

Juvenile Justice Procedural Rules, 2063 (2006)

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In exercise of the powers conferred by Section 58 of Children Act, 2048 (1991 A.D) Government of Nepal has framed the following Rules.

1. **Short Title and Commencement:** (1) These Rules may be called as "Juvenile Justice Procedures Rules, 2063(2006)".

(2) These Rules shall come into force immediately.

2. **Definitions:** Unless the subject or the context otherwise requires, in the Rules,-

(a) "Act" means Children's Act, 2048 (1991).

(b) "Juvenile Court" means the juvenile court constituted pursuant to Section 55 (1) of the Act.

(c) "Juvenile Bench" means the bench constituted pursuant to Section 55 (3) of the Act.

(d) "Investigation or Inquiry Authority" means authority who have authorized to investigate or inquiry the offense pursuant to Rule

3.

(e) "Charge sheet" means the charge sheet prepared in accordance with the State Cases Act, 2049 (1992).

(f) "Institution" means an institution registered pursuant to the prevailing laws.

(g) "Service provider individual or institution" means individual or institutions listed pursuant to Rule 21.

3. **Separate Unit or Police Official to be Designated:** Every police office shall have a separate unit comprising of a qualified police official, pursuant to the prevailing law to investigate and inquire on juvenile delinquencies. Until the formation of such a unit the police headquarter shall designate any police staff for the job.
4. **Provisions relating to the Investigation:** While inquiring or investigating on juvenile delinquencies the police unit or staff formed pursuant to Rule 3 shall pursue the following provisions in addition to the other provisions mentioned in the prevailing laws:
- (a) Police staff shall wear civil dress instead of the police uniform,
 - (b) He/she shall introduce oneself by showing the identity revealing documents, and show cause for the arrest while arresting the child.
 - (c) He/she shall inform the child of his/her legal and constitutional rights in the language understood by him/her,
 - (d) He/she shall inform both the parents of the child as far as possible, to at least one if both are not available, and in case there is not father and mother to the guardian about the delinquencies of the child,
 - (e) He/she shall get examined the physical and the mental health of the child in the nearest government hospital or by the doctor,
 - (f) He/she shall keep both the parents as far as practicable, and at least one and in absence of father and mother the guardian in *rohabar* while conducting a *Sarjameen*.
 - (g) He/she shall request the service provider individual or institution to prepare a social study report about the delinquent in the manner in format prescribed in the Schedule.

5. **Inquiry:** (1) The investigation and inquiry authority shall arrange for a child friendly environment so as to enable the child to answer the matters asked to him/her.

(2) While conducting an inquiry pursuant to Sub-rule (1), it may be done in the presence of the father, mother, guardian, lawyer or the representative of child welfare home or orphanage if the child has been staying there.

(3) While conducting an inquiry pursuant to Sub-rule (1), the investigation and inquiry authority shall inquire about the delinquency, family and social background and other necessary matters of the concerned child.

(4) A child shall not be inquired for a period longer than an hour at once and shall not be inquired at night too.

6. **Procedure for the Formation of a Juvenile Bench:** (1) Each District Court shall constitute a juvenile bench consisting of a social activist, child specialist or child psychologist in addition to the District Judge.

(2) In the court having more than one District judge, the District Judge designated by the Chief Justice shall work as the judge for the juvenile bench.

7. **Information to be given:** (1) The juvenile court or bench shall provide immediately a copy each of charge sheet and documentary evidences to the father, mother or guardian of the child, after the registration of the charge sheet against the child.

(2) While giving information pursuant to Sub-rule (1), if the father, mother, or the guardian of the child could not be found or if they deny to take such notice, it shall be provided to the lawyer of the child.

(3) Notwithstanding anything contained in Sub-rule (1) and (2), the father, mother or the guardian of the child may take the notice by being present in person before the juvenile court or child bench.

8. Qualification of Social Activist, Child Specialist or Child

Psychologist: The social activist, child specialist or child psychologist participating in the juvenile court or bench shall have the following qualifications:

- (a) Having Trained in field of child rights, child welfare or child psychology,
- (b) Not convicted in criminal offense by a competent court.
- (c) At least holding certificate level or equivalent.

9. Selection of a Social Activist, Child Specialist or Child

Psychologist: (1) For the purpose of selection of social activist, child specialist or child psychologist to be present in the juvenile bench, the District Court shall issue a Thirty day public notice and call for application from among the individuals having qualification pursuant to Rule 8.

(2) The District Court shall send a list of persons deemed competent after the necessary investigation from among the applicants called pursuant to Sub-rule (1) to the Ministry of Women, Children and Social Welfare.

(3) From the list of receiving pursuant to Sub-rule (2), the Ministry of Women, Children and Social Welfare shall send a list of persons to the Supreme Court for necessary advice who are deemed to be competent pursuant to Sub-section (5) of Section 55 of the Act.

(4) The Ministry of Women, Children and Social Welfare shall appoint separate names of social activists, child specialist, child psychologist for each District Court from list of social activist, child specialist or child psychologist obtained from the Supreme Court.

(5) The facilities of the social activist, child specialist or child psychologist who present in the juvenile bench shall be as prescribed by the Government of Nepal.

(6) Notwithstanding anything written anywhere in the Rule, if any of the social activist, child specialist or child psychologist are no longer competent of or deny hearing a case, the District judge shall appoint any of the social activist, child specialist, or child psychologist from among the list prepared pursuant to Sub-rule (3) to participate in the proceedings of a case.

10. Removal of Social Activist, Child Specialist or Child

Psychologist: (1) The concerned District Court shall remove the name of the social activist, child specialist or psychologist from the list if the concerned individual displays an improper conduct, or incompetency leading to work, or abuse of authority or if he/she fails to be present in the juvenile court or bench regularly for three times pursuant to Rule 9.

(2) If any of the social activist, child specialist or child psychologist listed pursuant to Rule 9, files an application for the removal of ones name from the list before the District Court, the District Court shall remove the name from the list and inform about the same to Supreme Court and Ministry of Women, Children and Social Welfare.

(3) The concerned District Court shall give an opportunity to defense him/her before the removal of name from the list pursuant to Sub-rule (1).

11. Exercise of Jurisdiction: (1) The judge, social activist, child specialist or child psychologist shall collectively hear the case in a juvenile court or Bench.

Provided that, even in the absence of all or some among the social activist, child specialist or child psychologist the proceeding executed by the judge shall not be declared invalid.

(2) The social activist, child specialist or child psychologist shall submit a written opinion before the judge.

(3) After obtaining the opinion pursuant to Sub-rule (2) the judge shall declare the verdict of the court.

12. Hearing of the Case: (1) The proceeding of the case shall be held in a child friendly environment.

(2) The juvenile court or juvenile bench shall use the language appropriate to the child's age, and his/her physical and mental development.

(3) The juvenile court or juvenile bench shall inform about the nature of the offences and the obtained evidences and witnesses to the juvenile offender.

(4) The juvenile shall be inquired in a separate room with an affixed camera within the juvenile court or the District Court and the inquiry shall be displayed on the screen of the bench.

(5) The juvenile court or bench shall appoint a child psychologist or a person able communicate with juvenile easily while conducting an inquiry pursuant to Sub-rule (4).

(6) While conducting an inquiry of the juvenile pursuant to Sub-rule (4), his/her father, mother, guardian or lawyer can stay with him/her.

13. Examination of Evidence: (1) While registering the charge sheet against the juvenile, if the social study report is not found attached with it, the juvenile court or bench shall order the service provider individual, or institution or child welfare organization formulation in accordance with the prevailing laws to submit such report.

(2) Anyone can file an application before the juvenile court to adduce evidence, in case of availability of the evidence that negates the charges against the juvenile.

(3) If the application pursuant to Sub-rule (2) is obtained the juvenile court or juvenile bench may grant permission to present such evidence.

14. Examination of Witness: (1) If the juvenile wants to present his witness by himself /herself in the juvenile court or bench may permit to summon such witness.

(2) The witness summoned pursuant to Sub-rule (1) shall enjoy the facilities as mentioned in the State Cases Rules, 2055.

15. Age Determination : In case age of the juvenile has been disputed, the juvenile court or bench shall determine the age of the juvenile based on the following documents:-

(a) The date of birth mentioned in the birth certificate issued by the hospital,

(b) In absence of certificate pursuant to Clause (a), the date mentioned in the birth certificate issued by the local *panjikadhari's* office

(c) In absence of the certificate pursuant to Clause (b), the date of birth mentioned in the school character certificate or the date of birth as mentioned during the admission in the school.

(d) In absence of the certificate pursuant to Clause (c), the age certified by the government hospital.

16. Decision: The juvenile court or juvenile bench shall have decided the case within One Hundred Twenty days after file the case.

17. **Details to be included in the Decision:** In the decision pursuant to Rule 16, in addition to the matters included in the prevailing laws, the following things shall be mentioned:-
- (a) Summary of the charge sheet,
 - (b) Evidence adduced and examined,
 - (c) Summary of opinion of the social activist, child specialist or child, psychologist participating in the juvenile court or bench,
 - (d) Arguments of the lawyer,
 - (e) Relevant Precedents,
 - (f) Basis and reason of the offense has been proved or not,
 - (g) Ratio decidendi of the case,
 - (h) Methods to be applied to correct the child,
 - (i) Description of compensation or fine, in case if it is to be paid or submitted.
18. **Provision Relating to the Execution of Decision:** The execution of decision done pursuant to these Rules shall be in accordance with the prevailing laws.
19. **Photocopy to be provided without fee:** The juvenile court or juvenile bench shall provide a photocopy of the decision without fee to the concerned child.
20. **Assistance may be Taken:** Investigation and inquiry officer may take assistance from local offices, police, and local administration, social and non governmental organizations during the proceeding of a case. It shall be the duty to provide such assistance of all concerned.
21. **List of Service provider Individual and Institution:** (1) The child welfare committee shall prepare a separate list of the individuals and institution desiring to carry out social study of, provide psycho

social counseling, legal aid as well as child corrective services to a child indicted of an offence.

(2) The Nepali citizens having the following qualification and desiring to be included in the list pursuant to Sub-rule (1) may file an application in the District Child Welfare Committee:-

- (a) Having at least Five years' work experience in the field of child rights or child welfare,
- (b) Not convicted in criminal offences by a competent court,
- (c) Has been staying in the concerned district since at least Two years.

(3) Institutions desiring to be included in the list pursuant to Sub-rule (1) shall attach the registration certificate, the regulation, List of Members, and the services provided by the institution and other necessary documents as prescribed by the Child Welfare Committee.

(4) While investigating on the applications filed pursuant to Sub Rule (2) and (3), if the child coordination committee finds that any individual or organization capable of providing such services, it shall enlist the name of such individuals or organizations

(5) If the individuals or organizations listed pursuant to Sub-rule (4), display misbehavior or misconduct, or if the quality of service provided by such individual or organization is not up to the standards determined by the District Child Welfare Committee, the Committee may remove its name from the list.

(6) While removing the name pursuant to Sub-rule (5), the service provider individual or institution shall be given an opportunity for hearing.

(7) The District Child Welfare shall provide a list pursuant to Sub Rule (1) to the juvenile court or District Court.

22. Juvenile Justice Coordination Committee: (1) In order to coordinate between the different agencies relating to juvenile justice the following Juvenile Coordination Committee shall be formed:

- (a) Judge of the Supreme Court as designated by the Chief Justice -Chairperson
- (b) Deputy Attorney General, Office of the Attorney General -Member
- (c) Secretary, Ministry of Law, Justice and Parliamentary Affairs or representative Gazetted First Class Officer designated by him/her -Member
- (d) Secretary, Home Ministry or representative Gazetted First Class Officer designated by him/her -Member
- (e) Secretary, Ministry of Women, Children or Social Welfare or representative Gazetted First Class Officer designated by him/her -Member
- (f) Additional Inspector General of Police, Police Headquarter -Member
- (g) Executive Director, Central

Child Welfare Committee -Member

(h) One representative nominated by Central Child Welfare Committee, from among the institutions working in the field of children -Member

(i) Registrar, Supreme Court -Member Secretary

(2) The tenure of office of the member nominated pursuant to Clause (h) of Sub-rule (1) shall be Two years and he/she may be re-nominated.

(3) Other procedures of the meeting shall be as determined by the Committee itself.

(4) The Committee pursuant to Sub-rule (1) may invite in its meeting; as per necessity, individuals concerned with juvenile justice.

(5) The functions, duties and power of the Juvenile Justice Coordination Committee shall be as follows:-

(a) To advise and counsel the Government of Nepal on legal and policy matters for strengthening and developing juvenile justice system,

(b) To coordinate with or cause to coordinate with the different programs being conducted in various national and international organization which are involving in the field of child right and juvenile justice system in Nepal.

(c) To conduct capacity enhancing programs for the various governmental and non governmental individuals and entities participating in the juvenile

justice dispensation on the new dimensions and programs being developed in the field of juvenile justice for the speedy and effective dispensation of juvenile justice.

- (d) To request the Government of Nepal to include contents related to child rights and juvenile justice in the syllabus of schools, universities as well as various other educational institutions,
- (e) To carry out or cause to carry out functions related to supervision and management of standards of services and functions executed by entities participating in the juvenile justice dispensation.

(6) Government of Nepal shall appoint officer level employee from Judicial Service in the secretarial job of the Committee in recommendation of Judicial Service Commission. The employee so appointed shall do the juvenile justice administration affair and the other power, function and duties of the employee shall be as determined by the Committee.

- 23. **Secretariat:** The Secretariat of the Juvenile Justice Coordination Committee shall be located in the Central Child Welfare Committee.
- 24. **Interpreter Shall be Kept:** The District Court or the investigation and inquiry officer shall conduct the inquiry through the interpreter, as per necessary.
- 25. **Power to Issue Directives:** The Supreme Court, Office of the Attorney General, Police Headquarter, Ministry of Women, Children and Social Welfare and the Central Child Welfare Committee shall issue necessary directives to the subordinate offices for well operate the activities mentioned in this Rule.

26. **Other matters to be according to Prevailing Laws:** All the matters mentioned in these Rules shall be in accordance with this Rule and other matters shall be in accordance with the prevailing laws.
27. **Change and Alteration in the Schedule:** (1) The Government of Nepal shall make necessary changes or alteration in the Schedule by publishing a notice in the Nepal Gazette.

NEPAL LAW COMMISSION

Schedule

(Related to Clause (g) of Rule 4)

Social Study Report

..... Juvenile Court or Juvenile Bench/ Police Unit/ Staff

..... (Address)

Clause A: Details of Charge indicted on the child, Personal and Family Description

Details of Charge indicted on the child:-

.....

.....

Personal Description:-

Name, Caste:

Age:

Gender:

Permanent Address:

Temporary Address:

Description relating to the stay of the Child in Institution:-

Family Description:

Father's,-

Name:

Occupation:

Address:

Mother's,-

Name:

Occupation:

Address:

In case of Step Mother:-

Name:

Occupation:

Address:

In case of Guardian his/her Name, Occupation and Address:

In case of other foster relatives:

Elder Brother, Younger Brother:

Elder Sister, Younger Sister:

Other relatives cohabiting:

Social and Economic Status:

Status of other family engaged in Criminal Activities or not:

Living standard:

Relation of father /mother, family members with each other:

Other necessary matters: