegration back into society.

## CHAPTER 3

### CHILD IN CONFLICT WITH THE LAW

#### Child in Conflict with Law (CICL)

13. A child in “conflict with the law” (CICL) refers to anyone who is above 12 and below 18 years of age and found to have committed an offence.

#### Rights of Child in Conflict with Law

14. A CICL has the right to the following:

- i) to be treated with respect and inherent dignity;
- ii) to be kept separately from adult offenders at all times;
- iii) to be transported in a separate conveyance from that of adult offenders;
- iv) to maintain contact with family members through correspondence and visits, except in exceptional circumstances;
- v) to prompt access to legal and other appropriate assistance;
- vi) to privacy which is to be fully respected and protected at all stages of the proceedings;
- vii) to legal aid for children whose parents/ guardian are indigent person;
- viii) to protection against legal consequences and social stigma;
- ix) to alternative measures, if not a recidivist or habitual offender;
- x) to separate hearing, if another person accused of same crime is an adult;
- xi) to minimum sentencing, if not a recidivist or habitual offender; and
- xii) to provide any statements in the presence of the child’s parents or guardian, or legal representative who shall also affix their signature to the said statement;



- xiii) not to be handcuffed unless there exist exceptional circumstances warranting such use.
- xiv) not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; and
- xv) not to be deprived, unlawfully or arbitrarily of his or her liberty.

### **Initial Contact**

15. Initial contact with the child refers to the apprehending or taking into custody of a child in conflict with the law by police or other law enforcement agency.
16. The police may come into initial contact with the child in conflict with the law when:
- i) a police officer comes across a child committing an offence while on duty or when called upon by someone in the community alleging that a child has committed an offence;
  - ii) a child apprehended by a citizen (victim of the crime of any other person) is brought to the police station;
  - iii) a complaint about a child has been received at the police station; or
  - iv) when a child willfully obstructs law enforcement authorities in carrying out its duties.
17. In case of non-cognizable offences, the police may arrest the child only if they possess the warrant issued by a competent court.

### **Age of criminal responsibility**

18. A child above the age of 12 years at the time of the commission of the offence is criminally responsible for committing a crime and will be subject to criminal prosecution.

### **Determination of a child's age**

19. A person below the age of 18 years shall be treated as a child evidenced by an official record maintained by the Government, birth certificate or any other document proving the age of the child.
20. In the absence of the record or the certificate mentioned above, or discrepancies regarding the age of the child, it may be based on information from the child or testimony of other person considering the physical appearance of the child or expert medical opinion and other relevant evidence.
21. The age at the time of the commission of the crime shall be taken into consideration for determining whether the accused is a child or not.

### **Child below the age of criminal liability**

22. A child of 12 years of age and below at the time of the commission of the offence is deemed incapable of committing a crime and cannot be subject to criminal proceedings.
23. If the child is below 12 years of age and is in conflict with the law, the child must be handed over to his parents, guardian or closest relatives after advice and cautioning. A joint undertaking must be signed by the parties to ensure that the child does not come in conflict with the law again.
24. In such an event, the court may order the parent or guardian to pay damages.
25. If the child is at or above the age of criminal responsibility and is alleged to have committed an offence, the child must be dealt in a child-friendly manner that takes into account of their vulnerability, personality, specific needs for education and intellectual maturity.

**Notification to Probation Officer**

26. The police upon determining the child as CICL must notify the probation officer through writing or through other means at the earliest.

## CHAPTER 4

### PROCEDURAL ASPECTS RELATING TO A CHILD IN CONFLICT WITH THE LAW

Child justice is a collection of state and court-based system whose purpose is to respond to children who come in conflict with the law. The courts hear the cases to determine whether the child violated the law and if so, decide on an appropriate response. Various stakeholders including the Probation Officer manage the rehabilitative programs, services and sanctions provided to help the child committing further delinquent behavior.

This Chapter lays out the various agencies involved in child justice administration and specific procedures to be followed when dealing with a CICL.

## Stages under Child Justice System

### PRE TRIAL

- Complaint
- Age determination
- Statement of complainant/ victim
- Statement of witnesses
- Arrest and Bail (No handcuff)
- Notifying Probation Officer, parents, guardian
- Asking Assessment Report from Probation Officer
- Use of Alternative Measures
- Release / chargesheet

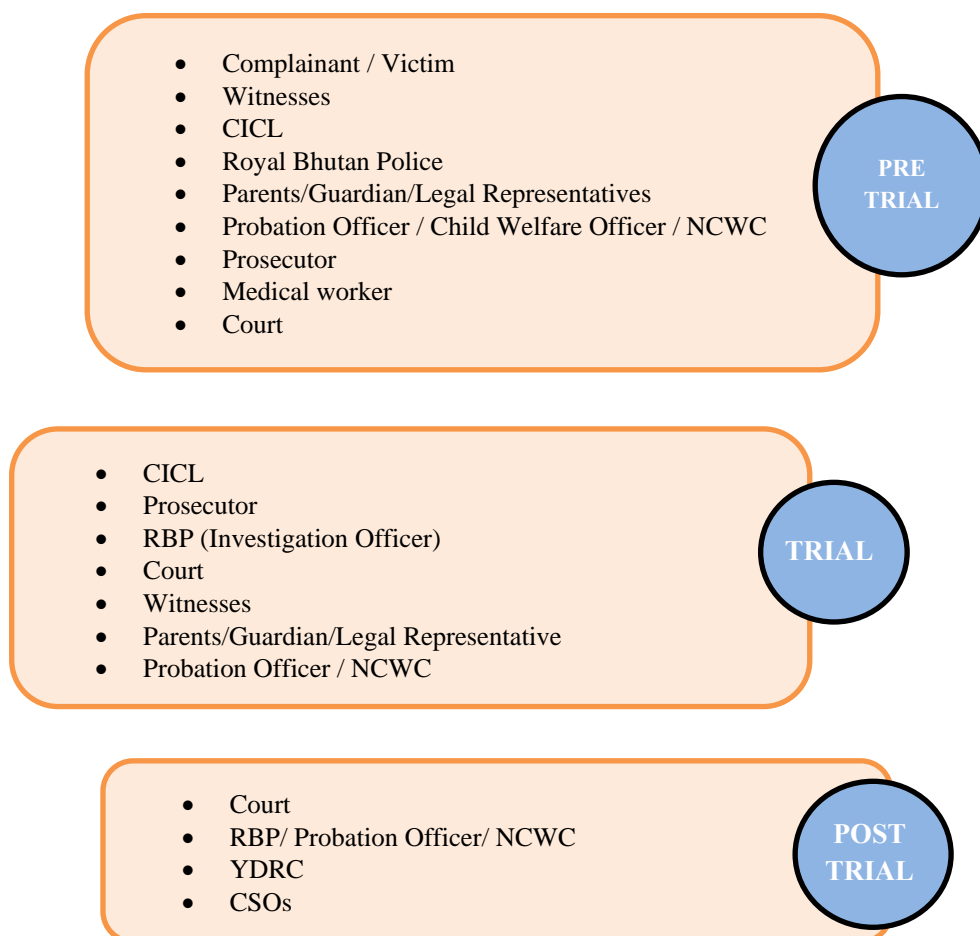
### TRIAL

- Chargesheet and Trial – separate from adults (specialized court / bench)
- *In camera* trial – no publicity
- Involvement of Probation officer and guardian
- Free legal Assistance (legal aid)
- Use of alternative sentencing

### POST TRIAL

- Probation and suspension of sentence
- Community service
- *Thrimthue*
- Placement / detention in YDRC
- Rehabilitation / reintegration in the society
- Expungement of criminal record

## Stakeholders/ Official involved at different stages



### Procedures for the Police

The police play a vital role in law enforcement as they are involved in responding to complaints, making arrests, investigating crimes and even prosecution of petty misdemeanor cases. The first point of contact between a CICL and the criminal justice system is normally the police. The manner in which the CICL is treated by the police will play a decisive role in

safeguarding the rights of the CICL and navigating through the child justice system

### *Arrest*

27. Institutionalization or pretrial detention of the child pending adjudication shall be used only as a measure of last resort and for the shortest possible period of time.
28. The police officer must determine whether the accused is a child or not by determining the age of the child at the time of commission of the crime.
29. Age determination of a child in conflict with the law shall be made on the basis of an official record with the government (census and birth registration), and in its absence, any other document including a medical determination made by a medical expert proving the age of the child.
30. A police officer shall deal with an alleged offence committed by a child without arresting, except when required for the purpose of justice or security.
31. A police officer shall not arrest or take into custody a child below 12 years and upon verification of the age, immediately release the child to the custody of the parents or guardian or in absence thereof, the nearest relative.
32. If a child is found committing, or reasonably believed to have committed an act which, if committed by an adult, would be a felony offence, or which involves serious physical harm or danger to others, the child may be taken into immediate custody.
33. When a child is taken into custody, the police must immediately inform the parent/ guardian/ legal representative of the child upon the arrest of the child, before asking anything of the child.
34. The police must inform the child about the right to remain silent and must not compel a child to confess guilt.

35. The police upon arresting a child or summoning a child for any matter shall notify the probation officer for assessment of the child before conducting any inquiry by the police.
36. The police must explain to the child the reason for being placed under custody in a language which a child can understand.
37. The police must not conduct any inquiry or investigation on a child in the absence of the child's parent/ guardian/ legal representative or the probation officer.
38. The police must not use handcuff on a child, however, handcuff may be used where there is exceptional circumstance warranting its use, such as risk to oneself or any other person.
39. The police must present the child before the court within 24 hours from the time of arrest.
40. The police must ensure to transport the child in a separate conveyance from that of adult offenders while taking the child to and from the court.

### *Custody*

41. The custody of the child who is apprehended is to be immediately turned over to the designated Woman and Child Protection Unit/Desk where available from the nearest police station to take charge of the matter.
42. The police must ensure that the child is medically examined if so needed, at the earliest and preferably within 24 hours at the nearest hospital.
43. The child in conflict with the law must be kept separate from adult offenders.
44. A child may be released on bail into the care of the parents or any guardian upon execution of a bond for such sum of money by one or more sureties and it is in the best interest of the child.



45. When a child in conflict with the law is arrested and not released on bail, the child shall be kept in a remand home (pre-trial facility) or a place of safety for a such period during the period of the inquiry and adjudication.

### *Case Registration*

46. All cases relating to a child in conflict with the law shall be registered for record purposes.
47. A child arrested on a criminal charge should be informed promptly and directly of charges against the child, through the parents, guardian or legal representative.
48. In case, a formal complaint is registered then copy of said charges should be made available, to the child, parents or guardian, at the earliest to enable the child to explain the circumstances which resulted in the child coming into a situation of conflict with the law.

### *Record of statement*

49. A police officer must ensure that the statement of the child is obtained in the presence of the child's parents or guardian, or legal representative in attendance who shall sign on the statement.

### *Investigation*

50. The police must inform the child about their right to *Jabmi* and facilitate in providing free legal aid if the child or parents or guardian of the child is an indigent person.
51. A child should never be compelled to confess his/her guilt and as far as possible, a child in conflict with the law should be interviewed in a child friendly environment, which does not give the feeling of being under custodial investigation.
52. The police must ensure to use child-friendly language while conducting the investigation and make use of a translator if needed.

53. The investigating officer shall complete the investigation within one month if the child is remanded after the production before the court, failing which the child shall be produced before the court and the court may authorize further detention of 2 weeks or one month where the investigation relates to a heinous crime.
54. A child in conflict with the law should be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and desirability of promoting the child's reintegration and encouraging his or her constructive role in society.
55. The record of a child in conflict with the law must be kept strictly confidential and must not be accessible to anyone other than duly authorized authorities.
56. A police officer should be friendly and try to gain the child's confidence and respect. If the child believes in the police officer.
57. A police officer shall identify himself/herself properly so that the child knows exactly who is interviewing him or her and inform the child of the charges against him in a friendly language.
58. A police officer should encourage the child to do most of the talking and be a good listener.
59. A police officer should try to ascertain the problems to help the child. A police officer should use simple expressions that can be easily understood by the child.
60. The police shall ensure that the child is interviewed in the presence of a parent, member of family, guardian or legal representative.
61. A police officer may summon any witness for the purpose of investigation.
62. Upon completion of the investigation, the investigation officer shall share the investigation report with the prosecutor.

63. The privacy of the child has to be fully respected, and the police must ensure that no harm is caused to the child by stigmatic exposure or publicity or labeling.
64. A police officer must ensure that the identity of the child in conflict with law and the victim is protected from publicity.

### **Procedures for the Probation Officer**

The Probation Officer is an officer appointed by the Competent Authority to advise and assist a child who comes in conflict with the law and supervise the conduct of a child released through alternative measures and alternative sentencing. The role of the Probation officer starts from the time the child comes in initial contact with the police and continues throughout the whole journey through the child justice system, until the child completes rehabilitation and reintegrates into society. Since the probation officers as foreseen in the CCPA have not been appointed, the Protection Officers in NCWC, the Gender and Child Focal Person (GCFPs) acting as interim protection officers in the Dzongkhags have been taking on the role of the Probation Officers.

### ***Assessment***

65. The Probation officer must visit the CICL to carry out an assessment of the child upon receipt of notification from the police, at a suitable place identified by the probation officer, which is conducive to privacy.
66. The assessment of the CICL by a probation officer shall take place before the conduct of any inquiry by the police.
67. The Probation officer must advise and assist the child in a child-friendly manner and language understandable to the child.
68. The Probation officer must seek assistance from the police wherever necessary.

69. During an assessment of the child, the following person may be present:
- i) child's parents or guardian or legal representative;
  - ii) police official;
  - iii) prosecutor; and
  - iv) any person whose presence is necessary or desirable for the assessment.
70. The Probation Officer must:
- i) explain the purpose of the assessment;
  - ii) inform the child of their rights and responsibilities under the law;
  - iii) explain the procedures to be followed; and
  - iv) ask whether the child intends to acknowledge responsibility for the offence.
71. After the assessment, the Probation officer shall make a report containing the following:
- i) prospect of diversion of the child;
  - ii) possibility of the child obtaining bail;
  - iii) possibility of the release of the child, if the child is in detention;
  - iv) placement of the child in a particular place of safety, secure care facility, or prison.
72. The Probation officer must submit an assessment report of the child as per the Annexure A of this SOP to the competent authority and the prosecutor.
73. The Probation officer shall coordinate and assist the police and the court where required.

### ***Monitoring and Supervision***

74. The Probation officer is responsible for monitoring those children who have been released at the pre-trial stage through alternative measures such as diversion, and post-trial stage through alternative sentencing, such as

- probation and community services and ensuring that the CICL complies with the terms and conditions of such order.
75. The Probation officer must coordinate with all stakeholders and maintain proper record (if possible, in a database or on a computer) of children who are in conflict with law and prepare report with regard to their social and educational status and identify children who immediately require rehabilitation services.
  76. The data should provide the total number of CICL, children released on diversion, probation or community services.
  77. The Probation officer must establish and maintain contact with the child sent to a rehabilitation facility, to monitor the conduct and provide assistance where required.
  78. If upon completion of the sentence at the rehabilitation facility and the child has no parents or guardian to go to, the Probation officer shall facilitate the child in obtaining aftercare services by identifying civil society organization involved in providing such services.

### **Procedures for the Prosecutor**

The role of the prosecutor is to carry out prosecution on behalf of the state. The prosecutor represents the victim in court and establishes the guilt of the accused person. The Office of the Attorney General (OAG) has the responsibility of prosecuting all cases starting from misdemeanor offences to the severest form of felony offences. Additionally, the police are also tasked with the responsibility to prosecute petty misdemeanor offences.

79. A prosecutor must assist the police and the court by acting as an intermediary between the police and the judiciary.
80. A prosecutor shall review the assessment report made by the Probation Officer and the investigation report submitted by the police and shall

- accordingly determine whether the child could be released through alternative measures instead of prosecution.
81. A prosecutor must endeavor to promote fair, impartial and just proceedings which shall be conducive to the best interests of the child.
  82. A prosecutor shall identify cases where diversion is possible and bring it to the notice of the court.
  83. The following factors need to be taken into consideration in determining the diversion of a child:
    - i) offence must be fourth degree felony and below;
    - ii) child voluntarily acknowledges responsibility for the offence;
    - iii) has parents or guardian to guide and supervise the child;
    - iv) best interests of the child; and
    - v) recommendation by case screening corpus at OAG.
  84. The prosecutor must inform the court of competent jurisdiction by submitting a copy of the diversion agreement to court.
  85. The prosecutor must inform the Competent Authority and the Probation Officer when a child is sent on diversion.
  86. The prosecutor may provide technical assistance to the investigation agency and court with matters relating to the CICL.
  87. The prosecutor must request for *in camera* adjudication proceeding of CICL and assist the court in expeditious disposition of case within the shortest possible period to minimize victimization or trauma to ensure smooth rehabilitation and reintegration to normal life.
  88. The prosecutor must assist the court and concerned institutions to exercise right of the child to legal representation in the interest of justice.
  89. A prosecutor may call for presence of an official or employee of the government or relevant agency for furnishing evidence at any stage of proceedings before the court.

## Procedures for Court

As per the CCPA, specialized Child Justice Court or Benches are to be established which are to be presided over by a judge having knowledge of the of child psychology and child welfare. Where there is no such court, regular courts are mandated to deal with cases concerning children.

90. The court must adopt child friendly procedures to adjudicate cases relating to CICL in child-friendly court room.
91. The Courts must be guided by the following principles:
  - i) well-being of the child;
  - ii) proportionate sentencing in the best interest of the child;
  - iii) minimum restriction on personal liberty;
  - iv) appropriate alternative sentencing; and
  - v) decriminalization and restorative justice.
92. The Court must dispose bail matters on priority to ensure that detention is a measure of last resort and for the shortest appropriate period of time.
93. The Court must monitor the investigation process by ensuring completion of investigation within *one month* if a CICL is remanded after production before court.
94. The Court may authorize detaining the child for an additional period not exceeding *2 weeks* on being satisfied that adequate grounds exists, or for one month where the investigation relates to heinous crime.
95. The Court may substitute detention pending adjudication with alternative measure such as close supervision, intensive care or placement with family or in an educational setting or home.
96. The Court must call for the assessment report made by the Probation Officer to ascertain the child's social and educational status.

### *Preliminary Inquiry*

97. The Court must conduct a preliminary inquiry before formally proceeding with adjudication in order to determine:
- i) if the child can be sent on diversion and if so to identify a suitable diversion option;
  - ii) if the matter needs to be formally adjudicated;
  - iii) the release or placement of the child pending conclusion of the inquiry.
98. The Court must conduct proceedings in an informal manner to encourage maximum participation of the child.
99. The Court must ensure that adjudication proceeding for cases relating to the child are held *in camera*.
100. The Court must ensure separate hearings for child if the child is accused of an offence with an adult.
101. The Court must ensure adoption of non-custodial measures to assist reintegration of child into the society.
102. The CCPA provides for the court to admonish or reprimand a child and dismiss a prosecution if the offence is of a *trivial* nature.
103. The Court may release a convicted child on probation or suspend the sentence on grounds of good and exemplary behavior of the child.
104. The Court may order community service in lieu of imprisonment, if the offence is '*fourth degree felony and below*'.
105. The Court must direct the Probation officer to monitor the child undergoing community service.
106. The Court may order to pay fine in lieu of imprisonment (*Thrimthue*), if the offence is '*fourth degree felony and below*'.
107. The court may order restitution by making the child, parents of guardian to restore property damaged by the child.



108. The Court may refer a case to a Family Group Conferencing
109. Where the offence committed is a *petty misdemeanor or misdemeanor* and the judge is of the opinion that the child can be reformed.
110. A child shall not be received in any rehabilitation or training facility without a court order.
111. The Court may consider early release of a child in conflict with law upon recommendation of the Parole Board if the child has served at least half the term of sentence. The Probation officer must maintain proper record of CICL placed in rehabilitation facility and keep a track of their conduct and behaviour.
112. The Court must consider the placement of CICL in a rehabilitation facility who has attained 18 years of age but has not completed serving the term of sentence. The probation officer must in coordination with the rehabilitation facility approach the court with the request to make a determination of whether the child can continue at the facility upon attaining majority.

## Roles and Responsibilities of child justice system stakeholders

### POLICE

- Arrest of CICL
- Determination of the age
- Inform parents / guardians of the CICL
- Notify the concerned probation officer
- Present CICL before court within 24 hours
- Coordinate and support the Probation Officer while conducting assessment
- Investigate the case
- Consider diversion program in petty misdemeanor offence
- Release after advice / admonition where the offence is a violation
- Cautioned and released where the offence is '*not of serious nature*'

### PROBATION OFFICER

- Conduct of assessment and maintain proper record of CICL
- Prepare Assessment Report
- Assist police in investigation
- Assist court in trial proceedings
- Submission of assessment report to court where legal proceeding is initiated
- Monitoring of CICL and ensuring reintegration back to community

### PROSECUTOR

- Assist the police in investigation
- Send CICL on diversion where the offence is '*not of a serious nature*' (upto felony fourth degree offence)
- Assist the court in disposition of case in terms of alternative sentencing

### COURT

- Monitoring of investigation process
- Dispose of bail matters on priority
- Call for assessment report from probation officer
- Admonish or reprimand the child and dismiss a prosecution if the offence is '*of a trivial nature*'.
- Explore opportunities for alternative sentencing

### COMPETENT AUTHORITY

- Maintain proper record of CICL
- Establishment and recognition of homes
- Monitor Dzongkhag /Thromde Women and Child Committee
- Maintain list of Probation / Child Welfare Officer (protection officer)
- Provide a mechanism for monitoring and review of institution providing social service, shelter service and aftercare services.

### CIVIL SOCIETY ORGANIZATION

- Assist rehabilitation and reintegration of CICL
- Provide shelter facilities where such services are not available
- Provide technical assistance to shelter homes

### MEDIA

- Assist in promotion of child rights and prevention of CICL
- Court proceedings shall not be published in any newspaper, magazine or transmitted through audio-visual medium which may disclose the identity of the child.
- Picture of CICL shall not be published in any manner.

### Role of the Competent Authority

113. The NCWC as the Competent Authority has the responsibility of ensuring promotion and protection of the rights of all children within the country in their best interest. The Competent Authority must:
- i) maintain a list of probation/ child welfare officers;
  - ii) provide necessary mechanism for monitoring and supervising of institutions providing, shelter facilities, rehabilitation, reintegration and aftercare services;
  - iii) monitor the Dzongkhag/ Thromde Women and Children Committee; and
  - iv) propose amendments to legislation and polices that restrict rights of children;
114. The Competent Authority must facilitate in providing counseling and psychosocial services to CICL undergoing rehabilitation and ensure reintegration of the child back into society by providing aftercare services.
115. The Competent Authority must ensure coordination and cooperation between the stakeholders involved in administration of child justice and seek the assistance of CSO and other service providers when required.

### Role of Women and Children Welfare Committee (WCWC)

116. The WCWC will provide technical backstopping to the Competent Authority on issues and services pertaining to women and children comprising a pool of experts on women and child related issues. The functions of the committee are to provide advisory, supervisory and other technical support to the Competent Authority in the following areas:

- i) advise and supervise institutions established for protecting and promoting the rights of women and children;
- ii) make recommendation regarding matters concerning protection of women and children in difficult circumstances and children in conflict with the law;
- iii) coordinate with stakeholders on the identification and prevention of the issues relating to women and children in difficult circumstances and children in conflict with the law;
- iv) recommend any agency or organization to provide their services to prevent and protect women and children in difficult circumstances and children in conflict with the law;
- v) provide technical support and expertise on issues related to women and children in difficult circumstances and children in conflict with the law;
- vi) monitor and assess the performance of the relevant agencies in the provision of protection services to women and children; and
- vii) promote and provide inputs for operationalization and improving coordination mechanisms on women and children related issues.

### **Role of Dzongkhag/Thromde Women and Children Committee**

117. The Dzongkhag/Thromde Women and Children Committee is established in every Dzongkhag and Thromde.

118. In the event, the child has no parent or guardian, the appropriate Dzongkhag/Thromde Women and Children Committee will appoint a

guardian at the earliest, but no later than 48 hours of receiving the notification regarding the child in conflict with the law.

119. The Dzongkhag/Thromde Women and Children Committee will appoint a legal guardian for a child if:
- i) the parent/s are incapacitated or unfit and unable to care or act on behalf of the child;
  - ii) there are reasons to believe that the presence of the parent/s pose an immediate risk to the child's life and wellbeing;
  - iii) the child's parent/s are serving a prison sentence;
  - iv) the child is an orphan; or
  - v) there are any other circumstances that are found not to be in the best interests of the child.
120. The Dzongkhag/Thromde Women and Children Committee must:
- i) advise the Protection Officer;
  - ii) consult, recommend and monitor the progress of the case;
  - iii) refer matters beyond their purview to Competent Authority;
  - iv) issue directives in cases in consultation with the Competent Authority;
  - v) coordinate with the stakeholders on providing after care services and support; and
  - vi) monitor, assess and submit information to the Competent Authority through the CMIS at the Dzongkhag/Thromde level.

### **Role of the Media**

121. The media shall assist in the promotion of child rights and the prevention of offences committed by children.

122. The media shall maintain privacy in reporting and covering cases of children and in all publicity concerning children, the best interests of the children shall be taken into consideration.
123. Court proceedings shall not be published in any newspaper, magazine or transmitted through audio-visual electronic medium in any form which may disclose the name, school or any identification or particulars that may lead directly or indirectly to the identification of such child.
124. Picture of the child in conflict with the law shall not be published in any manner.

## CHAPTER 5

### ALTERNATIVE MEASURES FOR DEALING WITH CICL

#### Alternative measures

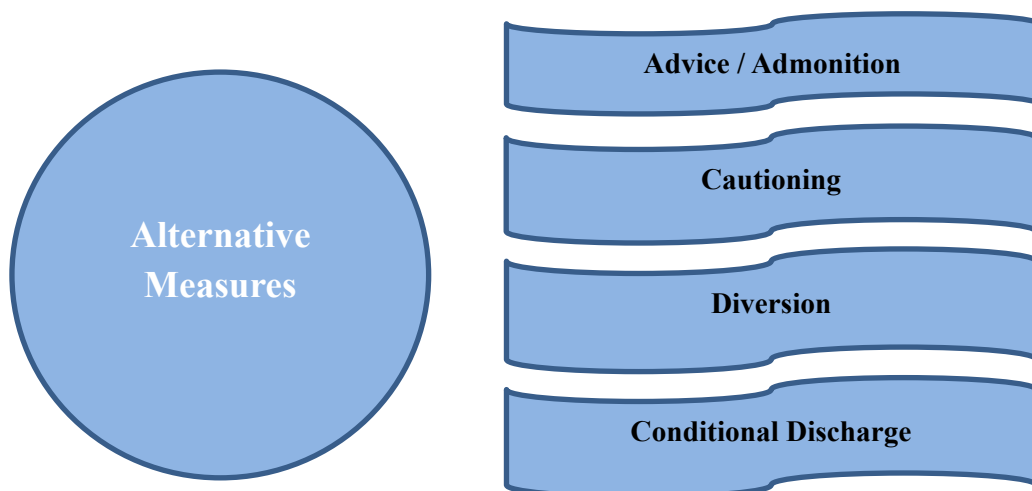
125. Alternative measures refer to programs for dealing with a CICL without resorting to formal court proceedings as an alternative to prosecution. It provides the CICL with the opportunity to make reparation to the victim and the community.
126. The primary goal of alternative measures is to promote a sense of responsibility, prevent criminalization, and facilitate rehabilitation and social reintegration of children.
127. Alternative measures offer the victim and community members the opportunity to be involved in resolving the case and have the accused take responsibility for their behavior and help repair the harm that has been done to the extent possible.
128. The use of alternative measures addresses the criminal actions of the accused while preserving their dignity and requiring them to be accountable for their behavior.
129. Alternatives measures can be used in cases where the offence committed by the child is not of a serious nature. If the offence is not serious and the child has no history of past criminal behavior, the child may be considered for an alternative measure program.
130. A child who comes in conflict with law may be considered for an alternative measure program based on the following factors:
  - i) the offence committed by the child is not of a serious nature;
  - ii) the child has no history of past criminal behaviour;
  - iii) reparation is made to victim and the community;



- iv) it addresses the criminal actions of the accused while preserving their dignity;
- v) the child admits to committing a crime and takes responsibility for their behaviour;
- vi) promotes sense of responsibility and prevents criminalization;
- vii) facilitates in rehabilitation and social reintegration of children;
- viii) offer the victim and community members the opportunity to be involved in resolving the case.

### **Types of Alternative Measures**

The CCPA provides for various types of alternative measures that may be adopted by the different stakeholders at different stages of proceedings when a child comes in contact with the child justice system. Each measure has been enunciated here in terms of the stage at which it can be adopted and the responsible agency by whom it may be implemented.



### Release after advice / admonition

131. The *police* may allow a child to go home after advice or admonition if the child is:
- i) below 12 years of age; or
  - ii) above 12 years of age but the offence is a *violation* offence.
132. The release of such a child after advice/ admonition is subject to an undertaking made by the child along with a parent, member of family, guardian or legal representative.

### Cautioning

133. A caution is a formal warning issued by *police* to a child who has admitted to having committed a criminal offence.
134. A caution is a formal out of court process that is used as an alternative to prosecution where the offence alleged to be committed by the child is '*not of a serious nature*'.
135. The police officer administering the caution to a child must ensure that the child understands the purpose, nature and effect of the cautioning.
136. The police must:
- i) explain to the child that the child's action is equivalent of a criminal offence and that he or she is warned to stay out of trouble;
  - ii) explain the consequences and what is likely to happen if the behavior continues;
  - iii) ensure the presence of the child's parents, guardian or legal representative; and
  - iv) provide an interpreter or person who can communicate effectively with the child if required.
137. The procedure for cautioning a child may involve the child apologizing to the victim after the police have determined that apology is an

appropriate course of action given the circumstances surrounding the case, and the child is willing to apologize and further, that the victim is willing to participate in the process.

138. Cautioning may include certain conditions to be met by the child which may include:
  - i) verbal/written apology to victim/victim's family;
  - ii) the return of an item taken;
  - iii) the replacement of an item that was stolen or damaged;
  - iv) to fix or repair an item that was damaged;
  - v) to attend school regularly;
  - vi) to be monitored by the police officer / probation officer; or
  - vii) any other conditions that may be considered appropriate such as counseling.
139. The conditions must be appropriate to the child's age and maturity and proportionate to the circumstance of the offence.
140. The caution should be subject to the consent of the child, parents/guardian or close relatives. If the child or the parents/guardian does not consent, they should be made aware that the alternative is to arrest the child.
141. Upon cautioning the child, the child will be released without going through the legal process. The police shall inform the child welfare officer if the child is found to be a child in difficult circumstance based on the preliminary assessment report.
142. The record of a child released after cautioning by the police must be maintained. However, the cautioning of a child on legal implication shall not form part of the child's criminal history.

## Diversion

143. Diversion is an alternative measure for dealing with a child in conflict with law other than judicial proceeding. Where the offence is *not of a serious nature*, a CICL may undergo diversion program without undergoing court proceeding.
144. Diversion program can be initiated either by the *police* or the *prosecutor* (OAG) depending on the gravity of the offence. Further, even where the case reaches the court, the court may allow a child to be sent on diversion in the best interest of the child.
145. According to the Diversion Guidelines adopted by the OAG, offences *up to felony fourth degree*, may be considered as ‘*non-serious offence*’ for the purpose of diversion of CICL and this would further be determined based on the following factors:
- best interest of the child
  - severity of the charge
  - suspect’s past criminal record
  - likelihood of flight
  - potential threat to society
  - suspect’s age and physical / mental health conditions
  - views of the victim or aggrieved person
  - circumstances under which the crime was committed
146. Diversion can be carried out by the police for offence that are *petty misdemeanor and below* and for *misdemeanor and felony fourth degree offences*, the prospect of diversion must be determined by the prosecutor (OAG) based on the assessment report made by the Probation Officer.
147. Diversion may be used at any time of the proceeding and if diversion is undertaken prior to court proceeding, the concerned agencies involved in it must submit the diversion agreement to court.

148. A CICL may be considered for diversion if the child:
- i) understands the right to remain silent and has not been unduly influenced to acknowledge responsibility;
  - ii) voluntarily acknowledges responsibility for the offence;
  - iii) feels accountable for the harm caused and is willing to pay the compensation;
  - iv) feels remorse for the offence he committed;
  - v) has parents or guardian to guide and supervise the child; and
  - vi) is willing to reconcile with the person or community affected by the harm caused.
149. Additionally, the views of the victim must be taken into consideration to make a determination on whether to send a child on diversion.
150. A Diversion Conference must be convened by the prosecutor with the child and his/her parents /guardian /legal representative, probation officer and any other official authorized by the Competent Authority.
151. Participation of the child at the conference shall be encouraged based on the age and the maturity in choosing a program that best befits the child.
152. The terms and conditions of the diversion agreement and explanation of the obligation and legal implications of the diversion program must be discussed at the diversion conference.
153. The outcome of the diversion conference must be drawn up as a Diversion Agreement.

### *Diversion Agreement*

154. A diversion agreement must be prepared and signed by the police or prosecutor, the child in conflict with the law and the parents/guardian of the child and the probation officer.

155. A copy of the diversion agreement shall be given to the Probation Officer, CICL, prosecutor and the Court.

### ***Implementation and Monitoring of Diversion***

156. The Probation officer in whose presence the diversion agreement was executed shall be responsible for implementation and monitoring of the diversion agreement.

157. The Probation officer shall submit the progress report to the prosecuting agencies as per the condition of the agreement.

158. The Probation officer shall submit a diversion completion report to the prosecuting agencies.

159. A successfully completed diversion program must be considered as a case resolved and a copy must be submitted to the Competent Authority.

160. The Probation officer should notify the concerned agencies with a copy to Competent Authority in writing if the child fails to comply with the diversion agreement.

161. The prosecutor or the police will inform the Probation Officer, upon deciding whether to proceed with the prosecution of the child concerned or continue with the diversion program with same or altered conditions after listening to the justification provided by the child.

### **Conditional Discharge**

162. Conditional discharge is one of the alternative measures administered by *court* before adjudication of a case of CICL.

163. Such cases may arise where the police may not be in a position to release the child through alternative measures (e.g. recidivist) and would have to require the case to be referred to the court.

164. Where the offence is of a *petty misdemeanor* and in the best interest of the child, where the court deems fit, the child may be released subject to the following conditions:
- i) entering a bond with or without sureties for not committing further offence;
  - ii) good behavior during the specified period mentioned in the order, which must not exceed one year;
165. Non-compliance with the conditions set in the order or committing an offence during the period of conditional discharge, the child will be sentenced for the original offence in addition to the sentence for the new offence committed.

### Family Group Conferencing

166. A family group conference is a measure similar to diversion conference but administered by the *court*.
167. A family group conference is a process led by family members to plan and make decision for a CICL in accordance with court procedure. The process will be initiated upon instruction of the court.
168. A court may refer a case to family group conference where the court considers that the case would be appropriately dealt by the conference, and it would assist the court in making an appropriate disposition order.
169. A family group conference would be instructed by the court in the following circumstances:
- i) the offence is of *petty misdemeanor or misdemeanor*;
  - ii) the child is a first-time offender;
  - iii) the child admits to the offence; and
  - iv) the judge is of the opinion that the child can be reformed without prosecution.

170. The following person must be present with the child during a family group conference:
- i) parents or guardian of the child;
  - ii) police official dealing with the case;
  - iii) probation officer;
  - iv) community representative (gup, mangmi, tshogpa)
  - v) victim or victim's parents or guardian; and
  - vi) any other person the judge deems fit to take part.
171. The conference shall be conducted in a child-friendly place with due regard to the privacy and confidentiality of the child.
172. Appropriate time and place shall be decided to convene the family group conference and take all necessary steps to ensure that all persons who are to attend the conference are adequately notified of the time and place of the conference.
173. The group will come out with an agreement to deal with the child with conditions the CICL should adhere to.
174. The probation officer or any other person appointed by the court shall record the details of the discussion and the reasons for reaching an agreement and forward a copy to the judge, who may make an order as per the terms of the agreement and impose requirements on the child to ensure compliance.
175. The participants at a family group conference shall agree on the following:
- i) specify the objectives for the child and the period within which they are to be achieved;
  - ii) state the responsibility of the child and the parents/ guardian of the child;



- iii) include matters relating to education, recreation and welfare of the child;
  - iv) provide the details of services and assistance to be provided;
  - v) specify the persons or organization to provide such services;
176. The probation officer must notify the court in writing where the child fails to comply with the conditions set forth in the family group conference.

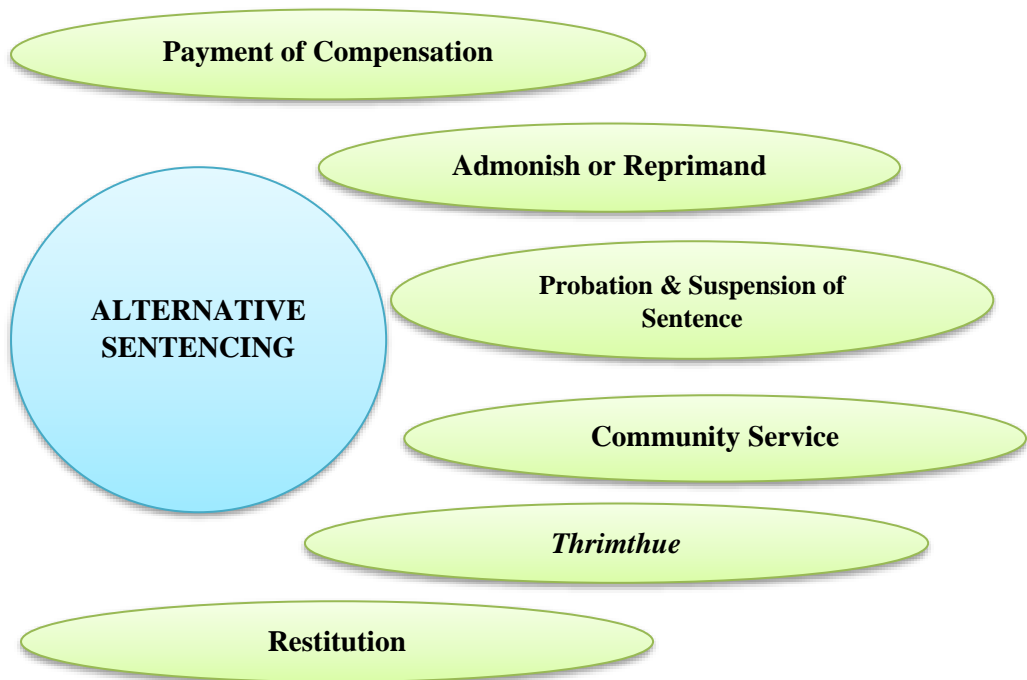
## CHAPTER 6

### DISPOSITION AND ALTERNATIVE SENTENCING

177. In awarding the judgment, the court must take into account the child's age, emotional, mental and intellectual maturity, antecedents and circumstances relating to a case.
178. The court will be guided by the following in adjudicating and disposing of a case:
- i) best interest of the child;
  - ii) well-being of the child;
  - iii) proportionate sentencing;
  - iv) minimum restriction on personal liberty; or
  - v) appropriate alternative sentencing.
179. While sentencing a child for an offence, the court takes consideration:
- i) child justice principles;
  - ii) nature and seriousness of the offence;
  - iii) child's previous deviant records;
  - iv) consideration relating to programs and services established for child in conflict with law;
  - v) the victim's interest; and
  - vi) alternatives to engage in reformation, rehabilitation, educational programs, employment etc.
179. Before rendering the decision, the court must properly investigate into the background and circumstances relating to a child including family background.

## Alternatives to Sentencing

180. Alternative sentencing means sentencing a CICL to a form of treatment or rehabilitation in the community rather than incarceration by providing the child with an opportunity to rehabilitate and reintegrate back into the society.
181. Even where the court is satisfied that a child has committed an offence, the court has the discretion of allowing non-custodial measures to assist the reintegration of the child into society.
182. The CCPA provides for the following alternatives to sentencing:
  - i) payment of compensation
  - ii) admonish or reprimand
  - iii) probation and suspension of sentence
  - iv) community service
  - v) *Thrimthue*
  - vi) restitution of property.



### Payment of Compensation

183. When child is sentenced for an offence, the court may order the child to pay appropriate compensatory damages in lieu of the sentence.
184. Where a child or the parents are not in a position to pay the compensation, it can be waived off by the order of the court or by the victim.
185. The compensation ordered to be paid is a debt owed by the parents or guardian of the child to the person in whose favor the order is made.

### Admonish or Reprimand

186. The court may admonish or reprimand a CICL and dismiss the prosecution against the child hand over the child to the parents/ guardian.

187. Admonish or reprimand may be used where the grading of the offence committed is petty misdemeanor and below.
188. In making the determination to allow a child to go home after advice, admonition or release on bail, the concerned authority shall consider the following circumstances:
- i) severity of the charge;
  - ii) past criminal record;
  - iii) likelihood of flight;
  - iv) child's age and physical or mental health condition; and
  - v) potential threat posed to society.
189. The Court may on releasing the child into the care of the child's parent or guardian, impose one or more of the following conditions:
- i) appear at the specified place and time upon order of the court;
  - ii) report periodically to a specified person or place;
  - iii) attend a particular school;
  - iv) reside at a particular address;
  - v) place under the supervision of a specified person; or
  - vi) any other condition the court deems fit in the best interests of the child.
190. If the home is not a conducive environment for the child, the child may be referred to the Probation Officer for necessary support and aftercare services.

### **Probation and Suspension of Sentence**

191. The court may grant probation or suspend the sentence of the convicted child on the grounds of good and exemplary behavior of the child.
192. The court must give due regard to the circumstances including the nature of the offence and the character of the child.

193. The court has the discretion to issue a probation or suspension order without requiring the child to execute a bond.
194. The grant of probation or suspension order by the court shall be subject to a commitment given by the child to the court as provided hereunder:
  - i) not to commit any offence;
  - ii) to be of good behaviour;
  - iii) make oneself available to the court as and when required; and
  - iv) remain within the limits of any particular area mentioned in the court order.
  - v) commitment of the child's parents/ guardian to supervise the child during the period of probation or suspension;
195. The court may direct the child to be placed under the care of parents/ guardian or any other person approved by the court and direct the child to be supervised by a Probation Officer.
196. The Probation officer is responsible for supervising the child and ensuring the child complies with the conditions set in the probation or suspension order.
197. The Probation officer must submit monitoring report to the concerned court periodically and may suggest for acquittal of the child in view of the positive attitude and good conduct.
198. The Probation officer may suggest cancellation of probation in view of bad conduct of the child.
199. Non-compliance with the conditions in the probation or suspension order may result in the cancellation of the order and the child is liable to be sentenced for the original offence in addition to the sentence for any new offence committed.

### Community Service

200. Where the offence committed by the child is a *fourth-degree felony and below*, the court must use its discretion to order community service in lieu of imprisonment.
201. The Competent Authority in consultation with stakeholders devises programs and activities for community service.
202. The programs and activities shall:
  - i) be culturally appropriate including any rules that may be required for the discipline of children;
  - ii) promote self-respect and foster their sense of responsibility; and
  - iii) encourage attitudes and development skills.
203. The programs and activities should be devised to provide CICL with an opportunity to develop positive behaviours and more importantly to prevent from committing further crimes.

### Thrimthue

204. The court in its discretion may make an order to pay fine in lieu of imprisonment, if the offence committed by the child is a *felony of fourth degree and below* and the child is not a recidivist or child habitually in conflict with law.

### Restitution

205. The parents or guardian of the CICL will have to bear the loss or damages caused to the victims. It may either be the case of returning the item taken or replacement of an item damaged or to fix or repair an item that was damaged.

206. The court will order the child, parents or the guardian to restore damaged property if the child is responsible for damaging property of another person.

### **Monitoring and Supervision of Alternative Sentencing**

207. The Probation Officer or any person designated by the court will monitor the implementation of the alternative sentencing as per the court order or relevant laws.

208. In the event of a failure to comply with the conditions set by the respective court, the Probation officer or the designated person must inform the court.

209. The court may cancel the order of any alternative sentencing arranged and shall consider the matter for further necessary orders.



## CHAPTER 7

### POST DISPOSITION

#### Rehabilitation and Reintegration

The Youth Development and Rehabilitation Centre (YDRC) located in Chukha under the Royal Bhutan Police is the only facility that caters to the rehabilitation of CICL which provides services like to the special home and closed facility mentioned in the CCPA.

210. A CICL upon conviction by the court is referred to YDRC irrespective of the gravity of the offence even though the CCPA provides for segregation of offences depending on which a child would be referred to a facility.
211. If the child is found guilty and ordered to be detained, the child is referred to a rehabilitation facility to provide care, protection, education and training with a view to reintegrating them into mainstream society.
212. A Child shall not be given any work that is harmful to their physical and mental development and no child shall be engaged in work that is mentally, or morally dangerous and harmful to children;
213. Admission of a CICL to the Centre is subject to an order issued by the court.
214. The rehabilitation facility for children must be separated from adults and male and female children must be accommodated separately.
215. A female CICL must be handled by female health personnel, correction officers and social workers or based on the preference of the CICL.
216. The Centre shall obtain full particulars of the child including details of parents or guardians.

217. The Centre shall examine the CICL medically and provide necessary medical treatment if needed.
218. The Centre must assess the psychological and mental health of the children and in case of need, refer them for specialized services including counseling session.
219. The Centre shall assess the social and educational needs of the child and approach relevant authorities for arranging school and technical education for CICL and connect with CSOs working on the rehabilitation of CICL.
220. The needs of the child may be assessed based on the assessment report of the probation officer and child friendly interview with the CICL.
221. The Centre shall ensure that the child is involved in productive activities such as educational, extracurricular activities and skill-based training programs during the time spent at the facility.
222. The Centre shall facilitate in providing education, social, and recreational activities for the wellbeing of the children and in this regard, may seek assistance from CSOs.
223. The Competent Authority must coordinate inter-ministerial and inter-departmental cooperation to ensure the provision of adequate academic and vocational training at the Centre.
224. To ensure the smooth transition from detention to life outside the home, the Centre must inform the Competent Authority when a child completes the sentence.
225. The Competent Authority shall direct the probation officer concerned to facilitate reintegration of the child by linking the needy children with aftercare services.

### **Visitation**

226. The Centre shall facilitate in providing necessary facilities to the children for meeting with parents/guardians.
227. Parents, guardians or legal representatives have the right of access to visit the child at least 3 times a month.

### **Early Release**

228. A CICL may be considered for early release if the child has served at least half the term of sentence.
229. The Centre shall inform the Probation officer when a CICL completes half the sentence, who shall then refer the case to the Parole Board.
230. The Parole Board upon making an assessment of the conduct and behavior of the child shall make a recommendation for the early release of the child.

### **Incomplete Sentence**

231. Incomplete sentence refers to a child undergoing a sentence at a rehabilitation facility and who has not completed serving the term of sentence but has attained the age of 18 years.
232. The Centre must inform the Probation officer/ Competent Authority when a CICL attains 18 years of age.
233. The placement of the child in conflict with law who has not completed serving term of sentence but has attained the age of 18 years shall be considered by the Court.

### **Protection against legal consequences**

234. A child shall not suffer any disqualification resulting from an offence committed by the child irrespective of what is stated in any other law.

235. All records relating to criminal proceedings of a child shall be expunged and the child must not suffer any disqualification because of a past conviction to ensure meaningful reintegration into society.

### **Confidentiality**

236. All documents relating to a child shall be treated as confidential and where the need to disclose documents arises, the consent of the child, parents, guardians or legal representative needs to be obtained or upon the order of the court.

237. All institutions dealing with children must ensure that data is only retained for the period necessary to fulfill the purpose for which it was collected and is fully deleted when no longer required.

### **Civil Society Organizations**

238. The Competent Authority shall collaborate and facilitate CSOs providing services for children to have access to the Centre in terms of providing life skill services and making contact with the children to ensure aftercare services for CICL after completion of sentence at the Centre.

## CHAPTER 8

### CHILDREN IN CONTACT WITH THE LAW AS VICTIMS AND WITNESSES

#### Purpose

239. For the purpose of this SOP, a child in contact with the law refers to any child who comes into contact with the law either as a victim or a witness, or a complainant of a crime.
240. The purpose of the SOP on children in contact with the law are to:
- i) provide guidance on effective and child-friendly handling of child victims or witnesses of crime;
  - ii) set standard of practice for children as victims or witnesses or in cases of alleged abuse, violence and exploitation;
  - iii) provide standardized practices for relevant agencies in handling child victims and witnesses;
  - iv) provide a framework for collaboration among relevant agencies dealing with child victims and witnesses.
241. In all interactions with children in contact with law, relevant agencies shall be guided by the principle of primary consideration of the best interest of the child and upholding the rights of the child.
242. The relevant agencies and institutions shall consider the types of services, actions and orders that will best serve the child.

#### Agencies and Persons Dealing with Children in Contact with Law

243. The following agencies are involved in dealing with children in contact with law:
- i) Royal Bhutan Police
  - ii) Office of the Attorney General

- iii) Royal Court of Justice
- iv) Child Welfare Officer
- v) CSOs

244. All persons dealing with children in contact with law must be appropriately sensitized and trained in dealing with children in contact with law.

245. Till such time the child welfare officer is appointed by the government, the Gender and Child Focal Person (GCFPs) acting as interim protection officers would be carrying out the role of the child welfare officer.

### **Adoption of a child-centered and child-friendly approach**

246. Agencies dealing with children in contact with the law must adopt a child-centered and child-friendly approach to ensure:

- i) children's dignity is respected and protected;
- ii) officials whom the child is most comfortable with are assigned to follow through with the entire proceedings;
- iii) children are questioned, interviewed, or examined in an environment and manner which makes them feel comfortable and safe and in a language that can be understood by children of different ages.
- iv) Video recordings and other recording technologies shall be utilized in order to avoid repeated questioning of a child.
- v) testimony of children is respected as true unless it is proved otherwise beyond a reasonable doubt, and so long as the child has understood the questions and answered them without assistance;
- vi) children are protected from any undue distress, hardship, or re-victimization during the process. This includes taking measures to reduce contact between the child and the suspect/ accused during investigations and court proceedings;

- vii) children and their parents/guardian/legal representatives are kept fully informed of the progress of the case and are consulted on significant decisions;
- viii) proceedings are completed as quickly as possible.

### **Protection of Privacy:**

- 247. No agency, institution or person shall publish or release any information that may lead to the identification of a child victim or witness or complainant.
- 248. All records involving children in contact with the law must be kept strictly confidential and information that might disclose a child's whereabouts (such as home address, temporary shelter where the child is staying, and child's school) shall be struck off from any witness statements or other documentation provided to the accused.
- 249. Confidential information may however be disclosed if the court directs to do so.
- 250. Data protection is crucial to child safeguarding, children's personnel data and sharing of data must be documented and managed using appropriate systems, protocols and tools. For details, refer to section 6 of the Child Protection Case Management SOP.

### **Initial Contact with Police**

- 251. A child may come in contact with the police either as a victim or witness crime.
- 252. When a child comes in contact with the police, the police shall immediately inform the child welfare officer / competent authority and the Woman and Child Protection Unit/Desk.

253. If the child is in immediate danger, the police shall immediately act to ensure that the child's safety is secured. If the child is a girl, female officers/personnel must be present.
254. If the child is alone or unaccompanied, the police shall immediately call the child's parent or guardian, or legal representative.
255. If the presence of the child's parent or guardian is not in the best interest of the child, the child welfare officer shall accompany the child.
256. If the offence is recent and a medical examination is likely to provide corroborating evidence, the police shall explain to the child that a complete examination is required to collect evidence for the investigation and ensure that the child is medically examined at the earliest, preferably within 24 hours at the nearest hospital.
257. If the child requires medical attention or psychosocial support, the police shall ensure that the child receives it immediately by getting the child to the nearest hospital.

### Interview

258. To adhere to some communication practices while interviewing a child, communication best practices should be as per section 8 of the Child Protection Case Management SoP on communication and informed consent.
259. Interviewing procedures shall commence only after ensuring that the child is safe and secure. This means any questioning, statement-taking or investigation must wait until after the child's immediate needs including medical assistance have been addressed and the child is taken to a safe and secure location.
260. After the child is safe and secure, the police shall take the child to a child-friendly place conducive to privacy where the child feels safe and comfortable and can make statements without fear.



261. The interviewing officer/personnel shall, to the extent possible, not be in police uniform. If the child is a girl, female officer/personnel shall be preferred to take the child's statement.
262. The interviewing officer shall ensure that the child's parent, guardian, or legal representative is present when interviewing the child. If the child's parent, guardian, or legal representative is absent or their presence is not in the best interest of the child, the child welfare officer must be present.
263. When interviewing the child, the interviewing officer shall do so keeping in mind the child's age and capacity in a child-friendly manner, and in a language the child understands.
264. Where the interviewing officer considers it necessary, he/she may take the assistance of a counselor, psychologist, or psychiatrist.
265. If a formal identification of the perpetrator is needed, this shall be done through a photo line-up or test identification parade. Under no circumstances shall the child victim/ witness/ complainant face or come in contact with the offender.
266. The interviewing officer shall promptly and accurately record the child's statements and ensure that all statements obtained from the child are signed by the child in the presence of the child's parents or guardian or legal representative or child welfare officer who shall also affix their signature to the said statement.

### **Participation in Judicial Proceedings**

267. Where the Court deems it necessary, the Court may take the child's testimony.
268. The Court shall ensure that the child's testimony is recorded *in camera* through video conferencing or with the aid of a single visibility mirror or any other means that ensure that child does not face or come in contact with the accused.

269. The Court shall ensure that the waiting room and/or the room for taking and recording the child's testimony are child-friendly and not intimidating to the child.
270. When taking the child's testimony, the Court shall ensure that the child is capable of making a voluntary statement and the developmental need of the child is recognized and accommodated.
271. When taking the child's testimony, the Court shall ensure that it is done so in a child-friendly manner and in a language the child understands.
272. Where necessary, the Court shall ensure the presence of a translator/interpreter or counselor or psychiatrist.
273. The Court must ensure that the child is not aggressively questioned and that his/her character is not assassinated.
274. The Court shall ensure that the child is not revictimized.
275. The Court shall ensure that the child is not repeatedly called for recording his/her testimony.

## CHAPTER 9

### MISCELLANEOUS

#### Definition

**“Best Interest of the Child”** means totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child’s physical, psychological and emotional development. It also includes the least detrimental available alternative for safeguarding the growth and development of the child.

**“Competent Authority”** shall mean the National Commission of Women and Children.

**“Child in conflict with the law”** means a child who is above 12 years of age but below the age of 18 years and found to have committed an offensive.

**“Community Services”** means work for a community or other work of value to the community performed by a child.

**“Diversion”** means the conditional channeling of children in conflict with the law away from judicial proceedings through the development and implementation of procedures, structures and programmes that enable many - possibly most - to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record.

**“Diversion Conference”** refers to the conference between the prosecutor and the CICL during which the conditions and obligations to be abided by the CICL for the proposed diversion program is discussed.

“**Guardian**” shall include any person who in the opinion of the competent authority, having cognizance of any proceeding in relation to the child, has, for the time being, the actual charge of, or control over the child.

“**Probation Order**” shall mean an order issued by the Court for a child in conflict with law to be put on probation in lieu of sentencing.

“**Probation Officer**” means any official authorized as such by the Competent Authority.

“**Prosecutor**” shall mean a police personnel or an attorney with the office of the Attorney General who has been designated to prosecute children in conflict with the law.

Annexure A - Assessment Form

Case No:		Date:	
Case Type:			
Case Background			
Client Details			
Name:		Age:	Sex:
Occupation:		Contact No:	
Present Address:		Permanent Address:	
		Village:	Gewog:
		Dzongkhag:	
Parents Detail/ Guardians Detail			
Father Name:	Mother Name:	Guardian's Name:	
Occupation:	Occupation:	Occupation:	
Present Address:	Present Address:	Present Address:	
Permanent Address:	Permanent Address:	Permanent Address:	
Village:	Village:	Village:	
Gewog:	Gewog:	Gewog:	
Dzongkhag:	Dzongkhag:	Dzongkhag:	
Contact No:	Contact No:	Contact No:	

## Standard Operating Procedure for dealing with Children in Conflict with the Law

Family Members				
Sl No	Name	Relation	CID No	Contact
Case Observation				
1. Living and Care Arrangement				
Needs:				
2. Safety and Protection				
Needs:				
3. Psychological Wellbeing				
Needs:				

<b>4. Health</b>
Needs:
<b>5. Education</b>
Needs:
<b>6. Economic Situation</b>
Needs:
<b>Recommendation</b>

Respectfully Submitted by:

(                    )

Dealing Officer

Approved by:

(.....)

Relevant Authority



Figure 2 : Flow Chart of a CICL Case

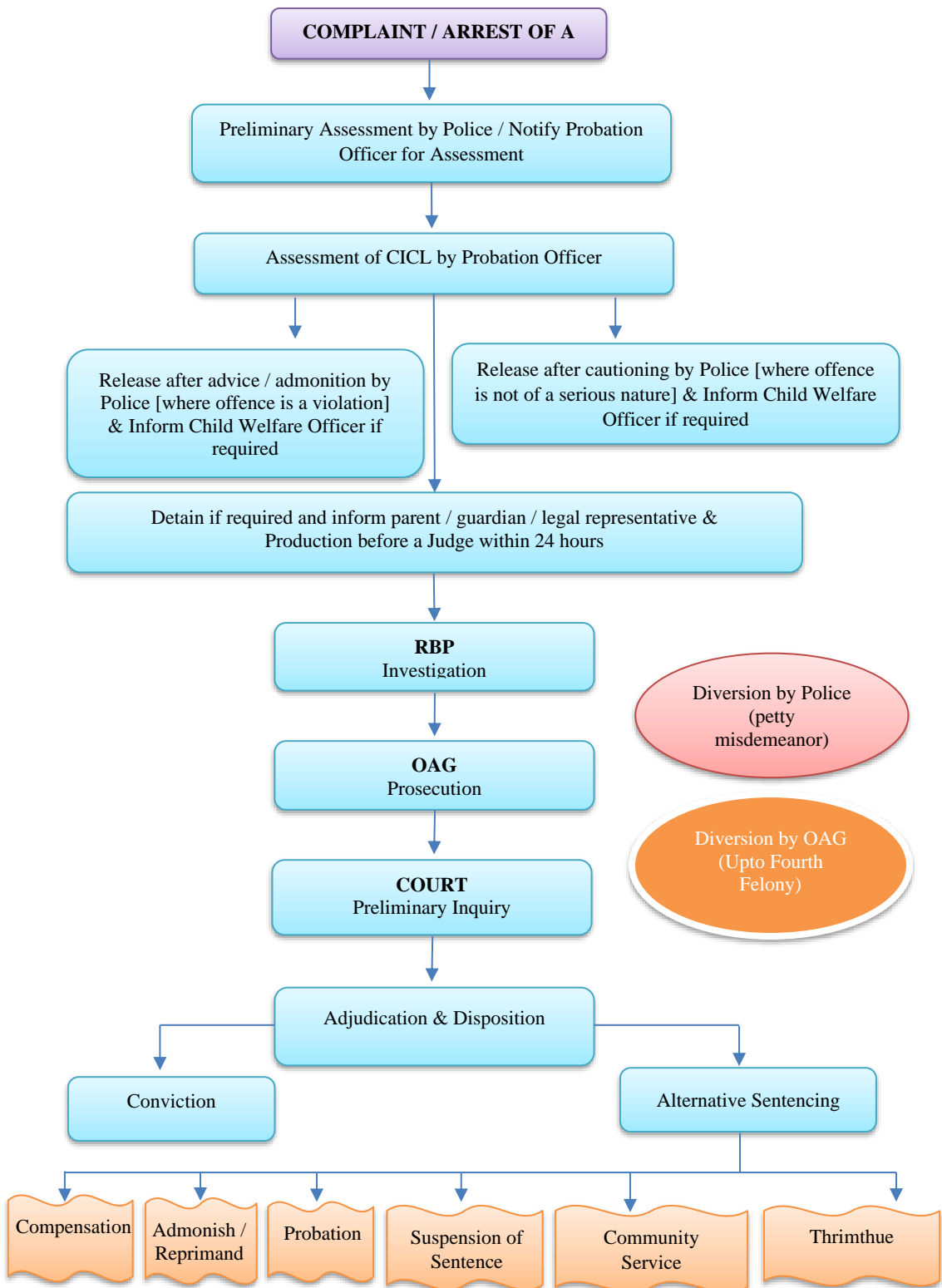


Figure 2: Flow Chart in the case of a Child Victim

