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**The Child Care and Protection  
Act of Bhutan 2011**

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## **Preamble**

WHEREAS, in keeping with the State Policy of promoting full development of the human personality;

WHEREAS, it is expedient to make appropriate measures to ensure that children are protected against all forms of discrimination and exploitation including trafficking, prostitution, abuse, violence, degrading treatment and economic exploitation;

WHEREAS, it is expedient to promote those conditions that are conducive to cooperation in community life and the integrity of the extended family structure;

In order to consolidate and provide care, protection, guidance, counseling, treatment, development, rehabilitation, adjudication and disposition of matters relating to children in conflict with law in the most favorable manner and in the best interest of the child;

Parliament of the Kingdom of Bhutan do hereby enact the Child Care and Protection Act of Bhutan 2011 on the 29<sup>th</sup> Day of the 3<sup>rd</sup> Month of Iron Female Rabbit Year of the Bhutanese Calendar corresponding to the 31<sup>st</sup> Day of May, 2011 at its 7<sup>th</sup> Session of the First Parliament as follows:

## **Chapter 1 Preliminary**

### **Short title, Commencement and Extent**

1. This Act shall:
  - (a) Be called THE CHILD CARE AND PROTECTION ACT OF BHUTAN 2011;
  - (b) Come into force on the 4<sup>th</sup> Day of 5<sup>th</sup> Month of Iron Female Rabbit Year of the Bhutanese Calendar, corresponding to the 5<sup>th</sup> Day of July 2011; and
  - (c) Extend to the whole of Bhutan.

### **Repeal**

2. The provision of any laws, Acts, regulations, rules, directives, notifications and enactments that are inconsistent with this Act shall hereby be repealed.

## **Chapter 2 Principles and Objectives**

### **Principles**

3. In 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.

4. A child shall be treated fairly and equally with respect and dignity and shall not be discriminated against on the grounds of race, sex, language, religion, political or other status.
5. A child shall not be subjected to arbitrary arrest, detention, imprisonment or deprivation of liberty. Any arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.
6. The child justice system is essential to uphold the rights of children keeping them safe and promoting their physical and mental well-being.
7. The prevention of child offences is an essential part of crime prevention in the society and requires efforts on the part of the entire society to ensure the harmonious development of the child with respect for and promotion of their personality from early childhood.
8. A child in conflict with the law shall 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.
9. A child under confinement shall be provided with conducive physical environment and accommodation which are in keeping with rehabilitative aims of residential placement and 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.

10. 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.
11. Programs and services established under this Act for children shall:
  - (a) Be culturally appropriate including any rules that may be required for the discipline of the children;
  - (b) Promote their health and self respect;
  - (c) Foster their sense of responsibility; and
  - (d) Encourage attitudes and the development of skills that will help them develop their potential as members of the society.
12. A child who is placed in an appropriate home established under this Act shall:
  - (a) Be provided with a safe and conducive living environment;
  - (b) Be assisted to maintain relationships with the child's family and community;
  - (c) Be consulted about, and allowed to participate in making decisions affecting the life of a child, taking the child's capacity to understand into consideration;
  - (d) Be given privacy that is appropriate in the circumstances including privacy in relation to the

- child's personal information;
  - (e) Have access to dental, therapeutic and other medical services necessary to meet the child's needs;
  - (f) Have access to education appropriate to the child's age and development; and
  - (g) Receive appropriate help and assistance in making a successful re-integration into society.
13. A child shall have a right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of any action taken under this Act.
14. A child shall not be held liable for the violation of law on account of any act or omission which did not constitute an offence under the law in force at the time of the commission or omission of such an act.

### **Objectives of the Act**

15. The objectives of this Act are as follows:
- (a) To create a uniform child justice system and legal framework with adequate provisions for dealing appropriately with all aspects of children in the context of the changing economic, social and cultural conditions prevailing in the country;

- (b) To set up a system of administration of child justice that is in the best interest of the child and to provide a comprehensive child justice system with special attention to prevention and treatment of children in conflict with the law;
- (c) To take all necessary measures to ensure that all children in conflict with the law are treated equally and fairly;
- (d) To protect their basic rights provided under the Constitution and other laws in force;
- (e) To provide for diversion and alternative sentencing in lieu of arrest, prosecution, conviction and imprisonment where it is appropriate;
- (f) To prevent stigmatization, victimization and criminalization of children and facilitate social reintegration;
- (g) To provide for officers and establishment of facilities required for the care, protection, assistance, education, and treatment of children in difficult circumstances;
- (h) To provide for establishment of institution and facilities required for the care, treatment, education, training and rehabilitation of children in conflict with the law;
- (i) To establish norms and standards for the administration of child justice in terms of investigation, prosecution, adjudication, disposition, care, treatment and rehabilitation; and
- (j) To constitute special offences in relation to a child.



### **Age of a child**

16. A person below the age of 18 years shall be treated as a child evidenced by an official record maintained by the Government, birth certificate or any other document proving the age of the child.
17. In the absence of the records or certificate mentioned under Section 16 or discrepancies regarding the age of the child, it may be based on information from the child or testimonies of other persons considering the physical appearance of the child or expert medical opinion and other relevant evidences.

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

18. The age at the time of the commission of the crime shall be taken into consideration for determining whether the accused is a child or not.
19. Where an inquiry or proceeding has been initiated against a child in conflict with the law and during the course of such inquiry or proceeding, if the child ceases to be a child, the inquiry or proceeding shall be continued and the orders may be made in respect of such person as if such person is a child.

### **Decriminalization**

20. All institutions or organizations whether government or private shall protect the dignity of the child observing the principle of decriminalization, diversion and restorative justice.

### **Protection of child privacy**

21. A child's right to privacy shall be respected at all stages of legal proceedings including the investigation by any agency.

### **Separation from Parents**

22. A child shall not be separated from ones parents against ones will, except when competent authorities subject to legal review determine, in accordance with the applicable law and procedures that such separation is necessary for the best interest of the child.

### **Restraint or use of force**

23. Restraint or force shall be used only when the child poses an imminent threat of injury to oneself or others and only when all other means of control have been exhausted. The use of restraint or force shall never be used as a means of punishment.

## **Chapter 3**

### **Prevention of child offences**

#### **Role of Central and Local Government**

24. The Central and Local Government shall disseminate and create awareness on the rights and responsibilities of the child and relevant child law.
25. The Central and Local Government through concerned agencies or institutions shall provide community based services responding to special needs, problems, interests and concerns of children including appropriate counseling and guidance to the children, guardians and families.

### **Role of education institution**

26. Education institution shall care for and protect the child through, among others, the following measures:
- (a) Work with families and communities to promote understanding about children;
  - (b) Enhance the academic and social image of children;
  - (c) Rehabilitate children in difficult circumstances and children in conflict with the law;
  - (d) Provide continuing education to children who have dropped out of schools, children in difficult circumstances and children in conflict with the law; and
  - (e) Equip children with information and skills to deal with personal safety.

### **Role of the mass media**

27. The mass media shall assist in the promotion of child rights and responsibilities and prevention of offences committed by children through positive publication.
28. The media shall have the duty to maintain professional standards including privacy in reporting and covering cases of children in difficult circumstances and children in conflict with the law. In all publicity concerning children, the best interest of the children shall be taken into consideration.
29. Unless the Court authorizes, any adjudication proceeding shall not be published in any newspaper, magazine, or

transmitted through audio-visual electronic medium in any form which may disclose the identity of the child.

30. To protect the best interests of the child, no report in any newspaper, magazine or news letter of any inquiry regarding a child under this Act shall disclose the name, address or school or any other particulars which may lead to the identification of the child nor shall any picture of any such child be published.

### **Participation of community**

31. The community may provide or strengthen a wide range of community based support measures for children, including community development centre, recreational facilities and other services to respond to the needs of children.
32. The services and supportive measures may be provided by the community to deal with the difficulties experienced by children.
33. The community shall endeavor with assistance from the government, to establish special facilities to provide adequate shelter for children who have no home to live in or not able to live at home.
34. Volunteers, voluntary or civil society organizations, social institutions and other community resources may be called upon to contribute effectively to the rehabilitation of children in difficult circumstances and in conflict with law.

### **Participation of family**

35. The government shall endeavor to take measures and develop programs to provide families with the opportunity to learn about parental roles and obligations with regard to child development and child care, promoting positive parent-child relationships, sensitizing parents about the problems of children and encouraging their involvement and promote community based activities.
36. Families and individuals shall, with the best interest of their children in mind, participate in programs and measures under this Act.

### **Socialization process**

37. The government shall emphasize on preventive policies facilitating the socialization and integration of a child in conflict with law, through family, community, schools, vocational training, and voluntary and civil society organizations.

## **Chapter 4 Institutions and Competent Authority**

### **Child Justice Court**

38. The Druk Gyalpo on the recommendation of the National Judicial Commission may establish a Child Justice Court or Bench for exercising the powers and discharging the duties conferred by this Act.

39. The Court shall be presided over by a judge having knowledge of child psychology and child welfare.
40. Till such time where there is no separate Child Justice Court, the regular Court shall exercise the powers and discharge the duties as prescribed under this Act.
41. The Court shall notwithstanding anything contained in any other law for time being in force but save as otherwise expressly provided in this Act have the power to deal exclusively with all proceedings under this Act relating to a child in difficult circumstances or a child in conflict with the law.
42. The Child Justice Court shall be the Court of First Instance in matters relating to children.

### **Jurisdiction**

43. The Court mentioned under this Act shall have the jurisdiction over the adjudication of any matter or cases relating to children within the general jurisdiction of the Court as prescribed under the Civil and Criminal Procedure Code of Bhutan.
44. The Court may hold proceeding or conduct hearing, where:
  - (a) The cause of action arose;
  - (b) A child, principal plaintiff or defendant resides; or

- (c) In actions by or against any agent or agency of the Government where the Government authority is located.

### **In-Situ Proceedings**

- 45. The Court may hold proceedings or conduct hearings at any site other than the place where the Court is situated whenever it considers that it is necessary, expedient or otherwise in the best interest of the child to do so.
- 46. The Court shall record the reasons in writing when it holds and conducts such hearings at any place or area other than where such Court is situated.

### **Child Homes**

- 47. The Government shall endeavor to establish and maintain as many child homes as may be necessary for:
  - 1. Giving assistance and protection to children in difficult circumstances;
  - 2. Providing accommodation, maintenance and facilities to children in difficult circumstances for the development of the child's character and abilities and give necessary education and training for protection against moral danger and exploitation; or
  - 3. Performing such other functions as may be prescribed in the rules and regulations made under this Act for the children in difficult circumstances to ensure all round growth and development of the child's personality.

48. Children in difficult circumstances shall be placed in child homes only after exhausting all other possible alternate care options.

### **Remand Homes**

49. The Government shall endeavor to establish and maintain as many remand homes as may be necessary for:
1. The temporary care of the child during the period of any inquiry or adjudication;
  2. Providing accommodation, maintenance and facilities for medical examination and treatment; or
  3. Performing such other functions as may be prescribed in the rules and regulations made under this Act.

### **Special Homes**

50. The Government shall endeavor to establish and maintain as many special homes as may be necessary for:
- (a) The care of the child in conflict with law;
  - (b) Providing accommodation, maintenance and facilities for development of the child's character, abilities, education, training, and provide rehabilitation for protection against moral danger and exploitation; or
  - (c) Performing such other functions as may be prescribed in the rules and regulations made under this Act.



### **Closed Facilities**

51. The Government shall endeavor to establish and maintain as many closed facilities as may be necessary for:
- (a) The care of the child in conflict with law involving an offence of third degree and above;
  - (b) Providing accommodation, maintenance and facilities for development of the child's character, abilities, education, training, and provide rehabilitation for protection against moral danger and exploitation; or
  - (c) Performing such other functions as may be prescribed in the rules and regulations made under this Act.

### **Aftercare Homes**

52. The Government shall endeavor to establish and maintain as many Aftercare Homes as may be necessary to facilitate social reintegration by providing for:
- 1. The temporary care of a child released from the home and who requires further care and assistance;
  - 2. Ensuring a smooth transition from detention to life outside the home;
  - 3. Assisting a child in finding suitable and gainful employment, foster homes or processing for adoption; and
  - 4. Monitoring the child and collection of feedback on their performance from the Organization where a

rehabilitated young person works and maintaining a record of the child released from a home on a monthly basis for a period of one year from the date of release.

### **Management of the Homes**

53. The Government shall by rules made under this Act provide for the management of the child homes, special homes, remand homes, closed facilities and aftercare homes including the standards and the nature of services to be maintained by them and the circumstances under which and the manner in which those institutions may be recognized as child homes, special homes, remand homes, closed facilities or aftercare homes

### **Competent authority**

54. The National Commission for Women and Children or any other authority established by the government shall be the competent authority under this Act.

### **Child Welfare Committee**

55. A Child Welfare Committee shall be constituted to advice the competent authority on matters relating to the establishment and maintenance of homes, mobilization of resources, provision of facilities for assistance, protection, education and training of children in difficult circumstances and for education, training and rehabilitation of children in conflict with the law and coordination amongst the agencies involved.

56. The Child Welfare Committee shall consist of a chairperson

and such number of members as determined by the government from relevant agencies, and the community of whom one shall be a woman having knowledge on child rights and the laws relating to children.

57. The committee shall have the function of:
1. Advising and supervising any institution established under this Act;
  2. Recommending to the competent authority regarding matters concerning children;
  3. Coordinating with the stakeholders on the identification and prevention of the issues relating children; and
  4. Where relevant, recommend any agency or organization to provide their services to prevent and protect children in difficult circumstance and in conflict with the law.

### **Child Welfare Officer**

58. A Child Welfare Officer referred to in this Act shall be a person possessing such qualifications as may be prescribed by rules and appointed by the Government to assist and protect the children in difficult circumstances.

## **Chapter 5**

### **The Child in Difficult Circumstances**

#### **Child in difficult circumstances**

59. A child in difficult circumstances is a child who:
- (a) Is found without having any home or settled place of abode and without any ostensible means of subsistence and is a destitute;
  - (b) Has a parent or guardian who is unfit or incapacitated to take care of or exercise control over the child;
  - (c) Is found to associate with any person who leads an immoral, drunken or depraved life;
  - (d) Is being or likely to be abused or exploited for immoral or illegal purposes; or
  - (e) Is a frequent victim at the hands of individuals, families or the community.

#### **Production of a child in difficult circumstances**

60. If any person is of the opinion that a child is apparently a child in difficult circumstances as mentioned in Section 59, such person shall inform the police or child welfare officer.
61. Whenever the information has been given to the police, the police shall inform the child welfare officer expediently.
62. When information is given to an officer in charge of a

police station or to a child welfare officer about any child in difficult circumstances such police officer or child welfare officer shall record the information and take such action thereon as deem fit.

63. A child in difficult circumstances taken into the care of the police under this Act shall be transferred to the child welfare officer within 24 hours after being taken into the care of the police excluding the time necessary for the journey from the place.

**Role and duties of the police and child welfare officer dealing with a child in difficult circumstances**

64. The police and the child welfare officer shall have the discretion to determine whether a child is in difficult circumstances. Upon affirmative determination, subsequent care and assistance shall be provided for the child.
65. The police shall ensure care and safety of the child till transferred to a child welfare officer. The police shall deal with the child with sympathy and understanding in a decent and polite manner.
66. When child welfare officer takes a child in difficult circumstances into care or receives such child from the police, child welfare officer shall consider the most appropriate ways and means of providing assistance and

protection to the child in accordance with the rules made under this Act

67. Where a child is taken into the care of a child welfare officer, the officer shall inform the parent or legal guardian of the child within twenty four hours.
68. In the absence of such parents or any legal guardian, the child welfare officer shall inform the person with whom the child is residing.

**Fact finding regarding child in difficult circumstances**

69. The child welfare officer shall take into consideration before providing protection and assistance to the child in difficult circumstances under this Act:
  - (a) The age of the child;
  - (b) Physical and mental health of the child;
  - (c) Reports made by the Police official in case of the child being transferred by the police;
  - (d) Such other circumstances as may be in the opinion of the child welfare officer required to be taken into consideration for the welfare of the child; and
  - (e) Specific assistance needed based on physical or mental condition of the child.
70. The child welfare officer may:
  - (a) Provide counseling to the parents or legal guardian on how to look after the child and direct the parents or legal guardian to look after the child in a proper

manner including the provision of necessary assistances to the family as the child welfare officer deems fit;

- (b) Monitor the way the parents or legal guardian look after the child to ensure the child's safety and welfare;
- (c) Send the child to a place of safety until he ceases to require assistance and protection or till the child attains the age of 18 years; or
- (d) Recommend the child for adoption in accordance with the relevant laws.

71. Where the child is sent to a place of safety, the parent or guardian of the child can request a Court to review the decision of the child welfare officer and return the child to the parent or guardian, unless the Court is of the opinion that the parent or guardian is unfit or unable to provide proper care for the child; in such a case, the child shall be sent to a place of safety as deemed fit by the child welfare officer.

## **Chapter 6**

### **Child in Conflict with the Law**

#### **A child in conflict with law**

72. A child in conflict with the law is a child who is above 12 years of age and found to have committed an offence.

### **Rights of the child in conflict with the law**

73. Every child in conflict with the law shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
74. No child shall be subjected to arrest or detention without warrant from the Court except in accordance with the Civil and Criminal Procedure Code and this Act.
75. A child detained or confined for an offence shall be treated with respect and dignity.
76. A child detained or confined shall be kept separate from adult offenders at all times.
77. A child in detention and who is deprived of liberty shall have the right to maintain contact with family members through correspondence and visits except in exceptional circumstances in the best interest of the child.
78. A child who is arrested and detained shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the arrest, detention and to testify as a witness on ones own behalf.
79. Except if a recidivist or habitual offender, a convicted child shall have the right to minimum sentencing.



## **Role and duties of the police regarding the child in conflict with the law**

80. The police shall assess whether a child is in conflict with law or not and subsequent proceedings shall take place only after the preliminary issue has been decided in the affirmative.
81. The police shall deal with the child in conflict with the law with sympathy and understanding in a decent and polite manner. Discretion shall be exercised in the best interest and well being of the child.
82. The Officer In-charge of the Police Station shall maintain detailed records of the child.
83. Subject to Chapter 12 of this Act, the Officer In-Charge of the Police may consider the child in conflict with the law for diversion program if it is in the best interest of the child and the offence committed by the child is not of serious nature.

## **Chapter 7**

### **Assessment, Investigation, Inquiry and Detention**

#### **Appointment of Probation Officers**

84. A probation officer referred to in this Act shall be a person possessing such qualifications as may be prescribed by rules and appointed by the Government.
85. Subject to the provisions of this Act and rules made under it, a probation officer may:

- (a) Visit or receive the child in conflict with law at reasonable interval as may be specified in the probation order;
- (b) Ensure that the child in conflict with law observes the conditions of the bond executed under this Act;
- (c) Advise and assist the child in conflict with law; and
- (d) Perform any other duty which may be prescribed in the rules made in accordance with this Act.

### **Assessment of child**

86. A child shall be assessed by the probation officer before conducting any inquiry by the police. The police upon arresting a child or summoning a child for any matter shall notify a probation officer for assessment.
87. The assessment of a child may take place in any suitable place identified by the probation officer. However, the place identified shall be conducive to privacy.
88. During the assessment of a child under this Act, the following person may be present:
- (a) The prosecutor or the victim or any legal representative of the victim;
  - (b) The legal representative of the child or the child's parents or guardian;
  - (c) The police official; and
  - (d) Any person whose presence is necessary or desirable for the assessment.

89. The probation officer may request a police official to:
- (a) Obtain any information regarding the child to be assessed including documents required for the completion of assessment of a child;
  - (b) Locate a child's parents or guardian; and
  - (c) Assess the child in obtaining the best information required for the completion of the assessment of the child.

**Duties of the probation officer during assessment**

90. The probation officer at the time of assessment of a child shall:
- (a) Explain to the child and parent or guardian of the child if any, about the purpose of the assessment;
  - (b) Inform the child on the child's rights and responsibilities under the law;
  - (c) Explain to the child the immediate procedures to be followed; and
  - (d) Inquire from the child whether or not the child intends acknowledging responsibility for the offence in question.
91. The probation officer may at any stage during the assessment of a child consult with:
- (a) The prosecutor on any matter relating to the child;

- (b) The police official who has arrested the child or who is responsible for the investigation of the matter; or
  - (c) Any person who may provide information necessary for the assessment.
92. The probation officer on the completion of the assessment shall make a report in a prescribed manner with recommendations as to:
- (a) The prospects of diversion in accordance with this Act;
  - (b) The possibility of the child to obtain bail;
  - (c) The possibility of the release of the child into the care of a parent or an appropriate guardian or person, if the child is in detention;
  - (d) The placement, where applicable, of a child in a particular place of safety, secure care facility or prison; or
  - (e) The transfer of the matter to the Court for further proceeding.
93. The copy of the report of the assessment made by the probation officer shall be forwarded to the Court if legal proceeding is to be initiated.

### **Investigation**

94. During the investigation, a police official or any investigating officer may:
- (a) Examine any person;
  - (b) Make a local investigation;
  - (c) Hold a scientific, technical or expert investigation; or

- (d) Perform any other functions, which are legally justified by the case and supported by the law.
95. The police or any investigating officer recording the statement and the person providing any record or evidence regarding the matters relating to the child shall sign all statements and records emanating from the investigation.
96. It is mandatory for the police or any investigating officer to get statement of a material witness questioned during the course of investigation.
97. The police official or any investigating officer shall complete the investigation within one month, if a child in conflict with the law is remanded after the production before the Court.
98. If the investigation cannot be completed in time as required under Section 97, the police official or any investigating officer shall produce the child before the Court with a justification for the failure to complete investigation. Thereafter, the Court may authorize the detention of the child for an additional period not exceeding:
- (a) Two weeks, if satisfied that adequate grounds exist for doing so; or
  - (b) One month, where the investigation relates to a heinous crime.

### **Inquiry, assessment and investigation**

99. The police official or any investigating officer shall not

question or interview a child if the child at the time of inquiry, assessment and investigation is:

- (a) Without ones parent or guardian or legal representative;
- (b) Unable to appreciate the significance of questions and answers made at the time of inquiry; or
- (c) Under the influence of alcohol, drugs, illness, ailment or condition that negates the capacity to comprehend the process. This section shall apply to any child offender or child witness.

### **Search**

100. A child shall only be searched by a law enforcement officer of the same sex respecting the privacy of the child at all times.

### **Detention**

101. Institutionalization or detention of the child pending adjudication shall be used only as a measure of last resort and for the shortest possible period of time.

102. Whenever possible, if the Court deems fit in the best interest of the child, the detention pending adjudication may be substituted by alternative measure, such as close supervision, intensive care or placement with family or in educational setting or home.

103. While in custody, a child shall receive care, protection and all necessary basic assistance-social, educational, training,

psychological, medical and physical that the child may require in view of age, sex, and personality.

## **Chapter 8**

### **Arrest and Pre-adjudication Detention**

#### **Arbitrary Arrest**

104. No child shall be subjected to arrest or detention, except in accordance with this Act.

#### **Arrest of child**

105. The police official shall always endeavor to deal with the alleged offence committed by a child, wherever appropriate without arresting except when required for the purpose of justice or security.

106. The child shall be informed of the grounds of arrest before being arrested. The police shall without delay, consider issues of the child as expeditiously as possible.

107. A child arrested on a criminal charge shall:

- (a) Be informed promptly and directly of the charge through the child's parents, member of family, legal guardian or legal representative;
- (b) Have the opportunity to be represented by a Jabmi; and
- (c) Have legal or other appropriate assistance in the preparation and presentation of the child's defense.

108. A child arrested on a criminal charge shall be accompanied by a parent, member of family, guardian or legal representative during questioning or investigation by the police unless it is considered not to be in the best interest of the child, in particular, taking into account the age or situation.
109. Upon arrest the child shall have the right to remain silent and not to be compelled to give evidence or confess guilt.

#### **Arrest of child below the age of criminal liability**

110. If the child arrested or taken into custody is 12 years of age and below, the authority that has effected such arrest or under whose custody the child is kept, shall immediately release the child to the custody of ones parents or guardian, or in absence thereof, the child's nearest relative.
111. Notwithstanding anything contained in section 110, the Court may order the parent or guardian to pay damages.

#### **Procedure for taking the child into custody**

112. Any police official or law enforcement officer while taking a child into custody shall:
- (a) Explain to the child in a language which a child can understand, the reason for being placed under custody;



- (b) Inform the child of the offence the child is alleged to have committed and of the rights entitled under the Constitution and the laws;
- (c) Properly provide the details of the identification of the child;
- (d) Refrain from using vulgar or profane language;
- (e) Avoid violence or unnecessary force or display of any threat to the child;
- (f) Refer a child immediately to an authorized medical officer for a physical and mental examination; and
- (g) Ensure that all statements obtained from the child is signed by the child 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.

### **Barring the use of handcuff**

113. No handcuff shall be used on a child of 12 years and below, and handcuffs may only be used on a child above 12 years if there is exceptional circumstance warranting such use.

### **Production before a Judge**

114. Any child arrested and detained with or without warrant shall be produced before a Court within twenty-four hours of the arrest exclusive of the time necessary for the journey from the place of arrest and the Government holidays.

### **Bail and Bond**

115. The Court may during any stages of proceeding including investigation, release the child on bail who is in detention into the care of a parent or any guardian if:

- (a) It is in the interests of justice and in the best interests of the child; and
- (b) Upon execution of a bond for such sum of money by one or more sureties. However, if the bail amount is not paid and a child is not a serious threat to oneself or public safety, the child may be released after posting a bond on a promise to return and other conditions set by the Court.

### **Failure to comply with the bail order**

116. If a child fails to comply with any order, the Court may upon inquiry into the reasons for the child's failure to comply with the order decide to:

- (a) Cancel the bail;
- (b) Alter the bail conditions; or
- (c) Make any other appropriate order.

### **Release after advice/admonition**

117. The police official may allow a child to go home after advice or admonition upon undertaking by the child along with a parent, member of family, guardian, or legal representative if the child is :

- (a) 12 years and below; or
  - (b) Above 12 years of age but the offence is of violation and the child is not a recidivist.
118. 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.
119. 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.

### **Conditional discharge**

120. If the offence committed by a child is of petty misdemeanor and if the Court deems fit, it may make an order discharging the child subject to the condition that the child enter a bond, with or without sureties for not committing further offence and being of good behavior during such period not exceeding one year from the date of the order as may be specified therein.
121. If a child in conflict with law discharged under this Act commits any offence or does not comply with the conditions set in the order during the period of conditional discharge, the child shall be liable to be sentenced for the original offence in addition to the sentence for the offence committed.

### **Custody and remand**

122. When a child in conflict with the law is arrested and not released on bail, the officer in charge of the police shall cause the child to be kept in a remand home or a place of safety for such period during the period of the inquiry and adjudication.

## **Chapter 9 Adjudication**

### **Preliminary inquiry by the Court**

123. A preliminary inquiry shall be held before the formal hearing is conducted before the court.

124. The court during the preliminary inquiry shall:
- (a) Establish whether the matter can be diverted before conducting actual adjudication proceeding;
  - (b) Establish whether the matter should be considered for adjudication or not;
  - (c) Identify a suitable diversion option, where applicable;
  - (d) Provide an opportunity for the prosecutor to assess whether there are sufficient grounds for the matter to proceed for adjudication;
  - (e) Ensure that all available information relevant to a child, circumstances and the nature of offence for any option made under this Act; and
  - (f) Determine the release or placement of the child pending conclusion of the preliminary inquiry.
125. A preliminary inquiry may be held in a court or any other place suitable for the child. The inquiry shall be conducted in an informal manner by asking questions, interviewing persons at the inquiry and eliciting information.
126. The following person shall be present during the preliminary inquiry:
- (a) The child in conflict with law;
  - (b) The child's parents or guardian or legal representative;
  - (c) The probation officer;

- (d) The prosecutor or the victim or any legal representative of the victim;
  - (e) The police official; and
  - (f) Any person whose presence is deemed necessary.
127. The judge may exclude any of the persons to be present at the preliminary inquiry, if the presence of such person including the parents or guardian of a child is not in the best interest of the child.
128. Information regarding a concerned child may be submitted at the preliminary inquiry by any person who possesses such information.
129. A child, parents, member of the family, guardian or legal representative and the prosecutor or police, shall be given an opportunity to question any person giving evidence regarding the child at the preliminary inquiry.

### **Joint preliminary inquiry**

130. 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.

### **Separate inquiry**

131. Where a child is accused of an offence for which such child and any person who is not a child is under inquiry, separate inquiry shall be conducted for such child and the other person accused of an offence.

### **Conducting adjudication proceeding**

132. If a child does not acknowledge responsibility for the offence with which he is being charged, no further questions regarding such offence may be raised to the child and the prosecutor or the police may proceed for adjudication.
133. No information furnished at a preliminary inquiry may be used in any subsequent proceeding before the court unless in the best interest of the child.
134. The judge shall keep the record of the preliminary inquiry.

### **Release of child post preliminary inquiry**

135. The judge may release a child into the care of parents, member of the family or guardian after preliminary inquiry upon the recommendation of the probation officer or any relevant authority considering relevant factors including:
  - (a) The best interest of the child;
  - (b) Whether the child has any previous convictions;
  - (c) The availability of the child's parents or guardian;
  - (d) The likelihood of the child returning to the preliminary inquiry for further appearance;
  - (e) The period for which the child has been in detention;
  - (f) The risk that the child may endanger oneself or any other person;
  - (g) Whether the detention would prejudice a child in preparation of the defense case;

- (h) The likelihood of the penalty if the child is convicted of an offence; or
- (i) The physical health, mental and psychology of the child.

### **Presumption of innocence**

136. Every child alleged of having committed any penal offence shall:

- (a) Be presumed innocent until proven guilty according to law; and
- (b) Have the matter determined without delay by a competent, independent and impartial judicial authority in a fair hearing according to this Act, in presence of legal or other appropriate assistance unless it is considered not to be in the best interest of the child.

### **Show cause hearing**

137. The Court may summon a child in conflict with the law along with other parties for the show cause hearing in accordance with the Civil and Criminal Procedure Code of Bhutan.

### **Proceedings**

138. The proceeding of the child before a Court may, with due regard to the child's procedural rights, be conducted in an informal manner to encourage maximum participation by the child during the proceedings.



139. The proceeding shall be conducive to the best interest of the child and shall be conducted in an atmosphere of understanding, which shall allow the child to participate therein and to express freely.
140. During the adjudication a child shall be accompanied by a parent, member of family, guardian or legal representative unless it is considered not to be in the best interest of the child, in particular, taking into accounts the age or situation of the child.
141. If the parents or guardian of the child cannot be traced after reasonable efforts and considering that any further delay would be prejudicial to the best interests of the child, the Court may dispense the requirement and conduct the proceeding accordingly.
142. Where a child is not assisted by a parent or guardian, and such child requests assistance, an independent observer may, if such observer is available be included to accompany the child during the proceeding.
143. The adjudication proceeding for cases relating to the child shall be in-camera.
144. During the inquiry, investigation process and at the adjudication proceeding, if the child cannot understand or is unable to comprehend the language used, the government shall provide free assistance of an interpreter.
145. During the miscellaneous proceeding, the judge shall inform the child of:-

- (a) The nature of allegations;
- (b) The rights; and
- (c) Procedures to be followed in accordance with this Act and Civil and Criminal Procedure Code of Bhutan.

### **Expeditious proceedings**

146. The Court shall conduct:

- (a) All the inquiries and proceedings as expeditiously as possible; and
- (b) Uninterrupted hearing unless Court grants an adjournment or stay of proceeding in accordance with the Civil and Criminal Procedure Code of Bhutan.

### **Summary adjudication**

147. The party to the suit can request for a summary adjudication to dispose off a case when the child pleads guilty. However, the Court shall not dispose the case until the prosecution to the full satisfaction of the Court has established proof beyond reasonable doubt.

148. On proceeding to hear and decide the charge summarily, the Court shall:

- (a) Reduce the charge and the judgment in writing; and
- (b) Ask the child whether the child pleads guilty.

### **Dispensing with attendance of child**

149. If at any stages of the adjudication proceeding, a judge is

satisfied that the attendance of the child is not essential for the purpose of hearing proceeding, the judge may dispense the attendance of the child and conduct the proceeding in the absence of the child.

### **Separate Hearing**

150. Where a child is accused of an offence for which such child and any person who is not a child have been charged, the Court shall direct separate adjudications for such child and the other person accused of a crime.

### **Legal representative**

151. A child who is in conflict with the law shall have the right to a legal representative.

152. A child shall have the right to give instructions to a legal representative in the language of the child's choice, with the assistance of an interpreter whenever necessary.

### **Duty of the legal representative**

153. A legal representative of a child shall:

- (a) Explain to the child, the child's rights and duties under the law;
- (b) Attend all the hearings in the Court;
- (c) Appear whenever required by the Court or an investigating team; and
- (d) Ensure that the adjudication is concluded without delay.

### **Cross-examination of witness**

154. A 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 family or guardian.

### **Subpoena**

155. The Court may:

- (a) Subpoena any person whose presence is necessary for the benefit of the child;
- (b) Permit the attendance of any person who may be able to contribute to the proceeding; or
- (c) Order any further documentation or information, which may be relevant or necessary to the proceeding.

### **Separate conveyance**

156. Where a child is taken to and from the Court, the child shall be transported in a separate conveyance from that of adult offenders.

## **Chapter 10 Disposition**

### **Disposition**

157. The Court shall take into account any information that is available about the child's age, emotional, mental and intellectual maturity, antecedents and circumstances before awarding the judgment.

158. In addition to Section 157 in sentencing a child for an offence, a court shall have regard to:
- (a) Subject to this Act, the general principles applying to the sentencing of all persons;
  - (b) The child justice principles;
  - (c) The nature and seriousness of the offence ;
  - (d) The child's previous deviant records;
  - (e) Any information about the child, including a pre-sentence report;
  - (f) Any considerations relating to programs and services established for the child in conflict with law;
  - (g) The victim's interest; and
  - (h) Other possible opportunities to engage in reformation, rehabilitation, educational programs, employment, etc.

### **Compensation**

159. The Court may order the child sentenced for an offence to pay appropriate compensatory damages in addition to the sentence or in lieu of the sentence.
160. No compensation to the victim shall be waived except by the victim or by the order of the Court, if the child or the parents are not in position to pay the ordered compensation.

### **Default on payment of compensation**

161. An amount of compensation ordered to be paid under this Act, and any amount of costs ordered by the Court to be paid, is a debt owed by the parents or guardian to the person in whose favour the order is made.

### **Alternative sentencing**

162. A Court may admonish or reprimand the child and dismiss a prosecution, if the nature of the charge constituting an offence does not threaten or cause harm or the offence is of a trivial nature.
163. If a child is found to be guilty of the offence, the Court considering the age of the child may order the child in conflict with law to be sent to a home.
164. Where the Court is satisfied on inquiry that a child has committed an offence, notwithstanding anything to the contrary contained in any other law for the time being in force, the Court shall have the discretion of allowing non-custodial measures to assist the reintegration of the child into society.

### **Probation and suspension of the sentence**

165. Where the Court is of opinion that it is expedient, having regard to the circumstances including the nature of the offence and character of the child, may grant probation or suspend the sentence of the convicted child, if a competent

authority submits a petition on the grounds of good and exemplary behavior of the child.

166. The Court shall not issue probation or suspension order unless the child gives commitment to the Court not to commit any offence and to be of good behaviour during the period stated in the commitment, and the child's parents or guardian gives commitment to supervise the child to that effect. The Court may use discretion to issue probation or suspension order without requiring the child to execute a bond.
167. Subject to the provision of Sections 165 and 166, the Court may direct the child in conflict with law released on probation to be placed under the care of the child's parents, guardian or other fit person approved for this purpose by the Court.
168. If the child commits any further offence or does not comply with the conditions set in the probation or suspension order, the Court may cancel such order and hold the child liable to be sentenced for the original offence in addition to the sentence for any new offence committed if any.
169. A child conditionally released on probation or the sentence being suspended shall be required to:
  - (a) Make oneself available to the Court as and when required;
  - (b) Remain within the limits of any particular area as prescribed in the Court order; and

- (c) Abstain from doing any act, which violates the conditions of the release.

170. While making a probation order the Court may:

- (a) Direct the child be placed under the supervision of a probation officer named in the order;
- (b) Impose for such conditions as deemed necessary for the supervision; and
- (c) Set conditions that the Court deems necessary in the best interest and benefit of the child.

### **Community service**

171. If an offence committed by a child is a fourth degree felony and below, the Court may in lieu of imprisonment, order community service.

### **Thrimthue**

172. Except for the recidivist or child habitually in conflict with law, the Court may make an order to pay fine in lieu of imprisonment, if the offence is a felony of the fourth degree and below.

### **Restitution**

173. If the child is responsible for damaging the property of another person, the Court may order the child, parents or the guardian to restore the property damaged.



## **Guiding Principles in Adjudication and Disposition**

174. In the adjudication and disposition of the case by a Court, it shall be guided by the following principle:
- (a) The well-being of the child;
  - (b) A proportionate sentencing considering the best interest of the child;
  - (c) Minimum restriction on the personal liberty; or
  - (d) Appropriate alternative sentencing.
175. In all cases before the Court makes any decision, it shall properly investigate into the background and circumstances in which the child is living including family background, performance and conduct in school, educational institutions, society and the conditions under which the offence has been committed.

## **Appeal**

176. A child convicted by the Court or any person on the child's behalf or any institution may within ten days from the date of judgment prefer an appeal in accordance with the Civil and Criminal Procedure Code of Bhutan.
177. If the appeal is not made within ten days the order or the decision of the Court shall be final and binding.

## **Chapter 11**

### **Legal Advice and Cautioning**

#### **Legal Advice**

178. Subject to the provisions of this Act, the child in conflict with law shall at all times be entitled to consult a legal counsel in private.
179. No person shall at any time do or say anything to dissuade a child in conflict with law from obtaining legal advice.

#### **Legal Aid**

180. If a child or the parents or guardian of the child is an indigent person, the State shall provide legal assistance to the child in all the proceedings of the case for one's defense where the interest of justice so requires.

#### **Cautioning**

181. A child suspected of a commission of an offence shall be cautioned on legal implication before being inquired or questioned about the offence. However, a child may not be cautioned if inquiries or questions are for:
- (a) Solely for establishing the identity of the child in conflict with law;
  - (b) Obtaining information in accordance with any statutory requirement;
  - (c) Furtherance of the proper and effective conduct of a search, or to seek cooperation while carrying out a search; or

- (d) Seeking verification of a written record.
182. The cautioning of a child on legal implication shall not form part of the child's criminal history.
183. A police officer who administers or requests the administration of a caution to a child shall take all necessary steps to ensure that the child understands the purpose, nature and effect of the cautioning. Such necessary step shall include:
- (a) Explaining the matters to the child clearly and in detail;
  - (b) The presence of the child's parents, guardian or legal representative; and
  - (c) An interpreter or other person able to communicate effectively with the child.

### **Cautioning procedure involving apology to victim**

184. The procedure of administering a cautioning to a child for an offence of not serious nature may involve the child apologizing to a victim if:
- (a) The police official administering or requesting the administration of the cautioning considers that an apology is an appropriate course of action in the particular circumstances of the case;
  - (b) The child is willing to apologize; and
  - (c) The victim is willing to participate in the procedure.

185. A child suspected of a commission of an offence after being cautioned be released without going through the legal process.

## **Chapter 12**

### **Diversion**

#### **Diversion**

186. Diversion means alternative measures for dealing with a child in conflict with law other than judicial proceeding.
187. A child in conflict with the law may undergo a diversion program without undergoing court proceeding if the alleged offence committed by the child is not of a serious nature.
188. The child shall be given the opportunity to consult with legal or appropriate assistance on the appropriateness and desirability of the diversion offered before making any diversion agreement and submitting it to the Court.
189. The consent of the child or the parents or guardian of the child shall be obtained before recommending the diversionary process.
190. Diversion may be used at any time of the proceeding. If the diversion is made prior to the court proceeding, the concerned authorities involved in making of such diversions shall submit a copy to the Court detailing the terms and conditions agreed to by the parties.

### **Factors in determining diversion program**

191. In determining whether diversion is appropriate and desirable, the following factors shall be taken into consideration:

- (a) Nature and circumstance of the offence charged;
- (b) Frequency and severity of the offence committed;
- (c) Age, maturity and intelligence of the child;
- (d) Family environment of the child;
- (e) Reparation of the injury and compensation to the victim;
- (f) Safety of the community; and
- (g) Best interest of the child.

### **Circumstances for diversion**

192. The child may be considered for diversion under the following circumstances:

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

- (f) The victim's view; and
- (g) The willingness of the child along with parents or guardian to reconcile with the person or community affected by the harm caused by the child.

193. In addition to the conditions made in the diversion agreement, the following requirements shall also be included:

- (a) Restitution of property or reparation of the damage caused if any;
- (b) Indemnification for consequential damages if any;
- (c) Written or oral apology;
- (d) A compulsory school attendance of the child monitored by a specified probation officer;
- (e) A child to report to a specified probation officer at a time specified in such order so as to enable such person to monitor the child's behaviour;
- (f) A child to spend a specified number of hours with the family;
- (g) To abide by an agreement made between the child and authority to comply with certain standards of behaviour;
- (h) A child to associate with a person or institution who can contribute to the child's positive behaviour;
- (i) Participation in available community based programs, including community services; or
- (j) Place a child under the supervision and guidance of an appropriate person.

194. While allowing diversion, the Court or police officer shall identify a probation officer to monitor the child's compliance with the diversion agreement.
195. In the event of a child failing to comply with any condition of the diversion option, the probation officer shall notify the police officer or prosecutor concerned in writing of such failure. Unless the police officer or prosecutor decides to proceed with the prosecution of the child concerned, the court may, after consideration of the views of any person present at the inquiry, decide to apply the same option with altered conditions.

### **Family Group Conferencing**

196. The Court may refer the offence to the family group conferencing, if the court considers referral to a conference would:
  - (a) Allow the offence to be appropriately dealt with or without the court making a disposition order; and
  - (b) Help the Court to make an appropriate disposition order.
197. The Court may appoint an officer or any other person as the Court deems fit to act as a facilitator in order to organize family group conferencing if:

- (a) An offence committed by a child is of petty misdemeanor or misdemeanor;
  - (b) The commission of such act by the child is for the first time;
  - (c) The child pleads guilty; and
  - (d) The Judge is of the opinion that the child can be reformed without being prosecuted.
198. Apart from the child, the following person shall be present during the family group conferencing:
- (a) The parents or guardian of the child;
  - (b) Any person requested by the child;
  - (c) The police official dealing with the case of the concern child;
  - (d) The probation officer;
  - (e) A representative of the community such as gup, mangmi, tshogpa, etc;
  - (f) The victim of the alleged offence and if such victim is under the age of 18 years, the victim's parents or guardian; and
  - (g) Any other persons as the judge thinks fit shall take part in the conferencing.
199. The police official or the probation officer shall record the details of and reasons for anything agreed at the family group conferencing and shall forward a copy of such record to the judge.



200. After submitting the copy of the family group conferencing report, and if the judge feels that such agreement would benefit the child, he may make the order accordingly.
201. In making an order, the Court shall consider:
- (a) The child's participation in the conference;
  - (b) The agreement;
  - (c) Anything to be done by the child under the agreement; and
  - (d) The report regarding the conferencing.
202. The Court may include all or any of the terms of the agreement in or as part of the disposition order and impose requirements on the child to ensure compliance with the terms so included.
203. 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.

## **Chapter 13**

### **Rehabilitation and Reintegration**

#### **Rehabilitation**

204. The Government shall by rules made under this Act establish homes for rehabilitating the children who are in conflict with the law, reintegrating them into the society and to their families, and as a productive member of the communities.

#### **Court order**

205. No child shall be received in any rehabilitation or training facility without court order.

#### **Separate facilities for children**

206. The rehabilitation program or the training facilities for the children shall be separated from adults unless they are members of the same family.

#### **Institutional treatment**

207. The objective of the training and treatment of the child in the institutions established under this Act shall be to provide care, protection, education and training, with a view to assist the child in assuming constructive and productive roles in society.

208. Male and female children in conflict with the law placed in an institution shall be accommodated separately and the female child shall be given special attention as to their personal needs and problems.

209. The female child in conflict with the law shall be handled by female health personnel, correction officers and social workers.
210. In the best interest and well-being of the institutionalized child, the parents, guardians or legal representatives shall have a right of access.
211. Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or as appropriate, vocational training to the institutionalized child.

## **Chapter 14**

### **Offence Against Child**

#### **Assault of a child**

212. A person shall be guilty of the offence of assault of a child, if the person purposely or knowingly assaults the child. The offence of assault of a child shall be a violation.

#### **Cruelty to a child**

213. A person shall be guilty of the offence of cruelty to a child, if a person having the actual charge or control over the child, willfully treats the child or causes or procures the child to be treated in any manner likely to cause such child unnecessary mental or physical suffering. The offence of cruelty to a child shall be a petty misdemeanor.

### **Harsh or degrading correction or punishment**

214. A person shall be liable for the offence of harsh and degrading correction or punishment, if the person subjects a child to harsh or degrading correction or punishment measures at home, in schools or in any other institutions. Any corrective measure shall be culturally appropriate and in accordance with rules framed for discipline of children. The offence of harsh and degrading correction or punishment shall be a violation.

### **Child battery**

215. A person shall be guilty of the offence of battering a child, if a person purposely uses physical force or causes the child to be subjected to a physical force. The offence of battering a child shall be a petty misdemeanor or a misdemeanor, if aggravated circumstances are present.

### **Employment of a child for begging**

216. A person shall be guilty of the offence of employment of a child for begging, if a person employs or uses any child for the purpose of begging or causes any child to beg. The offence of the employment of a child for begging shall be a misdemeanor.

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

217. A person shall be guilty of the offence of serving alcoholic beverages to a child if a person serves, gives or cause to serve or give any alcoholic beverages to a child. The offence of serving alcoholic beverages to a child shall be a petty misdemeanor.

### **Providing Narcotic drug Psychotropic or chemical substance to a child**

218. A person shall be guilty of the offence of providing narcotic drug or psychotropic substance to a child, if a person encourages or forces any child to use any narcotic drug or psychotropic substance, except upon the order of a duly authorized medical officer. The offence of providing narcotic drug or psychotropic substance to a child shall be a felony of the fourth degree.

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

219. Any person, institution or agency shall be guilty of the offence of invasion of a child's privacy if such person, institution or agency without specific consent of the child's parents or guardian publishes any article disclosing the identity of the child in conflict with law in any newspaper, magazine or news letter or publishes or reports any proceeding regarding the child without authorization of the Court. The offence of invasion of a child's privacy shall be a petty misdemeanor and be liable to pay the amount of reasonable compensation as determined by the Court to the concerned child.

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

220. A person shall be guilty of the offence of engagement of child for the commission of crime if the person engages such child in the commission of a felony crime. The offence of the engagement of a child for the commission of the crime shall be one degree higher than the punishment for the offence committed.

### **Sale of a Child**

221. A person shall be guilty of the offence of sale of a child if a person sells a child for remuneration or any other consideration. The offence of sale of child shall be felony of the third degree.

### **Child prostitution**

222. A person shall be guilty of child prostitution if a person uses a child in sexual activity for remuneration or any other form of consideration. The offence of child prostitution shall be felony of the third degree.

### **Child pornography**

223. A person shall be guilty of child pornography if the person by representation, by whatever means, of a child engaged in real or stimulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. The offence of child pornography shall be felony of the third degree.

### **Trafficking of a child**

224. A person shall be guilty of trafficking of a child if a person recruits, transport, transfer, harbour or procure a child by means of threat, 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 over another person, for the purpose of exploitation. The offence of trafficking of a child shall be felony of the third degree.

225. Any other crime committed against a child not covered under this Act shall be dealt in accordance with the Penal Code of Bhutan.

## **Chapter 15** **Post- Disposition**

### **Post Disposition**

226. The recidivist child or a child convicted of the offence of third degree felony and above shall be placed in a closed facility with the option of being placed in the special homes on good behavior and improvement.

227. The convicted female and male child shall be kept separately in closed facilities. In case, no provision exists, room partition should be made for female and male child in conflict with law.

228.A Child below 18 years of age in conflict with law shall be kept separate from adult prisoner.

### **Categories of work for child in conflict with law**

229. The convicted child in conflict with law shall not be given any work beyond their physical and mental capabilities. Further, no child who is under adjudication shall be engaged for daily labour.

### **Medical care**

230. The police or any other institutions under which the child is detained or confined shall be responsible for providing routine medical check-up or medical treatment when required.

### **Visits**

231. The authorities of the closed facilities or any authorities under whom the child is detained or confined shall allow the parents, guardians and legal representatives to visit their child at least thrice a month.

### **Counseling**

232. The authorities of the closed facilities or any authorities shall arrange for counseling on health, substance abuse, HIV/AIDS, life skills and behavioral education, and other related topics.

### **Early release**

233. The Court may consider the early release of a child in conflict with law upon the recommendation of the Parole Board comprising of a minimum of three members as prescribed under the rules made under this Act.
234. The child in conflict with law considered for early release must have served at least half the term of sentence.

### **Incomplete sentence**

235. The placement of the child in conflict with law who has not completed serving term of sentence but has attained the age of 18 years shall be considered by the Court.



## **Chapter 16**

### **Miscellaneous**

#### **Protection against Legal Consequences and Social Stigma**

236. Notwithstanding anything contained in any other law, a child who has committed an offence and has been dealt with under the provisions of this Act shall be expunged and not suffer any disqualification attaching to a conviction of an offence under this Act.

#### **Reports to be treated confidential**

237. All documentations considered by the competent authority shall be treated as confidential. Provided that the competent authority upon the consent of the child, the parents, guardian or legal representative or upon the order of the Court may disclose the documents regarding the child.

#### **One Stop Crisis Centre**

238. In order to facilitate expeditious processing of offences against and to safe guard the best interest of the child, the government shall establish a one stop crisis centre in every major government hospital staffed by a police official, psychiatrist, social worker and a legal counsel.

#### **Financial liability**

239. The parents or guardians of the child placed in homes who have the ability to provide financial support shall contribute for the maintenance of the child as specified under the rules made under this Act.

## **Power to make Rules**

240. The competent authority may make rules to carry out the purposes of this Act regarding:-

- (a) The internal management of homes, closed facilities, and the standards and the nature of services to be maintained by them;
- (b) The procedure to be followed by a competent authority in holding inquiries under this Act;
- (c) The functions, responsibilities and inspection of closed facilities, homes, place of safety, and after care organizations;
- (d) The qualifications and duties of social workers;
- (e) The qualifications and duties of probation officers;
- (f) The use of funds for the welfare and rehabilitation of the child;
- (g) The recruitment and training of persons appointed to carry out the purposes of this Act and the terms and conditions of their services;
- (h) The modalities and establishment of Association of Social Work and Probation Services, its management and functions;
- (i) The manner in which contributions for the maintenance of a child may be ordered to be paid by a parent or guardian and by whom and the purpose for which such fund for the child shall be administered;
- (j) The conditions subject to which the child may be placed under the care of any parent, guardian or other fit person or institution under this Act, and the obligations of such persons or institutions towards the child so placed; or

- (k) Any other matter which has to be or may be prescribed.

## **Chapter 17**

### **Amendment, Authoritative Text & Definitions**

#### **Amendment**

241. The amendment of this Act by way of addition, variation or repeal shall be effected by a simple majority of the respective Houses or vote of no less than two thirds of the total members of Parliament present and voting on a motion submitted by one third of the members of either House.

#### **Authoritative text**

242. The Dzongkha text shall be the authoritative text, if there exists any difference in meaning between the Dzongkha and the English text.

#### **Definitions**

243. In this Act unless the context otherwise requires the:

- (a) “**Best Interest of the Child**” refers to totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child’s physical, psychological and emotional development. It also includes the least detrimental available alternative for safeguarding the growth and development of the child.
- (b) “**Community service**” means work for a community or other work of value to the community performed by a child.

- (c) “**Community**” means a neighborhood, vicinity or locality where the child resides.
- (d) “**Court**” means a Child Justice Court or a Bench and where no such Court or Bench has been constituted, any regular Court/Bench empowered under this Act to exercise the powers conferred on a Child Justice Court.
- (e) “**Fit person**” means, any person found fit by the competent authority to receive and take care of a child entrusted to ones care and protection on the terms and conditions specified by the competent authority.
- (f) “**Guardian**” in relation to a child, includes any person who in the opinion of the competent authority, having cognizance of any proceeding in relation to the child, has, for the time being, the actual charge of, or control over, that child.
- (g) “**Institution**” means and includes all institutions related to child care, protection and development of a child.
- (h) “**Independent observer**” means and includes a person known to the child, a person working voluntarily or in civil society organization and whose presence is accepted by the child during adjudication or other proceedings.
- (i) “**Offence**” means any act or omission made punishable under any law for the time being in force.
- (j) “**Parents**” means the father and mother of a child.

- (k) “**Place of safety**” means any place or institution, the person in charge of which is temporarily receive and take care of a child and which, in opinion of the competent authority may be a place of safety for the child.
- (l) “**Probation Officer**” means an officer appointed by the competent authority as a probation officer under this Act.
- (m) “**Supervision**” in relation to a child placed under the care of any parent, guardian or other fit person under this Act, means the supervision of that child by a probation officer for the purpose of ensuring that the child is properly looked after and that the conditions imposed by the competent authority are complied with