(Translation from Nepali to English)

CASE MANAGEMENT GUIDELINES

(For District Courts)

Supreme Court

Kathmandu, Nepal

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Preface

The credibility of the judiciary is not counted on the basis of the authority bestowed on it; rather it is counted on the people's credence and confidence expressed toward the judiciary. The credence and confidence over the judiciary will always depends on the quality, purity, impartiality, and effectiveness of the service it offers to the general public. Hence, opinion of the people on the judiciary is built up on the basis of the standard it maintains while providing services to the people and the level of accountability it demonstrates. Generally, too formality, complex and lengthy procedures in the courts are some of the main issues of indifference of the people on the judiciary. Further, there is also allegation to the judiciary that the justice rendered by the judiciary is not only being expensive and delayed day by day but also has been uncertain.

So as to enhance the people's credence and confidence over the judiciary, there might be numerous areas of improvement in the quality of services as offered by the judiciary. However, as the main task of the judiciary is rendering justice to the people, the effectiveness in justice delivery is the underlining approach of determining the entire performance and capacity of the judiciary. Therefore, the effectiveness in delivering justice demands the effectiveness of courts in case management. Likewise, the certainty and transparency reflected in the case flow of a court enhances the standard and effectiveness in the performance of justice dispensing act of the judiciary. Further, the effectiveness in case management helps building judiciary as responsible and accountable.

Even if there is an enormous importance of the procedural aspects in the justice delivery of a court, it is not easier to carry out the judicial administration as in the past. More particularly, the procedures to be adopted due to the changing tendency in the number, nature and structure of the cases have explored more complexity in the procedural law. The rationality of justice delivery depends in many respects on the procedural management of cases. In this way, the issue of effective case management has been prioritized by the Third Five Years Strategic Planning of the judiciary. The Case Management Guideline for district courts is prepared on the basis of the motivation undertaken by the Strategic Planning. It is expected that the Guidelines may help maintain the uniformity in the acts performed by the district court for case management.

The Guidelines as such does not stand as a law, neither has it positioned a binding force. However, it is expected that it will a reliable document that exhibits a best reference for the human resources who are deployed for the administration of justice. More particularly, this document will be tremendously helpful for the personnel who are designated for case management and for those who are newly stared their job in case management. Notwithstanding the Guidelines has endeavored to maintain the uniformity in the language as far as possible, the fundamental characters of writing and presentation of the experts involved in different chapters may reflect some sort of disparities in the contains. Therefore, if any legal provision, precedent and other information contained in this Guideline creates confusion or shows misconception to the

readers, the provisions stated in the respective bare Acts shall supersede the contain of the Guideline.

Finally, I would like to express my sincere thanks to the SCC Project of Japan International Cooperation Agency (JICA) for offering managerial and technical assistant for making this Guideline. Likewise, I would also like to express my gratitude to the expert team members, staffs and other individuals who contributed in writing this Guideline.

Nripa Dhowj Niraula

Registrar

June 2017

FOREWORD

It is my great pleasure to announce this publication of the Case Management Guideline for District Courts ("the Guideline"). Since 2013, the Supreme Court of Nepal and JICA have worked together for a project, which aims at improving the case management and court-referred mediation. The Guideline, which was prepared by the accumulative efforts of people in the project, guides you throughout the court procedure. It will widely contribute to enhancing the speedy and reliable justice for the public.

The SCC Project (The Project for Strengthening the Capacity of Court for Expeditious and Reliable Dispute Settlement) is one of the technical cooperation projects conducted by JICA in Nepal. It began in September 2013, as the first project with the Supreme Court of Nepal and JICA. Since having the effective case management system is critically important to deliver the justice without delay and the speedy justice is an essential pillar to achieve the rule of law, JICA and the Supreme Court decided to address the issues of the case management, while the project also targets on the court-referred mediation.

In order to achieve the project goals, a number of activities have been conducted in Nepal and Japan with the continuous and dedicated support of concerned personnel. I am especially thankful to the advisory group led by Prof. Takayoshi Yoshino (Osaka University), a former chief judge of Osaka District Court, and Prof. Kazuto Inaba (Chukyo University), an ex-judge, who have been actively involved in the project from its beginning. Not only sharing their abundant experiences and knowledge, but, as senior members of the judiciary in Japan, the professors also kept warmly encouraging our long-term experts in Nepal.

Within the project, we sent more than ninety delegates to Japan. They explored the judicial system in Japan and sought for the best way for Nepal. Accordingly, the Guideline reflects the ideas suggested by these delegations. These programs had not been carried out without the zealous support of ICD (International Cooperation Department, Research and Training Institute, Ministry of Justice, Japan) that hosted the seminars in Japan. We heard a lot about their heart-full hospitality from the delegates. With ICD's facilitation, the seminar hall was always filled by energetic discussions.

The Supreme Court itself also devoted themselves into the activities. While drafting the Guideline, the SCC Project conducted the interaction and pilot training programs in the model courts of the SCC Project, Kavre Palanchawk, Dang and Dhanusha District Court with the support of their High Courts. The Justices, then-Registrar, then-Joint Registrars of Supreme Court and other concerned professionals vigorously engaged in these programs and led the relevant personnel to actively participate in the programs. The Supreme Court also made efforts to include the all seventy five district courts in the drafting process by sending drafts of the Guideline and requesting them to send the project their feedback.

The Guideline explains the entire procedure from registering a case till disposing it. A plenty of practical information; such as applicable laws, rules, precedents, and principles, is also given in each chapter This thorough guide will foster the common understanding on the procedure among the stakeholders, and help them smoothly handle the cases in district courts. As a result, the general public will enjoy the speedy and reliable justice in Nepal.

Without any of above mentioned efforts, I would have not seen this Guideline yet. Again, I am very happy to see this publication and thankful to the people who worked on it. This Guideline is an important milestone of the relationship between the Supreme Court of Nepal and JICA, which, I hope, will last for long.

Jun Sakuma

Chief Representative, JICA Nepal Office

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Chapter 1 Preliminary

1.1 Background for Formulation of Guidelines

Article 5 (K) (1) of the Constitution of Nepal incorporates justice related provisions in order to make judicial administration speedy, accessible, affordable, fair, effective and accountable towards people. Speedy, affordable and effective judicial administration mostly depends on effectiveness of case management. Considering this importance of effectiveness of case management, Third Five-Year strategic plan of judiciary has set out priority of a strategy to reform case management system by enforcing case management guidelines.

We have experience of unexpected delay in adjudication of even simple cases for a long time; someday many cases are produced before the bench and someday a judge becomes jobless for a long time. There is a situation that some cases are not listed in cause-list for a long but some cases come into the list comparatively very fast. There are grievances of not getting due priority by some cases which should have been settled in priority basis as per prevalent laws. There is also the situation where old cases could not be settling despite priority. All these issues are the concern of case management. In our system, there is no mechanism of systematic proceeding and hearing practice of the cases from case management perspectives except some provisions of procedural law. Study shows that there is not only the situation of timely settlement of cases in effective way comparatively but also it has been creating feeling of justice to the concerned stakeholders where effective management system applied.[1] In this background, formulation and enforcement of this Case Management Guidelines may be significant.

1.2 Objective of the Guidelines

This is not the guidelines for procedures of cases but guidelines for case management. Since basis for case management is the provisions of procedural laws such provisions of procedural laws shall also be included in this guidelines. Moreover, to identify the area of practice and use of templates to the legal provisions of procedural laws as per norms of management is the objective of the Guidelines. Basically, objectives of the Guidelines are as follows:

a. to inform about established standards of case management and to provide foundation for using such standards,

[1]Civil Litigation Management Manual; 2nd ed., The Judicial Conference of the United States (Committee on Court Administration and Case Management), p1 (2010)

b. to demonstrate general outlines of case management plan as a sample,
c. to provide idea of case proceeding from standard case management perspectivessubject to prevalent laws,
d. to identify and provide appropriate practices useful in case proceeding as per management principles,
e. to present scattered relevant legal provisions and principles established by Supreme Court in integrated manner from the perspective of management,
f. to set standardization of case management functions at all district courts practice,

1.3 Application of the Guidelines

Though, the Guidelines itself is not a law it is expected that application of the Guidelines will be significantly useful to achieve objectives of speedy, economical and effective adjudication process. As most common problems like delay, error, passiveness etc. during case proceedings were taken into consideration while drafting of the Guidelines, it is expected that such problems will be minimized by application of the Guidelines. The Guidelines has identifies area of constructive use of those provisions within the scope of prevalent procedural laws and emphasizes for purposive use of such provisions without distorting spirit of prevalent laws. The Guidelines suggests alternatives for using of laws related to case proceedings as well as possible way of procedures where lacking of clear legal provisions in line with management principles.

Basically, the Guidelines have been drafted targeting all judges and employees of the court who involve in proceedings of the cases. However, moving forward to the traditional understanding that case management is the responsibility of employees, whereas, judges just deliver the judgment; the Guidelines is guided from the concept that judges will have leadership role and employees will have a supportive one.[2] Such role of judge is expected in the context of enforcement of single docket system in District Court where a same judge handles the cases from registration to the judgment.

[2]The judicial role is not a passive one ... it is the duty of the judge ... to step in at any stage of the litigation where intervention is necessary in the interests of justice. (Civil Litigation Management Manual; 2nd ed., The Judicial Conference of the United States (Committee on Court Administration and Case Management), p 5-6 (2010)

Chapter 2 Conceptual Aspect of Case management

2.1. Concept of Case Management

Case management means a process to carry on all the activities in systematic way in a case from registration till the judgment. In this way case management is a Case-flow management. This concept includes issue of every event of activities applying during the process from registration of a case until judgment and the time management of such activities as well. This concept concerned whether management of all required processes appropriately followed or not to reach a case into the stage of settlement upon registration rather shows concern on judgment, dismiss, repeal or whatever decisions made in the case. This is a kind of administrative process. Therefore, it does not directly effect to sort out legal question of any substantive or procedural law.[3] Case management concept believes on court control over proceeding and speed of each case filed before the court and it is expected that effective use of this will make qualitative to the judicial functions of the court. Since the efficiency and effectiveness are main theme of case management following matters are required to consider at all the times in reference to use of concept of case management.

a. Time is very important for all such as the court, attorney and parties to the cases. Therefore, there should be no compromise in any process or judgment of any case to deliver even a single day faster, if possible.
b. Expenses to be incurred and use of resources in process of a case is also equally important. If it is possible to reduce number of court date (Tarekh) and hearing date by at least one time during entire process, cost of case will be reduced from the perspective of the parties, and for the Court, important time and resources will be saved which create situation to use that in other cases or urgent purpose.
c. Therefore, in every stage of the cases when giving court date, issuing evidence collection order or in any action we should be sincere on how such activities are really essential and objective oriented. We should understand that irrelevant and unnecessary actions misuse the important time and increase the cost of cases.

[3]Caseflow management is the court supervision of the case progress of all cases filed in that court. It includes management of the time and events necessaryto move a case from the point of initiation through disposition, regardless of the type of disposition. Caseflow management is an administrative process;therefore, it does not directly impact the adjudication of substantive legal or procedural issues. (Caseflow Management Guide, published by the StateCourt Administrative Office, Michigan)

d. Concept of case management believes that court cannot escape from its responsibility by passing on their weakness of efficiency and effectiveness to attorney or parties to the cases. It means the Court should have a full control over proceeding and speed of the cases and responsibility of delay and weaknesses in the cases to take by the Court itself.

2.2. Importance of Case Management

In the present world, there is no need to explain more about importance of effective management in achieving goal of every organization. Management has big role to achieve expected result through effective mobilization of available resources and equipment. It is believed that the management has important role in judicial functions of the Court on case proceedings in order to bring it on right track and timely settlement of cases making a base of automatic system. Generally, use of management concept in case proceeding has following importance:

a. to identify required process to follow in particular case at initial stage,
b. to determine time-frame to complete each such identified process,
c. to minimize possible unnecessary delay between one process and another,
d. to create situation to make judgment of case in targeted time,
e. to make the judgment qualitative,
f. to maintain court control over proceeding and speed of cases,
g. to make fair and transparency in case proceeding,
h. to make of case proceeding predictable,

2.3. Methods which shall be applied in case management

There is not a same practice can be found in all countries while observing methods applied in case management, Though objective of case management is almost similar in all countries, methods of case management may be different because of differences in provisions laid down in prevalent procedural laws of respective country. Method may not be the same not only in different country but also in the different courts within the same country. Reason behind differences in case management method amongst the courts within in the same country is because of diversities in local legal culture of particular place. But general methods of case management are not so different. At least, case management methods are almost similar in principle. Principally, methods to be applied in case management are as follows:

a. Goal setting,

b. Identification of significant process and monitoring,
c. Checking on proceedings in initial stage itself,
d. Regular control on speed of proceedings,
e. Different management for different nature of cases,
f. Determination of practical and reliable hearing date,
g. Effective management of hearing/certainty of hearing,

Considering to these theoretical methods and keeping in mind to practical aspect of case management of particular case, we can adopt following methods in our context:

a. After registration of a case, time-bound goal shall be set up for settlement of such case ,
b. After time-bound goal setting, work schedule to prepare for planning to achieve goal defining what process to adopt in which time in whole proceedings. This can also be called as case management planning.
c. After making case management planning, this step includes to execute all process to complete as per time schedules.
d. Monitoring should be carried out to see whether actions going on as per schedule or not and adopt the necessary way out to speed up the cases if it is not going on as per schedule,
e. Particular case should be settled as per time-bound goal setting determined as per plan,

Based on these structures of case management, following method shall be applied:

a. Goal Setting:

Management means the systematic process which is applied to achieve the goal already set out. In reference to the case management too, specific goal to be set and other activities should be focused in a way to achieve such goal. Goal setting in case management is to determine case settlement period after registration of particular case.While setting timeframe, it would be good to set time as prescribed by law and settle the case accordingly. But, in our case strategic plan has set up a separate timeframe for settlement based on nature of case considering number of old pending cases and average case settlement trend so far. Thus, it would be practical to consider time frame prescribed by strategic plan while determining time-bound case settlement goal.

b. Goal Achievement Plan:

It is easy to determine time-bound goal setting for case settlement after registration of a case, but, achievement of targeted goal is not easy all the time. It is required to make a

road map to reach in destination if a goal has been determined. If it is determined time-bound goal setting of case settlement, it is required to make a schedule to define time for completion of each task identifying various processes to be adopted in particular case from registration to settlement. This is a kind of action plan of case management. Model of work schedule to be prepared is given in Chapter 3.4 of the Guidelines.

c. Implementation of plan

Goal setting and goal achievement plan as stated above are the documentary works. These are easy to complete. Implementation of plan prepared for achieving goal is important. Each activity set with time-bound way to be completed within the prescribed time frame under this stage of case management.

d. Monitoring:

Sometime prescribed schedule might not be properly followed due to force *majure* as well as because of negligence or insufficient attention. This stage of case management requires to identify reasons for not following prescribed work schedule and to control such reasons. If work schedule could not be followed due to force *majure* and it is not possible to settle the cases within targeted time, such schedule shall also be amended; but such amendment to make only in exceptional circumstances.

e. Settlement within the prescribed time:

Case should be settled within the targeted time as per case management plan or work schedule determined for settlement of such case upon registration. Only if so, we can say that case management system has worked successfully.

Chapter 3 Case Registration Management

Use of concept of case management in case proceedings start from registration of a case itself. Case registration in the court is a preliminary stage of case proceedings. To make the case management functions effective, it is required to give due attention from the registration stage itself. If we unable to give due attention during registration, which may affect entire management of such case.

a. Not conducting verification of duplicate document with the original during registration leads situation to issue order to produce original documents unnecessarily and which compels to consume more time for same reason,
b. If Plaintiff paper or charge sheet registered without proper disclosure of name, surname, address of defendant then more time may lapse in process of delivery of notice (Myad Tameli),
c. If we consider some studies related to case-flow, 50% reasons in delay in timely settlement of cases are related to delivery of notice. Among these, in the circumstances of non-delivery of notice in time due to clarity of address, we should understand that it is very crucial to register the case with clear address of defendant in our context.
d. If complete and accurate detail about any place stated in plaintiff paper or charge sheet not obtained, it may require to give more time unnecessarily for the re-verification of same detail,
e. In the land dispute related cases if plaintiff paper is received without proper disclosure that in which side his/her land has been encroached, the problem may arise in survey and even which will create complexity in execution of judgment,
f. Where the law clarifies that plaintiff shall submit any documentary evidence etc. while registration, however, if such document not received along with plaintiff paper then an order may require to produce the same document and which shall make case proceedings a lengthy,
g. If plaintiff paper on Coparcenership (Ansha) case is registered without disclosure of complete detail of coparceners, then additional time may require to give for obtaining same thing,

h. If case has been registered without proper verification of locus *standi,* limitation such case will destroy the important time but later on it may require to make judgment by repealing claim.

3.1. Issues to be careful while registration of case

It is required to be careful on many issues right from the registration process in order to speed up case proceedings as per the concept of case management. Caution to apply from the registration process particularly to avoid tendencies of repetition of same nature of problems in proceedings. Though litigations are generally divided into civil and criminal but from procedural perspectives charge sheet is filed in the criminal case where government is a plaintiff, whereas, plaintiff paper is filed for individual nature of criminal case and civil case; hence, issues to be careful while registration of charge sheet and plaintiff paper are separately outlined below:

3.2. Issues to be careful while registration of plaintiff paper generally:

Issues to be careful	**Relevant legal provisions**
• whether plaintiff paper is within the limitation as prescribed by law or not,	Rule 15 (3) of District Court Rules, 2052
• whether it falls under jurisdiction of this court or not,	Rule 15 (3) of District Court Rules, 2052
• whether it is in line with as per prescribed format or not,	
• whether it has followed due process or not	Rule 21 of District Court Rules, 2052
• This is to confirm from execution section in written in reverse side of the document if person coming to register plaintiff paper has dues to clear any imprisonment, fine or other charges, court fee, government dues or not	Rule 89 of District Court Rules, 2052
• In case where attorney application for pleasing not submitted or attorney has not been appointed, court-	

paid attorney shall be appointed timely by asking to the concerned whether s/he needs legal aid or not.	
• Upon registration of plaintiff paper, collected documents during registration, needs to put in file in serial order into the record form (Tayadati).	Sections (a) of Rule 21 of District Court Rules, 2052 and No. 21 of Chapter of Court Management of Muluki Ain
• Plaintiff paper should be in line with the format as prescribed in Annex -4 of District Court Rules.	Rule 19 (1) of District Court Rules, 2052
• It is required to receive paper even if that is not as per proper format, in case somebody submits complaint application other than the plaintiff paper with disclosing evidences under Summary Procedures Act.	Section 4 of Summary Procedures Act, 2028
• Separate plaintiff paper to accept for civil and criminal case.	No. 72 of Chapter of Court Management of Muluki Ain
• Name, surname, age, village municipality or municipality, Ward No., Village or Tole, Block No., Street, Telephone No., Fax No., email address of the plaintiff to disclose in plaintiff paper.	Rule 14 (1) (b) and Rule 19 (1) (a) of District Court Rules, 2052
• Name, surname, age, village municipality or municipality, Ward No., Village or Tole, Block No., Street, Telephone No., Fax No., email address of the defendant to disclose in plaintiff paper.	Rule 14 (1) (b) and Rule 19 (1) (a) of District Court Rules, 2052
• In the plaintiff paper father's name, if known, of plaintiff and defendant or opponents should be stated.	Rule 14 (1) (b) and Rule 19 (1) (a) of District Court Rules, 2052
• In case for married woman, husband's name, if known, of plaintiff and defendant or opponents should be stated in the plaintiff paper.	Rule 14 (1) (b) of District Court Rules, 2052
• Name, surname, address and other necessary identity details of the person whose name is written	Rule 14 (3) of District Court Rules, 2052

in the content of plaintiff paper also so to be taken.	
• Detail of each place also to be obtained if any place has been stated in the plaintiff paper.	Rule 14 (4) of District Court Rules, 2052
• Citizenship or any other proof of the person who is bringing plaintiff paper which discloses his/her name, surname, address.	Rule 14 (5) of District Court Rules, 2052
• Plaintiff paper should not be registered until and unless fee is paid as per requirement, if applicable.	Rule 18 of District Court Rules, 2052
• It requires obtaining both duplicate and original papers of written evidence submitted with plaintiff paper.	Rule 16 of District Court Rules, 2052 and No. 77 of Chapter of Court Management of Muluki Ain.
• Upon verification of duplicate copy with original submitted along with plaintiff paper, such original documents should return back if that is required return.	Rule 7 (1) (b) of District Court Rules, 2052
• If defendant is an employee of any office it is also required to take name of such office, designation, address of office, block number if available and identity details helpful to find out	Rule 14 (1) (b) of District Court Rules, 2052
• In addition to above, following details also to disclose in plaintiff paper: o Name of the court, o Reasons of plaintiff paper and circumstances o related laws of jurisdiction of court o receipt of court fee submission with disclosure of charged amount, if court fee is applicable, o It would be better to note court fee amount and receipt number, if any, on the reverse side of plaintiff paper. If doing so it would	Rule 19 (1) of District Court Rules, 2052

be easy to return court fee or to collect shortfall amount in future. ○ clear remarks to note if charged amount could not be figure out, ○ claim of the plaintiff and related laws, ○ matter relating to limitation, ○ procedural laws related to case proceedings, ○ if partial claim is made in the case related to land and building, clarify the details about face of the land claimed and four-corner details and other necessary details, ○ *locus standi*,	

3.3 Issues to be careful while registration of criminal case where government is a plaintiff:

In the criminal case where government is a plaintiff, court engages not only during registration of charge sheet but from the stage of permission of remand for investigation of case. Therefore, issues to be careful during investigation and filing of charge sheet are stated as follows:

3.3.1. Issues to be careful in investigation stage:

Government Cases Act, 2049 (1992) grant authority to the police to arrest any person who is suspect to involve in crime and investigate such person taking into custody. But, the police do not have authority to detain for more than 24 hours. If there is situation to continue investigation detaining such person in custody for more than 24 hours, the police have authority to detain up to 25 days in maximum at once or in several times only after getting permission of remand from the Court.[4] If the police officials requested accordingly, following issues to be taken into consideration:

Issues to be careful	Relevant Legal Provisions
• Whether detainee is produced before the court	Section 15 (2) of Government Cases Act,

[4] Narcotic Drugs (Control) Act, 2033 Sec. 22 includes the provision which allows to extend time for three months not exceeding one month at once for cases under this Act.

or not.	2049
• Whether notice with cause of arrest is given to person arrested during investigation or not.	Article 20 (1) of Constitution of Nepal and Section 14 (1) of Government Cases Act, 2049
• Whether arrested person is produced within twenty four hours except time required for travel or not.	Article 20 (3) of Constitution of Nepal
• Whether physical condition of detainee who is detained in custody in the course of investigation checked up and such report is in the record or not; and a copy of such report is received by court or not.	Section 3(2) and (3) of Torture Compensation Act, 2053
• Whether arrested person has given opportunity to receive legal advice from his choice of attorney or not.	Article 20 (2) of Constitution of Nepal
• Whether arrested person is detained on the charge of a case permissible to detain or not.	Section 14 (1) Government Cases Act, 2049
• Whether following matters are disclosed or not on the request of permission to remand because of non-completion of investigation within 24 hours: o Charge against the detainee o Grounds of charge against detainee o reasons for investigation by keeping on remand o whether statement of detainee has been recorded or not, o details of the statement if it has been recorded,	Section 15 (2) of Government Cases Act, 2049

• when permission of remand sought in this way, and if the court thought by considering above details that investigation is being conducted in satisfactory manner and further deemed appropriate to continue it may grant remand for maximum 25 days at once or time and again explaining same reason.	Section 15 (4) of Government Cases Act, 2049
• It is essential keep in mind to the provisions to conduct investigation without arresting on a case where appropriate reason is not exist to arrest to the accused for a crime under Annex-1 of the Act.	Rule 9(2) of Government Cases Rules, 2055
• If any application received from detainee or his/her family member or attorney claiming torture to the detainee, an order to issue within 3 days for physical or mental health checkup.	Section 5(3) of Torture Compensation Act, 2053
• An order to issue for treatment from the Government of Nepal if it is appeared to have treatment from physical or mental health checkup.	Section 5(3) of Torture Compensation Act, 2053

3.3.2. Other activities which shall be done while permission for remand

Legal provisions related to judicial activities to be carried out when permission is sought for remand to investigate on any person taking into custody are stated above. Following further activities can also be done from management perspective without breaching such legal provisions; and if doing so it will ease in case proceedings as well as create environment to safeguard the rights of detained person in future.

a. Constitutional provision is that any person arrested should be produced before the court within 24 hours excluding time required for travel to reach such office and no one shall be detained without permission from the court, therefore, permission may not be granted if

such person produced at court beyond such time,

b. Even if person produced within 24 hours, it is also needed to keep in mind that whether investigation shall be conducted without taking such person into custody. It would be logical to grant permission of remand only if deemed appropriate to continue investigation taking such person into custody,

c. Order shall also be issued to release detainee on bail if permission is sought for remand but there is no satisfactory ground appears,

d. If detainee can not understand Nepali language, s/he has not got opportunity to take advice of attorney, in a case for foreigner if s/he has not getting chances to exchange currency or not getting opportunity to telecommunication contact with the close ones, chances to change dress or bath not getting etc. the court shall issue an order to arrange such facilities,

e. Order shall be issued to keep citizenship or other document into file to verify address mentioned in the statement of arrested person.

f. Order shall be issued to keep a photograph of each arrested person. This will make easy during case proceedings or in authentication while execution of punishment and fine upon judgment and it minimizes chances of arresting another person just because of similar name or other reasons.

g. Order shall be issued to keep real name of victim or defendant or their father and mother's name secret of those who are related to case which requires maintaining identity details secret.

h. If remand is sought on a case which required close bench, remand process also to be conducted in the close bench.

i. While granting permission of remand court stamp must affix in all documents enclosed in the file submitted at court in every time.

3.3.3. Some principles established by Supreme Court in regards to permission of remand for investigation

Established Principle	**Related case**
As per Section 15 (2) and (4) of Government Cases	Maya Pathak Vs. Ministry of Home

Act, 2049, in addition to others, the police officials have to sought permission of remand with explaining the circumstances that without taking arrested person into custody investigation shall not go head or to sought remand with clear reasons; and in this context legal guidance is that permission of remand to be issued only upon consideration to satisfactory investigation process. It cannot be deemed as essential or justifiable to detain for investigation only by the reason of mentioning that without taking into custody investigation is not possible or sought for remand for investigation cannot be deemed as essential or justifiable for permission of remand.	Affairs, Nepal Kanoon Patrika-Nepal Law Review (NKP) 2053, Decision No. 6182Pg. 334
There is a legal compulsion for concerned officer to disclose reason or circumstances that investigation would be interrupted if person is not detained in custody; detention shall not be only for investigation purpose.	Mukti Narayan Pradhan Vs. Upendra Pradhan, Supreme Court Bulletin 2054, Vol. 5, Pg. 119
In the cases under Schedule-1 of Government Cases Act, 2049, the Police Office to request for permission of remand only with clear justification to detain the arrested person into custody for investigation of any crime and the court shall also grant permission accordingly. Investigation to be conducted taking arrested person into custody if that interrupt to the investigation process itself or create negative effects into investigation process, if such person not detained into custody s/he shall intervene and destroy the evidences which shall be used against him/her, and there is circumstances of	Ram Prabesh Shah Vs. Appellate Court Patan, NKP 2070 Decision No. 8989 Pg. 483

re-involvement in crime in society. Detention into police custody even in the case where investigation shall be conducted without detaining will be unjustifiable.	
Mentioning reason in arrest warrant for not releasing as nature of sensitivity of case stands not valid as per constitutional and legal provisions. Generally there shall not be investigation activities during a long holiday, so, detention for investigation process on that period is not appropriate. Court order is that to produce the arrested person before the court after holiday be releasing on bail for the period of holiday as there shall not be investigation process generally in long holidays.	Dinesh Chandra Gupta Vs. District Police Office, Sindhupalchok, NKP 2050 Decision No. 4783 Pg. 506
There will be difficulties in investigation process of crime when permission of remand not granted by court questioning status of the case whether it's a forgery or transaction, in a situation where there is no preparation of case by prosecutor prior to investigation on the first day itself.	Lila Bahadur Gurung Vs. Council of Ministers, NKP 2070 Decision No. 9038 Pg. 951

3.3.4. Certification of Statement

Human Trafficking and Transportation (Control) Act, 2064 describes that if the reporting person is his/herself a victim in the cases of human trafficking and smuggling, the Police Office to take his/her statement immediately and to produce such person before the nearest district court to certify as soon possible and district court also to certify the statement. Concerned district court has to be careful on the following matters while certification of such statement:

Issues to be careful	**Related Legal Provisions**
• The person produced for certification of statement should be victim him/herself.	Section 6(1) of Human Trafficking and Transportation (Control) Act,

	2064
• Report of human trafficking and transportation offense to be registered by the victim him/herself.	Section 6(1) of Human Trafficking and Transportation (Control) Act, 2064
• Statement has already to be noted while bringing for certification.	Section 6(1) of Human Trafficking and Transportation (Control) Act, 2064
• Same person giving statement should be produced before the court.	Section 6(1) of Human Trafficking and Transportation (Control) Act, 2064
• Statement brought to certify needs to read aloud to victim. After that statement to be certified noting whether there is any difference in the statement or not.	Section 6(2) of Human Trafficking and Transportation (Control) Act, 2064
• Since the case related human trafficking and transportation is prescribed to hear in the closed bench certification of statement also to be conducted in closed bench.	Section 27 of Human Trafficking and Transportation (Control) Act, 2064
• During certification of statement if victim is unable to understand the language of the statement there should be necessary arrangement of interpreter, sign language expert or translator; or necessary permission is to be given if victim him/herself wishes to manage.	Section 11 of Human Trafficking and Transportation (Control) Act, 2064
• If statement is taken for certification it should be certified immediately even if the case not falls under its jurisdiction.	Section 6(2) of Human Trafficking and Transportation (Control) Act, 2064

3.3.5. Following points also to consider while certification of statement

a. There will be easy in proceedings from management perspectives if we can do following activities:

b. verify the address to ease for later if required to call from the court.

c. In case of differences between permanent address and currently residing address, to get confirmation from the concerned person itself that which address to be used for summon.

d. Address of the victim also to be confirmed as notification regarding judgment requires serving to the victims upon judgment.

e. As there will be continuous hearing system in human trafficking and transportation case it would be better to inform about it at the time of certification of statement.

3.3.6. Matters to be careful while filing of charge sheet

Issues to be careful	Related legal provisions
• Charge sheet to file within the limitation of law and that should be as per the format of Schedule 13 of Government Cases Rules, 2055.	Rule 13 (1) of Government Cases Rules, 2055
• Verify that whether it falls under jurisdiction of this court or not.	Rule 15 (3) of Government Cases Rules, 2055
• Write clearly the name, surname, age, village municipality or municipality, Ward No., village, tole, block number, street name, telephone number, fax number, email address of every person who is made as defendant in the charge sheet. It should also to keep in mind that whether produced person along with charge sheet is absconded accused of any other state cases or not? Whether any imprisonment fine or charge imposed or not?	Rule 14 (1) (b) and Rule 19a (1) of District Court Rules, 2052.
• Accept charge sheet disclosing reasons of inability to produce accused person before the court if accused person as per charge sheet is not produced	Rule 19a (2) of District Court Rules, 2052

while registration of case.	
• Accused person as per charge sheet needs to be produced at court while registration of case. If not produced, charge sheet to clarify with acceptable reason that address of such accused is as per charge sheet.	Rule 19a (2) of District Court Rules, 2052
• In the situation where more than one defendants are there and address of some defendants is stated clearly and other defendants' address is not clearly stated, notification to be given to District Government Attorney Office that further process of case proceedings will be proceeded only in the case of defendants whose address is clear and not proceeded in the case for others whose address is not clear.	Proviso of Rule 14 Rule 19a (3) of District Court Rules, 2052
• Fathers name of defendant or opponent should be stated in the charge sheet as far as possible	Rule 14 (1) (b) and Rule 19 (1) (b) of District Court Rules, 2052
• If defendants or opponent is married women, name of husband also to disclose in charge sheet as far as possible.	Rule 14 (1) (b) of District Court Rules, 2052
• Disclose name, surname, address and other necessary identity details of the person stated in the content of charge sheet.	Rule 14 (3) of District Court Rules, 2052
• Disclose complete detail of each place if any place is stated in the charge sheet.	Rule 14 (4) of District Court Rules, 2052
• If defendant or opponent is an employee working in any office it is also required to take name of such office, designation, address of office, block number if available and identity details helpful to find out.	Rule 14 (4) (b) of District Court Rules, 2052

• In addition to above details following other matters also to disclose in the charge sheet: o Crime information report, o Crime detail, o Charge against the accused person and evidence thereof, o punishment required to the accused person, o Compensation amount where required to compensate to the victim of crime, o Clearly understandable elements of crime against accused person if prevalent laws have named to particular accusation, o If accused person found involve in crime in repeated way it disclose to previous punishment date and punishing court as well as to enclose a copy of such judgment as far as possible, o If it is required to get approval of any authority to file a case against the accused person certified document of such approval also to be obtained,	
• It is to disclose that whether material items are submitted as stated in the charge sheet or not.	

3.3.7. However, plaintiff paper or charge sheet which lacks following process not to be registered:

• Charge sheet without proper disclosure of the address of defendant	Rule 19a (3) of District Court Rules, 2052
• If applicable fees as per law not submitted while	Rule 18 of District Court Rules,

registration of plaintiff paper	2052
• Plaintiff paper or charge sheet which lapse the limitation	Rule 15 (3) of District Court Rules, 2052
• Charge sheet or plaintiff paper not falls under its jurisdiction	Rule 15 (3) of District Court Rules, 2052
• Accused person not produced along with charge sheet when such person has been arrested	Section 18 (4) of Government Cases Act, 2049
• Required documents not enclosed with charge sheet	
• In a situation, when accused has been released on bail by investigating authority and not produced in the court while filing charge sheet requesting to issue summon/warrant from the court's behalf, the court should ask to investigating authority and prosecutor to produce such person by arresting through police as far as possible,	

3.3.8. Principles established by Supreme Court in regards to registration of charge sheet and plaintiff paper

Established principle	**Related case**
Until and unless it is linked with other cases Fraud case cannot be considered proceeding as governmental case as per Annex-1 of Government Cases Act.	Ashwin Kumar called as Pushpa Ratna Vs. Government of Nepal NKP 2066 Decision No. 8070 Pg. 200 full bench
When authority to grant permission to file a case and authority to have power to decide on filing of case is the same and if the case has been filed by authority having power to take decision regarding filing of case it cannot be assume that approval has not been taken.	Government of Nepal Vs. Suresh Kumar Mittal, NKP 2068 Decision No. 8626 Pg. 885
The charge sheet to be filed on behalf of the Government	Rajendra Maharjan Vs.

of Nepal should disclose written identity details of arrested person such as details as per citizenship certificate and educational certificates, his/her physical structure, facial shape, indication of identity photograph and thumb impression including other identification details. In the case of absconded accused, instructive order has been issued to the name of Attorney General Office and Police Head Quarters to clearly mention his/her name; name of father and grandfather, surname and address; ancestral detail; permanent and temporary address, his/her citizenship number voter list number and other name nick-name details and other written evidences if any.	Government of Nepal, NKP 2063 Decision No. 7787 Pg. 1464
Court fee is applicable only if the Court Fee Act prescribed and it cannot be presumed so, when Court Fee Act not prescribed it.	Shubha Kumari Shah Vs. Dharma Bhata Shrestha, NKP 2025 Decision No. 455 Pg. 359 Special bench
No court should accept petition or complain and proceed without court fee as per Section 3 of Court Fee Act, 2017.	Bindeshwari Singh Rajput Vs. Dilli Sing Rajput, NKP 2035 Decision No. 1135 Pg. 41
Number of plaintiffs shall also file a single case against many of defendants on the same dispute as per No. 72 of Chapter of Court Management.	Ekraj Adhikari Vs. Lalji Chaudhari Tharu, NKP 2035 Decision No. 1192 Pg. 176, Tek Jung Rana Vs. Department of Road, NKP 2041, Decision No. 2032 Pg. 556

3.3.9. Methods shall be adopted to systematize case registration function

We consider registration of a case as a common activity but for beneficiaries, this is the first step to come into the contact with court, therefore, based on our behaviors during registration, adopted process and management they make a perception towards working system of entire courts. For some, first experience of entry into the court might be the last one. Thus, the court should

demonstrate its smartness and managerial capacity in the very first stage. To systematize case registration activities following methods shall be adopted:

a. Check list of major point to be considered during registration shall be used. Because of this, beneficiaries will have pre-knowledge about court standards regarding case registration that helps to maintain transparency and for the employees it avoids confusion and creates certainty in case registration. It curtails the situation to take clearance from superior officer time again which can enhance smoothness in works.
b. Token system shall be executed to systematize the case registration process. Service delivery shall be made more systematic and transparent by providing token to the beneficiaries based on first-come-first-serve basis.
c. Registration order-sheet also to change if we divide registration functions amongst the employees. For this, separate section of check list for each staff shall be prepared and shall be executed the certification system by the same employee who have checked the list related to concerned section.
d. There is practice to mention address of those whose permanent and currently residing district are different in a way that having permanent address is in so and so district and now residing in so and so. This practice has been creating the situation of repetition in issuing summon by the court to call on the defendants in many of the cases where first summon is issued as per one address and next summon is based on another address. In this context, if clear address to issue summon to the defendants shall be obtained from the plaintiff him/herself properly through the plaintiff paper time will be saved.
e. In case for the people who has been residing on rented house there is a practice to mention ward number only. In this type of circumstances, if it would be possible to mention about rented house clearly along with house owner's name, house number etc. summon delivery system can be more effective.
f. In some cases, problem has been observed in delivery of summon because of changes in address stated in the plaintiff paper. So, court shall get relief from searching address of plaintiff which also helps to speed up its functions if commitment is obtained to inform to the court regarding anything changes in address other than to plaintiff paper.
g. There is a legal provision that if accused person as per the charge sheet is not produced before the court while filing the case there should be reasonable ground that address of such accused is confirm as per charge sheet, however, there is not a practice of proper disclosure and case also used to be registered even without such details. This has been

creating problem in delivery of summon time and again which delaying the proceedings. Therefore, if we strictly enforce existing legal provision that will ease out the issues of delivery of summon even in the case of absconded accused of the criminal case where government is a plaintiff litigation and which brings effectiveness in proceedings.

3.3.10. Registration and refusal of case

Any case comes to the court for registration to be registered immediately if that is as per due process of law. However, it should not be kept in as it is condition even if the case shall not be registered or no fit for registration. That should be refused by stating the reason. Following ways shall be applied regarding registration and refusal:-

• Once the plaintiff paper received it should be registered upon checking its due process and receiving applicable charges or court fee.	No. 18 of Chapter of Court Management of Muluki Ain, Rule 20 of District Court Rules, 2052
• While registration of plaintiff paper it is to register into a prescribed Register Book.	Rule 20 of District Court Rules, 2052
• Upon registration of plaintiff paper or charge sheet registration number of register book also to note down on reverse side of concerned plaintiff paper or charge sheet.	
• Memo of registration or Tarekh should be provided to the concerned plaintiff on the same day after registration.	Rule 20 of District Court Rules, 2052
• While giving proof of registration of plaintiff paper to the plaintiff registration number and date also to provide. It is sufficient to give Tarekh to the person who follows the Tarekh but case registration number and date also requires to mention in is such Tarekh memo.	Rule 15 of District Court Rules, 2052
• Since the government not takes Tarekh in the criminal case where government is a plaintiff case, a receipt of case registration needs to	

provide to District Government Attorney Office as a proof.	
• If any plaintiff paper is not in condition of registration because of due process that should be returned giving 7 days' time to fulfill the due process.	Rule 21 of District Court Rules, 2052
• In case of non-fulfillment of due process, paper to return stating process to comply in the first page of document with signature of Registrar and stamp of the case.	Rule 15 (2) of District Court Rules, 2052
• Returned plaintiff should be registered and to provide proof or Tarekh as stated above if it is resubmitted within seven days fulfilling all requirement,	Rule 21 of District Court Rules, 2052
• Plaintiff paper or charge sheet which is not acceptable to register also not to be returned without any reason. Write reasons of non-registration in detail on the reverse side of first page of plaintiff paper, affix the signature of Registrar and stamp of the court; and in separate paper further write reasons for refusal of plaintiff paper or charge sheet, affix signature of Registrar and stamp of the court therein as well and provide a copy of it to concerned person. A copy of record of such plaintiff paper should be maintained in the court.	Rule 15 (3) of District Court Rules, 2052 and No. 27 of Chapter of Court Management of Muluki Ain.
• Function and duties of registration of plaintiff paper or charge sheet is of Registrar, so, order should be made accordingly by	Rule 7(1) (a) of District Court Rules, 2052

Registrar.	

3.3.11 Principles established by Supreme Court regarding Registration and Refusal

Established principles	Related Case
Matter to conclude as procedure, logic and reasons for refusal in all cases in exact way is a complex and difficult.	Kalam Bahadur Khatri Vs. Rt.Hon. Prime Minister and others, NKP 2060, Decision No. 7221 Pg. 413 full bench
The word whether as per due process or not indicate to fact included in the document but to deem as indicated to technical aspects such as format of document, fees, name surname address signature of concerned plaintiff or defendant, date etc. and Registrar does not have right to refuse of registration entering into content of the document to be adjudged by the bench.	Gaumati Sunarni and others Vs. Appellate Court Butwal, NKP 2064 Decision No. 7837 Pg. 472

3.4. Making Work schedule of case

a. Making of work schedule of a case to be considered as an important part or opportunity of case management.

b. It is needed to make a work schedule because it helps to proceed ahead of a case in speedy and predictable manner as well as to it supports to balance work load of the court.

c. Practical type of work schedule is possible with consultation to party and attorney and by this way support and coordination of party and attorney can be obtained in case proceedings, therefore, work schedule should be prepared from case management discussion.

d. Work schedule should be prepared with clarity that in which time evidences to collect, hearing to conduct as well as what activities to be carried out on what date in whole process so that it can help to make entire proceedings of a case smooth and effective.

3.4.1. Issues to be careful while making work schedule

Following issued to be considered while making of work schedule of a case:

a. Timeframe of a case may be varied depending on procedures to adopt in such case, therefore, applicable procedures to be taken into consideration while making work schedule,
b. Timeframe of case may be varied depending on nature of case, complexity or question of the case, number of witness and address, evidences to collect, probable time on hearing of case because of number of attorneys etc. So, these parts also needs to be taken into consideration while making work schedule,
c. Work schedule to be prepared in order to complete different process as soon as possible considering timeframe as prescribed by the prevalent laws, if any, for process to be adopted or procedures to complete in the case, and if not prescribed so, assuming appropriate and probable timeframe.
d. Work load of other cases and activities to be carried there for, work balance are also to be taken into consideration while making work schedule. Similarly, also needs to consider in balancing work load of concerned section while making schedule.
e. It is also needed to keep in mind to the possible absenteeism of judges due to personal cause, participation in different programs including balancing to the personal work schedule of judges while making work schedule of a case.
f. Practical work schedule to be prepared in way to be abided by all considering accessibility, availability of the parties to the cases and attorney as well as their necessity and circumstances.
g. While making work schedule court also to consider case settlement target as determined by strategic plan.
h. Regular monitoring to be conducted whether all concerned have been following work schedule and activities are going on as per schedule or not.

3.4.2. Fundamental parts of Work Schedule making:

a. Separate work schedule forms have been developed for the cases under general, special or summary procedures while making schedule.

b. While making of work schedule it has been taken into consideration to required timeframe for completion of different process during case proceedings based on applicable procedures under general, special and summary three types of procedures.

c. In the case where timeframe is not prescribed, tentative schedule is prepared on the basis of practice and experience.

d. Whole process of case is divided into three stage (from case registration to joining of defendant, joining of defendant to judgment and judgment to issuance of summon for appeal) and timeframe is determined calculating main-main activities required to conduct during these stages and minimum and maximum time it consumes.

e. There is a provision that work schedule shall be amended only by giving appropriate reason of inability of work completion within the prescribed time.

f. It has been arranged to provide work schedule to the parties generally as per stage of the case and full work schedule will be included in the case file.

g. It has been arranged to make work schedule through software and apply accordingly by making software related to work schedule.

3.4.3 Types of Work Schedule Forms

Work schedules forms have been developed on the basis of nature of case and procedures to be adopted in the case:

a. Work schedule applicable to the criminal case where the government is a plaintiff on which warrant to be issued under general procedures,
b. Work schedule applicable to the criminal case where the government is a plaintiff, on which warrant not to be issued under general procedures,
c. Work schedule applicable to individual civil and criminal cases under general procedures,
d. 205 days' work schedule applicable to criminal case where the government is a plaintiff and process of which completes in fast manner,
e. 205 days' work schedule applicable to individual civil and criminal case and process of which completes in fast manner,
f. 205 days' work schedule applicable to the cases under summary procedures
g. 205 days' work schedule applicable to the cases under special procedures,

3.4.4 Sample Work Schedule applicable to individual civil and criminal cases under general procedures

S.N.	Stage		Activities to be done	required day	additional days	scheduled date	amended date	Real Days	Shortfall days	excess date	Remarks
1	From registration to joining of defendant	1	Plaintiff paper registration	1	0						

		2	Preparation of summon	3	0						
		3	Delivery of summon	15	0						
		4	Cancelation of summon and preparation	0	3						
		5	Re-delivery of summon	0	15						
		6	Time required for travel to the defendant	7	0						
		7	Summon/ subpoena	30	0						
		8	No. 59 holding of time	30	0						
		9	privileges as per No. 62	0	26						
		10	privileges as per No. 175	0	26						
			Maximum days may be consumed from till registration of reply or joining of defendant	156							
	Since there is no time is allocated for the process like withheld application, bail/guarantee process, obtain the report of material proofs, all these activities needs to be completed within above timeframe allocated for other process.										
	From joining of defendant to judgment	10	circulate for mediation by Registrar (Shrestedar)	0	30						
		11	Initial hearing date (statement as per No. 139 and 78, all orders and approval of work schedule)	15	0						
		12	- statement as per No. 139, - statement regarding statement, - witness testing -survey mapping, - to ask to submit documents and file - other acts as per order	45							
		13	hearing date for statement of expert	0	15						

		14	statement of expert	0	30						
		15	hearing date to call property list detail (tayadati)	0	15						
		16	process of property list detail	0	45						
		17	application as per No. 17	0	30						
		18	holding of court-date	0	30						
		19	for mediation	0	60						
		20	total days for final hearing	35	0						
		21	holding of hearing date	0	15						
			from evidence collection to judgment	95	270						
				365							
3	Post judgment stage	22	drafting of judgment			7	0				
		23	preparation summon for appeal			3	0				
		24	summon delivery for appeal			15	0				
			Maximum days required for post-judgment functions			35	0				
						25					
			Total days may require for all three stages	206	340						
				546							
	Internal works like sending of file for record or to the concerned high court, correspondences for execution etc. should be completed with the same timeframe as stated above.										

3.4.5. Issues to be careful while preparation of work schedule

a. This sample work schedule is prepared based on maximum days required to complete process as prescribed by per prevalent law and procedures. The court should prepare realistic and practical form of work schedule (about timeframe) to complete the case process as much as smoothly considering its work load and nature of case etc.

b. After preparation of work schedule proceedings of the case to complete as per the timeline of work schedule.

c. If any of tentative activity scheduled under every stage not required to execute, only the time allocated for other works to count by excluding time set aside for such activity.

d. Required time for execution of prescribed work in every stage is generally divided into two part as "required days" and "additional days". At first, time to be allocated as per "required days" in the work schedule. But, if it is required to conduct activities under "additional days", it can be done by reshuffling already set time. While doing so, work completion date to be accommodated within maximum timeframe determined for respective stage.

e. If additional activities than to scheduled one needed to conduct, time for such works to allocate in a way to complete the task within maximum timeframe as determined.

f. Based on work completion date indication as 'real date' to note down in the form. After that, it is also required to note down in the form that whether such period is more or less than to the actual. But, it is also to notify to the parties if such activities to be conducted in presence of the parties.

g. If any tentative work has been completed prior to the scheduled date in each stage work schedule to revise by prepending the subsequent activities.

h. If any activity could not be completed by any reason that should be stated in remarks section and immediately to notify the same to the higher authority. Similarly, concerned judge needs to monitor periodically that whether scheduled activities are completed within prescribed time or not, and to give necessary instruction and way out over there.

i. Activities scheduled for respective stage to be completed in a way not breaching the maximum tentative time for prescribed stages. Concerned judge should manage the time by not crossing the overall timeframe for all stages if scheduled works could not be completed by reason of *force majure*.

j. While making of work schedule, it is required to determine the time not exceeding to proposed time in the form considering number of defendants, distance to address, connected of cases, nature of evidence to take into notice, circumstance that the defendant is in abroad etc.

k. In case of condition to conduct continuous hearing as per Rule 23 of District Court Rules, 2052 the work schedule also to prepare accordingly by determining continuous hearing date.

l. Judgment to make on the same day if not required taking into notice of additional evidences because of consent on the disputing issue of both parties.

m. In the circumstances of where chances of mediation between the parties exist or dismiss or notice delivery of the case or application is registered to withdraw the case as per No. 92 of Chapter of Court Management the judge shall issue appropriate order or make decision in in the appropriate time despite pending of works as per schedule.

3.4.6. Major activities during the stage from joining of defendant to judgment

Identification and understanding of evidences falls within second stage i.e. from joining of defendant to judgment under the work schedule system. Major activities under this stage are as follows:

a. Initial hearing of the case (discussion with the parties on case management) and approval of work schedule,
b. Note statement as per No. 139 of Chapter of Court Management, authenticity statement, wetness testing, to ask for submission of necessary documents and file, material evidence or DNA testing, survey mapping, collection of other relevant evidences and execution of order, statement of expert, closed -question answer, process as per No. 115 of Chapter of Court Management.
c. Final hearing and judgment.

3.5. Distribution of case

Issues regarding case hearing judges arise in the district court where more than one judges have been working. For this, it is required to fix a judge to hear a case from amongst the registered cases. The process of assignment of case judge is called allocation of case. Case allocation function can be made systematize, effective and transparent on following way:

Works to be done	**Related legal provision**
To determine about bench of the hearing judge	Rule 30 (1) of District Court Rules, 2052

to a case after registration in a district court where more than one judges are working, district judge to assign the case through lottery system balancing proportion to number of cases in the court.	
It will be transparent if such lottery is conducted in presence of all judges.	
Where more than judges more than one are working and any of a judge is on leave, another judge shall perform his/her assignment in the absence except judgment. But if more than three judges are there and any one judge is on leave, then hearing judge is to be determined again through the lottery system amongst the judges present.	Rule 30 (3) of District Court Rules, 2052
If assigned judge is on leave for more than seven days, the judge in present shall perform all the proceeding including judgment.	Rule 30 (3) of District Court Rules, 2052
While distribution of cases amongst the employees in Case Section it should be distributed in proportionate to workload as far as possible.	Rule 7(1) (Ta) of District Court Rules, 2052

Chapter 4 Rejoining of Defendant

It's a fundamental principle of natural justice that no one should be convicted without giving chance of hearing against charges. It's a matter of right of a defendant to submit clarification against charges even accusations was made for a heinous crime. Rejoining of defendant in the process of case proceeding is related to principle of natural justice and the same right of the defendant. In the judicial process, it is regarded as pillar of zero tolerance. But from management perspective, defendant calling process has been appearing as a big reason for delay in case proceedings due to non-completion of this process in time. Particularly, it has been found following problems in defendant calling process from management perspective:

a. no initiation of process to call defendant timely after filing of plaintiff paper or charge sheet,
b. even if summon or warrant is issued from concerned litigation section in time as process for rejoining of defendant but not delivery of notice within appropriate time,
c. even after delivery concerned staff submits such copy to the court lately,
d. situation to re-sending of notice because of non-delivery of notice or warrant as per due process of law,
e. No monitoring over process of calling defendant whether it is within appropriate time in appropriate manner or not.

4.1. Process to rejoining of defendant

Process to call defendant are different in the different types of the cases as stated in the prevalent laws. Specifically, process to call defendant in warrant issuing type of cases and warrant non-issuing type of cases is totally different. Similarly, process to calling defendant on the cases under general procedures, special procedures and summary procedures also have some differences. However, to make defendant calling process more systematic, speedy and effective from management perspectives ides to apply equally.

4.2. Management of defendant rejoining process

To make defendant calling process speedy and effective following methods to be adopted:

Activities can be done	**Related legal provision**

• First of all it should be confirmed before rejoining of defendant that whether case is kind of warrant issuing or not-issuing. In warrant issuing case defendant to be called upon by issuing warrant, and in the case where warrant shall not be issued, the defendant to be called by issuing summon or subpoena.	No. 94 of Chapter of Court Management of Muluki Ain
• Warrant to be issued as per the format as prescribed in No. 98 and time-notice as per No. 99 of Chapter of Court Management of Muluki Ain in warrant issuing type of case.	No. 94 of Chapter of Court Management of Muluki Ain
• In a criminal case summon and in a civil case subpoena to be issued as per the format as prescribed in No. 102 and 104 of Chapter of Court Management in warrant issuing type of case.	No. 94 of Chapter of Court Management of Muluki Ain
• Registrar to issue summon or subpoena or notice sending order which is used for calling of defendant upon registration of plaintiff on the same day.	Rule 22 (1) of District Court Rule, 2052
• Upon order by Registrar the summon, subpoena or notice to the name of defendant to be issued within 3 days and such summon, subpoena or notice to reach to concerned notice delivery section for serving.	Rule 22 (1) of District Court Rules, 2052, Section 5 (3) (b) of Summary Procedures Act, 2028, No. 92 of Chapter of Court Management of Muluki Ain
• Notice to be issued in proper address, name, and surname of defendant by verifying with address, name, surname stated in plaintiff paper or charge sheet while issuing summon, subpoena or notice.	
• Process to start immediately with taking statement if defendant present in the court in a case applicable to Summary Procedures Act; and seven days' time	Section 5(3) (a) of Summary Procedures Act, 2052

to be given to submit reply paper only if denied to give statement.	
• Upon receiving of summon, subpoena or notice by Notice Delivery Section, it has to verify such summon, subpoena or notice that whether complete details of defendant is stated properly or not and whether there is a situation to find out defendant or not before handing it over to concerned police office or concerned notice delivery personnel.	
• Record of issued notice from the court to be maintained by every notice delivery personnel on a format as per Annex-12.	Rule 93a (1) District Court Rules, 2052
• Record of warrant and notice issue to be maintained.	
• Notice delivering person to deliver notice within 15 days from the date of receiving of such notice excluding time required for travel and to submit report to Section.	Rule 22 (2) District Court Rules, 2052
• Notice delivery section to monitor about status of delivery of summon, subpoena or warrant by concerned notice delivery personnel (tameldar) or police office on weekly basis based on delivery record.	
• If it is found from the monitoring that notice could not be delivered due to logical reason, Registrar or delivery section as per instruction of Registrar shall send another staff or take support of police personnel or of plaintiff or shall adopt other appropriate way giving prior information to the judge as per necessity.	Rule 22 (4) and 93a(4) District Court Rules, 2052

• If notice could not be delivered as per the process of No. 110 Chapter of Court Management of Muluki Ain, notice to be delivered as follows: o through any telex, fax, email or address of recordable electronic means o notice can be served by publication of notice in national daily newspaper or broadcasting of notice through electronic media radio or television if the bench orders considering appropriate base or reason to notify about delivery by defendant depending on nature of case, o If bench ordered thinking appropriate to deliver notice through other governmental office or local bodies, such notice shall be delivered through such bodies.	Rule 22a of District Court Rules, 2052
• Due to issued notice in warrant issuing case delivered by concerned police appeared as invalid or any other reason if circumstance arises to re-issue notice and deliver such delivery shall be executed by court staff as well.	Rule 22 Kha of District Court Rules, 2052
• If member or secretary of concerned Village Municipality or Municipality not found while delivery of notice as per No. 110 of Chapter of Court Management of Muluki Ain, notice shall be delivered in presence of government employees at least of the level of Non-Gazzete-III or equivalent available in Village Municipality or Municipality.	Rule 22ga of District Court Rules, 2052
• Registrar to check into following matters immediately after delivery of summon or subpoena: o whether report obtained stating delivery date	Rule23 of District Court Rules 2052

or not, ○ whether delivery is completed within prescribed period or not, ○ In what period report is obtained upon delivery, ○ whether deliver is done as per due process or not	
• In checking of delivery if it is found as executed in valid manner the Registrar to certify and maintain records accordingly in the file.	Rules 23 of District Court Rules, 2052
• In checking of delivery if it is found as executed in invalid manner the Registrar to nullify the such delivered notice and to arrange for delivery of another notice in valid manner as per the process of earlier by re-issuing another notice within three days.	Rule 23 of District Court Rules, 2052
• If notice is of another office but found that such notice also delivered in invalid manner then it has to arrange to re-redeliver it by-reissuing with minor changes as per necessity and inform to the concerned office.	Rule 23 of District Court Rules, 2052 and No. 110 (5) of Chapter of Court Management
• The Registrar to maintain a separate record book for the purpose of checking validity of notice delivery in a clear manner to understand whether notices are delivered or not.	

4.3. Matters to be careful in issuing of notice

Matters to be careful	**Related legal provisions**
• If it is deemed as required to issue summon, subpoena, notice to the person who resides in	No. 34 (1) and (2) of Chapter of Court Management

abroad such notice to be issued as per the Rule of Government of Nepal and to deliver accordingly. • In sending of delivery of summon, subpoena, notice issued by foreign court, the same has to be delivered only on the basis of reciprocity as per the rule of Government of Nepal. • In any case filed in the court if any summon or judicial notice required to deliver in the name of a person who is residing in foreign state the court shall issue order for that purpose. If such order issued so, the court should send such summon or judicial notice to central authority for delivery to the person residing in foreign land. (For this purpose, the Act has assigned Ministry of Law, Justice and Parliamentary Affairs as central authority.	Section 9 of Reciprocal Legal Assistance Act, 2070
• While issuing warrant in order to arrest accused person two copies of warrant as per the format as prescribed in No. 98 of Chapter of Court management of Muluki Ain needs to send in the name of Police Office or Police Personnel of the area where accused person remains or reside disclosing his/her identity as far possible and if accused person could not be arrested despite searching thoroughly for seven days, 70 days' summon notice to be issued as per No. 99 of Chapter of Court Management. • Notification about issuing of 70-days' summon notice to affix in notice board of office and to publish in any local newspaper as far as possible if accused could not be arrested within seven days.	No. 94 of Chapter of Court Management of Muluki Ain.
• Notice to the defendant should be of thirty days'	No. 94 of Chapter of Court

excluding time required for travel while issuing summon on the matter of criminal case and subpoena for civil case.	Management of Muluki Ain.
• Notice to the defendant should be of seven days' excluding time required for travel while issuing summon or subpoena under the cases as per Summary Procedures Act, 2028.	Section 8(2) of Summary Procedures Act, 2028
• In case it is required to sending of notice in a case where to follow the process as per Special Court Act, summon to be issued of thirty days' if person remains in abroad and fifteen days if person remains with in Nepal excluding time required for travel.	Section 10 (1) of Special Court Act, 2059
• Matter regarding the nature of case whether it is allowed to appoint representative (waris) or not should be disclosed while issuing of summon or subpoena. Statement like representative not to be used in the notice if Act not allowed appointing representative.	No. 105 of Chapter of Court Management.
• While issuing summon or subpoena three copies of notice to be prepared in the name of each defendant and there should be the signature of authority and court stamp. • While issuing summon or subpoena to the name of defendant in a case where plaintiff paper filed, copy document of such plaintiff paper affixing court stamp and signature of authority also to send as per following numbers along with summon and subpoena. o single copy to the family members of same family,	No. 101 of Chapter of Court Management of Muluki Ain

○ each copy to every defendant if there is up to another five members, and ○ Each copy to main defendant of them, sending whom may be accessible to all for reading if the number of defendants is more than of five.	
• If a copy of plaintiff paper is not sent to all defendants along with summon or subpoena then summon or subpoena to be issued for such person disclosing detail of the name of defendant and copy document.	No. 103 of Chapter of Court Management of Muluki Ain.
• In the situation where case was initiated by raising a memo by the court under Summary Procedures Act 2028, the court to send each copy of such notice-sheet and related written proofs thereto along with summon or subpoena. • Except in above condition, each copy of complaint and related written proofs thereto required to send along with summon or subpoena. But in case for defendant of the same family, only each set of document is to send.	Section 6 (2) and (3) of Summary Procedures Act, 2028
• Three copies of summon, subpoena or notice to be delivered to hand over to the concerned government employee who is being deployed for delivery of such summon or subpoena or notice and to maintain receipt of these document.	No. 110 (1) of Chapter of Court Management of Muluki Ain
• If wrong statement is stated in the issued summon, subpoena or notice delivery of all these documents will be invalid, therefore, it is required to check following details minutely on the issued notice: ○ Name of notice issuing court,	

○ Name, surname and address of plaintiff who has registered complaint or plaintiff paper, ○ Case registration date, ○ Case name, ○ Name, surname address, name of father/mother or husband/ wife of such person of whose name the notice has been issued, phone number if any (address to be stated in detail as per charge sheet or plaintiff paper), ○ purpose of calling, ○ timeframe to be present, date if it is stated, ○ detail of any required document if needs to bring together,	
• It is to check that whether there is signature of registrar or concerned official, court stamp or not, notice issuing date or not and whether there are three copies of notice or not.	
• As entire justice disbursement process may be delayed if notice delivery is delayed, so, it is required to monitor notice delivery personnel that whether notice are delivered within three days or not.	
• Notice delivering personnel is a representative of the court mobilized in the field and remains with the direct contact of beneficiaries; perception towards court may be buildup based on conversation, behavior, attitude of such person. Therefore, proper orientation to be there for such persons regarding friendly behavior, good manner, discipline, work process of the court and case	

procedures.	
• In addition to detail for disclosing as per the law photograph, certificate which disclose address also requires to submit along with reply paper in the court, therefore, while issuing notice requirement of these details like certificate, photograph etc. also to mention in the notice.	

4.4. Matter to be careful while delivery of notice

Matters to be careful	**Related legal provisions**
• If employee who is deployed for delivery of notice knows to the person to whom notice to be delivered shall handover it wherever meet. Details of his knowledge about such person to disclose while delivery. • A copy of notice to be delivered at home or residence of concerned person after proper verification if concerned person not identified in person or not known. • Notice to deliver to the family member of same house if concerned person not met at home or residence. • Even if such persons not met or denied to accept it, notice to be pasted at door of home to be viewed by all. • Notice to deliver or paste in presence of a person from amongst the member or secretary of concerned Village Municipality or Municipality and two local gentlemen stating date while delivery of notice to the concerned person or family member of same house or pasting at door.	No. 110 (1) of Chapter of Court Management of Muluki Ain

• While considering gentlemen in delivery of notice they should be a local of concerned ward. • Details of receiving person to mention, if it was handed over to person or pasting detail if it is pasted, in the reverse side of another copy of notice stating date of delivery or pasting along with persons who were in presence and concerned notice delivering employee to submit report to the court with detail name, designation and signature. • In case of pasting of notice at home/door third copy of notice to be handed over to the concerned municipality or village municipality by taking a receipt or to take signature in the reverse side of copy to be submitted at court. • Concerned village municipality or municipality to paste such notice on their notice board upon receiving.	
• If any person who submitted an application to the court requesting to receive the notice after knowing about issuance of such notice, the court to deliver such notice to such person. While doing so no fee is applicable.	Section 10 (8) of Special Court Act, 2059
• Notice to deliver at nearest village, town, Tole, if any, for such person whose home/residence is not known and notice to paste in the notice board of nearest office even if such village, town or Tole also not identified. If notice delivery place not stated in the notice, delivery will be considered as invalid, so, such place to be stated.	No. 112 of Chapter of Court Management, NKP 2051 Volume 7 Pg. 571
• While going for delivery of notice of any employee or member or official of any	No. 110 (3Kha) of Chapter of Court Management of Muluki Ain.

government office or body corporate, notice to deliver to the same to office of such person by stating detail accordingly if the concerned person not identified or denied to accept.	
• In case to deliver notice of any company, corporation or other organized entity such notice to deliver to executive chief or director of any other employee in place.	No. 110 (3) of Chapter of Court Management of Muluki Ain
• In case it is required to deliver notice of any foreigner, it is to be delivered to the office of concerned person or representative if there is any office or representative is there in the territory of Nepal. • If there is not any such office or representative notice to deliver in the address of his/her permanent address or location and to the address provided for correspondence while during business in Nepal through telex, telefax or other means of recordable telecommunication means or postal registry.	No. 110 (3Gha) of Chapter of Court Management, Section 22 (2) and (3) of Banking Offences Act, 2064.
• Notice issued under Special Court Act, 2059 and Summary Procedures Act, 2028 to be delivered within two days and other notice to be delivered within fifteen excluding time required for travel to submit report to Notice Delivery Section. • If notice issued for presence that should be delivered prior to such due date.	Section 10 (7) of Special Court Act, 2059 and Section 7 (3) of Summary Procedures Act, 2028, Rule 22 (2) of District Court Rules, 2052
• Notice delivery personnel to submit delivery notice along with delivered notice and returned copy documents to the court.	No. 110 (4) of Chapter of Court Management of Muluki Ain.

• There is online notice delivery system in order to smooth delivery of notice issued by other courts. As per this, there is a system that notice issuing court to send notice through online and such court to mobilise the notice delivery person to deliver it to concerned person by downloading from system; after that such court return back copy of delivered notice through online by scanning it. All should arrange to execute this practice as it help to save time because of practice of sending same notice from postal registry system. It can be taken support of technical staff related to information technology for effective implementation of this practice.	

Chapter 5 Management of Case notes

Rule 81 of District Court Rules, 2052 has stated that a note of the case needs to prepare before submitting it to bench for decision. As per this notes to include main summary of all documents contained in the file on serial order, fact in issue and brief of main evidences submitted by the parties. Any alteration or changes in the content of note book is not permitted, it is not allowed to write personal opinion over there and concerned section chief to sign and Registrar to certify the note book as per the provision. There is also the legal provision that if case file is required to send higher level in the course of appeal such note book of file also required to enclose therein.

5. 1. Issues to be careful while making notes of case

Objective of the note cannot be achieved until and unless such note is effective and qualitative. Following matters to be taken into consideration while making notes of the case for its quality:

a. Main summary of plaintiff paper, charge sheet, reply paper, statement, testimony and other main documents contained in the file while registration or due to creation by the court as well as summary of major evidences submitted by the parties needs to be prepared.
b. Notes of main content of document should be written in clear language without distorting intention of documents contained in the file.
c. Notes to be prepared on a format as per Annex of Notes Manual issued by Supreme Court.
d. Notes to divide into different sections with serial number and heading; matter related to which date and what is the statement or concerned office of letter to describe in the heading itself and note to prepare in way to cover essence of the document in a single paragraph as far as possible.
e. Date and content of the documents contained in the file to write in the note in inverse order.
f. In case of any document is added in the file of which notes has already been prepared, notes to be updated by incorporating summary of added documents.
g. Judge or case hearing authority can ask to alter or change the content of notes if they think appropriate to do so.
h. Name of initial note taking person and updating person as well as verifying officer also to mention in the note.
i. Note taker or verifying officer should not state their views and opinion over there.

j. Signature of officials of concerned section to be verified by Registrar or the official as assigned by him.

5.2. Format of Case note

Objective of note taking is to facilitate in reading and understanding of case by the bench as well as prepare judgment in speedy manner; therefore, format of notes has been developed accordingly. In some occasion most of time of the bench consumes by procedural matters like whether summon notice delivered with due process or not, notice period lapsed or not, order has been executed or not and it cannot be possible to enter into merit of the case unless such matters are confirmed, therefore, brief highlights of case proceedings including above mentioned details also to be stated clearly in opening of notes while it's preparation. Thereafter, notes of the documents contained in the file to be prepared serially.

At sight on format of notes prescribed by Notes Manual seems complex and time consuming to prepare case proceedings detail, but, such details enter into software automatically by the connection to case management software (CMS). For this, every activity of case during proceedings needs to enter into software.

5.3. Strategy to be adopted for effective management of note of case

Main reason for non-implementation of note taking provision of District Court Rules for a long time is lack of its effective management. Following points to be noted for its effective management:

a. It is required to ask any person or entity who brings case initiating documents like plaintiff paper, petition, and charge sheet or rejoinder paper, written reply etc. or registration of other important documents to submit electronic copy as well. About similarity between electronic copy and submitted documents to be certified through the concerned person or entity itself. Since case management software in use in court accepts Unicode font only, so, with coordination to the concerned Bar unit it is required to arrange to submit electronic copy in Unicode format.
b. Keep electronic copy of case safely in noting software and prepare a note accordingly upon registration of document in the court immediately; and electronic copy of same note also to keep safely in the noting software. Besides, main issue of the order of court or document submitted pursuant to order also to note down immediately and to put in software safely.

System to develop in a way that until noting no case can be considered as matured for hearing.

c. The court generally should arrange to take note about important deeds or documents contained in the file on regular basis from the registration section or concerned litigation section. Registration section to take note of plaintiff paper or writ petition from registration section immediately after registration. Concerned section to take note of reply paper or written reply right after registration of it. Note of documents added in the file in due course of time to be prepared by concerned sections in continuous manner as per submission. Registrar or assigned official by him to check the contents of notes with verification to documents and ensure about its accuracy and updated. Registrar of assigned officials to check the contents of notes with verification and to give necessary instruction by monitoring on regular basis. Separate desk or section for making notes on particular case or for particular time or for noting only is not required. Notes to be managed as a regular part of case proceeding to meet its way. Notes to be regular and automatic.
d. Registrar to ensure about notes of the case before submitting it to the bench for decision.
e. Entry of electronic copy of notes of related case into software to be indicated in the file as well.
f. Court to send notes as well to another court while sending file of the case.
g. During inspection of litigation desk or section by registrar, inspection of district court by High Court concerned official also to inspect about notes in the file has been maintained or not and to give necessary instruction if note has not been maintained in the file.
h. The judge does not involve in preparation of notes directly, however, main responsibility goes to him/her to arrange for making notes on the cases under his/her responsibility. Every judge in district court to take notice about status of notes of the cases under concerned court or their responsibility and arrange to make notes on time before the case is being submitted to bench for hearing. Since the notes prepared in the district court may be required to use ultimately by Supreme Court, so, such notes to be prepared without main gist of the document. The judge him/herself should share skill to note taking officer and other employees who involve in such job in time to time with proper monitoring for qualitative notes. Employees also to prepare notes being under direct supervision and instruction of the judge. ultimately, so, and if

i. Though Manual determines format for notes this should be prepared on a format of judgment fundamentally. If judge ask to prepare notes on a format of judgment it will be more convenient and practical. Manual to be followed for functional convenience.

j. Notes of the documents contained shall not be the substitute of files itself, however, generally notes to be made in full and authentic manner so that judgment can also be made depending on such notes. Its use shall be enhanced if such type of quality notes is prepared. In hearing process and preparation of judgment, notes to be used in maximum way.

k. From the management perspectives, if a campaign could be launched or starting of making notes on special type of cases and newly registered cases in the courts where drafting of judgment in many cases are in pending or high records of cases are there, notes of all cases in the court would be prepared after some months and then onwards note taking system as such to be continued.

l. In order to prepare qualitative notes, training to enhance skill of note preparation to the staffs who have been engaged there to be provided at local level and to motivate them.

m. Computer software to be used in maximum in note taking works. It is required to entry of electronic copy of documents from registration to all process of the court of case proceedings into computer system.

Chapter 6 Management of Statement, Rejoinder Paper, Judicial Custody and Bail (Surety)

6.1. Statement of Defendant

Every accused person deserves right to get information about accusation and related evidences, comment on it and opportunity to have his/her opinion. Specifically, process to express views before the judge by accused person upon registration of charge sheets in criminal case where government is plaintiff is called statement. In the civil case and individual criminal case, defendant will get chances to argue over the accusation through reply paper, however, in criminal case where government is a plaintiff accused get chance to reply through statement. Standard of fair hearing of case process will not meet if statement is recorded without giving information on necessary matter or asking questions properly, so, conducive environment to be made by necessary preparation prior to taking statement of defendant.

6.1.1. Prior preparation of statement

a. Self-presence of concerned judge is required in taking statement and such judge also to look after other cases, so, accused persons to produce before the court for statement only in the definite time with coordination to concerned authorities in order to carry both of these activities in systematic manner.

b. Concerned file to submit to concerned judge who hears the case for statement.

c. Efficient employees to assign for statement processing purpose.

d.It is required to make notes of charge sheet, accusation charged against accused person, evidence documents collected in course of investigation of related case without missing of important points with thorough study.

e. Necessary Acts, rules, documents which may require during statement taking process to be in ready conditions.

f. It is needed to ask for presence of attorneys from both side of accused person and plaintiff, if appointed. It is to arrange to provide service of court-paid attorney as free legal aid as per necessity to the accused person if separate attorney has not been appointed.

g. There should be timely arrangement of patron if statement taking person is essential to have patron as per law or in case for children.

h. Necessary security arrangement in hall where statement will be recorded.

g. It will appropriate to create recording statement in the peaceful environment and not to give chances to hear matter of statement by others, therefore, except parties to the case, attorney, security personnel and other required person all other unrelated person be excluded from the hall prior to starting of recording statement. All permissible person in the hall to maintain quiet and discipline manner.

h. Close bench to maintain for the case which requires continues hearing in the close bench as per the rule.

i. It is to be confirmed that whether defendant is a correct person as stated in charge sheet or not by verifying with other documents which disclose identity and such identity also to be maintain in the file.

j. Brief about statement process fairly the concerned person.

k. To appraise to all other persons permitted to present in the hall about conduct and manner to follow there.

l. To confirm that whether statement giving person can understand and speak Nepali language or not and to arrange interpreter if not able to understand.

m. To open handcuff of defendant, if it is used, before starting statement record process.

6.1.2. Matter to be careful while recording of statement

a. Statement to be recorded in direct supervision, control and involvement. For this, judge to ask question and employees to write answer of accused. The judge has to check about correctness of answer as per reply. If the judge observes physical activities of accused while reply it will help to understand psychology.

b. Interpreter's support to be obtained if it requires when recording of statement. It is required to follow the process as per No. 24 and 25 of Chapter of Court Management in presence of patron or legal heirs, while recording statement of minor or mentally disordered or lunatic or blind or dumb. In such situation, it is required to take signature of all interpreter, patron or heirs in all page of statement.

c. It is to explain to the accused person about accuse, read aloud content of all documents contained in the file and to brief about it in understandable language.

d. It is to inquire personal identity details of defendant including name, surname, ancestral detail, identity indication, citizenship number, phone number, email address properly and to maintain proof documents including citizenship to disclose identification of defendant in the case file. If personal there is mismatching of identity detail in the document and charge sheet contained in the case file and identity shared by accused, this should be confirm by questing to the concerned accused person. If accused person has said different address in the court than to statement given during investigation process, statement at the court to be further confirm and record.

e. In the case where any of accused person shows more than one address, answer to be taken about the proper address to send notice it be issued from court.

f. Commitment from defendant to notification about changes in address to the court, if any, also to be obtained during statement recording and also to inform that otherwise notice summon to be issued at the same address given earlier.

g. It has to disclose address for sending notice, passport or equivalent identity certificate number if the defendant is foreign citizen.

h. Complete details of *subjudice* or convicted case and court or date of judgment to mention if any case is *subjudice* against the accused person on other offence or has already been convicted.

i. Information related to financial and social status of defendant also required in case to where situation may arise to demand bail, so, question related to such matter also to ask during statement.

j. In the situation defendant has consented to the offence while statement, clear details to obtain that when offence was committed, who were the other persons associated? What was the objective of offence? Whether offence was committed because of pressure or influence or compulsion of anybody and if so what types of pressure, influence or compulsion arise?

k. In the situation defendant refuse charged accusation and claimed as innocent, it is required take answer of each questioning that why and how the accused person is innocent, on what reasons submitted evidences against accused are wrong and what are evidences to prove allegations are wrong.

l. In case answer of defendant not clear, it should be make clear by asking additional questions as per necessity.

m. It is required to make clarify that which matter is true if defendant express contradictory views during recording of statement.

n. In case defendant has stated name of any person while statement, needs to obtain detail identification of such person including name, address etc. Similarly, detail of place also to obtain if shared about any place.

o. While verification of statement of defendant and collected evidences during investigation, question to ask by showing such statement and evidence as well as content of such documents.

p. Obtain details of witness including name, surname, address and other identity detail if defendant wishes to put witness, and detail of evidences and its address to obtain if defendant wishes to submit any evidence in favour of its own.

q. Whole content of statement to read aloud to defendant upon completion of record and to describe written content in understandable means as per necessity.

r. Statement needs to record in next day by writing the same if statement record process not complete on the same day.

s. Not to ask questions on single issue but needs to ask by changing matter during statement.

t. No activities to do like irritation, irrelevant questioning, humiliation, misbehave and inhuman behavior, teasing, extending unnecessary support, noting of different than to the answer, physical and mental torture to the defendant during recording of statement.

u. Procedures as prescribed by Children Act and rules to be followed for recording of statement of children.

v. Privacy to maintain accordingly on a case which requires maintaining privacy of personal identity details.

x. Upon completion of statement process, signature of defendant to obtain in closing of every page and overwritten part with taking signature of statement taking judge and affix court stamp.

y. Date to mention in the last page of statement paper.

6.2. Management of Judicial Custody Hearing

After completion of recording of statement of defendant in criminal case where government is a plaintiff, it is required to conduct hearing process of judicial custody. Since order will be made regarding whether to accused person to detain in custody or release on bail or normal court-date

for trial of case on the basis of hearing of judicial custody, this hearing is important. Following activities to be carried out in order to systematize judicial custody hearing:

Activities	**Related legal provisions**
• Ensure timely presence of attorneys from defendant and Government of Nepal in the bench,	
• Arrange to provide service of court-paid attorney if defendant could not appoint attorney,	
• If hearing of judicial custody is going take place in close bench, arrange accordingly for presence of only the permitted persons in the bench by necessary notification.	
• Securities issue may also be sensitive during the hearing in some cases of public sentiment, therefore, such aspect also to consider prior to hearing needs to arrange accordingly.	
• Ensure access of attorneys from the both parties to statement made by defendant in the court.	
• Defendant has a right to be presented in the court during hearing of judicial custody and as far as possible interpreter's service to arrange for those who cannot understand Nepali language and to translate major points of hearing in the bench to the defendant.	
• After judicial custody hearing if it is ordered to detain the defendant for case trial, concerned defendant to be sent to concerned jail for detention along with covering letter and such order.	
• If ordered to release on bail or guarantee but defendant unable to produce such bail or guarantee then such defendant also to detain until arrangement of bail or guarantee.	

• Defendant is to be sent to jail only after execution of document disclosing about inability to produce bail or guarantee if situation arise to send defendant into jail because of inability of bail or guarantee.	
• In case of requirement of detention because of both condition of court order either to detain or release on bail for trail, detention to execute only after issuing warrant disclosing all detail and reasons of detention, case, applicable section of relevant law.	No. 121 of Chapter of Court Management
• no accused shall, in any circumstance, be held in detention for a period exceeding the maximum term of the punishment of imprisonment can be imposed on that accused if the charge made against the accused is proved, so, imposed charge and maximum possible term of imprisonment to the accused also to be disclosed from management perspective while sending into detention.	No. 119 of Chapter of Court Management
• In case when order is issued to release defendant on bail, it is required to brief about process of submission of bail clearly.	
• The judge should himself to conduct hearing of hear judicial custody and make order. In absence of judge, the registrar to conduct statement recording process and order the judicial custody. In such situation of judicial custody by Registrar to submit before judge upon presence to reconsider the order.	Section … of Judicial Administration Act
• In case any material evidence was also submitted along with charge sheet, order also to make during judicial custody for its management in a safe manner.	

• Information regarding continuous hearing to provide while order of judicial custody and hearing process to manage accordingly if the case was under the list of continuous process and hearing.	
• Order of judicial custody itself to clarify matters related to management of materials and kinds submitted along with charge sheet.	

6.3. Bail/guarantee management

After hearing of judicial custody in the case where court issued order for keeping defendant on Tarekh day by demanding bail or guarantee, it is required to release defendant on court-date obtaining bail or guarantee. In such demanding of bail, accused may submit cash or equivalent kinds or bank guarantee. From management perspectives, no such problem has been observed in taking cash or bank guarantee but in case for asset, experience shows that mostly accused unnecessarily needs to remain in custody for a long. Supreme Court has issued Bail and Guarantee (Procedure) Guidelines, 2066 in order to systematize or transparent the bail or guarantee procedures. Similarly, there are some provision in regards to bail and guarantee in Chapter of Guarantee (Surety) of Muluki Ain, 2020. Following matters to be considered while taking bail or guarantee:

Matters to be considered	**Related legal provisions**
• Receive application by disclosing following details from the party who wish to cash deposit as per decision or order: o status in the case, whether plaintiff or defendant or appellant or applicant, o name of the opponent and status, o name of the case, o bench or authority or judge who has demanded bail and court, o date of such order or judgment	Rules 5, 7,8 and 9 of Bail and Guarantee (Procedures) Guidelines, 2066

○ required bail amount	
• Application to be submitted in a format as prescribed in Annex 1 of Bail and Guarantee (Procedure) Guidelines, 2066	
• Concerned official to order send to financial administration section to receive bail amount if it is applicable to accept bail on cash as per application. Format of the order is prescribed in Annex-2 of Bail and Guarantee (Procedures) Guidelines, 2066.	
• After order, concerned section to send cash with correspondence letter to the financial administration section. Upon receiving such cash, financial administration section to provide a receipt to concerned section to maintain such document in file. • Name, address of such person who deposit cash as bail, name of the case, number, bail amount to be stated clearly and court stamp to affix over there. • Upon receiving receipt of deposit of bail amount from financial administration section, concerned case section to execute a document to concerned person clearly stating conditions of confiscation of bail amount to keep onTarekh as per No. 124 of Chapter of Court Management. Format of such documents are as prescribed in Annex-3 of Bail and Guarantee (Procedures) Guidelines, 2066.	
• In a case where bail or guarantee demanded, the court shall accept bank guarantee as well if the party wish to submit so. Bank guarantee should be of "A" Class licensed institution from Nepal Rastra Bank and should be of a permanent nature not requiring renewal in time to time. Party who submit bank guarantee also needs to	

submit a copy of agreement executed with the bank. • After finalization of case, the court shall ask to the concerned bank either to submit amount equivalent to bank guarantee or release it. • Concerned court to maintain record about acceptance of bank guarantee.	
• Before accepting bank guarantee, the court to confirm clearly that whether such guarantee protect interest of the court until issuing releasing after finalization of case or not? Whether any conditions are contained in such guarantee against the interest of the court or not? Whether any difficulty in payment of cash on demand of the court or not? • If situation exist to accept bank guarantee, the court execute a document with due process with concerned party as per No. 124A of Chapter of Court Management of Muluki Ain. Format of such documents are as prescribed in Annex-3 of Bail and Guarantee (Procedures) Guidelines, 2066.	Rule 10 of Bail and Guarantee (Procedures) Guidelines, 2066.
• Receive application by disclosing following details from the party who wish to submit bail in asset as per decision or order: o status in the case, whether plaintiff or defendant or appellant or applicant, o name of the opponent and status, o name of the case, o bench or authority or judge who has demanded bail and court, o date of such order or judgment o required bail amount o Following details of asset: ▪ District, metropolis, sub-metropolis,	

municipality and Village Municipality, Ward No. Plot No. and area of land and building, ▪ location of land and building and boundary from all sides (four-corners), ▪ structure in case for building, rooms, block, floors, square feet, built year ▪ minimum market price, ▪ Price as prescribed by Land Revenue Office in case for land, and in case for building price as prescribed by tax office or metropolis or sub-metropolis or municipality or village municipality office, ▪ name of registered owner, o Obtain detail accordingly if another person is providing asset guarantee; and if bail to cover for more than one person from the same property part of liability or portion of each person. o Following certified documents also ask for submission along with application for asset guarantee: ▪ land and building ownership certificate, ▪ land revenue paid receipt in case for land and tax paid receipt in case for building for last fiscal year, ▪ copy of map of land and building, ▪ consent letter of concerned person if another person is providing asset guarantee, ▪ in case for building approved design certificate, in case of VDC approved	

building design if so and if not approval or recommendation letter, ▪ in case for the place where there is no approval system recommendation with disclosing boundary from all side (four-corner), price, nature of building; and ▪ Certificate of Nepalese citizenship of applicant and the persons who provide consent, if any.	
• It should be checked and evaluated as follows in regards to asset once application of asset guarantee received: o Whether price as stated in application is appropriate or not? o Whether possibility of devaluation of price of asset or not? And if yes possibility of decreasing percentage. o Whether withheld from other office or other matters? o Who is the owner and whether all legal heirs of such property have consent or not? o Quality of property whether property is kind to be effected from floods, land sliding, erosion etc. or not? o Whether there is possibility of decreasing of value because of high-tension line of electricity, right of away from highway or undergoing project including other physical infrastructure? o Whether possibility to decrease value of proposed property than to price as determined by land revenue office in case of land and as determined by tax office or metropolis or sub-metropolis or municipality or village municipality in case for building? o For how long tax has been paying for building?	
• Court personnel to be deployed for inspection of	

proposed property in the field.	
• Concerned personnel to verify above stated matters including nature and value of property taking support of surveyor as per necessity and also to require to make a recognizance report *(muchulka)* about status of property with involvement of ad-joiner and local gentle(wo)men. • In addition to recognizance report concerned personnel to submit confirm opinion along with report to the court explaining whether to accept such property as bail or not on the issue of appropriateness of proposed price. • Upon receiving of report concerned bail accepting authority shall decide by assessing as deemed necessary. • Following points to be considered while determining value of asset: o If asset is a land not to accept in excess value of registration price, o If asset is building it is to accept considering value determined by tax office or metropolis or sub-metropolis or municipality and in case the building is of VDC price to be determined through valuation from concerned VDC. • If asset is deemed as appropriate to accept as bail from checking and valuation and it covers to the bail amount detail of property, after confirming about no prior withholding (sequestration) of such land and building from any other authorities, to send for concerned land revenue office to withheld (sequestrate) the property for restriction to sale or transfer of ownership in any manner until and unless court order is received. • If property is deemed as appropriate to accept for bail and also received confirmation of sequestration of property from concerned land revenue office, such	

property to accept as bail after executing guarantee document. • While execution of guarantee document both part of guarantee provider and guarantee accepting person to put together. • Format of application to submit for acceptance of asset guarantee is prescribed in Annex-4, format of order for probing of property is prescribed in Annex-5, format of letter to request land revenue office to disclose price is prescribed in Annex-6, format of letters to send to metropolis, sub-metropolis, municipality and village municipality and format about deployment of staff for inspection of property are prescribed in Annexes-7 and 8, format of letter to write for sequestration is prescribed in Annex-10, format of order for accepting asset as bail in Annex-12, format of document of asset guarantee is prescribed in Annex-13 of Bail and Guarantee (Procedures) Guidelines, 2066, therefore, all these formats to be followed.	
• Bail accepting authority to verify following points to check whether due process is complied or not prior to accepting bail or guarantee:	Rule 19 of Bail and Guarantee (Procedures) Guidelines, 2066.
○ document to execute determining figure of guarantee,	No. 124A (2) of Chapter of Court Management of Muluki Ain
○ If guarantee is given by concerned from own property, document to execute as per No. 124A (2) of Chapter of Court Management with conditions that guarantee amount will be recovered from guaranteed property or any other of his/her property in a case when s/he (accused) not appeared in the court on	No. 124A (2) of Chapter of Court Management of Muluki Ain

prescribed time and venue.	
○ If guarantee is given by another person for accused (bailee), document to execute clarifying condition that guarantee amount will be recovered from guaranteed property or any other of his/her property in a case when s/her unable to produce accused (Bailee) in the court on prescribed time and venue.	No. 124A (2) of Chapter of Court Management of Muluki Ain
○ If accused (Bailee) is minor, document to execute by patron instead of such minor.	No. 124A (3) of Chapter of Court Management of Muluki Ain
○ Document to execute with a condition that deposit will be confiscated if any person not appeared in the court on prescribed time and venue.	No. 124A (1) of Chapter of Court Management of Muluki Ain
○ In case of acceptance of bail from more than one person a same cause with condition to pay in proportionate manner, document to obtain separately disclosing figures of proportionate amount or figures of guaranteed amount if it is different whether more or less.	No. 1 of Chapter of Surety of Muluki Ain
○ No guarantee to accept from the person below 16 years of age.	No. 8 of Chapter of Surety of Muluki Ain
○ Document will not be valid if document is executed without presence of both guarantee provider and accepting person.	No. 9 of Chapter of Surety of Muluki Ain
○ If accused brings to deposit bail amount in cash by the person who has submitted asset guarantee due to inability cash deposit, the court to accept it by executing a required document as per No. 124 A of Chapter of Court Management and to release the asset.	Rules 20 and 22 of Bail and Guarantee (Procedures) Guidelines, 2066.

○ Changes in asset guarantee shall not be accepted for more than one time. Provided, if bail or guarantee accepting authority considered request of applicant to change guarantee in second time as humanistic or sensitive, it shall be permitted to change guarantee for another one time.	
○ It should not refund cash replacing to asset as it was deposited in the beginning. ○ No the property having less value or quality than to previous to accept while changing. ○ All procedures including valuation of subsequent property must be followed while changing of guarantee.	

Additional issues to be considered

a. Bail and Guarantee (Procedures) Guidelines, 2066 to be followed strictly while accepting bail and guarantee.
b. In some instances it has been found that land revenue office used to valuate land of certain areas in general way avoiding valuation of particular plot while valuation of land for registration purpose. As price of land may be different for different plots depending nature of land, evaluation of each proposed plot of the land for guarantee to be evaluated in order to find out real value. Valuation of land revenue office to be considered only when above such valuation found excess than to land revenue's value. If it is less to land revenue office's price, the less value to considered.
c. In every court has to maintain a separate bail guarantee record book and updated record of name of bail guarantee providing person's name, address, case number, case name, bail demand order date, bail amount, date, receipt number, guaranteed asset detail, guarantee providing person's name address, judgment's observation about bail if any, guarantee release detail if any etc. to be maintained in such record book.
d. While making order to accept asset guarantee and execution of such guarantee, details to be clearly mentioned about each plot number of land with value amount and the case for which guarantee was provided.

e. Letter to be sent to land revenue office for sequestration to include detail of name, number, plot number of building accepted for guarantee, area including details of guarantee providing person, decision or order to accept guarantee, complete other details that till when such property will be sequestrated.

f. If any suspect about authenticity of the submitted documents for guarantee arise, it is appropriate to verify originality of document by contacting to concerned authority.

6.4. Rejoinder Registration Management

A. Issues to consider while management of rejoinder registration:

Generally defendant defends through statement in the criminal case where government is a plaintiff, whereas, it should defend through submission of rejoinder paper in other civil and criminal cases. Since defendant counters the charges of plaintiff through submission of rejoinder, it is required to flawless and to follow due process. It is also required to arrange registration of rejoinder completing due process. Following matters to be considered while management of rejoinder paper registration:

Matters to be considered	**Related legal provisions**
• Whether rejoinder paper is within due date as prescribed in delivered summons or subpoena, or not?	Rules15(3)and 23A(1) of District Court Rules, 2052
• To check that whether rejoinder paper is as per format as prescribed Annex-4 (a) or not?	Rule 23A(1) of District Court Rules, 2052
• Verification through the identity document that whether rejoinder paper is submitted by concerned defendant or through power of attorney holder?	Rules 14 (5) of District Court Rules, 2052
• If it is brought by power of attorney holder to confirm whether rejoinder paper shall be registered through power of attorney or not?	
• Whether required fees submitted or not?	
• Whether complete details about the places have been stated in rejoinder paper or not?	Rules 14 (4) of District Court Rules, 2052

• Whether complete address of defendant has been stated or not?	Rules 14 (4) (b) of District Court Rules, 2052
• Whether name, surname, address and other identification details of the person contained in the content rejoinder paper draft is mentioned or not?	Rules 14 (3) of District Court Rules, 2052
• Whether submitted documents along with rejoinder paper are correct or not?	Rules 7 (1) (c) of District Court Rules, 2052
• If rejoinder paper is as per due process and within due date, it needs to register and keep in file and to provide court date (tarekhh) to the defendant in the same day on which date the plaintiff will also appear in the court.	Rules 23A (1) of District Court Rules, 2052

B. Other considerable issues while management of rejoinder paper registration:

a. Mostly case proceeding has been delayed due to problem in delivery of summon or notice because of unclear or differences of address while required to call upon the defendant by any reason, so, its management will be convenient if following matters are considered:

I. to obtain complete details of name, address, phone number and fathers name of the defendant,

II. to obtain confirm address that in which place notices to be issued from the court to be delivered in case more than one addresses have been stated as permanent and temporary,

III. to obtain commitment about to inform to the court about changes in addresses mentioned in the rejoinder by any reason before completion of case proceeding,

IV. arrange to disclose about house owner's name if defendant mentioned address as residing on rent in house of any person,

V. if address is of town area, arrange compulsory disclosure of Tole, street and house number in addition to ward number,

VI. to obtain certificates to be obtained as per rules which disclose address including citizenship and a copy of photograph of defendant compulsorily,

VII. because of lack of information about requirement of identity which disclose address and photograph, defendant may not bring such certificates and photo and without such documents no rejoinder shall be registered, therefore, the list of required document

including photograph and certificates to bring along with rejoinder to be sent to the defendant during issue of notice itself.

b. It requires to verify with the file that whether name and numbers of the case are correctly stated or not.

c. If it has been taken to registration through power of attorney holder, it is required to check about its validity.

d. If witness has been stated in the rejoinder paper, it is required to confirm that whether name, surname, contact address of witness is correctly stated or not, whether witness to produce before the by self or to be produced through court for testimony must be verified.

Chapter 7 Management of Preliminary Hearing

7.1 Importance of preliminary hearing management:

Preliminary hearing management is the management of discussion in presence of parties to the case, attorney/government attorney before the judge in view to make entire proceeding effective and predictable by ensuring activities of case process is regular, systematic and controlled. It would be better to focus preliminary hearing management in achieving following objectives:

a. to make case proceedings smooth and predictable,

b. to make overall case proceeding and hearing more effective and objective oriented,

c. to enhance cooperation and coordination of the parties and attorneys in case proceeding,

d. to provide service of court paid attorney (legal aid) to any party as per necessity of their representation,

e. to ensure certainty in case proceeding by demarcating scope of dispute through identification of fact in issue (disputing facts).

Preliminary hearing and order to examine evidences:

(1) After registering written response or taking statement by plaintiff and defendant on the basis of evidences are submitted by them seems sufficient, case can be decided on the same day when case presented before the bench.

(2) If the case is not possible to decide pursuant to sub-rule(1), following orders shall be made after having preliminary hearing:
   (a) to identify disputing fact,
   (b) to make an order for the examination of evidences after its identification
   (c) to fix case calendar after having discussion with the party and their lawyers about the case proceeding and process,
   (d) to hold a discussion about mediation.

Rule.24 of District Court Rules, 2048 (1995)

7.2. Fundamental contents to be discussed under preliminary hearing:

Identification of disputing facts, use of mediation or other means of dispute settlements in the case, presentation of information or details as deemed essential by plaintiff and defendant and notification to each other, to determine work schedule etc. are the issue or activities to be performed under initial hearing discussion process. Major activities under initial hearing management are as follows:

7.2.1 Find out Possibility of Mediation:

a. Discussion to hold between the parties whether mediation is possible or not if the case is permissible for mediation as per the law. For that purpose, Registrar or officer level supervisory staff to fix due date prior to hearing date in order to make effort for understanding between plaintiff and defendant for mediation earlier to evidence submission hearing.

If concerned bench deemed appropriated to settle the case through mediation in any case which is permissible for mediation as per law and concerned parties also agreed to adopt mediation process, the bench shall order to forward such case to the mediating person or institution listed under list of mediators. - Rule 32C (1) of District Court Rules, 2052

b. Since possibility of mediation in the case is high before the order to collect evidence or initial stage of the case, parties are to be encouraged to settle the dispute through mediation with discussion to both parties and their attorneys even during discussion of case management.

c. If the case is settled through mediation in the initial stage it does not re quire to proceed further and it also saves time, resources and cost of the parties to the case as well as of the court and such time and resources shall be used in other cases, therefore, there should be sufficient discussion about mediation while discussion on management of the case.

d. As the parties believes in words of the Judge, while discussion about mediation in case management discussion, keeping in mind to the higher possibility of settlement of dispute through mediation it is needed to assure to the parties about chances of mediation even during remaining process of the case as well.

7.2.2 Activities to be done while conducting discussion and consultation about mediation:

Mainly following matters to be considered while discussion and consultation about mediation in reference to case management:

a. to inform the parties about mediation system and its process specially about fairness, neutrality and secrecy,

b. to inform about benefits of settlement of cases through mediation specially cost effectiveness, time saving and win-win situation of both parties including long term important of mediation,

c. to discuss about reasons to appropriate solving the dispute through mediation process analyzing content of dispute of case, fact and evidences submitted by plaintiff and defendant at their plaintiff paper and rejoinder,

d. to clarify inform about basic aspects of mediation process of settlement of dispute such as selection of mediators, negotiation and discussion including clarifications about service and facilities to be provided by the court,

e .to inform to the parties about re-hearing and decision of case through court in case of failure of mediation process,

f. to forward the case to the mediation center immediately if the parties are agreed to settle the dispute through mediation after discussion.

7.2.3 Identification of evidences to collect and order for submission:

a. Functions of identification of evidences and order to collect such evidences to be considered as the fundamental and important part of case management discussion.

b. Evidence is the material to establish or counter to the fact raised in a case by plaintiff and defendant and important for settlement of dispute, therefore, special attention should be given while identification of evidence which is must to collect.

c. Identification of must-required evidence in the initial stage shall bring the case into right track and avoid the situation of issuing order repeatedly for collection of evidence and it ultimately supports in smooth proceedings of the case, therefore, there should be sufficient discussion in this matter.

d. Appropriate evidence can lead the case into right direction and justiciable conclusion, thus, issues to identify evidence related to case to be considered as most sensitive and serious matter.

After submission of rejoinder or statement of similar type, an order to issue by clearly stating about issues on which decision to make , upon discussion, to submit required evidences subject to No. 184A of Chapter of Court Management. - Rule 24 of District Court Rules, 2052.

Court shall examine only those evidences relevant to fact in issue and related matters. - Section 3(1) of Evidence Act, 2031.

7.2.4. Function to carry out in discussion of identification of evidence and evidence collection order:

Identification and order for collection of evidence are the fundamental objectives of case management discussion, therefore, special attention to be given while such discussion. Mainly, following things are to be considered while identification of evidence and issuing order for its collection:

(a) to clarify facts stated by plaintiff and defendant in the case and inform the same by simplification as per necessity,

(b) identify consented fact and disputing fact between the parties in the cases, ensure fact in issue and be clear on the matters through discussion including the hypothetical or unrelated type of facts, claim or rejoinder argument,

(c) be ensure number of witnesses number presented by plaintiff and defendant and to fix schedule for witness testing,

(d) to ensure about evidences submitted through plaintiff and rejoinder paper and discuss,

(e) to ensure whether it is required to test expert or expert witness of any subject, if any,

(f) to ensure about relevancy of examination and collection of evidences including of survey map, recognizance report (Sarjamin) as stated by plaintiff and defendant, to determine process of collection of such evidence and prepare schedule thereof,

(g) discuss and ensure about modes operandi for submission of proofs etc. of a kind which is not submitted by plaintiff and defendant at the moment because of its nature or the proofs including like pictures which has to be submitted upon capture,

(h) to identify such documents submitted by the plaintiff and defendant which is to be verified by showing to both parties about its genuineness,

(i) to analyze all required evidences to collect or submit, clarify about liability to submit such evidences and discuss and determine necessary timeframe for submission,

(j) to make clear order as far as possible for collection and examination of all required evidences at once keeping in view to convenience of its enforcement.

Chapter 8 Evidence Collection and Examination

Section 3 of Evidence Act, 2031 limits the courts to examine evidence only relating to fact of issues and relevant facts. However, case management discussion with the parties of the respective case determines the relevancy of evidence in a particular case. Subject to the recommendations of the case management discussion, the following undertakings may be conducted for the purpose of collection and examination of evidence.

8.1 Collection of Written Evidence

Written Evidences are considered as best evidence in the course of case proceedings. Therefore, if a case includes written evidences and court has already rendered order for examining the evidences, speedy collection and examination of such evidences helps making the final judgment within the prescribed timeframe. The following activities may be relevant in this regard:-

a. If an order has been issued to submit documentary evidence belonging to the parties themselves, next Tarekh Day may be issued to the parties with a commitment to bring the document on the Tarekh Day, as specified in the order.
b. If an order has been issued to submit documentary evidence which is not belonging to the parties, parties may be asked on the first day of Tarekh after the order to inform the court in writing that with whom the documents are available.
c. If the parties request that they need additional time as they could not at once identify the place or office where the documentary evidence as ordered by the court are available, time for identifying the place and office of the documentary evidence may be extended by giving the first Tarekh after the order shortly.
d. After the identification of the place or office of the documentary evidence, court shall require application if the documentary evidences to be called on by the court.
e. While corresponding for calling on the documentary evidences, the detail of the documentary evidences has to be stated with the purpose of calling on of such evidences.
f. The correspondence has to clearly state that whether the original copy or photocopies are required.
g. If a party of a case submits a documentary evidence, the court shall issue a receipt of it.

h. If an order requires calling on or submitting evidences from different places, it is appropriate to make correspondence to all the places at a time. Corresponding separately and in different times may cause unnecessary delay in the proceedings of the case.

i. If an order is made to submit documentary evidence by the parties themselves of a case, and parties are not able to submit the documents, it is appropriate to take signature of the parties confirming about it.

j. If a party has submitted an original document as evidence and it is not necessary to keep the original in the file, photocopy of the document may be included in the file and the original may be returned to the concerned party with a condition that he/she shall submit when it is required by the court.

k. If a court has made an order to submit a document which is not easy to carry, either copy or photograph of it should be included in the file.

l. If a party tenders application stating that he/she could not submit the documentary evidence for any reason and desires to fix another Tarekh Day for submission of the document, another Tarekh Day may be fixed not extending 35 days (Muluki Ain, Number 77(4) of the Chapter on Case Management)

8.2 Submission of Witness and Examination

a. Evidence Act provisions that, unless a written document is required to prove any matter, oral evidence may be submitted to prove the matter. The main sources of the oral evidences are statements of the witnesses. Both parties of a case give their witnesses. To invite and make statement of the witness is an important task of a case proceeding. The following activities may be accomplished to call and examine the witnesses.

Witnesses Calling

a. There are separate procedures to call on government witnesses and witnesses of other private cases. Therefore, it is necessary to have separate discussion on the management of such procedures:

Calling on Government Witnesses

a. Witnesses presented in a government case by the petitioner as a government witness are called government witnesses. Regarding the procedures of calling government witnesses, the procedure as set out by the Government Case Rule is applicable. According to the provision, the Police shall be notified to make the witness present at the court. However

in practice, it takes a longer time to make the witnesses present at the court. The following measures may be adopted to expedite the procedure: -

Measures	Related laws
• While receiving the Charge Sheet, the names of the witnesses have to be confirmed that who are going to be presented at the court room for testimony and then specify the name in the respective heading of the witnesses of the Charge Sheet.	
• Make sure whether the address of the confirmed witnesses in the respective witness heading is stated	
• While making order to call on witness for examination, the names of the witnesses have to be clearly stated that who are going to be called on for testimony.	
• While prescribing the date for witness statement, the distance of the address of the witnesses have to be taken into account and sufficient time to journey has to be provided.	
• After fixing the date for testimony of the witness, a correspondence to the Police to make the witness present has to be made.	Rule 15(1) of Government Case Rules, 2055
• While making correspondence to make the witnesses present in the court, it has to specify that the witnesses have to be present via Government Attorneys.	Rule 15(1) of Government Case Rules, 2055
• While corresponding to the Police to make the witnesses present on the fixed date, carbon copy of it should also be given to the Government Prosecutors' Office.	
• If a witness is presented before the prescribed date by the court for testimony with a reason that the witness cannot be presented on given date due to the reason that he/she will go to foreign country or cannot be present for any reason, the court may order to examine the witness immediately.	Rule 15(2) of Government Case Rules, 2055
• If the Government Attorney requests another date for testimony of witness with a reason that why the witness was	Rule 15(2) of Government Case

not presented on the prescribed date by the court, the court may consider to offer another date for testimony of witnesses.	Rules, 2055
• While making request of another date for testimony of witness, the memo prepared as per the format stated in Schedule-15 has also be attached.	Rule 15(2) of Government Case Rules, 2055
• Defendant has to be informed in case another date for testimony of witness has been considered.	

Calling on private witnesses other than government

The concern parties, except government cases, of a case or court have the responsibility to call on witnesses for testimony. Even in the government cases, defendants are responsible to call on their witnesses for testimony. The following measures may be adopted to sort out this issue:-

Measures	**Related legal provisions**
• The parties of a case have to make their witnesses present on the day as specified by the court.	Muluki Ain, Number 144 of the Chapter of Court Management
• If an order has been made to examine witnesses, the parties, specifying the date for witness statement, have to be informed on the first Tarekh Date after the order.	
• While prescribing dates for witness examination, the same day to the petitioner and defendant be given as Tarekh Date.	Muluki Ain, Number 143 of the Chapter of Court Management
• The court cannot examine the witness if the petitioner and defendant are failed to bring them in the court.	Muluki Ain, Number 144 of the Chapter of Court Management
• If a defendant in detention tenders an application to the court invoking to call on his/her witness by the court, the court should issue a notice, charging Rs.5 per each witness, in the name of witness and examine accordingly	Muluki Ain, Number 144A of the Chapter of Court Management

• If there is a situation as specified by the law that the witness cannot be made present in the court and the parties of the case themselves have invoked another date for examination within 10 days of the expiry of the prescribed date, excluding the time for journey, stating the reason thereof, the court may prescribe another date for examination of witness.	Muluki Ain, Number 144A of the Chapter of Court Management

8.3 Field Survey and measurement

Situation may demand for field survey and measurement, if the nature of the dispute underlines that it is not possible to reach in the conclusion without doing so. The following challenges have been experienced while performing such activities:-

a. Due to the lack of information of the date and time of land survey or measurement, either party of the case remains absence at the time and date of survey and measurement.
b. Unqualified personnel perform land survey and measurement
c. Representatives from local bodies are not present at the time of survey and measurement
d. The map and measurement does not replicate the exact house and land
e. Recognizance is prepared without mentioning the information as contained in the order of the court
f. The map prepared after field survey does not match the record/tress contained in the Land Measurement Office
g. Does not indicate that who possess the disputing house and land
h. Does not specify the length and width of the land

Generally, a question of fact is emerged in a case where a house and land owned by a person is encroached by another person, and in order to discover the exact situation of the field, land survey and measurement is necessary. Similarly, if there is a question of fact concerning of a land that has been encroached by a river/stream or affected by landslide, has remained under estimation of road construction or road is being constructed, or encroachment of government or public land, or land has been part of forest zone and etc. land survey and measurement may be necessary to reflect the exact situation of the dispute. In such situation, the following measures may be effective while surveying and measuring land:-

Matters to be considered	Relevant laws
• If an order for survey or measurement of land contains a reason that why the situation of conducting survey and measurement is occurred, the personnel who conduct survey or measurement know the purpose of the survey and measurement and in this way it may reflect the objectives.	
• An order has to contain the information regarding plots of the land clearly. Such as : o Neighboring plots o Length and width of land o Actual possession of every piece of land o Situation of road, if any o If there is any issue of a road on that land o If there is any issue of construction of a house or building	
• Right after the order is made, the date of survey and measurement has to be determined as soon as possible, taking into account the situation of the case such as how old the case is and when the date of finalization was determined.	
• Tarekh Date should also be given to the parties of the case stating to be present at the time and venue of the survey and measurement.	Number 171 of the Chapter of Court Management of Muluki Ain
• Informing the concern staff or surveyor regarding the date and venue of the survey and measurement, Travel Order of his/her should be approved on time.	
• Adjoining neighbors, representatives from concern Village Development Committee and Municipality have to be informed about the survey and measurement on time, and have to request to be present on the day and venue for survey.	Number 171 of the Chapter of Court Management of Muluki Ain
• The surveyors and measurement staffs have to arrange	

necessary materials and equipment beforehand.	
• The surveyors and measurement staffs have to arrive at the concern place and make gathering of parties of the case and adjoining neighbors including gentlemen of the village and representatives from local bodies	Number 171 of the Chapter of Court Management of Muluki Ain
• In the presence of the disputing parties and representatives of local bodies, accuracy of the map of the house/land has to be confirmed.	Number 171 of the Chapter of Court Management of Muluki Ain
• Confirming the accuracy of the map, all the information regarding the survey and measurement has to be stated in Remark on the bottom of the map, so that the information regarding map is understandable.	Number 171 of the Chapter of Court Management of Muluki Ain
• After the completion of survey and measurement, the surveyors, staffs and other representatives including the disputing parties have to sign the deed of recognizance	Number 171 of the Chapter of Court Management of Muluki Ain
• If the disputing parties did not appear at the venue of survey, or did not sign even if they were present at the time, or if a case is that in which parties are not present in the Tarekh Day at the court, after completion of survey or measurement as stated above, the main member (staff) deployed for survey and measurement and at least a representative from local bodies have to sign with the remark that the disputing parties were not present or did not agree to sign the deed of recognizance.	Number 171 of the Chapter of Court Management of Muluki Ain
• Except the information stated above that is Remark with the clear shape of the Map, other information should not be stated in the Map.	

Some established principles regarding Deed of Recognizance of Survey and Measurement

Established principle	**Case**
The survey map prepared previously was refused based on the	Tirtha Bahadur Thapalia V.

ground that signatures of claimant and defendant were missing, and then the second survey map was prepared. However, it lacked the signature of the claimant as the claimant refused to sign. Therefore, the Map is not declared as void as the claimant had option to sign it stating his/her remark if it was not satisfactory for him/her.	HomNathMudvari, N.K.P. 2041, Decision Number 2132, p.851
As prima facie view on map prepared in large scale and small scale may make different observation, not to accept the map as an evidence only due to this reason does not seem appropriate, if the situation in both scale of mapping is not so different.	Aasha Bahadur V. Om Bahadur Manandhar, N.K.P. 2044, Decision Number 3153, p.757

8.4 Receiving Records from other places

Depending on the nature of a case, if evidences, documents or other materials to be used as evidences are located at other places, these evidence have to be collected from such places. Practically speaking, the practice collecting such evidences is unnecessary lengthy. These evidences or materials to be used as evidences may be collected promptly if the following measures are adopted:

a. State the detail of the document/deed or materials to be used as evidence while making correspondence
b. If it is related with a deed or a file, state the reference of the file or deed with the date and dispatched number.
c. If original deed/document is called on having duplicate copy included in the file of the case in court, also send a copy of it with the letter.
d. Also state the name of the concern staff who is taking care of it, if possible
e. If the document/deed or material for evidence is not received within reasonable time, do follow up in every fifteen days.
f. If the document/deed or material for evidence is not received even after following up twice, write a letter to the Office In-Charge.
g. Telephone inquiries may be made as per necessity
h. If it is replied from the concern place that additional information is necessary relating to the documents/deed as asked before, provide additional information as requested as soon as possible.

i. After the evidences, deeds or material as called on are obtained, fix the hearing date of the case as soon as possible.

8.5 Examination of Evidence

Under the heading of examination of evidence, examination of deeds/documents, examination of witnesses, examination of deed of recognizance of map or survey and other managerial activities that may be adopted while examining evidence is discussed.

a. Examination of Deeds/Documents

If there is a question of fact that whether a deed/document submitted at the court is genuine or forge, the court has to come to the conclusion regarding such documents after examining from an expert. The following measures may be adopted for this:-

Measures	Related legal provisions
• If it is necessary to make testimony regarding the genuineness or false of the deed/documents submitted by either party of a case, submit him/her before the judge for testimony.	Number 75 of the Chapter of Court Management of Muluki Ain Rule 25 of the District Court Rules, 2052
• If it is necessary to confirm whether a deed/document is forgery or not by a signature and thumb expert, the court shall pay the charge of such expert collecting from the party who had claimed that the document is forgery.	Rule 27 of the District Court Rules, 2052
• Time may be saved if sample of signature or thumb impression is collected on the first Tarekh Day after an order for examination is made.	
• If a party is unable to submit the charge within the prescribed time and has asked additional time, the arrangement of next Tarekh Date should be made as short as possible.	
• Experience shows that reports of examination of deeds/documents sent to an expert takes generally longer time to receive it back. It is better if reasonable	

time to submit the report to the expert is prescribed, while assigning the deeds/documents for examination.	
• After receiving such report, hearing date should be fixed immediately	

b. Examination of Witnesses

Taking testimony of witnesses is called witness examination, as the witnesses are presented at the court for their testimony on the Tarekh Day as prescribed. The following subject matters may be considerable in order to make the witness testimony systematic.

a. If the number of witnesses is more than one, how many witnesses have to be interrogated per day?
b. How to manage that which witness is examined on a particular day?
c. Whether the examination is to be conducted on the rotation basis between the claimant and defendant or one after one witness from both sides?
d. Where to examine the witness? Bench or elsewhere?
e. How to manage if there is an unreasonable influence on the witness or possibility of having so?
f. Which method, general or any special, of conducting examination of witness in a sensitive case involving woman, children etc. to be followed?
g. Whether or not it is necessary to arrange special measures, if witnesses are women or children?

Management of Witness Examination

While taking into account the issues relating to the examination of witness, the following measures may be adopted in order to make it effective:

Measures may be adopted	**Related legal provisions**
• While issuing an order for presenting witness for examination or prescribing Tarikh Day for submitting witnesses or corresponding to make the witnesses present, the day of examination of a particular witness to be present from the claimant's or defendant side has to be specified in the order or prescribing the Tarekh Day.	

• If the order issued for submission of witnesses could not specify that which witness has to be interrogated on a particular day, the queue of the number of the witness has to be arranged on the first day of the presence of the witnesses in the court.	
• While submitting and interrogating witnesses, it shall be conducted as per the order fixed by the court	Section 48 of Evidence Act, 2031
• On the prescribed day for witness examination, the names of the witnesses have to be received from the claimant and defendant as soon as the court is open and submit it to the judge with the case file as per the rules	Rule 29 (1) of District Court Rules, 2052
• Generally, as the witnesses are traveled from far away and in some cases they have traveled from remote districts, it is better, as far as possible, to have a preparation and arrangement to interrogate the witness on the day of presence at the court	Number 146 of the Chapter of Court Management of Muluki Ain
• In the cases in which witness examination is not finished within one day, arrangement should be made that witnesses traveled from far away or from other districts are prioritized first.	
• While interrogating witnesses, with an intention to discourage and to prolong the interrogation process, the parties of the case may also perform various unhealthy practices such as being present in court very lately, make unnecessary questions in the cross examination with an intention to prolong the procedures and etc. This situation has to be taken into account and an understanding, in the presence of the parties, should be made at the time of commencement of examination of the witness.	
• Witness examination of a case involving children, rape, humankind trafficking, establishment of relationship, divorce or cases not to be heard in an open bench as	Rule 46 B (1) of District Court Rules, 2052

prescribed by the court has to be conducted in close bench.	
• Even if the opposition does not object on any question made to witness that is irrelevant, not reasonable or insulting, the court itself should prohibit asking such question.	Section 51 of Evidence Act, 2031 and Rule 29 (4) of District Court Rules, 2052
• Taking into consideration the situation of case and number of witnesses to be examined on the specified day, schedule of a judge to hear or not to hear other cases or number of other cases to be heard has to be arranged in advance, as he/she has to be involved in the examination of witness and may have limited time to hear other cases.	Number 174 of the Chapter of Court Management of Muluki Ain
• On the day prescribed for examination of witnesses, the bench and the concern staff to conduct the witness examination has to be specified as soon as the court is open.	
• The concern staff, as soon as he/she assigned with the duty, should make necessary arrangement for witness examination, having consultation with the respective bench and taking into account the number of witnesses, attorneys and parties of the case to be present on that day. Waiting rooms should be arranged for the witnesses who are waiting their turn.	
• Witness examination should be conducted in the presence of the parties of the case. However, this is not mandatory if either party or both parties are not present.	Number 143 of the Chapter of Court Management of Muluki Ain and section 49 (2) of Evidence Act, 2031
• Even if either party of the case is not present until 1 p.m. of the day, the proceeding of the witness examination should not be stopped.	Rules 29(2) of District Court Rules, 2052
• While examining witnesses, all the witnesses have to be examined on the prescribed day, as far as possible. Except	Number 146 of the Chapter of Court

in the situation that it was not manageable on that day, witnesses of a same case should not be examined in different days.	Management of Muluki Ain
• While interrogating witnesses, it is better if the judge makes an idea in advance that what particular questions have to be asked to the particular witnesses. If such information is not disclosed by the questions and cross-questions of the parties, the court itself has to ask question to disclose such information.	Section 53 of the Evidence Act, 2053
• If there are more than one witness, the interrogation should be taken separately so that subsequent witness does not listen to the answer of the interrogating witness. The place of interrogation of witness should be arranged taking into consideration this issue as well.	Section 49 (3) of Evidence Act, 2031
• Generally witness examination is conducted in the presence of the concern parties of the case. Notwithstanding, in the severe criminal cases, arrangement for the indirect presence of a defendant should be made if a witness feels pressure or influence due to the presence of the defendant or for any other reason.	Section 49(2) of Evidence Act, 2031 and Rule 29 (5) of District Court Rules, 2052
• In the situation that there should be indirect presence of the defendant of a case at the time of examination of witness, necessary arrangement for the presence of the attorney or any other prescribed person by the defendant should be made.	Rule 29 (5) of District Court Rules, 2052
• Except waiting until 1 p.m. on the first day of witness examination, if either party is not present on the other day during the examination of witness, the proceeding should be continued in the presence of available persons.	Proviso to section 49(2) of Evidence Act, 2031
• Persons who are verbally-impaired may also make statement in writing or by sign. Therefore, arrangements for the interpreters of sign language should also be made.	Section 39 of Evidence Act, 2031

• Necessary arrangement should be made so that subsequent witness does not listen to the previous witness's answer.	Section 49(3) of Evidence Act, 2031
• If any matter /answer of a witness is not clear while conducting witness examination, re-interrogation may be conducted. Provided that it is recommended to cover all the issues during the first examination so that parties and witnesses are free from additional suffer and also it will not be a question on the performance of the court.	Section 49(4) of Evidence Act, 2031
• If interrogation of a witness who is not required to be presence at the court or the case for witnessing is far away, interrogation may be conducted by means of envelop-questioning via the respective district court.	Number 160 of the Chapter of Court Management of Muluki Ain
• Other matters to consider while examining witness o To verify, along with the address contained in the file of the case, whether or not the same witness as stated in the evidence by party is being present. o To use the courteous language with the witnesses, irrespective of the language contained in the Act o The language used in the sample of integration question to the witness does not represent the current standard of communication of Nepali Language. Instead of the word 'Timi' the word 'Tapai' has to be used while questioning to the witnesses. o If witnesses are women or children, necessary assistance should be provided. Similarly, arrangement of closed-bench and other necessary things should be made. o The court has to maintain the standard that the witness is free from undue influence or unnecessary pressure o Depending on the nature of a case, if a female staff is appropriate to conduct interrogation, arrangement should be made for it.	

○ If interpreter is necessary, arrangement of the interpreter should be made from the listed interpreter.	

c. Examination of deed of recognizance of map or survey

The necessary information to be considered while preparing deed of recognizance of a map or survey has already been stated above. However, there are several instances, when the hearing is conducted after a long wait, that the court has given re-mapping or resurvey order with a logic that the deed of recognizance of map or survey had not maintained the right procedures or does not contain the necessary information etc. This shows that unnecessary time of the court is being consumed in the case proceeding. Taking into account these issues, the following activities may save the time of the court, and may also have timely order of the court in the case of remapping or resurvey:

a. After receiving the deed of recognizance of the mapping or survey, the registrar of the respective court should make sure that whether the procedure of making deed of recognizance was properly followed. For this, the registrar may take the following steps:
    i. Whether the map contains all the information as required by the order?
    ii. If the deed of recognizance of the mapping or survey does not contain the signature of the parties of the case, whether the parties were informed about the date and venue of the survey?
    iii. Whether the map confirms the records/tress of the Land Measurement Office?
    iv. Whether representatives from local bodies were present during the mapping or survey?
    v. If the representatives from the local bodies were not present, whether or not they were informed about the date and venue of the mapping and survey?
    vi. Whether the witnesses presented during the mapping or survey have signed the deed of recognizance or not?
b. While investigating the deed of recognizance of mapping or survey, if the registrar finds that the deed of recognizance lacks the due proceeding or does not disclose the information as required by the court and the purpose will not be fulfilled, the registrar may not schedule the case in the regular hearing but may submit to the judge/bench for necessary order.
c. If it is submitted to the bench, it will be as per the order of the court.

d. Examination of other evidences

In addition to the issues stated above, on the basis of the subject matter and question to be settled in a case, other necessary evidences may be examined. For instance, now a days there is a demand of DNA test in some of the cases, and, in some cases, request for examining the voice record in mobile phones, scene recorded by close circuit camera, texts sent via emails, and etc. are also being made. It is the part of case management that whether these evidences have to be examined or not and of course depending on the nature of the case and circumstances. In this scenario, there is also probability that petitions against the interlocutory order of a district court for examining or non-examining of such evidence may be tendered at the High Court pursuant to Number 17 of the Chapter of Court Management of Muluki Ain. If the High Court receives such petition, depending on the situation, it may have to void or confirm the order of the district court. In such situation, it will be in accordance with the order of the High Court. Since these matters are subject to be examined by the expert of the respective fields, the following activities may be conducted from the management point of view:

a. To make sure that which institution is qualified and have experts for a particular test/examination, an order has to be made to examine from the same institution.
b. For this, annual update has to be made regarding the services institutions that provide such service such as the Central Forensic Science Laboratory, Central Police Forensic Science Laboratory and etc.
c. If an order has been rendered for DNA test and sample has to be collected for the test, the court, while corresponding to the concern agency, should instruct to make sure that the sample is taken in the presence of the parties of the case, and should also instruct to the parties to be present on the specific day at the respective agency for the same purpose.
d. If the matter is that the sample should be taken at the court, taking sample in the presence of another party of the case will enhance trust and accountability of the proceedings.
e. While taking sample, make sure that the sample taken will fulfill the purpose and procedure is accomplished duly, and avoid taking sample often for the same purpose.
f. While sending sample for examination, deadline to send back the report of examination may be specified in the correspondence. Follow up correspondence in time to time will expedite the process.

g. There are many examples that the late receiving of report from the test has caused delayed in deciding cases. If situation is that the timeline to finalize a particular case has already been fixed and the delay submission of report may affect the timeline, it may be stated in the letter and request to accomplish the test as early as possible.

h. If it seems that the submission of the lab test report is delayed unnecessarily, it may also be informed to the concern judge and registrar and necessary steps may be taken.

i. If a charge sheet of a government case contains that lab test report of a particular event has not been obtained and will be submitted when the report is received, correspondence to make follow up for such report may be made from the management level, even without making an order from the bench.

	Established principles	**Related cases**
•	Court itself cannot create any evidence to establish a crime or cannot prove a charge against a person	Nepal Government v. Yagya Bahadur Thapa, NKP 2069, Decision No. 8764, p. 171
•	DNA is crucial evidence while deciding paternity. Provided that for the purpose of taking sample for DNA, only the expert and concern person shall enter into the lab.	Rajiv Gurung v. Neeta Gurung, NKP 2064, Decision No. 7809, p. 454
•	The accused has right to examine the statement made by eye witnesses • Only after examination of witness without doubt, it shall be considered as direct evidence.	Nepal Government v. BaidhyanathPandit, NKP 2064, Decision No. 7809, p.73
•	A person is not forced to speak against himself/herself. The principle " one may not be witness in his/her own case' is not applicable in the case of witness examination. Statements to be made by witnesses do not have preferences. The privilege given by article 24(7) of the Constitution that underlines that an accused has right to defend a charge against him/her is not applicable for the witness who is presented in a criminal case. Witness may be prosecuted in the contempt of court if he/she does not fulfill the duty.	Advocate Achyut Prasad Kharel v. Office of Minister's Council, NKP 2067, Decision No. 8517, p. 1989

• Number 15 of the Chapter of Court Management of Muluki Ain provisions for making the court competent for examining evidence. However, if other evidences indicate that the crime might have been committed, this provision shall be applicable to examine the evidence and prove the charge without doubt. But this provision does not indicate to have compulsory examination of other evidence which is not examined.	Nepal Government v. Arjun Giri et al., NKP 2044, Decision No. 3247 p. 1086
• Complaint should be made immediately if there is no opportunity for cross examination	Rajendra Rai v. Nepal Government., NKP 2045, Decision No. 3381, p. 192
• Pursuant to section 18 of the Evidence Act, 2031, the deed prepared in the police and the information of the deed of recognizance shall not be taken as evidence unless the witnesses confirm in their testimony in the court.	Nepal Government v. Raju Tamang, NKP 2946, Decision No. 3788, p. 390
• Opinion of expert should be based on a certain reason, otherwise such opinion do not carry any relevancy.	Buddi Prasad Subedi v.Nepal Government v., NKP 2048, Decision No. 4287, p. 186
• The dying declaration of the deceased made before his elder brother in a hospital when he got the sense for a while and the same statement made by the brother in the court shall make the validity as evidence of dying declaration.	KalawatiYadab alas Bitti v. His Majesty's Government, NKP 2063, Decision No. 7663, p. 321
• Statement made by the deceased on a bed of a hospital in front of the house owner and noted down by the police and the same statement made by the police in the court shall be considered as evidence of dying declaration	Nepal Government v. Ammar Bahadur Alemagar, NKP 2064, Decision No. 7898, p. 1443
• Oral evidence should be always direct, unclear and uncertain statements cannot be the base for establishing a crime.	Nepal Government v. AnupSahani, NKP 2065, Decision No. 7953, p. 423, Nepal Government v. Ram Rup Sarda et.al, NKP 2066, Decision No. 8093, p. 332

• Once the court renders an order to present the witness at the court, the concern party is obliged to make the witness present at the court on the specified date until the purpose of calling witnesses is over. It is not necessary to correspond again.	Bir Bahadur Raut v. Ministry of Home Affairs, NKP 2068, p. 1376, Full Bench

Chapter 9 Hearing Management

Submission of a case to the bench prescribing a fixed date and preparing a schedule (Cause-list) is called hearing of a case. In accordance with Rule 3 of the District Court Rules, only the judge has authority to resolve a case. Notwithstanding other court staffs such as registrars and other employees may also perform the procedural activities, only judge has authority in the matters relating to decision/justice, for instance to decide whether or not to examine evidences, or what types of evidences to be examined, matters relating to witness examination, to decide whether to continue the proceedings of a case keeping the defendant in custody or releasing in General Tarekh and rendering a final verdict etc. Therefore, a cause-list is scheduled and submitted before a judge in order to perform such activities. Even though, these all the activities have to be conducted following the provisions of the Rules, paying attention to the managerial aspect of the application of the Rules helps making expeditious settlement of the cases. The following issues are underlined regarding the hearing management.

1. In some days, the workload to the judges is really high and they cannot accomplish all the scheduled tasks on that day. However in some days, the tasks fixed for the judge is not so enough and they get early release.
2. Having final hearing of a case and witness examination of another case simultaneously, in many of the cases, judges do not get sufficient opportunity paying attention to the witness examination.
3. Due to the mismanagement in the preparation cause-list of the cases, cases to be prioritized for instance haring for submission and examination of evidence lags behind.
4. Time management also seems problematic if a big case and a small case according to their nature are scheduled on the same day and hearing of the big case consumes the whole day and small cases do not get the number.

9.1 Matters to consider making effective management of hearing:

Transparently, fairness and effectiveness are the most important elements for effective management of a hearing. These elements have to be ensured either making the weekly or daily cause-lists. The following issues are stated for making the effective management of hearing.

a. Cases must be scheduled for hearing only after completion of all the requirements to be listed for hearings as per law.
b. A hearing verification list may be prepared which helps check whether or not all the requirement to be listed for the hearing as per law
c. For the verification that whether a case has to be listed for the hearing or not, an officer may be deployed
d. If any officer is deployed in this way, the file of the case should be submitted him/her for verification before listing the case for hearing
e. Listing a case for hearing and submitting to the bench after verification of all the requirements to be listed for hearing as per the law saves the time of the judge.
f. Weekly cause-list may be prepared by observing the nature of the cases and workload to the judges specifying a particular day for a particular nature of cases. A general standard may be fixed for this.
g. Before prescribing the date for hearing, it is important to consider the agreeable date discussing with both parties and also verifying the case load and schedule of judges of that particular date.
h. No hearing date can be fixed without appearance of the parties of the case in the court. If a person of a case does not appear at the court within the reasonable time of the Tarekh Day, the hearing of the case should be prescribed looking at the expiry of Tarekh of the parties.
i. Generally, the number of the cases has to be considered while scheduling for hearing date.
j. Immediate upload in the software is necessary when the date for the hearing is fixed.
k. It is also important to remark in the cause-list if a party of a case is a detainee, senior citizen or a case of a priority hearing.
l. The government attorney, in a case where the government is a plaintiff, and the detainee, if he/she is in detention, should be notified about the hearing date. The receipt of such notification should be included in the case file.
m. After confirming the hearing date, the section in-charge has to make signature of the parties of the case and also mention in the Tarekh Memo, with his/her signature, given to the parties by the court.
n. The registrar of the court has to supervise and control regularly so as to ensure that the hearing dates are given as per the quota and standard developed for the particular days

according to the nature of the cases. If the registrar does not conduct regular supervision or control, there is a possibility that number of cases on a particular day may be listed more than the quota and some days cases do not maintain the standard as specified in the quota. If a court is using software for case management, cause-list should be managed through the software.

o. Cases listed for the hearing of following week have to be displayed in the notice board by Friday of the previous week. Court users will feel more convenience, if a particular time for displaying cause-list is practiced.
p. Nonappearance of a case fixed for the hearing in the cause-list of the hearing day creates a lot of confusions and doubts regarding the performance of the court. Therefore, a sincere attention has to be paid while fixing the cause-list. For this, before display of the weekly cause-list, it is better to verify with the concern section in-charge.
q. While displaying or publishing the cause-list on the notice board, name of plaintiff and defendant, name and number of the case, the date of hearing and name of private attorney, if any has to be included.
r. While displaying or publishing the cause-list of cases, the order of the cases should be followed as specified by Rule 31 (2) of the District Court Rules, 2052.
s. Cases not included in the weekly cause-list should not be displaced/ published in the daily-cause list. However, submission of a case before the judge to administer an application tendered for the purpose of Dismiss, Settlement and application tendered for withdrawal of a case pursuant to Number 92 of the Chapter on Court Management of Muluki Ain is allowed.
t. The cases listed in the weekly cause-list should also be listed in the daily cause-list every day and displayed on the notice board and uploaded in the software.
u. The hearing and case proceedings have to be carried out based chronological order as listed in the cause-list.
v. Weekly cause-list and daily cause-list should be prepared according to the individual judges.

9.2 Preliminary hearing:

The preliminary hearing of a case means submitting the case-file to the judge for the first time hearing which is done after appearance of both parties of a civil case in the court, or after

completion of apprehension of all defendants or time to arrest the defendant is expired. In this hearing, fact in issue is determined and after discussion with the parties and attorneys, evidences are also determined and examined including the discussion of the further proceedings of case to be carried out, timeline and possibility of referring the case to mediation etc. The following activities should take into account while listing the case for hearing:

(a) Whether or not all the defendants are appeared in the court or whether or not time to appear in the court is expired

(b) Whether or not time to make up the deadline is remaining

(c) Whether or not the notice has been served properly, in case of the defendants who do not appeared in the court.

9.3 Final Hearing:

After completion of all the proceedings as required by the first/preliminary hearing, the case is submitted to the bench for final hearing. In this stage, all the evidences are already examined. The following issues have to be taken into account while setting out the final hearing:

a. The hearing should be fixed only after confirmation that all the prerequisite tasks as per the orders have been completed.
b. Hearing should not be fixed if either party of a case is not appeared or time-limitation for making up of the Tarik Day is not expired.
c. If any day or date is specified according to the nature of case, the hearing should be fixed accordingly
d. Generally, the hearing dates of a subsequently registered case should not be fixed on the particular day without completing the number of older cases.
e. As soon as the hearing day is fixed, it has to be uploaded in the software.
f. If there should be any statement regarding detainee, old-aged or priority hearing, it should be stated in the remark.
g. The information of the hearing date to the government attorney and detainee, if any, in a government case has to be provided by the following day of the fixation of the hearing day. If the service of court-paid lawyer has to be received, he/she should also be notified immediately.

h. After confirming the hearing date, the section in-charge has to make signature of the parties of the case and also mention in the Tarik Memo, with his/her signature, given to the parties by the court.
i. If hearing could not be held due to the time limitation or adjournment, another day of hearing should only be prescribed after stating the same in the Tarik Memo.

9.4 Cause-list Publication:

Judicial proceedings should be open and transparent. For its own comfort and for the purpose of notifying the court users, court publishes weekly cause-list of cases to be heard in the following week. Such cause-lists may be classified as weekly cause-list, daily cause-list and supplementary cause-list. Without publishing the cause-list, courts do not conduct hearings of any case.

a. Weekly Cause-list

The cause-list of the cases prepared for the purpose of the hearing for the following week is called weekly cause-list. Every court has to prepare a weekly cause-list as follows. The cause-list has to be displayed on the notice board and updated in the software.

a. Registrar should, for the purpose of conducting hearing in the following week, prepare a cause-list of cases to be heard in the following week in a chronological order based on seniority.
b. While displaying or publishing the cause-list on the notice board, name of plaintiff and defendant, name and number of the case, the date of hearing and name of private attorney, if any has to be included
c. Weekly cause-list and daily cause-list should be prepared according to the individual judges.
d. No case shall be heard if it is not published in the weekly cause-list, except the cases submitted for the purpose of Dismiss, Settlement, application tendered for withdrawal of a case, testimony and hearing for trying the case keeping defendant in custody or not.

b. Daily cause-list:

A list of cases prepared for the purpose of daily hearing extracting from the weekly cause-list is called daily cause-list. Daily cause-list is prepared and published on the daily basis. Following matters are important while preparing and publishing the daily cause list:

a. Out of the cases listed in the weekly cause-list, cases specified for the daily cause-list of a particular day has to be prepared at 10 a.m. and display on the notice board. The cause-list should be prepared according to the number of judges, separately. It should also be uploaded in the website of the court.
b. Except the cases for supplementary cause-list, no cases other than the cases published in the weekly cause-list shall be published in the weekly cause-list.
c. Priority of the case while publishing the daily cause-list shall be fixed as follows:
    i. Petition of habeas corpus
    ii. Cases under consideration of a particular bench (prolonged hearing)
    iii. Cases involving a detainee
    iv. Petition of injunction
    v. Cases applying Summary Procedure Act
    vi. Juvenile Cases
    vii. A case involving a senior citizen more than seventy five years old or physically challenged person
    viii. A case for establishment of relationship
    ix. If a hearing date is fixed by the previous order
    x. A case involving an issue of partition or maintenance
    xi. Other cases as per the order of the number of the registration

c. Supplementary cause-list:

In certain situations, cases that are not included in the weekly cause-list or petitions to be submitted to the bench directly are submitted for the hearing. Cause-list of such cases is called supplementary cause-list.

a. A supplementary cause-list has to be prepared and published for the testimony and first hearing of a defendant of a case having government as petitioner, wherein the defendant has been submitted to the court along with the charge sheet or absconded defendant has been appeared at the court following the court's warrant or police has

arrested as per the warrant of the court, to confirm whether to trying the future keeping in the detention or freeing him/her in general Tarekh.

b. If an application is tendered invoking to administer settlement of a case or for withdrawing the case, a supplementary cause-list has to be prepared in order administer the task.

A supplementary cause-list should also be published, if any application to be submitted to the bench for withholding land and property, releasing the withholding or petitions tendered against the orders of the registrar or judgment execution officer, petitions tendered pursuant to Number 10 and 83 of the Chapter of Court Management of Muluki Ain for obtaining permission and other petitions.

Chapter 10 Differentiate Case Management

10.1 Differentiate Case Management of different cases

All the cases filed in the courts are not of similar nature. Generally, based on the content, subject matter, question of fact involved, number of parties and etc., cases are classified into two categories: simple and complex. The regular activities carried out by courts for case management is enough for the simple nature of cases. However, special attention of courts is necessary for the management of differentiate cases. The objectives and necessity of the differentiate case management may be stated as bellow:

a. Based on the inherent content and nature of issues involve, to identify the cases of differentiate management

b. To adopt special measures for the management of such cases, as per necessity.

c. Being alert with the possible delay in the proceeding of the cases and effect of it, to maintain the situation that the cases are finalized within the specified timeline.

d. As per the necessity, to mobile resources meeting the target of the court.

10.2 Identification of Differentiate Cases

The course of the proceeding of a case itself indicates to adopt the appropriate case management system for the case. In certain situation of the course of proceedings, simple cases in nature convert into complex and complex cases in nature convert into simple. As the proceedings of simple cases go normally and settled within the specified timeline, no special managerial measures are necessary to adopt. However, if special attention is not paid for the management of complex cases, many complexities will occur in the course of proceedings and it will be difficult to finalize within the prescribed timeline. Therefore, a separate heading for the Differentiate Case Management is proposed in this guideline. From the management point of view, the following issues may be the basis for identifying the cases to adopt special managerial measures:

10.2.1 Nature and Subject Matter of Case:

Nature and subject matter of a case may be a ground for adopting measures of differentiates case management, which is established mainly by the study, practice and experiences. Some cases by nature are complex in most of the situation. Therefore, special attention (such as during preliminary hearing, order for submission of evidence and collection of

evidence, hearing etc.) has to be paid immediately after the cases are registered in a court. The cases that commonly fall under this category are partition, establishment of relationship, encroachment of land involving question of several plots, homicide, corruption, robbery and etc. However, as stated above, just recognizing a name of a case is not sufficient for categorizing as a case of differentiate case management; rather the managerial system of a case is determined on the basis of issues involved and nature of disputes of the case. Hence, proceeding of a particular case indicates that what type of managerial system for that case is necessary to adopt.

10.2.2 Number of parties involved and situation

Much more attention in the proceeding of a case should also be paid if the number of parties involved in a case is high. The claims and concerns of the claimants will be increased if the number of claimants is high, and in the similar way, if the number of defendants is high, concerns of defendants will also be increased and the proceedings such as evidence examination, deliverance of summon to the defendants etc. will be lengthy and consequently the case becomes complex. If careful attention is not paid to this situation, the entire procedures for the case become lengthy and the case may not be settled for a long time. Likewise, the deliverance of summon to the defendants will also be difficult, if the defendants are living in different districts or even if they are living in the same district but far away geographically. Therefore, if a case has high number of claimants and defendants (at least more than 5) and the defendants are scattered in different districts or living in a geographically remote area, it will be qualified as differentiate case that demands special management.

10.2.3 Number of attorneys

If the number of attorneys representing from claimants and defendants is high, it takes much more time for arguing the case. Generally, a big number of attorneys cause to prolong the proceedings of a case. Likewise, postponement of the case by the attorneys from both sides is also affecting the expedite proceedings of a case. If attention is not paid to this situation and an appropriate measure is not adopted for better management, the entire proceeding of the case will be delayed. Therefore, a case having high number of attorneys may also be considered as differentiate case.

10.2.4 Adjoining cases and case duration

The scenario of adjoining of cases underlines several questions of fact to settle and disputes contained in the cases are also interrelated. In such cases, decision has to be made at a time having completion of all the procedures of all the cases, but given the nature of the cases, it is not easy to complete all the procedures of all the adjoining cases at a time that leads a complexity that even a

case out of the adjoining case having complete procedure cannot be finalized. In addition to this, a case will be considered as a complex case, if the duration of a case has been prolonged unnecessarily even after the case procedures are normally performed. In this situation, if a court does not adopt a special measure to settle the case in a differentiate way; it may not be finalized within the prescribed timeline. Therefore, a case may be considered as a complex case if the number of parties of the case is more than 5 and the duration of the case proceedings is extended unnecessarily.

10.2.5 Nature of question of fact and complexities of collection of evidences

On the basis of the questions to be resolved in a case, different technique of case management may have to be adopted. If a question to be revolved in the case is a new one, there is no existence of precedent on that issue, and the question on the basis of effect is vast, crucial and sensitive or rigorous, the case has to be dealt with a different managerial measure. Likewise, the evidences shown by the claimant and defendants to justify their claims and defends are not easier to collect and examine according to the nature of such evidences and needs to have special efforts to perform it, such cases are also considered as differentiate nature of cases.

10.3 Measures for the Management of Differentiate Case

Stating the measures to be adopted for the proceedings of differentiate cases, cases of special attention to be paid, appropriate measures and proceedings to be adopted to overcome the possible delay in the finalization of the case and provide expedite and effective justice, this Guideline talks about the management of complex nature of cases by a court. The main task to be performed or measures to be adopted in the complex cases has been discussed in brief as follows:

a. Identifying the differentiate nature of case; a separate section to handle such cases has to be allocated. If it is not possible to do this, make a separate file or put some identification on such file so that it can be identified easily.

b. Taking into consideration the inherent question in a case, number of the parties, address of the parties, situation of adjoining cases and etc. and identifying the complexities laying in the cases or possible complexities to be occurred in the future, the judges, registrar and concern staffs who take care of the file of the case should sit together and finalize the appropriate measures.

c. The registrar should take a copy of the list of the cases which have been identified as differentiate cases and monitor regularly that whether or not the appropriate measures identified for the management of such cases have been adopted.

d. Monthly assessment among the judges, registrar and concern staff who takes care the file is needed in order to identify that whether the proceedings adopted for the management of differentiate case have been properly adopted and to address the hindrance appeared, if any.

e. There should be compulsory discussion on the management of case and find the way for mediation. Identify the evidence to be submitted and issue an order for examination of evidence, and implement a work calendar having discussion with the parties and the attorneys representing from the parties and finalize the tasks to be performed to expedite the proceedings.

f. Tarekh Day should not be given for a long time, there should be balance between the bench and case section so that the scheduled tasked is completed on the prescribed day.

g. To supervise the case files regularly, to monitor whether the task have been performed as per the timeline, and to endeavor to accomplish the activities to be performed as per the order of the bench within the prescribed timeline.

h. The case-note has to be compulsorily prepared, update the case-note based on the activities of the case, the case-note has to be prepared making supportive for case hearing.

i. To do regular supervision on whether or not the proceedings have been completed, whether or not the case has been listed in the schedule for hearing on timely basis.

j. If it seems necessary in a case, ask to submit pleading note within a specified time, arrange to have an argument of attorneys on the same basis and fix the subject matter of argument by attorneys.

k. If the number of attorneys representing from claimants and defendants is high, have discussion among the attorneys in order to address the request of postponement by the attorneys and make consensus as follows:

    a. Determination of time for argument

    b. How many time the postponement is allowed

c. To allow or not, if an attorney is requesting to postpone the hearing of a case in which the party has appointed more than one attorney.

d. Submission of pleading note

e. Application of the concept of lead attorney in the case, and etc.

l. If there is any new order issued by the bench during the hearing, to take step for immediate implementation of such order

As soon as the task is performed as per the order, the case has to be scheduled for the hearing.

Chapters 11 Management of Continuous Hearing System

11.1 Background

Strategy of making judgment on some cases following continues hearing system by collecting evidences immediate after filing of a plaintiff or charge sheet has been developed considering adverse situation of justice delivery system because of possibility of forgetting important facts of the cases due to long gap in recording statement of victim or witness, arising of hostile situation for victim and witness due to undue influence and circumstances of disappear of evidence in some instances. This process to make judgment following continue proceeding of a case is known as continuous hearing system. In what type of case it requires to adopt continuous hearing system depends on legal provision of different countries. In our context, concept of continuous proceeding and hearing system has been introduced by amendment of District Court Rules, 2052 in 2067. In order to make court management system effective, third Strategic Plan of the judiciary adopts strategy to make continuous hearing system more effective which is adopted by district courts.

11.2 Cases to adopt continuous hearing system

Rule 23C of District Court Rule, 2052 states that continuous proceeding and hearing system shall be adopted on the cases as prescribed in Schedule 4B of the same Rules. Following cases are listed in Schedule 4b for regular proceedings and continuous hearing:

a. Cases related to alimony,
b. Cases related to domestic violence,
(a) Cases related to Rape,
(b) Cases related to human trafficking,
(c) Cases related to human trafficking and transportation,
(d) Cases related to Chapter of Marriage under Muluki Ain,
(e) Cases related to racial discrimination and untouchability,

In addition to above cases, the law has provision that Supreme Court shall add the additional cases into the list for continuous proceeding and hearing system by publishing notice from time to time in Nepal Gazette. However, the Supreme Court till now has not prescribed any such additional case under this provision.

Besides, the Supreme Court has issued an order through a case of Uma Tamang vs. Government of Nepal in 2069 Writ No.0258 for effective enforcement of legal provision of continuous proceedings and hearing system laid down in District Court Rules, 2052 in order to ensure proper punishment to the accused and clean cheat to innocent as well as to insure remedy and concession to the victim following to speedy judicial process.

11.3 Management of Continuous Hearing Process

Continuous hearing is a special provision for regular proceedings and hearing of critical type of criminal cases for fast and effective case proceeding and decision. Except the provision about for continuous hearing for prescribed cases no other detail provisions regarding procedures are stated in the Rules, therefore, the procedural provisions mentioned in laws for other cases to apply for the case of continuous hearing as well. Following activities shall be done for effective management for the case of continuous hearing:

Matters to be done	**Relevant laws**
Although, there is a single main register book for all cases the court has to make another subordinate register book for the case of continuous hearing and to identify and monitor such case.	
General procedures of the cases that have been applied for other cases; such as to issue notice in the name of defendant, taking the statement and issuing order for the imprisonment of judicial custody, registration of rejoinder paper etc; are the same also applicable for the case of continuous hearing. Only the matters related to examination of evidence needs to carry on continuously under continuous hearing system, therefore, it has to be managed accordingly.	23C (1) of District Court Rules 1991
This is to understand that the provision of continuous hearing will be applicable only for those cases where all defendants are produced with the charge sheet.	
If the case is as per the list of continuous hearing under the regulations and all defendants are produced along with charge sheet, the court, at the time of giving additional time for due date, should inform police, public	

prosecutor and defendant that the case will be proceeded under continuous hearing system; and similarly the court also to inform to the party to be alert for submission of witness and evidence upon court order and attorney also be alerted to present accordingly.	
In order to create a situation to call witness and complaint immediately upon calling by court, it is required to remind police and defendant both the parties to have telephone number of their respective witness.	
Upon completion of statement recording in a case where all defendants are produced, order must be issued to both the parties for submission of their witness next day or as soon as possible.	
Even if initial hearing is essential to collect other required evidences among others, discussion to hold on the same day of judicial custody hearing and to issue order instantly for collection of such evidences by identifying it.	
Prepare separate procedures and case calendar for the case belongs to continuous hearing and other cases. Court-date slip (tarekhhparcha) to give to the parties along with work-schedule in a way to complete prescribed work on prescribed date as determined at a time of registration.	
It is required to make understanding on procedural issues such as not to postpone the hearing date of the case belongs to continuous haring as far as possible, submit witnesses in the scheduled date, and identify required evidences immediately and accordingly issue an order to collect etc. with discussion to parties, attorney and government attorney.	
Give judgment immediately after completion of statement of witness and examination of evidences.	
If cause-list of cases under continuous hearing system published mixing to other cases there will be a possibility of less priority in case proceeding, therefore, a separate day to be determined for such cases and accordingly to schedule the cause-list.	
Judges and court Registrar needs to supervise the proceedings on regular basis about whether cases under continuous haring system is going on as	

expected way or not and to address the problem, if any, arise in process on timely manner.	
Total timeframe consumed for settlement of a case is considered as a kind of indicator for effective management of case under continuous hearing system, therefore, it would be better if a case under this system shall be settled within three month, though regulation itself does not determine particular timeframe for decision of a case.	

11.4. Matters to be careful on continuous hearing system

It seems necessity of additional managerial capacity for effectiveness of regular proceeding and continuous hearing system. Fundamentally, investigating police, government attorney having responsibility of prosecution, court-paid attorney, the court which proceeds and decides the case, defending bar or attorney, parties to the cases, witness, victim, expert and different other entities are the stakeholders of judicial process. Support and participation of all these stakeholders is essential for speedy decision after continue proceedings and hearing of case. Without effective coordination of these bodies management of continuous hearing system cannot be effective. Therefore, additional attention to be given on following issues for its effectiveness.

a. Formation of a mechanism

Continuous hearing management committee to be formed with representation of government attorney office, police office and bar unit in district level and District Judge should be the Chairperson and Registrar to be as member-secretary of such committee according to directive order of Supreme Court.

b. Presence of Defendants

Presence of all defendants as per charge sheet is compulsory for continuous hearing of prescribed case in accordance with District Court Rules. Case proceeding is not possible in a circumstance of absence of all or any of the defendants. Since there is no legal provision for filing of prosecution or make decision separately in later in case for absconded defendants, where some defendants appears in the court and some are in absconding condition, continue to move ahead of continuous hearing system is not possible. Hence, continuous hearing mechanism formed in District Court to encourage investigating police official and prosecuting government attorney to produce all the defendants stated in charge sheet to the court as far as

possible. Presence of all defendants is prerequisite of continuous hearing system. All effort needs to make for presence of defendants as much as possible for enforcement of continuous hearing.

c. Coordination with investigating authority:

It is needed to continue coordination with investigating authority of criminal cases through mechanism of continuous hearing formed at District Court. First of all, discussion and coordination is essential with investigation authority on different issues including to provide case list related to continuous hearing to the police, create an environment to present all the defendants of such case to the extent possible, request to provide or arrange to provide training on issues to be careful while investigation of such cases, arrange to note contact telephone number, email, fax number which is appropriate for coordination as and when required in such cases, counseling by investigating authority for immediate presence in the court when required. Similarly, coordination with investigation authority is also important on the issues such as to mention about continuous hearing while sought for opinion of government attorney for prosecution, produce all defendants, victim, first informant and reporting person as well as witness to the extent possible along with charge sheet, submit all required evidences which required to enclose with charge sheet and ensure submission of witness and expert before the court on demand.

d. Coordination with Government Attorney:

Government attorney's role is important in investigation and prosecution of criminal cases, so, coordination with government attorney in district level for effectiveness of regular proceeding and continuous hearing is also equally important. As same as like to investigation authority, case list of continuous hearing also to be provided to district level government attorney. Through continuous hearing mechanism at District Court, District Government Attorney has to obtain necessary information about such cases and accordingly to instruct investigation authority for carry out investigation activities in smooth manner. In addition to that effective coordination with government attorney is important on different issues such as for submission also of witness along with charge sheet, submit witnesses and experts in next day as prescribed by the Court if they could not be tested on the same day, in coordination between court and investigation authority in regards to witness testing and other procedures, in determination of hearing calendar with compulsory participation during initial hearing, not to postpone hearing

date to the extent possible, to present at bench on time as cases of continuous hearing comes to priority in cause-list among others.

e. **Coordination with Attorney and Bar**

As same as to investigating authority and government attorney, the Bar also needs to be informed and sensitive regarding process of case under continuous hearing system. Regular coordination to be maintained with concerned Bar Unit through mechanism of continuous hearing formed at District Court. Specifically, after being appointed as attorney of defendant of the case related to continuous hearing, such attorney needs to inform about hearing system of such case and counsel to the client to support court process including submission of witness evidences. Besides, effective coordination with concerned Bar and attorney is important to ensure to present for pleading during judicial custody hearing, submit witness or evidence immediately after being presented during statement of defendant, to involve in preparation of hearing calendar participating in case management discussion where witness testing could not possible at the moment, ask defendant to submit witness evidence on the same date as prescribed by court, present in the court for pleading case on the prescribed date and to the extent possible not to postpone hearing date on such case etc.

Chapter 12 Management of Juvenile Cases

With the development of juvenile justice system, concept of entertaining juvenile cases separately has also been emerged. The vision for separate management of the juvenile cases is developed due to the reason that habit of children with their age is not like an adult, juveniles are in state of immaturity, and their guilt mind is not developed like an adult's mind. In the context of Child Right Convention, 1989, Children Act, 2048 and Juvenile Justice (Procedure) Rules, 2063, some additional measures have to be adopted in the cases involved juveniles in comparison to other cases. The following measures have to be adopted in the management of cases involving juveniles:-

12.1Filing Charge Sheet in a Juvenile Case

There is no separate provision for registering Charge Sheet in a criminal case involving a juvenile as a defendant. Even in a case involving a juvenile as a defendant together with adults, if he/she is arrested, he/she has to be submitted at the court together with the adult while filing a charge sheet at the court. If juvenile are arrested in this way, they have to make present at the court like other adult defendants. If juveniles are not arrested, the court has to issue warrant order instructing to be present at the court. In the case that the defendant juvenile has been presented at the court with a charge sheet, the following issues have to be taken into account:

a. Keep the defendant juvenile in a children friendly room
b. If a juvenile has been brought with a handcuff, release the handcuff as there is no permission in law
c. Check whether he/she is present at the court within the prescribed time for remand
d. Whether or not any physical examination is needed
e. Whether or not an attorney is representing on behalf of the juvenile
f. Whether or not the identity of the juvenile is kept confidential
g. Not only the juvenile who has encountered with law, but also if the victim of that encounter is a child, check whether or not the identity and description is kept confidentially

h. If the description regarding a juvenile is not kept confidential, make arrangement for keeping the information secret.

i. In the case that the juvenile is in custody with his/her parents or kept in a children home, whether or not he/she is present.

j. For the children who are in custody in a children home, whether or not proof of it is included, and whether or not the reason is explained that why he/she was not present with the at the time of registration of the charge sheet.

k. Whether or not social study report is attached with the charge sheet

l. Whether or not the charge sheet is registered within the limitation of law

Prevailing Legal Provision

• Notwithstanding anything contained in the prevailing laws, no handcuffs shall be used for juvenile.	Section 15 of Children Act, 2048
• Case proceedings involving a juvenile having criminal charge shall not be started if an attorney does not represent the juvenile	Section 19(1) of Children Act, 2048
• While making charge sheet against a juvenile, if social study report along with the charge sheet has not been submitted, the juvenile court or juvenile bench may issue an order to a person or organization who provide service for submitting such study report or to an organization that is working for the child right.	Rule 13 of Juvenile Justice (Procedure) Rules, 2063

Precedent established by the Supreme Court

Precedent	**Case**
As the demand of the petitioner is for issuing an order of mandamus inculcating not to use handcuff to a child encountered with law while making him/her present at a judicial or quasi-judicial bodies, writ of mandamus in the name of the Ministry of Home Affairs has been issued instructing to follow provision stated in the Children Act,	Bal Krishna Mainali v. Ministry of Home Affairs et.all, Writ No. 305 of the year 2056, Decision date: 2058/4/23

2048	

Proceedings after registration of Charge Sheet

a. To inform social worker and child expert for conducting Juvenile Bench

Juvenile Bench is established at a District Court so as to look after cases relating to juvenile as a court of first instance, which exercises its jurisdiction looking after the cases involving juvenile as claimant or defendant subject to section 55 (2) of the Children Act, 2055. Section 55(1) of the same Act provisions for establishment of a Juvenile Court by the Government of Nepal, however as the Government of Nepal has not established separate Juvenile Court yet, subject to the provision contained in section 55(3) of the same Act, the respective district court has jurisdiction to entertain the juvenile cases. Section 55(4) provisions for a separate juvenile bench at a district court for looking after the juvenile cases. Juvenile Bench includes three members comprising of a judge, a social worker and a psychologist or child expert. The Government of Nepal deputes the social worker and a psychologist or child expert for the juvenile bench in the consultation with the Supreme Court. If a district has more than one district judge, the Chief Justice deputes a judge for juvenile bench. As the proceeding of a juvenile cases involving a child as defendant such as taking statement with the juvenile and proceedings for bail has to be conducted immediately, the social worker and psychologist or child expert has to be informed about the commencement of the business of the juvenile bench.

b. Immediate tasks to be conducted by Juvenile Bench

The juvenile bench has to perform the following activities after the registration of charge sheet:

a. Immediately provide the parents of the juvenile with a copy of charge sheet and relevant written evidences- Rule 7(1) of Juvenile Justice (Procedure) Rule, 2063

b. In case the juvenile does not have parents, immediately provide the guardian of the juvenile with a copy of charge sheet and relevant written evidence-Rule 7(1) of Juvenile Justice (Procedure) Rules, 2063

c. If parents or guardian of the juvenile are not found or refused to accept it, submit the copy to the attorney representing from the child-Rule 7(2) of Juvenile Justice (Procedure) Rules, 2063

d. If an attorney has not been appointed on behalf of the juvenile, appoint a court-paid attorney for the juvenile and submit the information to the court-paid attorney.

e. If a court-paid attorney has been appointed by the court for a juvenile, inform the parents or guardian of the juvenile about it in writing.

f. If the parents or guardian of the juvenile desirous to receive notice being present in the court, make arrangement for this.

g. Document evidence means:

   i. Statement made by juvenile in front of investigating officer

   ii. First Information Report filed against him/her

   iii. Deed signed by the victim

   iv. Copy of the report given by an expert, if any

   v. Birth Registration Certificate or any documents confirms the birth date

   vi. Deed of recognizance

   vii. Deed of recognizance of seizers of goods/property

h. Informing the Child Psychologist and Social Worker, to make sure of their presence

Prevailing Legal Provision

• After submission of charge sheet against a juvenile, immediately provide the parents of the juvenile with a copy of charge sheet and relevant written evidences.	Rule 7(1) of Juvenile Justice (Procedure) Rules, 2063
• While framing notices as per clause (1), if parents or guardian of the juvenile are not found or refused to accept it, submit the copy to the attorney representing from the juvenile	Rule 7(2) of Juvenile Justice (Procedure) Rules, 2063

• Notwithstanding anything contained in clause (1) and (2), if the parents or guardian of the juvenile desirous to receive notice being present in the court, make arrangement for this.	Rule 7(3) of Juvenile Justice (Procedure) Rules, 2063

12.2 Framing Timetable

Timetable means a table explaining all the detail breakdown of the activities to be performed from the registration to the finalization of the cases. Developing such timetable helps finalizing the cases within the specified timeline. Section 57 of Children Act, 2048 provisions that cases involving a juvenile as a claimant or defendant have to be prioritized to settle, whereas Rule 16 of Juvenile Justice (Procedure) Rule, 2063 provisions that case involving a juvenile has to be finalized within 120 days after the registration of the case. Therefore, while framing the timetable for juvenile cases, these provisions should also be taken into account and make definite timetable that the cases are decided within 120 days after registration.

Prevailing Legal Provision

• A separate timetable for individual case has to be prepared and include in the case file with a provisional calculation of the timing for warrant in the name of defendants, summon, notice, deliverance of notice/summon, presence of defendants, preliminary hearing, examination of evidence and decision.	Rule 85 B(1) of District Court Rules, 2052
• If any activity is not accomplished within the timeline as specified by clause (1), prepare another timetable stating the reason thereof and include in the case file.	Rule 85 B(2) of District Court Rules, 2052
• While determining the timetable, the concerns of the parties, if any, of the case should also be entertained.	Rule 85 B(3) of District Court Rules, 2052

12.3Inquiry to defendant juvenile

The following maters have to be considered while making inquiry to a defendant juvenile:-

a. The statement of juvenile should be taken at the juvenile bench

b. The statement of juvenile should be taken in a closed room/bench

c. In the juvenile bench, in addition to the district judge, the child psychologist and social worker should also be present as far as possible.

d. In case the child psychologist and social worker are not able to be present at the juvenile bench, the juvenile bench may be conducted only in the presence of the judge

e. While conducting juvenile bench, it is better if the judge wears informal dresses

f. In the courts where no separate juvenile bench has been established, the chamber of an individual judge may be used as juvenile bench.

g. While asking question to the defendant juvenile, child friendly environment should be maintained

h. So as to maintain the child friendly environment-

    i. While asking a question, to arrange accompany of familiar person with the juvenile

    ii. Make an environment that the parents of the child encountered with law are present at the court. For this, give instruction to the police and government attorney at the time of issuing remand.

    iii. Don’t use regular benches

    iv. If no separate juvenile bench is established, use a chamber of individual judge as juvenile bench

    v. Discourage the presence of police at the time of inquiry, unless there is an issue of security

    vi. If police personnel have to be present, make sure that they are not present in uniform

    vii. Make necessary arrangement of kid toys and kid's game according to the age group of the children

    viii. The staffs who are involved in inquiry with the juvenile should try to be familiar with the juvenile.

ix. While making inquiry to a juvenile, conduct from a woman staff having training on juvenile justice and if such woman is not available, conduct from a person who has obtained training of juvenile justice.

x. To make inquiry to the juvenile, the juvenile bench may depute the child psychologist or prescribes any other person who can make well communication with the juvenile

xi. While making inquiry with a juvenile, language of his/her understanding should be used

xii. If a juvenile does not understand Nepali Language, arrangement of facility of an interpreter should be ensured.

xiii. While making inquiry with a juvenile, it should be conduct accompanying his/her parents and attorney as far as possible

i. In the column of writing names of father and grandfather, if father is not identified, mother's father name has to be stated.

j. For a juvenile whose father and mother are not identified, if the organization taking care of the child states that father and mother of the child is not identified, it is not necessary to state the name of father and mother.

k. While making inquiry with a juvenile, the nature of the office has to be informed

l. If any evidence or witness found against the juvenile during the investigation, it should also be informed to the defendant juvenile.

m. If the facility of closed circuit camera has been set up in a room, the inquiry should be made in the same room

n. If any defendant juvenile is not present at the court with the charge sheet and warrant/notice of the court has been issued, statement/inquiry should be taken immediately if the child becomes present at the court within the specified time.

o. If any essential information is not included while making inquiry with the defendant juvenile and re-enquiry is necessary, it can be done any time.

p. While making inquiry with the juvenile, avoid using irrelevant words or gossiping.

Prevailing Legal Provisions

• Until the Juvenile Court is established, every district court shall have a Juvenile Bench as a court of first instance to take care of the cases relating to juvenile	Section 55 of Children Act, 2048
• The hearing in a juvenile court or juvenile bench should be conducted in child friendly environment	Rule 12 (1) of Juvenile Justice (Procedure) Rule, 2063
• While conducting hearing of a juvenile case, attorney representing from the juvenile, father, mother, relatives or guardians and any person or representative of social organization as considered appropriate by the judge may be present in the hearing.	Section 49 (1) of the Children Act, 2048
• Hearing of a juvenile case shall be in a close room	Rule 46 B (1) of District Court Rules, 2048
• While conducting proceedings of juvenile case in a close room, only the concern attorney, government attorney, expert, accused, victim, guardians, police as permitted by the court and court staffs shall be present	Rule 46 B (2) of District Court Rules, 2048
• Juvenile Court or Juvenile Bench should use the language which is comfortable and understandable to the child given his/her age and physical and mental development	Rule 12(2) of Juvenile Justice (Procedure) Rules, 2063
• Inquiry to a juvenile should be conducted in a separate room having camera set up and the bench will view that inquiry from through the screen	Rule 12(4) of Juvenile Justice (Procedure) Rules, 2063
• For the inquiry with a Juvenile, Juvenile Court or Juvenile Bench may prescribe a person who can make comfortable communication with the juvenile	Rule 12(5) of Juvenile Justice (Procedure) Rules, 2063
• Parents, guardians and attorney representing the juvenile may accompany while making inquiry with him/her	Rule 12(6) of Juvenile Justice (Procedure) Rules, 2063
• District court may arrange the facility of interpreter while inquiring a juvenile	Rule 24 of Juvenile Justice (Procedure) Rules, 2063
• In the column of writing names of father and grandfather, if father is not identified, mother and mother's father name has to be stated. For a juvenile whose father and mother are not	Section 10 of Children Act, 2048

identified, if the organization taking care of the child states that father and mother of the child is not identified, it is not necessary to state the name of father and mother.	
• If any defendant juvenile is not present at the court with the charge sheet and warrant/notice of the court has been issued, statement/inquiry should be taken immediately if the juvenile becomes present at the court within the specified time.	Number 129 of the Chapter of Court Management of Muluki Ain
• If any essential information is not included while making inquiry with the defendant juvenile and re-enquiry is necessary, it can be done any time.	Number 133 of the Chapter of Court Management of Muluki Ain

12.4 Bail Order in Juvenile Case

Order for imprisonment of judicial inquiry means an order of the court issued after the completion of the statement of defendants in a government cases for further trial. Number 18 of the Chapter of Court Management of Muluki Ain provisions for three types of orders when conducting trial hearing of the defendant- continue proceeding keeping the defendant in judicial custody, continue proceeding with bail, and continue proceeding resealing defendants in general Tarekh (fixing the due date to be present in the court). Notwithstanding, the provision of Number 18 of the Chapter of Court Management of Muluki Ain applicable for adult cannot be applied in the case involving juvenile. Protection of best interest of children is always crucial principle in a case involving juveniles. The following issues may be applicable in such cases:

a. What is the punishment for the charge? For instance, based on the evidence available for the time being, any person accused of the offence appears to have been guilty of the offence or there are reasonable grounds based on such evidence to believe that such person has been guilty of the offence punishable with imprisonment for life or an offence of attempt to, abetment of, or criminal conspiracy to commit, or being accomplice to, that offence charge of life imprisonment or claimant is the government of Nepal, try the case by holding the accused in detention.

b. Even if the charge of a crime is made which requires to try the case holding in detention:-

   i. Looking at the situation of physical condition of the child, if it is not appropriate to keep in detention for the proceeding of the case

   ii. It is not appropriate to hold in detention due to the age of the child

   iii. It is not appropriate to hold in detention while looking at the nature of the offence

   iv. Considering the detention place, it is not appropriate to keep in detention, etc.

c. Based on the evidence available for the time being, there is no ground to believe that he/she had committed the offence

d. What is the circumstance of committing offence

e. There is no situation that evidence may be lapsed if he/she is not held in detention

f. There is no situation exists that freeing him will create fear, terror and insecurity in the society

g. The observation of his/her parents

h. What is the possible effects in the physical and mental development of him/her

i. If not held in detention, the insecurity in the life of the child

j. Situation of fear and insecurity by the victim, if the defendant juvenile is not held in detention

Even if the juveniles are subject to be held in detention as per the law, order has to be issued sending them to the correction homes, not in the prison. For instance, section 42(1) of the Children Act provisions for establishment of Child Correction Home by the Government of Nepal, and clause (a) of subsection (2) of the same section contains that a child having conflict with law may be sent to such correction homes if they have to be detained for the trial of the case.

While making order to detain the defendant juvenile, the option to hold in detention for trial should be taken as the last resort.

It will be more realistic that if a juvenile having conflict with law is handed over to his/her parents, guardians or relatives with a condition that they make him/her presence at the court on demand.

If a child does not have father, mother, guardian or any relative or they refuse to custody the child, order may be issued to send the child to a social organization working in the field of children or Juvenile Correction Home.

Every order has to state the reason for making this order.

After the order of detention for the trial is made, the concern juvenile has to be informed

As there is no separate format for the order of holding in detention for trial, the same format used in the case of adult should be fine.

• If, based on the evidence available for the time being, any person accused of the following offence appears to have been guilty of the offence or there are reasonable grounds based on such evidence to believe that such person has been guilty of the offence, the office shall, unless proved to the contrary, try the case by holding the accused in detention: o An offence punishable with imprisonment for life o An offence instituted on being the Government of Nepal as plaintiff and punishable with imprisonment for a term of Three years or more o An offence of attempt to, abetment of, or criminal conspiracy to commit, or being accomplice to, the offence mentioned above	Number 18 (2) of the Chapter of Court Management of Muluki Ain
• Notwithstanding anything contained above, if the office holds that it is not justifiable to hold in detention any accused because of the accused being a minor or infirm due to physical or mental disease, the office may release the accused on bail or security (surety). If, in consideration of the circumstances of the commission of the offence the age of the accused, physical or mental condition, and previous behavior of the accused, the office does not think it justifiable to hold the accused in detention, the office may release the accused on bail or security (surety), with the exception of an accused charged with an offense punishable with imprisonment for	Number 18(4) of the Chapter of Court Management of Muluki Ain

life or an offence of attempt to, abetment of, or criminal conspiracy to commit, or being accomplice to, that offence	
• Except as otherwise provided above, the office shall try the case by taking a bail or security from the accused if there are reasonable grounds, based on the evidence available subsequently, to believe that the accused has been guilty of the offence	Number 18(5) of the Chapter of Court Management of Muluki Ain
• s other than those whose have to be in detention for trial, other have to be tried immediately when they make presence.	Number 47 of the Chapter of Court Management of Muluki Ain
• In case the officer hearing the case deems it not appropriate to keep a Child in prison having considered to the physical condition, the age of the accused Child who is to be investigated having detained in prison pursuant to existing law, circumstances during the time of commission of the offence and the place of imprisonment, he may issue an order to handover the Child to the custody of his father, mother, relatives or Guardian or any social organization engaged in protection of rights and interests of the Child.	Section 50 (1) Children Act, 2048
• While holding any accused in custody, releasing any accused held in custody or taking a bail or security from any accused, the office shall execute a memorandum to that effect, accompanied by the reason for the same.	Number 124 C of the Chapter of Court Management of Muluki Ain

Precedents established by the Supreme Court

Precedent established	**Case**
• As section 42 (2) (a) of Children Act clearly states that a Child accused of any offence and to be imprisoned pursuant to existing law for investigation or adjudication shall be kept in the Juvenile Reform Home, holding the child in detention in jail for the trial in accordance with Number 118(2) of the Chapter of Court Management of Muluki Ain is not in accordance with the law.	Bablu Godia v. Banke District Court, Writ No. 3390 of the year 2057 Order Date: 2057/12/2

Therefore, an order of habeas corpus is issued to release the detainee as the detention was made citing the wrong law.	
• The order to hold in detention if the amount of bail has not been furnished by the defendant is against section 42(2) of the Children Act, therefore it is declared as void.	Advocate Tara Devi Khanal on behalf of Sarita Tamang v. Kathmandu District et.al, writ No. 25 of the year 2058, Order Date: 2058/10/2
• As order has been made to hold in detention for the trial of the case, writ of habeas corpus has been issued to release from the detention as the Juvenile Reform Home was not constructed, and an order of mandamus was issued to send the juvenile, constructing the Juvenile Reform Home pursuant to section 42(1) of the Children Act, 2048, to thee Juvenile Reform Home pursuant to section 42(2) of the Same Act.	Ashis Adhikari on behalf of Pode Tamang v. Sindhupalchowk District Court, writ No. 4022 of the year 2058, Order Date: 2058/4/10
• As the accused is less than 14 years and punishment may will be maximum 6 months, order made sending the juvenile to Juvenile Reform Home is against the provision contained in Number 118 (2) of the Chapter of Court Management of Muluki Ain	Puspa Raj Poudel on behalf of Jeevan Ramtel Sarki v. Jhapa District Court, writ No. 0026 of the year 2069, Order Date: 2069/8/10, Pradip Thapa v. District Administration Office, Kathmandu, NKP 2065, Decision No. 8005

12.5 Submission of Evidence

Like the cases having adult as defendant, the cases having juvenile as defendant should also complete the procedures of submission and examination of evidence. The proceeding of submission and examination of evidences in the cases involving juvenile should be done without delay as decision of such cases have to be made within 120 days of the filing of cases. Therefore,

if all the juveniles if they have been made present at the court with the filing of charge sheet, an order to submit and examine the relevant evidence may be made on the date of the order of judicial inquiry. Generally the following evidences have to be examined in a government case. :

a. Social study report
b. Informant
c. Victim
d. Persons witnessed in the deed of recognizance of seizers of goods/property
e. Persons witnessed in the deed of recognizance of crime scene
f. If the juvenile has recommended any witness
g. Experts, if any expert opinion has been attached in the case as an evidence

The Procedures to be considered while examining witnesses and evidence

a. In a criminal case, examination of evidence should not be conducted before completing the statement- Number 137 of the Chapter of Court Management of Muluki Ain
b. Generally, the witnesses should be called from the same court where the case has been registered. For instance, eye witnesses of a homicide case have to be called on to the same court where the case is being administered-Number 141 of the Chapter of Court Management of Muluki Ain
c. Witnesses of other cases other than homicide may be called and interrogated by means of envelop-questions via the closest court-Number 141 of the Chapter of Court Management of Muluki Ain
d. If a witnesses essential for the case but cannot travel to the court due to old age or sickness, he/she may be interrogated by the staffs of the court visiting them in his/her home-Number 142 of the Chapter of Court Management of Muluki Ain
e. While prescribing Tarekh Day to the persons witnessed in the deed of recognizance or witness calling for their testimony at the court, the concern parties should also be provided with the same Tarekh Day to be present at the court, separate date should not be prescribed - Number 143 of the Chapter of Court Management of Muluki Ain

f. While interrogating witnesses or persons witnessed in the deed of recognizance, it should be done in the presence of the concern parties. This provision is not mandatory if the parties of the case are not present- Number 143 of the Chapter of Court Management of Muluki Ain

g. The parties of the case have to make their witness present at the court on the specified Tarekh Day by the court. If parties are unable to make their witnesses present at the court on the specified day, no witnesses shall be examined except in the situation of Number 115 of the Chapter of Court Management of Muluki Ain- Number 144 of the Chapter of Court Management of Muluki Ain

h. If a defendant who is held in detention (Juvenile Reform Home for children) for trial tenders application from the detention with a request to called on witness and examined, the court may issue a summon to the witnesses charging Rs. 5 for per witnesses-Number 144 of the Chapter of Court Management of Muluki Ain

i. Generally, the witnesses have to be made present at the court on the same day that is prescribed by the court. Where a party is not able to cause the presence of his or her witness on the date fixed by the office as a result of the closure of the route due to flood landslide or snow or declaration of a curfew or non-operation of means of transport for any other reason or occurrence of a natural calamity such as earthquake, another day for examination of witness may be fixed if he/she tenders application with the reason-Number 144 A of the Chapter of Court Management of Muluki Ain

j. In the situation as stated above, the party has to tender application to the court within ten days with the reasons that he/she could not make the witnesses present duet to flood landslide or snow or declaration of a curfew or non-operation of means of transport for any other reason or occurrence of a natural calamity such as earthquake and by an evidence issued by the concerned Village Development Committee or Municipality or government office setting out the happening or occurrence of such event, for the fixation of another date for the examination of witness and examine the witness, the court shall fix another date and examine the witness- Number 144 A of the Chapter of Court Management of Muluki Ain

k. The witnesses of all cases shall, as far as possible, be examined on the date fixed for the examination of witnesses of the cases-Number 146 A of the Chapter of Court Management of Muluki Ain

l. The examination of witnesses of all cases shall, as far as possible, be taken on the date fixed for the examination of witnesses of the cases. If it is no possible to take evidence of witness of such cases, the witnesses of a case whose evidence can be taken on that day shall be examined on that day, and the following day shall be fixed for examination of the witnesses of the other cases-Number 146 A of the Chapter of Court Management of Muluki Ain

m. Except where it is not possible to examine witnesses, there shall not be examined evidence of some witnesses of the same case today and of some witnesses tomorrow and of some the day after tomorrow-Number 146 A of the Chapter of Court Management of Muluki Ain

n. In taking down evidence or statement, one who is setting in the bench shall himself or herself take down the evidence or statement; and in doing so, there may be obtained necessary assistance of an employee of at least *Mukhiya*, *Bicharai*level (junior clerks) serving in the office-Number 147 of the Chapter of Court Management of Muluki Ain

o. While examining of a witness, the witness shall first be told to make statements truly and accurately with honesty and sense of duty and reminded of that such-and-such punishment may be imposed if he or she makes false statements in that case, and the evidence of the witness shall then be recorded in statement or letter oratory, as the case may be, in the specified format, by asking such interrogatories as may be required-Number 150 of the Chapter of Court Management of Muluki Ain

p. After taking down the answers to all such questions put to a witness as may be required, the witness shall be asked whether he or she has anything else to state on that matter and whether your statement and the matters set forth in the statement are correct or not, and the answers whatever are made by the witness to the questions shall also be taken down-Number 154 of the Chapter of Court Management of Muluki Ain

q. After taking down all questions and answers, there shall be so written at the end of the answers the name of the witness that no other letters can be inserted there, and the witness shall be caused to sign there and also each margin and joint thereof. The bottom shall be dated, margin and joint stamped with the seal of office and the top/head and bottom, margin and joint shall also be signed by the chief of office-Number 155 of the Chapter of Court Management of Muluki Ain

r. In taking down statement of a witness, there shall be set down at the bottom of the statement of the witness that it sets down correctly as stated by the witness, and be caused to be signed

by the litigant whom the witness belongs to if the litigant is in presence while taking down the statement, and, failing such litigant's presence, by any litigant who is in presence. If both litigants are not present or any litigant refuses to sign, the chief of office shall sign the same, setting down the remarks to that effect-Number 156 of the Chapter of Court Management of Muluki Ain

s. In taking down statements and statement, the issues shall be broken down, cases separated, short questions put to, and taken down the questions put, and answers to such questions-Number 157 of the Chapter of Court Management of Muluki Ain

t. In executing any document including the matters required to be asked by the office to a litigant or witness, if refuses to sign the answers given by him or her, the document shall be signed by the chief of office and by one employee of the highest class subordinate to the chief of office and be put on the records--Number 158 of the Chapter of Court Management of Muluki Ain

u. Where the office cannot itself takedown statement or letter of a witness of a litigant who may not be subpoenaed to make presence in the office or who lives very far and such statement or letter rogatory has to be taken down by serving it through another office, the letter rogatory containing such interrogatories reasonable, and taking down answers in the cases/issues-Number 159 of the Chapter of Court Management of Muluki Ain

Prevailing Legal Provisions

• 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	Rule 13 (1) of Juvenile Justice (Procedure) Rules, 2063
• 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.	Rule 13 (2) of Juvenile Justice (Procedure) Rules, 2063
• If the application pursuant to Sub-rule (2) is obtained the juvenile court or juvenile bench may grant permission to present such evidence.	Rule 13 (3) of Juvenile Justice (Procedure) Rules, 2063

12.6Witness examination

After the statement of the juvenile is completed, an order should be made to examine witnesses from both sides-litigant and defendant. However, if there is more than one defendant, the order to examine witnesses should not be issued until the statement of all the defendants is completed. If the time limitation for defendants to be present at the court is already expired, it is not necessary to wait for him/her. Order to examine witness may be issued in the cases, except the cases in which court issues warrant and cases to be prosecuted pursuant to the chapter on Theft of Muluki Ain. In this situation, the following tasks may be performed for examining witnesses: -

a. Identify whether someone is qualified to be a witness or not

   If a child is witness in a case, at first it is necessary to check whether or not the child can be qualified to be a witness. Children cannot be disqualified to be witness only due to their minority. If they understand the question and answer properly, a child can be a witness irrespective of his/her age- Section 38 of Evidence Act, 2031

b. Statement of a person who cannot speak

   If a person to be witness is not able to speak, statement may be taken in writing or by sign language- Section 39 of Evidence Act, 2031

c. Parents of a juvenile are not obliged to be witnesses

   Parents of a defendant juvenile are not obliged to be witness against their child-Section 40 of Evidence Act, 2031

d. A witness cannot refuse answering any question in the court only due to the reason that it may result him/her punishment -Section 40 of Evidence Act, 2031

e. On the Tarekh Day for witness examination, the bench assistant shall collect the names of the witnesses from the litigant and defendant presented at the court and submit along with the file before the judge for examination- Rule 29 (1) of District Court Rules, 2052

f. If the opponent party does not make present at the court even until 1 p.m. on the Tarekh Day prescribed for witness examination, the examination of witness of the party who is presented at the court should not be stopped- Rule 29 (2) of District Court Rules, 2052

g. If a witness shows any unusual activity while making his/her statement or demonstrates something different than a human being does, the judge shall record it in the testimony- Rule 29 (3) of District Court Rules, 2052

h. While examining witnesses, even if opponent party does not stop asking question that are irrelevant, insulting, unreasonable and with intention to tease, the court has to stop asking such questions- Rule 29 (4) of District Court Rules, 2052

i. Procedure of examining witnesses:

   i. Subject to the existing laws, courts have to maintain the order of the witnesses for examination- Section 48 of Evidence Act, 2031

   ii. Oath of the witnesses stating that "I will speak truth as I have seen, heard and with honesty and faith" have to be administered first- Section 49 (2) of Evidence Act, 2031

   iii. Judge may himself ask the question to the witness and ask a supporting staff to write down what the witness speaks out – Proviso B to Section 24 of Evidence Act, 2031

   iv. Witness should be examined in the presence of all the parties of the case. However, if a party does not appeared on the Tarekh Day of witness examination, examination may be conducted in the presence of available parties.- Section 49 (2) of Evidence Act, 2031

   v. Arrangement should be made in such a way so the subsequent witness does not listen to the statement made by the previous witnesses- Section 49 (3) of Evidence Act, 2031

   vi. If it seems essential for any valid reason that the already examined witness is needed to be re-examined, statement may be taken only on the matter which were not clear previously-Section 49 (4) of Evidence Act, 2031

   vii. The parties of the case should also have to sign the statement made by the witnesses. If any party does not agree to sign the statement, the judge will confirm this and make his signature-Section 49 (5) of Evidence Act, 2031

   viii. While examining witness, the party first asks the question to his/her witness and opponent party may cross examine if he/she wants-Section 50 (1) of Evidence Act, 2031

   ix. After cross examination by the opponent party , the first party may make re-question to his/her party--Section 50 (2) of Evidence Act, 2031

x. While making re-questioning by the first party, questions not asked before may also be asked, if the court permits to do so-Section 50 (3) of Evidence Act, 2031

xi. Except the court permits, no leading question may be asked to the witness while making question or re-questioning, if the opponent has objected-Section 40 of Evidence Act, 2031-Section 50(4) of Evidence Act, 2031

xii. If the courts permits for asking a leading question, the following grounds have to be established-Section 50(5) of Evidence Act, 2031

- The question must be introductory
- The question must be free from any dispute
- The matter relevant to the question has already been proved

xiii. If either party tenders application invoking that he/she rather prefer asking question to the witness from the court, not by him/her, the court has to proceed accordingly--Section 50(6) of Evidence Act, 2031. Provided that if the court asks the question, it shall be as follows:

- The other party may cross if he/she wants
- If any witness has been questioned by the court, the party then cannot make re-question to the witness
- Witnesses for making question cannot be divided between the court and the party

xiv. Court may stop asking questions to the witnesses which are defaming or intending to tease--Section 51 of Evidence Act, 2031

xv. Experts may be called on as like witnesses for examination. If so, the opponent party shall have an opportunity for cross question--Section 52 of Evidence Act, 2031

xvi. If the court deems appropriate, it may ask any type of question to the witnesses --Section 53 of Evidence Act, 2031

12.7 Bench Management in case involving Juvenile

Bench Management in a case involving Juvenile means management of the Juvenile Bench. In addition to the district judge, the Juvenile Bench comprises of a social worker and a child expert or child psychologist as prescribed. While managing the Juvenile Bench, making sure

of the presence of the persons who possess the bench, assurance of the security of the victim and the juvenile, timely proceedings of the case etc. are important issues to take into account. Therefore, the following matters are essential to consider while managing the Juvenile Bench:

a. Making sure of the presence of the person who possess the bench

As stated above, even if the Juvenile Bench comprises of a judge, a social worker and a child expert or child psychologist, the presence of the social worker and the child expert or child psychologist seems ineffective in the practice. The main reason behind it is that there is no proper management to make sure the presence of them. Therefore, the presence of the personnel who possess the Juvenile Bench is very important while talking about the management of the Juvenile Bench. The following measures may be adopted for the proper management of the Juvenile Bench:

a. To update the contract phone numbers of the social worker and a child expert or child psychologist who has been prescribed for the Juvenile Bench
b. To establish a practice letting the court know that if the social worker and the child expert or child psychologist prescribed for the Juvenile Bench are traveling out of the district.
c. If the social worker and the child expert or child psychologist who has been prescribed for the Juvenile Bench inform the court that they are traveling to out of the district or abroad, the hearing should be managed taking in to consideration of their arrival.
d. Alternative arrangement should be made if the social worker or the child expert or child psychologist has planned to go out or abroad for a long time and that will obstruct the proceedings of the case.
e. As the case is listed for hearing, as soon as possible, the concern social worker and the child expert has to be informed by phone and requested to be presence in the hearing.
f. Remind call to the concern social worker and the child expert is necessary one day before of the hearing day.

b. Making sure of the presence of the concern party and attorneys

It is matter of principle of human rights that a person whose case is going to be heard has a right to be present in the hearing, and it is also an issue of the principle of fair trial. This rights is not only important in the case involving an adult, but also equally important in a case where

a juvenile is involved. Article 20(9) of the Constitution of Nepal guarantees the right to a person having fair trial from competent court. Likewise, article 20 (2) also confirms that every person shall not be bar form appointing an attorney for defending the case. Therefore, in the context of management of Juvenile Bench, assurance of presence of the concern parties and their attorneys is equally important. The following measures may be adopted in this regard:-

a. Inform the juveniles, their parents and guardians to be present on the hearing day
b. If the children who do not have their own parents and are under custody of a guardian, information of the hearing should be given to the guardian
c. If any juvenile has not appointed an attorney, he/she should be informed while informing the hearing day and ask to appoint an attorney for the hearing
d. If any juvenile could not appoint an attorney to represent him/her during the hearing, postpone the hearing of that day.
e. If it seems that the juvenile could not appoint an attorney on his own, the court should appoint a court-paid attorney to represent on behalf of the juvenile.
f. If an attorney shows voluntary willingness to represent a juvenile who has not appointed any attorney yet, service from such attorney may be taken.
g. The juvenile has to be informed if the court has appointed a court-paid attorney to represent him/her or service has been accepted from a volunteer attorney.

Prevailing Legal Provisions

• The person who is arrested shall have the right to consult a legal practitioner of her/his choice and be defended from the time of arrest. The consultations held with the legal practitioner and the advice given thereon shall remain confidential.	Article 20(2) of the Constitution
• Every person shall be entitled to a fair hearing from an impartial, independent and competent court or judicial authority	Article 20(9) of the Constitution
• The Court shall not entertain or decide a criminal charge brought against a Child unless there is a legal practitioner to defend the Child.	Section 19 (1) of Children Act, 2048

• In circumstances referred to in sub-section (1), the concerned Court shall make available the service of a legal practitioner appointed on behalf of Government of Nepal or of any other legal practitioner willing to provide such service.	Section 19 (e) of Children Act, 2048

c. Arrangement for privacy and security

Generally, the established fundamental principle of judicial system is conducting hearing in an open bench. However, in a case involving a juvenile, taking into consideration the best interest of children, concept of closed hearing has been emerged. The concept not only demands the privacy of an accused and the subject matter, but also requires that all the proceedings carried out for that accusation has to be made confidential. Two types of measures may be adopted for maintaining the privacy of the juveniles involving – (1) Maintaining the privacy of identity of juveniles, (2) Limiting the presence of persons during hearing at the bench. In addition to this, in certain situation the life of the juvenile is at risk. These issues have to be taken into consideration while conducting the management of a Juvenile Bench. The following measures may be adopted:

a. To maintain a closed hearing

b. Not to publish any news of such incidents in the newspapers

c. During the proceedings, the accused juvenile has to be called by nickname

d. If there is any threat on the defendant juvenile from the victim' family members, adopt necessary measures for the security of the juvenile

e. If it seems that there is undue influence on the witness, make the presence of defendant indirect.

Prevailing Legal Provisions

• Only certain persons to attend in cases relating to Child: While proceeding o f a case relating to a Child under this Act or prevailing laws is going on, the legal practitioner, the father, mother, relatives or Guardian of the Child and, if the officer hearing the case deems appropriate and permit s, any person or representative of the social organization involved in protection	Section 49 (1) of Children Act, 2048

of rights and interests of Children may appear to the bench.	
• The case pursuant to sub-section (1) and particulars of the incident relating to it shall not be published in any paper without permission of the investigating officer of the case or the officer hearing the case. Such restriction shall also apply to correspondents or the press photo representatives.	Section 49 (2) of Children Act, 2048
• Cases of Juvenile delinquency, Rape, Human Trafficking, establishment of Propinquity, divorce and the bench has decided the case has not been appropriated to trial from the other court. In such types of cases, hearing shall be conducted from the camera court.	Rule 46 B (1) of District Court Rules, 2052
• If Proceedings of the case has executed prescribes in clause (1), the private and public attorney, specialist, defendant, victim and his\her curator and the court clerk and police who has been approved to present shall attend before the camera court.	Rule 46 B (2) of District Court Rules, 2052
• The copy of the documents in which belongs to the case trailed from the camera bench	Rule 46 B (3) of District Court Rules, 2052
• Generally the facts\cases decided from the camera bench shall not be published and disclosed in Newspapers. If the court has given the permission to be disclosed	Rule 46 B (4) of District Court Rules, 2052
• In a serious criminal case in which the Government of Nepal is a plaintiff, due to the presence of defendant or for any other valid reason, or there is pressure on the witness or possibility of having pressure, the court may make separate arrangement for examination of witness ensuring the presence of the defendant attorney, or presence of someone as selected by him.	Rule 29 (5) of District Court Rules, 2052

12.8 Determination of Age of Children

As the juvenile case fall under the certain categories of age group of children, the determination of age in the proceedings of such cases is always important. The standard of the age for minor/child is the matter of domestic laws. Section 2(a) Children Act, 2048 of Nepal defines children as "children means minors below than 16 years old". As there is provision in law that a case involving a child below than 16 years old will be entertained by Juvenile Court and if Juvenile Court is not established by Juvenile Bench, and the criminal liability and punishment for such juveniles is half of the majors bear criminal liability, the question of determining age of children is always critical. Actually, the age of the juvenile has to be determined during the time of investigation of the crime. However, without determining the age of a child in a tangible way, the Investigating Officers submit charge sheet to the court. In some of the situations, charge sheets have been registered increasing the age of the children without any basis. Therefore, determination of age of children is very important and in some sense it seems complex too. The following might be the grounds for determining the age of a child:

a. The Date of Birth of a child stated in the Certificate issued by a hospital, if the child was born in hospital

b. If the child was not borne in hospital or even if he/she was borne in hospital but certificate of birth was not issues, Date of Birth Certificate issued by the Local Registrar.

c. Even if there is no such certificate as issued by the Local Registrar, the date of birth stated in the Character Certificate issued by the School or the date of birth recorded at the School at the time of the admission of the child.

d. If no certificates are available as stated, there are variances in the practices regarding the certification of the age certified by the government hospitals. Generally the documents issued by the hospitals do not state the exact date of birth, rather they state that 'a child having age from ...to etc. At this perspective, some of the courts have taken the minimum age of the child as indicated by the hospital, whereas some judges have fixed the middle point between the maximum and minimum age. In such situation, the minimum age as pointed out by the hospital would be more realistic.

Prevailing Legal Provisions

• In case age of the juvenile has been disputed, the juvenile court or bench shall determine the age of the juvenile based	Rule 15 of Juvenile Justice (Procedures) Rules, 2063

on the following documents:- o The date of birth mentioned in the birth certificate issued by the hospital, o In absence of certificate pursuant to Clause (a), the date mentioned in the birth certificate issued by the Local Registrar o 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. o In absence of the certificate pursuant to Clause (c), the age certified by the government hospital	

12. 9 Pleading Management in a case involving Juvenile

Pleading management is not only an issue of a juvenile case, but also equally relevant to all the cases. To some extent the pleading of attorneys affects the prompt or delay proceedings of a case. In the context that the law has specified to prioritize the cases involving juveniles, the management of pleading in such cases is very important. The following activities may be performed to manage the pleading in the cases involving juveniles:

a. Make sure that an attorney is representing the juvenile to argue on his behalf
b. To appoint court-paid attorney if the juvenile has not been able to appoint an attorney on his own.
c. Do not remove the case listed in the daily hearing (Daily Cause-list)
d. Cases are not postponed if parties, their representatives or attorneys are not present as required by the bench
e. Before the commencement of hearing, if an application is tendered with a reason that the attorney could not be present at the court due to the circumstance of beyond the control, the hearing may be postponed for twice. However, hearing of the following cases should not be postponed:

i. Cases prioritized by the order of the bench

ii. If there are more than one attorneys for a party

iii. A case that is under hearing but not completed

iv. A case that has already been postponed for twice

v. Cases expiring the timeline to finalize as per the existing laws

f. Fix the time for arguing case, looking at the nature and gravity of the case

g. Stop diverting from the main topic

h. Instruct to argue being limited only on the question to be resolved

i. If there are more than one attorneys, prescribe one of the attorneys as a main attorney for the purpose of argument

j. If there are more than one attorney, manage them to concentrate on separate themes of arguments

Prevailing Legal Provisions

• In the beginning of a hearing, the bench may instruct attorneys of both parties to the case to limit their presentation or pleading to the questions to be settled by the bench.	Rule 33(1) of District Court Rules, 2052
• Looking at the nature and subject matter of the case, a bench may prescribe the time limitation of pleading. The legal attorneys shall make their pleading within the limitation as prescribed by the bench.	Rule 33(2) of District Court Rules, 2052
• If a party to a case or his/her legal attorney desirous to submit a pleading note, he/she shall submit the pleading note before the commencement of hearing and the bench has to provide opportunity to do so.	Rule 33(3) of District Court Rules, 2052
• In case there are more than one legal attorney in a case, bench may instruct to manage the pleading stating that an attorney shall plead as a chief attorney among the attorneys and other attorneys shall cover the different-different questions of facts and questions in law relating to the case.	Rule 33(4) of District Court Rules, 2052

• If a bench as prescribed time limitation for pleading pursuant to clause (1), (2), (3) and (4), there shall be the duty of the legal attorneys to follow the instruction.	Rule 33(5) of District Court Rules, 2052
• Any case that is enlisted in the daily cause list shall not be removed from the daily cause list only due to the reason that the time to make up of the due date to make presence at the court is not expired, and the hearing shall not be postponed only due to the reason that the representative or legal attorney is not present at the court.	Rule 35(1) of District Court Rules, 2052
• Notwithstanding anything contained in clause (1), if a party or legal attorney to the case tenders an application with convincing reasons to the court before the commencement of hearing at the bench stating that due to the situation of beyond the control he/she cannot be present at the court, the Chief Justice or the concern bench may postpone the hearing of a case not exceeding two times.	Rule 35(2) of District Court Rules, 2052
• Notwithstanding anything contained in clause (2), the hearing of cases of that have obtained priority hearing, cases having more than one legal attorneys, cases of which the hearing is continued, cases to postpone only one or some of the cases out of adjoining cases, cases which have already been postponed two times and cases exceeding to decide the time frame in accordance with the prevailing laws shall not be postponed.	Rule 35(3) of District Court Rules, 2052
• Notwithstanding anything contained in clause (2) , in the case that the parties have to postponed hearing of the case due to the reason of the situation of beyond the control, the parties to the case shall register the application urging to postpone the hearing before the commencement of the concern bench.	Rule 35(4) of District Court Rules, 2052

12.10 Decision

Decision of a case is the final stage of the proceedings. As the questions raised in the disputes are settled by the decision, the final proceeding of a case is crucial. However, implementation of the decision is also equally important. Most of the provisions of the prevailing laws regarding decision are set out keeping adults in the center. This is true that applying such provisions in the case of minors creates certain ambiguities. Therefore, the following matters to be taken in to consideration while making a decision of a case involving juvenile as defendant.

a. No Juvenile shall, in any circumstance, be held in detention for a period exceeding the maximum term of the punishment of imprisonment than can be imposed on that accused if the charge made against the accused is proved. (Number 119 of the Chapter of Court Management of Muluki Ain)

b. Such punishment of fine or imprisonment as may be held imposable by judgment on a juvenile held in detention for trial shall be realized or recovered from the person upon deducting the figure of fine already paid by him or her or the term of detention in which he or she has been so held from the amount of such fine or term of imprisonment. (The time spent by a juvenile at the Juvenile Reform Home shall be considered as the time spent in detention)(Number 120 of the Chapter of Court Management of Muluki Ain)

c. Where any juvenile has to be held in detention for any reason whatsoever in relation to a case, the juvenile shall not be held in detention unless and until a warrant for detention, accompanied by the reasons for holding in detention and the section or number of the law under which the juvenile is to be held in detention, is given to the juvenile pursuant to be held in detention. (Number 121 of the Chapter of Court Management of Muluki Ain)

d. Where any bail or security has been taken from any juvenile in the course of investigation, the bail or security so furnished shall be returned or released upon the conclusion of investigation. (Number 124 B of the Chapter of Court Management of Muluki Ain)

e. Matters to be considered while making a decision

    i. If a Child below the age of 10 years commits an act which is an offence under a law, he shall not be liable to any type of punishment.

    ii. If the age of the Child committing an offence which is punishable with fine under law, is 10 years or above and below 14 years:-

    - If the offence committed is fineable, shall be admonished

- If the offence committed is punishable with imprisonment, he shall be punished with imprisonment for a term which may extend to six months depending on the offence

iii. If a Child committing an offence is 14 years or above and below 16 years, he shall be punished with half of the penalty to be imposed under law on a person who has attained the age of majority.

iv. If a child commits an offence under advise or influence of any person, the person doing such act shall be liable for full punishment as per the law as if he/she has committed such offence

v. Even if a Child commits the same offence more than once, he shall not be liable to additional punishment on the basis of additional counts of offence.

vi. For the purpose of determination of counts of offence, an offence committed during childhood shall not be counted.

vii. No decision shall be made to hold the juvenile in isolated detention

viii. Even if a decision is to be made on an offence, no decision to be made holding a juvenile in detention with adults

ix. Generally, no deterrent punishment should be awarded to children

x. While rendering a decision awarding a jail punishment to a juvenile, the decision should require that the juvenile should be kept in Juvenile Reform Home, not in the detention center.

xi. Even in the decisions is made awarding jail sentence to the accused, looking at the physical condition, age, circumstance of committing the crime, repeat of committing the same crime, if it seems appropriate to avert the punishment, the decision may make averting the punishment.

xii. In case the punishment is averted as stated above and the juvenile committed the same offence within one year and needed to award punishment, previous punishment may also be merged and decision may be awarded to combine the both punishment.

xiii. If a decision is made awarding jail sentence, if the judge thinks appropriate, may order to custody the juvenile under the protection of any person or organization instead of holding him/her in Juvenile Reform Home.

xiv. The decision of a juvenile case has to be decided within 120 days of the registration.

As like other cases, juvenile cases are also decided after completion of the examination of evidences. While preparing decision of a case involving juvenile, in addition to the issues required by the prevailing laws, the following matters have to be stated (Rule 17 of Juvenile Justice (Procedures) Rules, 2063):

a. Brief summary of charge sheet
b. Proffer of submission and receive
c. Brief of the opinion made by social worker, child expert or child psychologist who are member of the Juvenile Bench
d. Arguments of attorneys
e. Relevant precedents
f. Grounds of establishment or non-establishment crime
g. Ratio of decision
h. Measures to be adopted for reformation of juvenile
i. Matters relating to paying compensation, if any
j. The decision should be prepared in the format as specified in Annex-1

Provisions of Prevailing Laws

• No one shall, in any circumstance, be held in detention for a period exceeding the maximum term of the punishment of imprisonment than can be imposed on that accused if the charge made against the accused is proved.	Number 119 of the Chapter of Court Management of Muluki Ain
• Punishment of fine or imprisonment as may be held imposable by judgment on a juvenile held in detention for trial shall be realized or recovered from the person upon deducting the figure of fine already paid by him or her or the term of detention in which he or she has been so held from the amount of such fine or term of	Number 120 of the Chapter of Court Management of Muluki Ain

imprisonment	
• Where any juvenile has to be held in detention for any reason whatsoever in relation to a case, the person shall not be held in detention unless and until a warrant for detention, accompanied by the reasons for holding in detention and the section or number of the law under which the juvenile is to be held in detention, is given to the person pursuant to be held in detention.	Number 121 of the Chapter of Court Management of Muluki Ain
• Where any bail or security has been taken from any person in the course of investigation, the bail or security so furnished shall be returned or released upon the conclusion of investigation.	Number 124 B of the Chapter of Court Management of Muluki Ain
• If a Child below the age of 10 years commits an act which is an offence under a law, he shall not be liable to any type of punishment.	Section 11 (1) of Children Act, 2048
• If the age o f the Child committing an offence which is punishable with fine under law, is 10 years or above and below 14 years, he shall be admonished and convinced and if the offence committed is punishable with imprisonment, he shall be punished with imprisonment for a term which may extend to six months depending on the offence.	Section 11 (2) of Children Act, 2048
• If a Child committing an offence is 14 years or above and below 16 years, he shall be punished with half of the penalty to be imposed under law on a person who has attained the age of majority.	Section 11 (3) of Children Act, 2048
• If a Child below the age of 10 years commits an act which is an offence under a law, he shall not be liable to any type of punishment	Section 11 (1) of Children Act, 2048
• For the purpose of determination of counts of offence, an offence committed during childhood shall not be counted.	Section 12 (2) of Children Act, 2048

• Even if a Child commits the same offence more than once, he shall not be liable to additional punishment on the basis of additional counts of offence.	Section 12 (3) of Children Act, 2048
• Notwithstanding anything contained in the exist in g laws, no Child shall be subjected to handcuffs and fetters, solitary confinement or be committed to live together in prison with prisoners having attained the age of majority in case a Child is convicted for any offence.	Section 15 of Children Act, 2048
• Government of Nepal shall establish Juvenile Reform Ho me as required and children punished shall be sent to children shall be kept in the Juvenile Reform Ho me established • In case the officer hearing a case deems it not appropriate to imprison a child convicted of an offence and imposed a sentence of imprisonment in a prison having regard to his physical condition, age, circumstances in which the offence has been committed and times of commission of the office, he may suspend the sentence to the effect of not undergoing the sentence for the time being or he may prescribe to undergo the sentence residing in a Children Rehabilitation Home or in guardianship of any person or organization. In case the same child having had his sentence suspended in such a way is convicted of the same offence or any other offence and is imposed a sentence of imprisonment within a period of one year, the officer hearing the case may order to execute the sentences of punishment having added the earlier sentence imprisonment.	Section 42 (1), (2) of Children Act, 2048 Section 50 (2) of Children Act, 2048

Precedent established by Supreme Court

Precedent	Case
• An order of mandamus has been issued not to use handcuff while submitting juvenile to the court and not to detain them with the adults at the detention.	Balkrishna Mainali v. Ministry of Home Affairs, writ No. 3505 of the year 2056,

• Regarding the writ filed invoking that the petitioner who has been convicted as guilt in a Theft case and sentenced, and forwarded him to add the jail sentence if he cannot pay the fine, and following the decision the juvenile was kept in jail together with other adult. Instead of establishing a Juvenile Reform Home pursuant to section 42 (1) of the Children Act, 2048 and referring the juvenile to the Home pursuant to section 42 (2) of the same Act, and if not, at least following the procedure stated in section 42 (3), the Juvenile has been detained in the jail, is illicit to the provisions of law. An order of mandamus is issued in the name of Dhankuta Jail to follow the provision of section 42(1) and if not, to follow the provision of section 42(3) of the Children Act, 2048.	Advocate Aashis Adhikari on behalf of Keshab Khadka v. Dhankuta District Court, writ no. 3685 of the year 2056, Decision date: 2058/1/28
• Order has been issued to transfer the detainee in the Juvenile Reform Home who was holding jail sentence of three years	Puspa Raj Poudel on behalf Abrama Tamang v. Dhading District Court, writ no. 0061 of the year 2069, Decision date: 2058/12/7

Chapter 13 Management of Writ Petitions

13.1 Jurisdiction of writ petition

Article 151 of the Constitution and section 7(2) and (3) of Justice Administration Act, 2073 authorize the District Courts to entertain a writ of habeas corpus and injunction. Likewise, a district court shall also hear the disputes relating to section 87 of the Contract Act, 2056 invoking for appropriate relief orders of the nature of injunction. However, there are no procedural laws produced for the implementation of section 87 of the Contract Act, 2056, the management of such petition based on the practice adopted by the courts is discussed in this chapter.

13.2 Filing writ petition

The objective of the writ petition is providing relief promptly. Therefore, attention should be paid in the different aspects of these petitions from the very stage of registration. Some of the common problems regarding writ petitions are listed below:

a. Writ of habeas corpus does not clear that where the person is detained

b. Petitions have been registered making opponents of extraterritorial persons

c. Unnecessary persons and bodies are fixed as an opponent

d. Takes longer time for deliverance of summon as the addresses of the opponents is not clearly stated

e. Petitions are registered hiding the fact that same petitions have been registered in other courts as well

f. Once the opponent is presented at the court for the discussion of issuance of an interim order and for any reason hearing is not conducted, it is difficult to summon again for the opponents as the information of next hearing is not provided on the same day

g. The remedy demanded in the petition is not clear

Several issues like clear mentioning of address of opponents are similar to the issues to be considered while registering litigation. The matters to be applicable for writ proceedings are stated below:

Matters to be considered	**Related Legal**

	Provisions
• For a petition of a habeas corpus, the following information should be included in the petition: o From whom, from when and for what purpose a person has been detained? o Where the person is in detention? o Whether the person is detained without providing foodstuffs and water? o Whether or not any petition registered previously in any court regarding the detention? If registered, what is the result of the petition? o Whether or not the detainee has signed on the petitions? If another person has signed instead of the detainee, whether the reason has been stated or not ? o Whether or not the petition has been prepared in the format as specified in annex-3. o While making any person holding public position as opponent, encourage referring only to the position of the persons, except in the situation making him/her individually accountable. It helps making the summon deliverance effective. o Whether or not clearly stated in the habeas corpus petition that the petitioner has invoked jurisdiction of the Supreme Court or High Court. o Whether or not the result of the proceedings of the Supreme Court or High Court has been stated	Rule 18 A (1) ad (2) of District Court Rules, 2052 Rule 18 N of District Court Rules, 2052 Rule 18 H of District Court Rules, 2052
• The following information has to be stated a petition of injunction:- o Matter relating to jurisdiction o Which legal right is going to be affected o Whether or not a proof has been attached with the	Rule 18 H of District Court Rules, 2052

petition so as to justify that the petitioner has absolute right on the issue? ○ What is the demand of remedy? ○ What is the basis of remedy? ○ Whether the petition is as per the prescribed format? (as stated in annex-3) ○ While making any person holding public position as opponent, encourage referring only to the position of the persons, except in the situation making him/her individually accountable. It helps making the summon deliverance effective. ○ Whether or not stated in the petition that the petitioner has invoked jurisdiction of the High Court. ○ Whether or not the result of the proceedings of the High Court has been stated	Rule 18 H of District Court Rules, 2052
• In the petition tendered as per section 87 of Contract Act, 2056 has to contained the following matters:- ○ What is the subject matter of the contract with the defendant? ○ What is the act that the defendant is going to do which is not allowed according to the contract? ○ How does the act performed by the defendant affects the performance of the contract ? ○ What is the evidence of it? ○ What is the invoked remedy?	Section 87 (1) of Contract Act, 2056

13.3 Management of preliminary hearing

Generally, once the petitions are registered under this chapter, scheduled for the preliminary hearing should be fixed on the following day. While preparing Daily Cause-list, these petitions have to be listed in the Complementary Cause-list, even if these petitions are not included in the weekly cause-list. The first hearing performed on the writ petitions and petition tendered pursuant to section 87 of the Contract Act, 2056 is called preliminary hearing. The following maters may be relevant in order to make the preliminary hearing effective.

Acts to be performed	Related Legal Provisions
• For the petition of habeas corpus	
○ If there is a probability that the detainee is detained against the law, issue show cause notice in the name of opponents	Rule 18B (1) of District Court Rules, 2052
○ If there is no probability of illegal detention, quash the petition at the time of preliminary hearing without issuing show cause notice	
○ While issuing show cause notice, order may require to be present with the detainee and written reply	Rule 18M of District Court Rules, 2052
○ Even if the provision of the Rules underlines that three days' notice shall be issued to be present along with the detainee and written response, it is worthwhile to take into consideration that the notice of 24 hours, except the time to journey, to be present at the court with the written reply and detainee is furnished.	
○ Court may not require making the detainee present at the court if it considers that it is difficult to make the detainee present due to the physical and mental health condition of the detainee, or due to the geographical difficulties, or for any other reasons.	Rule 18B(2) of District Court Rules, 2052
○ Court may not issue a show cause order in the name of any of the respondents underlined by the petition, if it comprehends that the respondent or office does not have any relation with the detainee.	Rule 18B(2) of District Court Rules, 2052
○ By the content of the petition or written responses, if the	

court comprehends that any person or office has to be called on as a respondent, it may issue a show cause order to such person or office too. ○ In the preliminary hearing, if the court finds any ground may issue the following orders in accordance with the situation:- a. To release the detainee as prescribed by the court. b. To transfer the detainee from police custody to judicial custody ○ In the preliminary hearing of the petition, if the court has a reliable reason to believe that the detainee has been detained inhumanly or tortured illegally, or search warrant is necessary due to the reason that the detainee may be transferred to avoid the court order, the court may issue an order of search warrant.	Rule 18B(3) of District Court Rules, 2052 Rule 18B(4) of District Court Rules, 2052 Rule 18C of District Court Rules, 2052
• While issuing search warrant, it is necessary to see whether the order can be implemented promptly or whether or not the objective of the order is fulfilled:- ○ If search warrant has been issued seeing the probability that the detainee may be transferred, the respondents or offices have to create a situation that such order is not in notice. ○ Order may be issued in the name of an employee of the government of Nepal, rather than own staff. ○ For the searching, not only prescribing a staff of the court, but also a searching group may be formed comprising of a person representing the petitioner and the office-bearers of local bodes. ○ Facilities of vehicles may have to be offered to the staffs or group who are deployed for searching ○ If the detainee is found while searching, generally the detainee have to make present at the court with report ○ If the detainee is found after searching and it is not possible	Rule 18D of District Court Rules, 2052 Rule 18D (2) of District Court Rules, 2052 Rule 18D (2) of District Court Rules, 2052 Rule 18D (3) of District Court Rules, 2052 Rule 18D (4) of District

to make him present, they have to inform the court and follow the instruction as issued by the court. ○ If a person to accompany the searching group or staff for assistance is needed due to any problem like difficulty in identifying the detainee or difficult to find the place of detention, the search warrant may include such condition too.	Court Rules, 2052
• **For the petition of injunction:-** ○ After preliminary hearing, if the court comprehends that the demand of petitioner is reasonable and lawful, it shall issue an order in the name of respondents to be presence in the court with written responses stating that why an order should not be issued as per the demand of the petitioner. ○ While conducting preliminary hearing, if the court comprehends through the statement of petition that the opponent shall also be called on, the court may not issue an order to call on the opponent and the petition is quashed. ○ It will be easier for the management of the registration of the written reply, if the show cause order clearly points out whether the parties have to present at the court in person or they can do via appointing representatives. ○ Maximum 15 days' notice shall be issued for submitting the written reply ○ Generally, in the petition of injunction, persons who are not opponents are not called on. Provided that while going through the written reply if the court realizes that other persons shall also be called on, the court may do it. ○ After conducting preliminary hearing, if the court deems reasonable and necessary, it may issue an interim order as invoked in the petition.	Rule 18H (2) of District Court Rules, 2052 Rule 18H (2) of District Court Rules, 2052 Rule 18H (2) of District Court Rules, 2052 Rule 18H (3) of District Court Rules, 2052 Rule 18J of District Court Rules, 2052

○ If the court seems necessary, it may issue an interim order to be prevailed for a prescribed period. ○ While issuing interim order, the court issues for a particular time and invite other party/respondents for discussion that whether or not the interim order be continued. ○ In the situation that that respondents have been called on for discussion of the continuation of interim order, the court may continue or discontinue the interim order issued before. ○ If an order has been issued to call on respondents for discussion in relation to continuation or discontinuation of the interim order that has been already issued, the interim order shall be ineffective afterward if the discussion/hearing cannot he held on the respective day due to the cause of the petitioner	Proviso (1) to Rule 18J (1) of District Court Rules, 2052
○ In case a party of a case has been called on for the purpose of continuation or lifting an interim order and for any reason the court could not carry on the discussion on the respective day and the discussion has been postponed for another day, the called on party shall be provided with another Tarekh Day to be present in the court. No notice shall be issued time and again for that purpose. ○ If an interim order was issued by ex-parte hearing, the opponents may file an application to vacate the interim order ○ If a petition has been tendered to vacate the interim order, the court shall call on the first party and listen to the both parties. ○ After listening to the both parties, the court may come to the conclusion whether to continue or vacate the interim order.	Proviso (1) to Rule 18J (1) of District Court Rules, 2052 Rule 18J (4) of District Court Rules, 2052 Rule 18J (3) of District Court Rules, 2052 Proviso (3) to Rule 18J (1) of District Court Rules, 2052 Proviso (3) to Rule 18J (1) of District Court Rules,

○ After the finalization of the petition, the interim order shall be *ispo facto* void.	2052 Rule 18J (2) of District Court Rules, 2052
• **Petitions submitted based on Contract Act, 2056** ○ After preliminary hearing, if the court comprehends that the demand of petitioner is reasonable and lawful, it shall issue an order in the name of respondents to be presence in the court with written responses stating that why an order should not be issued as per the demand of the petitioner. ○ It will be easier for the management of the registration of the written reply, if the show cause order clearly points out whether the parties have to present at the court in person or they can do via appointing representatives. ○ While issuing show cause order, rather than only conditioning to submit written reply within particular days, it would be more useful form the management point of view that if the order specifies the deadline of submitting the written reply and date of final hearing. If so, it helps sorting out the case promptly. ○ During the preliminary hearing, if courts sees that an act of the opponent has to be stopped immediately, may issue an appropriate order of interim nature. ○ Even if the Rules does not clearly specify about the deadline for the submission of written reply, it will be practical to specify 7 days or 15 days' notice, looking at the distance of the respondents.	

Decision of the Supreme Court regarding Injunction

• The party invoking an order of injunction must establish his/her demand at the prima facie level, otherwise order of injunction	Sankha Maya v. BardiaNational Park

cannot be issued. The condition for the injunction is establishment of absolute entitlement; it is not issued for the establishment of entitlement. This is a principle of prohibition.	et.al., Case No. 2064-CI-00700, Decision Date: 2067/4/27
• The court does not speak on the injunction petition making effect to other cases that are under consideration of a court. The main objective of injunction is to hold the situation as it is, rather it does not create or lapse of entitlement of anybody.	Prem Bahadur Dangi v. District Forest Office Rolpa et.al., Case No. 2065-CI-0372, Decision Date: 2067/4/27
• The role of the order of injunction is to hold the situation as it is, if there is any probability of encroachment or impediment on others' entitlements, rather it does not establish entitlement of a person. The nature of injunction is to bestow interim relief. It does not make a conclusion on any dispute. This can be a means holding the dispute as it is, and go for the right remedy. It cannot be used to establish the entitlement as encroached by others.	Raj Man Kurmi v. Kauleshwora Kurmi et.al., Case No. 2064-CI-0454, Decision Date: 2067/4/27

13.4 Management of Deliverance of Summon, Notice etc.

(a) The deadline for the submission of written reply in the habeas corpus petitions, petitions of injunction, and petitions under section 87 of the Contract Act are not bestowed longer as the conclusion of such petition have to made immediately. In some of the habeas corpus petitions, notice of having 24 hours deadline is bestowed. However, if the deliverance of notice to the respondents takes longer, the purpose of the petition is finished. Therefore, in order to expedite deliverance of notice in such petitions, the following activities may be accomplished:

i. Even if there is a system of prescribing notice server on regional basis for submitting summons/notices in the regular cases, it is better to manage more than one notice servers to be deployed at any time, based on need and their viability, for serving notices in the petitions which are of the nature to be settled promptly.

ii. If the petition indicates that petitioner's assistance is needed to serve the notice to any of the respondents, the petitioner has to be informed about it in advance and manage to get help as per necessity.

iii. If notice has to be served to another district/territory, management should be made to send the notice via online and telephone coordination should be made with the concern district court.

iv. Considering the viability of vehicles, distance to the serving places and the sensitivity of the issues raised in the petition, the notice servers should be provided with facility of appropriate vehicle.

v. Looking at the position of respondents and the sensitivity of the issues underlined in the petition, if it is necessary to get assistance from the security agencies for serving notice, make necessary coordinating with the security agencies for assistance.

vi. As the procedures as set out by the prevailing laws have to be followed while serving the notice, no separate heading is discussed in this chapter.

13.5 Proceeding of writ petitions and decision

1. Submission of Writ Petitions

a. As the court has issued order to submit written reply by the respondents in the habeas corpus petitions, petition of injunction or petition under section 87 of Contract Act, 2056, the written reply, after duly serving notice within the deadline, submitted within the deadline as indicated by the notice has to be registered and include in the file properly. For a person, the written reply should attach a proof of an identity, and for a body or organization an authorized letter has to be attached.

b. If any document or evidence is attached with the written reply, before the registration of the written reply it is necessary to check properly whether the documents are really containing or not, and make a remark too if it is necessary. If the written reply is tendered after expiry of the deadline, refuse registration of it giving a refuse note on the back.

c. In case the prescribed deadline to submit written reply is expired, 7 day's time for making up in a petition of habeas corpus and 15 day's time for making up in a petition of injunction may be allowed. However, no facilities of making up of time and postponement of hearing will be provided for the notices issued for issuance or vacate of interim order.

d. The written reply should confirm the format as specified by annex-3B of District Rules, 2052

2. Implementation of Orders, Hearing Management and Decision.

a. If a search warrant has been issued in a petition of habeas corpus, the registrar of the court himself or deploying any staff of the court, or in the case the order is made in the name of any other body or employees, the body or employees, making coordination with the petitioner and office-bearers of local bodies, shall search the place of detention or probable place of detention and will submit the report along with the detainee, if the detainee is found, and if the detainee is not found, report of the same shall be furnished to the court.

b. As per the necessity in the petition of injunction, the court may deployed mission to the field survey and obtain a report thereof.

c. After registration of written reply both parties have to be called on the same Tarekh Day.

d. After the preliminary hearing, if the court issues an order to submit or obtained documents or files from a particular place for evidence, the parties shall be provided with Tarekh Day until the documents/files have been obtained. And necessary follow up for the documents/files have to be made. If the document/files have been obtained and other proceedings are completed for listing the case for hearing, a date of hearing should be fixed and inform the parties accordingly. Even if either party does not appear in the court on the Tarekh Day, the proceedings of the case, fixing another Tarekh Day for other party of the case and conducting hearing on the case should not be postponed.

e. If a detainee requests to know about the hearing day after fixing the cause-list of the case, information of the hearing day should be provided to the detainee via speedy means of communication. Notice of the hearing should also be given to the respective office of Government Attorney, if any respondent is a government agency or government employee.

f. If the detainee has not appointed any attorney to represent him/he and tenders application to appoint court-paid attorney, the court should prescribe the court-paid attorney to represent the detainee and information thereof should be given to the detainee too.

g. If a case having been completion of procedures to get listed in the cause list for hearing, the hearing list should be prepared with the priority as specified by Rule 31 of the District Court Rules, 2052. As the petition of habeas corpus and petitions of injunction are highly prioritized for cause-list of hearing, the hearing should be conducted on the same

prescribed date. If hearing of that case could not be held due to an unavoidable circumstance, arrangement of next hearing should be fixed as soon as possible.

h. After hearing of a petition, the order of the bench has to be immediately noted in the opinion-book of the judges and signed it by the judges and also update in the Case Management Software. If the order is made to release detained, an immediate correspondence to the concern agency has to be made. If an order has been issued to handover a child to his/her mother or father or a handover a person from releasing from the custody of one family to another, it has to be done in a presence of a trustable person from both sides or in a presence of an officer of the court, and deed of recognizance of it should be included in the case file.

i. During Dashain Festival or in the situation that court is closed for more than three consecutive days as government holiday; the court should be opened for receiving petition of habeas corpus. If a petition of habeas corpus is tendered, the proceedings on the petition shall be carried out as usual. However, a petition that is under consideration of the court before the holiday was started, it shall be entertained in the regular business days of the court.

Chapter 14 Management of Writ Petition

A district court has to entertain several other petitions besides the regular cases and management of such petition is also equally important from the case management point of view. The following activities may be performed for the management of the petitions:

a. Rs. 10 shall be charged for the registration of such petitions

b. Names of petitioners and respondents, fathers' and grandfathers' names of both and addresses have to be clearly stated in the format as specified in annex-5. If the petition is related with already registered case, the concern of the petitioner and respondent connected the case shall also be stated.

c. The person who drafted the deed/petition should sing on the space of the left hand side of the paper.

d. A complementary cause-list has to be prepared for such petitions and submit to the bench

e. The following are the issues to be considered while preparing the petitions to be submitted in the district courts and management of it.

14.1 Application to be prepared under Number 10 of the Chapter of Court Management of Muluki Ain

Number 10 of the Chapter of Court Management of Muluki Ain contains a provision that the government of Nepal or any person, taking permission from the court, may be a litigant in a case involving public interest or an issue related with the government of Nepal. The procedure obtaining permission is as follows:

a. Application for the permission and lawsuit should be submitted together

b. Up on submission of such application, decision should be made on the same date submitted the file before a bench

c. If a decision is made contrary, the party may appeal at the Appellate Authority

d. With the application for permission, evidences showing an issue involving public interest should also be submitted. For instance, record of registration, field book etc in the case of a land.

14.2 Application to be prepared under Number 83 of the Chapter of Court Management of Muluki Ain

a. If a lawsuit, defense, appeal, petition and other application as may be necessary in the court has to be registered on behalf of a minor below than 16 years age, old-aged person or a person who is seriously ill by a hard disease and his/her sense is not in order or insane or blind or verbally impaired or a person who has gone to foreign employment and there is no fixed date to come back, a hair of the family above than 16 years or if no such heir is available, a guardian or curator may file the case taking permission from the court.

b. While tendering this application, evidence of the concern person not being able to manage going to the court with the petition/case has to be attached along with the application.

c. The applicant has also to submit a proof of verifying relation along with the application

d. Up on tendering such application, it has to be decided submitting the application before a bench on the same day.

14.3 Application to be tendered with a request to submit court fees afterward (Section 23 of Court Fees Act, 2017)

a. A litigant, applicant, petitioner, appellant, or petitioner for review or revision of a case may file an application to the concern district court with the statement that he/she is unable to pay court fee right away but wants to pay later as he/she is poor and no property is registered in his/her name, except in the situation of dispute in the court.

b. Along with the application, the lawsuit or petition and proof of being poor as recommended by local bodies should also have to be submitted.

c. If such application is tendered, it has to be submitted before a bench and follow what the bench instructs.

14.4 Application to withhold the movable and immovable property (Number 171A of the Chapter of Court Management of Muluki Ain)

a. In a case, if a dispute is relating to amount of movable and immovable properly or if there is a question of fact regarding entitlement, the litigant may file an application for any of the orders as follows:

i. Not to construct any infrastructure over the disputing property and hold it as it is, or not to modify or damage the existing construction on it.

ii. To stop transferring the disputing movable and immovable by any means

iii. If there is question of fact regarding the utilization of movable and immovable property, to make necessary arrangement for the utilization of it.

iv. Not to make payment to the defendant from its entitlement deposited in any bank or financial institution.

b. Along with the application to be tendered in this way, the proof showing the entitlement of the defendant has to be attached

c. If the application is demanding to withhold partially, the part of the entitlement of the defendant should also be stated in the application.

d. If an application is filed in this way, it has to be submitted to the bench for further steps.

e. The bench, considering the nature of the dispute and rationality and sees that there is possibility of establishing the claim of the litigant may issue, an order is issued instructing to withhold or keep the property as it is until the defense is registered or until the case is finalized.

f. After receiving order from the bench, correspondence as early possible should be made to the concern agency for withholding or keeping the property as it is.

g. If an application is tendered to vacate such order, such application has to be registered and submit to the bench and follow what the bench requires.

14.5 Application to withhold crops or income (Number 10 of the Chapter of Court Management of Muluki Ain, and Number 31 of the Chapter on Partition)

a. In a case involving dispute of ownership of land or encroachment of land or after submission of the detail description of the property in partition case, the litigant files

an application to withhold the crops or income from to be gained from the crops or rent of his/her part.

b. In such application, specification of the land and the respective crops to be withheld has to be stated.

c. Such application should also specify that to whom the crops, income gained from the crops and rent has to be given.

d. After registration of such application, it has to be submitted to the registrar for order on the same day.

14.6 Application requesting to receive notice from the court

a. A person (defendant or respondent) may receive issued notice/summon being presence at the court, before the notice server receives and delivers it.

b. Person who wants to receive notice/summon in this way shall attach a copy of document of identification of him/her.

c. Up on receiving such application, verifying whether the right person is being present to receive the notice, the notice/ summon, of the court should be handed over to the person affixing the date in the copy of receiver and the office copy with a memo in the office copy that the concern person has been present at the court and received the notice/summon.

14.7 Application for Bank Guarantee or bail

a. If there is an order in a criminal case to keep defendant in detention for further trail, or a decision of court has prescribed sentence or fine, bank guarantee or property may be kept as bail for the purpose of filing appeal against the decision.

b. While tendering such bail, the property registered in the name of the party of the case or anyone's property which is not withheld may be submitted

c. Along with the application for bail, withheld land ownership certificate and the receipt of paying local tax of the year should also be submitted

d. The application must also be contained the detail description of the land proposed for bail, the value determined for registration pass, and transaction value.

e. While submitting application for a bank guarantee, the bank guarantee should be from the Category A bank as specified by the Central Bank and having permanent nature, no need to renew every year.

f. The party submitting bank guarantee, shall submit a copy of the agreement signed with the bank

g. A deed also be prepared stating that if the concern party does not appear at the time and venue as specified by the court or does not submit fine and punishment as required by a decision, the bank guarantee will be forfeited, and it should be attached to the case file having signature of the party.

h. Such property shall not be return until the case is finalized

i. After submission of the application for submission of property for bail and document accepting bank guarantee, it has to be verified with the registered before attaching to the case file.

14.8 Application to success case by the heir (Number 62 (3) of the Chapter of Court Management of Muluki Ain)

a. If any party of a case has expired the deadline of the court of notice or Tarekh Day due to the reason of death, being insane, or disappearance, an heir may success the case filing an application within 35 days of such events, excluding the days for travel.

b. Provided that if the Tarekh day for the deceased person or insane or disappeared person is fixed after 35 days, the heir may file an application on the same Tarekh Day and success the case.

c. Such application has to be registered and verified with the registrar before attaching to the case file.

14.9 Application for withdrawing petition or appeal (Number 92 of the Chapter of Court Management of Muluki Ain)

a. A litigant may file an application saying that he/she cannot prove the claim

b. Same situation may happen with an appellant or petitioner

c. If an application is filed like this, it has to be submitted to the bench

d. If the bench confirms the demand of the application, the record of such lawsuit, appeal or petition has to be crossed.

14.10 Application under Number 194 of the Chapter of Court Management of Muluki Ain

a. In a criminal case having demand of punishment less than 3 years or if the accused is not in custody or not necessary to be in custody, court may release the accused in bail or guarantee until the deadline for filing appeal.

b. Appellant Court may release an accused in bail or guarantee, if a case is having less than 10 years jail sentence or a case for which accused is not necessary to be in custody or not actually in custody.

c. If a person wishes to apply bail or guarantee instead of jail, may file an application to the concern deciding court or appellant court for permission.

d. Such application should be submitted along with the appeal

e. Up on receiving such application, submit to the bench and administer the bail or guarantee as specified by the bench

f. While applying and receiving property bail, the procedures as set out by the "Bail and Guarantee (Procedures), 2066 has to be followed. It is stated above in 14.7

14.11 Application under Number 208 of the Chapter of Court Management of Muluki Ain

a. If a defendant does not receive the notice/summon of the court issued in accordance with the procedures as set out in Number 10 of the Chapter of Court Management of Muluki Ain and failed to file his/her defense within the specified timeline, may file a petition within 35 days of the knowledge having within 6 months of the decision of the trial court.

b. Defense should also be submitted along with the application

c. Such application should be submitted at the bench and follow the instruction as given by the bench

14.12 Application under Number 17 of the Chapter of Court Management of Muluki Ain

a. A party of a case, if he/she thinks that the proceedings carrying out in the subsequent court or judicial bodies or orders made is not in accordance with law or not satisfactory, may file application at the appellate court explaining the reason thereof.

b. Only one level of appeal may be invoked in a cases where punishment may be awarded more than ten or more years

c. If application is made in this way, the appellate court submit the application to the bench

d. If the bench ordered for calling on the file of the case, correspondence shall be made to the respective subsequent court along with the application.

e. After receiving the file from the subsequent court, the application has to be submitted before the bench

f. Send the file to the subsequent court as per the specification of the bench

g. The subsequent bench shall follow the order as specified by the superior court.

14.13 Application for authentication of Waresnama (authorized representative)

a. If a person wants to appoint a Wares (representative), for a case allowed by the law, for filing a lawsuit, defense, or to carry on any legal proceedings relating to this, with or without specifying a case, may file an application to the district court with affixing two copies photographs of receiver and giver.

b. Application filed for certifying Waresnama for giving authority to purchase and sell of a house or land or any other immovable property, land ownership certificate should also be attached with the application.

c. Up on receiving such application; submit it before the judge for certification after checking that the procedures have duly followed.

d. After certification from the judge, once should be kept in the court and another copy should be given to the concern person

Chapter 15 Management of Cases at Appellate Level

Appellate Jurisdiction of District Court

Generally, a district court is known as a trial court. However, article 148(2) and 151(1) of the Constitution of Nepal provided district courts with a jurisdiction of appellate level over the cases decided by quasi-judicial bodies of the respective district and judicial bodies of local level to be constituted pursuant to provincial laws. The judicial bodies to be constituted in accordance with the provincial level as specified by the constitution are yet to be established. However, the district courts may immediately start listening to appeals over the decisions made by quasi-judicial bodies of the respective territories. Therefore, this guidelines also includes the issue of management of a district court for hearing appeals:

Filing Appeals and Management

a. The appeal to be registered at a district court should contain the following information as stated below and maintain the format as specified by annex-4D of the District Court Rules, 2052:-

   i. Name of the case, brief fact of the case and description of the original decision of the case in which the appeal is being made

   ii. Name and designation of the deciding authority an date of decision

   iii. Whether the appellant is litigant or defendant in the original jurisdiction

   iv. The disputing amount, punishment and maintained disputing amount

   v. When the summon/notice for appeal was served or when the information was received and statement on the basis of this that the appeal is within the limitation of law

   vi. Declaration of appellate jurisdiction of the concern district court

   vii. Maters not acceptable in the decision, the reason thereof and the demand in the appeal

   viii. If the appellant is in detention, from when he/she is in detention

   ix. Proof of submission of court fees or submission of bail of property for this, if a case is requiring for court fee and charge for appeal registration.

   x. Proof of submission of fine and punishment, if any

xi. Proof of completion of jail sentence or being in jail or if any facility is entertained under Number 194 of the Chapter of Court Management of Muluki Ain.

xii. The relevant law for appeal

b. The following documents shall be attached with appeal

i. A certified and clear copy of the original decision

ii. If appeal has been noticed by the court, a copy of it

iii. Copies of appeal to be sent to the defendants (as per the numbers of the defendants)

iv. Proof of fine and punishment paid, if any

v. Charge for registration of appeal and receipt of court fees, if the court fee is payable

c. The appeals to be filed at the districts may be registered directly, or alternatively, it can also be registered at the respective authority entertaining original jurisdiction or from the jail, if the appellate is in the jail.

d. If the documents submitted by the appellant are not sufficient for the purpose of the proofs for registration of appeal, the appellant shall be notified, returning the appeal, to complete the documents before submitting the appeal.

e. Provided that if the time limitation to register the appeal is not sufficient, the appeal may be registered with a condition and fixing the Tarekh Day that the remaining documents have to be submitted in the next Tarekh Day accordingly, or calling the file from the original jurisdiction and then decide whether or not the appeal is registered.

f. If the appellant has applied bail for jail or fine or court fees, the appeal shall be registered temporarily and shall be given final touch when the bail procedures are over.

g. If an appellant makes appeal from the jail, the appeal shall be forwarded to the concern court after checking whether the formalities for preparing the appeal are completed and attaching the necessary charge for the registration of the appeal.

h. Along with the appeal, a certificated copy of the original decision and necessary copies of the appeal should be attached.

i. If an appeal has been brought to register via the original court, it shall be forwarded to the concern district court as soon as possible, after properly checking that whether the format and

other formalities are properly followed, and also charging the required fees and attaching the original file.

j. The appeal, which is in the given format, shall be registered in a register book pursuant to annex 4L and annex 4F of the District Court Rules, 2052. The appeal registration number and date should also be affix on the back of the appeal.

k. On the top of the appeal, prescription for registration and date has to be stated

l. If the appeal is registered collecting all the punishment and fine as prescribed by the subsequent court or confirming the bail, the original court should a also be notified about it.

m. The appellants who applied bail for the registration of appeal or have taken the facility of Number 194 of the Chapter of Court Management of Muluki Ain should conditioned for Tarekh Day. Besides, other appellants are not necessary to condition of Tarekh Day. If any appellant wants to be conditioned of Tarekh, may administer him asking to tender an application.

Calling on original file

a. Except the appeal has been registered via the original court, and the district court has received the original file, correspondence to send the original file has to be made to the concern original court within next day of the registration of the appeal.

b. While sending the original file to the district court, notice of the appeal has to be already served and attach the serving receipt with the file, as long as possible.

Management of hearing of cases at appellate level

a. After receiving the original file and evidences, it is necessary to check whether the notice for appeal has been served to all the parties or not, and if it is found that notice has not been served to the parties, send the file to the original court for serving the notice of appeal.

b. If notice of appeal has been served to all the concerns, now it is necessary to check whether the receipts are included in the file or not.

c. If the receipt of notice serving is not attached to the file, ask the concern body to send the receipt.

d. If the receipt shows that the serving of notice was not in accordance with law, forward to the registrar to serve again.

e. If there is more than one appeal in one case, all the appeals should be attached together and make single file.

f. The hearing of the appeal shall be fixed only after all the concern persons file appeal or the deadline for filing the appeal is expired.

g. After registration of appeal, the hearing date should only be fixed after receiving the original file from the subordinate court.

h. After fixing the date of hearing, the appellant or defendant who are not in Tarekh Day have to be notified via the means they have prescribed, in the format as specified by annex-4G of the District Court Rules, 2052

i. If the appellant is in jail, the court has to inform writing a letter

j. The concern district court may specify a specific day for the hearing of appeal as per the nature of the cases as per necessity. If particular days have been fixed for hearing of a particular nature of case, the hearing of appeal has to be fixed accordingly.

Order to call on defendant and deliverance of notice/summon

a. After hearing of an appeal, if the district court deems that it is necessary to call the opponent to the court, may issue an order accordingly.

b. If opponents are called on by the order of the court, the appellant has to submit per opponent Rs. 10 within 7 days of the order.

c. After the order to call on the opponent is made, a notice stating to be present within 15 days of serving in the name of defendant has to be served along with the a copy of appeal and the order issued by the court in the format as specified by annex-4H of District Court Rules, 2052

d. The defendants called on like this may file written defense. If so, they have to pay Rs. 10 for each.

e. After the defendants as called by the court are appeared in the court, same Tarekh Day should be fixed for all the parties of the case

f. If all the defendant called on by the court are not appeared within the limitation of law or even within the making up period as provisioned by law, checking whether the notices were properly served or not, and if it is found that the notices were not properly served, submit to the registrar and issue another notice to the defendants. Whereas, if it is found

that all the notices to the defendants were properly served, the case has to be fixed for the hearing after expiry of the making up period.

Chapter 16 Coordination and Cooperation among the stakeholders in Case Management:

Even though the Constitution and the prevailing laws of Nepal confirm the responsibility of the administration of justice to the courts, it is not possible to render prompt, effective, cost effective and impartial justice delivery without having cooperation from the stakeholders. , Taking this reality into account, the Rules relating to the Courts provision for Justice Sector Coordinator Committee that coordinates with the stakeholders of the related field and conducts necessary dialogue, coordination and communication with the stakeholders. Coordination and cooperation among the stakeholders for better case management may be enhanced through this mechanism. .

16.1 Stakeholders:

From the perspective of justice administration, there can be several stakeholders including parties of a cases and government agencies relevant in the judicial proceedings. However, in a criminal case, closest agencies and individuals such as government attorney's office, police office relating to crime investigation, the Bar that represents the parties of a case and the involved attorneys, jail or detention center, the Chief District Office that has responsibility to maintain law and order and civil society that are working in the field of law may be the relevant stakeholders. Due to this, Rule 4B of the District Court Rules, 2052 provisions for the Justice Sector Coordination Committee comprising of the above mentioned agencies. The District Judge of the concern district shall head the committee. There is also a provision that any agency other than the above mentioned of the district may be invited as an invitee in the meeting of the Justice Sector Coordination Committee, if it is relevant to any particular issue.

16.2 Possible areas of cooperation by the Justice Sector Coordination Committee for Case Management

Sometimes the judicial proceedings remain in halt in the absence of cooperation of the stakeholder agencies. It also affects the expediency of the finalization of cases. In the lack of coordination among the stakeholders, the following issues may be experienced in the case management system.

(a) Summon is not served timely

(b) Survey and measurement of land may not be accomplished timely

(c) Evidences and documents as required by the courts may be delayed and cases are not decided within the expected time.

(d) If detainees are not presented at the court within the specified time, it will affect the hearing of the case.

(e) Question of security in the court premises may be underlined

(f) The decision of the courts and order such as arresting and submitting persons in the court may be affected.

These are some of the general problems appeared in the course of case management. Additional problems may be appeared as per the situation that where the court is located. If any particular issue found, it may be discussed in the Justice Sector Coordination Committee and find out appropriate measures for sorting out the problems.

16.3 Meeting of Justice Sector Coordination Committee:

There is no doubt that the case management system will be more effective if meeting of the Justice Sector Coordination Committee is held in time to time and identify the problems to sort out. The following measures may be adopted to make the meeting of Justice Sector Coordination Committee effective.

Measures to be applied	Concerns laws
It should be arranged that the meeting of the Justice Sector Coordination Committee is held in every three months.	
Judges and registrar have to collect and note down the problems experienced in their daily life so that they can discuss in the meeting	
In the staff meetings of the court, the problems identified in the justice sector may be noted down.	
Utilizing the structure of Justice Sector Coordination Committee, interaction programs among the Secretary of Local bodies, police personnel working in different police circles, members of civil society and etc. who	

play tremendous role in the justice administration have to be organized, deliver the information to be adopted for a judicial proceeding, and get assurance for the cooperation in the judicial administration.	
Holding a meeting of the Justice Sector Coordination Committee in every three months, report of it should be sent to the concern district level Justice Sector Coordination Committee and the Appeal level Justice Sector Coordination Committee.	Rule 4B(4) of District Court Regulation 2052,
To develop a system of reviewing the status of the implementation of the decision as made by the previous meetings of the committee.	
Understanding should be developed that the meeting does not enter into any topic/case which is under consideration of a court.	Rule 4B(4) of District Court Regulation 2052,

Chapter 17 Behavior with Crime Victims and their Protection

17.1 Behavior with the service seekers:

A new approach regarding the behaviors and manners of the court staffs to be shown to the service seekers has been developed Now, it has been recognized that the service from the court is a right of the people, not a piece of cake to offer. The language of the constitution, prevailing laws, respective Rules of the courts, strategic plans of the judiciary and circulations issued in time to time have indicated that the court staffs should maintain friendly behavior with the court users. Following matters may be considered for maintaining friendly behaviors with the court service seekers.

Court Users Friendly Infrastructure

Establishment of information and Helpdesk:

A helpdesk and information desk should be established within the premises of the court with skilled staffs and sufficient furniture. This helpdesk and information desk should be equipped with a display that provides sufficient information and materials regarding the court, notice regarding hearings of cases, update information regarding cases, and activities regarding court proceedings. Similarly, there should be an arrangement that the respective sections may send information directly. If a service seeker wants template of application, it has to be provided immediately filing the gaps without charge. Assistance, as per necessity, should be deputed to lead the service seekers to the respective bench or section or room of the court.

Management of Clint friendly physical infrastructure:

Infrastructures of the courts should be user friendly. There has to be arrangement of the facility of clean toilet, pure drinking water, accessible cafeteria, and breast-feeding room, victims' friendly room, counseling room, mediation room, waiting room etc. based on the availability of physical infrastructure inside the court building. Court has to make necessary arrangement for visiting and access to the respective sections for differently able people. Citizen Charter has to display in the premises of the court so that people get information about the activities of the court and find out the respective section of their need including charges to be paid for a particular service. Every section and room has to display the name of section outside of the room/section including name and designation of the staffs working in that section.

Effective implementation of the program introduced for court users:

Court has to assure effective arrangement for existing service of the court such as one hour services, photocopy service, counseling service, service for court paid attorney, mediation, camera haring, service to fill the template, service to provide information and assistance, translator service, complain management etc. and conduct monitoring and implementing in time to time.

Court user's friendly behavior

The court staffs and judges have to maintain user friendly behavior in the court with high level of impartiality and professionalism as specified by the respective rules, laws relating to courts, directives issued in time to time. Review meeting may be conducted in time to time so that the staffs and judges may exchange their sharing and conduct interaction among each other if they have any issue to interact. Similarly, the supervision and monitoring system may be strengthened in order to make the code of conduct effective. Court user's survey form may be a mean to collect feedbacks from the users and based on the feedbacks implement necessary measures to satisfy the users regarding court's service. The following measures may be appropriate to maintain good behavior with court users.

(a) To provide service to the court users without any discrimination and hindrance.

(b) Treat the court users equally and in respectful way. Show humanitarian respect to children, women and differently able persons.. While dealing with the court users, maintain politeness in the communication, show smartness in the performance, and demonstrate good manner in the behaviors. Not to show anger, tension, laziness, aggression, arrogance and expectation or indifference with the court users.

(c) Greet the court users respectfully. Communicate in a polite way. Listen to the court users carefully and try to address the problems which they underline.

(d) To accomplish a task immediately, if it is under his/her control/jurisdiction. If it is not in his/her control, inform the same to the concern court users. Refer with reason to the respective section if his/her section does not perform that particular task as requested by the court users and assist him/her finding the way to that section.

(e) If it is necessary to make assistant for the task to be performed by another section, provide the assistant enthusiastically, as soon as possible. .

(f) Inform the service seekers in advance about the cost, time and procedures for the particular tasks and necessary documents and information required.

(g) Not to perform any act that make unnecessary financial burden and delay proceedings to the court users.

(h) After completion of the tasks, farewell the court users respectfully.

(i) Be always happy and smart during working hours and maintain neat and clean in the office surrounding. Wear the prescribed uniform and carry identity card as prescribed by the office.

17.2 Treatment to crime victims and service to provide:

Crime victims have been suffered physically, mentally, financially and socially. Therefore, it is the duty of the state to protect the crime victims from the time of occurrence of a crime particularly during investigation, prosecution, court proceedings, decision and execution of the decision. It is also a duty of all the personnel, authorities, office bearer and individuals who are involved in judicial process, for protecting victims and treating them in a humanitarian way. The main objective of victims protection is to respect the human rights of him/her for the life of dignified human being, to protect from physical, mental and economic threats, to minimize the pain and suffer as gained by the victims, to rehabilitate him/her in the previous life, to prosecute the perpetrator, not to make him/her re-victimized, to ensure the access to justice and etc. The behaviors of staffs to the crime victims during the court proceedings should be motivated from the same objectives

United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 includes some basic rights of the victims such as to treat the victims respectful and dignified way, the right to ask the information regarding the court proceedings involving him/her, the right to present their statement before the judicial authority , the right to receive free legal aid service, the right to get assurance of protection his/her identity or secrecy , the right to be protected from fear and revenge, the right to take part in mediation , the right to be compensated from the perpetrator, the right to get compensation from the state in violence, the right to receive social cooperation etc. In the context of Nepal, there are some laws that have adopted these principles in different capacity. It is better if we can adopt these principles in the course of a case proceeding.

Matters to be considered while certifying victim's statement:

(a) For a claimant-victim of a case on Humankind trafficking brought to the court for testimony pursuant to section 6 of Humankind Trafficking and Transportation (Control) Act, 2064, the district judge of a district court has to certify the testimony only after

confirming with the victim that this is the same statement he/she has made or has to certify if there is any difference in the statement. .

(b) The certification of the statement of the victim should be conducted expediently. It is also necessary to check that whether or not the identity of the victim is kept confidential. If not, should make arrangement to do so. Closed-bench should be used for the certification of testimony of the victim. (c)To check whether or not the victims who are in the investigation are provided with victim friendly environment, or whether or not provided with protection, security counseling, shelter and drinking water and etc. If not, should make necessary arrangement for this..

(c) To provide interpreters' service if it is necessary

Matter to be considered while issuing remand to an accused for investigation:

(a) To consider whether there is possibility that the accused may make harm to the victim again. To take necessary information of the victim from the investigating officer and issue necessary instruction for the protection of the victim as per necessity.

(b) If there is a situation to provide relief to the victims from defendant, instruction to the Investigation officer and government attorney should be given to take necessary steps for this

(c) To direct to maintain the confidentiality of victims, if confidentiality is not maintained in a case that requires to maintain the confidentiality.

Matter to be considered during proceedings:

(a) During the first hearing for trying keeping in the detention or bail, if it seems that victim has to be provided with interim relief, counseling, medical treatment, security and other necessary protection, a necessary order may be issued in the name of the concern officer to manage as per necessity .

(b) If the personal information of a victim has to be kept confidential, it has to be done in accordance with the Guidelines developed for Confidentiality of Victims.

(c) If it is a case to be heard in closed bench, arrangement should be made for this.

(d) Victims have to be updated of the proceedings in time to time. For this, victim's contract number may be taken and kept confidentiality and may be asked him/her to visit himself/herself or sending a reliable person to update the proceedings.

(e) If a victim request legal counseling or any information regarding legal proceedings, it as to be provided immediately and easily via court paid attorney.

(f) Victim has to be allowed to appoint an attorney, if he/she wants

(g) If a victim has a claim to be compensated from the perpetrator and specifying a property has demanded to withhold the property until the finalization of the case, it may be considered during the proceeding of the hearing conducted for keeping the defendant in detention for trying the case or in bail. .

(h) While prescribing a date for taking testimony with a victim, arrangement may be made to call him/her on the date in which there is no big pressure in the court due to other proceedings, or on day of less crowd and does not affect the proceeding for taking testimony.

(i) While taking testimony, questions that make the victim insulting, boring or makes otherwise feeling should not be asked. It will also applicable while making cross questions. .

(j) Close Circuit Camera may be used in order to avoid the direct testimony of the victim..

(k) Victims friendly court staffs has to be deployed in the proceedings to be carried out for a victim. Deploying women staffs will be more appropriate if the victim is a woman.

(l) Arrangement to expedite the court proceedings should be made if a victim is female. In the case of continuing hearing, the management of hearing day should be prescribed accordingly. If it is a case to make priority hearing, there should be a provision to notify to the records and software of the case.

(m) While questioning to a victim, help from a psychologist or any person as preferred by victim may be obtained..

(n) As per necessity, victims should be prioritized while providing all the services offered by the court

(o) Taking into account the situation that the victim may not receive the compensation as specified in the decision promptly, the judgment (annotation) part of a decision has to make it clear. . .

(p) Court should prioritize the compensation and otherwise reimbursement to be claimed by the victims.

Effective coordination with the stakeholders for victim's protection:

Effective measures have to be adopted for the protection of victims from the time of occurrence of a crime and up to the post decision of the court. For this, only one agency or authority cannot manage everything. Therefore, there should be a well continues coordination among the relevant stakeholders, persons, or agencies. Continue dialogues, interactions, discussion among the stakeholders may be fruitful for maintaining this environment.

Chapter 18 Bench Management and Decision

18.1 Decorum of Bench

The following measures have to be adopted to maintain the decorum of a Bench:

a. Develop a standard for the purpose of maintaining decorum in bench and make all the judges consented to it.

b. Provide training to the court staffs regarding the standard of bench

c. Fix the list of the activities which are allowed to do outside of the courtroom for the notification to the public

d. Arrange to have one-one copy of the standard with the supporting staffs deployed for bench

e. To arrange a provision that the supporting staffs deployed in the bench do not leave the courtroom, unless there is permission given by the bench officer

f. If any attorney or parties of a case or any person goes against the decorum of the bench, the supporting staffs shall intervene and try to resolve the problem including sending them out of the courtroom.

g. If using force is necessary to maintain the decorum of the courtroom, take necessary help from the police personnel deployed in the court

h. While possessing the courtroom/bench, except in the state of mourning, a male judge shall wear Daura Suruwal with black hat (topi), and a female judge shall wear Sari with Black Coat.

i. Judge in the bench shall not receive mobile phone, shall not read newspaper or have any other communication including taking tobacco and *Pan*

j. Except any law has specified as a closed hearing, hearing of all the cases have to be done in open bench/courtroom

k. In the closed hearing, judge shall make a judgment and notifies via bench officer and maintains the situation that only the relevant persons will be present at the court room.

l. The judges and court staffs should enter into and exist from the courtroom at appropriate time.

m. Judges shall not make any informal communication with the attorneys, parties of the case and other persons unless it is relevant with the case.

n. As the fairness, etiquette and impartiality are the ornament of a judge, he/she has to demonstrate it while sitting in the bench as a judge.

o. There should not be an impression that judge is discriminating or insulting or being crude in the name of caste, color, sex, age and etc.

18.2 Bench Management

The bench assistant or bench office has to manage the following issues with or without instruction of the judge:-

a. To check whether or not the Acts, Rules, opinion book, call bell to call the office assistance are updated or not, if not, make necessary arrangement.

   i. To check whether or not the courtroom cleaned. If not, make an arrangement for cleaning before the commencement of the bench

   ii. There should be proper arrangement of the sitting place for attorneys and parties of the case. If the number of the attorneys is high, request them to sit on the front who have got the number to argue and remaining should be sit on the back, on the chairs where the visitors do sit.

   iii. If there is any issue of public concern, the number of the observers would go high. In such situation, entry pass requirement may be the solution for controlling crowd. The parties of the case should obtain equal opportunity to enter into the courtroom.

   iv. The starting time of the hearing should be fixed. Generally, a district court should start its hearing before 11 a.m. The bench officer should inform to all the members of the courtroom if judges are entering into the court room.

b. The bench assistance has to make sure that the files of the case fixed for hearing on that day are brought to the bench before its commencement, and he/she should also make sure whether or not the proceedings of the case fixed for the hearing are completed, whether or not the power of attorney has been included in the file etc. He/she should also alert the parties or representatives or attorneys who are waiting the turn of the hearing of the case that their case is going to be open soon. (Rule 46 B of the District Court Rules, 2052)

c. The cases submitted to the bench fixing daily cause-list have to be proceeded one by one in order. Information about the status of current case and the orders already rendered should be stated on the board of the courtroom and also uploaded in the Case Management Software.

d. After the hearing is over, it is better if the judge himself declares the orders

Hearing of some of the cases should be done in a closed courtroom. If there is a case to be heard in a closed courtroom, it is better to state in the remark of the daily cause-list. It is also better to hang a board in front of the entry of the gate of the closed courtroom giving information of the closed hearing so that irrelevant persons will not enter into the room. Furthermore, it is also good to include in the information to be notified by the court to the public that the closed hearing only allows the relevant persons, attorneys, court staffs government attorneys, experts, accused, victims, guardians of them and the police and court staffs as permitted by the court. Cases relating to children, rape, humankind trafficking, establishment of relationship, divorce and other cases as ordered to be heard by a closed hearing. (Number 6 of the Chapter of Court Management of Muluki Ain and Rule 35 of District Court Rules, 2052)

Except the cases listed for closed hearing, other cases shall be heard in an open courtroom. However, the open courtroom does not mean that any irrelevant person may go in and out without any restriction. Therefore, the court or the bench may restrict the indefinite entry. If any stranger is creating a trouble may be sent out of the room. Police in civil dress may be deployed at the gate to manage the entry and prohibit the strangers.(Rule 35 of District Court Rules, 2052)

e. If an application is tendered by an attorney to postpone the hearing of the case fixed for hearing on that day, the bench assistant shall consult with the judge and the judge will decide whether or not to entertain the postponement request. Judge may postpone the hearing of a case for twice, if the party of the case or attorney tenders an application with a valid reason convening the court that they could not be present to the court due to the situation beyond the control.

f. The concern bench assistant has the responsibility of the cases submitted to the bench for hearing. Therefore, he/she should take care of the files of the cases. Strangers should not

have access to the files. Files have to be handed over to the respective section when the proceeding of that day is over.

Another important aspect of the bench management is security management. For the better security management of the bench, the entry point of the court should be managed from the security point of view. It is convincing to control the people except the parties and attorneys of a case or any relevant persons to the case. The court's premises should be kept peaceful. The Tarekh Memo could be the basis for the general public to check whether they have a case for hearing on that day or not. For attorneys, a separate dress code or identity card may be issued. The visitors of the court for other tasks may be regulated by providing with colorful visitor's pass cards. Security check at the entry point of the court may be arranged. It is also necessary to arrange security measures for the regulation of the entry point of a courtroom. No person may inter into courtroom with a weapon or other harmful objects. Mobile phones in the courtrooms should be switched off. Alternatively, mobile jammer may be fixed. (Rule 33 of District Court Rules, 2052)

g. Taking into account the decorum and environment to be maintained while conducting the open hearing in an open bench, the registrar may regulate, control and manage the entry of the general public at the courtroom.

h. The concern bench assistance, under the guidance of the judge, shall take other necessary efforts to maintain the decorum of the bench.

i. Another important element of the bench management is pleading management. It is more important if a court has many cases. Practicing a long hours for pleading a case will affect the hearing of other cases that are listed in the queue. Therefore, it is better to fix the time of pleading with the consultation of the attorneys involved in the case for pleading and the bench should fix the hours for pleading of that particular case. If there is more than one attorney in a case, the concept of lead attorney may be implemented. Bench may fix the arguing time of the attorneys taking into account the nature and gravity of the case. This shall be the duty of an attorney to follow the arrangement of the bench. (Number 184 of the Chapter of Court Management of Muluki Ain)

18.3 Decision

a. Decision is a conclusion of a case given by a judge after evaluating the evidence of both sides and applying the judicial mind in which parties are categories as winner and loser.

Muluki Ain recognizes not only the winning and losing type of decision but also some more categories of decision namely dismiss, one sided, settlement, withdrawal etc. Similarly, the record of a case may also be cross out by means of withholding of a case.

b. Judgment of a case should be made on the first day hearing if the claimant and defendant both are present and the defendant agrees with the claimant through the written defense. In the criminal cases, after submission of the charge sheet, after completion of statement of the defendants and if there are no further evidence to examine, decision may be awarded based on the available evidences and documents. If the case where the claimant and defendant do not agree with each other, the bench has to give order to examine evidence and should render the judgment after examining evidence as per law (Number 185 (1) (2) of the Chapter of Court Management of Muluki Ain, NKP 2031, P. 146)

c. Cases that are not listed in the daily cause-list are not qualified for the hearing, and decision should not be rendered. Cases listed in the daily cause-list should be heard tern by tern. Without conducting hearing of the senior case in the list, junior case should not be heard and render decision ((Number 179 of the Chapter of Court Management of Muluki Ain)

d. Even if a case is listed in the daily cause-list and submitted to the bench for hearing, it should be checked whether the parties are informed or the Tarekh Day of hearing has prescribed to them or not. Sometimes the information contained in the receipt of the file and the information contained in the Tarekh Memos of the party may be different that parties might have been asked to come different date than the hearing date as given by the court. Therefore, before going to the final decision or issuing order it is appropriate confirm this.

e. The Tarekh Day is very important for the case at trial level. Except the cases in which government is litigant, missing the Tarekh Day means the court may go for dismissal of the case which is known as dismissed decision. Government cases are not dismissed. In other cases, if defendants are present but claimant expires the Tarekh Day, the court may, based on the evidences included in the case file, go for dismiss decision to the extent that the defendants have refused the claim of the claimant. If the defense of defendant and the available evidences established the claim of the claimant, the judgment should be rendered making justice to the claimant. In the situation that the claimant is appeared but the defendant is not, decision should be made by examining evidences submitted by the

claimant. (Number 32 of the Chapter on Partition and Numbers 29, 80, 82, 83, 185 and 208 of the Chapter of Court Management of Muluki Ain)

f. If both parties of a case missed the Tarekh Days as specified by the court, after expiry of the period of making up of Tarekh pursuant to Number 59 and 62 of the Chapter of Court Management of Muluki Ain, the case will be dismissed. The claimant may be punished if the case becomes dismissed. (Number 179 of the Chapter of Court Management of Muluki Ain)

g. In a partition case, even if the claimant misses the Tarekh Days, decision should be rendered. In such cases, if the claimant misses the Tarekh Days and does not pay the court fees, the case is withheld with a condition that it will be revived later and necessary action may be taken against the claimant.

h. Decision with termination will be rendered, if lawsuits, petitions or claims have been registered expiring the limitation as specified by law, claims have been tendered in absence of locus standi and claims or petitions that have been submitted in absence of jurisdiction etc.

i. If a defendant does not appear at the court with defense even after the deliverance of notice/summon by the court, one-sided decision will be made after examining the evidences as per the law. Provided that no one-sided decision shall be rendered in the cases for which warrant is issued and cases relating to theft. Such cases should be kept as withholding case which will be revived for making decision after they get qualified as per law (NKP 2036, P. 103, NKP 2045 P. 845, Rule 19A (4) of District Court Rules, 2052).

j. Criminal cases awarding punishment of life imprisonment and life imprisonment with forfeiture of property have to be referred to the higher courts. This has to be stated in the decision as well. In such cases, if the judge thinks that the punishment is higher, he/she may recommend to reduce the punishment with his/her opinion. But in other cases, no opinion should be furnished to reduce the punishment.

k. If a defendant who is in detention has been released from the charge, an immediate corresponded should be made to the concern agency to release him/her from the detention.

l. Decision should be made on all the claims as underlined by the claimant. If all the claims of the claimants are not addressed, it will be an error as specified by Number 192 of the Chapter of Court Management of Muluki Ain. If a statement is made on the truth or

forgery of a deed and the decision does not speak on this means the decision is erroneous. However, in a case of issuing warrant, withholding may be administered in the case of absconded accused or even if the accused was arrested.

m. After the completion of examination of evidences, the decision of the case has to be rendered on the prescribed date for decision. If it could not be decided on that day due to the reason that further time is needed to study and observe the file, another Tarekh Day for making the decision may be fixed giving the reason thereof in the Memo contained in the case file. Decision has to be rendered on the prescribed Tarekh Day. As there is the practice in the Supreme Court that the decision awarding date is prescribed after completion of the hearing, district court may also apply this practice by making an order. However, such practice should be an exception. It is better to give the full text of the decision on the day prescribed for awarding judgment.

n. While making a decision, judge has to specify the opinion in the opinion book and sign. On the bottom of the book, parties of the case also have to sign the opinion book with the statement that they acknowledged the decision. There was a practice in the past for signing parties in a separate sheet if they do not sign on the opinion book. While doing so, it is not necessary to issue notice of appeal to the parties who may go for appeal against the decision. It will save time and resources. Now a days, a tendency is being developed that parties are present at the court, they listen to the decision but do not sing the opinion book, neither they sign a separate sheet of acknowledgement. If we take the argument that the parties are not asked to sign due to the reason that the full text of the decision is not prepared and once they sign in the opinion book or acknowledged in a separate sheet, the time for appeal starts right away, it is better to provide with the full text to the parties as soon as possible. There is a provision of law that states that after the opinion is produced, the full text should be prepared within 7 days. (Number 183 and 185 of the Chapter of Court Management of Muluki Ain, Rule 47 of District Court Rules, 2052)

o. As the Guideline for Note of the case, 2072 has been prepared and software also has been prepared, it is necessary to provision that a complete proceeding of the case shall be considered when all the activities relating to the case including registration of claims an other deeds are compulsorily updated in the software. If so, all the information regarding a case have been already noted and updated, and it will also be easier to produce full text

of the decision within 7 days of the decision. It is better to make a sign of the parties on the opinion book on the day of the decision for the purpose of acknowledgement.

p. Due to the software practiced by the district courts, cases are listed in the software and the full information of a case is displayed when they are listed for hearing on the hearing day. The situation of the listed cases in the cause-list has to be updated in the software. Such updates are visible in the website and it will also be informed via mobile phones if the parties had given their phone number. Therefore, decision or order whatever comes out, the respective staff should update in the software. The concern judge or registrar has to monitor it.

A decision has to contain the following information

a. Summary of the case
b. Fact of issue/disputing fact between the parties
    i. Main highlights of the arguments of the parties or their attorneys
c. Decision rendered and basis of it including the provisions of law
d. Whether a precedent is applicable or not
e. Punishment and fine etc

q. There is no universal rule that what is the format and content of a decision and there is no specific guideline for writing a judgment. However, a decision has to maintain clarity in terms of information in the factual part and decision part. In the background part, all the information including claims and defense should be contained in brief. Similarly, this part also has to contain the evidences received from the orders and witness examination (NKP 2046, p 1120)

r. Court does not issue press release of its decision like a political party or leadership do, neither has it gone for a press conference to inform the decision. Whatever comes, it comes from the full text of the decision. A decision, therefore, has to underline the reason and basis of the judgment. Once the reasons and basis are given, the judge should not make any clarification about the decision. It will speak itself. This is the issue pertaining to the independence of the judiciary as well. Therefore, a decision has to be simple and understandable to the parties of the case with basis and reason of making the decision.

Clear and simple language, words used with single meaning, and short sentence is the quality of a decision.

s. Writing of a decision should not be based on sentiments; rather it should be based on the fact of the case and relevant laws. It is better not to show individual experiences and tempers in the decisions. The decision should be limited within the ambit of the disputing issues. Defensive languages should not be used in the decision. Use of such language may give a change to the defeating party to raise a question against the competency of the judge. While deciding a case or writing a decision, once declaration of lack of locus standi or limitation of law or jurisdiction is made, it is not appropriate to give further alternative logics such as facts relating arguments. This is the criticism appeared against our decisions writing practice, which has to be overcome. A decision of district court should not be unnecessary long and too short without giving reasonable information and basis. Decision has to address the claim and defense as raised by the claimant and defendant. It is better not to use negative impression of the language. Nepali grammar should be carefully checked in the writing. The language of decision should also be gender friendly. If any decision of the superior court has to be stated in the decision, year of the Law Journal, page number and the name of the parties have to be cited.

t. Statement of the decision such as decision, giving something, declaration of crime and punishment etc should be stated in the decision part of the judgment. If there is conflict between decision part and annex part, the decision part will be valid.

u. Language editor may be consulted for the purity in the writing of judgment. In the absence of such facility or even if such facility are available the judge and bench assistance has to has at least minimum knowledge of pure writing and be able to use the grammar properly. Decision writing should be separate from story writing, easy writing or literature writing.

v. The annex part of a decision is very important element in a decision. As the basis of implementation of judgment is annex part, the implementing issues have to be properly stated in the annex part. Given the nature and context of a case, decision of trial court has to include the following information:-

i. If the decision is prescribing jail sentence of a detainee of a jail, it is clearly needed to state that from when the detention is made and till when the detention will be continued.

ii. If the decision has prescribed fine and if the fine is not submitted, how long the guilt has to go to the jail

iii. If the punished defendant is absconded, matters to recover the punishment by arresting him/her

iv. The amount of punishment to individual defendant. Matter to release a defendant in detention if he/she has got released from the decision

v. Matters to return bail property or deposit, if a defendant was tried in bail or depositing the property.

vi. Released in general Tarekh or in bail by the order of the trial court but the appellate court issued an order to keep in custody entertaining the petition tendered pursuant to Number 17 of the Chapter of Court Management of Muluki Ain, and if has missed the Tarekh Day, matter to confiscate the bail or deposit.

vii. If the decision has declared life imprisonment, life imprisonment with confiscation of property, till when the defendant has to be in jail

viii. Matter relating to reimbursement of court fees and mater paying the court fee subsequently

ix. Matter about the release of withheld property and bail or deposit

x. Matter of paying interest in a civil case

xi. Matter not to provide notice of appeal to the defendant who missed the trial notice

xii. Matter to reimburse the amount to the informant

xiii. In the case of defendants in detention, matter to issue notice to the defendants and the government attorney with the copy of decision

xiv. Matter to the defendant who have tied the case that if they are not satisfied with the decision, name of the appeal court they may go for appeal

xv. Mater of confiscation or release the physical evidence

xvi. In civil cases, matters relating to separation of partition, matter relating to transfer the records of property, matter issuing notice, matter to reimburse the amount, matters relating to charge to be collected for making division of property and reimbursing money etc.

xvii. Matter of court fee collection/reimbursement

xviii. Matter relating to the withholding of case pursuant to Number 10, 190 of the Chapter of Court Management of Muluki Ain and Rule 19 A (4) of District Court Rules, 2052. And other necessary matters

Chapter 19 Management of Records of Case

19.1 Background

Every citizen has the right to ask the information relating to the subject about him/her or any information of public importance/ concerns, except the documents to be kept confidential as per law. Stakeholders have the right to obtain the copies of the files/documents recorded in the court. Similarly, the concern attorneys and any person having authority to inspect the files may also receive the duplicate copies or have access to check the files any time. The files represent the conclusion of a case in which person's right are declared or dismissed, punishment are declared and etc. Therefore, the files having recording of citizen's affairs have to be protected and maintained in a proper manner. There are some outstanding problems regarding recording and management of files in the districts courts such as: files are not found easily, no record of the file is found if they have transferred to other court etc. Even the old files have not been disposed off that has led the difficulties in the management of record section. It seems an urgent need to have managerial reform in the record management.

19.2 Maintaining Records of Files

After the decision of a case, the files are submitted to the record section of the court. Even after the decision of the court, sometimes due to the problem of not writing of decision on time and the matters stated in the annex part of the decision are not implemented for long time, the file of the cases remain pending for a long time. Therefore, the file after making decision should submit to the record section as soon as possible. The registrar and or any prescribed officer by the registrar have to frequently check whether or not the files have been submitted to the record section. If not submitted timely, arrangement for this should be made. While submitting file in the record section, the staffs of the respective section and record section have to perform the following activities: -

a. The staffs of the respective sections:-

   i. After the decision is made, to upload in the upload system

   ii. Need to perform the task such as furnishing notice, furnishing notice of appeal , furnishing records or maintaining record should be performed

iii. After the decision, taking the file of case back from the bench assistance, to verify whether the documents are arranged in the file accordingly or not, and issuing notice, information and calls as per the decision to refer to the file of the case the Judgment Execution Section and submit the file to the Record Section verifying with the registrar after 15 days of the preparation of final text of the decision (Rule 12 (f) of District Court Rules 2052)

b. The staffs of the record section:-

i. After receiving the files from the case section, to verify whether the documents are arranged in the file accordingly or not, whether the tasks required by the decision part of the decision such as issuing notice, issuing notice for appeal, maintaining record etc are completed or not, whether the document stated in the document prepared for the description of the property are attached or not and the decision is uploaded or not. If these tasks are not performed, need to ask the concern staffs of case section to perform. (Rule 10 of District Court Rules 2052)

ii. The file received in the record has to be registered in the record book with date of registration.

iii. While recording so, separate registration book for civil and criminal cases have to maintain with separation of records of every years. (Rule 10 of District Court Rules 2052)

iv. After registration of the file in the record book, the record number should be marked in the cover of the file. If the file received from the case section is old or destroyed, make a new file and record it.

v. The registered file has to be kept safe in the respective wrack/cupboard or cartoon. The wrack, cupboard and cartoons should also be provided with the information numbers and year such as number or year from this year to that year etc. Similarly, address of the respective wrack, cupboard or cartoon should also be stated in the record book.

vi. In addition to the registration number of files in the record registration book, the information of the cupboard, wrack or cartoon should be uploaded in the software and also verification should be done.

Format of Record Book

S.N	Name and address of claimant	Name and address of defendant	Case	Registration date	Deciding judge	Date of decision	Brief description of decision	File sending court and received date	Wrack, cupboard and box number	remarks

19.3 File maintaining of Withholding of a Case

a. After receiving information of the case tendered to the record section that the record has been maintained and the notice of appeal has been furnished, the file has to be included in the descriptive forms. If it is found that the notice has not been served duly, declared void from the concern officer and arrange for re-serving.

19.4 Providing duplicate copy

a. The parties of the case and other concern person can take the copies of the files and documents recorded in the record section. For this, if the parties of the case tender application requesting copies of the documents or if they ask for filling the template of receiving duplicate as prepared by the court, voluntary assistance should be provide for doing so.

b. After filing the application for duplicate copies, after calculating the copies, ask to submit the charge for receiving duplicate copies and attach the receipt of the charge paid in the file. The record section has to assist making duplicate copies of the documents and provide to the applicant after certifying from the respective officer. Date and signature of the applicant has to be obtained and the application for requesting duplicates has to be included in the file.

c. While providing duplicate copies, it is important to note that in some of the cases, duplicate copies are not provided to others except the parties of the case. Duplicate copies of the cases administered by closed hearing such as cases involving juvenile, rape, humankind trafficking, establishment of relationship, divorce etc are only provided to the victims (Rule 46 B (3) of District Court Rules, 2052)

19.5 Forwarding the files

a. If an appeal is file at the appellate court against the decision of the district court, the appellate court asks the file from district court. If so, the district court has to send the file immediately. While sending so, the letter demanding file and duplicate copy of the cover letter of sending file and the dummy file has to be placed at the place (wrack or cupboard) of the file. The dispatched number, date and the name of the court shall also be maintained in the record registration book. Furthermore, it should also be updated in record management software. When the file is return, it has to be placed to the same previous place and maintain the record in the record book.

b. If a bench of the same court asks a file of the record section, the file should be sent making a small note and when it is returned put at the same place on the same day. If it is demanded for the purpose of evidence for case section of the same court, it has to be sent mentioning the information in the record book and updating in the software.

19.6 Place of recording files and protection

a. In order to keep the record of the of the decided cases safe, cupboard or wrack made of Steal should be arranged. The year and order of the number should be mentioned on the outer part of the box has to be stated.

b. Appropriate measures for the protection of files from sunlight, fire, water, darnamite, etc. should be adopted. Record Section should not be placed near cafeteria. Fire brigade should be hanged near the storages of files. The staffs and guards of the record section should be taught that how to use the fire brigade. Chemical should be used to protect for darnamite etc.

The following documents are in the categories of never disposal
(Number 21 of the Chapter of Court Management of Muluki Ain)

a. Lawsuit
b. Order
c. Statement/ defense
d. Serving notice in the name of claimant and defendant
e. Summon
f. Original deed
g. Survey document
h. Deed of settlement, decision or final order
i. Appeal
j. Map of a land

These documents have to be kept safely

c. The record section should be kept neat and clean so that it can be protected from rat and others. Holes have to be closed and chemical may be used as a precaution.

d. There should be sufficient gap between two wrack or cupboard so that mobility may be done easily

e. In order to protect from the coldness from the ground, record section should be kept open and warm having windy passing. Wrack containing files should also have been comfortably fixed so that windy may passes. To maintain the temperature, room heater, electric fan, air conditioner may be used. Regular cleaning in the record section is necessary.

f. As there is high change of inundation in the rainy season. Therefore, better to avoid the record section on the ground floor. Similarly, in order to be saved from natural calamities like earthquake, it better not to store books or files in the upstairs.

19.7 Disposal of files and documents

(a) In every court's annual planning, in addition to other managerial activities, disposal of documents and file also prioritized every year. As the cases are being finalized but if documents are not disposed-off, the court cannot manage the documents. Therefore, the documents have to be disposed-off following procedures as set out by the law. The record section has to accept the task of disposal of documents as its regular function. If documents are not disposed-off every year, the volume of the document will go high and the regular human resources of the court also cannot manage to do it. If the disposal of the documents is pending, a campaign should be made for the court staffs for their additional time. The court management has to provide the staffs with masks and gowns to be protected from the dust emerged from the disposal of the documents and files.

(b) It is better if the act of disposal is done on monthly basis. However, it is easier in the winter season than rainy season. So the target for the winter season should be more than the rainy season. Documents of a running case should not be disposed-off. Withholding files and documents also should not be disposed-off.

(c) Since, some of the documents are disposed-off after five years of the expiry of the time for appeal and some documents are disposed-off after one year of the expiry of the appeal, it is very important to see that whether the notice of appeal has been duly issued and duly

served.

The following documents should disposed-off after five years of the expiry of filing appeal by the party

1. Letter-questions to the witnesses
2. Witness statement
3. Deed of recognizance

The following documents have to be disposed after one yare of the expiry of filing appeal by the parties

4. Tarekh Memo

(d) After having appeal, to dispose-off after the five year of the decision of the supreme court seems reasonable

(e) The original documents as submitted by the parties have to be returned when they visit to receive it. Information of it should be stated in the file and record form

(f) The record form should not be disposed off

While disposing off the documents, the provisions contain in Number 21 of the Chapter on Case Management of Muluki Ain are not sufficient. Therefore, it is important to see the nature, connection and importance of the documents. For instance, letters and correspondences are pun under the category of disposing off after one year, if a letter for withholding the property is disposed-off after one year and the withholding status is not clear, it may create a problem to release later on. Therefore, attention should be paid while disposing off such documents. Except the documents as stated in Number 21 of the Chapter on Case Management of Muluki Ain for disposing off, the other documents may be disposed categorizing as below:

Never dispose off	**Dispose-off after five years**	**Dispose off after one year**
	Application with the description of the property, application for withholding property, application for duplicate copies, application for making of missed Tarekh Day or notice, application to void undue order, and other pity applications	
	Tarekh Memo, authority for representation, money	

	voucher, letters, hearing postponement application, warisnama (authorized representative paper), sakarnama (acceptance paper), photocopy papers attached in the file	
	Deed signed by claimant and defendant	
	Deed signed with the statement that the description the property has been acknowledged.	
	Reports, witness statement and deed of recognizance	
	Order to withhold property and letter relating to this, bail voucher	

While disposing off, it will be appropriate to make decision with the explanation that documents form this year to this year has been disposed-off or etc. The records of the disposed documents have to be maintained.

Even if the provision of law states that the useless document have to auctioned, there is possibility of being misused of such documents. It is better to make an agreement with a company or factory and remove all the information by using chemical before going to the auction.

If the unused documents are in small volume, may be disposed-off by using fire like we are practicing till to date.

Talking about the management of records, files may also be disposed-off. However, the following files should not be disposed-off (Number 22 of the Chapter on Case Management of Muluki Ain)

• Homicide case • Theft cases • Cow killing • Incest • Relationship establishment cases • Government dues • Inheritance • Maintenance • Adoption	• Gambling • Forgery and fraudulent or coercion • Marriage • Sale and Purchase of prohibited goods or production of such goods • Land or crops • Partition • Donation • Trust

• House and shop • General transaction of mortgaging property	• Bankruptcy • Road and cannel exist • *Jimindaritalukdari (of responsibilities)* case

(g) The documents of other cases, other than above stated cases, after the expiry filing appeal and case of reimbursement amount, after 12 years and after five years for other case, the file has to be disposed-off. The documents to be returned to the parties should be returned. While disposing off the file, records as follows has to be maintained :

S.N	Name and address of claimant	Name and address of defendant	Case	Case no.	Date of registration	Date of decision	Final court	Brief description of decision	Signature of employees	Certifying authority	Remarks

19.8 Scanned Copy of Documents

A big number of the files of the final judgments have been pending in the name of keeping record in the court. These files have to be protected too. The important documents of the file have to scanned and make a computer copy in the software. In case the files are destroyed due to natural calamities, the back-up prepared in this way will be useful. Also, the software upload system should also be made updated as per the changing context. The records and files have to be maintained by means of software.

19.9 Maintaining the record of the decision of the higher courts

a. If the final file, after filing appeal against the decision of the district court, from the superior court have been received, the decision has to be included in the file and record it. It should also be stated in the description form. If there is a difference in the superior court's decision than the district court's decision and difference has been made in the punishment, update the record in the decision enforcement section.

19.10 Supervision and Monitoring of files in Record

a. the registrar has to supervise the files contained in the record section regularly. Also check whether or not the documents have been disposed-off as per law. If any document found not being disposed-off as per law, instruct to do this.

b. Regular supervision and monitoring is necessary to check whether or not the files in the record section are affected by wetness and whether or not chemical has been used as precaution. Also monitor whether the software and the record book have been updated or not.

c. As the files stored in records are the property of the people, it should not be otherwise damaged. If damaged or stole, the concern staffs shall be punished.

d. Law gives responsibility to the National Record Office that how to protect the documents located in government offices, the court may also take expert service from the national Record Office for the protection of the documents.

e. Activities for capacity building for the better management and protection of the

Chapter 20 Miscellaneous

20.1 General Principles of Law

20.1.1 Civil Law Principle

- Ignorance of law is not excused
- An act against the law is void
- Guilt should bear Compensation
- Every person is liable to bear the liability of his or her mistake
- Compensation shall be as per the provisions of law
- No any act can be done to harm other
- No act shall be conducted to harm others
- No one can take benefit of his or her own wrong
- Mistake of court cannot not affect the rights of a party
- Every person has to respect others personality
- Every person should maintain good neighborhood without making any harm
- If an act is not allowed to do directly means also not allowed to do indirectly.
- Customs or traditions against law are not valid

20.1.2 Principles of Criminal Law:

- An act performed according to laws does not amount a crime
- No prosecution and punishment without the due process of law
- An act done with mistake of fact does not amount a crime
- No one is deprived of fair trial
- No one is guilty until proved
- Hearing of a case shall be conducted in an open courtroom, except the closed hearings as specified by the laws.
- No one shall be forced to be witness against his or her own
- An act committed by a senseless person is not a crime
- An act for the wellbeing of a person performed with consent cannot be a crime

- An act to be crime according to the law cannot be done even with the consent
- Persons under the age of 16 is a minor (the standard of Child Right Convention is 18 years)
- An act done in good faith cannot be a crime
- An act performed for self-defense is not a crime
- Mens rea is not tested in the crime of strict liability
- Person who involves or cause to involve is responsible in the crimes committed by an organized body.
  If a crime is committed by a group, all the members of the group shall be responsible.

20.1.3 Objective of punishment:

- Discourage the criminals and others
- To protect society and community
- To provide justice to the victims with compensation
- To keep the criminals away from society
- To make the criminals responsible for their commission of crime and make them realized that their act has harmed persons or members in society
- To rebuke the conduct against law

20.1.4 Matter to be considered while determining the punishment:

- Punishment should not be awarded more than the specification of law for particular crime
- Punishment should not be awarded more than the need of society for attaining the objectives
- If there are more offenders, punishment to be awarded to the offenders should not be different
- If there are more than one offences, punishment should be based in rationality and proportionality
- Jail sentence should only be awarded if other punishment are not enough.

20.2 Use of template for the court users:

Without bearing any trouble, court users have the rights to entertain available court services paying fees as specified by the law. It is also the duty of the state authorities to ensure such services to the court users. To ensure easy and accessible service at free of costs or minimum cost, the authorities make necessary arrangement for inquiry desks, preparation of necessary templates for filing application, and display citizen charter, brushers, video clips etc. The Supreme Court has, in order to simplify the judicial proceedings for the clients or other stakeholders, already instructed to prepare and use templates of different types of general applications to be filed at the courts. .Forty types of templates that may be used for districts courts are stated below:

1. Authorization of power of attorney 2. Application for obtaining approval, pursuant to No.83, of the Chapter of Court Management of Muluki Ain 3. Application receiving summon in the court 4. To make up the expired date and register written reply 5. Application for succession of case 6. Application for serving notice/summon through publishing and broadcasting 7. Application for Stating the address 8. Application for taking testimony 9. Application for obtaining permission of court to get present in a case 10. Application for receiving duplicate copies 11. Application for submission of fine 12. Application for making up Tarekh Day 13. Application for making the concern person present 14. Application to return materials used for physical evidences 15. Application for receiving legal aid 16. Application for submitting original documents	17. Application for calling on witnesses from the court for statement. 18. Application to to correct minor mistakes in the deeds 19. Application to withdraw a case 20. Application for withholding a case 21. Application for re-proceedings of the withheld case 22. Application for asking facility of submitting court fee after the finalization of case/or later 23. Application to return bail amount 24. Application to return court fees25. Application for correction of minor error in the decision and court order 26. Application for refunding fined amount 27. Application to administer case releasing in bail or general Tarekh	28. Application seeking permission to submit cash instead of inventory 29. Application for replacing inventory 30. Application for releasing withholding property 31. Application for requesting information about the decision or order 32. Application for seeking information regarding settlement 33. Application for the reimbursement of claimed amount. 34. Application to withhold property 35. To enforce the use of property as per the decision 36. Application for Partition of property by court 37. Application for re-enforcing use of property as the opponent created hindrance to sue the property.

(a) By using such templates, it is expected that court users may receive not only easy, accessible and prompt court service but also save time and resources. Therefore, the

following endeavors may be adopted for making the effective use of templates. Courts have to make sure that service seekers of the courts are free from any trouble for preparing general types of applications, wasting unnecessary time and they have easy access to the court services as offered by the court. .

(b) Courts have to make sure that the templates of such general types of application are available to the service seekers free of costs through the website and helpdesk of the court. .

(c)

(d) Information center and helpdesk have to provide the templates to the service seekers free of cost. If an applicant who cannot fill the form, staff from the information and helpdesk should assist him/her for filling the form. . Then the concern staff shall make signature of such person and send that document to the concern section of the case. It will be more appropriate, if the case section and other unit provide such application template with free of cost. Court users may take assistance by the court paid attorney to fulfill the template.

(e) The court staffs should be aware that the templates are not misused by the court users.

(f) Since this service is offered only to the court users by the court, attorneys or any other professionals who prepare the legal documents are not expected to use.

(g) Court staff has to conduct regular supervision about the use of template.

(h) Court staffs have to collect feedback from the court users about the effectiveness of the use of the template and work for making the template system more effective and sustainable.

(i) Except the above-mentioned templates (40 types), court staffs have to use variety of template through the web-side and the template for the execution of decision. If helps expediting the proceedings of the court. .

20.3 Use of court paid attorney:

Everyone has the right to hire a legal counsel of his/her choice in a case and the legal counsel shall represent the person in the court. . However, if there is a situation that incapable, helpless or economically poor persons are not being able to entertain the rights guaranteed by the constitution, such persons will obtain the service through the court paid attorneys. Therefore, so as to make the service provided by the court paid attorneys to the incapable or helpless people

effective, the following measures may be adopted: (Article, 20 (2), of the Constitution of Nepal, and Article 14(3) of International Covenant on Civil and Political Rights 1966):

(a) If it seems that a person of a case is being unable to appoint an attorney as he/she seems incapable, helpless, minor, economically week, or kept in detention, the judge or registrar should appoint the court paid attorney for necessary legal support.

(b) Court has to supervise and maintain records of the legal services provided by the court paid attorneys representing such incapable, helpless, minor, and economically week, persons.

(c) So as to obtain service on demand from the court paid attorney, court has to establish a good cooperation with the court paid attorney. Also, it is necessary to establish his/her office within the court premises. .

(d) Also make sure that the Court paid attorney will assist to provide legal opinion and other counseling to the client.

(e) So as to make effective legal aid services to the person in detention, to visit the detention once in a week and make sure that the person in detention have obtained the legal service as offered. If any incapable, helpless, minor or economically week person cannot remain in Tarekh Day, arrange to manage Tarekh Day via the court paid attorney.

(f) Disseminate the information via notice board of the court and jail, and other means that incapable, helpless, minor, economically week, or person kept in detention may obtain free legal aid through court paid attorneys. (Make sure the court paid attorneys are appointed by free competition publishing vacancy in the national level newspapers and taking written and oral exams and ensuring qualification, competency and fairness in the selection process. The Guidelines or the Appointment and Terms of Service of the Court Paid Attorneys, 2072 has to be followed. Rule 95 (3) (a)(3) of District Court Rules, 2052, Third Strategic Planning of Judiciary (2071-76, p.75)

20.4 Use of Translator:

(a) No person should be refused from the judicial proceedings due to the language. Every person has the right to know about the proceedings occurred against him/ her. As the Nepali Language is the official language in courts, the state has a

responsibility to provide with free interpretation service for the persons who do not understand the Nepali script/language. This is also a commitment of Nepal to international law. All most all the courts of Nepal have introduced services for the persons who use sign language including facility of interpreter. (Article 20 (9) of the Constitution of Nepal and International Covenant on Civil and Political Rights, 1966)

(b) If a party of a case or other persons as summoned by the court requests verbally or in writing to the court for providing a facility of an interpreter, or the court itself realizes that an interpreter is necessary, the court has to make sure the facility of interpreter without any charge.(Page.74, Third Strategic Plan of Judiciary, Guideline for the Use of Interpreter in Court Proceeding, 2072)

20.5 Judicial Outreach Program:

(a) In order to elevate the public trust and confident on the judiciary, the judiciary has to communicate to the people regarding its activities and judicial proceedings. Likewise, judiciary should also listen to the feedbacks made by the court users and other stakeholders for reforming the judicial proceedings. In this regard, the Judicial Outreach Program has been established as an essential program of judiciary. Similarly, this program is considered as an essential program for not only maintaining accountability and transparency in the judiciary but also informing people regarding the real court functions and addressing the confusions created against the judiciary. .

(b) Judicial outreach program is a new experiment of the judiciary in Nepal in which judges and court staff speak to the people directly. It has been considered as a means of disseminating information about the court proceedings, getting feedbacks from general public regarding court's functions, and minimizing the confusions created against the judiciary. Therefore, a special attention has to be paid while preparing, running and after completion of the program. The following measures may be adopted to make this program effective.

a. Courts should fix the numbers of outreach programs while determining the annual work plan.

b. After that, the content of the program and target groups has to be determined

c. Developing a program schedule makes the program systematic, participants should be around 50 for effectiveness, and program should be finished between 3-4 hours.
d. As the intent of the judicial outreach program is to meet the people directly, it is better to organize in a simple way and better not to coordinate with the non-governmental organizations.
e. The program should be organized in the leadership of the judges. Members from the District Justice Sector Committee may also be invited as per necessity.
f. It will be better if the program is conducted informally
g. Even if the program is informal, it better for judges to wear formal dress.
h. In the beginning of the programs, golden rules for maintaining the program such code of conducts to be followed during the programs, issues not to be raised and discussed, courtesy to be maintained during the discussion etc. have to be determined.
i. The issues raised by the participants have to be addressed respectfully
j. It is better if the participants are provided with some stationary for making notes. It is better if court itself prepares and prints leaflet, broacher, information books etc. for the participants.
k. Welcome remarks in the beginning and finally appreciation of being present is necessary
l. The activities or discussions of the programs may be recorded and with the help of this a report may be prepared.
m. Organizer should not conduct any party or etc. after the completion of the program

20.6 Meet the Judge Program:

(a) Introducing the Meet the judge program is for encouraging the court users to make feedbacks regarding the court services, tender complains, if any, and in this way the court can enhance the quality of service. In this program, the court users directly meet with the district court judges. The following measures may make this program effective:
    a. This program should be conducted once in a month
    b. Program date, schedule, venue and time may be fixed in advance so that the court users are informed in advance.
    c. The district judges have to make comfortable environment in the beginning so that the participants involve without any hesitation

d. It is better not to involve any staff by the district judge
e. If any feedback or complaint is made by the participants regarding the court service, the judge has to take initiation to resolve the problem, and the respective court users have to be informed about it as soon as possible.
f. As the participants of next/subsequent programs are interested to know the efforts adopted to address the issued underlined in the previous programs, preparation should be made in this line.