



ROYAL COURT OF JUSTICE

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Seek Truth & Ensure Justice



BHUTAN NARCOTICS
CONTROL AUTHORITY



Standard Operating Procedures on Case Management for Children in Conflict with the Law

Foreword

The Constitution of the Kingdom of Bhutan 2008 reflects commitments of the country towards ensuring that children are protected against all forms of discrimination and exploitation including trafficking, prostitution, abuse, violence, degrading treatment and economic exploitation. The ratification of the Convention on the Rights of the Child (CRC) including its two Optional Protocols, further confirms the country's commitment to promote and protect the rights of children.

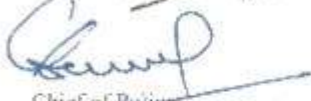
The Parliament of Bhutan passed the Child Care and Protection Act 2011 (CCPA) to ensure the provision of effective and appropriate services for the care and protection of children in difficult circumstances and children in conflict with the law. Designated as the Competent Authority to implement the Act, the National Commission for Women and Children (NCWC) strives to establish a systematic and well-coordinated protection mechanism for children in collaboration with all relevant stakeholders.

Recognizing the emerging protection issues related to women and children and the need for proper mechanisms and systems, the Standard Operating Procedures on Case Management for Children in Conflict with the Law (SOP) was developed to ensure the provision of effective, appropriate, systematic and timely services to prevent and respond to the protection issues faced by children who come in conflict with the law. The SOP contains the integral roles and responsibilities of all the stakeholders involved in dealing with children in conflict with the law. Further, it provides for the provision of a continuum of care and support services from the registration of a case to the closure, post care and reintegration services.

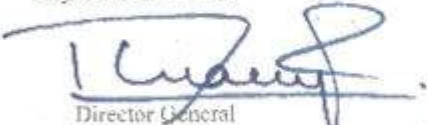
The SOP has been developed jointly by the Royal Court of Justice (RCJ), Office of the Attorney General (OAG), Royal Bhutan Police (RBP), Bhutan National Legal Institute (BNLI) and the National Commission for Women and Children (NCWC). Going forward, the onus of implementing and institutionalizing the child justice system and streamlining the approach to rehabilitate and reintegrate children in conflict with the law lies with the commitment of all the key stakeholders.



Chief Justice
Royal Court of Justice



Chief of Police
Royal Bhutan Police



Director General
Bhutan Narcotics Control Agency



Attorney General
Office of the Attorney General



Director General
Bhutan National Legal Institute



Director
National Commission for Women and Children



Chairperson
National Commission for Women and Children

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CHAPTER 1

PRELIMINARY

Objective

1. The main objectives are to:
 - (a) provide guidance in dealing with the child in conflict with the law to ensure the best interest of the children;
 - (b) standardize the procedure for dealing with child in conflict with the law (CICL) to ensure accountability, transparency, consistency and uniformity ;
 - (c) specify the respective roles of the key agencies involved with CICL; and
 - (d) enhance collaboration and coordination among the key agencies involved in administration of child justice.

Guiding Principles

2. In implementing this SoP, the key agencies and others must adhere to the Guiding Principles provided in Chapter 2 of the CCPA, and regulations, which is in line with the Convention on the Rights of Child (CRC). In determining the best interest of the CICL, the guiding factors can be referred under rule 9 of the CCPAR&R 2015, and includes the following:

- (a) *Best interest of the child*

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

- (i) the health, development, safety of the child;
- (ii) the importance of keeping children within their families;
- (iii) the taking of a child into custody only as a last resort;
- (iv) the need to rehabilitate and reintegrate children back to the society and not to focus exclusively on punishment.

(b) *Non-discrimination*

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

(c) *Participation*

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

(d) *Adopting a child-friendly approach*

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

(e) *Arrest and Detention as a last resort*

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

(f) *Respect for Children's Privacy and Confidentiality*

Confidentiality is paramount in all actions relating to children to protect them from public exposure and stigmatization. The privacy of children in conflict with the law must be respected and information relating to a child shall be shared only with appropriate authorities.

CHAPTER 2

COMPETENT AUTHORITY AND KEY INSTITUTIONS FOR CHILD JUSTICE SYSTEM

3. The following are the key institutions of child justice system:

(a) Competent Authority

The Act has identified the National Commission for Women and Children (NCWC) as the Competent Authority responsible for enforcing the provisions of the Act. Any matter pertaining to need for care and protection of children must be taken up with the Competent Authority.

(b) National Women and Children Welfare Committee

The Act envisages the setting up of a child welfare committee to advise the Competent Authority regarding establishment of homes, training and rehabilitation of children in conflict with the law and coordination amongst the agencies involved. Therefore, the National Women and Children Welfare Committee has been setup with the approval of the cabinet to function as a technical body providing advisory support and expert services to the NCWC.

(c) Dzongkhag/Thromde Women and Children Committee

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

4. Royal Court of Justice (Family and Child Bench)

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 and protection issues.

A family and child bench has been established in Thimphu Dzongkhag court in accordance with the provisions of the CCPA. However, in all other Dzongkhags, matters relating to children are dealt by the regular courts.

5. Royal Bhutan Police (Women and Child Protection Unit/Desk (WCPU/D)

The 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.

6. Bhutan Narcotics Control Authority

Bhutan Narcotics Control Authority being the nodal agency of Narcotics and Psychotropic substances, the Narcotic Drugs, Psychotropic Substances and Substance Abuse Act of Bhutan 2015 mandates the authority to provide treatment to the minors with substance use disorder as per section 152 and 154 of the Act through Treatment Assessment Panel (TAP), Drop-in Centers and other institutions based treatments.

7. Office of the Attorney General

The OAG as the central prosecuting agency of the State, reviews investigation/assessment reports referred by RBP pertaining to CICL. The OAG as mandated under Article 29 of the Constitution reviews and expedites proceedings in cases of CICL. The OAG endeavors to make exceptions in cases of CICL to protect their rights and welfare, affording them corrective measures such as alternatives to prosecutions.

8. Bhutan National Legal Institute

The BNLI as the nodal agency for conducting pre and in-service training of Judicial Service Personnel will build the capacities of judges and other judicial personnel on child justice administration. BNLI also conducts legal dissemination and awareness programs to the general public in coordination with relevant agencies.

9. Homes

The support services include the following Service Provider such as CCPA requires the establishment of various homes by the government on its own or in association with voluntary or Civil Society Organizations for the purpose of providing care and protection to contribute effectively towards rehabilitation of children in difficult circumstances and in conflict with law. The Act provides for the establishment of following homes:

10. Shelters

- (i) *Child Home* (for children in difficult circumstances to ensure the provision of education, health and other development services for the child based on the child's age, gender and ability);
- (ii) *Remand Home* (for temporary care and protection of the child during the period of inquiry or adjudication);
- (iii) *Special Home* (for the care of child in conflict with law by way of providing accommodation, facilities for development of child's character, abilities);
The Youth Development and Rehabilitation Centre at Tsimasham is the closest example of such a facility under the present scenario;
- (iv) *Closed Facilities* (for the care of child in conflict with law involving an offence of third degree and above);
- (v) *Aftercare Home* (for temporary care of child released from a home to ensure a smooth transition from detention to life outside the home);
Presently, *Nazhoen Lamtoen* a civil society organization is the only organization catering such support services.

CHAPTER 3

CHILD IN CONFLICT WITH THE LAW

Child in conflict with the law

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

Rights of the Child in Conflict with the law

12. In dealing with the CICL, the following rights must be complied with:
- (a) to be treated with respect and inherent dignity;
 - (b) to be kept separately from adult offenders at all times;
 - (c) to be transported in a separate conveyance from that of adult offenders;
 - (d) to maintain contact with family members through correspondence and visits, except in exceptional circumstances;
 - (e) to prompt access to legal and other appropriate assistance;
 - (f) of privacy to be fully respected and protected at all stages of the proceedings;
 - (g) to legal aid for children whose parents/ guardian are indigent person;
 - (h) to protection against legal consequences and social stigma;
 - (i) to alternative measures, if not a recidivist or habitual offender;
 - (j) to separate hearing, if other person accused of same crime is an adult;
 - (k) to minimum sentencing, if not a recidivist or habitual offender.
 - (l) 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;
 - (m) not to be handcuffed unless required in for the safety of the society
 - (n) not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; and
 - (o) not to be deprived, unlawfully or arbitrarily of his or her liberty.

Initial contact

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

Determination of CICL

16. In order to provide effective and meaningful services to children, it is important to determine if the child is in conflict with the law.
17. If the CICL is in need of care and protection, the Police shall refer the child to the relevant service providers.

Age Determination

18. In the absence of the record or the certificate mentioned under section 16 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 evidences.

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19. In deciding whether the accused is a child or not, the age of the child at the time of the commission of the crime shall be taken into consideration.

Child below the age of criminal liability

20. A child below the age of 12 at the time of the commission of the offence is deemed incapable of committing a crime and cannot be subject to criminal proceedings.

21. If the child is below 12 years of age and is in conflict with the law, the child must be handed over to his parents, guardian or closest relatives after advice and cautioning. A joint undertaking must be signed by the parties to ensure that the child do not come in conflict with the law again.

22. If the child is at or above the age of criminal responsibility and is alleged to have committed an offence, the child must have to be dealt through a specialized approach which takes into account their vulnerability, personality, specific needs for education and intellectual maturity.

23. If the child is determined to be a Child in Difficult Circumstances (CIDC) by the Probation Officer, the child shall be referred to the Protection Officer for necessary support.

Notification to Probation Officer

24. The police upon determining the child as CICL must notify the probation officer through CMIS or in writing or through other means.

CHAPTER 4

ASSESSMENT OF A CHILD IN CONFLICT WITH THE LAW

Assessment of child

25. The probation officer must be notified within 24 hours of a child being arrested by the police.
 - (a) The Probation Officer must, notify the Dzongkhag/Thromde Women and Children Committee or the competent authority accordingly
 - (b) The Probation Officer must ascertain and prepare the case plan immediately carry out the assessment.
 - (c) Based on the assessment, the case plan is prepared and submitted to the Chairperson of D/TWCC and the Head of the Competent Authority.
 - (d) 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.
 - (e) The probation officer must advise and assist a child in conflict with the law at all times and adopt the least intrusive interventions.
26. The following person/s may be present during the assessment of a child:
 - (a) the prosecutor or the victim or 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 other person whose presence is necessary or desirable for the assessment.

Purpose of the assessment

27. The purpose of the assessment is to learn about the child's involvement in the commission of an offence which includes, ascertaining whether the child was involved, how the child became involved in the offence. It also seeks to minimize

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trauma and stigmatization and to maximize opportunities for a positive development in best interest of the child.

28. Based on the assessment, the Probation Officer will determine and recommend the most appropriate steps for executing the procedures for referral, treatment and diversion. The assessment of a child will determine whether:
 - (a) the offence committed is serious in nature or not;
 - (b) the offence is a one-time antisocial behavior;
 - (c) the offence is a result of a child demonstrating disturbing behavior caused by mental illness including psychosocial problem or lack of conducive family environment;
 - (d) the offence is a result of a CICL, first time serious or non-serious offender; and
 - (e) the CICL is a recidivist, serious or non-serious offender.
29. Based on the assessment, the child may be dealt with appropriate alternative measures.
30. The family environment and life circumstances (poverty, homelessness etc.) must be taken into account when considering the subsequent actions to help the child.

Role of the Probation Officer during assessment

31. The probation officer can take the assistance of the police official to:
 - (a) obtain information of the child to be assessed which may include documents required for completion of assessment; and
 - (b) locate a child's parents or guardian.
32. During the assessment, the probation officer shall:
 - (a) explain the purpose of the assessment to the child and parent or guardian of the child;
 - (b) notify the child's rights and responsibilities to the child;

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- (c) explain the procedures to be followed; and
 - (d) find out whether the child intends to acknowledge responsibility for the offence.
33. The probation officer must obtain the following documents;
- (a) birth certificate to determine the age of the CICL;
 - (b) household information from Department of Civil Registration and Census (DRC); and
 - (c) any other documents, deemed necessary.
34. The probation officer must inform the child of any information that is relevant to the case or any decision being made at the earliest in a language the child best understands.

Consultation

35. At any stage of the assessment, the probation officer can consult with:
- (a) the prosecutor on any matter relating to the child;
 - (b) the investigation officer in the police; or
 - (c) any person who may provide information necessary for the assessment.

Report

36. Upon completion of the assessment, the probation officer must prepare a report that includes the following recommendations:
- (a) prospects of diversion;
 - (b) possibility to obtain bail for the child;
 - (c) 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;
 - (d) placement of a child in a place of safety;
 - (e) share the assessment report with the investigating or prosecuting agency, for further proceeding.

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37. 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.

Provisional assessment

38. Where there is an ad hoc referral for assessment of a CICL on the instruction of the court or situational requirement which may have not arisen before, the Probation Officer can carry out assessment under this chapter.

CHAPTER 5

PROCEDURAL ASPECTS RELATING TO A CHILD IN CONFLICT WITH THE LAW

Role of the police

39. The police must follow the SoP on CICL of RBP for detailed procedural aspects.
40. The police must notify the parents or legal guardian of the child immediately on initial contact. However, if parents or legal guardian cannot be located, Probation Officer will be notified.
41. The police must notify the probation officer within 24 hours upon determining that a child is in conflict with the law.
42. The police must take statement from the child only in presence of the child's parents or legal guardian.
43. In absence of the child's parents or legal guardian, the police must take statement from the child in the presence of the probation officer or independent witnesses or social worker or legal representative.
44. From the moment a child is arrested, the police officer must explain the reason for the arrest and the offence alleged to have been committed in a language the child can understand.
45. Detailed records pertaining to the child must be maintained at the police station and further forwarded to Women and Child Protection Division at the RBP, HQs.

Role of OAG

46. On receiving the Investigation/Assessment Report from RBP pertaining to CICL, the OAG shall determine whether the case merits alternative measures/ diversion as per the Diversion Guideline or prosecution as per child Prosecution Guidelines.

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47. Where a case merits alternative sentencing/ diversion, the office initiates diversion process involving the CICL and competent stakeholders.
48. Where a determination for prosecution is made, the review and determination must be expedited in line with the guiding principles and relevant laws.
49. The prosecution of the CICL will be before the Child and family Court or bench/court as designated by the Court procedure or practice.

Role of BNCA

50. BNCA can provide treatment to those minors who are involved in substance abuse as per section 141A, 152 and 154 of the Narcotic Drugs, Psychotropic Substance and Substance Abuse Act 2015. A minor committing the offence of substance abuse for the fourth time shall be liable to be sent to juvenile correctional centre for at least one year for treatment and rehabilitation.
51. Demand Reduction Division under Bhutan Narcotics Control Authority, has been mandated to look after the prevention, rehabilitation and after care services to people with substance use disorder including minors. In this regard, the prevention methods and the expansion of the services through Drop-in Centers (DIC), Rehabilitation Centers and after care services (run by the CSOs and RGoB) will be enhanced.

National Women and Child Welfare Committee

52. The WCWC will provide technical backstopping to the Competent Authority on issues and services pertaining to women and children. Further, it will comprise a pool of Experts on women and child protection issues. The functions of the committee are to provide advisory, supervisory and other technical support to the Competent Authority in the following areas:
 - (a) Advise and supervise institutions established for protecting and promoting the rights of women and children;

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- (b) Recommend regarding matters concerning protection of women and children in difficult circumstances and children in conflict with the law;
- (c) Coordinate with stakeholders on the identification and prevention of the issues relating to women and children in difficult circumstances and children in conflict with the law;
- (d) Recommend any agency or organization to provide their services to prevent and protect women and children in difficult circumstances and children in conflict with the law;
- (e) Provide technical support and expertise on issues related to women and children in difficult circumstances and children in conflict with the law;
- (f) Monitor and assess the performance of the relevant agencies in the provision of protection services to women and children;
- (g) Promote and provide inputs for operationalization and improving coordination mechanisms and SoPs on women and children related issues; and
- (h) Report and present to the NCWC twice a year and as and when necessary.

Role of the Dzongkhag/Thromde Women & Child Committee

53. Dzongkhag/Thromde Women and Children Committee is established in every Dzongkhag and Thromde called as the Dzongkhag/Thromde Women Children Committee.
54. In the event, where the child has no parent or guardian, the appropriate Dzongkhag/Thromde Women and Children Committee will appoint a guardian at the earliest, but no later than 48 hours of receiving the notification regarding the child in conflict with the law.
55. The Dzongkhag/Thromde Women & Child Committee will appoint a legal guardian for a child if:

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- (a) the parent/s are incapacitated or unfit and unable to care or act on behalf of the child;
- (b) there are reasons to believe that the presence of the parent/s pose an immediate risk to the child's life and wellbeing;
- (c) the child's parent/s are serving a prison sentence;
- (d) the child is an orphan; or
- (e) there are any other circumstances that are found not to be in the best interests of the child.

56. The Dzongkhag/Thromde Women and Children Committee must:

- (a) advise the Protection Officer;
- (b) consult, recommend and monitor the progress of the cases;
- (c) collaborate with the Competent Authority regarding matters beyond their purview;
- (d) issue directives in relation to cases in consultation with the Competent Authority;
- (e) coordinate with the stakeholders on providing after care services and support; and
- (f) monitor, assess and submit information to the Competent Authority through the CMIS at the Dzongkhag/Thromde level.

Role of the Competent Authority

57. The NCWC is designated as the competent authority and has the responsibility of ensuring promotion and protection of the rights of children in their best interest within the country and the Competent Authority must:

- (a) assess and propose amendment of legislation and policies that restrict the rights of children;
- (b) monitor the Dzongkhag/Thromde Women Children Committee;
- (c) maintain a list of the probation officer;

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- (d) provide necessary mechanism for monitoring and review of institutions that provide social service, probation services and after care;
58. A CICL must be provided with counseling and/or other necessary services where required.
59. The Competent Authority may seek assistance of CSOs and other service providers where required.

CHAPTER 6

ALTERNATIVE MEASURES FOR DEALING WITH CHILDREN IN CONFLICT WITH THE LAW

Alternative Measures

60. Alternative measures refer to programs for dealing with a CICL without resorting to formal court proceeding as an alternative to prosecution. It provides the CICL with the opportunity to make reparation to victim and the community.
61. The primary goal of alternative measures is to promote sense of responsibility, prevent criminalization, and facilitate rehabilitation and social reintegration of children.
62. Alternative measures offer the victim and community members the opportunity to be involved in resolving the case and have the accused take responsibility for their behavior, and help repair the harm that has been done to the extent possible.
63. The use of alternative measures addresses the criminal actions of the accused while preserving their dignity and requiring them to be accountable for their behavior.
64. Alternatives measures can be used in cases where the offence committed by the child is not of a serious nature. If the offence is not serious and the child has no history of past criminal behavior, the child may be considered for an alternative measure program.

Types of Alternative Measures

Diversion

65. A diversion can be done by prosecution (OAG and POLICE) as per diversion guidelines without undergoing formal judicial proceeding.

66. A copy of the diversion agreement as per annexure must be submitted to the court by the police or prosecutor for the purpose of information and record, since judicial proceedings concerning the child would have been initiated in the form of obtaining remand order and grant of bail etc.

Conditional discharge

67. Where the offence is of petty misdemeanor and where the court deems fit, the child may be released subject to the following conditions:

- (a) enter a bond with or without sureties for not committing further offence; and
- (b) being of good behavior during the specified period as mentioned in the order. However, the period must not exceed one year;
- (c) conditions prescribed through court order in the best interest of the child; and
- (d) Where the child is released with conditions, 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.

Cautioning

68. A caution is a formal warning issued by police to a child who has admitted to having committed a criminal offence. A caution is a formal out of court process that is used as an alternative to prosecution where the offence alleged to be committed by the child is not of a serious nature.

69. The police officer administering the caution to a child must ensure that the child understands the purpose, nature and effect of the cautioning.

70. The police must:

- (a) explain the matter to the child that the child's action are equivalent of a criminal offence and that he or she is warned to stay out of trouble;

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- (b) explain the consequences and what is likely to happen if the behavior continues;
 - (c) ensure the presence of the child's parents, guardian or legal representative; and
 - (d) where required, provide an interpreter or person who can communicate effectively with the child.
71. The procedure for cautioning a child may involve the child apologizing to the victim after the police have determined that apology is an appropriate course of action given the circumstances surrounding the case, and the child is willing to apologize and further, that the victim is willing to participate in the process.
72. As caution involves a formal warning by the police, it may include certain conditions to be met in order for the police to refrain from further action. These conditions may include:
- (a) verbal/written apology to victim/victim's family;
 - (b) the return of an item taken;
 - (c) the replacement of an item that was stolen or damaged;
 - (d) to fix or repair an item that was damaged;
 - (e) to attend school regularly;
 - (f) to be monitored by the police officer; or
 - (g) any other conditions that may be considered appropriate such as counseling.
73. The conditions must be appropriate to the child's age and maturity and proportionate to the circumstance of the offence.
74. The caution should be subject to the consent of the child, parents/guardian or close relatives.
75. Upon cautioning the child as mentioned above, the child will be released without going through the legal process. If the child or the parents/guardian does not consent, they should be made aware that the alternative is to arrest the child.

76. Record must be maintained for child released after cautioning by the police. However, the cautioning of a child on legal implication shall not form part of the child's criminal history.

Diversion Agreement

77. If the conference has resulted in the victim and the CICL to reach an agreement on how to resolve the effects of the crime committed, a diversion agreement as per annexure must be prepared and signed by the prosecutor (OAG or RBP), the victim, the child in conflict with the law and the parents/guardian of the child and the probation officer.

Implementation and monitoring of diversion

78. The probation officer in whose presence the diversion agreement was executed shall be responsible for implementation and monitoring of the diversion agreement.
79. Prepare the progress report and submit to the prosecuting agencies as per the condition of the agreement.
80. Upon the recommendation of the probation officer, the prosecutor/police after evaluating the progress of the case shall direct the closure of the case.
81. A successfully completed diversion program must be considered as a case resolved and a copy must be submitted to the Competent Authority.
82. PO should notify the concerned agencies with a copy to Competent Authority in written, if the child fails to comply with the diversion agreement.
83. The prosecutor or the police will inform the Probation Officer, upon deciding whether to proceed with the prosecution of the child concerned or continue with the diversion program with same or altered conditions after listening to the justification provided by the child.

Family Group Conferencing

84. A family group conference is a process led by family members to plan and make decision for a CICL as per Child Friendly Court Procedure. It will be initiated upon the instruction of the court.

CHAPTER 7

DISPOSITION AND ALTERNATIVE SENTENCING

Disposition

85. Dispositions and adjudication will be administered by the Courts as per the Child Friendly Court Procedures/ Civil and Criminal Code of Procedure through issuance of disposition order/ court order/ Judgment.
86. Dispositions may include Alternative Sentencing of the Courts as follows:
 - (a) Probation or release,
 - (b) Conditional Discharge,
 - (c) Family Conferencing disposition, and
 - (d) Suspension of sentencing.

Alternative Sentencing

87. Alternative sentencing means sentencing a CICL to form of treatment or rehabilitation in the community rather than incarceration.
88. Alternative sentencing provides the child with an opportunity to rehabilitate and reintegrate back into the society.
89. In awarding the judgment, the court must take into account the child's age, emotional, mental and intellectual maturity, antecedents and circumstances relating to a case.
90. The court will be guided by the following in adjudicating and disposing of a case:
 - (a) the best interest of the child
 - (b) the well-being of the child;
 - (c) a proportionate sentencing;
 - (d) minimum restriction on personal liberty; or

- (e) appropriate alternative sentencing.
91. While sentencing a child for an offence, the court takes into consideration:
- (a) the child justice principles;
 - (b) the nature and seriousness of the offence;
 - (c) child's previous deviant records;
 - (d) any consideration relating to programs and services established for child in conflict with the law;
 - (e) the victim's interest; and
 - (f) Alternatives to engage in reformation, rehabilitation, educational programs, employment, etc.
92. Before making a decision, the court shall properly investigate into the background and circumstances relating to a child including family background.
93. The act provides for the following alternatives to sentencing:
- (a) payment of compensation;
 - (b) admonish or reprimand;
 - (c) probation and suspension of the sentence;
 - (d) community service;
 - (e) *thrimthue*; and
 - (f) restitution of property.

Compensation

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

Admonish or Reprimand

97. If the grading of the offence is of petty misdemeanor and below, the court may admonish or reprimand the child and dismiss the prosecution and send the child home.
98. If home is not a conducive environment for the child, the child may be referred to the Probation Officer for necessary support and after care services.
99. 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.

Probation and Suspension of the Sentence

100. Where a petition on grounds of good and exemplary behavior of the child is submitted before the court and the court 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.
101. The grant of a probation or suspension order by the court shall be subject to a commitment given by the child to the court, not to commit any offence and to be of good behavior and the child's parents/guardian gives the commitment to supervise the child during the period of probation or suspension.
102. The court may direct the child released on probation to be placed under the care of the parents/guardian or any other fit person approved for the purpose by the court.
103. 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 new offence.

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104. A child conditionally released on probation or suspended sentence shall be required to:
- (a) make oneself available to the court as and when required;
 - (b) remain within the limits of any particular area mentioned in the court order; and
 - (c) abstain from doing any act which violates the conditions of release.
105. The probation or suspended sentence order may:
- (a) direct the child to be placed under the supervision of a probation officer named in the order;
 - (b) impose conditions for supervision; and
 - (c) set conditions which the court deems to be in the best interest and benefit of the child.

Community Service

106. 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.
107. The Competent Authority in consultation with stakeholders, devise programs and activities for community service.

Thrimthue

108. The court will also use their discretion to make an order to pay fine in lieu of imprisonment if the offence committed by the child is a felony of fourth degree and below and the child is not a recidivist or child habitually in conflict with law.

Restitution

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

Monitoring and supervision of alternative sentencing

110. Probation Officer or designated person will monitor the implementation of the alternative sentencing as per the court order or relevant laws.

CHAPTER 8

POST DISPOSITION

Rehabilitation

111. Presently, the Youth Development and Rehabilitation Centre (YDRC) under the Royal Bhutan Police in Chukha is the only facility that caters towards rehabilitation of CICL.
112. Any rehabilitation or training facility must not receive a child without a court order.
113. Children placed in an institution must be accommodated separately based on gender and appropriate needs must be met.
114. A female child in conflict with the law must be handled by female health personnel, correction officers and social workers.
115. The parents or guardians or legal representative will have the right of access to the child placed in an institution.
116. The Competent Authority must coordinate inter-ministerial and inter-departmental cooperation to ensure provision of adequate academic teaching and vocational training will be institutionalized.

Reintegration

117. To ensure the smooth transition from detention to life outside the home, the service provider must focus on assisting the child for reintegration and rehabilitation programs enabling them to become a productive member of the community, which is an integral part of child justice system.

Medical Care

118. The institutions under which the child is placed will be responsible for providing routine medical check-up or medical treatment when required.

Early Release

119. The CICL considered for early release must have served at least half the term of sentence.

Incomplete Sentence

120. Incomplete sentence refers to a child undergoing a sentence at a rehabilitation facility and who has not completed serving the term of sentence but has attained the age of 18 years shall be considered by the Court for placement.

121. In such a case, YDRC will notify the court with recommendations on whether the person should remain at the center to complete ongoing training or education or be moved to a prison.

Protection against legal consequences

122. A child shall not suffer any disqualification resulting from an offence committed by the child irrespective of what is stated in any other law. All records relating to criminal proceedings of a child shall be expunged.

Reports to be treated confidential

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

CHAPTER 9

Miscellaneous

Definition

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

“Competent Authority” shall mean the National Commission of Women and Children or any authority established by the Government, in line with the Act.

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

“Community” means a neighborhood, vicinity or locality where the child resides.

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

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

“Guardian” shall 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 the child.

Standard Operating Procedure for Dealing with CICL

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

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

“Prosecutor” means an authorized by the Attorney General who has been designated to deal with the prosecutions where Children are involved in any court; and Qualified lawyers who are members of the Bar who have been instructed by the Attorney General to act as prosecuting counsel to perform in a specific area.

Annexure

ལ་བསྐྱར་གྱི་གན་རྒྱ།

༣༥ ལན་ རང་ལུགས་གན་མ་..... རང་ལྷན་བཞི་པའི་ཚེས་.....ལུང་མ་ སྤྱི་ཚེས་.....ལུ་ སྐྱེས་ལོ་ལང་མི་
 ན་རྒྱུང་.....གི་ཀྱི་འཚོ་འཛིན་པ་ཨའི་.....དང་ ཚུད་དཔོན་ཡོངས་ཁྲབ་ཡིག་ཚང་ལས་
 ཞི་གཡོག་རོ་རྟགས་ཨང་.....ཚན་མ་འཆང་མི་ཚུད་དཔོན་.....གཉིས་ཀྱི་བར་ན་.....
 འགག་སྤེལ་སྤོད་པའི་ཚུད་རིམ་ཨང་.....ཚན་མའི་ཚུད་དོན་ ཚོ.....སྐོར་
 བློ་སྤེལ་དང་རྒྱབ་འགལ་བྱུང་བའི་ཨ་ལོ་གི་མཐའ་དོན་དང་ མི་ཚོ་ལེགས་བཅོས་དོན་ལུ་
 ཐངས་ཞིག་ལ་བསྐྱར་འབད་ནི་འི་ལ་འཆམ་བྱུང་ཡོད།

དེ་ཡང་ སྤྱི་ཚེས་.....ལུ་ ཉམས་རྒྱུད་པ་.....གི་ཀྱིས་ བློ་སྤེལ་དང་རྒྱབ་འགལ་བྱུང་
 བའི་ཨ་.....ལས་ རྒྱུད་འཇུག་གང་ཡང་དགོ་འདོད་མེད་པའི་ཡི་གུ་སྤུལ་ཡོད་པའི་ལར་ ཡང་ན་
 རྒྱུད་འཇུག་གི་སྐོར་ལོགས་སུ་སྤེལ་ལ་འཆམ་ཡོད་པ་ལས་ ཨ་ལོ་འི་བརྟུག་ཞིབ་འབད་བའི་སྐབས་ལུ་ཡང་མི་ཚོ་ཉམས་གསོ་དང་
 སྐྱོད་གཞག་ སྐྱོད་བཟུང་ བེས་ཡོན་དང་ གཉམས་སྐྱོད་དགོས་ཡོད་པ་མ་ཚད་ བློ་སྤེལ་དང་རྒྱབ་འགལ་བྱུང་བའི་ཨ་ལོ་དེ་
 གཤོང་ལེན་དང་ བཀག་དམ་འབད་ནི་དོན་ལུ་ བྱམ་མོང་མ་ཡིན་པའི་དམིགས་གཏང་དང་བཅས་པ་སྤེལ་བྱུག་གི་ཨ་ལོ་
 གཉམས་སྐྱོད་དང་ཉེན་སྐྱོབ་བཅའ་ཁྲིམས་ ༢༠༡༡ ཚན་མའི་ལེའུ་བཅུ་གཉིས་པ་དང་འཇུག་ ལ་བསྐྱར་གྱི་གན་ཡིག་བཅོས་པ་
 གཤམ་གསལ་ལྟར་།

༡. དེ་ཡང་བློ་སྤེལ་དང་རྒྱབ་འགལ་བྱུང་བའི་ཨ་ལོ་.....འདི་ སྐོབ་གྲུ་ནང་སྐོབ་སྐྱོད་འབད་ནི་མེད་པའི་ན་གཞོན་
 ཅིག་ཡིན་མ་ལས་བརྟེན་ལ་བསྐྱར་གྱི་གན་འཛིན་ལྟར་རིག་ཅུལ་ཅིག་སྐོད་ཐབས་མ་འབྱུང་ན་ ཨ་ལོ་ཁོ་འདི་
 གན་ས་སྤངས་འདི་ལས་བརྟེན་སྐྱར་ལོག་བློ་སྤེལ་དང་རྒྱབ་འགལ་བྱུང་ནི་དེ་རན་ལག་ཡོད་པ་ལས་མི་སྤེལ་ལུ་གཅིག་བ
 སྐྱེལ་བསྐྱར་གསོ་འབད་ཐབས་དོན་ལུ་དམིགས་ཏེ་རིག་ཅུལ་སྐོད་ཐབས་ཀྱི་དོན་ལུ་ལ་བསྐྱར་གྱི་ལས་རིམ་བཅོས་ཡིན།
 དེ་བཞིན་ ཚུད་དཔོན་གྱི་ལ་སྐྱེལ་ལས་ བློ་སྤེལ་དང་རྒྱབ་འགལ་བྱུང་བའི་.....འདི་ ཚུད་རིམ་ཨང་.....
 ཚན་མ་ནང་གཤོད་འགོལ་འཐབ་པ་ལས་བརྟེན་རྐྱེད་ལག་བློ་སྤེལ་གྱི་
 འདུན་ས་ལས་བློ་སྤེལ་གྱི་ཚབ་ལུ་ མི་ཚོ་ཉམས་གསོ་དོན་ལུ་ཐིམ་སྤྱུག་ལུང་ཟམ་ཏོག་ལུ་ཡོད་པའི་ན་གཞོན་ལས་སྤོན་
 གྱི་མི་སྤེལ་ས་ཚོགས་ནང་ལུ་ཚེས་བཅོམ་སྐྱོད་བཟུང་དོན་ལུ་བཏང་དོ་ཡོད་པ་བཞིན་ ཁོ་གིས་ལས་ཚོགས་ནང་སྤོན་
 པའི་སྐབས་ བྱ་སྐྱོད་བཟང་པོ་ཚུལ་མཐུན་སྤྱི་གས་ནི་དོན་ལུ་དང་།

༢. བློ་སྤེལ་དང་རྒྱབ་འགལ་བྱུང་བའི་ཨ་ལོ་.....དང་འཚོ་འཛིན་.....གིས་ གན་ཡིག་འདི་ནང་འཁོད་
 པའི་ཚོག་དོན་དང་ འཇུག་གི་ཨ་ལོ་གཉམས་སྐྱོད་དང་ཉེན་སྐྱོབ་བཅའ་ཁྲིམས་ ༢༠༡༡ ཚན་མ་ལྟར་ལག་ལེན་འཐབ་ནི་

ཨིན་པའི་ཁས་ལེན་འབད་བ་མ་ཚད་འཚོ་འཛོམ་གྱིས་ཁྲིམས་དང་རྒྱབ་འགལ་བྱུང་བའི་ཨ་ལོ་.....འདི་
 ཐིམ་ཕུག་རྒྱལ་ཡོངས་ཨམ་སུ་དང་ཨ་ལོའི་ལྷན་ཚོགས་ཡིག་ཚང་ལུ་འབྱིན་བཀའ་འཁུན་གྱི་དང་ ཕྱིན་ཚད་ཨ་ལོ་འཚོ་སྤྱོད་
 དང་ བདག་འཛོམ་ལེགས་ཤོམ་འཐབ་ནིའི་ཁས་ལེན་ཡང་འབད་ཡོད།

3. ལ་བསྐྱར་གི་གནས་ལུན་འདི་ གན་ཡིག་བཟོས་པའི་ཉིན་མ་ སྤྱི་ཚེས་.....ལས་སྤྱི་ཚེས་.....ཚུན་ཚད་
 འབད་མ་ད་ ལོ་རོ་.....གི་རིང་སྤྱིར་འཇུག་འབད་ནི་ཨིན་མ་ལས་ཁྲིམས་དང་རྒྱབ་འགལ་བྱུང་བའི་ཨ་ལོ་
གི་ཁྲིམ་ མི་སྡེ་ལས་ཚོགས་ནང་སྤོང་རིང་ བྱ་སྤྱོད་བཟང་པོ་བསྐྱིགས་ཏེ་ཉེས་ལས་མི་འཐབ་ནི་དང་
 ཡིག་ཐོག་བཟོད་གསོལ་གྱི་ཞུ་ཡིག་ཚུན་དཔོན་ལུ་བཅུགས་ནི་ཁས་ལེན་འབད་ཡོད།
 དེ་བཞིན་ ཁྲིམས་དང་རྒྱབ་འགལ་བྱུང་བའི་ཨ་ལོ་བསྐྱེད་བཟང་ལུ་སྤྱོད་གྱུ་གིས་ ལ་བསྐྱར་གནས་ལུན་སྐབས་
 གཤམ་འཁོད་ཀྱི་འགན་དབང་སྐྱབ་དགོས་འདི་ཡང་།
 ཀ། ཁྲིམས་དང་འགལ་བའི་ལས་སྤྱོད་ཚུ་ལས་འཛོམ་ནི།
 ཁ། ཁྲིམས་འགལ་གྱི་ལུ་ལུ་ཡིག་ཐོག་བཟོད་གསོལ་གྱི་བཤམས་པའི་ཡི་གུ་བཅུགས་ནི།
 ག། ཐིམ་ཕུག་ལྷང་ཟམ་ལྷོག་ལུ་ཡོད་པའི་ན་གཞོན་ལམ་སྤོན་མི་སྡེ་ལས་ཚོགས་ནང་སྤོང་རིང་ཚོམ་རིགས་སྤྱོད་བཟང་
 འབད་ནི།
 ད། མི་སྡེ་ལས་ཚོགས་ནང་སྤོང་རིང་སྤོབ་སྤོན་པ་ཚུ་ལུ་དུས་མཐུན་གྱི་མཉམ་འབྲེལ་འབད་ནི།
 ཅ། ཟླ་རོ་.....གི་བར་ན་ ཚོད་བཟླག་འགོ་དཔོན་ལུ་སྤོན་ཏུ་འབད་ནི།

4. ལ་བསྐྱར་གྱི་གནས་ལུན་འདི་གན་འཛོམ་བཟོ་བའི་ཉིན་མ་སྤྱི་ཚེས་.....ལས་འགོ་བཅུགས་སྤྱི་ཚེས་.....ལུ་
 ཚང་བའི་རྒྱུ་སུ་འཚོ་འཛོམ་.....གྱིས་འཚོད་བཟླག་འགོ་དཔོན་ལུ་སྤོན་ཏུ་འབད་བའི་སྐབས་
 གན་ཡིག་ཚུལ་མཐུན་བསྐྱར་སྤྱོད་གྱུ་བའི་ཕྱིས་འཛོམ་འབད་དེ་ཕྱིན་ཚད་གཞོན་འགོལ་དེའི་ཐོག་ཏུ་ཁྲིམས་མཐུན་དབ
 ང་འཛོམ་གྱིས་ཉེས་འབྱེད་བསྐྱར་བཀའ་ཐབས་མེད་པའི་ངེས་གཏན་བཟོ་དགོ།

5. ཁྲིམས་དང་རྒྱབ་འགལ་བྱུང་བའི་ཨ་ལོ་དང་ ཚོ་འཛོམ་གྱིས་ལ་བསྐྱར་གན་རྒྱ་ནང་གི་དོན་ཚན་ལྟར་ གནས་ཏེ་
 ཡོད་མེད་སྟོན་ ཚོད་བཟླག་འགོ་དཔོན་གྱིས་ དུས་དང་དུས་སུ་ ལྷོག་དང་ཞིབ་དཔྱད་འབད་དགོ།
 གལ་སྲིད་གན་ཡིག་དང་མ་འཁྲིལ་བའི་བྱ་སྤྱོད་འཐབ་ཚེ་ ཚོད་བཟླག་འགོ་དཔོན་གྱིས་ལམ་ལུགས་བཞིན་དང་
 ལེན་འབད་དོན་ལུ་འགག་སྡེ་ཡང་ན་ཚོད་དཔོན་ལུ་སྤོན་ཏུ་འབད་དགོ།

6. ལ་བསྐྱར་གི་གནས་ལུན་ཚང་བའི་རྒྱུ་སུ་ ཚོད་བཟླག་འགོ་དཔོན་གྱིས་ཁྲིམས་དང་རྒྱབ་འགལ་བྱུང་བའི་ཨ་ལོའི་
 ཀུན་སྤོང་དང་ ཀུན་སྤོང་གི་གནས་སྤངས་སྟོན་བཟོད་ཐོན་ལས་འབྲེལ་ཡོད་དབང་འཛོམ་ཏེ་འགག་སྡེ་
 ཚོད་དཔོན་ཡོངས་ཁྱབ་ཡིག་ཚང་ རྒྱལ་ཡོངས་ཨམ་སུ་དང་ཨ་ལོའི་ལྷན་ཚོགས་ཀྱི་ལུ་མཐའ་བཅད་ཀྱི་སྤོན་ཏུ་སྤུལ་དགོ།

༧. འབྲུག་གི་ཨ་ལོ་གཅེས་སྐྱོད་དང་ཉེན་སྐྱོབ་གྱི་བཅའ་ཁྲིམས་ ༢༠༡༡ ཅན་མའི་དོན་ཚན་ ༡༥ དགོངས་དོན་ལྟར་
 ལ་བསྐྱར་གན་རྒྱ་དང་འཁྲིལ་ཏེ་ཨ་ལོ་འདི་བཟོ་རྟོག་འབད་ནིའི་དོན་ལུ་ ཨམ་སྐུ་དང་ ཨ་ལོའི་ལྷན་ཚོགས་དང་མཉམ་
 གྲོས་བསྟུན་ཐོག་ རྫོང་ཁག་གི་ཁྲིམས་དོན་འགོ་དཔོན་ འདི་
 རྫོང་ཁག་གི་མོ་མོ་འབྲེལ་ཡོད་གྱི་དོ་ཚབ་ [Gender Focal Person-GFP]
 ཨིན་མ་ལས་ ཚོད་བརྟག་འགོ་དཔོན་གྱི་ རོས་འཛིན་འབད་ཡོད།

༨. གན་ཡིག་བཅོས་པའི་ཉེན་མ་ལས་འགོ་བཟུང་སྟེ་ ལ་བསྐྱར་གནས་ཡུན་སྐབས་ གན་ཡིག་ནང་གི་ཚིག་དོན་དང་
 འགལ་བའི་རིམ་པ་འབྱུང་ན་ གཞོད་འགལ་དེའི་ཐོག་ཏུ་ དང་ཁྲིམས་སྲིད་ནིའི་དོན་ལས་
 ཉེས་འཛུགས་ཁྲིམས་འདུན་ལུ་ཕུལ་ཏེ་ ཉེས་བཤེར་འབད་ནི་ཨིན། གལ་སྲིད་ ལ་བསྐྱར་གྱི་གན་ཡིག་ནང་བཀོད་པའི་
 དོན་ཚན་ཚུ་ལུ་ ལེ་རྒྱུད་མ་བརྟུབ་པའི་རིམ་པ་འབྱུང་ན་ ཚོད་འཛིན་གྱི་དུས་ཡུན་ ཞག་གངས་བརྩམ་ནང་ཡོད་
 ཁྲིམས་གྱི་འདུན་སར་ མཐོ་གཏུགས་ལུ་ཚོག་པའི་ཁར་ དེ་མིན་ བསྐྱར་སྐྱོད་སྐབ་དགོ་པར་
 བཅའ་ཁྲིམས་དགོས་པ་བཅས་ གན་འཛིན་བཅོས་ཐུབ་པ་དགོ་འོ།།

ཁྲིམས་དང་རྒྱབ་འགལ་བྱུང་བའི་ཨ་ལོ་ཚོད་དཔོན།

[.....]
 འགྲུལ་འཕྲིན་ཨང་.....

[.....]

འཚོ་འཛིན། ཚོད་བརྟག་འགོ་དཔོན།
 [.....]
 འགྲུལ་འཕྲིན་ཨང་.....

[བསོད་ནམས་ཚེ་རིང་]
 འགྲུལ་འཕྲིན་ཨང་.....

འདུལ་།

1. འབྲུག་གི་ཨ་ལོ་གཅེས་སྐྱོད་དང་ཉེན་སྐྱོབ་བཅའ་ཁྲིམས་ ༢༠༡༡ གི་དོན་ཚན་ ༡༥ ལ་བསྐྱར་གྱི་གན་ཡིག་
 འདྲ་ རྫོང་ཁག་ཁྲིམས་གྱི་འདུན་སར་སྟུན་ལུ་འཛིན་ཅིང་།
2. རྒྱལ་ཡོངས་ཨམ་སྐུ་དང་ ཨ་ལོའི་ལྷན་ཚོགས་ལུ་བརྒྱུན་ཐོབ་ཅིང་།
3. འགལ་སྟེ་ལུ་དང་ལེན་དང་ རྒྱབ་སྐྱོར་ཅིང་།
4. ཚོད་དཔོན་གྱི་ལག་བཞག་



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