



## Administration of Child Justice in the Kingdom of Bhutan

A Child Justice Training Manual 2022



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**A Child Justice Training Manual 2022**  
**OFFICE OF THE ATTORNEY GENERAL**

**OFFICE OF THE ATTORNEY GENERAL**

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Under the guidance and leadership of the Attorney General, a core group composed of four Senior Attorneys developed this manual. The manual was finalized involving key stakeholders that include the Royal Court of Justice, Royal Bhutan Police, Office of the Attorney General, National Commission for Women and Children, Bhutan National Legal Institute and Nazhoen Lamten. The Office conveys our sincere gratitude to the stakeholder for their meaningful inputs during the consultation.

The Office remains thankful to all the institutions and individuals involved in developing this manual.



## FOREWORD

Considering the importance of children's rights, Bhutan ratified the *United Nations Convention on the Right of the Child* (CRC) in the year 1990, just a year after it was opened for signature. Ratification of the two optional protocols to the CRC affirmed Bhutan's commitment to care and protect the rights of the children.

The *Constitution of the Kingdom of Bhutan 2008* mirrors Bhutan's assurance to take appropriate measures that protects children against all forms of discrimination and exploitation including trafficking, prostitution, abuse, violence, degrading treatment and economic exploitation. The constitutional principles are reiterated in the *Child Care and Protection Act of Bhutan 2011*, the special Act that ensures that the child rights are never compromised. To achieve this goal, the stakeholders involved in delivering child justice have been endeavoring to accomplish the profound intent of the child care laws and its guiding principles.

I wish this manual fulfills its primary objective to have a uniform training content and its application in the areas of the Child Justice Principles, Pre-trial Rights, Diversion, Alternative Measures, Trial, Sentencing, Rehabilitation, Reintegration and Offences Against a Child. I hope that the facilitators and the key stakeholders administering child justice recognize this as a guide and reference point in promoting, safeguarding, and strengthening delivery of child justice in the Kingdom.

A handwritten signature in black ink, appearing to read 'Lungten Dubgyur', with a long horizontal stroke extending to the right.

(LUNGTEN DUBGYUR)  
**ATTORNEY GENERAL**



## INTRODUCTION

The Children's rights are internationally recognized fundamental freedom and inherent right available to every child without any discrimination. Like adults, the children have the same general rights guaranteed through the International, Regional and Domestic laws. The *Convention on the Rights of the Child*,<sup>1</sup> is widely recognized as the first legally binding human right treaty pertaining to a child and sets a clear standard that the rights of a child must be realized for children to develop to their full potential. It encompasses specific rights that recognize the special needs of a child and emphasizes their rights and responsibilities to be proportionate to their age and stage of development. It focuses on the fundamental human dignity of all children and necessity to ensure their welfare.

Guided by the wisdom and compassion of His Majesty, the Royal Government of Bhutan signed the *Convention on the Rights of the Child* in the same year it came into force.<sup>2</sup> In order to utterly fulfil country's obligation as a state party to the convention, the *Child Care and Protection Act of Bhutan* (CCPA)<sup>3</sup> was enacted in the year 2011. The CCPA echoes the international obligation and constitutional mandate enshrined under Article 9 Section 18 which requires state to take appropriate measures to protect children from all forms of discrimination and exploitation. The CCPA covers a wide range of alternative measures to protect the rights of a child and provides numerous avenues to make legislative and policy decisions in the best interest of a child. In doing so, the relevant stakeholders have been proactive in dealing with child in conflict with laws. Over a period of time, there have been many legislative and

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<sup>1</sup> *United Nations Convention on the Right of the Child*, opened for signature on 20 November 1989, UNTS, vol. 1577 (entered into force to 2 September 1990).

<sup>2</sup> The United Nations Human Right Treaty Bodies: UN treaty Database.  
[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=20&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=20&Lang=EN)

<sup>3</sup> *Child Care and Protection Act of Bhutan 2011*.

institutional reforms to ensure that the best interest of the child is taken care through suitable policy and legal safeguard.

Despite having adequate policy and legal protection, the justice system sometimes fails to recognize children's rights when they come in conflict with laws. This is attributed to two primary reasons which are: (i) children's lack of knowledge of their rights and lack of means to seek legal assistance or representation. (ii) the police, prosecutors, lawyers and judges often lack specialized training to deal with a child when they come in conflict with law. Many children are often detained and go through formal legal proceedings, which is contrary to our laws and guiding principles.

Considering the downsides in implementing child justice, this manual will act as a reference and guide the professional in dealing with child in conflict with law. It is developed with an objective to strengthen the capacity of the professionals in understanding and implementing child justice. This manual broadly covers principles of child justice, pre-trial rights, diversion of child from formal proceeding, giving opportunity to alternative measures, child prosecution and sentencing, rehabilitating and reintegrating a child back to the community and offences against a child. The children's ability to reintegrate back to the society is critically dependent on the treatment they receive while undergoing the justice system and its due process.

Reflecting the importance of every child in the community and their capability to contribute towards the socio-economic wellbeing of the country's future, this manual is developed with primary intent to aid the users to understand the legal rights and protection for a child when they come in conflict with laws.

To achieve this objective, the manual is divided into chapters and training module as follows:

- Chapter 1:** Principles of child justice
  - Chapter 2:** Pre-trial rights
  - Chapter 3:** Diversion
  - Chapter 4:** Alternative measures
  - Chapter 5:** Trial and sentencing
  - Chapter 6:** Rehabilitation and reintegration
  - Chapter 7:** Offences against a child
- Training Module

Each chapter provides a basic learning objective, guiding principles, core content on the subject matter, case studies and discussion questions wherever relevant. It encloses further readings to understand in-depth on the subject matters covered in this manual. While each chapter will cover the international and regional standards, the mainstream of its contents is centered on the domestic laws and its practices.

The Training Module is an integral part of the manual. The Training Module will not only guide and facilitate the trainer in designing the training on the particular subject covered under this manual, but provide tips and resources to initiate a training. The Module includes but is not limited to ready-made training agenda, pre-training assessment, time breakdown, delivery format, training outline, feedback form and post training assessments.



## LIST OF ABBREVIATIONS

ADA	Austrian Development Agency
Art	Article
Arts	Articles
BFDA	Bhutan Food and Drugs Authority
BNCA	Bhutan Narcotic Control Agency
BNLI	Bhutan National Legal Institute
CCPA	Child Care and Protection Act of Bhutan
CCPC	Civil and Criminal Code of Bhutan
CSC	Case Screening Corpus
CSO	Civil Society Organization
DTWCC	Dzongkhag/Thromde Women and Children Committee
ECOSOC	Economic and Social Council
ICCPR	International Covenant on Civil and Political Rights
CICL	Child in Conflict with Law
CIDC	Child in Difficult Circumstances
CRC	Convention on Right of the Child
Doc	Document
Ibid	Same as above
IPC	Indian Penal Code
OAG	Office of the Attorney General
OAU	Organization of African Unity
MACR	Minimum Age of Criminal Responsibility
NCWC	National Commission for Women and Children
NWCWC	National Women and Child Welfare Committee
PCB	Penal Code of Bhutan
RES	Resolution
RBP	Royal Bhutan Police
RCoJ	Royal Court of Justice
SAARC	South Asian Association for Regional Cooperation
Sec	Section or Sections

SOP	Standard Operating Procedure
TAP	Treatment Assessment Panel
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Convention on the Right of the Child
UNICEF	United Nations International Children’s Emergency Fund
UNODC	United Nations Office for Drug Control and Crime Prevention
UNTS	United Nations Treaty Series
USA	United States of America
WCPU	Women and Child Protection Unit
WCPU/D	Women and Child Protection Unit/Desk
Vol	Volume
YCJA	Youth Criminal Justice Act
YDRC	Youth Development and Rehabilitation Centre



## DEFINITION AND CONCEPTS

- ❖ **Age of Criminal responsibility** refers to a minimum age at which a person can be held criminally responsible for his or her actions.
- ❖ **Alternative measure** refers to programs for dealing with a CICL without resorting to formal court proceeding as an alternative to prosecution.
- ❖ **Alternative sentencing** means an alternative to incarceration such as treatment or rehabilitation in the community.
- ❖ **Best Interest of the Child** refers to a 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 alternatives for safeguarding the growth and development of the child.
- ❖ **Case screening corpus** refers to a body established under the Prosecution and Litigation Division to screen cases.
- ❖ **Child:** “*A child means any person below the age of 18 years old*”

The *Convention on the Right of the Child* is one of the important internationally recognized legal instruments that protects and provides the rights of a child. The convention was adopted by the United Nations General Assembly on 20 November 1989 and came into force on 2 September 1990.

Article 1 of the Convention defines a child as “*every human being below the age of eighteen years*”. Thus, any human being below the age of eighteen years of age is internationally recognized as a child and will be protected under the convention.

The Royal Government of Bhutan signed the *Convention on the Right of the Child* on June 4, 1990 and ratified it on August 1, 1990. To uphold the principles of the Convention and *the Constitution of the Kingdom of Bhutan 2008, the Child Care and Protection Act of Bhutan*

2011 was enacted. Section 16 of the Act defines a child as: “*Any person below the age of eighteen years.*”

It further provides that any person proven to be below 18 years, evidenced by an official record maintained by the government birth certificate or any other document proving the age will be considered as a child and will get the protection under this Act. The Act under section 17 to 19 provides means to determine a child’s age in absence of official record or birth certificates or any other document proving child’s age.

- ❖ **Child in conflict with law** refers to a child who is above 12 years of age, but below 18 years of age and found to have committed an offence.<sup>4</sup>
- ❖ **Child in Difficult Circumstances:** a child is considered to be in difficult circumstances (CIDC) in following cases:<sup>5</sup>
  - Is found without having any home or settled place of abode and without any ostensible means of subsistence and is a destitute;
  - Has a parent or guardian who is unfit or incapacitated to take care of or exercise control over the child;
  - Is being or likely to be abused or exploited for immoral or illegal purposes; or
  - Is a frequent victim at the hands of individuals, families or the community.
- ❖ **Diversion** means alternative measures for dealing with a child in conflict with law other than judicial proceeding.
- ❖ **Diversion program** means the program agreed and stipulated in the diversion agreement.
- ❖ **Doli Incapax** means incapable of committing a crime.
- ❖ **Family group conferencing** is a process led by family members to plan and make decisions for a CICL as per Child-Friendly Court Procedure.

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<sup>4</sup> Ibid, section 72.

<sup>5</sup> Ibid, section 59.

- ❖ **Gup** means elected local leader and head of the *gewog* as defined under the *Local Government Act*.<sup>6</sup>
- ❖ **Juveniles** refers to every person under the age of 18.<sup>7</sup> Section 117 under Chapter 9 of the *Penal Code of Bhutan 2004* which recognized a child above 10 years of age as a juvenile was amended in 2011.<sup>8</sup> The amendment increased the age of criminal responsibility from 10 to above 12 years of age and provided necessary protection to a child in conflict with law. The amendment has aligned our domestic law with international standards. Thus, the court may consider appropriate facilities or correctional institutions if a child is above 12 years of age.<sup>9</sup> As per UNICEF, juvenile refers to persons who have not fully matured or developed and at a minimum include a child up to the age of 18 but sometimes to the age of 21.<sup>10</sup>
- ❖ **Mangmi** means elected local leader of a *gewog* under the *Local Government Act*.
- ❖ **Mens rea** means guilty mind.
- ❖ **Offences against a child** means offences committed against a child or where a child is a victim of an offence committed.
- ❖ **Parents** means father and the mother of a child.
- ❖ **Police** refers to the investigating officer or police personnel dealing with the child in conflict with law.
- ❖ **Probation Officer** means an officer appointed by the competent authority as a probation officer under the *Child Care and Protection Act of Bhutan 2011*.
- ❖ **Pre-trial** means stage before commencement of the trial or formal legal proceeding before a court.

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<sup>6</sup> Section 304(j) of *Local Government Act 2009*.

<sup>7</sup> Section 11 of *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Adopted by General Assembly resolution 45/113 of 14 December 1990).

<sup>8</sup> *Penal Code (Amendment) Act of Bhutan 2011*.

<sup>9</sup> Ibid.

<sup>10</sup> UNICEF, *Justice for Children Manual*, available at [unicef.org](http://unicef.org).

- ❖ **Prosecutor** refers to an authorized official through the issuance of power of attorney by the Attorney General and representing the State in criminal case or any other authorized official authorized by law to initiate prosecution.
- ❖ **Reintegration** refers to the effective re-entry of a child back into the community following a custodial sentence. The term, however, is something of a misnomer because the process does not simply begin after an offender is released. A comprehensive reintegration process typically begins after sentencing, continues through incarceration and the period of release into the community.
- ❖ **Rehabilitation** is various forms of intervention and programs targeting individuals to reduce the likelihood that CICL's will reoffend.
- ❖ **Stakeholders** means relevant authorities under the Child Care and Protection with delineated responsibilities when a child comes in conflict with a law.
- ❖ **Thromde** means a large urban area or municipality.
- ❖ **Thrimthue** means fine in lieu of imprisonment.<sup>11</sup>
- ❖ **Tshogpa** means elected local leader of the territorial constituency of the gewog under the Local Government Act.

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<sup>11</sup> Section 28 of the *Penal Code of Bhutan 2004*.

## CHAPTER 1

# PRINCIPLES OF CHILD JUSTICE

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This chapter comprises the principles of child justice and its guiding principles. As domestic laws are founded on the international law, the chapter examines international and regional standards on child justice. The chapter highlights the domestic legal framework and its guiding principles.

## CONTENTS

- 1) Overview of the international standards.
- 2) Overview of the regional standards.
- 3) International Guiding Principles.
- 4) Domestic laws on Child Rights.
- 5) Guiding Principles under the CCPA.
- 6) Issue and case discussion.

## LEARNING OBJECTIVES

After completing this Chapter, you should be able to:

- Understand and explain important guiding principles recognized by the international and domestic laws on child rights.
- Elucidate and impart important definitions and concepts.
- Enable to know the child rights standard recognized under various international instruments.
- Able to distinguish the child rights standard recognized under various regional instruments with specific reference to Europe, Africa and Asia.
- Recognize domestic laws and its guiding principles dealing with Child in Conflict with the Law.
- Enhance their knowledge through issue discussion and case studies.



## 1. OVERVIEW OF THE INTERNATIONAL STANDARDS

The international legal instrument plays a critical role in enunciating internationally accepted legal principles. International law establishes that every person, including children, has the right to protection from physical and mental violence. The topic elucidates internationally recognized instruments that provide assurance to the children's rights. As countries become party to international instruments, the majority of the domestic laws are guided by the international law and its practice. While some of the international standards are binding instruments, some are non-binding. Although many international instruments are non-binding, its intent and principles are translated and contextualized in many domestic laws as it embraces important guiding principles and best practices.

### A binding UN instrument

The treaties are legally binding documents on the States that are party to it. Once the State becomes a party to such treaties, they have the duty to fulfil the obligations enumerated under the treaty. The implementation of the provisions of the treaty depend on their domestic laws. For some countries, it becomes law the moment they become a party to a treaty. For some countries, it requires ratification by the Parliament to become a law.

### Non-binding UN instruments

The non-binding international instrument includes but is not limited to the declarations, recommendations, guidelines, bodies of principles etc. While these instruments are non-binding on States, they do complement the treaties and provide useful guidance in enforcing the provisions of the treaty.

### 1.1. The Universal Declaration on Human Right

The Universal Declaration on Human Right (UDHR) outline the fundamental rights that all human beings are entitled to without any

discrimination. It proclaimed that childhood is entitled to special care and assistance.<sup>12</sup> The declaration is considered a milestone document in the history of human rights. The declaration represented as a basic foundation in inspiring and paving ways for adopting many human right treaties by the United Nations.

## **1.2. The UN Convention on the Rights of the Child**

The protection of children from violence is a key component of the *United Nations Convention on the Rights of the Child* (UNCRC). It is one such document that draws its inspiration from the UDHR. It is one of the first binding international documents that was specifically endorsed to care and protect rights of the children. The convention imposes an obligation on the State parties to take appropriate measures to protect all the rights embodied in the convention. The CRC is founded on fundamental freedom to recognize the inherent dignity and of the equal and inalienable right of all the human beings, which is undeniably the foundation of freedom, administration of justice and peace.

Reflecting almost universal consensus on children's rights, the convention recognizes that children are entitled to special care and assistance and that the best interests of the child must be a primary consideration in all actions concerning children. The children under the convention have the right to protection from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parents, legal guardian or any other person who has the care of the child."<sup>13</sup> Article 19 of the convention protects youth from private acts of violence and harassment as well as from acts committed by the State

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<sup>12</sup> *Universal Declaration on Human Rights*, General Assembly resolution 217 A, Paris 10 December 1948.

<sup>13</sup> Article 3 and 19 of the *UN Convention on the Right of a Child*, adopted November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (entered into force September 2, 1990).

agents. By its terms, the State's obligation to protect extends to "all forms" of violence or neglect committed against a child while that child is in the care of another person.

### 1.3. ICCPR and Convention Against Torture

The right of the children to be protected from violence is also postulated in the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Under Article 24 of the ICCPR, children enjoy the right "to such measures of protection as are required by their status" as minors. In addition, both the ICCPR and the *Convention against Torture* prohibits cruel, inhuman, or degrading treatment.<sup>14</sup> The ICCPR encompasses several provisions that cover child rights including social rehabilitation and reforms.<sup>15</sup>

### 1.4. Optional Protocol to the CRC on the involvement of children in arm conflict

The protocol seeks to protect children from recruitment and use in hostilities. It requires the State parties to enact legislation to prohibit and criminalize the recruitment of children under 18 and involve them in hostilities. It obligates the State parties to provide physical, psychological recovery service and social reintegration in case children are involved in hostilities.<sup>16</sup>

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<sup>14</sup> Article 24 and 7 of the *International Covenant on Civil and Political Rights*, opened for signature December 19, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, art. 16, adopted December 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

<sup>15</sup> ICCPR, Arts. 10(3) and 14(4)

<sup>16</sup> *Optional Protocol to the Convention on the Right of a Child on the involvement of children in arm conflict*, adopted by the General Assembly on 25 May 2000 (entered into force on 12 February 2002)

### **1.5. Optional Protocol to the CRC on the sale of children, child prostitution and child pornography**

The protocol is intended to achieve the purposes of certain articles in the *Convention on the Rights of the Child*, by taking “appropriate measures” to protect them. Article 1 of the protocol entails State parties to protect the rights and interests of child victims of trafficking, child prostitution, child pornography and child labour.<sup>17</sup>

The protocol outlines the standards for international law enforcement covering diverse issues such as jurisdictional factors, extradition, mutual assistance in investigations, criminal or extradition proceedings and seizure and confiscation of assets. It requires the State parties to have enabling legislation that imposes appropriate punishments.

### **1.6. UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)**

The Beijing Rules affirm member States’ commitments to “endeavor to develop conditions that will ensure for the juvenile a meaningful life in the community.”<sup>18</sup> The Rule provides guidelines on how children should be treated while they are in the justice system. It addresses issues such as privacy, special training for the police and diversion of a child from formal proceedings. Under Rule 13(1) it encourages States to devise new and innovative measures to avoid detention in the best interests of the child.

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<sup>17</sup> *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, adopted on 25 May 2000 by resolution A/RES/54/263 at the fifty-fourth session of the General Assembly of the United Nations (Entry into force: 18 January 2002)

<sup>18</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“The Beijing Rules”) passed on 29 November 1985, the UN General Assembly Resolution: A/RES/40/33.

### **1.7. United Nations rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)**

The Havana Rules comprise rights of a juvenile under arrest or awaiting trial and management of juvenile facilities.<sup>19</sup> The Rule establishes minimum standards accepted by the United Nations (UN) for Juvenile Justice applications within a context of human rights and freedoms.

### **1.8. UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)**

The Guidelines affirm the importance of reducing juvenile delinquency, focus on reducing crime, the necessity of implementing the guidelines according to a child-centered approach, and the communal responsibility for children's well-being from the earliest ages onward.<sup>20</sup>

### **1.9. The Guidelines for Action on Children in the Criminal Justice System**

The Guidelines for Action are addressed to the Secretary General, UN agencies and State parties to the CRC. It incorporates how to implement the principles of the *Convention on the Rights of the Child* and other international standards relating to the administration of juvenile justice.

### **1.10. Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime**

The Guidelines necessitates the child victims and witnesses to have access to a justice process, which encompasses detection of crime,

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<sup>19</sup> *United Nations rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules), adopted by the General Assembly in 1990.

<sup>20</sup> *UN Guidelines for the Prevention of Juvenile Delinquency* (Riyadh Guidelines), Adopted by the Un General Assembly during its 68th plenary meeting on 14 December 1990.

investigation, prosecution, trial and post-trial procedures.<sup>21</sup> It is founded on four principles which are<sup>22</sup> (i) respecting child's dignity, (ii) non-discrimination, (iii) best interest of a child, which includes protection and harmonious development and (iv) right to participation.

### **1.11. UN Standard on Alternatives to Imprisonment (Tokyo Rules)**

The Tokyo Rules is the key international standard on alternatives to imprisonment. The key guiding principles outlined in the Rules include: (i) pre-trial detention to be used as a means of last resort; (ii) non-custodial alternatives to imprisonment should be developed; (iii) any non-custodial measure or sanction and its conditions should be selected based on a number of factors. This includes the nature and gravity of the offence, and personal characteristics and the background of the person who is charged with, or convicted of a criminal offence; and (iv) staff or personnel employed to supervise and implement non-custodial alternatives should have professional training.<sup>23</sup>

### **1.12. Standard Minimum Rules for the Treatment of Prisoners 1955**

The Rules expound the principles to ensure that all those deprived of their liberty are treated with humanity and dignity.<sup>24</sup> Under the Rule, the prisoners shall not be subjected to torture and other cruel, inhuman or degrading treatment or punishment.

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<sup>21</sup> UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC resolution 2005/20.

<sup>22</sup> Ibid at Art. 8.

<sup>23</sup> *UN Standard on Alternatives to Imprisonment* (Tokyo Rules), adopted by the United Nations in 1990.

<sup>24</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners*, General Assembly resolution 70/175, annex, adopted on 17 December 2015.

### **1.13. UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)**

The Rules explicitly encourage the development and use of gender-specific non-custodial alternatives to pre-trial detention and to imprisonment. The Bangkok Rules acknowledge that many women in conflict with the law do not pose a risk to society and imprisonment frequently has a disproportionately negative impact on their rehabilitation and on their children's lives.<sup>25</sup> Thus, the rules specify guidance to policy makers, prosecutors and judges to reduce imprisonment of women and to meet specific needs of women in case of imprisonment.

## **2. OVERVIEW OF THE REGIONAL STANDARDS**

### **2.1. European Convention for the Protection of Human Rights and Fundamental Freedoms 1950**

The binding convention identifies inalienable rights and freedom of every human being and accordingly compels the State parties to guarantee and protect these rights.<sup>26</sup> Any violation of the rights mentioned under the convention are handled by the European Court of Human Rights. A child can bring a case against a signatory state to the European Court, stating violation of their rights under the convention.

### **2.2. European Convention for prevention of Torture 1987**

The convention is founded on Article 3 of the *European Convention on Human Rights* (ECHR) 1950 and strengthen the protection for

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<sup>25</sup> *UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, adopted by the United Nations General Assembly 22 December, 2010.

<sup>26</sup> *European Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 1950 (entered into force in 1953). It outlines 13 inalienable rights namely right to life, liberty, fair-trial, privacy, non-discrimination, education, marry and start family, freedom from torture, slavery, thoughts/religion, expression, assembly and abolition of death penalty.

people against torture, inhuman or degrading treatment or punishment.<sup>27</sup>

### **2.3. Guidelines on child-friendly justice 2010**

The guidelines were created by the Council of Europe to put treatment and measures in place to protect the rights of children who come in contact with the justice system. The guideline encompasses principles for each stage of the judicial process.<sup>28</sup> The council considers child-friendly justice as justice, if it is accessible, age appropriate, speedy, diligent, focuses on the needs of the child, respect due process and participation.

### **2.4. African Charter on the Rights and Welfare of the Child**

The African Charter is called the Children's Charter and is a comprehensive instrument that outlines rights and defines universal principles and norms for the status of children. The Charter is grounded on the four principles namely: "Non-discrimination of children; the best interest of the child; the right to survival, protection and development of each child; and the right to participation."<sup>29</sup>

### **2.5. African Charter on Human and Peoples' Rights**

The Charter upholds the basic principles of UDHR. It is endorsed with the primary objective to promote and protect human rights and basic freedom in Africa. The convention under Articles 2 to 24 specifies a list of rights every African people should not be deprived of.<sup>30</sup>

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<sup>27</sup> *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, opened for signature on 26 November 1987 (entered into force on 1 February 1989).

<sup>28</sup> *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, adopted on 17 November 2010.

<sup>29</sup> *African Charter on the Rights and Welfare of the Child*, (adopted by the Organization of African Unity (OAU) in 1990), entered into force in 1999.

<sup>30</sup> *African Charter on human and people's rights* (Adopted on 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force on 21 October 1986).



## **2.6. SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution**

The main objective of the convention is to promote regional cooperation amongst member States in dealing with various aspects of trafficking in women and children. It aims to prevent use of women and children in prostitution network where the SAARC regions are countries of origin, transit and destination. The Convention comprises repatriation and rehabilitation of victims of trafficking.<sup>31</sup>

## **2.7. SAARC Convention on Regional Arrangements for Promotion of Child Welfare in South Asia**

The Convention envisions to facilitate the development of the full potential of the South Asian child. It is founded on the guiding principles stipulated under Article 3 namely participatory rights, enjoy rights and freedom provided under national laws, implement well-being of a child, uphold best interest of a child and protect child's best interest.<sup>32</sup>

## **3. INTERNATIONAL CROSS-CUTTING PRINCIPLES**

International law over a period of time has enhanced children's rights in criminal justice. The international law has promulgated the fundamental cross-cutting principles that must be taken into consideration when children's likelihood and rights are being affected. Following are some of the important guiding principles reflected in several UN instruments:

### **INTERNATIONAL GUIDING PRINCIPLES**

- 1.** Best interest of a child as primary consideration.
- 2.** Protection and Non-discrimination.
- 3.** Right to be heard and freedom to express.

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<sup>31</sup> *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*, signed in 2002.

<sup>32</sup> *SAARC Convention on Regional Arrangement for the Promotion of Child Welfare in South Asia* (enacted on 5 January 2002), entered into force on 15 November 2005.

4. Age of criminal responsibility.
5. Separate criminal justice system.
6. Detention as last resort.
7. Diverting a child from formal proceeding.
8. Rehabilitation and Reintegration.
9. No-violence against a child.
10. Right to privacy and Confidentiality.

### 3.1. Best interest of a child

The term “the best interest of the child” refers to taking all the consideration in the best interest of a child while making a decision that affects the welfare of a child. The CRC considers the best interest of the child as a top priority in all decisions and actions that affect children.<sup>33</sup> The international instruments on child justice that includes Guidelines, Rules, body principles and Declarations have incorporated “the best interest of a child” as an essential guiding principle while dealing with a child or a child in conflict with law.

### 3.2. Protection and Non-Discrimination

The principle of protecting child’s welfare and non-discrimination are two relevant principles in determining the best interest of a child. The protection principle goes beyond protecting a child from wellbeing but covers approaches and actions to enable a child’s healthy mental and physical development. The CRC recognizes protection of children’s identity,<sup>34</sup> the government’s responsibility in ensuring that a child is protected from all forms of violence, abuse and neglect,<sup>35</sup> protection of a child living away from family<sup>36</sup> and protection of refugee

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<sup>33</sup> Article 3 of the CRC

<sup>34</sup> Article 8 of the CRC

<sup>35</sup> Article 19 of the CRC

<sup>36</sup> Article 20 of the CRC.

children.<sup>37</sup> All the above-mentioned articles from the CRC emphasize on the protection and non-discrimination principles.

### **3.3. Right to participation**

A child who is capable of forming his or her own view has the right to express those views freely in all matters affecting the child, in accordance with the age and maturity of the child. Hence, CRC emphasizes on the need to give the child in particular, the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of the national law.<sup>38</sup>

### **3.4. Age of criminal responsibility**

The age of criminal responsibility is the age below which a child is presumed to be incapable of committing a crime. Article 40 (3) of CRC requires States parties to seek to promote, *inter alia*, the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, considering the facts of emotional, mental and intellectual maturity of the Child.

### **3.5. Separate criminal justice system**

According to international standards, a juvenile justice system shall aim at encouraging specialization in child justice practices and developing a distinct system of criminal justice that treats children in a manner appropriate to their age and level of maturity. The primary goal of having a separate system is to divert young offenders from the formal investigation and court proceedings and direct them through appropriate alternative means of sentencing or rehabilitation.

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<sup>37</sup> Article 22 of the CRC.

<sup>38</sup> Article 12 of the CRC.

### **3.6. Detention as last resort**

This principle ensures that no child is deprived of his or her liberty unlawfully or arbitrarily. Diverting a child from detention not only protects their liberty, it is also an important reformative tool to ensure that a child does not commit an offense again. Article 37 of the CRC mandates the State to use arrest, detention or imprisonment only as a measure of last resort and for the shortest period of time if at all detention is necessary. It emphasizes that children must not be subjected to torture or other cruel, inhuman or degrading treatment or punishment when child comes in contact with the justice system.<sup>39</sup>

### **3.7. Strive in diverting children from formal proceeding**

According to article 40 (3) of CRC, the States parties are obliged to take measures for dealing with children in conflict with the law without resorting to judicial proceedings. CRC considers alternative measures as an integral part of any juvenile justice system and demands state parties to ensure that children's human rights and legal safeguards are fully respected and protected.

### **3.8. Develop reintegration and rehabilitation**

Children in conflict with the law, including child recidivists, have the right to be treated in ways that promote their reintegration and the child's assuming a constructive role in society. Hence pursuant to article 40 (1) of CRC, reintegration requires that no action may be taken that can hamper the child's full participation in his or her community, such as stigmatization, social isolation, or negative publicity of the child. Thus, a child in conflict with the law has to be dealt with in a way that promotes reintegration and requires all State actions to support the child's well-being and development as a constructive member of society.

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<sup>39</sup> Article 37 of CRC.

### **3.9. No violence against the CICL**

Article 40 of the CRC entails the States Parties to recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth. By doing this, it reinforces the child's respect for the human rights and fundamental freedoms of others.

Hence, respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented in all phases of the juvenile justice process, from the first contact with the police, during pretrial detention and during the stay in treatment and other facilities to the end of proceedings.

### **3.10. Right to privacy and confidentiality**

Article 16 of the UNCRC requires states to protect children's privacy. Article 40(vii) states that the child's privacy must be maintained throughout the proceeding. By Virtue of above provisions, children are entitled to respect for privacy and confidentiality.

## **4. DOMESTIC LAWS ON CHILD RIGHTS**

Our domestic laws are founded on the *Convention on the Rights of the Child* and international and regional instruments dealing with child justice. Like these instruments, the Bhutanese law requires the State to respect and protect all children from "any form" of discrimination and exploitation.

### **4.1. The Constitution**

Article 9 Section 18 of the *Constitution of the Kingdom of Bhutan 2008* (Constitution) requires the State to take appropriate measures to ensure that children are protected against any form of discrimination.

## 4.2. Child Care and Protection Act

The *Child Care and Protection Act of Bhutan, 2011* (CCPA) is the primary legislation that deals and protects the rights of a child. It is founded based on the principles enshrined under CRC and the Constitution of Bhutan.

## 4.3. Child Care and Protection Rules

In keeping with the guiding principles of the CCPA, the *Child Care and Protection Rules and Regulation of Bhutan 2015* (CCP Rules) was framed considering the best interest of a child as its essential guiding principle. The Rule is adopted to protect and promote the rights of the child in conflict with law and children in difficult circumstances.

## 4.4. Penal Code of Bhutan

In the context of penal law, *Penal Code of Bhutan 2004* (Penal Code) encompasses provisions that specifically cover the child in conflict with laws. A child who is 12 years and below is not liable for any offence.<sup>40</sup> If a child is above 12 years, the court is required to sentence to a minimum of half of the prescribed sentence.<sup>41</sup> The court may consider the availability of other measures in lieu of imprisonment.<sup>42</sup>

## 4.5. Civil and Criminal Procedure Code

On the procedural aspect, the *Civil and Criminal Procedure Code of Bhutan 2001* (CCPCB) requires the Court to exclude the public from trial to protect child's privacy.<sup>43</sup> A Child in Conflict with Law (CICL) is immune from charges and to be presented together in the preliminary hearing.<sup>44</sup>

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<sup>40</sup> Sec. 114 of the *Penal code* as amended in 2011.

<sup>41</sup> Ibid at sec. 115.

<sup>42</sup> Ibid at sec. 116.

<sup>43</sup> Sec. 4 of CCPC as amended in 2011.

<sup>44</sup> Ibid at sec. 194.

#### 4.6. Prison Act

The *Prison Act of Bhutan 2009* defines Juvenile delinquents to mean all individuals convicted of any offence if they are under the age of 18 years at the time of conviction.<sup>45</sup> Based on section 142 of the Act, a Juvenile is admitted into the Youth Development and Rehabilitation Centre (YDRC). Chapter 16 covers wide range of rights that includes continuing education<sup>46</sup> and exemption from hard labor.<sup>47</sup>

#### 4.7. Labour and Employment Act

The *Labour and Employment Act of Bhutan 2007* (Labour Act) embody provisions that deals with worst forms of child labour, their rights and stipulates categories of offences that may be committed in the process of employing children.<sup>48</sup>

#### 4.8. Diversion Guidelines

For effective implementation of the CCPA, the *Diversion Guidelines for Child in Conflict with Law, 2019* was developed. It is an important guideline to guide the police, probation officers, facilitators, prosecutors and court while considering a CICL for diversion. The guideline delivers due consideration to waive prosecution, discontinuing proceedings conditionally or unconditionally, or diverting a criminal case involving a CICL from the formal justice system, with full respect for the rights of CICL and the victim by exploring the possibility of adopting diversion programs to alleviate excessive court loads and to avoid stigmatization and adverse effects of imprisonment.<sup>49</sup>

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<sup>45</sup> Sec. 141 of the Prison Act of 2009.

<sup>46</sup> Ibid at sec. 144.

<sup>47</sup> Ibid at sec. 145.

<sup>48</sup> *Labour and Employment Act of Bhutan 2007*.

<sup>49</sup> *Diversion Guidelines for Child in Conflict with Law 2019*.

#### 4.9. Prosecution Guidelines

The *Guidelines for Prosecution 2019* strengthens the administration of child justice. The guideline streamlines child friendly procedures and rehabilitative programs that would provide delinquent children with an opportunity to atone their wrong and re-integrate into mainstream life, at an early stage, to enable them to pursue a more promising future.<sup>50</sup> Its standard requires prosecutors to be guided by the child right principles.

#### 4.10. SOP in dealing with CICL

The *Standard Operating Procedure for dealing CICL* (SOP) was framed with the primary objective to provide guidance in dealing with CICL and standardize the procedure by specifying the clear roles to the key agencies involved in administering child justice. It is developed with an objective to enhance collaboration and coordination amongst the key stakeholders in administering child justice.<sup>51</sup>

### 5. GUIDING PRINCIPLES

#### THE GUIDING PRINCIPLES UNDER CCPA

- 1) Best interest of a child as primary consideration.
- 2) Equality and fair treatment without discrimination.
- 3) Lawful arrest and detention of a child.
- 4) Uphold rights of a child and promote wellbeing.
- 5) Opportunity to be heard in any proceeding.
- 6) Child confinement to be a conducive environment.
- 7) Appropriate programs and services.
- 8) Design appropriate programs and services.
- 9) Conducive home care with required care.
- 10) Prompt legal aid and assistance.

<sup>50</sup> *Guidelines for Prosecution (Child in Conflict with the Law) 2019.*

<sup>51</sup> *The Guidelines for Prosecution (Child in Conflict with the Law) 2019.*



Bhutan became a State party to the *Convention on the Right of the Child* in 1990. Similarly, Bhutan ratified two other optional protocols. The *Optional Protocol to the Convention on the sale of children, child prostitution and child pornography* was ratified on October 26, 2009 and the *Optional Protocol to the Convention on the involvement of children in armed conflict* was ratified on December 9, 2009.

In addition to the international treaties, Bhutan has also ratified two regional treaties dealing with children. On September 4, 2003, Bhutan ratified the *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*. The *SAARC Convention on Regional Arrangements for Promotion of Child Welfare in South Asia* was ratified on September 4, 2003.

Despite being signatory to the CRC, Bhutan did not have specific law on child care and protection until enactment of the CCPA in 2011. The CCPA echoes the international obligation and the constitutional mandate to take appropriate measures to care and protection children from all forms of discrimination and exploitation. Like the CRC and other instrument on child justice, Chapter 2 of the *Child Care and Protection Act of Bhutan* stipulates following guiding principles to care and protect the interest of the child:

### **5.1. Best interest of a Child**

The CCPA entails the State to provide due consideration to the best interest of the child while deciding any matter that affects the interest of a child. It necessitates providing care, protection, guidance, counseling, treatment, development, rehabilitation, adjudication and disposition that is favorable to the child.<sup>52</sup> Where a child is in need of care and protection, the CCPA and *Child Care and Protection Rules*

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<sup>52</sup> Sections 3, 15(b), 22, 28, 30, 36, 45, 77, 81, 83, 102, 108, 115(a), 119(f), 127, 133, 135(a), 136(b), 139-141, 170(c), 174(b), 191(g), 210 and 238 of CCPA.

list out factors to consider while determining the child's best interest.<sup>53</sup> In any actions concerning children whether undertaken by government, non- government or private social welfare institutions, courts of law, administrative authorities, family members or individuals, the best interest of the child shall be the primary consideration.<sup>54</sup>

Similarly, the Diversion and Prosecution Guideline recognizes the best interest of a child as a critical component in the administration of a child justice. The guiding principles of the guidelines require the concerned person handling a case of CICL to underline the best interest of a child as a primary consideration.<sup>55</sup> Likewise, the *SOP on dealing with CICL* includes four elements in determining best interest of a child which are (i) health, development and safety of child; (ii) importance of keeping children within their families; (iii) custody as last resort; and (iv) focus on rehabilitation and reintegration.<sup>56</sup>

## **5.2. Equal and fair treatment without discrimination**

A child must be treated fairly and equally with respect and dignity. Section 4 of the CCPA requires a child to be treated fairly and equally with respect and dignity and not to be discriminated against on the grounds of race, sex, language, religion, political or other status.

## **5.3. Not subject to arbitrary arrest, detention, imprisonment or not deprived of liberty**

As per section 5 of CCPA, a child should not be subjected to arbitrary arrest, detention, imprisonment or deprivation of his or her liberty. Any arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest period of time. Given the

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<sup>53</sup> *Child Care and Protection Rules and Regulation of Bhutan*, 2015 at p.3-4

<sup>54</sup> *Diversion Guidelines for Child in Conflict with Law 2019* at p.3.

<sup>55</sup> *Guidelines for Prosecution (Child in Conflict with the Law) 2019* at p.1.

<sup>56</sup> *Standard Operating Procedure on dealing with Child in Conflict with law* at p.1.

vulnerability associated with young age, subjecting children to arrest and detention can have very negative consequences.<sup>57</sup> 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.<sup>58</sup>

#### **5.4. The child justice system upholds the rights of children and promotes physical and mental wellbeing**

Section 6 of the CCPA reaffirms that the child justice system is essential to uphold the rights of children in keeping them safe and promoting their physical and mental well-being.

#### **5.5. Provide adequate opportunity to be heard in any proceeding**

Section 8 of the CCPA postulates that children in conflict with the law should be provided with the opportunity to be heard in any judicial and administrative proceeding either directly or through a representative or an appropriate body in accordance with the *Civil and Criminal Procedure Code*. It is important to ensure that child gets the maximum opportunity to participate during the proceeding.

#### **5.6. Childs confinement should be of conducive physical environment**

Section 9 of CCPA mandates the state to provide a conducive physical environment and accommodation to a child in confinement, keeping with rehabilitative aims of residential placement and necessary need of the child for privacy, opportunities for association with family, and friends, participation in cultural, sports, physical exercise, and other leisure activities. A child must be treated with professionalism, fairness and respect. Adopting a child-friendly approach would prevent unnecessary conflict and distrust.<sup>59</sup>

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<sup>57</sup> Ibid at p.2

<sup>58</sup> Ibid at p.2.

<sup>59</sup> *Standard Operating Procedure on dealing with Child in Conflict with law* at p.2.

### **5.7. Design appropriate programs and services for child**

Section 11 of CCPA mandates the state to establish Programs and services for children shall that are culturally appropriate, programs that promote health and self-respect of children, programs that foster children's sense of responsibility; and programs and services that encourage attitudes skills development of a child that will help them develop their potential as members of the society.

### **5.8. A child placed in appropriate home care should be conducive and have all required care for the wellbeing of a child**

Section 12 of the CCPA mandates the state to establish appropriate homes for child that provides safe and conducive living environment, that ensures privacy, a home that gives access to medical helps and care, a home that provides access to education appropriate to the child's age and development; and a home that gives appropriate help and assistance in making a successful reintegration into society.

### **5.9. Right to prompt legal aid and other assistance**

Section 13 of CCPA gives every child the right to prompt access to legal and other appropriate assistance and the right to challenge the legality of any action taken under this Act against the Child.

## 6. ISSUE DISCUSSION AND CASE STUDY

### ISSUE DISCUSSION

- A child in conflict with law may need additional measures to protect their rights. Discuss.
- The international and as well as the domestic law put too much emphasis on the “best interest of the child” when a child comes in conflict with you. What constitutes the “best interest” and how do you determine it?
- Discuss some of the important cross-cutting guiding principles that a person must be aware while dealing with the child in conflict with law.
- What are some of the important domestic laws that aim to care and protect child rights? Mention some important rights provided under those laws.

### CASE STUDY

Sangay, resident of Motithang reported to the Police that a 14 years old boy committed a malicious mischief. Subsequent to the report, 14 years old boy was arrested from the premises. Based on this hypothetical scenario, discuss and explain following:

- What should a person dealing with a child in conflict with law be aware of in relation to a 14-year-old boy?
- What should they do to ensure that guiding principles of child justice are diligently applied?
- Identify some of the international and domestic cross-cutting guiding principles in relation to the present case?

## CHAPTER 2

### PRE-TRIAL RIGHTS OF A CHILD

This chapter comprises definition and guiding principles of CICL and examines regional and international standards. To ensure that child rights are protected, it encompasses guiding principles and procedure during arrest and subsequent assessment of a child by a relevant stakeholders.

#### CONTENTS

- 1) Definition and guiding principles.
- 2) Rights of a child and guiding principles.
- 3) Arrest of a child and its procedure.
- 4) Stakeholders and their role.
- 5) Pre-trial assessment and its procedure.
- 6) Issue and case discussion.

#### LEARNING OBJECTIVES

Upon completion of this Chapter, you must know following:

- Explain the concept of Child in Conflict with law (CICL) and know which groups of children it specifically refers to.
- Able to identify the primary provisions of regional and international standards that serve as the foundation of protecting rights of Child in conflict with Law.
- Know the essential principles on arrest of a Child in conflict with law and its procedure.
- Comprehend pre-trial assessment of a child and related procedure.

## 1. DEFINITION AND GUIDING PRINCIPLES

### 1.1. A child in conflict with law (CICL)

A child in conflict with the law (CICL) under CCPA is a child who is above 12 years of age and found to have committed an offence.<sup>60</sup>

According to the United Nations International Children's Emergency Fund (UNICEF), it refers to any person below the age of 18 who has come in contact with the justice systems for committing a crime or has been suspected of committing a crime.<sup>61</sup>

### 1.2. Age of criminal responsibility

“The minimum age of Criminal responsibility refers to the minimum age at which a person can be held criminally responsible for his or her actions.”

## 2. INTERNATIONAL LAW

### 2.1. UN Convention on the Right of a Child

The Article 40(3) of the CRC requires the States to set a minimum age of criminal responsibility.<sup>62</sup> Although no age is stipulated, the Committee on the Rights of the Child recommends that the minimum age of criminal responsibility be no lower than twelve. However, as per the Committee, this is the absolute minimum and should be revised upwards wherever possible. The Article states “parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.”

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<sup>60</sup> Section 72 of CCPA

<sup>61</sup> Juvenile Justice Reform Commission “*the Right of Children in Conflict with the Law*” Ministry of Justice of Montenegro Juvenile Justice Reform Commission, UNICEF, 2007.

<sup>62</sup> Article 40(3) of CRC

## 2.2. Beijing Rule

Rule 4 of the Beijing Rules recommends that the beginning of Minimum Age of Criminal Responsibility (MACR) should not be fixed at too low, bearing in mind the facts of emotional, mental and intellectual maturity.<sup>63</sup> In line with this rule the Committee on the rights of a child has recommended States parties not to set a MACR too low and to increase the existing low MACR to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. The States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age. The Committee urges States parties not to lower their MACR below the age of 12 years.

## 3. REGIONAL LAW

### 3.1. India

The age of responsibility of understanding the results of one's activities had been perceived as 12 years in *the Indian Penal Code* (IPC).<sup>64</sup> Alluding to Section 82 IPC, it provides that nothing is an offence which is done by a child under seven years of age. Section 83 of IPC provides that nothing is an offence which is done by a child above seven years of age and under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct. It was, in this way, encouraged even under the Indian Criminal Jurisprudence that the age of criminal responsibility is settled at twelve years.

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<sup>63</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") passed on 29 November 1985, the UN General Assembly Resolution: A/RES/40/33.

<sup>64</sup> Section 82 and 83 of the *Indian Penal Code 1860*.



### 3.2. Singapore and Canada

The minimum age of criminal responsibility is ten years of age.<sup>65</sup> Whereas, in Canada, it was alluded to *The Youth Criminal Justice Act (YCJA)*, 2003, as revised every now and then, where the age of criminal responsibility has been settled at twelve years.<sup>66</sup>

### 3.3. United States of America

At the State level, many states do not have minimum age of criminal responsibility. Pertaining to the federal crimes, the minimum age is set at 11. However, in the State of Massachusetts, the minimum age of criminal responsibility is at 12. The *Juvenile Justice and Delinquency Prevention Act*<sup>67</sup> sets age at 6 years for the North Carolina.

### 3.4. England and Wales

A child denounced of violations undergo trial under the *Children and Young Persons Act, 1933*, as amended in section 16(1) of the *Children and Young People Act, 1963*. Under the Act, the minimum age of criminal obligation in Britain and Wales is ten years and those who are below such age are considered to be as *doli incapax* and unequipped for having *mens rea*.<sup>68</sup>

## 4. DOMESTIC LAWS

### 4.1. Child Care and Protection Act

The CCPA has not only provided uniform definition for a child in line with the CRC but has also set the minimum age of criminal responsibility at “above 12 years of age.” Section 72 of the CCPA provides that “a child in conflict with the law is a child who is above 12 years of age”. Thus, the age of criminal responsibility under

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<sup>65</sup> Section 82 of *Penal Code of Singapore, 1972*.

<sup>66</sup> *Youth Criminal Justice Act, 2003*.

<sup>67</sup> *Juvenile Justice and Delinquency Prevention Act 1974*.

<sup>68</sup> *Children and Young Persons Act, 1933*, as amended in section 16(1) of the *Children and Young People Act, 1963*.

Bhutanese law is above 12 years. The CCPA repealed the age of criminal responsibility provided under section 114 of the *Penal Code of Bhutan*, which was fixed at 9 years.

**4.2. Penal Code of Bhutan**

The *Penal Code of Bhutan* was amended in 2011 and through this amendment, the age of criminal responsibility under Penal Code was made consistent with the CCPA. Section 114 of amendment states “if the defendant is a child of 12 years and below, he or she shall not be held liable for any offence committed by him or her”.

**5. RIGHTS OF A CHILD IN CONFLICT WITH LAW**

**5.1. The guiding principles under international law**

The UNCRC is the binding document on children’s rights. Out of many essential principles enshrined under the convention, following are the important cross-cutting principles pertaining to the rights of a CICL:<sup>69</sup>



In line with the international guiding principles, a CICL must enjoy full respect of human rights as guaranteed by the Constitution, law and applicable international instruments.

<sup>69</sup> *United Nations Convention on the Right of a Child*, adopted November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (entered into force September 2, 1990).

The international instruments that dwell for the protection of children in conflict with law emphasize the need to observe the principle of proportionality, meaning that any reaction to a CICL must be proportionate to his background and nature of the crime committed. The International standards require the States to evade resorting to formal proceedings or trial by court in all cases involving CICL.

As discussed in the preceding chapter and topics, rights of CICL are defined and recognized under a wide range of international instruments. All these instruments imply that there is a need to bestow special attention to protect rights of the CICL. The CRC provides a comprehensive mechanism on this matter and is binding international agreement that protects the rights of the child.

## 5.2. Guiding principles under domestic laws

In line with Article 37 of the *Convention on the Rights of the Child*, the rights of the CICL in Bhutan are enumerated under Chapter Six of the *Child care and Protection Act of Bhutan, 2011*.<sup>70</sup> The children's rights and its guiding principles are distinctly reflected under the *Constitution*, the *Penal Code* and its Amendment in 2011, the *Civil and Criminal Code* and its subsequent Amendments in 2011.

**In dealing with the CICL, the personnel that come in contact with child must comply and follow following:**

- To be treated with respect and inherent dignity;
- To be kept separately from adult offenders at all times;
- To be transported in a separate conveyance from that of adult offenders;

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<sup>70</sup> Sec.73 to 79, CCPA

- To maintain contact with family members through correspondence and visits, except in exceptional circumstances;
- To prompt access to legal and other appropriate assistance;
- Privacy to be fully respected and protected at all stages of the proceedings;
- Right to legal aid for children whose parents or guardian are indigent person;
- Protection against legal consequences and social stigma;
- Alternative measures, if not a recidivist or habitual offender;
- Separate hearing, if other person accused of same crime is an adult;
- Minimum sentencing, if not a recidivist or habitual offender;
- To provide any statements in the presence of the child's parents or guardian, social worker, or legal representative in attendance who shall also affix their signature to the said statement;
- Not to be handcuffed unless required in for the safety of the society;
- Not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; and
- Not to be deprived, unlawfully or arbitrarily of his or her liberty.

## 6. ARREST AND PROCEDURE

### 6.1. Determination of CICL

Children who come into conflict with the law will inevitably come in contact with the police. Therefore, police practice must be regarded as an integral part of the child justice system. A CICL's contact with the police is often the child's first encounter with the criminal justice system and contact at that point shapes his or her impression of the justice process that follows.

In order to provide effective and meaningful services to children, it is important to determine if the child is in conflict with the law. In deciding whether the offender is a child or not, the age of the child at the time of the commission of the crime shall be taken into consideration.

In the absence of the record or the birth certificate mentioned under section 16 of CCPA 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.<sup>71</sup> If the CICL is in need of care and protection, the Police need to refer the child to the relevant service providers.

### 6.2. Procedure during arrest

#### GUIDING PRINCIPLES

The Constitution of Bhutan prohibits all kinds of torture, cruelty, inhumane, degrading treatment, punishment.<sup>72</sup>

<sup>71</sup> Sec 16 of the CCPA to determine Child's age.

<sup>72</sup> Article 9(18) of the *Constitution of the Kingdom of Bhutan 2008*.

The Civil and Criminal Procedure Code of Bhutan prohibits any kinds of arbitrary arrest and detention.<sup>73</sup>

Section 104 of CCPA provides that no child shall be subjected to arbitrary arrest or detention.

In case of non-cognizable offences, the police may arrest the child only if they possess the warrant issued by a competent court. However, the *Civil Criminal Procedure Code* also includes a broad list of circumstances under which the police can arrest a person without a warrant. These provisions apply uniformly to adults and children. The Civil Procedure Code does not contain exception or any other provision that limits the powers of the police to arrest or search a child. It is important to note that arrest must be made in line with the guiding principles stipulated under the Constitution and the CCPC. The arrest of a child must be guided by following principles:

- Not subject to arbitrary arrest;
- Not subject to torture or threat;<sup>74</sup>
- Apprehend only on sufficient ground or probable cause;<sup>75</sup>
- Arrest by warrant;<sup>76</sup> and
- Comply process if arrest is made without warrant.<sup>77</sup>

The Police Official may allow a child to go home after advice or admonition upon undertaking by the child along with a parent,

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<sup>73</sup> Section 158 of the *Civil and Criminal Procedure Code 2001*.

<sup>74</sup> Ibid at sec. 160.

<sup>75</sup> Ibid at sec. 161.

<sup>76</sup> Ibid at Chapter 27

<sup>77</sup> Ibid at chapter 28.

member of family, guardian, or legal representative if the offence committed by a child is of violation and the child is not a recidivist.<sup>78</sup>

An arrest should only be used as a measure of last resort for the shortest period possible. Section 105 clearly requires police officials to deal with alleged offence without arresting a child except for the purpose of justice and security. If police arrest a child, section 106 requires them to inform grounds of arrest and without delay, consider issues of child as expeditiously as possible.

### 6.3. Rights during arrest

A child has following rights during arrest:

- ❖ Be informed promptly and directly of the charge through parents, member of family, legal guardian or legal representatives;
- ❖ Opportunity to be represented by a lawyer;
- ❖ Have legal or other assistance to prepare child and presents child's defenses;
- ❖ Accompanied by a parent, member of family, guardian or legal representatives during questioning or investigation by police;
- ❖ Right to remain silent and not to be compelled to give evidence or confess guilt;
- ❖ If a child is below 12 years of age and below, a child must be released immediately to the custody of parents or legal guardian;
- ❖ Section 113 completely bars usage of handcuffs for a child of 12 years and below. For a child above 12 years, handcuffs may be used in exceptional circumstance; and
- ❖ Any child arrested with or without warrant must be produced before a court within 24 hours as per section 114 of the CCPA.

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<sup>78</sup> Section 117 of CCPA.

#### **6.4. Taking child into custody**

If a police official or law enforcement decides to take a child into custody, the concerned authority must follow procedure established under section 112 of CCPA and relevant laws on taking child into custody. CCPA requires officials to follow following procedure:

- ❖ Explain in language that child understand about the reason for placing under custody;
- ❖ Inform nature of alleged offence committed;
- ❖ Explain rights entitled under constitution and other laws;
- ❖ Properly provide the details of the identification of the child;
- ❖ Refrain from using vulgar or profane language;
- ❖ Avoid violence or force or display of any threat;
- ❖ Refer immediately to an authorized medical officer for physical and mental examinations; and
- ❖ Ensure that all statements obtained from the child are signed by the child in the presence of the child's parents or guardian, social worker or legal representatives in attendance who shall also affix their signature to the said statement.

#### **6.5. Bail and Bond**

A CICL has a right to bail at any stage of proceeding including investigation. If the child is not in a position to pay the bail amount, the Court may release the child after posting a bond with conditions set by Court, considering whether a child could cause serious threat to oneself or public safety.<sup>79</sup>

#### **6.6. Remand Homes**

The CCPA mandates the Government to establish and maintain remand homes for following purpose:

- 1) Temporary care and protection of the child during the period of any inquiry or adjudication;

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<sup>79</sup> Sec 115 of CCPA.



- 2) Provision of accommodation, maintenance and facilities for medical examination and treatment; and
- 3) Any other matter that may be deemed necessary for the promotion of the child's best interest.<sup>80</sup>

An arrest should only be used as a measure of last resort for the shortest period possible. It is also in the interest of justice and best interest of the child, the Court may at any stages of proceeding including investigation, release the child on bail if the child is in detention. The child may be released after posting a bond on a promise to return and other conditions set by Court, if the bail amount is not paid and a child is not a serious threat to oneself or public safety.<sup>81</sup>

### 6.7. Contact with police

The police may come into initial contact with the child in conflict with the law when:

- A police officer comes across a child committing an offence while on duty or when called upon by the community alleging that a child has committed an offence.
- A child apprehended by a citizen and brought to the police station.
- A complaint about a child has been received at the police station; or when a child willfully obstructs law enforcement authorities in carrying out its duties.

The Police during his or her contact with the CICL must follow the *First Responders' Guide* and its guiding principles.<sup>82</sup>

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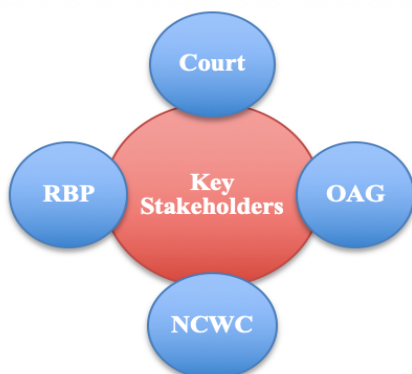
<sup>80</sup> Section 49, CCPA and Section 168, Child Care and protection rules and regulations.

<sup>81</sup> Ibid at sec. 115.

<sup>82</sup> *Protection of Women and Children, First Responder's Guide Manual 1*, Royal Bhutan Police 2016.

## 7. STAKEHOLDER AND THEIR ROLE

### 7.1. The key stakeholders in a Pre-trial



#### (i) NCWC

The *Child Care and Protection Act* identifies the NCWC or recognized implementing agency as the Competent Authority responsible for enforcing the provisions of the Act.<sup>83</sup> Any matter pertaining to the need for care and protection

of children must be taken up with the Competent Authority.

#### (ii) Royal Court of Justice

The Act mandates the establishment of a Child Justice Court or bench to be presided over by a judge who is well versed in child rights, protection and development.<sup>84</sup>

#### (iii) Royal Bhutan Police

The Women and Child Protection Unit/Desk (WCPU/D) is a specialized division under the Royal Bhutan Police (RBP) created for the specific purpose of handling all matters relating to women and children.

#### (iv) Office of the Attorney General

The Office of the Attorney General (OAG) as the central prosecuting agency of the State, reviews investigation or assessment reports referred by RBP pertaining to CICL. The OAG as mandated under Article 29 of the Constitution and the *Office of*

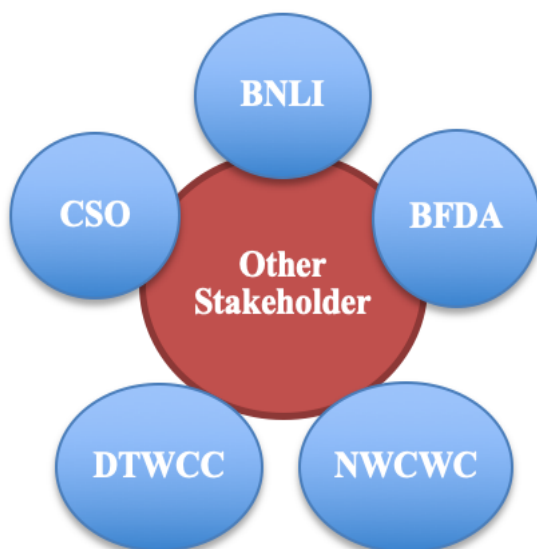
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<sup>83</sup> Section 54 of the CCPA

<sup>84</sup> Section 38-39 of the CCPA

*the Attorney General Act*<sup>85</sup> reviews and expedites proceedings in cases of CICL. The OAG endeavors to make exceptions in cases of CICL to protect a child's rights and welfare, affording them corrective measures such as alternatives to prosecutions.

## 7.2. Other stakeholders



### (i) BNLI

The BNLI as the nodal agency for conducting pre and in-service training of the Judicial Service Personnel builds the capacity of the judges and other judicial personnel on the child justice and its guiding principles.<sup>86</sup>

### (ii) National Women and Children Welfare Committee

The Act requires the setting up of a National Women and Child Welfare Committee (NWCWC) or any other agency performing mandate stipulated in CCPA to establish homes, provide training and rehabilitation of children in conflict with the law and coordination amongst the relevant agencies involved in child justice.

### (iii) Dzongkhag/Thromde Women and Children Committee

The DTWCC or any other committee executing the mandate under the CCPA is required to provide assistance to the Competent Authority and to render timely services to women and children in

<sup>85</sup> Office of the Attorney General Act 2015.

<sup>86</sup> The Judicial Service Act of Bhutan 2007.

need of care and protection including CICL in their respective Dzongkhags and Thromdes.

**(iv) Bhutan Food and Drugs Authority**

The Bhutan Narcotics Control Authority (BNCA), which is now Bhutan Food and Drugs Authority is the nodal agency of *Narcotics and Psychotropic substances*. The Narcotic Drugs law, which is now under the mandate of BFDA requires the authority to provide treatment to the minors with substance use disorder through Treatment Assessment Panel (TAP), Drop-in Centers and other institutions-based treatments.<sup>87</sup>

**(v) Civil Society Organizations**

The Civil Society Organizations (CSO) and the other service providers play a significant role by complimenting and supporting the relevant Government Agencies in taking care of the well-being of the CICL. The Competent Authority seeks assistance of CSOs and other service providers in the establishment of homes, providing training, rehabilitation and creating diversion programs for CICL.<sup>88</sup>

## **8. PRE-TRIAL ASSESSMENT AND RELATED PROCEDURE**

The purpose of the assessment is to ascertain about the child's involvement in the commission of an offence which includes, ascertaining whether the child was involved and how the child became involved in the offence. It also seeks to minimize trauma, stigmatization and to maximize opportunities for a positive development in the best interest of the child. Based on the assessment, the Probation Officer will determine and recommend the most appropriate steps for executing the procedures for referral, treatment and diversion of the CICL.

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<sup>87</sup> Section 152 and 154 of the *Narcotics and Psychotropic substances, the Narcotic Drugs, Psychotropic Substances and Substance Abuse Act of Bhutan 2015*.

<sup>88</sup> Section 59, SoP for dealing with CICL

The police upon determining the child as CICL must notify the probation officer through CMIS or in writing or through other means. The probation officer must be notified within 24 hours of a child being arrested by the police and has following roles upon receipt of notice:

- ❖ The Probation Officer must notify the Dzongkhag or Thromde Women and Children Committee or the competent authority accordingly.
- ❖ The Probation Officer must ascertain and prepare the case plan immediately to carry out the assessment.
- ❖ Based on the assessment, the case plan is prepared and submitted to the Chairperson of D/TWCC and the Head of the Competent Authority.
- ❖ The assessment of a child can take place at any place identified by the Probation Officer, provided the place is conducive to privacy and is in the best interest of the child.
- ❖ The probation officer must advise and assist a child in conflict with the law at all times and adopt the least intrusive interventions.

#### PERSON TO BE PRESENT DURING ASSESSMENT

1. Prosecutor or the victim or legal representative of the victim;
2. Legal representative of the child or the child's parents or guardian;
3. Police official; and
4. Any other person whose presence is necessary or desirable for the assessment.

Upon completion of the assessment, the probation officer must prepare a report. The assessment report may include the following recommendations to be considered by the Police, Prosecutor or Court:

### RECOMMENDATION AFTER ASSESSMENT

- Prospects of diversion;
- Possibility to obtain bail for the child;
- Possibility of the release of the child into the care of a parent or guardian or any other person, where the child is in detention;
- Placement of a child in a place of safety;
- Share the assessment report with the investigating or prosecuting agency, for further proceeding.

**Note:** *The copy of the Assessment Report must be submitted by the Probation Officer to the RBP or the Prosecutor for further due process including diversions, alternative measures and adjudication.*

## 9. ISSUE DISCUSSION AND CASE STUDY

### ISSUE DISCUSSION

- What are important documents that you may take into consideration to determine a child's age?
- Discuss some of the reasons why you think the CICL may need additional measures to protect their rights?
- Should CICL be treated differently during arrest and investigations?
- What does "the best interest of the child" mean in practice in the context of your profession?
- Discuss importance of assessment report concerning CICL.
- In what ways and at what times in the criminal justice system would it be important to ensure a child's right to be heard?

### CASE STUDY

A 14 years old Pema has been arrested for a burglary at a home in Changzamtog, Thimphu. He committed an act with his 20 years old brother Dorji. They were caught at the premises and taken to the police station. Based on this hypothetical case, discuss following question:

- What should the Police or Investigation Officer be aware of in relation to 14-year-old Pema?
- What should they do to ensure that the cross-cutting principle of justice for children is applied?
- Name some of the stakeholders that should be present when a child comes in conflict with law?
- Stipulate some roles of key stakeholders in dealing with a child in conflict with law.

## CHAPTER 3

### DIVERSION

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This chapter comprises the concept of diversion and its guiding principles, the diversion process and the roles of stakeholders involved in dealing with the Child in Conflict with the Law. It encompasses monitoring and compliance of the diversion programs including challenges.

#### CONTENTS

- 1) Definition, laws and its importance.
- 2) Guiding Principles.
- 3) Diversion process.
- 4) Initiation of diversion program.
- 5) Monitoring and compliance.
- 6) Issue and case discussion.

#### LEARNING OBJECTIVES

After completing this Chapter, you should be able to:

- Learn concepts of diversion, its importance and the guiding principles.
- Able to comprehend the different processes of diversion by the Police, OAG and the Court.
- To be able to understand the consequences of effective and non-effective diversion programs.
- To identify prevalent issues and challenges related to the diversion process and its programs.



## 1. CONCEPTS AND LAWS ON DIVERSION

### 1.1. Diversion

“Diversion refers to an alternative measure for dealing with a child in conflict with law other than judicial proceeding.”<sup>89</sup>

### 1.2. Convention on the Rights of the Child

The *United Nations Convention on the Rights of the Child* recognizes the promotion of establishing laws, authorities, procedures and institutions that would bring forth the measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law, without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.<sup>90</sup>

### 1.3. Committee on the Rights of the Child

The Committee has stressed that the following factors are particularly vital to safeguard the child’s rights in diversion programs:

- ❖ Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that a child freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him or her in any subsequent legal proceeding;<sup>91</sup>
- ❖ The child must freely and voluntarily give consent in writing to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure. With a view to strengthening parental involvement, States parties may also consider requiring

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<sup>89</sup> Sec. 186 of CCPA.

<sup>90</sup> Article 40(3)(b) of CRC.

<sup>91</sup> *Committee on the Rights of the Child*, General Comment No. 10, *Children’s rights in juvenile justice*, CRC/C/GC/10, 25 April 2007, para. 27.

the consent of parents, in particular when the child is below the age of 16 years;<sup>92</sup>

- ❖ The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular to protect the child from discrimination;<sup>93</sup>
- ❖ The child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the diversion offered by the competent authorities, and on the possibility of review of the measure;<sup>94</sup>
- ❖ The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as “criminal records” and a child who has been previously diverted must not be seen as having a previous conviction. If any registration takes place of this event, access to that information should be given exclusively and for a limited period of time.<sup>95</sup>

#### 1.4. Beijing Rules

Under rule 11(1), the Beijing Rules provides that whenever appropriate, consideration shall be given to dealing with child offenders without resorting to formal trial by the competent authority.<sup>96</sup> It adds that any diversion involving referral to appropriate community or other services shall require the consent of the child, the

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<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“The Beijing Rules”) passed on 29 November 1985, the UN General Assembly Resolution: A/RES/40/33.

parents or guardian, provided that such a decision to refer a case shall be subject to review by a competent authority, upon application.<sup>97</sup>

### 1.5. The Child Care and Protection Act

According to section 72 of the CCPA, a Child in Conflict with the Law (CICL) is a child who is above 12 years of age and found to have committed an offence.



The CCPA provides for dealing with matters pertaining to CICL in the most favorable manner and the best interest of the child. The Act mandates the relevant agencies and any individuals acting in the administration of Child justice, to reckon with the “Best Interest of the child” as a paramount factor and exhaust all means and manner that would divert the child from the formal proceedings of the criminal justice system.

The formulated Diversion is one such means to deal with a CICL in a friendlier manner, in the best interest of the child, without having to resort to the complicated procedures of the criminal justice system. Even in practice, the diversion programs are found to be one of the best alternatives or components in aiding the effective administration of the Child Justice System.



<sup>97</sup> Ibid.

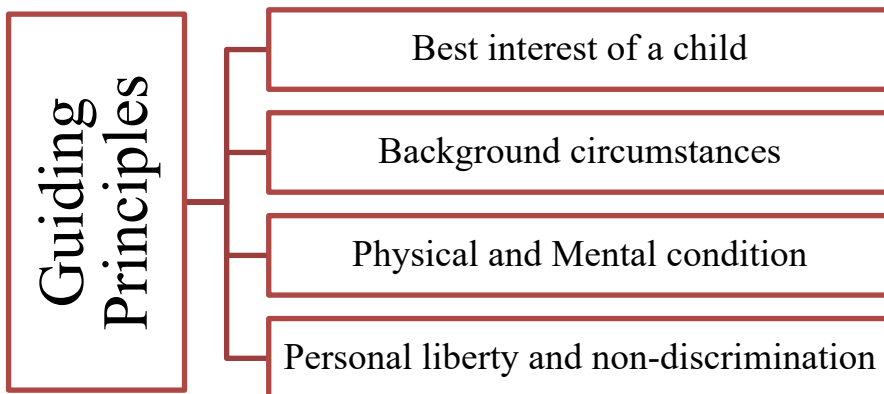
## 1.6. Importance of diversion program

Diversion is one of the important alternatives that is devised to deal with a CICL. Diversion programs have following benefits to the child:

- Diversionary strategies help in avoiding the disgrace and predicaments that the prosecution would bring to the child and his family.
- It aims to prevent stigmatization, victimization and criminalization of children; and
- Provides them with an opportunity for reformation and reintegration, which is important for their physical, mental and emotional development.

## 2. The GUIDING PRINCIPLES

In considering a CICL for diversion, it shall be guided by the following principles:



### 2.1. Best interest of a child

“Best interest of the child” refers to “the totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging the child’s physical, psychological and emotional development”.

It also includes the least detrimental alternative available for safeguarding the growth and development of the child. The best interest of the child must be the paramount consideration while determining whether the child should be admitted for diversion or not. Only if it's in the best interest of the child that diversion is favourable, then one must expeditiously proceed.

## **2.2. Minimum restriction on the personal liberty and non-discrimination**

A child's liberty should not be deprived due to arbitrary arrest, detention and imprisonment. Diversion as an alternative measure to judicial proceedings must ensure that reasonable and minimum restrictions are imposed on the CICL, without depriving his liberty. It must also ensure that the child is treated fairly and equally with respect and dignity and shall not be discriminated against on the grounds of race, sex, language, religion, politics or other status.

## **2.3. Background and circumstances**

One of the guiding principles for diversion is the family background and the living environment of the CICL. The circumstances under which the child has been living, the child's conduct and performance in school or institutions and his behavior in the society have to be considered equally.

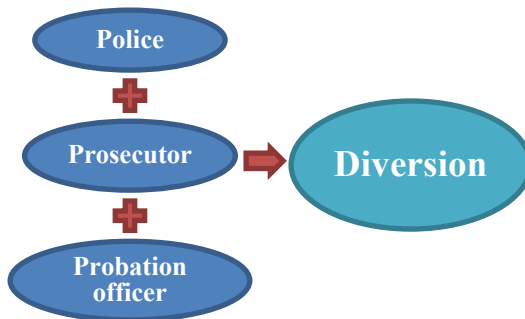
## **2.4. Conditions during the commission of the offence**

In addition to the above-mentioned circumstances, it is also important to consider the child's physical and mental conditions, his motive and intention, and other eventful conditions under which the CICL committed the alleged offence.

### 3. DIVERSION PROCESS



#### 3.1. Preliminary determination



During the preliminary stage, either the police or the prosecutor, after studying the assessment report of the child prepared by the Probation officer, decide whether there is possibility of

diversion. If the police or prosecutor finds that the child can be admitted for diversion, then before initiating diversion, the following must be taken into consideration:

- The prosecutor must determine whether it is case of CICL;
- Whether the offence committed is of serious nature or not;
- Whether child admits commission of an offence;
- The consent of the CICL or his or her parents or guardian must be obtained;
- The CICL must have the opportunity to consult with legal counsel or seek appropriate assistance on the appropriateness and desirability of the diversion program offered.

If the above-mentioned considerations are satisfied, based on the factors discussed below, the concerned official will determine whether diversion is appropriate and desirable.

### 3.2. Determination of age of CICL

The age must be evidenced by an official record maintained by the Government, birth certificate or any other document proving the age of the child. In absence of any, it must be based on information or testimonies of the child and other persons considering also the physical appearance of the child or expert medical opinion. If, however, the defendant is a child of 12 years and below, he or she shall not be liable for any offences committed by him or her.

### 3.3. Determination of Non-serious offences for CICL

Unlike other countries, serious offences are not specifically defined or categorized in our laws. However, offences of first, second, third- and fourth-degree felonies are non-compoundable offences wherein if convicted the suspect must serve prison term. Similarly, a non-bailable offence refers to an offence against the security and sovereignty of the country, and offences of felony of second degree and above. Thus, the offences of first and second degree are non-bailable as well as non-compoundable, whereas offences of third and fourth degree are bailable but non-compoundable. Until a law defining serious offence is adopted, offences of misdemeanor and below being both compoundable as well as bailable can be considered not serious.

In addition to the above, for the purpose of a CICL, offences of felony of fourth degree, and misdemeanor and below may be considered as non-serious offence based on the factors such as:

- Best interest of the child;
- Severity of the charges;
- Suspect's past criminal record;
- Likelihood of flight;
- Potential threat posed to civil society;
- Suspect's age and physical or mental health conditions;

- Views of the victim or aggrieved person; and
- Circumstances under which the crime was committed.

### 3.4. Factors in determining the appropriateness and desirability of diversion

The relevant stakeholder or officials before initiating diversion must consider following factors:

- Nature and circumstances of the offence charged;
- Frequency and severity of the offence committed;
- Age, maturity and intelligence of the child;
- Reparation of the injury and compensation to the victim;
- Safety of the community; and
- The best interest of the child.<sup>98</sup>

### 3.5. Circumstances for considering diversion

Once the concerned official determines desirability of the diversion for a CICL, the child may be considered for diversion under the following circumstances:

- If the child understands the right to remain silent and has not been unduly influenced to acknowledge responsibility;
- If the child voluntarily acknowledges responsibility for the offence;
- If the child is accountable for the harm caused and is willing to pay the compensation;
- If the child feels remorse for the offence he committed;
- The ability of the parents or guardian to guide and supervise the child;

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<sup>98</sup> Section 191, CCPA 2011.



- The victim's view; and
- The willingness of the child along with parents or guardians to reconcile with the person or community affected by the harm caused by the child.<sup>99</sup>

#### 4. INITIATION OF DIVERSION



Diversion can be initiated by the police or prosecutor as early as right after the apprehension of the CICL or by the court at any stage of the trial.

Diversion programmes are more effective if they precede any kind of formal judicial proceedings. The Prosecution of a CICL should only be done when

every other alternative to prosecution has been exhausted or when the case merits prosecution in all ways.

##### 4.1. Diversion by Police

No sooner than the child has been apprehended by the police, the police have to determine if the offence committed by the child can be diverted or if any other alternatives can be availed. If the case fulfills every factor aforementioned, the police shall initiate diversion instead of prosecution.

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<sup>99</sup> Section 192, CCPA 2011.

### **(i) Role of Police**

In majority of the cases, police are the first personnel that comes in contact with CICL. The moment police apprehend a child, following must be considered:

- Determine the age of CICL upon apprehension.
- Notify a probation officer for assessment.
- Facilitate the probation officer during assessment.
- Organize a diversion conference.
- Submit diversion agreement to the court.

### **(ii) Diversion Procedure**

Considering the provisions stipulated under the CCPA and other guiding principles, police have authority to initiate diversion. The diversion by the police may involve following process:

- After apprehending the child, the police shall determine the age of the child and check if the case merits diversion.
- If the child is found to be a CICL, and the circumstances of the case merits diversion, the police shall then notify a probation officer for assessment.
- The probation officer shall assess the child in presence of all relevant stakeholders which includes the CICL, the CICL's parents or guardian or legal representative, and any other relevant persons or agencies in the best interest of the child.
- During the assessment, the stakeholders shall collectively come up with a valid recommendation. The probation officer shall then submit the Recommendation of Assessment to the Police.
- Upon receiving the recommendation, the Police shall organize a diversion conference, during which a diversion agreement will be drawn.

- The police shall then submit a copy of such agreement to the court of appropriate jurisdiction.

### **(iii) Diversion Conference**

Once the police decide to initiate diversion for CICL, it must be followed by a diversion conference. The police will hold the conference at such a time and place suitable to the CICL. The time and place should be decided in consideration of the well-being of the child. During the conference, following persons must be present:

- Child in Conflict with Law.
- CICL's parents or guardian or legal representative.
- Probation Officer.
- Police.
- Victim, if necessary.
- Any other person or agency deemed necessary and appropriate.

During the conference, the stakeholders shall discuss appropriate diversion programs for the CICL. The needs and interest for the wellbeing of the child shall be discussed thoroughly in the conference. The parents or guardians shall take responsibility for the child's future.

### **(iv) Diversion Agreement**

A diversion agreement is a legally binding agreement drawn between the police and the CICL's parents or guardian or legal representative during the diversion conference. A diversion agreement shall consist of the following:

#### **CONTENTS OF THE DIVERSION AGREEMENT**

- Details of the Child in Conflict with Law.

- The nature of the offence committed and the role of the CICL.
- Details of parents or guardian or person under whose responsibility or custody the CICL is vested for ensuring compliance to the agreement.
- The conditions to be met (must include a commitment not to breach the conditions of the agreement and also not to commit a further crime).
- Duration of the diversion program.
- Restitution of property or reparation of the damage caused if any.
- Indemnification for consequential damages if any;
- Written or oral apology.
- Compulsory school attendance monitored by a specified probation officer.
- Reporting to a specified probation officer at a time specified so as to enable such person to monitor the CICL's behaviour.
- Spending a specified number of hours with the family;
- Abiding by an agreement made between the CICL and the concerned agency to comply with certain standards of behaviour.
- Association with a person or institution who can contribute to positive behaviour.
- Participation in available community-based programs, including community services, or placed under the supervision and guidance of an appropriate person.
- Monitoring and compliance (responsibility of the authorities-e.g. Probation officer or any other official designated by the competent authority).

There should be Legal stamps affixed on the agreement and the agreement shall be signed in presence of and by all the relevant stakeholders. The original copy of the agreement will be retained by the police and its copy must be given to all the relevant stakeholders. The Police must submit a copy of an agreement to the court of appropriate jurisdiction. To ensure that the CICL complies with the provisions of the agreement, police must coordinate with the probation officer for necessary follow up on the conditions stipulated in the agreement.

#### **4.2. Diversion by the Office of the Attorney General**

When a case of a CICL is forwarded to the OAG, the concerned prosecutor has to determine whether the case merits diversion or prosecution. The prosecutor, after determination based on the Assessment report and upon meticulous deliberation through the Case Screening Corpus, if the case merits diversion, shall initiate and arrange a diversion conference.

##### **(i) Role of Prosecutor**

If a case is forwarded by the Royal Bhutan Police for prosecution and the Office decides to initiate diversion of a CICL, the prosecutor has the following roles:

- Facilitate assessment by a Probation officer;
- Determine CICL in the Diversion program;
- Initiate Diversion program;
- Initiate Diversion Conference;
- Draw a Diversion agreement with the guardian or parent of the CICL; and
- Submit a copy of the Diversion agreement to the Court and Parties.

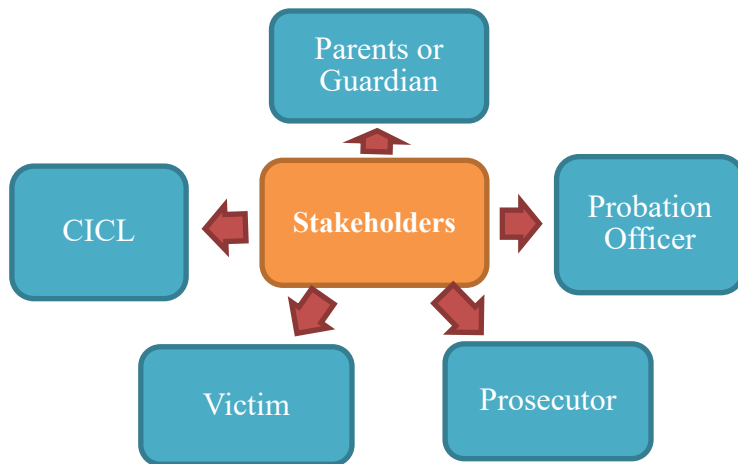
## (ii) Diversion Conference

The diversion conference is held with the following objectives:

- To identify or discover a diversion program appropriate for the CICL; and
- To draw up acceptable terms and conditions for the proposed diversion program.

### ❖ Key stakeholders for the conference

During the diversion conference, it is important to ensure that the following are present:



As per the provisions of CCPA and relevant laws, the diversion conference should be conducted and have representative which are (i) the CICL; (ii) the CICL's legal representative or guardian or parents (one or all-whoever appropriate); (iii) Probation officer or any official authorized as such by the Competent Authority; (iv) the prosecutor or police official; (v) the Victim, and if the victim is a minor, the victim's parents or guardian; and (vi) Any other persons deemed necessary and appropriate for the diversion conference.

#### ❖ **Place of Conference**

- The diversion conference shall be conducted at an appropriate time and conducive place suitable for the child.
- The setting and conduct of the conference shall be in an informal and friendly manner.
- The venue for the conference shall be any place suitable for the child.

#### ❖ **The outcome of the diversion conference**

- A legally binding diversion agreement between the prosecutor and the CICL is drawn up.
- The obligations and implications of the agreement will be discussed during this conference.

### **(iii) Contents of the Diversion Agreement**

A diversion agreement is a legally binding agreement drawn between the prosecutor and the CICL's parents or guardian or legal representative during the diversion conference. Such agreement shall consist of the following:

#### **CONTENT OF THE DIVERSION AGREEMENT**

- Details of the Child in Conflict with Law.
- The nature of the offence committed and the role of the CICL.
- Details of parents or guardian or person under whose responsibility or custody the CICL is vested for ensuring compliance to the agreement.
- The conditions to be met (must include a commitment not to breach the conditions of the agreement and also not to commit a further crime).
- Duration of the diversion program.
- Restitution of property or reparation of the damage caused if any

- Indemnification for consequential damages if any.
- Written or oral apology.
- Compulsory school attendance monitored by a specified probation officer.
- Reporting to a specified probation officer at a time specified so as to enable such person to monitor the CICAL's behaviour.
- Spending a specified number of hours with the family.
- Abiding by an agreement made between the CICAL and the concerned agency to comply with certain standards of behaviour
- Association with a person or institution who can contribute to positive behaviour.
- Participation in available community-based programs, including community services, or placed under the supervision and guidance of an appropriate person.
- Monitoring and compliance (responsibility of the authorities-e.g. Probation officer or any other official designated by the competent authority)

#### **(iv) Submission of Diversion Agreement to the Court**

After drawing a diversion agreement through a diversion conference:

- The concerned prosecutor must notify the court; and
- Submit a copy of a diversion agreement to the Court of appropriate jurisdiction.

### **4.3. Diversion by Court**

#### **(i) A preliminary inquiry by the Court**

The main objective of conducting a preliminary inquiry is to see the prospects of diversion for the CICAL. The court shall hold an informal preliminary inquiry before the formal hearing is conducted. During the inquiry, the court shall establish whether the matter can be



diverted before conducting actual adjudication proceedings and if so, identify a suitable diversion option for the CICL. A preliminary inquiry may be held in a court or any other place suitable for the child. The following persons must be present during the preliminary inquiry:<sup>100</sup>

- The CICL;
- The CICL's parents or guardian or legal representative;
- The probation officer;
- The prosecutor or the victim or any legal representative of the victim;
- The police official; and
- Any person whose presence is deemed necessary.

## **(ii) Family Group Conferencing**

A family group conference is a process led by family members to plan and make decisions for a CICL as per Child-Friendly Court Procedure. It will be initiated upon the instruction of the court. The court may appoint an officer or any other person as the court deems fit to act as a facilitator to organize family group conferencing if:

- An offence committed by a child is a petty misdemeanour or misdemeanour;
- The commission of such an act by the child is for the first time;
- The child pleads guilty; and
- The judge thinks that the child can be reformed without being prosecuted.

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<sup>100</sup> Section 126, CCPA 2011.

## 5. MONITORING AND COMPLIANCE

### 5.1. Duties of Probation Officer

Upon the receipt of the diversion agreement from the prosecutor or investigator or the court, the probation officer should monitor the CICAL as per the conditions stipulated in the agreement. The Probation officer in collaboration with working partners (schools, councilors, CSOs) has to carry out the compliance assessment on the matters of the CICAL from time to time. The probation officer has to submit periodic monitoring and assessment reports to the prosecutor or investigator or the court as the case may be. The probation officer has to submit the final report after completion of the diversion program.

#### CONTENT OF MONITORING AND COMPLIANCE ASSESSMENT REPORT

- Name and sex of the CICAL;
- Date of birth of the CICAL;
- Date of Diversion and completion date;
- Details of present address;
- Education status;
- Health status;
- Family relationship;
- Description of diversion agreement or order compliance;
- Follow up information on the diversion agreement;
- Any other threat or risk associated with the CICAL, if any; and
- Recommendations and other additional information.

### 5.2. Procedure for Non-compliance to the diversion program

The probation officer must notify the concerned agency in writing if the CICAL fails to comply with the diversion program. Upon the receipt of the notification, the concerned agency will terminate the agreement

and proceed with other alternatives. For example, the prosecutor may initiate prosecution if the child fails to comply with the diversion agreement.

### **5.3. Completion of the Diversion Program**

The Probation Officer must inform the concerned authority in writing with a copy to the competent authority and the parents/legal guardians of the CICL about the completion of the program during the submission of the last report. Upon the successful completion of the diversion program by the CICL, to reintegrate the CICL into the community, the Probation Officer must:

- ensure proper handing taking of the CICL to the parents or guardian in the presence of the concerned authority which should include recommendations for reintegrating the child;
- inform the CICL according to the CICL's age, ability and in a language that the CICL can understand; and
- notify the Competent Authority in writing.

The Probation Officer should maintain updates of the records of all such monitoring and compliance in the Management and Information System of the Competent Authority and also in hard copy. Failure of the CICL to comply with the conditions outlined in the diversion agreement made according to family group conferencing, the police official or probation officer has to notify the court in writing of such failure. The court will consider the matter for further necessary orders including continuing prosecution or withdrawal from prosecution.

## 6. DIVERSION PROGRAMS AND CHALLENGES

The following are some of the prevalent diversion programs in Bhutan but not limited to:

DIVERSION PROGRAMS	ISSUES AND CHALLENGES
<ul style="list-style-type: none"><li>• School Attendance;</li><li>• Vocational skills activities;</li><li>• Help Parents with household chores;</li><li>• Education and counseling; and</li><li>• Mental health treatment.</li></ul>	<ul style="list-style-type: none"><li>• Availability of probation officers;</li><li>• Identification of appropriate diversion programs;</li><li>• Effectiveness of diversion programs;</li><li>• Challenges with monitoring and compliance; and</li><li>• Availability of efficient diversion programs.</li></ul>

**Note:** The diversion programs mentioned above are some of the prevalent programs. However, the above list is not exhaustive. The programs are usually determined during the diversion conference. While determining the program, the appropriate program is decided considering the interest of a child or a program that would bring significant reform to a child.

## 7. ISSUE DISCUSSION AND CASE STUDY

### ISSUE DISCUSSION

- Explain guiding principles in considering diversion of a child in conflict with law.
- Discuss factors in determining the appropriateness and desirability of diversion. What are the circumstances that you may consider for diversion?
- List out important contents of the diversion agreement.
- What happens if a child fails to comply with the diversion agreement?
- Discuss the reporting process once a child completes his or her diversion program.
- What are the advantages in routing a child through a diversion process rather than a formal legal proceeding?

### CASE STUDY 1

A 15 years old child committed an offence of larceny. The value of the stolen property was Nu.1 Lakh. Based on the complaint to the Police, a child was arrested by the Royal Bhutan Police. The Probation was informed about an offence committed by a child. The probation officer started the assessment of a child. A child confessed to committing of crime but argued that a crime was committed as he was going through economic crises. He further stated that his parents passed away and now lives with his drunkard uncle who failed to provide basic necessities to him.

Along with the investigation report, an assessment report was forwarded to the Office of the Attorney General for initiating prosecution. Based on the above case scenario, discuss following:

- Considering children's age, do you think the RBP could have carried out the diversion of a child?
- Is the value of the stolen property important in considering diversion by the OAG?
- Will it make any difference if a child is just above twelve years of age? How will you proceed if a child is 17 years of age?
- What are the important factors you would consider to divert 15 years old from formal court proceeding?

## CASE STUDY 2

Sangay, a 13 years old girl after her school, was travelling from Motithang to Changzamto. While she was walking down the Hospital area, she found a disabled lady in her wheel chair with her purse in her right hand. Knowing that she was disabled, Sangay picked purse, opened it and took Nu. 1500 from Nu. 10,000 available in the purse. The disabled sought help from people nearby during which Sangay fled the scene. The people nearby saw Sangay running and immediately informed the police. Sangay was arrested later by Police from her house in Changzamto and taken to the police station. A probation officer was called. While the investigating officer of the Police recommended to issue a warning and let go but the Dy. Chief of Police, Crime branch ordered the case to be forwarded to the Office of the Attorney General for prosecution.

During the review of case, the Prosecutor discovered the following facts:

Sangay's principal and her friends from her class gave a statement to the Police that Sangay was a very good girl and never missed her classes. They all confirmed that there was no report of abuse at home nor had she committed such an act before. She was known for her sincerity and commitment in any activities the school organized.

Sangay on other hand was in desperate need of money to pay school fees which amounted to Nu. 1500. It is due to her financial issues at home which made her commit such an act. Sangay stated to the police that she committed this act to pay her long due fees after repeated reminders from school.

- Considering the above available facts, what diversion measures would be appropriate?
- What are the important factors from the above case would you use if you were to initiate diversion?
- What are some advantages of dealing this case through diversion instead of formal court proceedings?
- List out some of the stakeholders that should be involved in the present case?
- Which would be most appropriate punishment or remedies against or for Sangay?

## CHAPTER 4

### ALTERNATIVE MEASURES

The chapter highlights the guiding principles pertaining to alternative measures and explores alternatives to sentencing of a CICL. It encompasses monitoring and compliance of alternative measures.

#### CONTENTS

- 1) Guiding Principles.
- 2) Alternative measures.
- 3) Alternative to sentencing.
- 4) Monitoring and compliance.
- 5) Issue and case discussion.

#### LEARNING OBJECTIVES

After completing this Chapter, you should be able to:

- Learn the alternative measures to detention, prosecution and sentencing of a CICL.
- Able to identify law enforcement agencies that the CICLs will come in contact with and can afford them with diversion and alternative measures in lieu of arrest, prosecution, conviction and imprisonment.
- Understand the administration of child justice in terms of investigation, prosecution, adjudication, disposition, care, treatment and rehabilitation that will help them develop their potential as members of society.



## 1. GUIDING PRINCIPLES

Any actions concerning children under this Act whether undertaken by government, non-government or private social welfare institutions, courts of law, administrative authorities, family members or individuals, the best interest of the child shall be the primary consideration.<sup>101</sup>

If a child commits an offence, the child shall be treated in a manner that would divert the child from the criminal justice system unless the nature of the offence and the child's criminal history indicates that a proceeding for the offence should be initiated.

The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;<sup>102</sup>

State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.<sup>103</sup>

A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner

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<sup>101</sup> Sec 3,10 and 11 of the CCPA.

<sup>102</sup> Article 37(b) of CRC.

<sup>103</sup> Article 40(1) of CRC.

appropriate to their well-being and proportionate both to their circumstances and the offence.<sup>104</sup>

## **2. ALTERNATIVE MEASURES FOR CICL**

Alternative measures refer to programs for dealing with a CICL without resorting to formal court proceedings as an alternative to prosecution.<sup>105</sup>

The CICL may be considered for an alternative measure program under the following factors:

- 1)** In cases where the offence committed by the child is not of a serious nature.
- 2)** The child has no history of past criminal behaviour.
- 3)** Provides the CICL with the opportunity to make reparation to the victim and the community.
- 4)** Addresses the criminal actions of the accused while preserving their dignity.
- 5)** Requires the CICL to admit to committing a crime and take responsibility for their behaviour.
- 6)** Promote sense of responsibility, prevent criminalization.
- 7)** Facilitates in rehabilitation and social reintegration of children.
- 8)** Offer the victim and community members the opportunity to be involved in resolving the case and have the accused.

The primary goal of alternative measures is to promote a sense of responsibility, prevent criminalization, and facilitate rehabilitation and social reintegration of CICL.

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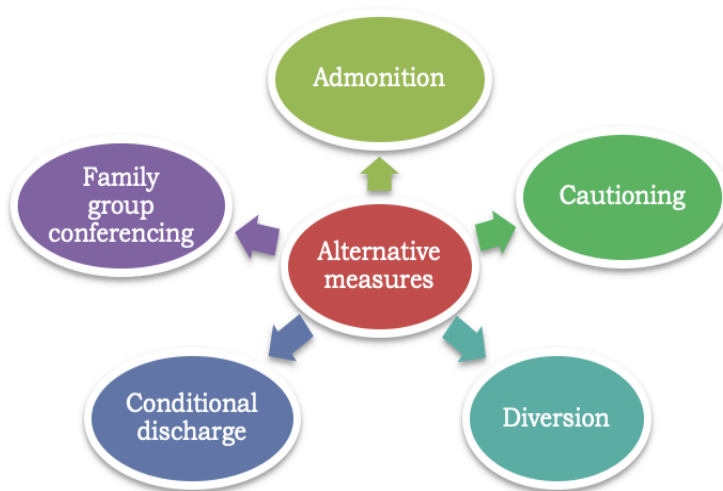
<sup>104</sup> Article 40(4) of CRC.

<sup>105</sup> Chapter 6 of the SOP on case management for CICL.

Alternative measures not just redress the victim but also gives opportunity to the victim and community members to be involved in resolving the case. It also addresses the criminal actions of the CICL while preserving their dignity and requiring them to be accountable for their behavior.

Alternative 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.<sup>106</sup>

### 3. TYPES OF ALTERNATIVE MEASURES



#### 3.1. Release after advice or admonition

One of the foremost institutions the CICL will be exposed to under the formal judicial system is the Investigating agency. This is one of the alternative measures provided by the investigating agency when the CICL is below age of criminal liability or if, above 12 years, the crime committed by the child is just a violation. The Police official may release a CICL to the parents or guardian after advice or

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<sup>106</sup> Sec 64, SoP for dealing with CICL

admonition upon undertaking by the child along with a parent, guardian, or legal representative.<sup>107</sup>

### 3.2. Cautioning

This is also one of the alternative measures administered by the investigating agency (RBP). It is a formal out of court alternative when the offence alleged to be committed by the child is not of a serious nature. A formal warning is issued by police to a CICL who has admitted to a criminal offence.

The police officer administering the caution to a child must ensure that the child understands the purpose, nature and effect of the cautioning.<sup>108</sup> The police must:

- ⇒ Explain the matter to the child that the child's action is equivalent to a criminal offence and that he or she is warned to stay out of trouble;
- ⇒ Explain the consequences of further committing a crime;
- ⇒ Ensure the presence of the child's parents, guardian or legal representative throughout cautioning process; and
- ⇒ Provide an interpreter if required to communicate effectively with the child.

Cautioning procedure involves following:

- ⇒ Verbal or written apology to victim;
- ⇒ Return of an item taken;
- ⇒ Replacement of an item that was stolen or damaged;
- ⇒ To fix or repair an item that was damaged;
- ⇒ To attend school regularly;

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<sup>107</sup> Sec 117 of CCPA.

<sup>108</sup> Sec 181 of CCPA and Section 68 of SOP.

- ⇒ To be monitored by the probation officer; or
- ⇒ Any other conditions that may be considered appropriate such as counseling.

The police may require the CICL to adhere to certain conditions to be released after cautioning.

### **3.3. Diversion**

A diversion can be done by prosecution (OAG and POLICE) as per diversion guidelines without undergoing formal judicial proceedings. In addition to it, to inculcate the objective of the best interest of the Child, even the courts have been mandated to proceed with judicial diversion in addition to diversions conducted by investigation and prosecution agencies.

### **3.4. Conditional discharge**

Conditional discharge is one of the alternative measures administered by the court before adjudication of a case of CICL.<sup>109</sup> The court instead of proceeding with the trial may wherever deems fit may make an order discharging the CICL, subject to the following conditions:

- ⇒ Where the offence is of petty misdemeanor and below;
- ⇒ Enter a bond with or without sureties for not committing further offence;
- ⇒ Being of good behavior during the specified period as mentioned in the order. However, the period must not exceed one year; and
- ⇒ Conditions prescribed through court order in the best interest of the child.

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<sup>109</sup> Sec 120 of CCPA and Sec 67 of SOP.

Where the child fails to comply with the conditions set in the order or commits an offence during the period of conditional discharge, the child will be sentenced for the original offence in addition to the sentence for the offence committed.

Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.<sup>110</sup>

### 3.5. Family Group Conferencing

A family group conference is a measure similar to diversion conference but administered by the court. It is a process instructed by the court to be initiated by the family members and relevant persons to plan and make decisions for a CICL as per Child Friendly Court Procedure.<sup>111</sup> It allows the offence to be appropriately dealt by the court in the best interest of the child, with or without a disposition order. The court may afford the CICL to family group conferencing if:

- ⇒ An offence committed is of petty misdemeanor or misdemeanor;
- ⇒ Not a recidivist;
- ⇒ Child admits to the criminal offence; and
- ⇒ Best Interest of the child (The Judge is of the opinion that the child can be reformed without being prosecuted).

The Court may appoint an officer or any other person as the Court deems fit to act as a facilitator to organize family group conferencing. The following person shall be present:

- ⇒ Child in Conflict with Law;

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<sup>110</sup> Rule 28(1) of the *Beijing Rules*.

<sup>111</sup> Sec 196 of CCPA and sec 84 of SOP.

- ⇒ Parents or guardian of CICL;
- ⇒ Any person requested by the CICL;
- ⇒ Concerned police official to the case;
- ⇒ Probation officer;
- ⇒ Representative of the community such as *Gup, Mangmi, Tshogpa*;
- ⇒ Victim, if minor the victim's parents or guardian; and
- ⇒ Any other persons as the judge thinks fit shall take part in the conferencing.

The conference shall be conducted in a child friendly place with due regard to privacy and confidentiality of the child. 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.

The group will come out with an agreement to deal with the CICL with conditions the CICL should adhere to. The probation officer or any officer appointed by the court shall record the details of and reasons for any plan agreed to at the family group conference and shall furnish a copy of the record to the Court. The Court may include all or any of the terms of the agreement as part of the disposition order and impose requirements on the child to ensure compliance with the terms so included.

The participants in a family group conference shall come up with an agreement as follows:

#### CONTENTS OF THE AGREEMENT

- Specify the objectives for the child and the period within which they are to be achieved;

- State the responsibility of the child and the parents or guardian of the child;
- Include matters relating to the education, re-creation and welfare of the child;
- Contain the details of the services and the assistance to be provided;
- Specify the persons or organizations to provide such services;
- Any other plan appropriate to the child; and
- It must be consistent with the principles stipulated in the CCPA.

In the event of the child failing to comply with the conditions set forth in the family group conferencing, the police official or probation officer shall notify the Court in writing of such failure. The Court shall consider the matter for further necessary orders.

The proceedings of a family group conference shall be confidential and no statement made by a participant in the family group conference may be used as evidence in any subsequent court proceedings.

#### **4. ALTERNATIVE SENTENCING**

When a CICL is convicted of an offence the court affords the child with an alternative of treatment or rehabilitation in the community rather than incarceration.<sup>112</sup>

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<sup>112</sup> Section 84 of SOP.





#### 4.1. Factors to be considered in awarding the judgment

The court while pronouncing sentencing that involves child must take into following consideration:

- ⇒ Take into account the child's age;
- ⇒ Emotional, mental and intellectual maturity;
- ⇒ Antecedents and circumstances relating to a case;
- ⇒ Circumstances under which the crime was committed;
- ⇒ Family background;
- ⇒ Child justice principles;
- ⇒ Nature and seriousness of the offence;
- ⇒ Child's previous deviant records;
- ⇒ Any consideration relating to programs and services established for child in conflict with the law;
- ⇒ Victim's interest; and
- ⇒ Alternatives to engage in reformation, rehabilitation, educational programs, employment, etc.<sup>113</sup>

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<sup>113</sup> Sec 91 of SoP

## 4.2. Guiding principles

The court will be guided by the following in adjudicating and disposing of a case:<sup>114</sup>

- ⇒ Best interest of the child;
- ⇒ Well-being of the child;
- ⇒ A proportionate sentencing;
- ⇒ Minimum restriction on personal liberty; or
- ⇒ Appropriate alternative sentencing.

## 5. ALTERNATIVE TO SENTENCING

The act provides for the following alternatives to sentencing:



### 5.1. Admonish or Reprimand

Admonishment or reprimand by the court is an alternative to sentencing, where the court dismisses prosecution against CICL and is sent home or after care services.<sup>115</sup>

Admonish or reprimand used when the grading of the offence is of petty misdemeanor and below. 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.

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<sup>114</sup> Sec 87 of SOP.

<sup>115</sup> Sec 162 of CCPA and sec. 97 of SOP.

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:

- a) Severity of the charges;
- b) Child's past criminal record;
- c) Likelihood of flight;
- d) Child's age and physical or mental health condition; and
- e) Potential threat posed to society.<sup>116</sup>

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:

- a) Appear at the specified place and time at the order of the Court;
- b) Report periodically to a specified person or place;
- c) Attend a particular school;
- d) Reside at a particular address;
- e) Place under the supervision of a specified person; or
- f) Any other conditions, the Court deems fit in the best interest of the child.<sup>117</sup>

If home is not a conducive environment for the child, the child may be referred to the Probation Officer for necessary support and aftercare services.<sup>118</sup>

## **5.2. Probation and Suspension of the Sentence**

The court may grant probation or suspend the sentence of a convicted child on the grounds of a petition submitted of good and exemplary behavior of the child. The court shall have due regard to the circumstances including the nature of the offence and character of the child.<sup>119</sup> The court has the discretion to issue probation or suspension orders without requiring the child to execute a bond.

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<sup>116</sup> Sec 118 of CCPA, 2011

<sup>117</sup> Sec 119 of CCPA, 2011

<sup>118</sup> Sec 97 of SoP

<sup>119</sup> Sec 165 of CCPA and Sec 100 of SOP.

The grant of a probation or suspension order by the court shall be subject to a commitment given by the child to the court such as:

- ⇒ Not to commit any offence;
- ⇒ To be of good behavior;
- ⇒ Make oneself available to the court as and when required;
- ⇒ Remain within the limits of any particular area mentioned in the court order;
- ⇒ The child's parents or guardian gives the commitment to supervise the child during the period of probation or suspension; and
- ⇒ Set conditions which the court deems to be in the best interest of the child.

The court will direct the child to be placed under the care of Parents or guardian or any other person approved by the court. It also requires the commitment from the parents or guardian to supervise the child during the period of probation or suspension. Furthermore, while making probation orders the court may direct the child to be supervised by a probation officer as per the court order, with certain conditions applied in the interest of the child.

Where the child does not comply with the conditions set in the probation or suspension order or commits any further offence, the court may cancel the order and sentence the child for the original offence in addition to the sentence for the new offence.

### **5.3. Community Service**

Where the offence committed by the child is a fourth-degree felony and below, the court must use their discretion to order community service in lieu of imprisonment.<sup>120</sup> The Competent Authority in

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<sup>120</sup> Sec 171 of CCPA and sec 106 of SOP.

consultation with stakeholders, devises programs and activities for community service. Programs and services established under for children shall:

- ⇒ Be culturally appropriate including any rules that may be required for the discipline of the children;
- ⇒ Promote their health and self-respect;
- ⇒ Foster their sense of responsibility; and
- ⇒ Encourage attitudes and development of skills

The programs and activities devised should provide CICL with an opportunity to develop positive behaviors and more importantly to prevent from committing further crimes. The community services implemented by the courts have been mostly involving the CICL in beautification of surrounding and recreational activities.

The programs developed for diversion purposes and other alternative measures which are appropriate can be used for community services. The afforded program should not just benefit the community and the public but also the CICL.

#### 5.4. *Thrimthue*

As per the CCPC, only offences below the grading of misdemeanor can pay fine in lieu of imprisonment (*Thrimthue*).<sup>121</sup> But in cases of children the court under their discretion can make an order to pay a 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. In keeping with the best interest of the CICL when it comes to children the felony of fourth degree is considered relaxed in comparison to the adult offenders.

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<sup>121</sup> Sec 172 of CCPA.

### **5.5. Restitution**

One of the alternatives to sentencing of CICL is restitution.<sup>122</sup> The parents or guardian of the CICL will have to bear the loss or damages caused by CICL to the victim. It is to either return the item taken or replacement of an item damaged or to fix or repair an item that was damaged; In addition to the alternative measures the court will order the child's parents or the guardian to restore damaged property if the child is responsible for damaging property of another person.

## **6. MONITORING AND SUPERVISION OF ALTERNATIVE SENTENCING**

The Probation Officer or any designated person by the court will monitor the implementation of the alternative sentencing as per the court order or relevant laws. Failing to comply with the conditions set by the respective courts the official assigned should inform the court. The court may cancel the order of any alternative sentencing arranged and the Court shall consider the matter for further necessary orders.

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<sup>122</sup> Sec 173 of CCPA and Sec 109 of SOP

## 7. ISSUE DISCUSSION AND CASE STUDY

### ISSUE DISCUSSION

- Who will merit alternative measures under the Child Justice System?
- Why are alternative measures for CACL important?
- Who can afford Alternatives measures to CACL?
- Are alternative measures and alternative sentencing different? How?
- What kind of other measures can be implemented for CACL? Suggestion?

### GROUP WORK

- First divide the participants into groups of three.
- Write all the topics of alternative measures in a paper and let the group pick one topic each.
- Make each group work on the topic and discuss whatever they have learned and make a presentation.
- One person from the group should present on the topic and also state challenges and give feedback.
- Each group will be given 5-10min each for presentation.
- After each group presents, the other participants can ask questions and discuss.

## CHAPTER 5

### TRIAL AND SENTENCING

The chapter covers a wide range of subject matter on the child justice system in conducting a trial that involves a child in conflict with the law. It explains the detail of the prosecution process and the roles of the stakeholders involved in the process. It contains adjudication, sentencing and alternatives to sentencing.

#### CONTENTS

- 1) Guiding Principles.
- 2) Rights of the CICL during trial.
- 3) Role of relevant stakeholders.
- 4) Prosecution process of CICL.
- 5) Adjudication.
- 6) Sentencing.
- 7) Alternative to sentencing.
- 8) Issue and case discussion.

#### LEARNING OBJECTIVES

After completing this Chapter, you should be able to:

- Elucidate concept and guiding principles concerning trial and sentencing of CICL;
- Able to understand rights of child during the adjudication and role of key stakeholders dealing with CICL;
- Comprehend the role of the prosecutor and judges during a trial that involves a child.
- Acquainted with the importance of different stages of court proceedings.
- Develop coherence in conducting a fair trial involving the CICL.



## 1. GUIDING PRINCIPLES

While dealing with a CICL, a formal trial shall be initiated only as a measure of last resort after exhausting all other alternative or diversionary measures. During the trial of a CICL, the court officials, the prosecutor or police and any other relevant persons shall, in the best interest of the child, conduct the trial in the friendlier and most favourable manner.

### Important guiding principles to be observed during the trial

- 1) In the best interest of the child.
- 2) Non-discrimination.
- 3) Right of the child to express his or her views freely.
- 4) Protection from abuse, exploitation and violence.
- 5) Treating every child with dignity and compassion.
- 6) Respecting legal guarantees and safeguards in all processes.
- 7) Well-being of the child.
- 8) Proportionate sentencing.
- 9) Minimum restriction on personal liberty.
- 10) Appropriate alternative sentencing.
- 11) Speedy and fair trial.

## 2. INITIATION OF COURT PROCEEDING

A trial against a child is initiated after exhausting all the available means stipulated under relevant laws. Available means include admonition by the police, diversion by police or the prosecutors and other alternatives means including diversion by the Court. As per section 132 of the CCPA, a proceeding against a child will begin if a child does not acknowledge responsibility for the offence with which he is being charged. Without raising further questions regarding such offence to the child, the prosecutor or the police may proceed for adjudication before the Court.

### 3. RIGHTS OF CICL DURING TRIAL

In addition to the general rights and rights during the arrest, CICL, like any other person accused of a crime, has several rights during the trial as well. The CICL should be educated and well informed of his or her rights at the very moment of his or her apprehension and during the trial as well, as he or she may not be aware of the rights or may not be able to comprehend them even if he or she is aware.

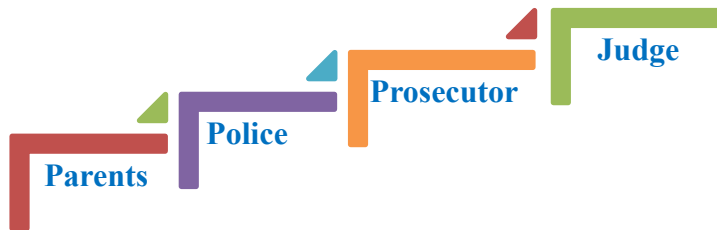
Based on the guiding principles and rights stipulated under numerous laws as discussed above, the CICLs are entitled to the following rights during the trial:

#### RIGHTS DURING TRIAL

- Right to be informed of the charges: sec. 185 of CCPA;
- Right to remain silent;
- Right to be presumed innocent until proven guilty under section 136 of CCPA;
- Proceed in informal manner with maximum participation by child as per section 138 and 139 of CCPA;
- Right to privacy;
- Right to separate hearing and conveyance as per section 150 and 156 of CCPA;
- Right to legal representation as per section 151 of CCPA;
- Right to maintain contact with his family;
- Right to be accompanied by parents or guardian at all the time;
- Right to prompt legal assistance or representation accordance with section 78;
- Right to an interpreter during proceedings as per section 144 of CCPA;
- Right to bail during trial or after arrest;
- Right to in-camera hearing under section 143 of CCPA;

- Right to minimum sentencing in accordance with sec.79;
- Right to fair and expeditious proceedings: section 146 of CCPA; and
- Right to appeal.

#### 4. ROLE OF THE STAKEHOLDERS



Respective stakeholder plays their relevant roles during the adjudication at their level in ensuring that the best interest of the child is protected at all times. The parents or the legal representatives, the police as the investigating agency, the prosecutor as the state representative and the judge as the adjudicator must carry out their primary roles in keeping the best interest of the child. The roles of the respective stakeholders are discussed in detail below:

##### ROLE OF A JUDGE: SUMMARY

- ❖ Proceed fairly & favorably.
- ❖ Separate or in-camera hearing.
- ❖ Brief on case and hearing.
- ❖ Protect child identity.
- ❖ Safeguard child's rights.
- ❖ Provide minimum sentencing.

The president judge or the officials of the courts have the following roles and responsibilities while dealing with the CICL:

- 1) The presiding judge must conduct the proceedings fairly and favorably in the case involving a child;
- 2) Contrary to open trial, the judge shall hold separate and in-camera hearings in case a child is involved;
- 3) The Judge is required to brief the child on the ongoing and upcoming stages of hearings;
- 4) Judge shall in all the way protect the identity and dignity of the child, focusing mainly on the needs of the child;
- 5) Shall ensure that the rights of the CICL are safeguarded; and
- 6) Shall award the least sentence term wherever possible.

#### **ROLE OF A PROSECUTOR: SUMMARY**

- ❖ Act in the interest of justice.
- ❖ Assist the court.
- ❖ Submit credible evidence.
- ❖ Do fair assessment of defense cases.
- ❖ Protect the rights of CICL.
- ❖ Apply constitution and other legal principles.

The primary role of the prosecutor is to assist the judge in reaching a favourable decision. The prosecutors, while dealing with the child have the following roles:

- 1) A prosecutor must always act in the interest of justice;
- 2) Assist the court in all matters of law and practice applicable to the case;
- 3) Ensure that only credible and relevant evidence is submitted;

- 4) Ensure that the defence case is properly and fairly challenged and that the examination of witnesses is fairly conducted;
- 5) Ensure that the rights of the CICL are protected; and
- 6) Ensure that the principles of the Constitution are applied and respected in all forms.

#### **ROLE OF THE POLICE: SUMMARY**

- ❖ Produce CICL before Court.
- ❖ Escort in separate conveyance.
- ❖ Separate CICL from other offenders.
- ❖ Inform parents or guardians.

The Royal Bhutan Police or the relevant investigating officers have numerous responsibilities during the trial of a CICL: The Police shall have the following roles:

- 1) Is required to produce the CICL at the exact time and place, whenever the court summons;
- 2) Duty to escort the CICL in a separate conveyance;
- 3) Ensure that the CICL is kept separate from other offenders throughout the trial; and
- 4) Inform the CICL's parents or guardian or legal representatives about the scheduled hearing dates.

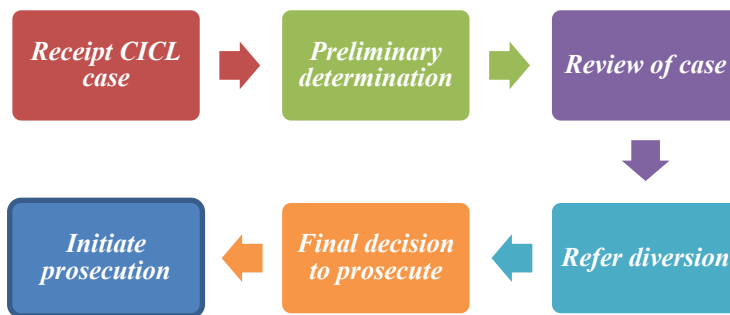
#### **ROLE OF PARENTS: SUMMARY**

- ❖ Accompany a child.
- ❖ Educate their rights.
- ❖ Guide in defending.
- ❖ Provide other support.

The parents play a vital role in ensuring that children's rights are protected at any stage of the proceeding. The responsibilities of parents are taken care of by the child's guardian or representatives in absence of parents. They have the following roles:

- 1) Accompany the child in every stage of the trial;
- 2) Ensure that they are aware of their child's rights and execute them;
- 3) Shall guide the child in defending his or her case; and
- 4) Provide the necessary support throughout.

## 5. PROSECUTION PROCESS OF THE CICL



### 5.1. Receipt of a CICL case for prosecution

On receipt of the case of CICL for the prosecution, the concerned procedure must ensure following:

- Whether the child is being detained or not?
- Whether the child is released on bail or released to the care of the parents or guardians?
- The Case Assessment Report along with Investigation Report;
- The prosecutor may assess the detailed records of the CICL maintained by the OC of the Police Station; and
- The concerned Official with RBP shall be informed of an incomplete or unclear report.

## **5.2. Preliminary determination**

Once the prosecutor completes the due diligence on receipt of the case of CICL, the prosecutor then does the preliminary determination considering following:

- A prosecutor must first determine whether it is a case of a CICL;
- Determine the age of CICL;
- To determine age, prosecutor must consider: Official record maintained by the Government, birth certificate or any other document proving the age of the child and in absence of any, it must be based on information or testimonies of the child and other persons considering also the physical appearance of the child or expert medical opinion; and
- Need to determine whether the offence committed by a child is serious or not.

## **5.3. Review of case**

During the preliminary determination, if a prosecutor determines case as a case of CICL, the prosecutor must carry out expeditious review considering following elements:

- The Cases of CICL are treated with priority and reviewed without unjustified delay including at the time of prosecution;
- Review the case within 3 working days from the day of receipt;
- The referring agency should be asked to provide the facts within 5 workings days;
- Within 5 working days, determine whether the act committed by a CICL constitutes an offence; and
- Within 2 working days determine whether to initiate prosecution by applying a test for prosecution.

## **5.4. Referral for diversion**

Upon completion of review of a case, the prosecutor must consider following to refer CICL for diversion:

- Age, maturity and intelligence of the child;
- Consider nature and circumstances of the offence charged;
- Frequency and severity;
- CICL admits to the offence and shows remorse;
- Family environment;
- Reparation for the injury and compensation to the victim;
- Safety of the community; and
- “Best Interest of the Child.

### 5.5. Prosecutorial decision

If the prosecutor decides not to refer a case of a CICL for diversion, in order to make appropriate prosecutorial decisions, the prosecutor may decide to prosecute or may refer to the Case Screening Corpus (CSC) to decide appropriate measures or charges. It may include case return, initiation or withdrawal of prosecution. The prosecutor will act according to the decision of the Corpus if a case is referred to CSC. In deciding a case against a child, the prosecutor must consider the prosecution test. The OAG shall initiate prosecution only if both the evidential and public interest test is fulfilled.<sup>123</sup>



#### (i) Evidential Test

The test involves giving due consideration to the following:

- Every element of offence is supported by corresponding evidence;<sup>124</sup>

<sup>123</sup> Sec. 29 to 31 of *the Office of the Attorney General Act 2015*.

<sup>124</sup> Ibid at sec. 34.



- Determine whether there is sufficient evidence to prove a case beyond reasonable doubt;<sup>125</sup>
- Admissibility Test: consider only admissible evidence;<sup>126</sup>
- Relevancy Test: sufficiently identifies offender responsible for the crime;<sup>127</sup>
- Credibility test; and<sup>128</sup>
- A case will not proceed further if the above test is not met.

## **(ii) Public Interest Test**

If evidentiary test is met, the prosecutor will next consider public interest test which involves the following consideration:<sup>129</sup>

- Likelihood of imposing a very small or nominal penalty;
- The loss or harm can be described as minor and is the result of a single incident;
- The offence is not serious and unlikely to be repeated;
- That prosecution is likely to harm the victim's physical and mental health;
- That the defendant was at the time of the commission of the offence, suffering from significant mental or physical ill-health; and
- The offence is minor and the defendant has put right the loss or harm.

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<sup>125</sup> Ibid at sec. 35.

<sup>126</sup> Ibid at sec. 36.

<sup>127</sup> Ibid at sec. 37.

<sup>128</sup> Ibid at sec. 38.

<sup>129</sup> Ibid. sec. 40 and 41.

While considering a matter that involves CICL, the prosecutor to decide and deliberate on three things at different stages which are:

- To close or return a case after completion of review process;<sup>130</sup>
- Decide to prosecute after review of the case; and
- Withdrawal of prosecution after initiating evidence. Withdrawal of case involving CICL can on the ground stipulated under Office of the Attorney General Act<sup>131</sup> or in the best interest of a child.

Once the corpus makes the final decision to initiate prosecution, the corpus next determines the appropriate charges. The drafting of charges against CICL should be guided by the following principles:

- Charges to be presented before the Court must be based on evidential considerations; as the CSC decides;
- Charges should be justified by the facts as then known;
- Charges and submissions should be drafted in a simple language;
- Avoid the use of legal jargon or words that are too technical to understand.

## 5.6. Conduct of prosecution

If the prosecutor *Suo Motto* makes a decision to prosecute or decides to prosecute based on the decision of the Corpus decision, the prosecutor must consider following guiding principles during the court proceedings:

- Proceeding must be n-camera;
- Must be adequately represented: Legal representation;

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<sup>130</sup> Ibid. sec. 42.

<sup>131</sup> Ibid. sec. 47(2).

- Attendance of CICL in the trial and provide freedom to express freely during proceedings;
- Expeditious proceeding;
- Summary adjudication must be conducted;
- Examination of witnesses;
- Provide interpreter;
- Informal and simple communication; and
- Educate a child on court proceedings.

## **6. ADJUDICATION OF CICL**

### **6.1. Child Justice Court**

#### **(i) Salient features of Child Justice Court**

- 1) Informal and simple set-up room;
- 2) Presided over by a judge knowing child psychology and child welfare;
- 3) Informal communication; and
- 4) Presence of parents, guardians or legal representatives.

#### **(ii) Importance of Child Justice Court**

- 1) Ensures that the best interest of the child and his well-being are considered paramount;
- 2) Provides a conducive and friendly environment;
- 3) To expedite the cases involving CICL;
- 4) To protect the child's identity and dignity through in-camera hearings; and
- 5) To prevent self-stigmatization associated with criminal behaviour.

#### **(iii) Establishment of Child Justice Court or Child Bench**

- 1) The Child Justice Court shall be the Court of First Instance in matters relating to children.

- 2) Every Dzongkhag or Dungkhag needs to have a separate court or bench.
- 3) The Court shall be presided over by a judge knowing child psychology and child welfare.

## 6.2. Preliminary Inquiry by the court

The preliminary inquiry is one of the unique features of CCPA in the administration of the Child Justice system, which takes place before commencing the actual trial of a CICL.

<b>Who does?</b>	The Royal Court of Justice or Judge
<b>When?</b>	Before the formal hearing or proceeding
<b>Where?</b>	Court or any other place suitable for the child
<b>Stakeholders to be present</b>	<ul style="list-style-type: none"> <li>• Child in conflict with the law;</li> <li>• Child's parents or guardian or legal representative;</li> <li>• Probation officer;</li> <li>• Prosecutor or the victim or any legal representative of the victim;</li> <li>• Police official; and</li> <li>• Any person whose presence is deemed necessary.</li> </ul>
<b>Inquiry Mode</b>	Questioning, interviewing and eliciting information in an informal manner.

### (i) Conduct of Inquiry

The court during the preliminary inquiry shall:

- 1) Establish whether the matter can be diverted before conducting an actual adjudication proceeding;
- 2) Establish whether the matter should be considered for adjudication or not;
- 3) Identify a suitable diversion option, where applicable;
- 4) Provide an opportunity for the prosecutor to assess whether there are sufficient grounds for the matter to proceed for adjudication;
- 5) Ensure that all available information relevant to a child, circumstances and the nature of the offence for any option made under this Act; and
- 6) Determine the release or placement of the child pending the conclusion of the preliminary inquiry.

### (ii) Types of inquiry

- 1) **Joint preliminary inquiry:** If a child in respect of whom the holding of a preliminary inquiry is contemplated, is co-accused with one or more other children, then a joint preliminary inquiry shall be held. Where a joint preliminary inquiry is held, separate decisions may be made in respect of each child.<sup>132</sup>
- 2) **Separate inquiry:** Where a child is accused of an offence for which such child and any person who is not a child is under inquiry, a separate inquiry shall be conducted for such child and the other person accused of an offence.<sup>133</sup>

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<sup>132</sup> Sec. 130 of CCPA.

<sup>133</sup> Ibid. sec. 131.

### **(iii) Post Preliminary enquiry**

#### **1) Release of the child**

On the completion of the preliminary enquiry, the Judge may release the child into the care of his/her parents, member of the family or guardians upon the recommendation of the probation officer or any relevant authority considering the following factors:

- In the best interest of the child;
- Whether the child has any previous convictions;
- The availability of the child's parents or guardian;
- The likelihood of the child returning to the preliminary inquiry for further appearance;
- The period for which the child has been in detention;
- The risk that the child may endanger oneself or any other person;
- Whether the detention would prejudice a child in preparation for the defence case;
- The likelihood of the penalty if the child is convicted of an offence;
- The physical health, mental and psychology of the child.<sup>134</sup>

#### **2) Commencement of Adjudication**

The prosecutor or the police may proceed for adjudication if the child does not acknowledge responsibility for the offence with which he is being charged during the preliminary enquiry. However, the judge shall keep the record of the enquiry and the information furnished at the enquiry should not be used in any subsequent proceedings.<sup>135</sup>

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<sup>134</sup> Section 135, CCPA 2011

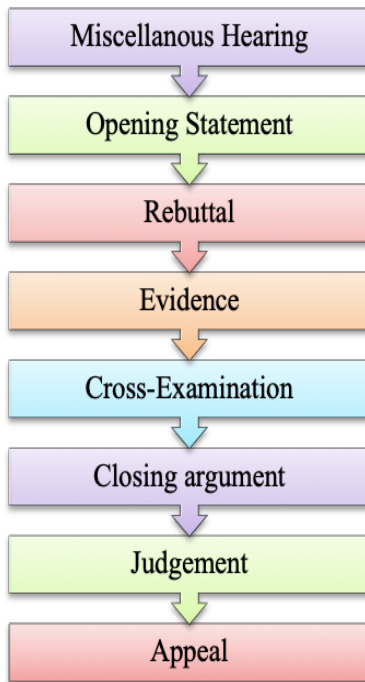
<sup>135</sup> Section 132,133,134, CCPA 2011

## **7. CONDUCT OF JUDICIAL PROCEEDINGS**

After preliminary enquiry, a child may be released with appropriate recommendation or may proceed with the judicial proceeding. If the court initiates or commence adjudication, the proceeding will be based on the following principles:

- The court shall conduct the proceedings in a fair and friendly manner, and a language comprehensible by the child.
- The proceedings should be Expeditious and should not be delayed unreasonably.
- If the child pleads guilty, the court shall resort to summary adjudication.
- The proceedings shall be held in camera and places favourable to the child.
- The child shall always be accompanied by his or her parents or guardian during every proceeding.

## 8. CHRONOLOGY OF PROCEEDING BEFORE COURT



### 8.1. Miscellaneous hearing

This is the first hearing and during this stage of the hearing, the judge shall inform the child of the nature of the offence, the rights and the procedures of the trial.

### 8.2. Opening Statement

The child should be given adequate time to prepare for submitting his opening statement to the court. He should be allowed to express his submission both in written and orally, either in person or through his legal representative.

### 8.3. Rebuttal hearing

The child should be given an opportunity for rebuttal as many times deemed necessary to refute the charges against him or her if he pleads not guilty.

### 8.4. Evidence hearing

The child must be guided to submit relevant evidence before the Court. During the evidentiary hearing, necessary support must be provided to gather evidence and prepare for the hearing.

### 8.5. Cross-examination of witness hearing

The child shall have the right to examine or have examined adverse witnesses, and obtain the participation and examination of witnesses on the child's behalf by a parent, member of the family or guardian.



### 8.6. Closing Argument

The child shall be allowed to summarize the case and present any facts and evidence that he omitted during prior proceedings.

### 8.7. Judgement

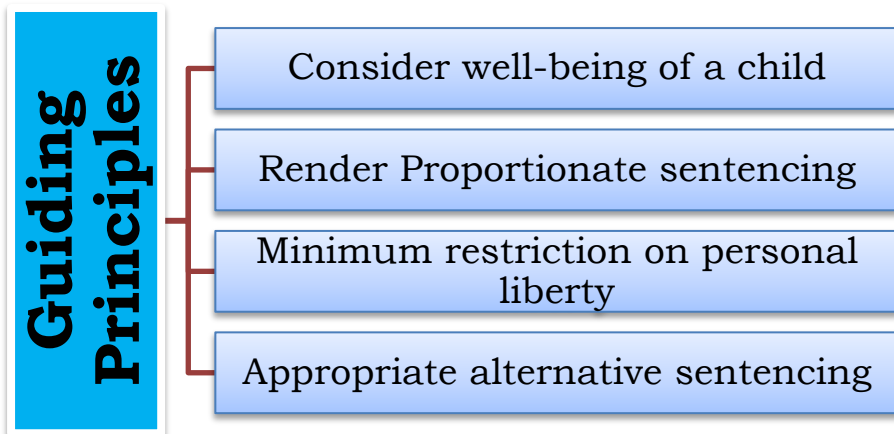
The child shall be explained the operative part of the judgement including the nature of sentencing and the way forward.

### 8.8. Appeal

The child convicted of the offence charged shall have the right to appeal the case if he or she is not satisfied with the judgement passed by the Court of the first instance.

## 9. SENTENCING OF CICL

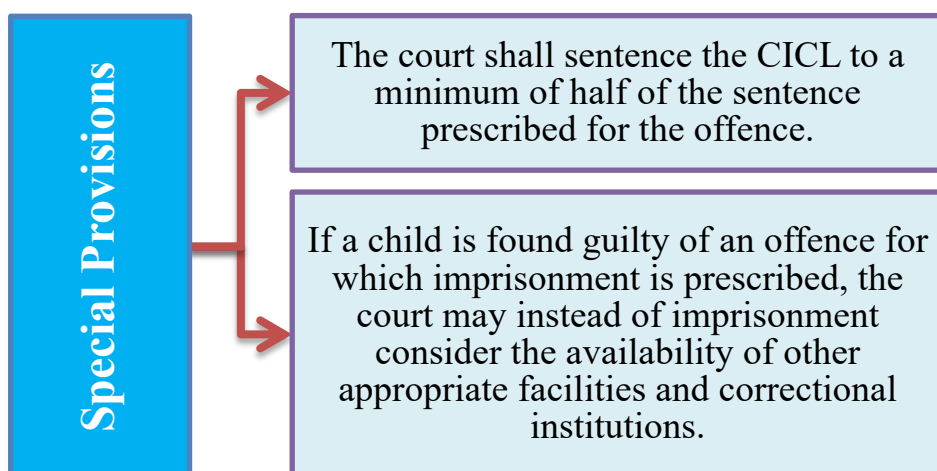
The Child Justice Court can sentence a CICL, who has been found guilty of the offence charged, by issuing various dispositions by the law. Unless otherwise required, the court shall award the minimum sentence upon observing the following principles while sentencing the CICL.



### 9.1. Sentencing parameter

A child convicted of a criminal offence shall be sentenced by the Penal Code of Bhutan.<sup>136</sup> The following are the different types of sentences awarded under the Penal Code:

Degree	Sentencing Parameter
First degree felony	15 years to life imprisonment
Second degree felony	9 years to below 15 years
Third degree felony	5 years to below 9 years
Fourth degree felony	3 years to below 5 years
Misdemeanour	1 year to below 3 years
Petty Misdemeanour	1 month to below 1 year
Violation	Fine with the Minimum wage for a maximum of 90 days



<sup>136</sup> Sec. 8 to 14 of the *Penal Code of Bhutan*.

## 9.2. Additional award

In addition to the sentencing based on the special provision, a child may be awarded following additional award:

- ❖ Court may order to pay an appropriate fine.
- ❖ Pay compensation or damages and make restitution. The court may order compensatory damages in addition to the sentence or instead of the sentence.

The Compensation can be waived off only by the victim or by the order of the court. The obligation to pay compensation is on the parents or the guardian of the child.

## 9.3. Alternative to sentencing

A CICL may receive an alternative to sentencing which includes admonition, suspension of sentence, community service and release on probation. The CICL convicted of the offence charged may by Court order be released on probation on the following conditions:

- ❖ if the competent authority submits a petition on the grounds of good and exemplary behaviour of the child to the court;
- ❖ The child makes himself available to the court as and when required;
- ❖ The child shall remain within the limits prescribed by the court;
- ❖ The child shall not commit any further offence and
- ❖ Shall not violate any conditions of the order

## 10. ISSUE DISCUSSION AND CASE STUDY

### ISSUE DISCUSSION

- Discuss who, where and when does preliminary inquiry happen? Which of the stakeholders should be present during the inquiry?
- In releasing a child after inquiry, as a judge what are some of the important factors one must consider?
- A prosecutor initiates a case against a child. What are some of the rights that must be considered during formal proceedings?
- A child has committed a first-degree felony murder and liable to sentence life imprisonment. Based on the special provisions, how would you consider half of life?

### CASE STUDY

- As a result of the child's second battery case, prosecutor requested the judge to deny bail and prayed for higher sentence. A child who is 15 years old however submitted to the court about his reform's and changes in his behavior while in detention. As a judge, what measures would you consider to decide this case? Are there any other professional's that you should consult to assess a child before awarding a sentence?
- A 13 years old boy was charged for a simple assault on his friend in the school. The prosecutor-initiated trial with the primary objective to deter similar incident in the school. The defense council on other hand argued that state prosecutor should have chosen alternative measures for a child as it was the child's first offense. Is the reason submitted by the prosecutor justifiable? Do you think that prosecutor should have resorted to any other alternative measure? If you are a judge, will you sentence a child or opt for alternative measure? Why?

## CHAPTER 6

### REHABILITATION AND REINTEGRATION

This chapter explores definitions, concepts and guiding principles concerning rehabilitation and reintegration. It covers placement procedure and other aspects of visits and early release. In addition, it highlights institutional activities, care and counselling and protection against legal consequences.

#### CONTENTS

- 1) Definitions and guiding principles.
- 2) Concept behind rehabilitation and reintegration.
- 3) Placement procedure.
- 4) Visit and early release.
- 5) Protection against legal consequences.
- 6) Monitoring and compliance.
- 7) Institutional activities.
- 8) Care and counseling.
- 9) Issue and case discussion.

#### LEARNING OBJECTIVES

After completing this Chapter, you should be able to:

- Understand the essential principles and importance of rehabilitation and reintegration.
- Know when should the child's rehabilitation and reintegration begin.
- Identify various international and national laws that encourage rehabilitation and reintegration.
- Able to comprehend provisions regarding visit, early release, care and counseling including categories of institutional activities.

## 1. DEFINITIONS

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- ❖ **Reintegration** is the effective re-entry of a child back into the community following a custodial sentence. The term, however, is something of a misnomer because the process does not simply begin after an offender is released. A comprehensive reintegration process typically begins after sentencing, continues through incarceration and the period of release into the community.<sup>137</sup>
  - ❖ **Rehabilitation** is various forms of intervention and programs targeting individuals to reduce the likelihood that CICL's will reoffend.
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## 2. GUIDING PRINCIPLES

A child under confinement must be provided with a conducive physical environment in conformity with rehabilitative aims of residential placement with due regard to child's need for privacy and association and wholesome development activities.<sup>138</sup> It is the right of every child to be treated in ways that promote their *rehabilitation and reintegration*, and the child's assuming a constructive role in society.<sup>139</sup>

Children shall benefit from all the *human rights* guarantees available to adults.<sup>140</sup> All children should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.<sup>141</sup>

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<sup>138</sup> Sec. 9 of CCPA.

<sup>139</sup> Art. 40(1) of CRC.

<sup>140</sup> *Universal Declaration of Human Rights, 1948 and Convention on the Rights of the Child, 1990.*

<sup>141</sup> Rule 79 of the *Havana Rules 1990.*

### **3. REHABILITATION AND REINTEGRATION CONCEPTS**

Children are the precious asset of our country and it is the responsibility of everyone to ensure that they have a safe environment to live in. While addressing the issue of problems faced by children in our country, a category of children that are almost always overlooked are the CICL.

Every child who comes in contact with the Child justice system is a child in difficult circumstances who has fallen out of the protective net at some point and has been robbed of an opportunity of a safe and secure childhood. CICL should be treated as children in difficult circumstances and the approach of the child justice system should be aimed at addressing the vulnerabilities of children and ensuring their rehabilitation.

The idea behind rehabilitation is that people are not born criminals, thus should be given a chance to be reformed and reintegrated back into the society as a productive citizen. It also prevents them from becoming recidivists. Rather than punishing them as a criminal, rehabilitation seeks, by means of education or therapy, to make the CICL a healthy citizen of the society.

It is indicated that the most effective way to find constructive solutions to involvement of children in activities that violate a law is to involve children in the process of rehabilitation and not to consider them as merely ‘trouble makers’ in need of punishment. Recognition of and respect for their rights as human beings and as a child is an important first step in this direction.

Thus, Child justice has made a departure from the criminal justice model of punishment recognizing the negative influence of association with adult offenders and the higher possibility of reformation of

children being in the growing age where their capacities are still being built and developed. Child Justice adopted the path of reformation of children found to have committed an offence through various community based reformatory and rehabilitative measures and using institutionalization as a measure of last resort.<sup>142</sup>

#### **4. PLACEMENT PROCEDURE**

The CCPA provides the government to establish special Home and closed facilities and aftercare homes for the purpose of rehabilitation and reintegration of CICL. By providing accommodation, facilities for development of child's character, abilities and ensure smooth transition into the society. Closed Facilities must be established for the care and protection of children in conflict with the law involved in offences of third degree and above.<sup>143</sup> It shall provide accommodation, maintenance and facilities for development of the child's character, abilities, education, training, and provide rehabilitation for protection against moral danger and exploitation.

Currently, the Youth Development and Rehabilitation Centre (YDRC) at *Tsimasham* is the closest example of such a facility. The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.<sup>144</sup>

Such places shall have conducive physical environment and accommodation with aims of residential placement. Due regard must be given to the needs of the child for privacy, opportunities for association with family, relatives and friends, participation in cultural, sports, physical exercise, and other leisure activities.

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<sup>142</sup> Chapter 13 of CCPA

<sup>143</sup> Sec 51 of CCPA and rule 171

<sup>144</sup> Rule 26 of the *Beijing Rules 1985*.



Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development.<sup>145</sup> Any rehabilitation or training facility must not receive a child without a court order.<sup>146</sup>

## **5. SEPARATE FACILITIES**

The rehabilitation program or the training facilities for the children must be separated from adults unless they are members of the same family.<sup>147</sup> Juveniles in institutions should be kept separate from adults and detained in a separate institution or in a separate part of an institution holding adults.<sup>148</sup> Children placed in an institution must be accommodated separately based on gender and appropriate needs must be met.<sup>149</sup> A female child in conflict with the law must be handled by female health personnel, correction officers and social workers.<sup>150</sup>

## **6. VISITS AND EARLY RELEASE**

### **6.1. Visits**

Receiving visits during detention or imprisonment has proven to be vital for reintegration.<sup>151</sup> The CRC has emphasized the importance of families for the growth and development of the child and ensures the child's right to maintain contact with his or her family through

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<sup>145</sup> the Beijing Rules (1985), rule 26.2

<sup>146</sup> Sec111 of SOP, Sec 205 of CCPA

<sup>147</sup> Sec 206 of CCPA

<sup>148</sup> the Beijing Rules (1985), rule 26.3

<sup>149</sup> Sec113, of SOP, sec 208 of CCPA

<sup>150</sup> Sec 114, of SOP

<sup>151</sup> [https://www.unodc.org/documents/justice-and-prison-reform/18-02303\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf) , pg.38

correspondence and visits, save in exceptional circumstances.<sup>152</sup> Moreover, adequate communication with the outside world is essential for the preparation of CICLs to return to the society.<sup>153</sup>

Considering the importance of the role of visits in reintegration, CCPA of Bhutan allows the parents, guardians and legal representatives of children in detention to visit their child at least thrice a month.<sup>154</sup>

## 6.2. Early Release

Children should be released from detention as early as possible to serve the remainder of their sentence in the community. Such release should be accompanied by measures to support and supervise the child during that period of time. The child in conflict with law considered for early release must have served at least half the term of sentence.<sup>155</sup> The court may consider the early release of the CICL by granting probation on the grounds of a petition submitted of good and exemplary behavior of the child or upon the recommendation of the Parole Board.

The Havana Rules state that deprivation of liberty of a child should be a disposition of last resort and for the minimum necessary period.<sup>156</sup> The sentencing for CICLs should be determined without precluding the possibility of his or her early release.<sup>157</sup> Also, as per the CCPA of Bhutan, the Court may consider a CICL for early release on recommendation of the parole Board provided he or she has served at least half the term of sentence.<sup>158</sup>

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<sup>152</sup> CRC, art. 37(c)

<sup>153</sup> Havana rule J.

<sup>154</sup> CCPA of Bhutan, § 231 (2011).

<sup>155</sup> CCPA, 2011, sec 234

<sup>156</sup> Havana Rules, rule no. 2

<sup>157</sup> Havana Rules, rule no. 2

<sup>158</sup> CCPA of Bhutan, § 233 - 234 (2011)

## **7. PROTECTION AGAINST LEGAL CONSEQUENCES**

It is highly essential to seal and expunge the records of the child at an appropriate time to ensure successful reintegration. Havana Rules state that all reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment has to be sealed and expunged at an appropriate time upon the release of the child.<sup>159</sup>

Moreover, CCPA Bhutan also mandates the authorities to expunge all records relating to criminal proceedings of a child. It ensures that the child would not suffer any disqualification resulting from an offense committed by the child notwithstanding anything contained in any other law.<sup>160</sup>

## **8. MONITORING AND COMPLIANCE**

For a successful rehabilitation and reintegration, effective supervision is very important. The Government should endeavour to establish Aftercare Homes as may be necessary to facilitate social reintegration.<sup>161</sup>

They could monitor the child and collect feedback on their performance from organizations where a rehabilitated young person works.<sup>162</sup> They could maintain a record of the child released from a home on a monthly basis for a period of one year from the date of release.<sup>163</sup>

It shall be the role of the competent authority to provide necessary mechanisms for monitoring and review of institutions that provide

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<sup>159</sup> Havana Rules, rule no. IV.A.19.

<sup>160</sup> Sec236 of CCPA, Sec 122 of SoP

<sup>161</sup> Sec. 52(4) of the CCPA.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid.

social service, probation services and after care.<sup>164</sup> The Competent Authority must coordinate inter-ministerial and inter- departmental cooperation to ensure provision of adequate academic teaching and vocational training will be institutionalized.<sup>165</sup>

Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.<sup>166</sup>

## **9. CONFIDENTIALITY**

It is very important to maintain the confidentiality of all forms of reports of the child to promote integrity and reputation of the child. It is to safeguard the child's privacy and protect them from social stigma and other collateral consequences of being involved in the child justice system.

Havana Rules state that all reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment have to be kept confidential except to the authorized persons.<sup>167</sup>

Additionally, CCPA of Bhutan mandates the confidentiality of all documents relating to a child and may be disclosed only with the consent of the child, the parents, guardian or legal representative or upon the order of the Court.<sup>168</sup> Records of juvenile offenders should be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the

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<sup>164</sup> Ibid. sec 57(d).

<sup>165</sup> Sec 116 of SOP.

<sup>166</sup> Rule 26.6 of the *Beijing rules*.

<sup>167</sup> Rule IV.A.19 of the *Havana Rules*.

<sup>168</sup> Sec. 237 of the CCPA.

disposition of the case at hand or other duly authorized persons.<sup>169</sup> Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.<sup>170</sup>

## 10. CATEGORIES OF INSTITUTIONAL ACTIVITIES

For a successful rehabilitation and reintegration of the child, he/she should be prepared for employment. They should be given proper vocational training of their choice with due regard to proper vocational selection and to the requirements of institutional administration to be able to be employed in a work of their choice.<sup>171</sup> Those training and works should prepare the child for the conditions of normal occupational life. While doing so, all protective national and international standards applicable to child labor and young workers should be applied to them.<sup>172</sup> Programs and services established for children shall:

- Be culturally appropriate including any rules that may be required for the discipline of the children;
- Promote their health and self-respect;
- Foster their sense of responsibility; and
- Encourage attitudes and the development of skills that will help them develop their potential as members of the society.<sup>173</sup>

The child is protected from any form of economic exploitation and from performing works that are hazardous, which interfere with the child's education, or which are harmful to the child's health or physical, mental, spiritual, moral or social development. They are protected from

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<sup>169</sup> Rule 21(1) of *Beijing rules*.

<sup>170</sup> Rule 21(2) of *Beijing rules*.

<sup>171</sup> Rules 42-43 of *Havana Rules*.

<sup>172</sup> Ibid at Rule 44.

<sup>173</sup> Sec.11 of CCPA.

performing any work beyond their physical and mental capabilities. Further, no child who is under adjudication shall be engaged for daily labor.<sup>174</sup>

The activities in the institutional facility shall not be in contravention to the regulation on acceptable forms of child labor, regulation on working condition, 2012. It provides for the types of employment that is considered dangerous to their safety, health and moral well-being, indicating the occupations and employment arrangements considered acceptable for children, and indicates the working conditions that shall apply to acceptable occupations for children.<sup>175</sup>

## **11. CARE AND COUNSELING**

Great care and suitable measures for counseling are essential to reintegrate the child back into the society. Care and counseling help the children deal with the difficulties experienced by young persons in the transition to adulthood and prepare them mentally and socially for the transition ahead.

A range of services and programs which emphasizes care, counseling, assistance and therapy-oriented interventions should be developed.<sup>176</sup> It is the responsibility of the institution under which the child is placed to provide routine medical check-up or medical treatment when required. It is also the responsibility of the authorities to arrange counseling on health, substance abuse, HIV/AIDS, life skills and behavioral education, and other related topics for the child.<sup>177</sup>

## **12. INCOMPLETE SENTENCE**

Incomplete sentence refers to a child undergoing sentence at a rehabilitation facility who has not completed serving the term of

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<sup>174</sup> Ibid at sec 229.

<sup>175</sup> Rule 5, Regulation on working condition, 2012.

<sup>176</sup> Art. 40(3)(b) of CRC.

<sup>177</sup> Sec. 230 and 232 of CCPA.

sentence but has attained the age of 18 years.<sup>178</sup> In that case, the child will be considered by the court for placement upon the notifications and recommendations of YDRC on whether the person should remain at the center to complete ongoing training or education or be moved to a prison.<sup>179</sup>

Upon the recommendation of the parole board or any committee identified by the competent authority may consider the early release of a CICL qualifying incomplete sentence.

### 13. ISSUE DISCUSSION AND CASE STUDY

#### ISSUE DISCUSSION

- Is adhering to international standards of rehabilitation and reintegration important? Why?
- What is the difference between rehabilitation and reintegration? Which one should be given more importance?
- What are the benefits of rehabilitation and reintegration?
- What kind of institutional activities for CICL would you recommend, which is feasible in our country?
- Have you seen or heard about any successful reintegration of CICL into the society? Share it?

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<sup>178</sup> Sec 121 of SOP.

<sup>179</sup> Sec 235 of CCPA and sec. 121 of SOP.

## CASE STUDY

16 years old Sangay who is studying in Rewa high School, in 11<sup>th</sup> standard was found in possession of 30gms of cannabis by the police. Accordingly, when the police conducted THC test, Sangay also tested positive for abusing marijuana.

- What is the constructive solution to Sangay under the child justice system?
- Should Sangay be institutionalized? Why?
- Discuss the kind of treatment and rehabilitation activities that will benefit Sangay?



## CHAPTER 7

### OFFENCES AGAINST A CHILD

This chapter discusses a child victim and related principles. It provides resources and guidance on interviewing a child victim and essential guiding principles under domestic law. In addition, the chapter provides a gist of offences against a child covered under the CCPA and an overview of offences against a child under international law.

#### CONTENTS

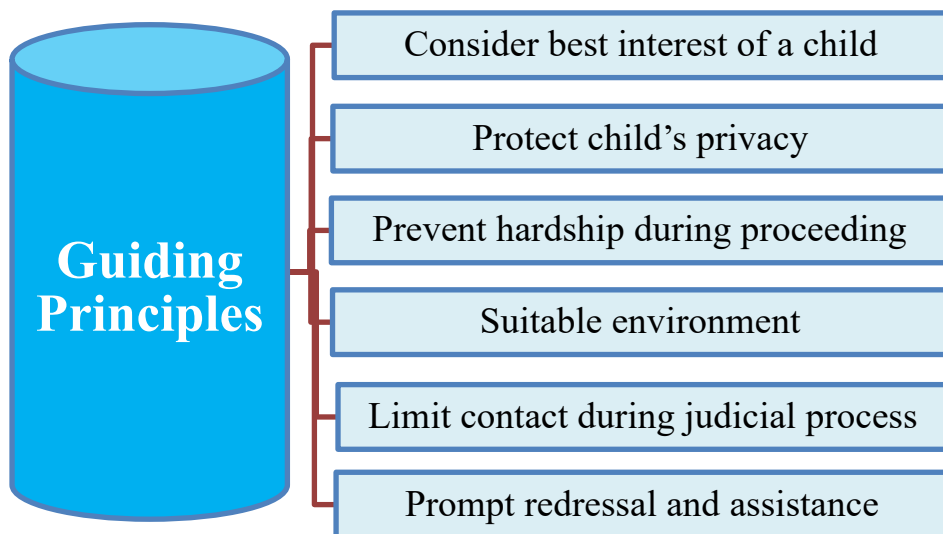
- 1) Child victim and essential principles.
- 2) Child focus support.
- 3) Interviewing a child victim.
- 4) Guiding principles under domestic laws.
- 5) Overview of offences against a child.
- 6) Categories of offences under CCPA.
- 7) Issue and case discussion.

#### LEARNING OBJECTIVES

After completing this Chapter, you should be able to:

- ⇒ Know essential international guiding principles when a child becomes a victim of a crime.
- ⇒ Recognize guiding principles under domestic laws in dealing with child victims.
- ⇒ Enhance their knowledge and skills to conduct child interviews.
- ⇒ Understand different categories of offences committed against a child.
- ⇒ Elucidate rights under the international and domestic laws in case of crime against a child.
- ⇒ Know the penalties or sentencing imposed under domestic law.

## 1. CHILD VICTIM AND ESSENTIAL PRINCIPLES



### 1.1. The child's best interest and fair treatment

As per article 3 of CRC and UN Guidelines on child victims, a child has the right to have his or her best interests given primary consideration in all decisions affecting him or her, including the right to protection from any form of hardship, abuse or neglect.<sup>180</sup>

### 1.2. Protection of privacy

In the case of an offence committed against a child, the UN Guidelines on justice requires protecting the child's privacy as a matter of primary importance. Respective stakeholder needs to take

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<sup>180</sup> Art. 3 of the *Convention on the Rights of the Child*, Article 3; *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, ECOSOC Resolution 2005/20 available at [www.un.org](http://www.un.org)

appropriate measures to protect the child's identity from exposure to the public.<sup>181</sup>

### 1.3. Prevent child engagement

When an offence is committed against a child, they go through numerous formal processes which have an imperative impact on the child's mental and physical well-being. In such cases, the professionals should take measures to prevent hardship during the detection, investigation and prosecution process including potential intimidation, reprisals or secondary victimization.<sup>182</sup> Child interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner.<sup>183</sup> Similar standards must be applied during the adjudication before the court.

### 1.4. Child friendly environment

When a child is a victim of a crime, the relevant professionals come in contact with a child one way or another. While unnecessary contact must be avoided at all times, any necessary interactions should be conducted in a child sensitive manner. It must be done in a suitable environment that accommodates the special needs of the child and in a language which the child uses and understands to enhance a child's ability to participate.<sup>184</sup>

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<sup>181</sup> Ibid.

<sup>182</sup> *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Council of Europe Guidelines on Child-friendly justice.*

<sup>183</sup> *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.*

<sup>184</sup> *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Committee on the Rights of the Child, General Comment No.12).*

### **1.5. Limit unnecessary contact with justice process**

A child may be summoned by the court or parties to the case during the formal proceeding. However, there must be measures in place to limit unnecessary contact with the justice process. The measure includes limiting the number of interviews or examination with a child and using video recording of testimony.<sup>185</sup>

### **1.6. Prompt redress, assistance and access to justice**

Child victims are entitled to prompt redress, as provided for by national legislation, for full reintegration and recovery.<sup>186</sup> Child victims should have access to assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and any other services necessary for the child's reintegration through governmental, voluntary, community-based and indigenous means.<sup>187</sup> The judicial and administrative mechanisms should be established and strengthened to receive prompt redressal.

## **2. CHILD FOCUS SUPPORT**

In order to ensure a child's mental and physical well-being, there must be a victim's assistance program which includes crisis response, counseling, advocacy, participation in justice process, compensation,

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<sup>185</sup> *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Guidelines of the Council of Europe on Child-friendly Justice.*

<sup>186</sup> *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, (Adopted on 29 November 1985 (General Assembly resolution 40/34).*

<sup>187</sup> *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principles 4-5, Guidelines 7-8.*

restitution, assistance and care.<sup>188</sup> Some of the critical assistance are mentioned below.

## **2.1. Restitution**

Any person who commits an offence against a child is responsible to make fair restitution to a child or parent or guardian, whichever appropriate.<sup>189</sup>

## **2.2. Compensation**

A child victim must be adequately compensated proportionate to child's bodily injury or impairment of physical or mental health as a result of serious crimes. The state should endeavor to make financial compensation in case the offender is not in the state of paying compensations.<sup>190</sup>

## **2.3. Assistance**

A child victim should receive necessary material, medical, psychological and social assistance through government or institutions dealing with a child. In providing assistance, professionals that come in contact with child victims must receive appropriate training to know the needs of victims, which would enable them to provide proper and prompt assistance.<sup>191</sup>

## **3. INTERVIEWING A CHILD**

Children often come in contact with the relevant law enforcement officials or agencies. A child may come in contact due to commission of an offence or as a victim or witnesses or for other reasons. Whenever

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<sup>188</sup> United Nations Office for Drug Control and Crime Prevention, "*Handbook on Justice for Victims*" New York 1999.

<sup>189</sup> *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, (Adopted on 29 November 1985 (General Assembly resolution 40/34).

<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

a child comes into contact with law enforcement or justice system, a person interviewing a child must consider prior to interview:<sup>192</sup>

- Not all Children's are same at same ages;
- Children are more vulnerable than adults;
- Effort should be made to make child victims as comfortable as possible;
- Rapport building is key in child interview; and
- A child should not be interviewed, unless it is absolutely necessary.

Under section 99 of the CCPA, a police officer or investigating officer shall not question or interview without one's parent or guardian or legal representatives. Similarly, a child interview will not take place if the child is unable to appreciate the significance of the question and answer made at the time of inquiry. Under sub-section 99.C interview cannot be initiated if a child is under influence of alcohol, drugs, illness, ailment or condition that negates the capacity to comprehend the process. During a child interview, parents should be present. If a child is without parents, the guardian should represent. Legal representatives represent in absence of a guardian. If the perpetrator is the parents, guardian and then legal representatives will represent a child. The officials coming into contact may observe and apply *parens patriae doctrine* if there is no one to represent a child.

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<sup>192</sup> *Protection of Women and Children, Investigate interviewing manual 2*, Royal Bhutan Police 2016.

#### **4. GUIDING PRINCIPLES UNDER DOMESTIC LAWS**

The CCPA and Rules under it require the officials that come in contact with a child to recognize the needs of a child. Following principles are directly relevant when a child is victim of case:<sup>193</sup>

- A child must be treated as a child in difficult circumstances;
- Best interest of a child must be of primary consideration over all other matter;
- No questioning or proceeding without child's parents, guardian or legal representatives;
- Handle case without involving child if it is in the best interest of a child;
- Treat child with dignity and compassion;
- Respect child's special needs, privacy and interest at all times;
- Questioning a child if necessary, must be environment suitable to a child and should be in language that child understand best;
- A Child should not be subject to secondary victimization;
- Protect the child's privacy including maintaining confidentiality of information that may reveal child's identity; and
- A child has the right to be informed during judicial proceedings on matter relevant to child and protection of child.

#### **5. OVERVIEW OF OFFENCES AGAINST A CHILD**

Internationally, there is no separate and exhaustive classification of offences as offences against a child. Thus, while categorizing offences against a child, we must take into consideration those offences committed against a child or the crime in which child is a victim.

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<sup>193</sup> Chapter 11 of the *Child care and Protection Rules 2015*.

Domestically, the CCPA defines a person below an age of 18 years and below as a child and an offence committed on a victim under the age of 18 years of age is considered as crime against children. The Act stipulates list of offences which are considered as offences against a child. While there are multiple offence listed under the Penal Code and other laws of Bhutan that are offences against a child, this chapter will cover offences that are listed under the CCPA. Similarly, there are numerous laws legal in place that cover a variety of protective and preventive measures. Generally, the crime against child include physical and emotional abuse, neglect and exploitation, such as through torture, trafficking, pornography, battery, serving alcoholic beverages and psychotropic substances.

## **6. CATEGORIES OF OFFENCES AGAINST A CHILD UNDER CCPA**

The CCPA under Chapter 14 categorically lists out 13 types offences that are considered an offence against a child. This part will cover those offence specifically listed in the CCPA and child labour provisions stipulated under Labour Act. Each of the listed offences are explained in line with the relevant provisions from the CRC and relevant domestic laws including the Constitution, CCPA, Penal Code and the Labour Act as follows:

### **6.1. Assault of a child**

The assault by definition refers to causing apprehension of bodily injury to another person.<sup>194</sup> The children have rights to be protected from any form of assault. The international law guarantees a child to be protected from all forms of physical or mental violence, injury or abuse.<sup>195</sup> Even if the child does not sustain any injury, purposely or

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<sup>194</sup> Section 212 of CCPA (Offence of assault of child shall be a violation; Section 156 of the *Penal Code of Bhutan 2004*.

<sup>195</sup> Art. 19 of CRC.



knowingly causing apprehension of bodily injury to the child is abusive and is considered assault of a child. Section 212 of CCPA considers it as an offence against a child if the person purposely or knowingly assaults a child and the offence of assault shall be a violation.

## **6.2. Cruelty to a child**

The CRC mandates the state to protect the child from any type of cruel treatment that would cause mental or physical sufferings for the child.<sup>196</sup> Similarly, it is the fundamental right of every person under the constitution to be protected from being subjected to cruel or inhuman treatment under the Constitution.<sup>197</sup> Most of the time, children are more vulnerable towards a person who has actual charge or control over the child. If such a person willfully treats the child or causes the child to be treated in a manner likely to cause the child unnecessary mental or physical suffering, the child is considered to be treated cruelly. Considering the above guiding principles, the CCPA considers cruelty to a child as an offence and any person treating a child that would likely cause unnecessary mental or physical suffering. The offence of cruelty to a child shall be a petty misdemeanor.<sup>198</sup>

## **6.3. Harsh or degrading correction or punishment**

A child is protected from receiving degrading correction or punishment under the International law as well as under our domestic law.<sup>199</sup> The corrective measure or punishment subjected to a child be it at home, in the schools, or in any other institutions has to be culturally appropriate and in accordance with rules framed for

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<sup>196</sup> Ibid at Art. 37.

<sup>197</sup> Article 17 of the *Constitution*.

<sup>198</sup> Sec. 213 of CCPA.

<sup>199</sup> Art. 39 of CRC and sec. 214 of the CCPA.

discipline of children. An offence of harsh and degrading treatment shall be a violation.

#### **6.4. Child battery**

The CRC entails the State party to provide protection to a child from any forms of physical violence or injuries.<sup>200</sup> Physical violence against a child will not only have lifelong consequences on the child but also have serious consequences for the person who uses physical violence no matter whether the child sustained severe injury or not. A child would always be vulnerable to violence by virtue of his or her age. It would be considered a child battery if a person either purposely uses physical force or causes the child to be subjected to a physical force.<sup>201</sup> Under section 215 of CCPA, offence of child battery is a petty misdemeanor or misdemeanor if aggravated circumstances are present.

#### **6.5. Employment of child for begging**

A child has the right not to be subjected to any kind of economic exploitations.<sup>202</sup> The CRC requires the government to protect employment of children in work that is dangerous and might cause harm to their development or education. It further requires the government to set a minimum age for children to work and must ensure that work conditions are safe and appropriate.<sup>203</sup>

The Labour and Employment Act of Bhutan 2007 prohibits worst form of child labour.<sup>204</sup> And begging is one of the worst forms of child labour that destroys the health, development and education of the child. Such degrading acts makes the child vulnerable to prostitution, drug abuse, trafficking and crimes. It undermines the whole existence

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<sup>200</sup> Art. 19 of CRC.

<sup>201</sup> Sec. 215 of CCPA.

<sup>202</sup> Article 32 of CRC.

<sup>203</sup> Article 32 of CRC.

<sup>204</sup> Section 9 of *Labour and Employment Act of Bhutan 2007*.

of the *United Nation Child Right Convention* and *Child Care and Protection Act of Bhutan*. Using a child for the purpose of begging or causing a child to beg is strictly prohibited under the CCPA.<sup>205</sup>

#### **6.6. Serving alcoholic beverages to a child**

Alcohol is a very powerful mood-altering drug which affects both mind and body in unpredictable ways. Therefore, it is considered an offence under the CCPA.<sup>206</sup> It could result in various alcohol-related accidents, crimes and may develop alcohol dependence. It is detrimental to the mental and physical development of the child. Prohibition of serving alcoholic beverages or causing any other person to serve alcoholic beverages to a child is vital for moral well-being and physical and mental health of the child.

#### **6.7. Providing Narcotic drug Psychotropic or chemical substance**

The CRC recognizes the right of a child to be protected from being forced to use narcotic drugs or psychotropic substances and from being used in the illicit production and trafficking of such substances.<sup>207</sup> Such substances are detrimental to the physical and mental health, and behavior and moral well-being of the child. The act of encouraging or forcing a child to use such substances is criminalized and will have serious consequences. Providing narcotic drugs and psychotropic or chemical substances to a child is prohibited both by the *Labour Act* and the CCPA.

#### **6.8. Invasion of a child's privacy**

As per the provisions of CRC, every child has the right to privacy. In order to protect children's privacy, the convention requires regulating law to protect children's private, family and home including

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<sup>205</sup> Section 216 of CCPA.

<sup>206</sup> Section 217 of CCPA.

<sup>207</sup> Article 33 of CRC.

protecting children from unlawful attacks that harm their reputation.<sup>208</sup> The CCPA of Bhutan recognizes the right of the child to his or her privacy in everyday life and during any stage of the proceedings.<sup>209</sup> Publishing articles about the identity of the CICL and publishing reports on the proceedings could only be done with the consent of the child's parents or guardians and court's authority. Maintaining the child's privacy is very important to protect the child from stigmatization and for successful reintegration into the society.

#### **6.9. Engagement of child for commission of crime**

The CCPA prohibits a person from engaging a child for the commission of a crime. It considers offence if a person engages a child in the commission of a felony offence.<sup>210</sup> Taking advantage of the vulnerability and immaturity of the child for engaging the child in the commission of the crime has more serious consequences than actually committing a crime by self. The punishment for the person who engages a child in commission of a crime would be a degree higher than the actual offense committed.<sup>211</sup> The act of the person is introducing the Children to a dark world of crime at a very early age. It has detrimental effects on the development of the child physically and mentally.

#### **6.10. Sale of a child**

The CRC protects the child from being sold for any purpose or in any form.<sup>212</sup> It requires the government to protect children from being abducted, sold or moved illegally to a different place in or outside their country for the purpose of exploitation. The CCPA prohibits sale of a child for remuneration or any other consideration. The sale of the child

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<sup>208</sup> Article 16 of the CRC.

<sup>209</sup> Article 16 and 40(vii) of CRC.

<sup>210</sup> Section 220 of the CCPA.

<sup>211</sup> Ibid.

<sup>212</sup> Article 35 CRC.

risks various exploitation. The child could be used for forced labor, pornography and prostitution etc.

### **6.11. Child prostitution**

Child prostitution is the use of children for sexual activities in exchange for remuneration or another form of retribution.<sup>213</sup> It leads to negative effects on the wellbeing and mental health of the child. They become vulnerable to diseases and are unable to access services like health care and education. The CRC and CCPA recognizes the right of every children to be protected from all forms of sexual exploitation and sexual abuse.<sup>214</sup>

### **6.12. Child Pornography**

Child pornography is a form of sexual abuse often involving the visual depiction of a child engaged in real or stipulated explicit sexual activities or representation of the sexual parts of a child for primarily sexual purposes. It is a global issue. The production of child pornography creates a permanent record and victimization of the children continues in perpetuity. The victims of child pornography not only suffer sexual abuse but also humiliation, fear, psychological damage, and continued molestations for their whole life. The CRC and CCPA protects the child from child pornography and any forms of sexual abuse or exploitation.<sup>215</sup>

### **6.13. Trafficking of a child**

Trafficking of a child is buying, selling or transporting a child by means of threat, or use of force, coercion, abduction, fraud, deception, abuse of power, position of vulnerability, transaction involving payments or benefits to achieve the consent of a person having control

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<sup>213</sup> <https://www.humanium.org/en/child-prostitution/>

<sup>214</sup> Article 34 of CRC.

<sup>215</sup> Article 34 of CRC.

over the child, for the purpose of exploitation.<sup>216</sup> The trafficked children are stripped of their human rights and are vulnerable to various abuse such as child labour, organ trading, sexual exploitation, or forced marriage. The CRC and CCPA recognizes the right of every child to have the protection of law against trafficking.<sup>217</sup>

## **7. PROHIBITION OF CHILD LABOUR**

In addition to CCPA and other laws, the Labour and employment Act of Bhutan 2007 prohibits worst form of child labour. Section 9 of the act states that no person shall subject a child to:

- (a) any form of practices such as sale and trafficking, debt bondage, forced or compulsory labour, including recruitment for use in armed conflict;
- (b) the use, procuring or offering of the child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of the child for illicit activities, in particular for the production and trafficking of drugs;
- (d) work under particularly difficult conditions such as work for long hours or during night or work where the child is unreasonably confined to the premises of the employer; or
- (e) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of a child including:
  - (i) work which exposes a child to physical, psychological or sexual abuse;
  - (ii) work underground, under water, at dangerous heights or in confined spaces;

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<sup>216</sup> Section 224 & 225 of CCPA.

<sup>217</sup> Art. 35 of CRC.

- (iii) work with dangerous machinery, equipment or tools, or which involves the manual handling or transport of heavy loads; or
- (iv) work in an unhealthy environment that may expose the child to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to his or her health.

Under section 10 of the *Labour and Employment Act of Bhutan*, a person who contravenes section 9 shall be guilty of an offence which shall be a felony of the third degree.

## 8. ISSUE DISCUSSION AND CASE STUDY

### ISSUE DISCUSSION

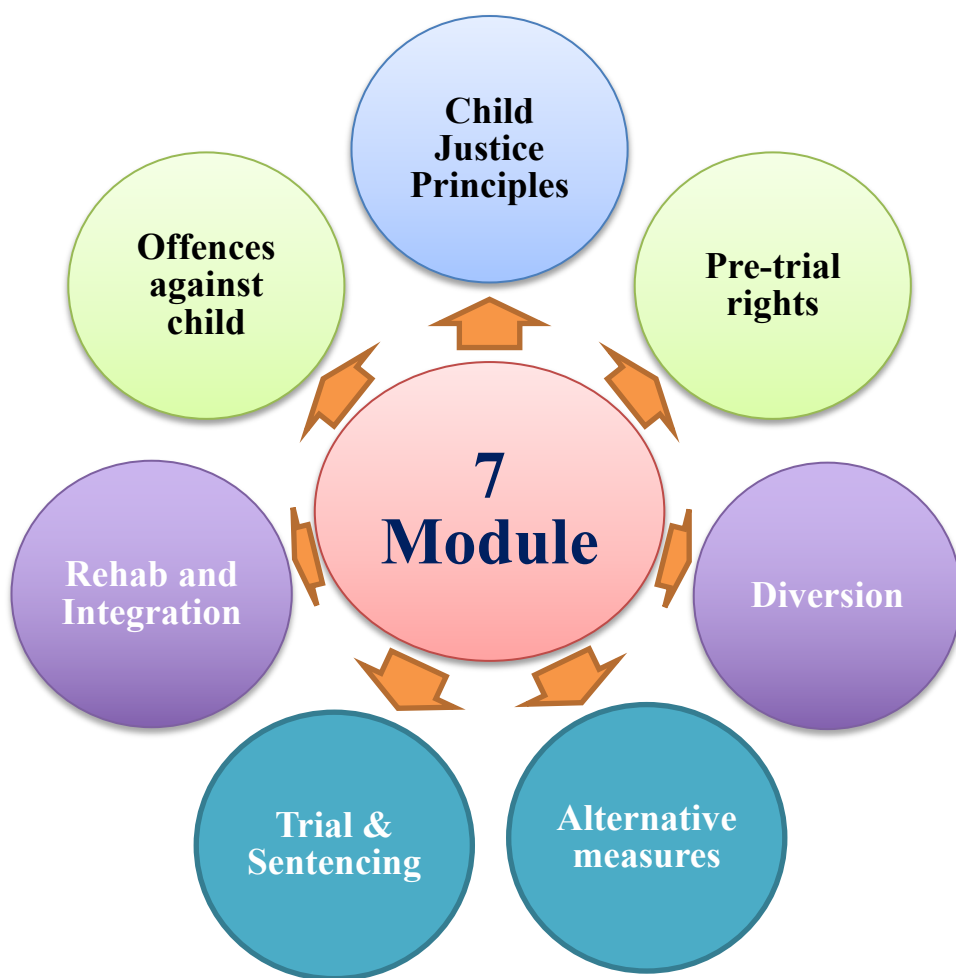
- In our country's context, what are some of the issues that need to be addressed to ensure that child rights are adequately protected when they become a victim to a crime?
- The justice system must ensure that children must be kept away from unnecessary contact during formal proceedings. However, a child may be called for examination if it is of urgent necessity. How would you approach to ensure that the atmosphere is conducive for a child during such examinations?
- The offences against a child are covered under the CCPPA, Labour laws and the penal code. Which one would you apply if the provisions of the different laws contradict each other and why?

## CASE STUDY

Dawa, a 13-year-old was the victim of a battery case. She was interviewed several times by the Police wherein she gave many inconsistent statements. She was neither taken to psychologist nor accompanied by her parents or guardian during the interview. A battery case was forwarded for prosecution and the prosecutor initiated the prosecution. Although, Dawa gave contradictory statements, the prosecutor never contacted but initiated a trial based on the available facts and evidence. As the defendant denied the crime before the court, the prosecutor resorted to calling Dawa for the cross-examination before the Court. The prosecutor requested the court and the defense council to make the conducive environment for Dawa and ask questions appropriate at Dawa's age. Considering the above facts, discuss following based on the international guiding principles and domestic laws:

- How would you comment on the investigation by the Police? Did they perform their roles in line with the prevailing principles?
- What do you understand when prosecutors' request the court and the defense council to make a conducive environment?
- What must be done to ensure that the hearing is not only conducive but child friendly?
- What kind of questions during examination would be considered appropriate for Dawa and questions which may not be appropriate in the present case?





# Training Module



## INTRODUCTION

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This training module will provide specific guidance in using and applying the content and reference materials used in the preceding seven chapters in a training context. The person who works within the system is key to the effective implementation of the principles of justice and we believe that this module will aid in enhancing their aptitude to care and support the child justice system. To achieve this, the training manual will take the trainer and trainee into the international, regional and domestic legal concepts and guiding principles that would strengthen the law enforcement's capacity in dealing with CICL. We believe that in the process, it will indefinitely enhance their capacity in carrying out their roles more humbly and effectively.

The participants come to attend the training programmes with a lot of expertise and knowledge on CICL in particular and child justice in general. The trainer must draw and gather those knowledges, experience, expertise and keep adding new knowledge and skills to further enhance their professional capacity. The discussions, problem solving and other activities attached to the training module would enable trainees to discover and analyze the concepts and cross-cutting principles of child justice including diversion and alternative measures, pre-trial rights, adjudication and sentencing, rehabilitation and reintegration.

The sample training modules for each chapter contain international and domestic guiding principles in dealing with the child in conflict with law. This will not only facilitate the trainer, but enable the learner to initiate discovery of ideas, discussions and accordingly arrive at a conclusion that “best interest of the child” is the primary goal of a child justice.



## TRAINING TIPS

### BE FULLY PREPARED



When you conduct a training, make sure that you have read and have all the resources and materials with you. It is important to know pre-training questionnaires and be aware of the trainee's expectations. Get ready with whatever you need for the training including chart papers, equipment's, power points etc. to start the training without hindrance.

### TIMING



Timing is an essential part of any training and thus must ensure that your agendas are well timed. This should include tea or lunch breaks and any other break in between. You have to have appropriate design based on your training needs and circulate in agendas.

### RESOURCES MATERIALS:



It is important to identify all the required resources to conduct a smooth training. Based on your training content and mode of delivery, it is essential for you to list out resources that you may require. This would include photocopy, handouts, computers, projector, monitor, zoom link and reading materials and any other resource as you may required

**SEATING  
ARRANGEMENT**



The seating arrangement should be as per the training module. You may make arrangements as per the training needs. For instance, group work and role play may require different seating arrangements. This may apply different in case of lecture method of training.

**PRESENTATION TIPS**

**INTRODUCTION**

Introductory and closing sessions are critical aspect to any trainings. This will allow the participants to introduce themselves and know other participants and their background. This will also act as ice breaker and become more interactive during the actual Training

**INTRODUCTION  
CONTENTS**



- Introduction must contain following:
- ⇒ Purpose and the objectives of the training.
  - ⇒ Agenda which would basically cover the schedule of the training.
  - ⇒ Introduction of participants.
  - ⇒ Knowing expectations of participants.
  - ⇒ Providing daily feedback and its purpose.

**CLOSING  
SESSIONS**

The closing remarks on other hand provides good platform to recap the day and discuss further over the topics already covered. This may be a platform to share the knowledge they gained and how they are going to apply the same at their workplace.

## PRESENTATION TIPS



### RULES FOR PRESENTATION



Whether it is training or workshop or meetings, presentation is an efficient way to impart information on a particular subject. It is important to have materials presented with clarity and precision to ensure that your audience gets the best out of it.

Following Rules must be applied:

- ⇒ Speak slowly with clarity to ensure all can understand.
- ⇒ Explain the jotted point with clarity and precision.
- ⇒ Do not read the presentation slide.
- ⇒ Prepare to move around as you make presentations.
- ⇒ Be right on the time allotted for the presentation.
- ⇒ Make pause at times to let participants ask questions.
- ⇒ Ask questions to random participants.

## CONDUCT OF TRAINING AND METHODOLOGY

### GROUP AND ISSUE DISCUSSION

Group discussions form an integral part of any training. The learners learn and digest information provided in the presentation. The group discussions are used to analyze an issue or a case study.

### RULES FOR DISCUSSION

In order to run effective group discussion, following tips may be applied:

- ⇒ Provide a case study and clearly state the task of the group.



- ⇒ If it is on issue discussion, clearly state the issue and task required to be completed.
- ⇒ Prepare and provide tasks in presentation slides or in a form of handouts.
- ⇒ Explain the task and expected outcome through the group discussion.
- ⇒ Provide a time within which the task must be completed.
- ⇒ Monitor the group discussion. Guide or assist wherever necessary.

## CASE STUDIES



Case studies are an important tool to establish participants' recently acquired understanding or skills by problem-solving. It generates multi-level analysis of complex problems and puts the reference material learnt into a more realistic situation. This manual encompasses cases in many chapters.

## RULES FOR CASE STUDY



For effective case study, following must be applied:

- ⇒ Select a case study directly relevant to the points and issues that need to be examined and with enough detail for participants to understand the situation and the factors affecting it.
- ⇒ Case studies can, and should, be modified for your audience to get the most beneficial discussion.
- ⇒ You should identify the key questions around which the discussion will focus and these should be given to participants with the case study.

	<ul style="list-style-type: none"> <li>⇒ In the case studies provided, a few sample questions are included at the end of each case study.</li> <li>⇒ Make sure you prepare any necessary background or additional resources that the participants may require to understand the complex issues posed in the cases.</li> <li>⇒ discussing the case study as a group, move the discussion towards the key points and issues, and direct the analysis back towards the objectives of the workshop.</li> <li>⇒ discussion should be solution-oriented and constructive.</li> <li>⇒ Summarize all the key points identified by participants on a flip chart or board and, to conclude the activity.</li> </ul>
<b>VIRTUAL TRAINING</b>	Training can be conducted virtually through zoom or other digital platforms. Trainer can provide all the materials through emails and relevant sites to enable proper training.
<b>READING MATERIALS FOR NEXT DAY</b>	In order to gear up for the next session, the facilitator can provide material that a trainee can read for the next session. The trainer can provide a list of documents, links or documents to read. This can enable the trainee to learn better in the next session and multiple issues can be brought up for discussion.
<b>ICE-BREAKER</b>	Training is all about building confidence and sharing your experience and knowledge acquired in the process. Discussions require confidence and ice-breaker is one of the ways

	<p>to enhance confidence. It is introductory exercise that can generate confidence in an interactive learning environment. During the ice-breaking exercise, the facilitator can ask the participants to introduce themselves at the beginning of the training. Facilitator can also ask open questions to the participants and seek their view on it.</p>
<b>ENERGISER</b>	<p>Energizer is an essential technique to keep training lively and attentive. The energizer activity should be able to generate energy and thus should be fun. It should be quick and enable participants to refresh and relax. The activity should be time bound. Facilitator can engage participants in short games or puzzles solving or quiz with prizes.</p>
<b>PLAYING VIDEO</b>	<p>Video after a presentation on the particular subject would bring clarity on topics covered. A video on diversion conference would bring clarity in how a diversion takes place in a real scenario. Similarly, a video on trial would enhance professional's capacity in dealing with child. Through video, a professional would be able apply theory in practice. For that matter, the facilitator may create a hyperlink to the video to be screened.</p>
<b>RECAP</b>	<p>The facilitator must conduct a recap of the session at the end of each session. If a training is conducted by a single facilitator, recap can be done at the end of every session or next day before starting the actual session. The recap can be done by the facilitator themselves or by</p>



the participants. For this, materials such as chart paper, pen or pencil or markers may be required. It can also be done in powerpoint presentations.

## MISCELLANEOUS

### TRAINING AGENDA

It must be circulated prior to the training. Any changes must be notified as well. Agenda circulation can be done through the email address provided by the trainees or any other appropriate email ID. Facilitator can also print a few copies to keep as reference for the chief guest and participants.

### TRAINING EXPECTATIONS

It is important to have this exercise prior to the training session. It can be circulated in hard copies or made available online to be filled. This exercise will enable the facilitator to know expectations and may incline the training to achieve those if expectations are very critical. We can also determine participants' knowledge on the particular subject and work further on it to enhance their knowledge. Training expectation forms are available under annexures and forms.

### TRAINING FEEDBACK

This should happen at the end of the training. A feedback form will be provided to all the trainees with the option to write their name or not. Feedback form can be circulated in hard copies or made available online to the trainers. Feedback must be seriously noted as it helps to improve future training.

## POST TRAINING ASSESSMENT

The assessment should happen at the end of the training. The facilitators may also conduct this assessment at the end of each training session or modules. This will let the trainer know how much trainees have learned from the training and accordingly assess for further improvement. The assessment can be done by distributing question papers or through google forms. A time should be allocated for the exercise.

## GROUND RULES FOR THE TRAINING

- ⇒ Must be in training hall on time as per agenda;
- ⇒ Trainer and trainee must not use phone during the sessions;
- ⇒ Must complete task within allocated time;
- ⇒ Ensure that time state in agenda is respected by both the trainer and trainee;
- ⇒ Resources available should not be misused;
- ⇒ Maintain decorum of the training;
- ⇒ Respect each other and follow any other instructions given by the facilitators and organizers.

## Training Module 1

# Principles of Child Justice

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**Information  
available in  
Chapter 1**



**Time  
required  
3:30-4:00  
Hours**



### Learning objectives

- ⇒ Understand and explain important guiding principles recognized by the international and domestic laws on child rights.
- ⇒ Elucidate and impart important definitions and concepts contained under this chapter.
- ⇒ Enable to know the child rights standard recognized under various international instruments.
- ⇒ Able to distinguish the child rights standard recognized under various regional instruments with specific reference to Europe, Africa and Asia.

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### Further readings

- ⇒ International: Conventions, UN Guidelines, UN Rules, Declarations and body of principles
- ⇒ Regional: European conventions, African Charter, SAARC conventions
- ⇒ Domestic: Constitution, CCPA, Labour Laws, Penal Code, CCPCB, Delegated legislations, Diversion Guidelines, SOP and prosecution guidelines.

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### Target Participant

Probation officers, Police officials, Prosecutors, Lawyers, Judges, Bench clerks, Social workers, CSO and its employees and students.

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## TIME BREAKDOWN

Time	Topic	Contents
<b>30 Mins</b>	<b>Introduction</b>	Introduction to the workshop, agenda, objectives, participants, and their expectations. Explain few important child justice principles
<b>120 Mins</b>	<b>Principles of child justice</b>	Based on the chapter on the child justice principles, lecture will include international principles, child justice principles under Bhutanese laws, highlight on the International, regional and domestic laws
<b>30 Mins</b>	<b>Issue discussion &amp; questions</b>	After the lecture, a few issues will be presented to the participants. The participants will take a few minutes to study the issue. They may also discuss in pairs and present their analysis of the issue.
<b>30 Mins</b>	<b>Case study</b>	This part will be a case application. A case in handouts will be provided to participants after dividing them into small groups. They will be asked to identify the principles in response to the case
<b>15 Mins</b>	<b>Closing or recap</b>	There will be a recap at the end of the session. The recap can be done by the trainer or trainee or all of them together about important matters learned during the session.



## Course detail

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### 1. Overview

The training on the principles of child justice explores the international, regional and domestic cross-cutting legal principles. It highlights essential principles within the framework of law that are critical for fair and effective administration of child justice. The training pin-points the child rights provisions under the international and national laws.

### 2. Mode of delivery

The training will be delivered through face to face sessions to the target participants. A session on the principles of child justice will approximately last around 3:30 hours to 4:00 hours. The session will be highly interactive and includes presentations, issues for discussions, case studies and group exercises. Participants are expected to fully engage in all the exercises.

### 3. Training Outline

- ⇒ International cross-cutting principles for child justice – it will cover 11 essential principles that a person dealing with a child must be aware of to protect their rights.
- ⇒ Fair and effective criminal justice for children of Bhutan – this part will explore essential guiding principles that are available under the laws of the Bhutan.
- ⇒ International instruments and law on children – it lays out the fundamental international instruments such as UDHR, UNRCR, optional protocol.
- ⇒ Regional treaties – this part highlight some of the regional treaties to which Bhutan is a party

⇒ Domestic laws on child justice – it lists out all the domestic laws of the country and essential protection guaranteed under those laws.

#### **4. Course facilitators**

Judges, Senior Attorney's, Police personnel's, lawyers, probation officers and any other relevant official with expertise in the field of child justice and its guiding principles.

## Training Module 2

### Pre-trial rights of a child

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**Information  
available in  
Chapter 2**



**Time required  
3:30-4:00  
Hours**



#### Learning objectives

- ⇒ Explain the concept of Child in Conflict with law (CICL) and know which groups of children it specifically refers to;
- ⇒ Identify the primary provisions of regional and international standards that serve as the foundation of protecting rights of Child in conflict with Law.
- ⇒ Know the essential principles on arrest of a Child in conflict with law and its procedure.
- ⇒ Comprehend pre-trial assessment of a child and related procedure.

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#### Further readings

- ⇒ UN conventions, declarations and rules.
- ⇒ Beijing Rules.
- ⇒ Regional standards with reference to age of criminal liability.
- ⇒ The CCPA, Penal Code, diversion and prosecution guidelines
- ⇒ SOP in dealing with CICL

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#### Target Participant

Probation officers, Police officials, Prosecutors, Children, Lawyers, Judges, Bench clerks, Social workers, CSO and its employees and students.

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## TIME BREAKDOWN

TIME	TOPIC	CONTENTS
<b>30 MINS</b>	<b>Introduction</b>	Introduction to the workshop, agenda, objectives, participants, and their expectations. Explain important pre-trial principles concerning a child in conflict with law
<b>120 MINS</b>	<b>Pre-trial rights of a child</b>	Based on the chapter on the pre-trial rights of a CICL, lecture will include international principles, child justice principles under Bhutanese laws, highlight on the International, regional and domestic laws on the rights of CICL
<b>30 MINS</b>	<b>Issue &amp; discussion questions</b>	After the lecture, a few issues will be presented to the participants. The participants will take a few minutes to study the issue. They may also discuss in pairs and present their analysis of the issue.
<b>30 MINS</b>	<b>Case study</b>	This part will be a case application. A case in handouts will be provided to participants after dividing them into small groups. They will be asked to identify the principles in response to the case
<b>15 MINS</b>	<b>Closing or recap</b>	There will be a recap at the end of the session. The recap can be done by the trainer or trainee or all of them together about important matters learned during the session.





## Course detail

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### 1. Overview

The training on the pre-trial rights of a child focuses mainly on the relevant procedural aspects and rights when a child comes in conflict with law. It defines a child in conflict with law and highlights the guiding principles in dealing with a child. This chapter explores laws of many countries and compares the international and domestic standards on CICL. It also covers stakeholders of child justice and their role in the administration of child justice. As the assessment is critical when a child comes in conflict with law, it covers pre-trial assessment of a child and its procedure.

### 2. Mode of delivery

The training will be delivered through face to face sessions to the target participants. A session on the pre-trial rights of a child will approximately last around 3:30 hours to 4:00 hours. The session will be highly interactive and include presentations, issues for discussions, case studies and group exercises. Participants are expected to fully engage in all the exercises.

### 3. Training Outline

- ⇒ Guiding principles and definition – the topic focuses on defining a child in conflict with law and guiding principles on age of criminal responsibility. It will explore international, regional and domestic laws.
- ⇒ Rights of a child in conflict with the law – the topic highlights the guiding principles that includes the best interest of a child and others. It covers aspects from the international and domestic laws.
- ⇒ Arrest and its procedure – it dwells on the rights and procedure during arrest of a child. The principles enshrined under

international law, constitution and the other domestic laws will be covered under this topic.

- ⇒ Stakeholders in child justice – this part discusses the roles and mandates of the stakeholders involved in the administration of child justice
- ⇒ Pre-trial assessment and related procedure – assessment is critical in determining alternative measures for a child. It narrates an essential process in dealing with a child during assessment.

#### **4. Course instructors**

Judges, Senior Attorney's, Police personnel's, lawyers, probation officers and any other relevant official with expertise in the field of child justice and its guiding principles.

## Training Module 3

### Diversion

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**Information  
available in  
Chapter 3**



**Time required  
3:30-4:00  
Hours**



#### Learning objectives

- ⇒ Learn concepts and guiding principles of diversion.
- ⇒ Comprehend the different processes of diversion and stakeholders.
- ⇒ Able to understand the consequences of effective and non-effective diversion programs.
- ⇒ Elucidate diversion conference and drafting agreement.
- ⇒ Known monitoring and compliance.
- ⇒ Able to identify prevalent issues and challenges related to the diversion process and its programs.

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#### Further readings

- ⇒ The CRC and Beijing Rules
- ⇒ The child rights committee comments
- ⇒ Constitution, CCPA and CCP Rules, Civil Procedure Code and Penal Code
- ⇒ Diversion guidelines 2019
- ⇒ Prosecution Guidelines 2019
- ⇒ SOP in dealing with CICL

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#### Target Participant

Probation officers, Police officials, Prosecutors, Children, Lawyers, Judges, Bench clerks, Social workers, CSO and its employees and students.

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## TIME BREAKDOWN

Time	Topic	Contents
<b>30 Mins</b>	<b>Introduction</b>	Introduction to the workshop, agenda, objectives, participants, and their expectations. Explain important guiding principles concerning diversion
<b>120 Mins</b>	<b>Pre-trial rights of a child</b>	Based on the chapter on the Diversion, the lecture will include guiding principles of diversion, advantages and diversion process being practiced. It will also cover different stages of diversion and roles of professionals involved in the diversion.
<b>30 Mins</b>	<b>Issue &amp; discussion questions</b>	After the lecture, a few issues will be presented to the participants. The participants will take a few minutes to study the issue. They may also discuss in pairs and present their analysis of the issue.
<b>30 Mins</b>	<b>Case study</b>	This part will be a case application. A case in handouts will be provided to participants after dividing them into small groups. They will be asked to identify the principles in response to the case
<b>15 Mins</b>	<b>Closing or recap</b>	There will be a recap at the end of the session. The recap can be done by the trainer or trainee or all of them together about important matters learned during the session.



## Course detail

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### 1. Overview

The training will be on the diversion, its concepts and guiding principles. It elaborates the diversion process including preliminary stage, factors and circumstances in considering diversion. It explores the initiation of diversion programs for children and roles of respective stakeholders involved in it. As diversion agreement forms an important part of the topic, it will provide details of diversion agreement and process involved in arriving at the agreement. It explains diversion by the Police, OAG and the Court with every minute detail on the process. It covers the monitoring and compliance of diversion programs.

### 2. Mode of delivery

The training will be delivered through face to face sessions to the target participants. A session on diversion will approximately last around 3:30 hours to 4:00 hours. The session will be highly interactive and include presentations, issues for discussions, case studies and group exercises. Participants are expected to fully engage in all the exercises.

### 3. Training Outline

- ⇒ Definition, concepts and guiding principles – the topic focuses on the defining a diversion and related concepts followed by its guiding principles.
- ⇒ Diversion process – it will explore different stages of diversion and factors and circumstances for diversion.
- ⇒ Diversion by Police, OAG and police – it will cover procedures followed by stakeholders in executing diversion, including roles of concerned stakeholders in diverting a child from formal proceeding.

- ⇒ Diversion agreement – this part discusses the details of the diversion agreement and factors to be considered before arriving at an agreement. It will also cover an important process that includes submission of a diversion agreement to the court.
- ⇒ Monitoring and compliance – this part will detail out roles of probation officer and content of the monitoring and compliance assessment report followed by completion of diversion program and issues and challenges.

#### **4. Course instructors**

Judges, Senior Attorney's, Police personnel's, lawyers, probation officers and any other relevant official with expertise in the field of child justice and its guiding principles.

## Training Module 4

### Alternative measures

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**Information  
available in  
Chapter 4**



**Time required  
3:30-4:00  
Hours**



**Learning objectives**

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#### **Further readings**

- ⇒ The CRC and Beijing Rules
- ⇒ The Child Care and Protection Act 2011
- ⇒ Penal Code of Bhutan 2004
- ⇒ Civil and Criminal Procedure Code 2001
- ⇒ Diversion guidelines 2019
- ⇒ Prosecution Guidelines 2019
- ⇒ SOP in dealing with CICL

- ⇒ Know alternative measures available to the CICL.
- ⇒ Learn guiding principle that arrest, detention and punishment is applied as last resort.
- ⇒ Diversion as alternative measure in lieu of arrest, prosecution and imprisonment
- ⇒ To know administration of child justice in terms of investigation, prosecution, disposition, care, treatment and rehabilitation

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#### **Target Participant**

Probation officers, Police officials, Prosecutors, Children, Lawyers, Judges, Bench clerks, Social workers, CSO and its employees and students.

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## TIME BREAKDOWN

Time	Topic	Contents
<b>30 Mins</b>	<b>Introduction</b>	Introduction to the workshop, agenda, objectives, participants, and their expectations. Explain important guiding principles concerning diversion
<b>120 Mins</b>	<b>Alternative measure</b>	Based on the chapter on the alternative measure, the lecture will include guiding principles for alternative measure, types of alternative measure and monitoring of alternative measure.
<b>30 Mins</b>	<b>Issue discussion &amp; questions</b>	After the lecture, a few issues will be presented to the participants. The participants will take a few minutes to study the issue. They may also discuss in pairs and present their analysis of the issue.
<b>30 Mins</b>	<b>Case study</b>	This part will be a case application. A case in handouts will be provided to participants after dividing them into small groups. They will be asked to identify the principles in response to the case
<b>15 Mins</b>	<b>Closing or recap</b>	There will be a recap at the end of the session. The recap can be done by the trainer or trainee or all of them together about important matters learned during the session.





## Course detail

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### 1. Overview

The training on the alternative measure encompasses guiding principles and alternative measures available for a CICL. The other part will focus on the different types of alternative sentencing for a CICL. It will cover factors that must be considered while awarding a judgement by a court. It will also cover monitoring and supervision of alternative measures.

### 2. Mode of delivery

The training will be delivered through face to face sessions to the target participants. A session on diversion will approximately last around 3:30 hours to 4:00 hours. The session will be highly interactive and include presentations, issues for discussions, case studies and group exercises. Participants are expected to fully engage in all the exercise.

### 3. Training Outline

- ⇒ Guiding principles – it will elaborate on the guiding principles and rights available to a child and the best interest of the child as the primary consideration.
- ⇒ Alternative measure of CICL – It will have different alternative measures which includes admonition, cautioning, diversion, conditional discharge and family group conferencing.
- ⇒ Alternative sentencing – this topic will focus on the effort to provide alternative sentencing rather than incarceration which includes admonish, probation, suspension of sentence, community service, *thrimthue* and restitution.
- ⇒ Monitoring and supervision – this part will discuss the monitoring and supervising the alternative measures provided to the child.

### 4. Course instructors

Judges, Senior Attorney's, Police personnel's, lawyers, probation officers and any other relevant official with expertise in the field of child justice and its guiding principles.

## Training Module 5

### Trial and sentencing

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**Information  
available in  
Chapter 5**



**Time required  
3:30-4:00  
Hours**



**Learning objectives**

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#### Further readings

- ⇒ The convention on the rights of a child
- ⇒ The Child Care and Protection Act 2011
- ⇒ Office of the Attorney General Act 2015
- ⇒ Penal Code of Bhutan and Civil Procedure code
- ⇒ Diversion and Prosecution Guidelines 2019
- ⇒ SOP in dealing with CICL

- ⇒ Elucidate concept and guiding principles concerning trial and sentencing of CICL;
- ⇒ Able to understand rights of child during the adjudication and role of key stakeholders dealing with CICL;
- ⇒ Comprehend the role of the prosecutor and judges during a trial that involves child.
- ⇒ Acquaint with the importance of different stages of court proceedings.
- ⇒ Develop coherence in conducting a fair trial involving the CICL.

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#### Target Participant

Probation officers, Police officials, Prosecutors, Children, Lawyers, Judges, Bench clerks, Social workers, CSO and its employees and students.

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## TIME BREAKDOWN

Time	Topic	Contents
<b>30 Mins</b>	<b>Introduction</b>	Introduction to the workshop, agenda, objectives, participants, and their expectations. Explain important guiding principles concerning diversion
<b>120 Mins</b>	<b>Lecture on Trial and sentencing</b>	Based on the chapter on the trial and sentencing of a child, the lecture will include guiding principles for conducting prosecution, adjudication and sentencing.
<b>30 Mins</b>	<b>Issue discussion &amp; questions</b>	After the lecture, a few issues will be presented to the participants. The participants will take a few minutes to study the issue. They may also discuss in pairs and present their analysis of the issue.
<b>30 Mins</b>	<b>Case study</b>	This part will be a case application. A case in handouts will be provided to participants after dividing them into small groups. They will be asked to identify the principles in response to the case
<b>15 Mins</b>	<b>Closing or recap</b>	There will be a recap at the end of the session. The recap can be done by the trainer or trainee or all of them together about important matters learned during the session.



## Course detail

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### 1. Overview

The training on the trial and sentencing encompasses guiding principles and rights of CICL during a conduct of trial by Courts. It includes roles of stakeholders, child justice process and due diligence in child justice. It describes salient feature of the child bench and its importance followed by preliminary enquiry and conduct of inquiry. It explores the hearing stages and rights of a child in each stage. The sentencing part will cover the guiding principles and a type of sentencing that a child is entitled to in consideration of special provision.

### 2. Mode of delivery

The training will be delivered through face to face sessions to the target participants. A session on diversion will be approximately last around 3:30 hours to 4:00 hours. The session will be highly interactive and include presentations, issues for discussions, case studies and group exercises. Participants are expected to fully engage in all the exercise.

### 3. Training Outline

- ⇒ Guiding principles and rights of CICL in a trial – it will elaborate on the guiding principles and rights available during trial.
- ⇒ Key stakeholders – It will explore roles of key stakeholders in administration of child justice.
- ⇒ Prosecution process – it will explore different stages of starting from receipt of a case till initiation of prosecution. It will cover due diligence in child
- ⇒ Adjudication of CICL – this part discusses the details of the child bench and its advantages, followed by the conduct of inquiry on matter concerning a CICL.

- ⇒ Family group conferencing – this topic comprises purpose and conditions under which conference can take place. It will also elaborate on the procedure and stakeholders involved
- ⇒ Sentencing of CICL – it will explore guiding principles and types of sentencing for a child. In addition, it will also highlight on special provision.

#### **4. Course instructors**

Judges, Senior Attorney's, Police personnel's, lawyers, probation officers and any other relevant official with expertise in the field of child justice and its guiding principles.

## Training Module 6

# Rehabilitation and Reintegration

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**Information  
available in  
Chapter 6**



**Time required  
3:30-4:00  
Hours**



**Learning objectives**

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### Further readings

- ⇒ The UDHR and CRC.
- ⇒ Nelson Mendala Rules, Beijing Rules 1985, Havana Rules, UN Bangkok Rules 2010.
- ⇒ The Child Care and Protection Act 2011.
- ⇒ SOP in dealing CICL.

- ⇒ Knowing the essential principles and importance of rehabilitation and reintegration;
- ⇒ Learn when should the child's rehabilitation and reintegration begin;
- ⇒ Identify various international and national laws that encourage rehabilitation and reintegration.

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### Target Participant

Probation officers, Police officials, Prosecutors, Children, Lawyers, Judges, Bench clerks, Social workers, CSO and its employees and students.

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## TIME BREAKDOWN

Time	Topic	Contents
<b>30 Mins</b>	<b>Introduction</b>	Introduction to the workshop, agenda, objectives, participants, and their expectations. Explain important guiding principles concerning diversion
<b>120 Mins</b>	<b>Rehabilitation and Reintegration</b>	Based on the chapter on rehabilitation and reintegration, the lecture will include guiding principles for conducting prosecution, adjudication and sentencing.
<b>30 Mins</b>	<b>Issue discussion &amp; questions</b>	After the lecture, a few issues will be presented to the participants. The participants will take a few minutes to study the issue. They may also discuss in pairs and present their analysis of the issue.
<b>30 Mins</b>	<b>Case study</b>	This part will a case application. A case in handouts will be provided to participants after dividing them into small groups. They will be asked to identify the principles in response to the case
<b>15 Mins</b>	<b>Closing or recap</b>	There will be a recap at the end of the session. The recap can be done by the trainer or trainee or all of them together about important matters learned during the session.



## Course detail

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### 1. Overview

The training on the rehabilitation and reintegration includes introduction to the concepts of reintegration and rehabilitation and its guiding principles. It outlines placement procedures and requirements of separate facilities. It will cover provisions on early release and visits followed by monitoring and compliance. The chapter explores protection against legal consequences and different categories of institutional activities for CICL. The topic will also dwell on care, counseling and incomplete sentences.

### 2. Mode of delivery

The training will be delivered through face to face sessions to the target participants. A session on diversion will approximately last around 3:30 hours to 4:00 hours. The session will be highly interactive and include presentations, issues for discussions, case studies and group exercises. Participants are expected to fully engage in all the exercise.

### 3. Training Outline

- ⇒ Definition, concepts and guiding principles – it defines and explain important concepts behind rehabilitation and reintegration.
- ⇒ Placement procedure and separate facilities – it outlines where to place a child and related facilities a center must have to provide care and protection.
- ⇒ Visit and early release – covers provisions on visit and early release and related provisions.
- ⇒ Monitoring and compliance – dwells on the importance of effective supervision and role of competent authorities in



providing necessary mechanism for monitoring and review of institutions.

- ⇒ Care and counseling – outlines the importance of care for a child in conflict with law and lists out services and programs that emphasizes on care and counseling.
- ⇒ Categories of institutional activities – discuss varieties of trainings to enable a child to reintegrate back to the society.

#### **4. Course instructors**

Judges, Senior Attorney's, Police personnel's, lawyers, probation officers and any other relevant official with expertise in the field of child justice and its guiding principles.

## Training Module 7

### Offence against a child

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**Information  
available in  
Chapter 7**



**Time required  
3:30-4:00  
Hours**



**Learning objectives**

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#### Further readings

- ⇒ CRC and UN Guidelines on child victims.
  - ⇒ Child Right Committee comments, Council of Europe on child justice
  - ⇒ Declaration of basic principles of justice for victims, principles on access to legal aid
  - ⇒ UNODC, Handbook on Justice for Victims.
  - ⇒ Constitution, CCPA, Penal Code, CCPC, Labour laws
- ⇒ Know essential international guiding principles when child becomes a victim of a crime.
  - ⇒ Recognize guiding principles under domestic laws in dealing with child victims.
  - ⇒ Enhance their knowledge and skills to conduct child interview.
  - ⇒ Understand different categories of offences committed against a child.
  - ⇒ Elucidate rights under the international and domestic laws in case of crime against a child.
  - ⇒ Know the penalties or sentencing imposed under domestic law.

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#### Target Participant

Probation officers, Police officials, Prosecutors, Children, Lawyers, Judges, Bench clerks, Social workers, CSO and its employees and students.

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## TIME BREAKDOWN

Time	Topic	Contents
<b>30 Mins</b>	<b>Introduction</b>	Introduction to the workshop, agenda, objectives, participants, and their expectations. Explain important guiding principles concerning diversion
<b>120 Mins</b>	<b>Lecture on the Offence against a child</b>	Based on the chapter on the Offence against a child, the lecture will include presentations on the different types of offences committed. It will cover international instruments and domestic legislations on the offences against a child
<b>30 Mins</b>	<b>Issue discussion questions &amp;</b>	After the lecture, a few issues will be presented to the participants. The participants will take few minutes to study the issue. They may also discuss in pairs and present their analysis of the issue.
<b>30 Mins</b>	<b>Case study</b>	This part will be a case application. A case in handouts will be provided to participants after dividing them into small groups. They will be asked to identify the principles in response to the case
<b>15 Mins</b>	<b>Closing or recap</b>	There will be a recap at the end of the session. The recap can be done by the trainer or trainee or all of them together about important matters learned during the session.



## Course detail

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### 1. Overview

The training on the offences against a child encompasses of international law and categories of offences under our domestic laws. It will provide an extensive overview of offences and probable sentences in case of commission of an offense.

### 2. Mode of delivery

The training will be delivered through face to face sessions to the target participants. A session on diversion will be approximately last around 2:30 hours to 3:00 hours. The session will be highly interactive and include presentations, issues for discussions, case studies and group exercises. Participants are expected to fully engage in all the exercise.

### 3. Training Outline

- ⇒ International law on offences against a child – it will elaborate on the guiding principles and categories of offences under the international law.
- ⇒ Categories of offences against a child – It will explore all kinds of offences stipulated under the act. it will explain what constitutes a particular offense and discuss the probable sentencing.
- ⇒ Prohibition of child labour – this part will identify a type of labour that constitutes child labour under the law laws and its prohibition.

### 4. Course instructors

Judges, Senior Attorney's, Police personnel's, lawyers, probation officers and any other relevant official with expertise in the field of child justice and its guiding principles.

## BIBLIOGRAPHY

### 1. List of international and regional instruments

- ❖ *Universal Declaration on Human Rights*, General Assembly resolution 217 A, Paris 10 December 1948.
- ❖ *United Nations Convention on the Right of the Child*, opened for signature on 20 November 1989, UNTS, vol. 1577 (entered into force to 2 September 1990)
- ❖ *International Covenant on Civil and Political Rights*, opened for signature December 19, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976);
- ❖ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted on December 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987).
- ❖ *Optional Protocol to the Convention on the Right of a Child on the involvement of children in arm conflict*, adopted by the General Assembly on 25 May 2000 (entered into force on 12 February 2002)
- ❖ *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, adopted on 25 May 2000 by resolution A/RES/54/263 at the fifty-fourth session of the General Assembly of the United Nations (Entry into force: 18 January 2002)
- ❖ *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“The Beijing Rules”), the UN General Assembly Resolution: A/RES/40/33 (passed on 29 November 1985).
- ❖ *United Nations rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules), (adopted by the General Assembly in 1990).
- ❖ *UN Guidelines for the Prevention of Juvenile Delinquency* (Riyadh Guidelines), Adopted by the Un General Assembly during its 68th plenary meeting on 14 December 1990.
- ❖ *UN Standard on Alternatives to Imprisonment* (Tokyo Rules), adopted by the United Nations in 1990.

- ❖ *UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders 2010*, adopted by the United Nations in 2010.
- ❖ *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, adopted by General Assembly resolution 45/113 (14 December 1990).
- ❖ *UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders 2010*, adopted by the United Nations in 2010.
- ❖ *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*; Committee on the Rights of the Child, General Comment No.12.
- ❖ *UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, ECOSOC resolution 2005/20.
- ❖ *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, the General Assembly resolution 40/34 (adopted on 29 November 1985).
- ❖ *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, Principles 4-5, Guidelines 7-8.
- ❖ *United Nations Standard Minimum Rules for the Treatment of Prisoner*, General Assembly resolution 70/175, annex, adopted on 17 December 2015.
- ❖ *European Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 1950 (entered into force in 1953).
- ❖ *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, opened for signature on 26 November 1987 (entered into force on 1 February 1989).
- ❖ *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, adopted on 17 November 2010.
- ❖ *African Charter on the Rights and Welfare of the Child*, adopted by the Organization of African Unity (OAU) in 1990 (entered into force in 1999).

- ❖ *African Charter on human and people's rights* (Adopted on 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), (entered into force on 21 October 1986).
- ❖ *United Nations Human Right Treaty Bodies*: UN treaty Database available at:  
[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=20&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=20&Lang=EN)
- ❖ *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*, signed in 2002.
- ❖ *SAARC Convention on Regional Arrangement for the Promotion of Child Welfare in South Asia* (enacted on 5 January 2002), entered into force on 15 November 2005.

## 2. List of statutes

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- ❖ *Civil and Criminal Procedure Code of Bhutan 2001*
- ❖ *Penal Code of Bhutan 2004*
- ❖ *Labour and Employment Act of Bhutan 2007*
- ❖ *Judicial Service Act of Bhutan 2007.*
- ❖ *Thromde Act of Bhutan 2007.*
- ❖ *Constitution of the Kingdom of Bhutan 2008*
- ❖ *Local Government Act of Bhutan 2009*
- ❖ *Prison Act of Bhutan 2009*
- ❖ *Child Care and Protection Act of Bhutan 2011*
- ❖ *Penal Code (Amendment) Act of Bhutan 2011*
- ❖ *Child Care and Protection Rules and Regulation of Bhutan, 2015*
- ❖ *Office of the Attorney General Act 2015.*
- ❖ *Narcotics and Psychotropic substances, the Narcotic Drugs, Psychotropic Substances and Substance Abuse Act of Bhutan 2015.*
- ❖ *Diversion Guidelines for Child in Conflict with Law 2019*
- ❖ *Guidelines for Prosecution (Child in Conflict with the Law) 2019*

### 3. Statutes of other countries

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- ❖ *Indian Penal Code 1860*
- ❖ *Children and Young Persons Act, 1933*
- ❖ *Children and Young People Act, 1963.*
- ❖ *Penal Code of Singapore, 1972*
- ❖ *Youth Criminal Justice Act, 2003*
- ❖ *Juvenile Justice and Delinquency Prevention Act 1974*
- ❖ *Juvenile Justice (Care and Protection of Children) Act of India, 2015*

### 4. List of manuals, documents and materials

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- ❖ Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers, Penal Reform International Head Office, 60-62 Commercial Street London E1 6LT, United Kingdom available at [www.penalreform.org](http://www.penalreform.org)
- ❖ Juvenile Justice Training Manual: Facilitator's Guide and Participant's Materials, UNICEF & Penal Reform International 2006
- ❖ Juvenile Justice Reform Commission "*the Right of Children in Conflict with the Law*" Ministry of Justice of Montenegro Juvenile Justice Reform Commission, UNICEF, 2007.
- ❖ United Nations Office for Drug Control and Crime Prevention, "*Handbook on Justice for Victims*" New York 1999.
- ❖ Ten-Point Plan for Fair and Effective Criminal Justice for Children available at [www.penalreform.org](http://www.penalreform.org)
- ❖ The Standard Operating Procedure on dealing with Child in Conflict with law
- ❖ Defining Young Adulthood, University of San Francisco
- ❖ Standard Operating Procedure on dealing with Child in Conflict with law
- ❖ Improving the Protection of Children in Conflict with the Law in South Asia, Regional Parliamentary Guide available at: <https://www.refworld.org/pdfid/51e7b5e24.pdf>



- ❖ *Protection of Women and Children, First Responder's Guide Manual 1*, Royal Bhutan Police 2016.
- ❖ *Protection of Women and Children, Investigate interviewing manual 2*, Royal Bhutan Police 2016.
- ❖ *Protection of Women and Children, Specialist Investigators manual 3*, Royal Bhutan Police 2016.

**Forms**

**and**

**Annexure**

## PRE-TRAINING QUESTIONNAIRE AND EXPECTATIONS

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**NOTE: PLEASE COMPLETE THE QUESTIONNAIRE AND RETURN TO THE FACILITATOR**

NAME	
DESIGNATION	
AGENCY	

Briefly describe your job responsibilities and some experience in working with child with conflict with law

Name any other training or studies attended on the child justice

Write three expectations from this training?

Do you have specific question or concern which you feel must be shared during this training? If any, mention your question.

## SAMPLE TRAINING AGENDA

### Day 1

Time	Session	Purpose	Mins
9:00	Introduction	<ul style="list-style-type: none"> <li>• Opening ceremony</li> <li>• Overview of workshop</li> <li>• Objectives</li> <li>• Introduction of the trainers and participants</li> <li>• Knowing expectations</li> </ul>	30
9:30	The Principles of child justice	<ul style="list-style-type: none"> <li>• Explain concepts of child justice</li> <li>• Know the guiding principles</li> <li>• International, regional and domestic legal provisions</li> </ul>	90
11:00	Tea break		30
11:30	Pre-trial rights of a child	<ul style="list-style-type: none"> <li>• Definitions and Guiding principles</li> <li>• International, regional and domestic laws</li> <li>• Rights of CICL</li> <li>• Arrest and its procedure</li> </ul>	90
13:00	Lunch Break		60
14:00	Pre-trial rights of a child Cont....	<ul style="list-style-type: none"> <li>• Key stakeholders and their roles</li> <li>• Other stakeholders and their roles</li> </ul>	90

		<ul style="list-style-type: none"> <li>• Pre-trial assessment and its procedure</li> </ul>	
<b>15:30</b>	Tea break		<b>30</b>
<b>16:00</b>	Diversion	<ul style="list-style-type: none"> <li>• Explain concepts and guiding principles</li> <li>• Touch on diversion process</li> </ul>	<b>60</b>

## Day 2

Time	Session	Purpose	Mins
<b>9:00</b>	Diversion Cont...	<ul style="list-style-type: none"> <li>• Factors in determining diversion</li> <li>• Initiation of diversion</li> <li>• Diversion by Police, OAG and Court</li> <li>• Stakeholders in diversion and their roles</li> <li>• Diversion agreement</li> <li>• Monitoring and compliance</li> </ul>	<b>120</b>
<b>11:00</b>	Tea break		<b>30</b>
<b>11:30</b>	Alternative measures	<ul style="list-style-type: none"> <li>• Guiding principles</li> <li>• Alternative measures for CICL</li> <li>• Family group conferencing</li> <li>• Alternative sentencing</li> </ul>	<b>90</b>
<b>13:00</b>	Lunch Break		<b>60</b>
<b>14:00</b>	Alternative measures Cont...	<ul style="list-style-type: none"> <li>• Monitoring and supervision of alternative sentencing</li> </ul>	<b>90</b>
<b>15:30</b>	Tea break		<b>30</b>
<b>16:00</b>	Trial & sentencing	<ul style="list-style-type: none"> <li>• Guiding principles</li> <li>• Rights during trial</li> <li>• Roles of stakeholders</li> </ul>	<b>60</b>

### Day 3

Time	Session	Purpose	Mins
<b>9:00</b>	Trial & sentencing cont...	<ul style="list-style-type: none"> <li>• Prosecution process involving CICL</li> <li>• Check-list in prosecution process</li> <li>• Adjudication of CICL</li> <li>• Sentencing and its guiding principles</li> <li>• Alternative and special provision</li> </ul>	<b>120</b>
<b>11:00</b>	Tea break		<b>30</b>
<b>11:30</b>	Rehabilitation & reintegration	<ul style="list-style-type: none"> <li>• Explain concepts and its guiding principles</li> <li>• International and domestic law on rehabilitation and integration</li> </ul>	<b>120</b>
<b>13:30</b>	Lunch Break		<b>60</b>
<b>14:30</b>	Offences against a child	<ul style="list-style-type: none"> <li>• International and regional</li> <li>• Categories of offence against a child</li> <li>• Probable sentencing for the offender</li> </ul>	
<b>16:30</b>	Closing session		<b>30</b>
<b>17:00</b>	Closing tea		<b>30</b>

## TRAINING FEEDBACK FORM - SAMPLE

Name (optional)	
Designation	
Agency	

**Note: Please fill up the feedback form to improve our future training programs**

Question: Based on your current training experience, please tick most appropriate answer between (strongly agree) to (strongly disagree)

Question matter	Strongly disagree	disagree	Agree/d isagree	agree	Strongly agree
Excellent coverage on the subject matter					
Training was useful and refreshing					
Training materials were adequately provided					
It fulfilled my learning expectations					
Contents are relevant to my work and experience					
There was proper management of time					

Trainer allowed us participate during session					
Such training should be provided in future to other					
Meeting venue was excellent					
Food and lodging were good					
Training management was exceptional					

**Question: Rate the individual training session from (1=poor) to (5=outstanding)**

Sessions	Content of session	Delivery of presentation	Training Exercise
The principles of child justice			
Pre-trial rights of a child			
Diversion			
Alternative measures			
Trial and sentencing			
Rehabilitation & reintegration			
Offences against a child			



### Answer the following questions

Mention five important things that you learned from this training

Which of the training session was not useful? Give reasons

Which of the training session was most useful? Why?

What the trainers and organizers could have done to make this training better

List out some expectations that this training failed to achieve

## POST TRAINING ASSESSMENT QUESTIONNAIRE - SAMPLE

**Name (optional)**

**Designation**

**Agency**

### Test your learning: Circle the best answer

- 1) Which of the following international instruments was first to proclaim that childhood is entitled to special care and assistance?
  - a) UDHR
  - b) UNCRC
  - c) ICCPR
  - d) Beijing Rules
- 2) The first binding document of the UN that covers to protect and care the rights of the children?
  - a) Havana Rules
  - b) Convention against torture
  - c) UNCRC
  - d) Two optional protocols
- 3) The UN CRC Came into force in the year
  - a) 1989
  - b) 1990
  - c) 1991
  - d) 1992
- 4) The special domestic legislation that deals with child care and protection
  - a) CCPC
  - b) CCPPA
  - c) Constitution
  - d) Prison Act

- 5) Under Bhutanese law, a child in conflict with the law (CICL) under CCPA is a child who is
- a) Below 12 years
  - b) Above 12 years
  - c) Below 10 years
  - d) Above 10 years
- 6) Minimum age of criminal responsibility under Bhutanese law is?
- a) Below 12 years
  - b) Above 12 years
  - c) Below 10 years
  - d) Above 10 years
- 7) Arrest of a child must be guided by which of the following principles?
- a) Not subject to arbitrary arrest
  - b) Not subject to torture or threat
  - c) Apprehend only on sufficient ground or probable cause
  - d) Arrest by warrant
  - e) All of the above
- 8) Diversion can be done by?
- a) OAG
  - b) RBP
  - c) Court
  - d) All of the above
- 9) Which of the following is not an alternative measure?
- a) Admonition
  - b) Cautioning
  - c) Diversion
  - d) Sentencing
  - e) Conditional discharge
- 10) Cautioning is usually done by?
- a) Judge
  - b) Police
  - c) Prosecutor
  - d) Victim

- 11) Which of the following factors does the court must consider while awarding the judgement?
- a) Child's age
  - b) Emotional, mental and intellectual maturity
  - c) Family Background
  - d) Circumstances under which the crime was committed
  - e) All of the above
- 12) Based on the guiding principles, which of the following is not the main stakeholder during the trial of a child?
- a) Judge
  - b) Parents
  - c) Child
  - d) Police
- 13) In order to initiate prosecution, which of the following tests must be fulfilled?
- a) Evidentiary test
  - b) Public Interest Test
  - c) Both evidentiary and public interest test
  - d) None of the above
- 14) Cautioning is usually done by
- a) Judge
  - b) Prosecutor
  - c) Police
  - d) Probation officer
- 15) The rehabilitation or training facilities can receive a child
- a) Only with court order
  - b) Without court order
  - c) With consent of parents
  - d) With consent of a child

## Notes

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