

AUSTRALIA | CHINA (PRC) | INDIA | INDONESIA | MALAYSIA  
PHILIPPINES | SINGAPORE | TAIWAN | THAILAND | VIETNAM

# ANTI-CHILD LABOUR LEGAL GUIDE

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End Violence Against  
Children program

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# CONTENTS

INTRODUCTION	4
AUSTRALIA	7
CHINA (PRC)	20
INDIA	28
INDONESIA	45
MALAYSIA	51
PHILIPPINES	61
SINGAPORE	69
TAIWAN	74
THAILAND	80
VIETNAM	89
CONTRIBUTORS	102
ACKNOWLEDGEMENTS	106

## INTRODUCTION

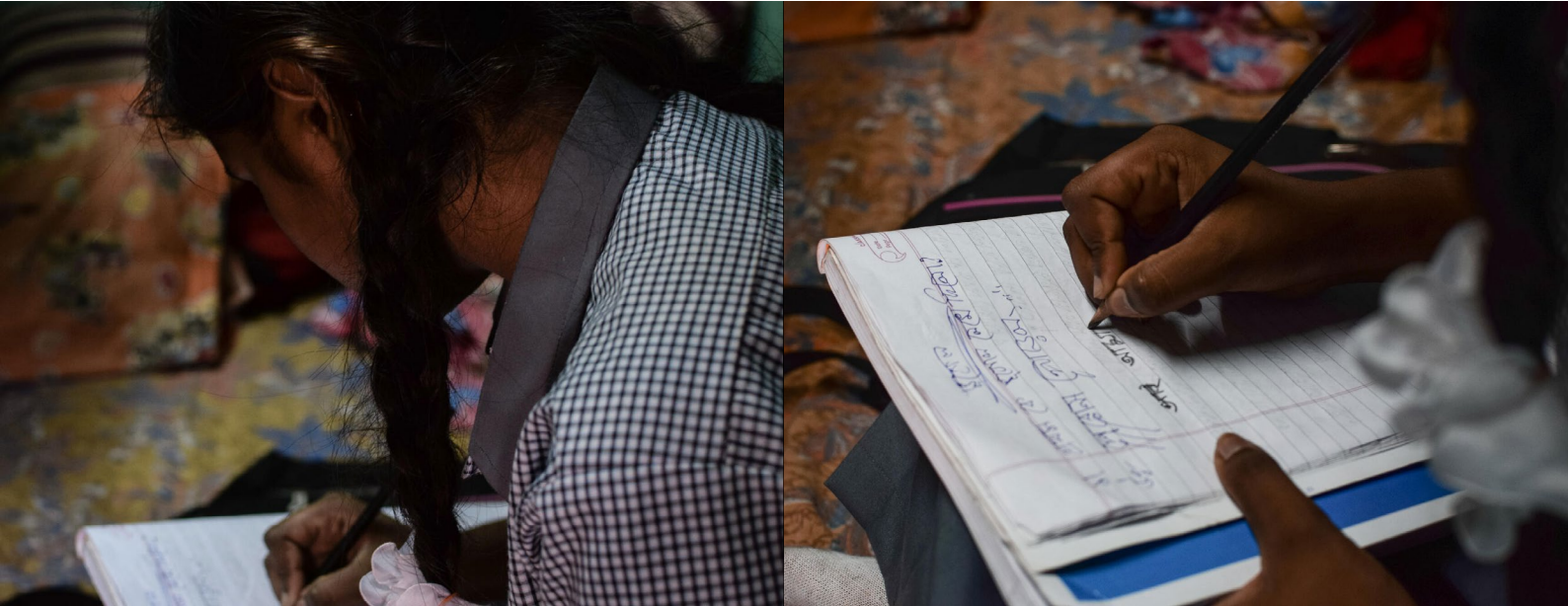
# END VIOLENCE AGAINST CHILDREN (EVAC)

The End Violence Against Children (**EVAC**) program is a global initiative launched by World Vision to fortify protections, ignite community movements and eradicate violence against vulnerable children. Violence against children takes many forms that include, physical, sexual and mental violence, neglect or negligent treatment, maltreatment or exploitation, harm or abuse, commercial sexual exploitation, trafficking, child labour, cyber abuse and other harmful practices. Given that the Asia Pacific region faces an overwhelming number of children affected by violence, there remains a huge gap for these child victims to understand and access the law for their protection.

In line with the UN's Sustainable Development Goals and global CSR principles, World Vision and its corporate partners endeavour to provide essential protections and resources necessary to build new lives for affected children.



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## THE ASIA PACIFIC LEGAL GUIDES

Underpinned by a robust regional framework, the Asia Pacific offices of World Vision are committed to building long lasting relationships with the private sector and developing pragmatic solutions to combat violence against children. Based on these principles of cooperation, World Vision, Baker McKenzie and other prominent corporate clients are teaming together to develop a series of 6 Asia Pacific Legal Guides to educate community leaders and social workers in relation to core legal frameworks.

The **first four** Asia Pacific Legal Guides have covered the following themes:

1. Anti-Child Trafficking
2. Anti-Physical Violence
3. Anti- Sexual Violence
4. Anti-Child Marriage

## UN CONVENTION ON THE RIGHTS OF THE CHILD

The Asia Pacific Legal Guides are intended to benefit local communities within the region by breaking down legal barriers; however, without the robust support of governments to strengthen child protection mechanisms, children affected by violence would inevitably lack the resources to rehabilitate themselves and prosper into responsible members of society. In order to ensure that the human rights of children are protected, we call upon governments worldwide to align domestic laws and introduce legislation that adheres to the United Nations Convention on the Rights of the Child (UNCRC) and its corresponding three optional protocols that include: (1) the Optional Protocol on the Involvement of Children in Armed Conflict (2002), (2) the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2002) and lastly, (3) the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (2014). For more information on this human rights treaty, please refer to the United Nations Human Rights Office of the High Commissioner website at <https://www.ohchr.org/EN/Pages/Home.aspx>.

# ANTI-CHILD LABOUR LEGAL GUIDE INTRODUCTION

This Anti-Child Labour Guide has been produced by Baker & McKenzie, World Vision, 3M, Citibank, Kyndryl and Khaitan & Co. to support the End Violence Against Children Program. This fifth legal guide addresses frequently asked questions encountered by World Vision relating to protecting victims of child labour in Australia,

Mainland China, India, Indonesia, Malaysia, the Philippines, Singapore, Taiwan, Thailand, and Vietnam. The objective is to empower and educate users as how to best navigate regulatory hurdles that may arise when assisting children affected by child labour.



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# AUSTRALIA

## 1. What is the legal minimum working age under domestic law?

In Australia, the minimum working age for children in employment varies across each state and territory. Generally, the minimum age is between 11 years to 15 years and there are restrictions on the work that children can undertake. There is no minimum age to work in a family business or the entertainment industry.

## 2. Is there domestic legislation that regulates the employment of children?

Yes, the employment of children is regulated by state and territory legislation, including the legislation set out below. At a federal level, the Fair Work Commission regulates employment of children and young people under Australia's Fair Work system through the use of legislation, certified collective agreements and awards. Australia's work health and safety laws also play a role in regulating the employment of children by setting health and safety standards in the context of employment.

Queensland: *The Child Employment Act 2006 (Qld)* and *Child Employment Regulation 2006 (Qld)* regulate the employment of children below the age of 18 years. The *Education (General Provisions) Act 2006 (Qld)* prohibits parents of school aged children from allowing a child to work during school hours.<sup>1</sup>

New South Wales: New South Wales does not have specific legislation addressing child employment generally. However, the *Education Act 1990 (NSW)* requires children of compulsory school age (6 to 17 years) to attend school, thereby restricting employment during school hours. There are also regulations regarding certain industries (eg: entertainment, photography and door-to-door sales) including the *Children's Guardian Act (2019) NSW*<sup>2</sup>.

Victoria: The *Child Employment Act 2003 (Vic)* regulates the employment of children under 15 years.

South Australia: There is no legislation which specifically addresses child employment. However, the *Education and Children's Services Act 2019 (SA)* requires children of compulsory school age (6 and 16 years), to attend school, thereby restricting employment during school hours.

Western Australia: The regulation of child employment is governed by the *Children and Community Services Act 2004 (WA)*. The *School Education Act 1999 (WA)* prohibits the employment of children of compulsory school age during school hours.<sup>3</sup>

Northern Territory: The *Care and Protection of Children Act 2007 (NT)* regulates the employment of children. The *Education Act 2015 (NT)* prohibits the employment of children of compulsory school age during school hours.<sup>4</sup>

Australian Capital Territory: The *Children and Young People Act 2008 Act (ACT)* regulates the employment of children under 18 years, and is supplemented by:

- *Children and Young People (Employment) Standards 2011 (No 1)*;
- *Children and Young People Regulation 2009*;
- *Children and Young People (High Risk Employment) Declaration 2009 (No 1)*; and
- *Children and Young People (Work Experience) Standards 2022 (No 1)*.

<sup>1</sup> *Education (General Provisions) Act 2006 (Qld)*; s230 and s9

<sup>2</sup> *Children's Guardian Act 2019*: Part 6 and *Children's Guardian Regulation 2022 (NSW)*: Part 7 and Schedule 6 (Code of Practice - Child Employment)

<sup>3</sup> *School Education Act 1999 (WA)*; s 29(1)

<sup>4</sup> *Education At 2015 (NT)*; s163

Tasmania: There is no legislation that specifically addresses the employment of children. However, the *Education Act 2016 (Tas)* requires children of

compulsory school age (5 years until completion of Year 10) to attend school, thereby restricting employment during school hours.<sup>5</sup>

### 3. Under what circumstances does the law allow a child to work?

The regulation of child employment differs across the states and territories. There is a common requirement in all jurisdictions that work must not interfere with a child's education. Below, we focus on the ages that children may work across the different jurisdictions.

Queensland: *The Child Employment Regulation 2016 (Qld)* prescribes that the minimum age for employing children is 13 years, unless:

- the work is delivery work (eg: newspapers and advertising material) and the child is at least 11 years of age; or
- the work is voluntary work; or
- the work is in the entertainment industry.<sup>6</sup>

Under the *Education (General Provisions) Act 2006 (Qld)* parents of school aged children (between 6 years and 6 months and 16 years unless the child has completed Year 10) are prohibited from allowing a child to work during school hours.<sup>7</sup>

New South Wales: There is no minimum legal working age for children in casual or part-time employment but the minimum age for full time work is 17 years old or completion of Year 10 (unless permission is obtained from the Department of Education). Children of compulsory school age (6 to 17 years) must attend school, thereby restricting employment during school hours.<sup>8</sup>

Victoria: *The Child Employment Act 2003 (Vic)* regulates the employment of children under 15 years. Amongst other matters, the Act provides:

- the minimum age for employment of a child is 11 years when the child is delivering

newspapers or advertising material, or making deliveries for a registered pharmacist;<sup>9</sup>

- the minimum age for employment is 13 years for all other employment unless the child is employed in a family business or entertainment in which case there are no age restrictions;<sup>10</sup>
- children under 15 years cannot be employed unless the employer has obtained a permit from the Wage Inspectorate Victoria and the child's parent or guardian has provided written consent.<sup>11</sup>

Employment of a child under 15 years during school hours is prohibited unless the Minister for Education has granted the child an exemption.<sup>12</sup>

South Australia: There is no minimum working age but under the *Education and Children's Services Act 2019 (SA)*:

- a child of compulsory school age (between 6 and 16 years) cannot be employed during school hours; and
- a child may not work in any labour or occupation that renders, or is likely to render, the child unfit to attend school or obtain the proper benefit from attending school.<sup>13</sup>

Western Australia: *The Children and Community Services Act 2004 (WA)* prohibits the employment of children under 15 years<sup>14</sup> unless:

- the child is employed in a family business;<sup>15</sup>
- the child is employed in a dramatic or musical performance or other form of entertainment or in the making of an advertisement;<sup>16</sup>

5 *Education Act 2016 (Tas)*; s16

6 *Child Employment Regulation 2016 (Qld)* s 4.

7 *Education (General Provisions) Act 2006 (Qld)*; s230 and s9

8 *Education Act 1990*

9 *Child Employment Act 2003 (Vic)* s 10.

10 *Child Employment Act 2003 (Vic)* s 10.

11 *Child Employment Act 2003 (Vic)*; s 13.

12 *Child Employment Act 2003 (Vic)*; s11

13 *Education and Children's Services Act 2019 (SA)* s. 74(1).

14 *Children and Community Services Act 2004 (WA)*; s190

15 *Children and Community Services Act 2004 (WA)* s 191(1).

16 *Children and Community Services Act 2004 (WA)* s191(2).



- the child has reached 10 years but is under 13 years and is employed to carry out delivery work between 6:00am and 7:00pm (but outside of school hours) and is accompanied by a parent or an adult and the work has been authorised in writing by the parent;<sup>17</sup>
- the child is at least 13 years old and is employed between 6am and 10pm only (but not during school hours) with the written permission of their parent to carry out:
  - delivery work (delivery of newspapers, pamphlets or advertising material);
  - work in a shop, retail outlet or restaurant; or
  - collection of shopping trolleys from a shop or retail outlet, including adjacent areas.<sup>18</sup>

The *School Education Act 1999 (WA)* prohibits the employment of children of compulsory school age during school hours.<sup>19</sup> Compulsory school age means from the beginning of the year in which the child reaches the age of 5 years and 6 months until the end of the year in which the child reaches 17 years and 6 months or the child reaches 18 years.<sup>20</sup> A child is considered to be employed regardless of whether they are paid.<sup>21</sup>

Northern Territory: The *Care and Protection of Children Act 2007 (NT)* prohibits:

- the employment of children less than 15 years between 10pm and 6am;<sup>22</sup>
- the employment of a child less than 18 years<sup>23</sup> to perform work that is harmful, or likely to be harmful, to the child's health;<sup>24</sup> and
- the employment of a child less than 18 years to perform work that involves exploitation of the child.<sup>25</sup>

*The Education Act 2015 (NT)* prohibits the employment of children of compulsory school age during the school day.<sup>26</sup> A child becomes of compulsory school age on 1 January of the year in which, as at 30 June, the child is 6 years.<sup>27</sup> A child ceases to be of compulsory school age when the child completes Year 10 or reaches the age of 17 years.<sup>28</sup>

Australian Capital Territory: The *Children and Young People Act 2008 (ACT)* 2008 prohibits the employment of children under 15 years<sup>29</sup> unless the child is employed in light work in the family business<sup>30</sup> or in light work for 10 hours per week or less.<sup>31</sup> Employment may also be prohibited where it is deemed that it is contrary to the best interests of the child<sup>32</sup>

The *Children and Young People Employment Standards 2011 (ACT)*:

- prohibit the employment of a child under 17 years during school hours;<sup>33</sup>
- prohibit the employment of a child under 18 years if it adversely affects their ability to benefit from their education, or if it harms their health, safety, personal or social development (including sexual or financial exploitation);<sup>34</sup>
- require that when employing children under 15 years (see permissible circumstances above) consideration must be given to a number of factors including:<sup>35</sup>
  - the child's physical ability to undertake the requirements of the work, particularly regarding tasks that require heavy lifting and handling hot substances;
  - the impact of the work on the emotional development of the child;

17 *Children and Community Services Act 2004 (WA)* s191(3).

18 *Children and Community Services Act 2004 (WA)* s191.

19 *School Education Act 1999 (WA)*; s 29(1)

20 *School Education Act 1999 (WA)*; s6(1)

21 *School Education Act 1999*; s29(2)

22 *Care and Protection of Children Act 2007 (NT)*; s203(1)

23 *Care and Protection of Children Act 2007 (NT)*; s13

24 *Care and Protection of Children Act 2007 (NT)*; s203(2)

25 *Care and Protection of Children Act 2007 (NT)*; s203(4)

26 *Education At 2015 (NT)*; s163

27 *Education At 2015 (NT)*; s38(1)

28 *Education At 2015 (NT)*; s38(2)

29 *Children and Young People Act 2008 (ACT)*; s795

30 *Children and Young People Act 2008 (ACT)*; s797

31 *Children and Young People Act 2008 (ACT)*; s796

32 *Children and Young People Act 2008 (ACT)* s 782, and the *Children and Young People Employment Standards (ACT) 2011*; clause 1.1

33 *Children and Young People Employment Standards 2011 (ACT)*; para 1.1

34 *Children and Young People Employment Standards (ACT) 2011*; clause 1.1

35 *Children and Young People Employment Standards (ACT) 2011*; clause 3.1

- the impact of the work on the child's physical and social development and societal expectations of age appropriateness;
- whether the level of responsibility is appropriate for the child's capacity.

Tasmania: There are references to child employment in various pieces of legislation. Under the *Education Act 2016 (TAS)*, a person may not employ, or permit to be employed, a school-aged child during the hours when the child is required to attend a school.<sup>36</sup> A school-aged child is aged between 5 years and the age at which they complete Year 10.<sup>37</sup>

#### 4. What restrictions and prohibitions does the law impose upon the employment of children?

As outlined above, there is a general prohibition on employing school aged children during school hours. Like the minimum age requirements (also outlined above), other restrictions regarding child employment vary between state and territory. Some of those restrictions are outlined below.

Queensland: In addition to parents being prohibited from allowing school-aged children (under 16 years) to work during school hours,<sup>38</sup> employers must not allow school-aged children to work between 10pm and 6am.<sup>39</sup>

There are also restrictions upon the number of hours that school-aged children are permitted to work per day (eg: a maximum of 4 hours on a school day and 8 hours on a non-school day) and per week (eg: 12 hours during a school week and 38 hours during a non-school week).<sup>40</sup> For the purposes of this regulation, "work" does not include:

- domestic chores;
- collections work; or
- work that is part of work experience, an apprenticeship, or a traineeship.<sup>41</sup>

New South Wales: In NSW there are regulations for the employment of children in certain industries including entertainment, theatre and modelling. For example, employers must not employ a child to work in entertainment,

exhibitions, recorded performances or door-to-door sales without obtaining an employer's authority to do so (unless they fall within a statutory exemption)<sup>42</sup> and there are limitations on hours of work.<sup>43</sup> A child is defined as a person under 15 years, unless they are employed as a model, in which case a child is defined as a person under 16 years.

Victoria: In Victoria it is prohibited to employ children in certain industries including door-to-door selling; fishing boats (unless in inland waters); and construction sites at any time before the building site is at lock-up stage.<sup>44</sup>

Unless it is a family business, employers must obtain a permit before they employ a child under 15 years (whether the work is paid or unpaid) and comply with Child Safe Standards.<sup>45</sup> There are also restrictions on when and how many hours children can work<sup>46</sup> and what kind of work they can perform.<sup>47</sup> Children under 15 years may only be employed to perform light work.<sup>48</sup> Exceptions apply to employment in family businesses and entertainment.<sup>49</sup>

South Australia: Some awards, agreements or laws specific to certain industries, such as those relating to liquor licences and mining, contain provisions that prohibit or restrict the duties for those under a certain age.<sup>50</sup>

<sup>36</sup> *Education Act 2016 (Tas)* s 247

<sup>37</sup> *Education Act 2016 (Tas)* s11

<sup>38</sup> *Education (General Provisions) Act 2006 (Qld)*; s230

<sup>39</sup> *Child Employment Regulation 2006 (Qld)*, s7.

<sup>40</sup> *Child Employment Regulation 2006 (Qld)*, ss 8 & 9

<sup>41</sup> *Child Employment Act 2006 (Qld)*; s8(2).

<sup>42</sup> *Children's Guardian Act 2019 (NSW)*: ss92 and 93

<sup>43</sup> *Children's Guardian Regulation 2022 (NSW)*: Schedule 6 (Code of Conduct - Child Employment); Part 2

<sup>44</sup> *Child Employment Act 2002 (Vic)*; s 122

<sup>45</sup> *Child Employment Act 2003 (Vic)* s 8.

<sup>46</sup> *Child Employment Act 2003 (Vic)* s 21-22.

<sup>47</sup> *Child Employment Act 2003 (Vic)* s 12.

<sup>48</sup> *Child Employment Act 2003 (Vic)* s 20.

<sup>49</sup> *Child Employment Act 2003 (Vic)*; s24 - 28

<sup>50</sup> [Minimum working age | SafeWork SA](#)

**Western Australia:** If the Chief Executive Officer (CEO) of the Department for Community Development is of the opinion that the wellbeing of a particular child is likely to be jeopardised by the fact that the child is employed, or the nature or extent of the work that the child is employed to carry out, the CEO may, by written notice given to a parent of the child:

- prohibit the employment of the child; or
- impose limitations on the employment of the child.<sup>51</sup>

The notice must also be provided to the child and the child's employer.<sup>52</sup>

**Northern Territory:** The Chief Executive Officer (CEO) of the Department administering the *Child and Protection of Children Act 2007 (NT)* may restrict the employment of the child if the child is employed and the CEO is of the opinion that:

- the child suffers or is likely to suffer, exploitation because of the employment; or
- the wellbeing of the child is, or is likely to be, jeopardised because of the employment.<sup>53</sup>

**Australian Capital Territory:** Employers of children must comply with the *Children and Young People Employment Standards 2011 (ACT)* which set out a number of requirements including:

- adequate and reasonable supervision of children under 15 years by a responsible adult;<sup>54</sup>
- provision of a safe and healthy work environment;<sup>55</sup>
- provision of appropriate information, training and supervision regarding workplace health and safety;<sup>56</sup>
- reasonable access to facilities for a child to contact their parents or guardians;<sup>57</sup>
- hours of work;<sup>58</sup>
- taking reasonable steps to ensure that children have arrangements in place for safe travel to and from work.<sup>59</sup>

**Tasmania:** Under the *Children, Young Persons and Their Families Act 1997 (Tas)*, a person must not procure or induce any child:

- under 11 years of age to offer any thing for sale in a public place<sup>60</sup>; or
- between 12 and 13 years of age to offer anything for sale in a public place between the hours of 9:00pm to 5:00am.<sup>61</sup>

However, these restrictions do not apply where the net proceeds of sale are devoted to the benefit of a school or a charitable purpose.<sup>62</sup>

## 5. What penalties apply for breach of laws relating to the employment of children?

Fines and/or prison terms may apply for breaches of laws relating to the employment of children. Fines are usually quantified in penalty units which represent a monetary amount which is usually indexed each financial year in each jurisdiction so that it is raised in line with inflation.

**Queensland:** Fines apply when an employer employs a child under the minimum age or

without a required permit.<sup>63</sup>

**New South Wales:** Fines apply for employers who employ children without the required employer's authority in industries including entertainment, exhibitions, recorded performances and door-to-door sales.<sup>64</sup> Breach of the entitlements under the Fair Work Act 2009 (Cth) (e.g. failure to pay minimum rates of pay) also attracts fines.

51 *Children and Community Services Act 2004 (WA)* s 193(2).

52 *Children and Community Services Act 2004 (WA)* s 193(4).

53 *Care and Protection of Children Act 2007 (NT)*, s 201(1).

54 *Children and Young People Employment Standards (ACT) 2011*; cl 5.1

55 *Children and Young People Employment Standards (ACT) 2011*; cl 5.7

56 *Children and Young People Employment Standards (ACT) 2011*; cl 5.8

57 *Children and Young People Employment Standards (ACT) 2011*; cl 5.15

58 *Children and Young People Employment Standards (ACT) 2011*; Standard 6

59 *Children and Young People Employment Standards (ACT) 2011*; cl 7.1

60 *Children, Young Persons and Their Families Act 1997 (Tas)* s 94(1).

61 *Children, Young Persons and Their Families Act 1997 (Tas)* s94(2).

62 *Children, Young Persons and Their Families Act 1997 (Tas)* s 94(3). See also: Section 8 of the *Collections for Charities Act 2001 (Tas)*

63 *The Child Employment Act 2006 (Qld)*; s9

64 *Children's Employment Act 2019 (NSW)*; s92. See also *Child Guardian Regulation 2022 (NSW)*; Schedule 7 (Penalty notice offences)

Victoria: Individual employers who contravene the *Child Employment Act 2003 (Vic)* may face fines. Contraventions include:

- employing or allowing a child to be employed without a permit (penalties also apply to parents);<sup>65</sup>
- employing a child who is below the minimum age of employment;<sup>66</sup>
- employing a child during school hours;<sup>67</sup>
- employing a child in prohibited employment.<sup>68</sup>

South Australia: Fines apply for employing a child of compulsory education age during school.<sup>69</sup>

Western Australia: Fines apply for both the employer and parent if they unlawfully allow a child under 15 years to work.<sup>70</sup> A fine and a 3 year prison term apply for both the individual employer and parent if they allow a child to work in contravention of a written notice from the Department's Chief Executive Officer to stop or limit that work.<sup>71</sup> It is also an offence for a person to employ, or for a parent to permit, a child of less than 18 years to be employed to perform in an indecent, obscene or pornographic way while participating in an entertainment, exhibition or production of an advertisement. The penalty for

this offence is imprisonment for up to 10 years.<sup>72</sup>

Northern Territory: Employers and parents who contravene the *Care and Protection of Children Act 2007 (NT)* face fines or imprisonment between 6 months and 4 years for requiring a child under 15 years to:<sup>73</sup>

- work between 10pm and 6am;
- perform work that is harmful, or likely to harm, the child's physical, emotional or emotional well being; or
- perform work that involves exploitation of the child.

Australian Capital Territory: The maximum penalty for unlawfully employing a child under 15 years old is a fine and/or 6 months' imprisonment,<sup>74</sup> unless it involves 'high risk employment', in which case the maximum penalty is a larger fine and/or 2 years imprisonment.<sup>75</sup>

Tasmania: A person who unlawfully employs a school-aged child (between 5 years and finishing Year 10) faces fines.<sup>76</sup> Persons who unlawfully procure or induce any child under 13 years to offer any thing for sale in a public place face additional fines and a maximum 3 months prison term.<sup>77</sup>

## 6. Are there gaps in the domestic laws compared to international legal standards such as those set out in the International Labour Organisation's *Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*?

There are a number of international instruments relevant to the prevention of illegal child labour practices, including the *Worst Forms of Child Labour Convention 1999 (No. 182)* (the **Child Labour Convention**) and the *Minimum Age Convention, 1973 (No. 138)* (the **Minimum Age Convention**). Although Australia is a signatory to most of these instruments and has ratified seven

of the eight fundamental conventions, including the Child Labour Convention, Australia has not yet ratified the Minimum Age Convention.

The Child Labour Convention defines a child as a person 18 years of age and seeks to eliminate the worst forms of child labour.<sup>78</sup> The Minimum Age Convention sets the general minimum age

65 *Child Employment Act 2003 (Vic)*; s9

66 *Child Employment Act 2003 (Vic)*; s10

67 *Child Employment Act 2003 (Vic)*; s11

68 *Child Employment Act 2003 (Vic)*; s12

69 *Education and Children's Services Act 2019 (SA)* s 74(1).

70 *Children and Community Services Act 2004 (WA)* s 190(1)-(3).

71 *Children and Community Services Act 2004 (WA)* s 193(5)-(6).

72 *Children and Community Services Act 2004 (WA)* s 192.

73 *Care and Protection of Children Act 2007 (NT)*, s 203.

74 *Children and Young People Act 2008 (ACT)* s 795.

75 *Children and Young People Act 2008 (ACT)* s 803.

76 *Education Act 2016 (Tas)*; s247

77 *Children, Young Persons and Their Families Act 1997 (Tas)*; s94

78 International Labour Organisation, *C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)*, article 6.1. ([Child Labour Convention](#)). These are defined in article 3 and include slavery and forced labour; prostitution; use of a child for illicit activities; and work that is likely to harm the child's health, safety or morals.

for admission to employment or work at 15 years (13 years for light work)<sup>79</sup> and the minimum age for hazardous work at 18 year (16 years under certain strict conditions).<sup>80</sup> The minimum age can be 14 years where the work is an integral part of education or a training program, under strict conditions.<sup>81</sup>

Australian laws relating to child labour practices are somewhat inconsistent with international standard practices when considering the minimum age requirements. There is no federal law in Australia setting a minimum age for employment. Instead, the eradication of child labour is recognised through a range of Commonwealth, State and Territory legislation seeking to protect

children and young people from exploitation and risk in the workplace. For example, as outlined above, state and territory legislation typically sets a minimum age for employment generally, a minimum age in selected occupations/high risk activities and restricts the number of hours per week.<sup>82</sup> State and territory legislation seeks to promote the best interests of a child or young person.<sup>83</sup>

Additionally, the prevention of child labour is reflected in compulsory education until around age 15 or 16 (Year 10).<sup>84</sup> Most jurisdictions then mandate a choice of work, education and or training (regulated) until age 17.<sup>85</sup>

## 7. What government agencies are responsible for enforcement of laws regulating the employment of children?

In Australia, state and territory governments are primarily responsible for laws that regulate the employment of children. Some jurisdictions regulate child-employment through education legislation, others through employment or child-specific legislation. The responsible agencies reflect these distinctions.

Queensland: The Department of Children, Youth Justice and Multicultural Affairs is responsible for compliance with the *Child Employment Act 2006* (Qld).

New South Wales: The Department of Education is responsible for the *Education Act 1990* (NSW).

Victoria: Prosecutions under the *Child Employment Act 2003* (Vic) can only be brought by a person employed by the Department of State Development, Business and Innovation.

South Australia: The Department of Education is responsible for the *Education and Children's Services Act 2019* (SA).

Western Australia: The regulation of child employment under the *Children and Community Services Act 2004* (WA) is managed by the Department for Child Protection and Family Support.

Northern Territory: The Chief Executive Officer of the Department of Territory Families, Housing and Communities has primarily responsibility for regulating the *Care and Protection of Children Act 2007* (NT) which regulates the employment of children.

Australian Capital Territory: The *Children and Young People Act 2008* (ACT) regulates the employment of children and is relevantly administered by the Minister for Education and Youth Affairs, Education and Community Services Directorate.

79 International Labour Organisation, *C138 - Minimum Age Convention, 1973* (No. 138), article 7.1. ([Minimum Age Convention](#)). Note that where a Member argues for insufficient development per article 2.4, these ages may be reduced to 13 and 15: article 7.4.

80 Conditions for 16 years: if there has been consultation between employer and worker organisations and on condition that the children are protected from the harm and have been appropriately trained: Minimum Age Convention, articles 3.1 and 3.3.

81 [Minimum Age Convention](#), article 6.

82 *Children and Young People Act 2008* (ACT) ss 11, 12, 793, 794; *Education Act 1990* (NSW) s 21B; *Care and Protection of Children Act 2007* (NT) s 203; *Child Employment Act 2006* (QLD) s 9 and *Child Employment Regulation 2016* (QLD) ss 4, 7, 8, 9, 13; *Education and Children's Services Act 2019* (SA) s 74; *Education Act 2016* (TAS) ss 16, 24; *Child Employment Act 2003* (VIC) Pt 2 Div 1, Div 4; *Children and Community Services Act 2004* (WA) s 190, *School Education Act 1999* (WA) s 29.

83 *Children and Young People Act 2008* (ACT) s 782; *Care and Protection of Children Act 2007* (NT) s 198; *Child Employment Act 2006* (QLD) s 4; *Child Employment Act 2003* (VIC) s 1.

84 *Education Act 2004* (ACT) s 9; *Education Act 1990* (NSW) s 21B; *Education Act 2015* (NT) s 38; *Education (General Provisions) Act 2006* (QLD) s 9; *Education and Children's Services Act 2019* (SA) ss 3, 60; *Education Act 1994* (TAS) s 4; *Education Act 2016* (TAS) ss 16, 24; *Education and Training Reform Act 2006* (VIC) s 2.1.1; *School Education Act 1999* (WA) s 6.

85 *Education Act 2004* (ACT) s Part 2.4; *Education Act 1990* (NSW) s 21B; *Education Act 2015* (NT) s 38; *Education (General Provisions) Act 2006* (QLD) s 231; *Education and Children's Services Act 2019* (SA) ss 3, 61; *Education Act 2016* (TAS) s 24; *School Education Act 1999* (WA) ss 11A, 11B.

Tasmania: The Department of Education is responsible for the *Education Act 2016* (TAS).

At a federal level, the Fair Work Commission regulates employment of children and young people under Australia's Fair Work system through the use of legislation, certified collective agreements and awards. The Australian judicial system can also impose sanctions and pecuniary measures against employers or businesses that engage in illegal child labor practices or breaches of the minimum employment standards set out in awards and agreements or for violations of health and safety practices.

Australia's work health and safety laws also play a role in regulating the employment of children by setting health and safety standards in the context of employment. Each Australian state and territory has a regulator that is responsible for enforcing health and safety standards. Employers and those in control of workplaces are responsible for ensuring, as far as practicable, the safety and health of employees and visitors including children at the workplace. Employees are also required to work safely so children are not harmed.

## 8. Who can report illegal child labour practices?

There are no restrictions on who can report illegal child labour practices in Australia.

Australia also has mandatory reporting obligations that may arise in the context of illegal child labour practices where there is abuse or neglect of a child, or risk of such abuse or neglect. Mandatory reporting legislation generally lists specific professions that are required to report

cases of suspected child abuse and neglect.<sup>86</sup> In addition, any person may report abuse if they are concerned for a child's welfare, even if they are not required to do so by legislation.<sup>87</sup> Suspicions of less severe child abuse and neglect may also be referred to child and family welfare agencies. Reporters are protected regarding confidentiality and immunity from legal liability provided the report is made in good faith.<sup>88</sup>

## 9. Who should illegal child labour practices first be reported to?

Illegal child labour practices can be reported to the relevant state or territory government regulator where the claim of the illegal child labour practices is being made. Please refer to the response to question 7 for the state and territory regulators.

There are also other avenues available at the federal level to someone reporting illegal child labour practices, including:

- **Fair Work Ombudsman**: The Fair Work Ombudsman has an anonymous reporting tool in place. This reporting tool is used to target unlawful practices in workplaces across all of Australia and deliver outcomes for exploited

people, including for and on behalf of children or young people in employment.<sup>89</sup>

- **Australian Human Right Commission**: The Commission is an independent agency that investigates and resolves complaints about discrimination at work and may be used to report illegal or unfair child labour practices. It does not cost anything to make a complaint.
- **Australia Federal Police**: A person may report any concerns relating to the abuse or exploitation of children to the Australian Federal Police. The local Australian police in the relevant state or territory can also be contacted if a child is in immediate danger.

<sup>86</sup> *Children and Young People Act 2008* (ACT) s 356; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 24; *Care and Protection of Children Act 2007* (NT) s 26; *Child Protection Act 1999* (QLD) s 13E; *Children and Young People (Safety) Act 2017* (SA) s 31; *Children, Young Persons and Their Families Act 1997* (TAS) s 14; *Children, Youth and Families Act 2005* (VIC) s 184; *Children and Community Services Act 2004* (WA) s 124B (note this is limited to child sexual abuse).

<sup>87</sup> *Children and Young People Act 2008* (ACT) s 354; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27; *Care and Protection of Children Act 2007* (NT) s 26; *Child Protection Act 1999* (QLD) s 13A; *Children and Young People (Safety) Act 2017* (SA) s 5; *Children, Young Persons and Their Families Act 1997* (TAS) s 13; *Children, Youth and Families Act 2005* (VIC) s 183.

<sup>88</sup> *Child Family Community Australia, Australian Institute of Family Studies, Fact Sheet on Mandatory Reporting of Child Abuse & Neglect, June 2020*

<sup>89</sup> *Fair Work Ombudsman website*.

**10. Are there any legal protections provided to persons who report illegal child labour practices?**

Australian regulatory bodies such as the Australia Fair Work Ombudsman and the Australian Taxation Office allow people to report illegal child labor practices confidentially and anonymously.<sup>90</sup> Additionally, the child protection legislation discussed above often contain protections for reporters.<sup>91</sup>

A person reporting illegal child labour practices may also have protection from retaliation, threat and any detriment under Australia’s whistleblower

legislation. The whistleblower laws cover current or former employees or officers and family members who report misconduct about the company or its managers or other employees.<sup>92</sup> The whistleblower laws do not provide immunity if a person was involved in the misconduct, though the report cannot be used against the person reporting and the person cannot be charged with a criminal offence or subject to civil proceedings for making a report.

**11. In a criminal case in connection with child labour:**

**11.1 Which agency or agencies have the authority to file a case with the prosecutor?**

The Australian Federal Police is the agency that has authority to investigate contraventions of the *Criminal Code Act 1995* (Cth), and to file a case with the prosecutor for criminal prosecution. In addition, Australian State and Territory local police are the relevant authorities to investigate and prosecute conduct associated with illegal child labour which contravenes state and territory legislation.

**11.2 In general, what evidence is required to build the case against the alleged perpetrators of a child labour case?**

The evidence required will depend upon the particular offence being prosecuted. Evidence may include:

- documentation showing the age of the child (e.g. a passport or birth certificate);
- evidence of the type of work undertaken (eg: a statement from the child or other witnesses; photographs);
- evidence of the child’s working hours (eg: pay records, a statement from the child or other witnesses);
- evidence of working conditions (e.g. photographs, a statement from the child or other witnesses);
- evidence of the impact on compulsory education (e.g. records of school attendance or grades); and
- police records.

**11.3 If the prosecutor requires a child labour survivor to testify against alleged perpetrators, (e.g. parents or close relatives):**

**(a) Does the child have the right to refuse?**

Generally, a child who is competent to give evidence can be compelled to give evidence. In order to be considered competent to give evidence, the Court must be satisfied that the child:

- understands that they are under an obligation to give truthful evidence; and
- is able to understand the question that they are being asked and can give an answer that can be understood.

In determining whether to excuse the child from giving evidence the Court will consider (amongst other circumstances):

90 See e.g. <https://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/report-an-issue-anonymously>; <https://www.ato.gov.au/general/gen/making-a-tip-off/>

91 *Children and Young Persons (Care and Protection) Act 1998 (NSW) ss 26, 29; Care and Protection of Children Act 2007 (NT) s 2; Child Protection Act 1999 (QLD) s 13D; Children, Young Persons and Their Families Act 1997 (TAS) s 16; Children, Youth and Families Act 2005 (VIC) ss 189-191; Children and Community Services Act 2004 (WA) ss 124F and 124G.*

92 Section 1317A1 *Corporations Act 2001* (Cth).

- the nature and gravity of the offence;
- whether any other evidence is reasonably available to the prosecutor;
- the substance and importance of any evidence the child might give and the likely weight of that evidence; and

- the likely harm that might be caused to the child if they gave evidence and whether that harm outweighs the desirability of receiving the evidence.

The child may also object to giving evidence if the alleged perpetrator is a parent. However, the Court will only excuse the child from testifying in certain limited circumstances, which do not generally include cases in which the child's testimony can be critical to determining whether the offence occurred.

**(b) Can the child give evidence via video link (eg: from another room)?**

Yes, subject to the Court's discretion. The Court may permit the child to give evidence from a separate room via closed-circuit television, audio-visual link or a video recording. Alternatively, a screen, partition, one-way glass or other device may be used to separate the child from the accused when giving evidence.

**(c) Can the child's evidence be admitted into evidence without a court appearance?**

Yes, subject to the Court's discretion.

The Court may admit a recording of a statement made by the child to a police officer as the whole or part of a child's evidence in chief. However,

the child must be available for questioning in Court for cross-examination and re-examination although such questioning may be via video-link in the Court's discretion.

**(d) What other legal protections are available to the child?**

Before a child can give evidence, the Court must be satisfied that they are competent to give evidence, which requires that they:

- understand that they are under an obligation to give truthful evidence; and
- are able to understand the question that they are being asked and can give an answer that can be understood.

In order to protect a child giving evidence, the Court may:

- allow the child to be accompanied by a support person when giving evidence;

- appoint a person to conduct cross-examination and re-examination of the child when the accused is unrepresented;
- make orders about the way evidence is given and the questioning of the child (including disallowing questions and preventing inappropriate or aggressive cross-examination of the child);
- hold the proceedings in private or exclude certain people from the court room;
- make orders for the court room to be arranged so that the child cannot see the accused or anyone else the court considers should be screened from the child; and
- make orders to prevent the publication of any material that would disclose a child's identity.



## 12. What legal protections or remedies are available to children who are the victims of illegal labour practices?

### Criminal proceedings

Criminal proceedings may be brought against the perpetrators of illegal child labour practices. As discussed in Question 5, persons who contravene child labour laws may be imprisoned in Western Australia, the Northern Territory, the Australian Capital Territory and Tasmania under specific child labour legislation.<sup>93</sup> In Queensland, any person who contravenes child labour legislation can also be prosecuted in an Industrial Magistrates Court.<sup>94</sup> Criminal proceedings are also able to be brought in New South Wales and South Australia for child abuse and neglect. The Australian Federal Police can also bring criminal proceedings against perpetrators of illegal child labour who contravene the *Criminal Code Act 1995* (Cth).

In addition, there are wage theft laws in Queensland and Victoria which make it a crime to deliberately and dishonestly underpay employees.<sup>95</sup>

### Family Law Act Orders

Although Australia does not have a specific regime of illegal child labour protection orders, children at risk of being exploited for labour could obtain state protection through an application for

a parenting order prohibiting conduct that would enable the labour.

### Civil Compensation Proceedings

Under the *Fair Work Act 2009* (Cth), a victim of illegal child labour can file an unpaid wages claim with the Fair Work Ombudsman which will allow them to recover unpaid wages and entitlements. This will require employers to produce time and wage records to defend the claim.

If the conduct surrounding the child labour offences also involve the commission of a tort (for example, assault, battery or false imprisonment), it may be possible for victims to sue offenders for tortious damages in the civil jurisdiction of relevant courts.

### Police Protection

Illegal child labour will likely amount to abuse or neglect of the child. In these circumstances, Federal or State and Territory police are able to remove the child from their living situation in order to be placed in government-care. All States and Territories also have domestic violence legislation that affects children, who can be granted Family Violence Protection Orders or Restraining Orders.

## 12.1 Who can act as the child's guardian (or equivalent) in pursuing remedies?

Civil proceedings can only be commenced by a child's "tutor", "litigation guardian", "next friend" or "guardian ad litem" (depending on the jurisdiction). Any person who does not have any interest in the proceedings adverse to the child

and is capable of conducting the proceedings is eligible to apply to hold this position. The court has the power to remove and substitute tutors/guardians.

<sup>93</sup> *Children and Community Services Act 2004* (WA) s 192; *Care and Protection of Children Act 2007* (NT), s 203; *Children and Young People Act 2008* (ACT) s 803; *Children, Young Persons and Their Families Act 1997* (Tas) s 94(1).

<sup>94</sup> *Child Employment Act 2006* (Qld) s 8A-11, s25.

<sup>95</sup> *Wage Theft Act 2020* (Vic); *Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020* (Qld).

12.2 In circumstances where World Vision is providing shelter and other support to a survivor of child labour:

- (a) Can World Vision apply to be the guardian of the child for the purpose of pursuing those remedies?

Litigation guardian: A corporation or organisation cannot be a tutor/litigation guardian for the purposes of pursuing civil remedies. However, an individual representative of World Vision could be the tutor/litigation guardian of the child and can appoint a lawyer to represent the child to pursue compensation in a civil case.

Guardianship generally: Providing shelter to a child will not automatically cause the local World Vision organisation to be regarded as a child’s guardian. In order to become a legal guardian, a World Vision representative would need to undergo a detailed review and assessment process and be approved by the Children’s Court for a guardianship order.

- (b) What criteria is World Vision required to satisfy and how does it apply to be the guardian?

Litigation Guardians: In civil proceedings, the relevant World Vision representative must show that they have no interest in the proceedings adverse to the interests of the child and be capable of conducting the proceedings. The application process will depend on the particular forum. For example, in the Federal Circuit and Family Court, the potential litigation guardian submits an application with an affidavit that explains why the person needs a litigation guardian and how the guardian is qualified to act as a guardian.

Guardianship generally: In order to become a child’s legal guardian, a World Vision representative would need to undergo a detailed review and assessment process and be approved by the Children’s Court for a guardianship order. The court will decide guardianship applications based on the best interests of the child and references, statements, medical reports and inspections are usually required. The World Vision representative would need to show that they have an established and positive relationship with the child and can provide a safe, nurturing, stable and secure environment.

- (c) Can World Vision appoint a lawyer to assist the child?

Yes. If a World Vision employee is acting as a guardian or litigation guardian, in order for the child to pursue civil remedies.

12.3 Can these other remedies be pursued at the same time as a criminal case?

Yes, a civil case can be lodged at the same time as a criminal case and does not need to be preceded by a criminal case or criminal conviction. A guilty finding may be relied on in a civil case as evidence but is not a prerequisite.

#### 12.4 Do these remedies provide for an award of compensation to the child? If so, how is the amount of compensation determined?

As discussed in Question 12, under the *Fair Work Act 2009* (Cth), a victim of illegal child labour can file an unpaid wages claim with the Fair Work Ombudsman. This will allow them to recoup wages and other entitlements that are owed to them.

If the conduct surrounding the child labour offences also involve the commission of a tort (for example, assault, battery or false imprisonment), it may be possible for victims to sue offenders for tortious damages in the civil

jurisdiction of relevant courts. Compensatory damages may be awarded based on evidence of economic loss flowing from any act of violence associated with illegal child labour and the pain and suffering of the victim. In addition, the court may award an amount for exemplary damages aimed at punishing/detering the offender where the offender's conduct amounts to conscious wrongdoing. This amount will be determined based on all the circumstances of the case, including the nature of the act of violence or tortious conduct and any injury caused.

#### 13. Which organisations provide pro bono legal services to assist survivors of child labour?

There are a number of community legal centres that specialise in providing pro bono legal services to young people including:

[Youth Law Australia](#)

[Youth Legal Service](#), Western Australia

[Marrickville Legal Centre's Youth Legal Service](#), New South Wales

[Youthlaw](#), Victoria

[Youth Law Centre](#), Legal Aid, Australian Capital Territory

# CHINA (PRC)

## 1. What is the legal minimum working age under domestic law?

The legal minimum working age under PRC law is 16. That said, institutions of literature and art, physical culture, and special arts and crafts can recruit minors under the age of 16 according to relevant laws and regulations but shall guarantee the minors' right to compulsory education.<sup>1</sup>

## 2. Is there domestic legislation that regulates the employment of children?

There are several legislations that regulates the employment of children in the PRC. The key legislations include:

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1) The PRC Labour Law</li> <li>2) The PRC Criminal Law</li> <li>3) The PRC Law on the Protection of Minors</li> <li>4) The Provisions on the Prohibition of Using</li> </ol> | <p>Child Labour</p> <ol style="list-style-type: none"> <li>5) Measures for Lump-sum Compensation to the Injured or Deceased Employee of An Illegal Employing Entity</li> <li>6) Regulations on Work-Related Injury Insurance</li> <li>7) Provisions on the Fines Standard for Employment of Child Labour</li> </ol> |
|---|---|

## 3. Under what circumstances does the law allow a child to work?

As mentioned in Question 1, no employer is allowed to recruit minors under the age of 16 in the PRC. That said, institutions of literature and art, physical culture, and special arts and crafts can recruit minors under the age of 16 according to relevant laws and regulations but shall guarantee the minors' right to compulsory education.

## 4. What restrictions and prohibitions does the law impose upon the employment of children?

No organization or individual may hire any minor under the age of 16, except as otherwise prescribed by the state. Pursuant to the *PRC Labour Law*, the allowed exceptional circumstances include employment of minors under the age of 16 for institutions of literature and art, physical culture, and special arts and crafts. Such exceptional employments must comply with the relevant provisions of the State and guarantee minors' right to compulsory education.<sup>2</sup>

Employment of minors over the age of 16 is also subject to restrictions and prohibitions. Certain sites, such as commercial recreation sites, bars

or internet access service sites, are deemed unsuitable for minors to work at. Employers of minors over the age of 16 are required to implement relevant provisions of the state in respect of the types of jobs, working hours, intensity of work and protective measures, etc., and may not assign to minors any work or dangerous operation endangering the physical and mental health of minors, which are over-strenuous, poisonous or harmful, etc. No organization or individual may organize minors to carry out activities such as performances which are harmful to their physical and mental health.<sup>3</sup>

<sup>1</sup> Article 15 of the PRC Labour Law.

<sup>2</sup> Article 15 of the PRC Labour Law.

<sup>3</sup> Article 61 of the PRC Law on the Protection of Minors.

## 5. What penalties apply for breach of laws relating to the employment of children?

The penalties for breach of laws relating to the employment of children differ depending on whether the employer is an individual or an entity and the type of work involved.

Where the employer is an individual and employs a child to conduct profit-generating productive labour, the employer will be fined CNY 600 to CNY 1,200 for each child employed. Where child labour is employed to do work of family service, the individual employer will be fined CNY 300 to CNY 600 for employment of each child.<sup>4</sup>

Where an entity is the employer, a fine of CNY 5,000 shall be imposed for one child labour per month. If the employer uses child labour in working places with toxic materials, it shall be given a heavier punishment according to the range of fine prescribed in the Regulations on Labour Protection for the Use of Toxic Substance in Workplace or the standard fine of CNY 5,000 for one child labour per month. The employer will also be ordered to send the child back to his/her parents or other custodians, failing which they will be subject to a fine of CNY 10,000 for one child labour per month starting from the day of the order, and their business license will be revoked.<sup>5</sup>

Where an employer (whether an individual or entity), employs 3 or more children, employs child labour on multiple occasions or employs child labour for a long-term (3 or more months), they will be subject to three times the original fines.<sup>6</sup>

In some instances, the violation of the laws and regulations on labour administration may attract criminal liability. A unit that employs a minor under the age of 16 to do physical labour of ultra-intensity, or to work high above the ground or in a pit, or to work under explosive, inflammable, radioactive, poisonous and other dangerous conditions, the person who is directly responsible shall be sentenced to fixed-term imprisonment of up to 7 years (depending on the seriousness of the circumstances), in addition to being fined.<sup>7</sup>

Parents or other custodians of minors under 16 years old shall not allow such minors to be illegally employed by employers. Otherwise, the people's governments of the townships (towns), the urban sub-district offices, the villagers' committees and the residents' committees of the places at their locations shall criticize and instruct those parents or custodians.<sup>8</sup>

## 6. Are there gaps in the domestic laws compared to international legal standards such as those set out in the International Labour Organisation's *Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*?

There are not big gaps in the domestic laws compared to international legal standards such as those set out in the *ILO's Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*.

China approved *ILO's Minimum Age Convention 1973* at the 6th Session of the Standing Committee of the Ninth National People's Congress on December 12, 1998 and clarified as below:

- *The minimum age for employment or work . . . in the Territory of the People's Republic of China is 16 years old.*

China approved *Worst Forms of Child Labour Convention 1999* at the 28th Session of the Standing Committee of the Ninth National People's Congress on June 29, 2002.

China has a relatively comprehensive legal system on the recruitment of child labour that consists of basic laws (e.g., the *PRC Criminal Law*), special laws and administrative regulations (e.g., the *Labour Law*, the *Law on the Protection of Minors*, and the *Provisions on the Prohibition of Child Labour*) and international conventions.

4 Article 2 of the Provisions on the Fines Standard for Employment of Child Labour.

5 Article 6 of the Provisions on the Prohibition of Using Child Labour.

6 Article 4 of the Provisions on the Fines Standard for Employment of Child Labour.

7 Article 244 of the PRC Criminal Law.

8 Article 3 of the Provisions on the Prohibition of Using Child Labour.

### 7. What government agencies are responsible for enforcement of laws regulating the employment of children?

Generally speaking, there are multiple governmental departments, including the administrative departments of human resources and social security, administrations for market regulation, public security organs, responsible for enforcement of laws regulating the employment of children from different perspectives.

For example, according to Articles 61 and 125 of the *PRC Law on the Protection of Minors* and Article 94 of the *PRC Labour Law*, where the employing unit illegally recruits minors under the age of 16, the administrative departments of labour (now referring to the administrative departments of human resources and social security) shall order the employing unit to make corrections, and impose a fine thereon.

If the circumstances are serious, market regulation departments (now referring to the administrations for market regulation) shall revoke its business license. Furthermore, if the minors are illegally recruited to work and suffered mental or physical health injuries during the illegal employment, the public security organs may take enforcement actions. Further, according to Article 96 of the *PRC Labour Law*, where the employing unit commits certain acts, persons who are held responsible shall be punished by the relevant public security organ with a detention of 15 days or less, or a fine, or a warning; where the case constitutes a crime, persons who are held responsible shall be investigated for criminal responsibility according to law.

### 8. Who can report illegal child labour practices?

Article 5 of the *Provisions on the Prohibition of Using Child Labour* provides that "any entity or individual" that finds out the use of child labour shall have the right to report to the administrative departments of labour security of the people's governments at and above the county level.

Similarly, Article 11 of the Law of the PRC on Protection of Minors, provides that "any organization or individual" has the right to dissuade or stop . . . or report or file charges against any act adverse to the physical or mental health of minors. Reports or charges would be made to relevant departments such as public security, civil affairs or education.

Additionally, there is responsibility placed on "a state organ, a neighbourhood committee, a

villagers' committee" that if they are in close contact with minors and find out, or even suspect, something injurious to minors, they shall immediately report the same to relevant departments.

By further inference, there are Chapters devoted to "Protection by Family & Guardians", "Protection by Schools", "Protection by Society", "Protection by Government", so presumably **any organization or individual** who would report or file charges could very well come out of any of these subsets, e.g., parents, guardians, schools, kindergartens, after-school agencies, infant and childcare services, nursing, medical, public institutions, social organizations, residents' committees, villagers' committees, etc.

### 9. Who should illegal child labour practices first be reported to?

There is no strict rule under PRC law in terms of which department should illegal child labour practices first be reported to.

Pursuant to Article 5 of the *Provisions on the Prohibition of Using Child Labour*, illegal child labour practices could first be reported to the administrative departments of labour security of the people's governments at and above the

county level. The administrative departments of labour security now refer to the administrative departments of human resources and social security.

For potential criminal offenses involving child labour, report could also be made to public security organs.

## 10. Are there any legal protections provided to persons who report illegal child labour practices?

Article 9 of the *Regulation on Labour Security Supervision* provides that a labour security administration shall keep confidential information about the reporters and complainants and shall award those whose report is true and who have provided important clues or evidence for investigating major acts of violating labour security laws, regulations or rules (e.g., a bounty for whistleblowers who report a substantiated case).

Article 111 of the *PRC Criminal Procedure Law* provides that public security organs shall insure the safety of reporters, complainants and informants as well as their near relatives. If the reporters, complainants or informants wish not to make their names and acts of reporting, complaining or informing known to the public, these shall be kept confidential for them.

## 11. In a criminal case in connection with child labour:

### 11.1 Which agency or agencies have the authority to file a case with the prosecutor?

In China, any individual or entity that discovers any fact of a crime or any criminal suspect has the right to report the case to the public security organ.<sup>9</sup>

Moreover, in China, the public security organ is the authority that has investigatory power into criminal cases concerning child labour.<sup>10</sup> After the public security organ completes a criminal investigation, it shall refer the case to the people's prosecutor for prosecutions.<sup>11</sup>

### 11.2 In general, what evidence is required to build the case against the alleged perpetrators of a child labour case?

Under PRC law, the criminal offences in connection with child labour are the crime of forced labour and the *crime of employing children to engage in critical labour* which are stipulated under Article 244 of the PRC Criminal Law.

According to this Article 244, the following pieces of evidence are considered necessary to build the case against the alleged perpetrators for *the crime of forced labour* involving child labour:

1. Identification certificates of the child to show the child is under 16 years old;
2. Evidence indicating that the child is forced to work by violence, threat or restriction of personal freedom.

Further, the following pieces of evidence are considered necessary to build the case against the alleged perpetrators for *the crime of employing children to engage in critical labour*:

1. Relevant records demonstrating the employment of the child by the perpetrator;

2. Identification certificates of the child to show the child is under 16 years old;
3. Evidence indicating that the child is employed to conduct physical labour of ultra-intensity, to work high above the ground or in a pit, or to work under explosive, inflammable, radioactive, poisonous and other dangerous conditions;
4. Evidence indicating that the circumstance is serious, which includes but not limited to:
  - a) causing death or injury to the child or causing serious harm to the child's physical health;
  - b) employing three or more children;
  - c) employing a child in hazardous work by force or deception.

<sup>9</sup> Article 110 of PRC Criminal Procedure Law.

<sup>10</sup> Article 19 of PRC Criminal Procedure Law.

<sup>11</sup> Article 169 of PRC Criminal Procedure Law.

11.3 If the prosecutor requires a child labour survivor to testify against alleged perpetrators, (e.g. parents or close relatives):

(a) Does the child have the right to refuse?

Theoretically speaking, all those who have information about a case shall have the legal obligation to testify,<sup>12</sup> except those physically or mentally handicapped persons or minors who cannot distinguish right from wrong or cannot properly express themselves.<sup>13</sup>

Notwithstanding the above, the refusal to testify may not result in any adverse consequence during the investigation conducted by the public security organ and the examination and prosecution carried out by the people's procuratorate, as there is no statutory liability in this regard.

That being said, Article 193 of the *PRC Criminal Procedure Law* provides that if a witness refuses to appear in court to give testimony without justified reasons, the people's court may compel him/her to appear in court, except the spouse, parents and children of the defendant. Further, if a witness refuses to appear in court without justified reasons, or refuses to give testimony when appearing in court, he/her shall be reprimanded, or, if the circumstance is serious, subject to the approval of the president of the court, be punished by detention of no more than 10 days.

(b) Can the child give evidence via video link (eg: from another room)?

Yes. Minor victims and witnesses generally do not appear in court to testify, and the court may use video to play statements and testimony of the minor(s). Protective measures shall be adopted to protect the privacy and psychological well-being of the minor victims and witnesses.<sup>14</sup>

(c) Can the child's evidence be admitted into evidence without a court appearance?

This question requires a case-by-case analysis, and it depends on whether the statement made by the child is consistent with other evidence and whether its reliability could be strengthened by other evidence.

Evidence provided by the child will not be excluded only because the absence of court appearance, as PRC has not established the

hearsay evidence rule which takes a strict approach against testimony made outside the court. Also, as mentioned above, minor victims and witnesses generally do not need to appear in court to do the testimony, and the court may use video to play their statements and testimony. This indicates that their non-appearance in court will not by itself affect their testimony being admitted into evidence.

(d) What other legal protections are available to the child?

There are various protection measures available to children making testimony, including,

1. During the hearing, the name, domicile or photo of the minor or other materials with which the identity of the minor may be deduced shall not be disclosed to the public.<sup>15</sup>

2. When questioning a minor victim or witness, his or her legal representative (in most cases, parents) shall be notified to be present at the scene. If the legal representative cannot be present, other adult relatives or representatives from the school, minors protection organizations, etc. may be notified to be present instead.<sup>16</sup>

<sup>12</sup> Article 62 (1) of the PRC Criminal Procedural Law.

<sup>13</sup> Article 62 (2) of the PRC Criminal Procedural Law.

<sup>14</sup> Article 253 and 558 of the Interpretations of the Supreme People's Court on the Application of the PRC Criminal Procedure Law ("**Interpretation on Criminal Procedural Law**").

<sup>15</sup> Article 559 of the Interpretation on Criminal Procedural Law.

<sup>16</sup> Article 281 of the PRC Criminal Procedural Law; Article 110 of the PRC Law on the Protection of Minors.



3. When questioning a female minor victim or witness, a female staff member shall be at the scene.<sup>17</sup>
4. When handling case involving the minors, relevant authority (e.g., public security organ, people's procuratorate, people's court) shall

designate special agencies or personnel to handle the case. The designated personnel which shall have received special training and be familiar with the physical and psychological characteristics of minors.<sup>18</sup>

## 12. What legal protections or remedies are available to children who are the victims of illegal labour practices?

There are various legal protections and remedies for children who are the victims of illegal labour practices, including the following:

1. For minors who need legal aid or judicial relief, legal aid institutions, public security organs, people's procuratorates, people's courts or judicial administrative departments shall assist them in this regard, and provide them with legal aid or judicial relief according to the law.<sup>19</sup>
2. For minor victims who have suffered sexual assault or violence as well as their families, relevant authority (e.g., public security organ, people's procuratorate, people's court) shall take protective measures such as necessary psychological intervention, economic rescue, legal aid, transfer to another school, etc.<sup>20</sup>

3. The minor victim may claim compensation from the perpetrator for the property losses and physical and mental damages he/she has suffered and can also require the perpetrator to cease any infringement.<sup>21</sup>
4. Administrative liabilities will be imposed on any perpetrator that involves in illegal labour practices, including being ordered by relevant authority to make corrections within a time limit, warning, confiscation of illegal gains, administrative fines of up to CNY 1 million, and revocation of business license and relevant permits.<sup>22</sup>
5. If the illegal labour practice has constituted a crime, criminal liabilities will be imposed on the perpetrator, including fixed-term imprisonment of up to seven years or criminal detention as well as a criminal fine.<sup>23</sup>

### 12.1 Who can act as the child's guardian (or equivalent) in pursuing remedies?

Under PRC law, in general, a minor shall perform a civil juristic act (e.g., pursuing remedies) through his/her legal representative. The guardian of the minor is his/her legal representative.<sup>24</sup>

Generally speaking, the guardians of a minor are his/her parents. Where the parents of a minor are deceased or incompetent to be guardians, the following persons, if competent, shall act as the guardians of the minor in the following sequence:

- a) the minor's paternal grandparents and maternal grandparents;
- b) the minor's elder brothers and sisters; or
- c) any other individual or organization that is willing to act as the guardian, provided that it is approved by the urban residents' committee, villagers' committee, or civil affairs department of the place of the minor's domicile.<sup>25</sup>

<sup>17</sup> Article 281 of the PRC Criminal Procedural Law.

<sup>18</sup> Article 101 of the PRC Law on the Protection of Minors.

<sup>19</sup> Article 104 of the PRC Law on the Protection of Minors.

<sup>20</sup> Article 111 of the PRC Law on the Protection of Minors.

<sup>21</sup> Article 179 and 1165 of the PRC Civil Code.

<sup>22</sup> Article 125 of the PRC Law on the Protection of Minors

<sup>23</sup> Article 244 of the PRC Criminal Law.

<sup>24</sup> Article 19, 20 and 23 of the PRC Civil Code; Article 60 of the PRC Civil Procedural Law.

<sup>25</sup> Article 27 of the PRC Civil Code.

**12.2 In circumstances where World Vision is providing shelter and other support to a survivor of child labour:**

**(a) Can World Vision apply to be the guardian of the child for the purpose of pursuing those remedies?**

As mentioned above, where both parents of a minor are deceased or incapable of acting as a guardian, the following persons capable of acting as a guardian shall act as the guardian of the minor in the following sequence:

- a) the minor’s paternal grandparents and maternal grandparents;
- b) the minor’s elder brothers and sisters; or
- c) any other individual or organization that is willing to act as the guardian.

We note that World Vision has undergone registration formalities for the formation of representative offices in accordance with law. Therefore, World Vision’s China rep offices could act as the guardian where the parents, grandparents, elder brothers or sisters of the minor are incapable of acting as a guardian, on the condition that it is approved by the urban residents’ committee, villagers’ committee, or civil affairs department of the place of the minor’s domicile.

**(b) What criteria is World Vision required to satisfy and how does it apply to be the guardian?**

To apply to be the guardian of a minor, World Vision shall file an application to the urban residents’ committee, the villagers’ committee, or the civil affairs department in the place where the minor’s domicile is located. Upon receipt of approval from the latter, World Vision can become the guardian (in the scenario where the parents and other qualified family members of the minor cannot perform as guardian).<sup>26</sup>

As for the specific criteria required to satisfy, that may depend on the discretion of the entities mentioned above to which World Vision shall file the application. According to relevant PRC laws, World Vision shall at least have the capacity to raise, educate, and protect the minor,<sup>27</sup> as well as the capacity to represent the minor to perform civil juristic acts and to protect the personal, proprietary, and other lawful rights of the minor.<sup>28</sup>

**(c) Can World Vision appoint a lawyer to assist the child?**

Yes, if World Vision has successfully become the guardian of a child, it is entitled to appoint one to two lawyers to assist the child.<sup>29</sup>

**12.3 Can these other remedies be pursued at the same time as a criminal case?**

Yes, a civil case can be lodged at the same time as a criminal case, but where the civil case is dependent upon the outcome of the criminal case, the civil case may be suspended until the trial of the criminal case is concluded.<sup>30</sup>

On the other hand, the child victim can also bring an incidental civil action during the criminal proceeding, if he/she suffers from losses in kind due to the criminal acts of the perpetrator.<sup>31</sup>

26 Article 27 of the PRC Civil Code.  
 27 Article 26 of the PRC Civil Code.  
 28 Article 34 of the PRC Civil Code.  
 29 Article 61 of the PRC Civil Code.  
 30 Article 153 of the PRC Civil Procedural Law.  
 31 Article 101 of the PRC Criminal Procedural Law.

#### 12.4 Do these remedies provide for an award of compensation to the child? If so, how is the amount of compensation determined?

Yes, the child may receive an award of compensation if he/she suffers from injury or death or any other losses caused by the illegal employment.

The amount of compensation is generally based on the extent of harm the child suffered from the illegal employment and a calculation of reasonable expenses. When medical treatment is needed, the child is entitled to claim for all the medical and living expenses incurred during the period of medical treatment.<sup>32</sup>

In the scenario where the child is physically disabled or dies, the employer shall also pay compensation in a lump sum to the child or the direct relative of the deceased child.<sup>33</sup>

- If the child is physically disabled, the compensation is determined based on

the result of the labour capacity appraisal conducted by the relevant authority.<sup>34</sup> For example, the compensation shall be 16 times of the compensation base for Grade 1 Disability, 14 times of the compensation base for disability of Grade 2 Disability, 12 times of the compensation base for Grade 3 Disability, etc. The compensation base refers to the average annual wage of the employees in the previous year of the area planned as a whole for work-related injury insurance.<sup>35</sup>

- If the child dies, a lump-sum compensation payment is 20 times of the national per capital disposable income for urban residents in the previous year and a lump-sum funeral subsidy and other compensations equal to 10 times of the national per capital disposable income for urban residents in the previous year shall be paid.<sup>36</sup>

#### 13. Which organisations provide pro bono legal services to assist survivors of child labour?

There are Legal Aid Centres at or above county level, which can provide legal assistance for minors implicated in child labour, provided that the minor and his/her legal representative are in financial difficulty.<sup>37</sup>

To obtain legal aid from these centres, the applicant shall prove he/she suffers financial difficulties.<sup>38</sup> The relevant Legal Aid Centre will conduct verification on the financial status of the applicant. That being said, the applicant could be exempted from the check on financial difficulties if he/she proves that he/she belongs to special groups such as minors, the elderly, and the disabled who have no fixed source of income.<sup>39</sup>

Also, we have also observed local commonweal organizations in some regions in the PRC, such as the Beijing Children's Legal Aid and Research Center, providing legal advice and legal assistance concerning the protection of minor's rights.

<sup>32</sup> Article 10 of the Provisions on the Prohibition of Using Child Labour.

<sup>33</sup> Article 10 of the Provisions on the Prohibition of Using Child Labour; Article 66 of the Regulations on Work-Related Injury Insurance.

<sup>34</sup> Article 3 of the Measures for Lump-sum Compensation to the Injured or Deceased Employee of An Illegal Employing Entity ("**Measures for Lump-sum Compensation**").

<sup>35</sup> Article 5 of the Measures for Lump-sum Compensation.

<sup>36</sup> Article 7 of the Measures for Lump-sum Compensation.

<sup>37</sup> Article 12, 29 and 31 of the PRC Legal Aid Law.

<sup>38</sup> Article 41 of the PRC Legal Aid Law.

<sup>39</sup> Article 42 of the PRC Legal Aid Law.

# INDIA

## 1. What is the legal minimum working age under domestic law?

The current legal minimum age under the Child and Adolescent Labour (Prohibition and Regulation Act), 1986 (*hereinafter referred to as "the Act"*) is as following:

- a) Child: Below the age of 14 years; and
- b) Adolescent: Between 14 to 18 years

This law is not an all-out prohibition on all jobs, rather it provides specific areas wherein employment of children is prohibited i.e., occupation and processes.<sup>1</sup>

The Act prohibits children (less than 14 years of age) from being employed or to take work in any occupation and processes. The Schedule of the Act provides details about occupation and processes that are prohibited.

Further, the Constitution of India (*hereinafter referred to as "Constitution"*) requires the government to provide free education to children (6-14 years of age).<sup>2</sup> The Constitution also prohibits employment of children (below the age of 14 years) in factories, mines and other hazardous employment.<sup>3</sup> The Constitution further provides that the State shall, in particular, direct its policy towards securing the health and strength of workers, men and women, and that the tender age of children are not abused and that

citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.<sup>4</sup>

Under the Apprentices Act, 1961, a person, who is less than 14 years of age, is not allowed to undertake apprenticeship training in relation to designated trade.<sup>5</sup>

Under the Merchant Shipping Act, 1958 no person under the age of 16 is allowed to be employed or carried to sea to work in any capacity in any ship.<sup>6</sup>

Prior to implementation of the Occupational Safety, Health and Working Conditions Code, 2019, Factories Act, 1948; Mines Act, 1952; Motor Transport Workers Act, 1961 and Beedi & Cigar Worker (Conditions of Employment) Act, 1966 provided age of the child for being employed in that industry respectively. The Occupational Safety, Health and Working Conditions Code, 2019 remains silent regarding the minimum age requirement to ensure children of any age are barred from employment.

The Shops and Establishment Act (under various States) are other legislations which prescribe age of the children for employment. The minimum age requirement for employment under this Act is between 12–14 years in most states where the minimum age is prescribed.

## 2. Is there domestic legislation that regulates the employment of children?

Yes.

Below are the relevant legislations:

- The Constitution of India
- The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 and the Schedule
- The Child Labour (Prohibition & Regulation) Rules, 1988 (*hereinafter referred to as "The Rules"*)
- The Juvenile Justice (Care and Protection of Children) Act, 2015 (*hereinafter referred to as "JJ Act"*)

1 Section 3A, Child and Adolescent Labour (Prohibition and Regulation Act), 1986 and Refer to the Schedule

2 Article 21A, The Constitution of India

3 Article 24, The Constitution of India

4 Article 39 of the Constitution of India

5 Section 3 (a), The Apprentices Act, 1961

6 Section 109 (1), the Merchant Shipping Act, 1958

- The Bonded Labour System (Abolition) Act, 1976
- Right of Children to Free and Compulsory Education Act, 2009
- Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (*hereinafter referred to as "JJ Rules"*)
- Merchant Shipping Act, 1958

### 3. Under what circumstances does the law allow a child to work?

Section 3(2) of the Act provides for exceptions when a child can work. It states as under:

*"(2) Nothing in sub-section (1) shall apply where the child -*

- (a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;*
- (b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safely measures, as may be prescribed:*

*Provided that no such work under this clause shall effect the school education of the Child.*

*Explanation.- For the purposes of this section, the expression,*

- (a) "family" in relation to a child, means his mother, father, brother, sister and fathers*

*sister and brother and mothers sister and brother;*

- (b) "family enterprises" means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;*
- (c) "artist" means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2)."*

Section 3(A) of the Act provides that an adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule of the Act. Provided that the Central Government may, by notification, specify the nature of the non-hazardous work in which an adolescent may be permitted to work under this Act.

### 4. What restrictions and prohibitions does the law impose upon the employment of children?

The Constitution prohibits employment of children (below the age of 14 years) in factories, mines, and other hazardous employment.<sup>7</sup>

Under the Act, there is complete prohibition in occupations and processes mentioned in the Act with the exception of family business or working as an artist in the entertainment industry. The Rules provide conditions to the abovementioned exceptions for ensuring the safety and security of children.<sup>8</sup>

There is prohibition on employment of adolescents<sup>9</sup> in the age group of 14 to 18 years in hazardous occupation or processes.<sup>10</sup> The Act also provides stricter punishment for employers on any violation of the Act and makes the offence of employing any child or adolescent in contravention of the Act, a cognizable offence.<sup>11</sup>

Under the Occupational Safety, Health and Working Conditions Code, 2020 Children are prohibited from being employed near cotton-openers.<sup>12</sup>

<sup>7</sup> Article 24, the Constitution of India

<sup>8</sup> Rule 2B and 2C, Child Labour (Prohibition and Regulation) Rules, 1988

<sup>9</sup> Definition of Adolescents as per Section 2(i), Child and Adolescent Labour (Prohibition and Regulation Act), 1986

<sup>10</sup> Part A & B of the Schedule (Section 3A) to the Child and Adolescent Labour (Prohibition and Regulation Act), 1986

<sup>11</sup> Section 3A, Child and Adolescent Labour (Prohibition and Regulation Act), 1986

<sup>12</sup> Section 18 (2) (f) read with Item No. 7 of the Second Schedule of the Occupational Safety, Health and Working Conditions Code, 2020

Under the JJ Act, employment of children for begging<sup>13</sup>, use of children for supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance<sup>14</sup>, exploitation of child employee<sup>15</sup>, sale and procurement of any children<sup>16</sup>, are liable for rigorous imprisonment and fine.

Shops and Establishment Act(s) of Delhi<sup>17</sup>, M.P.<sup>18</sup>, Chhattisgarh<sup>19</sup>, and Sikkim<sup>20</sup> prohibit employing children even though they are family members of the employer.

## 5. What penalties apply for breach of laws relating to the employment of children?

The following punitive legal provisions apply to employment of children or procurement of children for employment.

### Laws specifying Penalties for Employment of Children

#### A. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

- Punishment for employing a child (Below 14 years of age):

Employing a child in any form of occupation except as a child artist<sup>21</sup>, or in a family business<sup>22</sup>, is a cognizable offence<sup>23</sup> punishable with imprisonment between six months and two years and / or a fine between Rs. 20,000 and Rs. 50,000<sup>24</sup>.

- Punishment for employing an adolescent (14-18 years of age):

Employing an adolescent<sup>25</sup> or permitting an adolescent to work in mines, places which use inflammable substances or explosives<sup>26</sup> and other hazardous processes<sup>27</sup>, is a

cognizable offence<sup>28</sup> with imprisonment between six months and two years and / or a fine between Rs. 20,000 and Rs. 50,000<sup>29</sup>.

- Repeat Offenders:

If a person after having been convicted once for such illegal employment of children or adolescents, commits a like offence again, he shall be punishable with imprisonment between one and three years.<sup>30</sup>

- Punishment for parents

Parents who force their children to be employed in family businesses or as child artist or permit them to be employed otherwise<sup>31</sup> and parents of the adolescents who permit their child to be employed in any of the prohibited occupation or processes<sup>32</sup> are not liable for punishment in case of first offence, but a repeat offence is punishable with a fine up to Rs.10,000<sup>33</sup>.

13 Section 76, Juvenile Justice (Care and Protection) of Children Act, 2015

14 Section 78, Juvenile Justice (Care and Protection) of Children Act, 2015

15 Section 79, Juvenile Justice (Care and Protection) of Children Act, 2015

16 Section 81, Juvenile Justice (Care and Protection) of Children Act, 2015

17 Section 12, Delhi Shops & Establishment Act, 1954

18 Section 24, M.P. Shops and Establishment Act, 1958

19 Section 24, Chhattisgarh Shops & Establishment Act, 1958

20 Section 31, Sikkim Shops & Commercial Establishment Act, 1983;

21 Section 3(2)(b), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

22 Section 3(2)(a), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

23 Section 14A, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

24 Section 14(1), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

25 Section 2(i), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 defines "adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

26 Section 3A and The Schedule, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

27 Hazardous Process" in the Schedule of this Act has the same meaning assigned to it under Clause (cb) of the Factories Act, 1948 and includes the occupation and processes provided in the Schedule of the Factories Act, 1948: Refer to Explanation to the Schedule.

28 Section 14A, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

29 Section 14(1A), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

30 Section 14(2), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

31 Proviso, Section 14(1), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

32 Proviso, Section 14(1A), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

33 Section 14(2A), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

B. Application of penalties on offences committed under other Acts

Several national legislations prohibit the employment of children below at least 14 years and up to 18 years, specifically in factories<sup>34</sup>, mines<sup>35</sup>, ships<sup>36</sup> or motor transports<sup>37</sup>. The penalties for violation under any of those provisions shall be punishable with the penalties listed under these Acts.<sup>38</sup>

C. The Juvenile Justice (Care and Protection of Children) Act, 2015

- Employment of child<sup>39</sup> for begging:
  - Any person who employs a child or causes a child to beg shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine of Rs. 1,00,000.<sup>40</sup>
  - If any person for the purpose of begging, amputates or maims a child, he shall be punishable with rigorous imprisonment for a term not less than seven years which may extend up to ten years, and shall also be liable to fine of five Rs. 5,00,000.<sup>41</sup>
  - If a person who has actual charge or control of the child, abets in the commission of the above offences, then they shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine of Rs. 1,00,000.<sup>42</sup>
- Employing or using a child for carrying or supplying of liquor, drugs or psychotropic substances:
 

If any person employs or uses a child for vending, peddling, carrying, supplying or

smuggling any intoxicating liquor, narcotic drug or psychotropic substance, they shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine up to Rs. 1,00,000.<sup>43</sup>

- Exploitation of a child employee:
 

If a person engages a child and keeps him in bondage for the purpose of employment<sup>44</sup> or withholds his earnings or misuses it for personal use, they shall be punishable with rigorous imprisonment for a term extending up to five years and shall also be liable to fine of Rs. 1,00,000.<sup>45</sup>
- Procurement of a child for hazardous employment:
 

Any person who sells or procures a child for any purpose shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine of Rs. 1,00,000.<sup>46</sup>

D. Penalties under other Acts for child employment

- (a) Under the Mines Act, 1952, if a person below 18 years of age is employed in a mine, the owner, agent, or manager of such mine shall be punished with a fine which may extend to Rs. 500.<sup>47</sup>
- (b) Under the Apprentices Act, 1961, any person below the age of 14 years (for any designated trade) and below the age of 18 years (for designated trade related to hazardous industries)<sup>48</sup> must not be engaged as an apprentice to undergo apprenticeship training. Any violation of this:

34 Section 67, Factories Act, 1948

35 Section 40(1), The Mines Act, 1952

36 Section 109, Merchant Shipping Act, 1958.

37 Section 21, The Motor Transport Workers Act, 1961.

38 Section 16(2), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

39 Section 2(12), Juvenile Justice (Care and Protection of Children) Act, 2015 defines "child" as a person who has not completed eighteen years of age

40 Section 76(1), Juvenile Justice (Care and Protection of Children) Act, 2015

41 Proviso, Section 76(1), Juvenile Justice (Care and Protection of Children) Act, 2015

42 Section 76(2), Juvenile Justice (Care and Protection) Act, 2015

43 Section 78, Juvenile Justice (Care and Protection of Children) Act, 2015

44 Refer Explanation to Section 79, Juvenile Justice (Care and Protection of Children) Act, 2015. For the purposes of this section, the term "employment" shall also include selling goods and services, and entertainment in public places for economic gain.

45 Section 79, Juvenile Justice (Care and Protection of Children) Act, 2015

46 Section 75, Juvenile Justice (Care and Protection of Children) Act, 2015

47 Section 68, The Mines Act, 1952

48 Section 3(a), The Apprentices Act 1961

- By the employer or any other person: will be punishable with fine of Rs. 1000 for every occurrence<sup>49</sup>, and if
- By the Company: Person responsible for the conduct of the company as well as the company shall be liable<sup>50</sup> for a fine of minimum Rs. 1,000 and maximum Rs. 3,000<sup>51</sup>

#### E. Laws specifying Penalties for Activities relating to Employment of Children

##### (a) Indian Penal Code, 1860

- Lying to or enticing children to bring for employment: When a person lies to or a entices a child or children to bring them for the purpose of employing them in any kind of occupation, it could fall under the offences of:
  - Cheating<sup>52</sup>: which carries a punishment of imprisonment of a term up to one year, or with fine, or with both
  - Abduction for wrongful confinement<sup>53</sup>: carries a punishment of imprisonment of a term up to seven years and / or fine.
  - Abduction for slavery<sup>54</sup>: carries a punishment of imprisonment of a term up to ten years and / or fine
  - Kidnapping through enticement: carries a punishment of imprisonment of a term up to seven years<sup>55</sup> or ten years<sup>56</sup> (if kidnapping is of a minor with the purpose of employing them for begging) or for life<sup>57</sup> (if the minor is kidnapped and maimed, to be used for begging), and shall be liable to fine.
- Procuring children by paying some money to the parents, or otherwise: When a person obtains the custody of a child with

an intention to use them for servitude or employ them in an occupation or service or for prostitution, by paying some money to the parents either as consideration or as advance, it could fall under the offence of:

- Trafficking of person for slavery<sup>58</sup>: which carries a punishment of imprisonment for a term up to ten years or for life (in case of minors), with fine<sup>59</sup>
- Exploitation of trafficked persons: which carries a punishment of imprisonment up to a term between five and seven years (in case the trafficked person is minor) with fine<sup>60</sup>
- Section 370 IPC which lays down penalties for trafficking of persons shall apply to any and all situations where one child or multiple children<sup>61</sup> have been kidnapped, coaxed, or induced into any form of employment. The same shall be punishable with rigorous imprisonment for even a term extending for life, with fine
- Selling the procured child to an employer for monetary consideration for the purpose of employment: When a person sells the procured child to another person for employing the trafficked person in prostitution or any immoral purpose, he shall be liable for punishment of imprisonment up to a term of ten years, with fine<sup>62</sup>
- Restricting movement of the child: When a person does not allow the procured child to move freely or return to his / her home, it shall constitute wrongful confinement of a kidnapped or abducted child and shall be liable for punishment of imprisonment up to a term of ten years, with fine<sup>63</sup>

49 Section 30 (2), The Apprentices Act 1961

50 Section 32 (1) and Section 32(2), The Apprentices Act, 1961

51 Section 31, The Apprentices Act 1961

52 Section 417, Indian Penal Code, 1860

53 Section 365, Indian Penal Code, 1860

54 Section 367, Indian Penal Code, 1860

55 Section 363, Indian Penal Code, 1860

56 Section 363A(1), Indian Penal Code, 1860

57 Section 363A(2), Indian Penal Code, 1860

58 Section 370, Indian Penal Code, 1860

59 Section 370(4), Indian Penal Code, 1860

60 Section 370A(1), Indian Penal Code, 1860

61 Section 370 (3), Indian Penal Code, 1860

62 Section 372, Indian Penal Code, 1860

63 Section 368, Indian Penal Code, 1860



## (b) The Bonded Labour System (Abolition) Act, 1976

- Under this Act, any person employing a child and not paying them any wage or less than minimum wage, will be considered to be compelling the child to render bonded labour, which is punishable with imprisonment up to a term of three

years, with a fine up to Rs 2,000.<sup>64</sup>

- Also, if a person procures a child by paying its parents an advance or a consideration money for the child, it will be considered as advancement of bonded debt, which is also punishable with imprisonment up to a term of three years, with a fine up to Rs. 2,000.<sup>65</sup>

**6. Are there gaps in the domestic laws compared to international legal standards such as those set out in the International Labour Organisation's *Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*?**

Despite the ratification of various conventions<sup>66</sup> and enactment of various domestic legislations, gaps exist in the legal framework and its enforcement:

- Domestic Legislation permits children to work in "family businesses": The Act allows children to work in family or family run enterprises, other than any hazardous occupations or processes, only "outside school hours or during vacations".<sup>67</sup> Therefore, minimum age to work as required under the ILO's Minimum Age Convention is not made applicable in such situations. Moreover, this exception to child labour is misused by contractors to disguise child labourers as adult family members.<sup>68</sup> Additionally, "family" in relation to a child means his mother, father, brother, sister, father's sister and brother and mother's sister and brother; and "family enterprise" means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons.<sup>69</sup> These definitions open up a range of settings for work by the child leading to misuse of the provision. No limitation to the number of hours or rules for regulation of employment has been prescribed in

such family-run enterprises contrary to the United Nations Child Rights Convention.<sup>70</sup> Furthermore, no mechanism has been devised to ensure that these permitted activities are not hindering or affecting the education of children. The aforesaid is against the spirit of the International Conventions.

- Lack of effective enforcement of the provisions: The biggest loophole is the lack of effective enforcement. There are children working in small establishments as part of the informal sector and unless the machinery for enforcement is empowered to address these problems, the law, however stringent on paper, will not be able to fully address child labour in the country.
- Non-conformation to the technical standards prescribed by ILO for Labour Inspectors: The ILO has published technical advice of a ratio of 1 inspector for every 15,000 workers in developing economies.<sup>71</sup> The Act provides for appointment of Inspectors<sup>72</sup> however there is no data on how many inspectors have been appointed and their ratio with the number of workers.

<sup>64</sup> Section 16, The Bonded Labour System (Abolition) Act, 1976

<sup>65</sup> Section 17, The Bonded Labour System (Abolition) Act, 1976

<sup>66</sup> Minimum Age Convention 1973, Worst Forms of Child Labour Convention 1999, United Nations Convention on the Rights of Child, Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol)

<sup>67</sup> Section 3, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

<sup>68</sup> Komal Ganotra, Flawed Child Labour Law Amendment, Economic & Political Weekly, Vol. L1 No 35

<sup>69</sup> Explanation to Section 3, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

<sup>70</sup> Article 32, United Nations Child Rights Convention

<sup>71</sup> ILO's Strategies and Practice for Labour Inspection: <https://www.ilo.org/public/english/standards/reIm/gb/docs/gb297/pdf/esp-3.pdf>

<sup>72</sup> Section 17, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

- d. Article 1 of ILO's Minimum Age Convention prescribes that minimum age for admission to employment shall be increased progressively. However, minimum age for employment has remained 14 years except under the Mines Act, 1952 (18 years)<sup>73</sup>; Apprentices Act, 1961 (14 years; 18 years for hazardous activities) and Merchant Shipping Act, 1958 (15 years)<sup>74</sup>.
- e. ILO's Minimum Age Convention prescribes minimum age at 15 years. Members could initially specify minimum age of 14 years. Thereafter, in their report to ILO, members have to give reasons for subsistence of this minimum age.<sup>75</sup> It is not clear as to why even after a lapse of 36 years since enactment of the Act, minimum age has not been increased to at least 15 years of age.
- f. ILO's Minimum Age Convention provides that employment can be given from 16 years of age, provided young persons have received adequate specific instruction or vocational training in the relevant branch or activity.<sup>76</sup> No such provisions are there in the Act.

### 7. What government agencies are responsible for enforcement of laws regulating the employment of children?

The Government appoints Inspectors<sup>77</sup> for the purpose of monitoring compliance / enforcement of the provisions of the Act. The Inspector must comply with the norms and instructions of the Central Government and report regarding inspections quarterly.<sup>78</sup>

The District Magistrate has also been conferred with powers to implement the provisions of the Act.<sup>79</sup> The District Magistrate is empowered to appoint Nodal Officers and preside over the Task Force that must be constituted in the district of his jurisdiction.<sup>80</sup> The Task Force comprises of fourteen officials to ensure that the provisions of the Act are properly enforced. They prepare a comprehensive action plan for conducting raids and rescue operations for child labourers.<sup>81</sup>

Furthermore, the Government has established the following mechanisms to coordinate its efforts to address child labour:

- a. National Commission for the Protection of Child Rights (NCPCR): The NCPCR ensures that all laws, policies, programmes and administrative mechanisms are in accordance with the constitutional protections for children and the United Nations Convention on Child Rights. The NCPCR inquires about child rights violations and failures to properly implement laws relating to child protection. State Commissions for Protection of Child Rights have also been established in all the States and 6 Union Territories, including Delhi for effective implementation of the laws.
- b. National Human Rights Commission (NHRC): The NHRC monitors implementation of laws pertaining to human rights. It also monitors actions of State Governments to identify, release and rehabilitate bonded laborers through exploratory and investigative missions.
- c. Platform for Effective Enforcement for No Child Labour (PENCiL) Portal<sup>82</sup>: PENCiL is an online portal operated by the Ministry of Labour and Employment that allows government officials, NGOs and law enforcement agencies to share information and coordinate on child labour cases at the national, state and local levels to improve enforcement of child labour laws and the implementation of the National Child Labour Project Scheme. The portal allows citizens to lodge child labour complaints. Rescued child laborers are put through a rehabilitation program that includes formal education and

73 Section 40(1), Mines Act, 1952

74 Sections 92 (3), 109 (1), Merchant Shipping Act, 1958

75 Article 2, ILO's Minimum Age Convention

76 Article 3, ILO's Minimum Age Convention

77 Section 17, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

78 Rule 17-D, Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988

79 Section 17A, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

80 Rule 17-C, Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988

81 Rule 17-C (2), Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988

82 Platform for Effective Enforcement for No Child Labour (PENCiL) Portal <https://pencil.gov.in/>

vocational skills training and those eligible are mainstreamed into formal education. Several Special Training Centres are located across the country to effectively undertake the aforesaid efforts and provide a stipend to children, free meals, vocational training and bridge education for eligible children.

- d. Central Advisory Board on Child and Adolescent Labour: The Central Advisory Board convenes to review the implementation of existing legislation and programmes related to child labour and proposes new welfare measures for combating child labour.

Besides the above, the following authorities are also entrusted with their respective roles for Child Labour Law Enforcement:

- a. State and Local Police: To enforce laws pertaining to child labour and human trafficking, they may submit information to District Magistrates to determine whether a case should be prosecuted in District Court and to refer children to protection and rehabilitation services.

- b. Ministry of Home Affairs, Anti-Trafficking Operations Division, State and District-Level Anti-Human Trafficking Units (AHTUs): The AHTUs report to District Police Chiefs and investigate cases of domestic and international human trafficking. In most cases, children are trafficked to force them to work illegally as child labourers, therefore the role of anti-trafficking operations are equally relevant to address issues of child labour.
- c. Central Bureau of Investigation, Anti-Human Trafficking Unit: The Anti Human Trafficking Unit investigates and prosecutes cases involving the kidnapping and trafficking of women and children across multiple states. It takes on cases by request of, or in agreement with, state governments and manages the 24-hour Helpline Number 011 for reporting cases of Illegal Human Trafficking especially Trafficking of Children & Women.
- d. National Investigation Agency (NIA): The mandate of the NIA includes investigation and prosecution for trafficking in persons and cases that have multiple state or international ramifications.

## 8. Who can report illegal child labour practices?

Any person, police officer or Inspector may report illegal child labour practices.<sup>83</sup> Such persons include schoolteachers, representatives from school management committee, child protection committee, and Panchayat or Municipality.<sup>84</sup> The JJ Act also enables voluntary organisations to report instances of child labour.<sup>85</sup>

## 9. Who should illegal child labour practices first be reported to?

There are several ways to report illegal child labour practices in India:

- a. CHILDLINE-1098 of CHILDLINE India Foundation (CIF)<sup>86</sup>: 1098 is a 24-hours toll free helpline for children in distress. It responds to the emergency needs of children and child issues including child labour. (A complainant for child labour issue would be required to provide as much information as possible regarding the child that has been employed illegally, including details like name, age, description of child and address where the

child is working). The local ground staff of CHILDLINE India Foundation will make an inquiry, with the combined efforts of the Labour Department and Police, who will then take action to stop such illegal labour.

- b. Local Police Station: A report for illegal child labour practice can be made directly to the nearby police station or by calling 100.

<sup>83</sup> Section 16 (1), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

<sup>84</sup> Rule 17A, Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988

<sup>85</sup> Section 31(1), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>86</sup> CHILDLINE India Foundation (CIF) is the nodal agency of the Union Ministry of Women and Child Development for setting up, managing and monitoring the CHILDLINE 1098 service all over India.

- c. PENCiL Portal: A simple online complaint form<sup>87</sup> is made available on "Platform for Effective Enforcement for No Child Labour (PENCiL)" by Ministry of Labour and Employment, Government of India, for registering complaints regarding any illegal child labour practice.
- d. National Commission for Protection of Child Rights (NCPCR): A complaint<sup>88</sup> related to illegal child labour practice may directly be made to the Chairperson of NCPCR (appointed under the Commissions for Protection of Child Rights Act, 2006) at the address: National Commission for Protection of Child Rights, 5th Floor, Chanderlok Building, 36, Janpath, New Delhi - 110 001.
- e. State Commission for Protection of Child Rights (SCPCR)<sup>89</sup>: A complaint related to illegal child labour practice may also be made to the SCPCR (established by the State Government under the Commissions for Protection of Child Rights Act, 2006) of the state where the child is located, and then SCPCR will inquire into reported illegal child labour practice and recommend initiation of proceedings in such cases.
- f. Any person, police officer or Inspector may also file a complaint of the commission of an offence related to illegal child labour practices in any court of competent jurisdiction.<sup>90</sup>

#### 10. Are there any legal protections provided to persons who report illegal child labour practices?

There are no specific provisions in this respect under the Act and any amendments thereto.

However, the Government of India, based on the recommendations of several States / Union Territories and National Legal Services Authority had drafted the Witness Protection Scheme, 2018 (*hereinafter referred to as "Scheme"*), which has been declared a law<sup>91</sup> by the Supreme Court of India under Article 141 of the Constitution.

The Scope of the Scheme states that witness protection could mean providing protection to a witness in a situation ranging from providing a police escort to witness up to court room or using audio video means for recording testimony of such witness<sup>92</sup> to steps ensuring anonymity, temporary residence in safe house, providing new identity, relocation of witnesses, etc., in extreme cases. The Scheme further looks into categorizing witnesses into three categories<sup>93</sup> on the basis of a threat assessment or on the basis of Threat Analysis Report (TAR)<sup>94</sup>, prepared by the Additional Commissioner of Police / Deputy

Commissioner of Police in charge of concerned Police Station and its disposal within a period of five working days from the receipt of said Report. The Scheme further provides for the establishment of State Witness Protection Fund<sup>95</sup>, operated by the Department / Ministry of Home under the respective State / Union Territory Government, for meeting the expenses incurred during implementation of Witness Protection Orders passed by the Competent Authority. Such order may include: monitoring of mails / telephone calls; ensuring witness and accused do not come face to face during investigation / trial; concealment of identity; holding in-camera trial; regular patrolling around witness' house, etc.<sup>96</sup>. The Scheme also makes provisions regarding protection of identity of witnesses<sup>97</sup>, change of identity<sup>98</sup>, relocation of witness<sup>99</sup>, Confidentiality and preservation of Records<sup>100</sup>

State of Kerala incentivizes persons who report or provide information about child labour by paying a sum of Rs. 2,500 to such person.<sup>101</sup>

87 Complaint Form for Child Labour complaints on PENCiL portal: <https://pencil.gov.in/Complaints/add>

88 Detailed guidelines for making the complaint can be accessed at <https://ncpcr.gov.in/index1.php?lang=1&level=0&linkid=13&lid=28>.

89 Section 24, Commissions for Protection of Child Rights Act 2006

90 Section 16 (1), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

91 *Mahender Chawla v. Union of India*, (2019) 14 SCC 615

92 Scope of the Scheme, Witness Protection Scheme 2018

93 Part II, Section 3, Witness Protection Scheme 2018

94 Part II, Section 6, Witness Protection Scheme 2018

95 Section 4, Witness Protection Scheme, 2018

96 Section 7, Witness Protection Scheme, 2018

97 Section 9, Witness Protection Scheme, 2018

98 Section 10, Witness Protection Scheme, 2018

99 Section 11, Witness Protection Scheme, 2018

100 Section 13, Witness Protection Scheme, 2018

101 <https://www.thehindu.com/news/national/kerala/incentive-for-informers/article37810173.eces>

## 11. In a criminal case in connection with child labour:

### 11.1. Which agency or agencies have the authority to file a case with the prosecutor?

Any person, police officer or Inspector may file a complaint in a competent court.<sup>102</sup> Such persons include schoolteachers and representatives from

school management committee, child protection committee, Panchayat or Municipality.<sup>103</sup>

### 11.2 In general, what evidence is required to build the case against the alleged perpetrators of a child labour case?

Evidence could be either in the form of oral evidence or documentary evidence. Evidence under the Indian Evidence Act, 1872 includes:

- a. all statements which the Court permits or requires to be made before it by witnesses, in relation to a matter of fact under inquiry (Oral Evidence); and
- b. All documents including electronic records produced for inspection of the Court (Documentary Evidence)<sup>104</sup>

To prosecute under the Act, the prosecution must first prove the age of the victim child.

A certificate as to the age of a child granted by a prescribed medical authority is conclusive evidence of the child's age.<sup>105</sup> The prescribed medical authority is a government medical doctor not below the rank of an Assistant Surgeon of a district or a regular doctor of equal rank employed in Employees' State Insurance dispensaries or

hospitals.<sup>106</sup>

Further, in cases where there is a dispute regarding age of the child owing to the lack of a certificate as to the age of such child granted by the prescribed medical authority, the dispute shall be referred by the Inspector for decision to the prescribed medical authority.<sup>107</sup> If the Inspector apprehends that any adolescent has been engaged in a prohibited employment, the employer is required to produce a certificate of age.<sup>108</sup>

While conducting examination and issuing a certificate of age, the doctor must take into account Aadhar card<sup>109</sup>, date of birth certificate or the matriculation certificate. In its absence, the birth certificate given by a corporation or a municipal authority or a Panchayat may be considered. If none of the above are available, an ossification test or medical age determination test may be conducted.<sup>110</sup>

### 11.3 If the prosecutor requires a child labour survivor to testify against alleged perpetrators, (e.g. parents or close relatives):

#### (a) Does the child have the right to refuse?

Under Section 118 of the Indian Evidence Act, 1872, there is no minimum age for a witness. Children as young as three years old have deposed before trial courts in cases of sexual abuse. Usually during a trial, the court, before recording the testimony of a child witness, determines his or her

competency on the basis of their ability to give rational answers. A child is usually asked questions like their name, the school they study in, and the names of their parents to determine their competency. If the child is very young and does not understand the significance of taking an oath

<sup>102</sup> Section 16 (1), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

<sup>103</sup> Rule 17A, Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988

<sup>104</sup> Section 3, Indian Evidence Act, 1872. As per the interpretation clause, Section 3, Indian Evidence Act, 1872 "Proved" is defined as a fact said to be proven when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a reasonable man ought, under the circumstances of the particular case, to act upon the assumption that it exists.

<sup>105</sup> Section 16 (2), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

<sup>106</sup> Explanation to Rule 17, Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988

<sup>107</sup> Section 10, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986; *Anant Construction Co. v Government Labour Officer & Inspector*, (2006) 9 SCC 225

<sup>108</sup> Rule 17 (1), Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988

<sup>109</sup> Aadhaar is a 12-digit individual identification number issued by the Unique Identification Authority of India on behalf of the Government of India. The number serves as a proof of identity and address, anywhere in India.

<sup>110</sup> Rule 17 (2), Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988

to speak the truth which is administered to each witness before testimony the judge or the staff explain to the child that he or she should speak the truth, thinking of whichever God they believe in.

Further, under the Criminal Procedure Code, 1973<sup>111</sup> a child shall be bound to answer all questions other than the questions the answers to which would have a tendency to expose him to a criminal charge or penalty.

**(b) Can the child give evidence via video link (eg: from another room)?**

As per JJ Rules<sup>112</sup> during a trial involving children, as far as possible, the following norms should be followed to ensure a child-friendly atmosphere:

- A child shall, at no stage of the trial come in front of the accused. Therefore, he or she need not testify in front of the accused.
- Further, as per JJ Rules<sup>113</sup> special children's rooms may be designated in every court complex with facility of separate spaces for children waiting and children who are giving their statement or interview, separate entrances wherever feasible, video-conferencing facilities for interacting with children wherever possible, provision for entertainment of children such as books, games, etc. Statements and interviews, other than during trial of children who are victims or witnesses, shall be recorded through child friendly procedure in a children's room.
- The statement or the interview of the victim / witness child shall be conducted while ensuring the following conditions:
  - (i) The Magistrate shall record the statement of the child<sup>114</sup> in the Children's room or, if possible, in the child's place of residence including, home or institution where he or she is residing.
  - (ii) The statement shall be recorded verbatim as spoken by the child.

(iii) The statement may also be recorded by audio-visual means<sup>115</sup>

The Hon'ble Supreme Court of India has also recently approved Standard Operating Procedures (SOPs) that provide for recording evidence through video conferencing in all criminal trials where child witnesses are to be examined.<sup>116</sup> However, this is subject to the condition that the child witnesses are not residing near the court and not physically present in court where the trial is conducted.

The Delhi High Court has also come up with guidelines for recording of evidence of vulnerable witnesses<sup>117</sup> in criminal matters. A vulnerable witness is defined as anyone who has not completed 18 years of age. The Guidelines provide for a live link through which the child may testify. The child may testify behind a screen, using image or voice altering devices or through examination in another place transmitted simultaneously to the Court room by means of a video link or through a qualified and suitable intermediary.<sup>118</sup> Further, if the child refuses to give testimony in the presence of the accused or if circumstances show that the child may be inhibited from speaking the truth in that person's presence, the court may direct the accused to go to an adjacent room with a video link or a one-way mirror visibility into the court room.<sup>119</sup> However, the Guidelines are only applicable for courts in Delhi.

Delhi High Court has also taken the initiative to create child friendly courtrooms.

111 Section 161 (2), Code of Criminal Procedure, 1973

112 Rule 54 (18) (xi), Juvenile Justice (Care and Protection of Children) Model Rules, 2016

113 Rule 54 (12) and (13), Juvenile Justice (Care and Protection of Children) Model Rules, 2016

114 Section 164, Code of Criminal Procedure, 1973

115 Section 164(1), Code of Criminal Procedure, 1973.

116 *Children in Street Situations, In re, 2022 SCC OnLine SC 189*

117 Guidelines for recording of evidence of vulnerable witnesses in criminal matters, Delhi High Court available at [http://delhihighcourt.nic.in/writereaddata/upload/notification/notificationfile\\_lcwcd2x4.pdf](http://delhihighcourt.nic.in/writereaddata/upload/notification/notificationfile_lcwcd2x4.pdf)

118 Clause 27(e), Guidelines of Delhi High Court

119 Clause 27(g), Guidelines of Delhi High Court

**(c) Can the child's evidence be admitted into evidence without a court appearance?**

The JJ Act provides that if at any stage of the inquiry, the Committee is satisfied that the attendance of the child is not essential for the purposes of inquiry, the attendance of the child is not required.<sup>120</sup>

As per JJ Rules<sup>121</sup>:

- (i) If the child victim or witness does not

belong to the District or State or Country, the statement or interview or deposition of the child may also be recorded through video conferencing.

- (ii) Provides that separate rooms for vulnerable witnesses may be designated in every court complex to record the evidence of child witnesses<sup>122</sup>

**(d) What other legal protections are available to the child?**

As per JJ Rules:

- (i) Psychological counselling may also be provided to the child, wherever necessary.<sup>123</sup>
- (ii) The language(s) used should be familiar to the child and if needed, translators and special educators to be made available.<sup>124</sup>
- (iii) Length and questions admissible at the interview will not be taxing and to be suitable to the attention span of the child.<sup>125</sup>
- (iv) Before the statement of the child is recorded, the Court needs to ensure that the child can make a voluntary statement.<sup>126</sup>

As per JJ Act:

Prohibition on disclosure of identity of children<sup>127</sup>:

- (i) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address

or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published. Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

- (ii) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of. Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to Rs. 2,00,000 or both.

**12. What legal protections or remedies are available to children who are the victims of illegal labour practices?**

A. The Supreme Court of India has issued directions to the state governments to provide following remedies to the victims of illegal labour practices<sup>128</sup>;

- a. Payment of compensation amounting to Rs.20,000 by the offending employer for every child illegally employed

120 Section 91 (1), Juvenile Justice (Care and Protection of Children) Act, 2015

121 Rule 54 (15), Juvenile Justice (Care and Protection of Children) Model Rules, 2016

122 Rule 54 (17), Juvenile Justice (Care and Protection of Children) Model Rules, 2016

123 Rule 54 (18) (ii) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016

124 Rule 54(18)(v) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016

125 Rule 54(18)(ix) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016

126 Rule 54 (18) (vi) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016

127 Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015

128 *M.C. Mehta v. State of T.N.*, (1996) 6 SCC 756

- b. Giving alternative employment to an adult member, if the child is withdrawn from hazardous occupations or payment of an amount of Rs.5,000 for each child employed in hazardous employment by the appropriate Government
- c. Payment of interest on the corpus of Rs. 25,000 (Rs.20,000 by the employer and Rs.5,000 by the appropriate Government) to the family of the child withdrawn from work
- d. Provision of education in a suitable institution for the child withdrawn from work

The Act also provides for penalties against the Employers as has been highlighted in Question No. 5 herein, which can act as a deterrent.

The Act provides for constitution of the Child and Adolescent Labour Rehabilitation Fund for every district wherein fine realised from employers shall be credited. In this Rehabilitation Fund, the appropriate government shall credit Rs. 15,000 for each child or adolescent for whom fine amount has been credited which shall be invested as per the Government's advice.<sup>129</sup> The amount deposited or invested, as the case may be under sub-section (3), and the interest accrued on it, shall be paid to the child or adolescent in whose favour such amount is credited, in such manner as may be prescribed.<sup>130</sup>

- B. The JJ Act states that any child in need of care and protection may within 24 hours, be produced before the Committee established under the said Act, by
  - (i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;
  - (ii) any public servant;
  - (iii) Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;

- (iv) Child Welfare Officer or probation officer;
- (v) any social worker or a public spirited citizen;
- (vi) by the child himself; or
- (vii) any nurse, doctor or management of a nursing home, hospital or maternity home.<sup>131</sup>

The Committee is then empowered to send the child with a fit person or facility<sup>132</sup>, pending its inquiry or investigation and may further pass one or more of the following orders<sup>133</sup>

- "(a) declaration that a child is in need of care and protection;*
- (b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;*
- (c) placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;*
- (d) placement of the child with fit person for long term or temporary care;*
- (e) foster care orders under section 44;*
- (f) sponsorship orders under section 45;*
- (g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;*

<sup>129</sup> Section 14B, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

<sup>130</sup> Rule 16-A, Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988

<sup>131</sup> Section 31(1), Juvenile Justice (Care and Protection Children) Act of 2015

<sup>132</sup> Section 36, Juvenile Justice (Care and Protection Children) Act of 2015

<sup>133</sup> Section 37, Juvenile Justice (Care and Protection Children) Act of 2015



(h) declaration that the child is legally free for adoption under section 38”

C. Schemes:

- I. Further, the Government of India has formulated the following schemes to aid and assist victims of child labour:
  - a. National Child Labour Project (NCLP) Scheme: Under the NCLP Scheme, children in the age group of 9-14 years, withdrawn from work are put into Special Training Centres, where they are provided with bridge education, vocational training, mid-day meal, stipend, health-care facilities etc. and are finally mainstreamed to the formal education system. Adolescent labour identified in the age group of 14 to 18 years working in hazardous occupations / processes are provided with vocational training opportunities through existing scheme of skill development. In addition, efforts are also made to target the families of these children so as to cover them under various developmental and income / employment generating programmes of the Government to raise the economic standard of the family.
  - b. Integrated Child Protection Scheme: provides children in need of protection, including children withdrawn from hazardous work, forced labour, and human trafficking, with food and accommodation in government-run shelter homes and non-institutional care in foster homes and with adoptive families. Provides rehabilitation and reintegration services to rescued children. Through the Welfare of Working Children in Need of Care and Protection programme, provides non-formal education and vocational training to street children and working children living in urban areas not covered by NCLP schemes.
  - c. Central Sector Scheme for Rehabilitation of Bonded Laborers: It is a programme that rescues and rehabilitates adult and child bonded laborers and provides

rescued bonded laborers with financial assistance and social protection services. The programme also supports funding of surveys at the district level on the prevalence of bonded labour and the rehabilitation of bonded laborers identified through the surveys.

- d. Anti-Human Trafficking Activities: Ministry of Women and Child Development operates anti-human trafficking activities, in collaboration with NGOs and state governments. These activities support projects to help reintegrate, rehabilitate and repatriate human trafficking victims, including children, through the Grant-in-aid scheme for financial assistance to organisations (voluntary and non-governmental) for taking up action programmes / projects for the benefit of child labour and women labour.<sup>134</sup> The Ministry of Labour has been financing, since 1981-1982, voluntary organizations by way of grant-in-aid for taking up action oriented projects for the benefit of child labour and women labour. Per this scheme and subject to the terms of the scheme, the Ministry of Labour finances 75% of the recurring cost of an organisation and rest of the 25% is borne by the organisation.
- e. Ujjawala and Swadhar Greh schemes: Ujjawala is a comprehensive scheme launched in 2007 which combats trafficking in persons of women and children, including for commercial sexual exploitation. In addition, this scheme facilitates the rescue of victims, places them in safe custody, provides rehabilitation services, facilitates reintegration of victims and facilitates repatriation of foreign victims.

The Swadhar Greh scheme provides temporary residential accommodations and services, including vocational training, legal aid and rehabilitative counselling services to women and girls rescued from human trafficking, including commercial sexual exploitation.

134 As revised in 2003

## II. Scheme by other aid agencies.

f. Work in Freedom Project II (2018-2023): This is a partnership programme developed between UK's Foreign, Commonwealth & Development Office and ILO on Fair Recruitment and Decent Work for Women Migrant Workers in South Asia and the Middle East. It aims to reduce vulnerability to trafficking and forced labour of women and girls across migration pathways leading to the care sector and textiles, clothing, leather and footwear industries. The programme addresses key drivers and vulnerabilities of human trafficking, such as gender and other forms of discrimination, distress migration and poor working and living conditions, through an integrated prevention strategy of targeted social protection and empowerment, fair recruitment

practices and evidence-based policy advocacy for decent work options.

g. Measurement, Awareness-Raising and Policy Engagement (MAP16) Project on Child Labour and Forced Labour: This is a United States Department of Labour funded project (\$500,000) which is implemented by ILO to conduct research and develop new survey methodologies, improve awareness, strengthen policies and government capacity, and promote partnerships to combat child labour and forced labour. In India, the project works in the states of Bihar, Chhattisgarh and Uttar Pradesh to promote coordination of programmes for child laborers and their families, build capacity of state and local governments to address child labour and build knowledge base on child labour.

### 12.1 Who can act as the child's guardian (or equivalent) in pursuing remedies?

Under the JJ Act<sup>135</sup>, "Guardian" can be a natural guardian or any other person having the actual charge of the child or the Juvenile Justice Board in the course of proceedings. The Act also provides for provisions with respect to the registration of child-care institutions.<sup>136</sup> Child-care institutions under the Act<sup>137</sup> have been defined to mean

children's home, open shelter, observation home, special home, place of safety, specialized adoption agency and a fit facility recognized under the JJ Act for providing care and protection to children, who are in need of such services. Thus, if World Vision is providing shelter, it can and must register under the JJ Act.

### 12.2 In circumstances where World Vision is providing shelter and other support to a survivor of child labour:

(a) Can World Vision apply to be the guardian of the child for the purpose of pursuing those remedies?

Yes. As per the Guardians and Wards Act, 1890, a Guardian is defined as a "person" having the care of the person of a minor or of his property or of both.<sup>138</sup>

In the Comments of Section 4A of the Guardians and Wards Act 1890, it is clarified that the term 'guardian' does not necessarily imply that it has to be a natural person. Even registered societies can act as guardians in case of orphans. Therefore, World Vision can apply to be the guardian of child victims.

<sup>135</sup> Section 2 (31), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>136</sup> Section 41, Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>137</sup> Section 2 (21), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>138</sup> Section 4 (2), Guardians and Wards Act, 1890

(b) What criteria is World Vision required to satisfy and how does it apply to be the guardian?

In the Guardians and Wards Act, 1890 whereby Guardian is defined as a "person" having the care of the person of a minor or of his property or of both his person and property.<sup>139</sup> Therefore, if a child victim is under the care of World Vision, then World Vision is eligible to apply for guardianship of such child victim.

(c) Can World Vision appoint a lawyer to assist the child?

World Vision can appoint a lawyer to seek legal remedies on behalf of the child. The JJ Act also enables voluntary organisations to report instances of child labour.<sup>140</sup>

### 12.3 Can these other remedies be pursued at the same time as a criminal case?

Yes, the state is bound to provide the child or the adolescent with the benefits of the welfare schemes as envisaged under the National Child Labour Project Scheme irrespective of the outcome of the criminal case. Furthermore, punishment under the Act<sup>141</sup> would not bar civil action for realisation of child labour compensation.<sup>142</sup>

However, the benefits under the Act<sup>143</sup> pertaining to compensation shall only be available to the victim upon the completion of the criminal trial and once the fine is imposed upon the offender and has been deposited by him.

Further, depending on the circumstances of the case, the following sections from the Indian Penal Code of 1860 can also be used to pursue a criminal case:

- Kidnapping or maiming a minor for purpose of begging<sup>144</sup>
- Kidnapping or abduction to subject a person to slavery<sup>145</sup>
- Buying or disposing off any person as a slave<sup>146</sup>
- Habitual dealing in slaves<sup>147</sup>
- Unlawful compulsory labour<sup>148</sup>

### 12.4 Do these remedies provide for an award of compensation to the child? If so, how is the amount of compensation determined?

Yes. The Act provides for payment of compensation to the child.<sup>149</sup>

Two types of compensations are envisaged under the section. *Firstly*, the offender is liable for payment of fine, the amount of which is determined by the competent court. This amount shall be credited to a fund as provided under the Act and be payable to the child as

compensation.<sup>150</sup> *Secondly*, the government is under an obligation to provide a compensation of Rs 15,000 to the child and the same shall also be credited to the same fund.<sup>151</sup>

The payment of the amount to the child or adolescent from and out of the Child and Adolescent Labour Rehabilitation Fund is regulated by the Child and Adolescent Labour

<sup>139</sup> *Ibid*

<sup>140</sup> Section 31(1), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>141</sup> Section 14, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

<sup>142</sup> *Anil Kumar Agarwal v. Assistant Labour Commissioner, (1999) 2 LLJ 1318*

<sup>143</sup> Section 14B, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

<sup>144</sup> Section 363A, Indian Penal Code, 1860

<sup>145</sup> Section 367, Indian Penal Code, 1860

<sup>146</sup> Section 370, Indian Penal Code, 1860

<sup>147</sup> Section 371, Indian Penal Code, 1860

<sup>148</sup> Section 374, Indian Penal Code, 1860

<sup>149</sup> Section 14, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

<sup>150</sup> Section 14B (1), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

<sup>151</sup> Section 14B (2), Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

(Prohibition and Regulation) Rules, 1988.<sup>152</sup>

In cases where the violation of child rights are of a serious nature or for contravention of provisions of any law, the National Commission for Protection of Child Rights can approach the

Supreme Court or respective High Courts for directions, writs, orders and recommend to the Government or authority for interim relief to the victim or their family members, if required.<sup>153</sup>

### 13. Which organisations provide pro bono legal services to assist survivors of child labour?

Following is a non-exhaustive list of NGOs providing *pro bono* legal services to assist child labour victims:

1. **CHILDLINE India Foundation**<sup>154</sup>  
Address: B-1101, 11th Floor, Ratan Central, Dr. Babasaheb Ambedkar Road, Parel East, Mumbai 400 012, Maharashtra
2. **Kailash Satyarthi Children's Foundation**<sup>155</sup>  
Address: L-64, Kalkaji, New Delhi 110019  
Tel: 011 – 49211111
3. **Socio-Legal Information Centre / Human Rights Law Network**<sup>156</sup>  
Address: c/o Socio-Legal Information Centre, 576 Masjid Road, Jungpura, New Delhi – 110014  
Tel: +91-11-24374501
4. **Socio Legal Aid Research and Training Centre**<sup>157</sup>  
Address: P-112 Lake Terrace, Kolkata 29, West Bengal, India  
Tel: 91-33-2464 6098 / 5430  
Email: slartc@cal.vsnl.net.in
5. **Child Rights and You (CRY)**<sup>158</sup>  
Address: 189/A Anand Estate, Diagonally Opposite Arthur Road Jail, Sane Guruji Marg, Mumbai – 400011  
Tel: 022 23063647
6. **Global March against Child Labour**<sup>159</sup>  
Address: L-6, Kalkaji, New Delhi-110 019, India  
Tel: +91 11 49211111/12
7. **Hand in hand India.**<sup>160</sup>  
Address: 90/A, Nasarathpet village, Little Kancheepuram – 631501  
Tamil Nadu, India
8. **Save the Children**<sup>161</sup>  
Address: Bal Raksha Bharat National Support Office,  
1st & 2nd Floor, Plot No. 91, Sector – 44  
Gurgaon (Haryana) – 122003
9. **Uday Foundation.**<sup>162</sup>  
Address: D-233 (LGF, Block D, Sarvodaya Enclave, New Delhi, Delhi 110017
10. **SOS Children's Village**<sup>163</sup>  
Address: National Office, Plot 4, Block C-1 Institutional Area, Nelson Mandela Marg, Vasant Kunj, New Delhi - 110070

<sup>152</sup> Rule 16-A, Child and Adolescent Labour (Prohibition and Regulation) Rules, 1988

<sup>153</sup> Section 15, Commissions for Protection of Child Rights Act, 2005

<sup>154</sup> Childline India Foundation: <https://www.childlineindia.org/a/p/contact-us>

<sup>155</sup> Kailash Satyarthi Children's Foundation: <https://satyarthi.org.in/contact/>

<sup>156</sup> Human Rights Law Network: <https://www.inclo.net/members/hrln/>

<sup>157</sup> Socio Legal Aid Research and Training Centre: <https://slartc.org/about.html>

<sup>158</sup> Child Rights and You: <https://www.cry.org/contact/>

<sup>159</sup> Global March against Child Labour: <https://globalmarch.org/about-us/contact/>

<sup>160</sup> Hand in Hand, India: <https://hihindia.org/contact-hand-in-hand/>

<sup>161</sup> Save the Children: <https://www.savethechildren.in/about-us-contact-us/>

<sup>162</sup> Uday Foundation: <https://www.udayfoundation.org/contact-us/>

<sup>163</sup> SOS Children's Village: <https://www.soschildrensvillages.in/donate-now/>

# INDONESIA

## 1. What is the legal minimum working age under domestic law?

As a general rule, Article 68 of Law No. 13 of 2003 on Labor ("**Labor Law**") prohibits an employer from employing children. The Labor Law defines a child as an individual below 18 years.

Please refer to point 3 below on several exemptions on the employment of a child under the Labor Law.

## 2. Is there domestic legislation that regulates the employment of children?

Yes, below are legislations on the employment of children:

- a. Law No. 13 of 2003 on Labor
- b. Law No. 20 of 1999 Ratification of ILO Convention No. 138 Concerning Minimum Age for Admission to Employment
- c. Law No. 1 of 2000 on Ratification of ILO Convention No. 182 on The Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
- d. Decree of Minister of Manpower and Transmigration No. KEP-235/MEN/2003 of 2003 on Work that Jeopardize the Health, Safety and Morals of Children
- e. Decree of Ministry of Manpower and Transmigration No. KEP/115/MEN/VII/2004 on Protection of Children Undertaking Jobs to Develop Talent and Interest ("**Decree No. 115/2004**")
- f. Minister of Manpower and Transmigration No. 6 of 2020 on the Implementation of Domestic Apprenticeship.

## 3. Under what circumstances does the law allow a child to work?

There are several exemptions exist under the Labor Law, which are:

1. Article 71(1) of the Labor Law allows a child to carry out work to develop their talents and interests. For this purpose, the employer must fulfil the following requirements:
  - a. The child is working under the direct supervision of a parent or a guardian.
  - b. The maximum working hours are 3 hours per day.
  - c. The work conditions and environment do not disturb the child's physical, mental and social development, as well as school hours.

In addition, Decree No. 115/2004 stipulates the following requirements for work that are intended to develop children's talents and interests:

  - a. The work are generally be done by children from an early age.
  - b. The work is in accordance with the interests of the child.
  - c. The work is based on the child's ability.
  - d. The work helps the child to grow their creativity in accordance with the child's situation.
2. Article 70 of the Labor Law allows a child (with a minimum age of 14 years old) to carry out work at a place of work that is a part of an education curriculum or training ratified by an authorized official. Work for this purposed can be carried out with the following conditions:
  - a. There is clear direction on how to implement the work and there is guidance and supervision in the implementation of the work.
  - b. There is occupational safety and health protection.

3. Article 69 (1) of the Labor Law stipulates that specifically children from 13 years until 15 years can carry out light work to the extent that it does not disturb their physical, mental and social development and health. Furthermore, the employer must fulfil the requirements as follow:
- a. Obtain written permission from the parents or guardians of the child.
  - b. Make an employment agreement between the employer and the parents or guardian.
  - c. Not require the child to work more than 3 hours per day.

- d. Employ the child during daytime, and the work should not interrupt the child's school time.
- e. Ensure work health and safety.
- f. Ensure the existence of a clear employment relationship.
- g. Provide wages in accordance with prevailing law and regulations.

Note that the Labor Law provides an exemption from complying with the points mentioned in a, b, f, and g above for children between 13 and 15 years old who are working in their family's business.

**4. What restrictions and prohibitions does the law impose upon the employment of children?**

Please see our answers in point (1) and (3) above.

**5. What penalties apply for breach of laws relating to the employment of children?**

1. Criminal imprisonment of a minimum 1 year and a maximum 5 years and/or a fine of a minimum Rp 100,000,000 and a maximum Rp 400,000,000 may be imposed on:
  - a. Anyone violating Article 68 of the Labor Law on the prohibition for employing children.
  - b. Anyone violating the requirements for employing children between 13 and 15 years old to perform light work as stipulated in Article 69(2) of the Labor Law.
2. Criminal detention of a minimum 1 month and a maximum 12 months and/or a fine of a minimum Rp 10,000,000 and a maximum Rp 100,000,000 may be imposed on anyone violating the requirements for employing

- children to develop their talents and interests as stipulated in Article 71(2) of the Labor Law.
3. Criminal imprisonment of a maximum of 5 years and/or a fine of a maximum of Rp 200,000,000 may be imposed on anyone violating Article 74 of the Labor Law which governs prohibition of child labor on specified immoral areas. Such immoral areas include: (a) slavery, (b) any work that benefits from, prepares, or offers children for prostitution, pornographic production, pornographic display, or gambling; (c) any work that benefits from, prepares, or involves children for the production or sale of alcohol, narcotics, psychotropic, and addictive substances; and/ or (d) all work that endangers health, safety or morality of children.

**6. Are there gaps in the domestic laws compared to international legal standards such as those set out in the International Labour Organisation's *Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*?**

Indonesia has ratified key international conventions concerning the child labour.

To date, Indonesia has ratified:

- a. the International Labour Organisation's *Minimum Age Convention 1973* (ILO C.138) and the *Worst Forms of Child Labour Convention 1999* (ILO C. 182). Ratification for the former is under Law No. 20 of 1999 and for the latter, under Law No. 1 of 2000.

- b. The following United Nations Conventions:
  - i. on the Rights of Child.
  - ii. Optional Protocol on Armed Conflict.
  - iii. Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.
- c. Palermo Protocol on Trafficking in Persons.

There are no material gaps in that the ratification of the conventions listed above were implemented in full.

## 7. What government agencies are responsible for enforcement of laws regulating the employment of children?

The relevant government agencies are:

- a. Ministry of Manpower ("MOM") Directorate General of Labour Development and Supervision.
- b. National Police, Including Women and Children's Service Unit.
- c. MOM Directorate of Norms Supervision of Women and Child Workers.
- d. Ministry of Women Empowerment and Child Protection.

## 8. Who can report illegal child labour practices?

The National Task Force to Combat Trafficking in Persons completed work to establish local anti-trafficking task forces in all 34 provinces in Indonesia. In addition, the Ministry of Manpower employed "community-based monitoring inspectors" and neighbourhood chiefs who can report incidences of child labor.

## 9. Who should illegal child labour practices first be reported to?

Any illegal child labour practice can be reported to a community based monitoring inspector or a neighbourhood chief. Both these positions have been created by the Ministry of Manpower to tackle the problem of child labour at the grassroots level.

## 10. Are there any legal protections provided to persons who report illegal child labour practices?

No specific legal protections provided by Indonesian laws and regulations for a party who reports illegal child labour practices.

However, in general provision of protection and support to victims are conducted by LPSK (*Lembaga Perlindungan Saksi dan Korban*) as governed under Law No. 13 of 2006 on Protection of Witnesses and Victims, as amended by Law No. 31/2014 on Amendment to Law No. 13 of

2006 on Protection of Witness and Victims ("**Law 13/2006**").

Pursuant to Article 5.1 of Law 13/2006, the protection includes, among others, obtain (i) protection for the safety of their personal family and assets, and freedom from threats in connection with testimony that will, are or being given, (ii) new identity, (iii) new domicile, and (iv) legal advice.

## 11. In a criminal case in connection with child labour:

### 11.1 Which agency or agencies have the authority to file a case with the prosecutor?

The Indonesian National Police.

Anyone (including Indonesian Commission for the Protection of Children (*Komisi Perlindungan Anak Indonesia*)) is able to file a report to the police if they suspect or have information of any conduct of illegal child labour. After the police receive information of a possible child labour case, they will start their preliminary investigation.

The preliminary investigation is the early stage of the investigation that focuses on finding and collecting preliminary evidence in order to determine whether or not the alleged offence has taken place.

If it is decided that there is a criminal act (in this case illegal child labour) has taken place, the police will launch an investigation to further build a case.

11.2 In general, what evidence is required to build the case against the alleged perpetrators of a child labour case?

There is no clear definition of preliminary evidence. However, it is generally accepted that preliminary evidence should consist of a minimum of two items of evidence.

11.3 If the prosecutor requires a child labour survivor to testify against alleged perpetrators, (e.g. parents or close relatives):  
(a) Does the child have the right to refuse?

There is no specific elaboration on the right of a child to refuse to testify.

However, Article 18 of Law No. 11 of 2012 on the System of Juvenile Courts ("**Juvenile Court Law**") requires that all law enforcement officials treat child witnesses in accordance with the best interests of the child.

Further, Article 19 of the Juvenile Court Law also governed that the identity of child victims/witnesses shall be kept confidentially from printed or electronic media coverage.

Furthermore, Article 59 of the Juvenile Court Law provides various procedures to accommodate the fact that a child is not present at a hearing to provide testimony. However, the child would still be required to provide his/her testimony outside of a court hearing.

(b) Can the child give evidence via video link (eg: from another room)?

Yes, according to Article 58 (3) of the Juvenile Court Law, in the case of a child not being present to testify before a court hearing, the judge may order the hearing of testimony outside the court through:

- electronic recording
- long-distance direct investigation using audiovisual communication devices, accompanied

(c) Can the child's evidence be admitted into evidence without a court appearance?

Please refer to our answer in paragraph 11 (c) (i)

(d) What other legal protections are available to the child?

Article 3 of the Juvenile Court Law provides that every child involved in prosecution has the right to, among other things,

- a. be treated humanely by paying attention to their needs according to their age
- b. be separated from adults (e.g., detained in separate areas)
- c. conduct recreational activities
- d. be free from torture, punishment or other treatment that is cruel, inhuman and degrading
- e. not being sentenced to death or a life sentence
- f. not being arrested, detained, or imprisoned, except as a last resort and for the minimum time

- g. obtain justice before a juvenile court that is objective, impartial, and with the hearing closed to the public
- h. have their identity unpublished
- i. obtain assistance from parents/guardians and people trusted by the child
- j. obtain education and health services

Further, Article 90 of the Juvenile Court Law governs that child victims and child witnesses are entitled to medical and social rehabilitation efforts, to have their safety guaranteed and to easy acquisition of information on the development of the case.



12. What legal protections or remedies are available to children who are the victims of illegal labour practices?

12.1 Who can act as the child's guardian (or equivalent) in pursuing remedies?

Based on Government Regulation No. 29 of 2019 on Requirements and Procedures for Appointment of Guardian ("**Guardian GR**"), the child's family, siblings, other people or legal entity (including social welfare) can be appointed as the child's guardian.

12.2 In circumstances where World Vision is providing shelter and other support to a survivor of child labour:

(a) Can World Vision apply to be the guardian of the child for the purpose of pursuing those remedies?

No. The guardian of the child needs to fulfil several requirements as set out in point (ii) below. As World Vision is not a foundation under Indonesian laws, World Vision cannot be a guardian under Indonesian laws.

(b) What criteria is World Vision required to satisfy and how does it apply to be the guardian?

To become a guardian of a child, a "social welfare institution" needs to fulfill the following requirements under Article 7 paragraph (3) of the Guardian GR:

- a. incorporated as a foundation [under Indonesian laws] and accredited;
- b. willing to become a guardian as stated in a statement letter from the appointed caretaker in the relevant child social welfare institution
- c. accept recommendations from the agency that administers government affairs in the social sector
- d. make a written statement that states that it never discriminated and will not discriminate

in protecting children's rights

- e. get written consent from parents, if;
  - a. the parents are still alive
  - b. the parents' location is known
  - c. the parents are capable of doing legal actions.

In addition, social welfare institutions that base their institutions on a certain religion have to have the same religion as the religion held by the child.

Please note that an appointment of a guardian should be conducted based on a request or will of the parents.

(c) Can World Vision appoint a lawyer to assist the child?

Yes.

12.3 Can these other remedies be pursued at the same time as a criminal case?

Yes.

12.4 Do these remedies provide for an award of compensation to the child? If so, how is the amount of compensation determined?

One of the main aims of pursuing civil remedies is to obtain a court-granted restitution, one of which is compensation. An application for compensation granted to a victim against an abuser is submitted by the victim, or his/her family or attorney to the court through the Witness and Victim Protection Agency ("**LPSK**").

The application should include, inter alia, a description of the actual suffered loss and form of requested restitution. The result of LPSK's checking of the application will be determined

in a LPSK decree and accompanied with its consideration. Thereafter, LPSK will submit the application to the court to be:

- a. examined and ordered (if the application is submitted before the existence of a final and binding court order); or
- b. examined and stipulated (if the application is submitted after the existence of a final and binding court order).

13. Which organisations provide pro bono legal services to assist survivors of child labour?

- a. Witness and Victim Protection Agency (*Lembaga Perlindungan Saksi dan Korban* or "**LPSK**")
- b. Legal Aid Agencies (*Lembaga Bantuan Hukum* or "**LBH**")
- c. Indonesian Commission for the Protection of Children (*Komisi Perlindungan Anak Indonesia*)
- d. Technical Implementation Unit for the Protection of Women and Children (*Unit Pelaksana Teknis Daerah Perlindungan Perempuan dan Anak* or "**UUPTD PPA**")
- e. Association of the Legal Aid Agencies for Women for Justice (*Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan* or "**LBH APIK**")

# MALAYSIA

## 1. What is the legal minimum working age under domestic law?

The Child and Young Persons (Employment) Act 1966 ("**CYPEA 1966**") and Sabah and Sarawak Labour Ordinances (collectively as the "**Relevant Laws**") generally prohibit the employment of persons (i) below the age of 15 years (i.e. 'child' under the Relevant Laws) and (ii) between the age of 15 and 18 years (i.e. 'young person' under the Relevant Laws), unless it falls within a set of specific types of employment such as children are allowed to do light work (defined in Section 1A of the CYPEA 1966) in family enterprises or as an approved apprentice, work in the field of public entertainment, work that is sponsored by the government within a school or institution, contracted apprenticeships that are approved by authorities (discussed in detail in Question 3 below).

## 2. Is there domestic legislation that regulates the employment of children?

Yes. In Malaysia, the CYPEA 1966 and Sabah and Sarawak Labour Ordinances regulate the employment of children in Peninsular Malaysia and East Malaysia respectively.

## 3. Under what circumstances does the law allow a child to work?

A child may be engaged in any of the following employments<sup>1</sup>:

- (a) employment involving light work<sup>2</sup> suitable to his capacity in any undertaking carried on by his family;
- (b) employment in any public entertainment, in accordance with the terms and conditions of a licence granted in that behalf under the Relevant Laws;
- (c) employment requiring him to perform work approved or sponsored by the government of

Malaysia or any state government and carried on in any school, training institution or training vessel; and

- (d) employment as an apprentice under a written apprenticeship contract approved by the Director General of Labour with whom a copy of such contract has been filed.

Note however under the CYPEA 1966, the minimum age of a child who may be engaged in the type of employment listed as item (a) above is 13 years old<sup>3</sup>.

<sup>1</sup> Section 2 of the CYPEA 1966, Section 72(2) of the Sabah Labour Ordinance and Section 73(2) of the Sarawak Labour Ordinance

<sup>2</sup> Light work means any work performed by a child which is not likely-

<sup>3</sup> Section 2A of the CYPEA 1966

#### 4. What restrictions and prohibitions does the law impose upon the employment of children?

##### CYPEA 1966

##### Sabah Labour Ordinance and Sarawak Labour Ordinance

#### (a) Working hours

A child engaged in any employment may not<sup>4</sup>:

- (i) work between 8pm and 7am;
- (ii) work for more than 3 consecutive hours without a period of rest of at least 30 minutes;
- (iii) work for more than 6 hours in a day;
- (iv) work for a period which, together with the time he spends in school, exceeds 7 hours, if he is attending school; or
- (v) commence work on any day without having had at least 14 consecutive hours free from work.

Note that item (a)(i) above does not apply to any child engaged in employment in any public entertainment<sup>5</sup>.

#### (b) Number of days of work

A child engaged in any employment may only, in any period of 7 consecutive days, work a maximum of 6 days<sup>6</sup>.

#### (c) Employment connected with public entertainment

An employer who employs children in any public entertainment is required to first hold a licence to take part in public entertainment issued by the Director General of Labour or such other authorised Director General<sup>7</sup>.

#### (d) Prohibited employment

The employment of a child is prohibited in the following areas<sup>8</sup>:

- (i) any employment which offer children for prostitution;
- (ii) any employment as social escorts, hostesses and other related activities;
- (iii) any employment which require children to be involve in the production or trade of alcoholic beverages;
- (iv) any employment related to gambling and lotteries activities;

The employment of a child is prohibited in any employment contrary to the provisions under the (i) Factories and Machinery Act 1967 or (ii) Electricity Supply Act 1990 (in the case of Sabah) and Electricity Ordinance (Sarawak) (in the case of Sarawak) or in any employment requiring him to work underground<sup>9</sup>.

(a) to be harmful to his health, mental or physical capacity; or

(b) to prejudice his attendance at school that includes any place which teaches any religion, his participation in vocational orientation or training programmes approved by the competent authority or his capacity to benefit from the instruction received.

Note that 'light work' has not been defined under the Sarawak Labour Ordinance and Sabah Labour Ordinance.

<sup>4</sup> Section 5(1) of the CYPEA 1966, Section 73B of the Sabah Labour Ordinance and Section 74B of the Sarawak Labour Ordinance

<sup>5</sup> "Public entertainment" means entertainment to which the public or any section of the public is admitted or in connection with which any charge, whether for admission or not, is made or at which any collection or subscription is received and includes performances for the making of films for public exhibition other than news films but does not include any entertainment given by the pupils of any school registered under the Education Act 1961 at or under the auspices of such school, or any entertainment promoted by a voluntary, social or welfare body which has been approved by the Director General.

<sup>6</sup> Section 4 of the CYPEA 1966, Section 73A of the Sabah Labour Ordinance and Section 74A of the Sarawak Labour Ordinance

<sup>7</sup> Section 7(1) of the CYPEA 1966, Section 73D of the Sabah Labour Ordinance and Section 74D of the Sarawak Labour Ordinance

<sup>8</sup> Fifth Schedule of the CYPEA 1966

<sup>9</sup> Section 72(5) of the Sabah Labour Ordinance and Section 73(5) of the Sarawak Labour Ordinance

- (v) any employment which require children to work in any activities related to massage or reflexology services;
- (vi) any employment that offer children for any job related to pornography;
- (vii) any employment which involve children in the production and trade of drugs which are prohibited under the law in operation; and
- (viii) any hazardous work<sup>10</sup>.

#### 5. What penalties apply for breach of laws relating to the employment of children?

CYPEA 1966	Sabah Labour Ordinance and Sarawak Labour Ordinance
<p>Any person found to be in contravention of any provision under the CYPEA 1966 or of any regulations or order made thereunder or who being the parent or guardian of a child knowingly acquiesces in any such contravention in respect of such child shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of less than 2 years or to a fine below RM50,000 or to both. In the case of a second or subsequent offence, such person(s) shall be liable on conviction to imprisonment for a term of less than 5 years or to a fine below RM100,000 or to both<sup>11</sup>.</p> <p>Where the contravention is committed by a body corporate, society or trade union:</p> <ul style="list-style-type: none"> <li>(a) in the case of a body corporate, any director, manager, or other similar officer;</li> <li>(b) in the case of a partnership, every partner; and</li> <li>(c) in the case of a society or trade union, every office-bearer;</li> </ul> <p>at the time of the commission of the offence, shall be deemed to have committed the offence and may be charged jointly or severally in the same proceedings as the body corporate, partnership, society or trade union<sup>12</sup>.</p>	<p>Any person found to be in contravention of any provision under the employment of Children and Young Persons Chapter under the Sabah and Sarawak Labour Ordinances or who being the parent or guardian of a child knowingly acquiesces in any such contravention in respect of such child shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of less than 2 years or to a fine below RM10,000 or to both.<sup>13</sup></p>

<sup>10</sup> Fourth Schedule of the CYPEA 1966 sets out the list of "hazardous work" which includes any work:

- (a) related to machines, installations and other equipment which can pose high risk such as drilling machines; grinding machines; steam boiler; installations of pressure pipe; electricity; and electricity transmission lines;
- (b) conducted in hazardous environment such as any underground work, at a height which can lead to serious bodily injury, an environment with noise or vibration where the intensity exceeds permissible exposure limits, an environment with extreme temperature and moisture or high-speed wind or a dusty environment that is detrimental to health; or
- (c) which contains certain hazardous nature and condition such as construction work including the construction of building; work in timber industry such as cutting, transporting and unloading trees; or any offshore work such as working in a petroleum platform.

<sup>11</sup> Section 14(1) of the CYPEA 1966

<sup>12</sup> Section 9A of the CYPEA 1966

<sup>13</sup> Section 130F of the Sabah Labour Ordinance and Section 130F of the Sarawak Labour Ordinance

6. Are there gaps in the domestic laws compared to international legal standards such as those set out in the International Labour Organisation's *Minimum Age Convention 1973 and the Worst Forms of Child Labour Convention 1999*?

#### CYPEA 1966

No.

The following amendments<sup>14</sup> were introduced on 1 February 2019 to the CYPEA 1966 to be in line with the International Labour Organisation ("ILO") standards<sup>15</sup>:

(a) the definition of "light work" is redefined under section 2 of the CYPEA 1966 as any to be harmful to his health, mental, or physical capacity; or to prejudice his attendance at school that includes any place which teaches any religion, his participation in vocational orientation or training programmes approved by the competent authority or his capacity to benefit from the instruction received.<sup>16</sup>

This is in line with Article 7(1) of the Minimum Age Convention 1973.

(b) A new Fourth Schedule is introduced providing a list of hazardous work, work conducted in hazardous environment, work contain certain hazardous nature and condition.<sup>17</sup> No child or young person shall be required or permitted to be engaged in any hazardous work.<sup>18</sup>

This is in line with Article 4 of the Worst Forms of Child Labour Convention 1999.

(c) A new Fifth Schedule is also introduced under the CYPEA 1966<sup>19</sup>, which specifically prohibits the employment of a child or young person in any of these areas:

- (i) any employment which offer children or young persons for prostitution;
- (ii) any employment as social escorts, hostesses and other related activities;
- (iii) any employment which require children or young persons to involve in the production or trade of alcoholic beverages;
- (iv) any employment relating to gambling and lotteries activities;
- (v) any employment which require children or young persons to work in any activities related to massage or reflexology services;
- (vi) any employment that offer children or young persons for any job related to pornography; and
- (vii) any employment which involve children or young persons for the production and trade of drugs which are prohibited under the law in operation.

This is in line with Article 3 of the Worst Forms of Child Labour Convention 1999.

<sup>14</sup> Children and Young Persons (Employment) (Amendment) Act 2019

<sup>15</sup> Organisation's Minimum Age Convention 1973 ([link](#)), Worst Forms of Child Labour Convention 1999 ([link](#)), Hansard dated 17 October 2018 (House of Representatives, The Parliament of Malaysia) ([link](#))

<sup>16</sup> Section 2 of the CYPEA 1966

<sup>17</sup> Fourth Schedule of the CYPEA 1966

<sup>18</sup> Section 2 (1), (1A) of the CYPEA 1966

<sup>19</sup> Fifth Schedule of the CYPEA 1966

**Sabah Labour Ordinance****Sarawak Labour Ordinance**

Yes.

- (a) There is no definition of light work provided under the Sabah and Sarawak Labour Ordinance. This is inconsistent with Article 7(1) of the Minimum Age Convention 1973.
- (b) There is no provision on prohibition of hazardous work for children and young persons. This is inconsistent with Article 4 of the Worst Forms of Child Labour Convention 1999.
- (c) There is no provision for list of work which is defined as worst forms of child labour under Article 3 of the Worst Forms of Child Labour Convention 1999.

### 7. What government agencies are responsible for enforcement of laws regulating the employment of children?

The CYPEA 1966 and Sabah and Sarawak Labour Ordinances provides that any proceedings for offences under the CYPEA 1966<sup>20</sup> and Sabah and Sarawak Labour Ordinances<sup>21</sup> may only be instituted by or on behalf of the Public Prosecutor.

Under the CYPEA 1966<sup>22</sup>, the Director General of Labour and such other officers appointed under section 3 of the Employment Act 1955, are charged

with the responsibility for the carrying out of the provisions of CYPEA 1966.

Under the Sabah and Sarawak Labour Ordinances, the Minister of Human Resources and the

Director of Labour are responsible for carrying out the provisions of the Sabah and Sarawak Labour Ordinances.

### 8. Who can report illegal child labour practices?

Any individual can report illegal child labour practices.

### 9. Who should illegal child labour practices first be reported to?

Illegal child labour practices should first be reported to the Department of Labour and/or Royal Malaysian Police.

### 10. Are there any legal protections provided to persons who report illegal child labour practices?

We are not aware of any legal protection provided to persons who report illegal child labour practices.

### 11. In a criminal case in connection with child labour:

#### 11.1 Which agency or agencies have the authority to file a case with the prosecutor?

In Malaysia, the police are empowered under the Police Act 1967 to investigate the commission of any offence. Once the case has been investigated, the police investigating officer will refer the case to the prosecutor and the prosecutor will decide whether or not to bring charges against the suspect based on the evidence obtained through the police investigation.

<sup>20</sup> Section 11 of the CYPEA 1966

<sup>21</sup> Section 123A of the Sabah Labour Ordinance and Section 124A of the Sarawak Labour Ordinance

<sup>22</sup> Section 9 of the CYPEA 1966

**11.2 In general, what evidence is required to build the case against the alleged perpetrators of a child labour case?**

Oral and/or documentary evidence are required to establish the elements of the offence to the standard of "beyond reasonable doubt". In general, such evidence may include testimony from the victim that their parents or guardians had forced, permitted or threatened the victim into child labour.

**11.3 If the prosecutor requires a child labour survivor to testify against alleged perpetrators, (e.g. parents or close relatives):**  
**(a) Does the child have the right to refuse?**

No. A child generally does not have the right to refuse if the child is deemed competent to testify by the court i.e., the child is capable of understanding the questions put to them and give rational answers to those questions.<sup>23</sup>

**(b) Can the child give evidence via video link (eg: from another room)?**

Yes.

A child witness may give evidence via a live link from a location other than the courtroom. This involves a live television link or other arrangement whereby a child witness, while being absent from the courtroom, is able to see and hear (and to be seen and heard by) the court, the prosecutor, the advocate for the accused, and the interpreter.

Such evidence given via a live link is deemed to be evidence given in an open court.<sup>24</sup>

More generally, a person (other than the accused) may, with leave of the court, give video or live evidence through a live video or live television link in any trial or inquiry, if it is expedient in the interest of justice to do so.<sup>25</sup>

**(c) Can the child's evidence be admitted into evidence without a court appearance?**

Yes.

Apart from using a live link as mentioned in the response to Question 11.3(b), a child's evidence may be given by video recording without a court appearance. Video recording involves an interview conducted between a police officer and the child witness, where the video recording of the oral evidence of the child witness is made with a view to its admission as evidence of examination-in-chief of the child witness.<sup>26</sup>

The contents of the video recording is subject to the Evidence Act 1950 (e.g., only facts in issue and relevant facts may be given, oral evidence must be direct and not hearsay etc.), and shall be accompanied by a transcript of the original language and a translation of the transcript (if the original language is not in Malay). Such evidence given via a video recording is deemed to be evidence given in an open court.<sup>27</sup>

<sup>23</sup> Section 118 of the Evidence Act 1950.

<sup>24</sup> Sections 2, 3(1)(b), 3(2) and 5(1) of the Evidence of Child Witness Act 2007.

<sup>25</sup> Section 272B(1) of the Criminal Procedure Code.

<sup>26</sup> Sections 2, 3(1)(c) and 6(1) of the Evidence of Child Witness Act 2007.

<sup>27</sup> Sections 3(2), 6(1) and 6(2) of the Evidence of Child Witness Act 2007; sections 5 and 60 of the Evidence Act 1950.



**(d) What other legal protections are available to the child?**

Where the prosecutor requires a child labour survivor to testify, a child witness may also give evidence with a screen or other arrangement to prevent the child from seeing and being seen by the accused. However, the screen or other arrangement shall not prevent the child witness from being able to see and to be seen by the court, the prosecutor, the advocate for the accused, and the interpreter.<sup>28</sup>

The court may also allow a child witness to be accompanied by an adult while giving evidence in any proceedings. The adult accompanying the child witness, however, shall not prompt the child to answer any question, influence the answers of the child witness or disrupt the questioning of the child witness.<sup>29</sup>

Examination of a child witness may be conducted through the court or an interpreter or any other person authorised by the court, acting as an intermediary. The functions of an intermediary

include communicating the questions put to the child witness and explaining such questions so far as necessary to enable them to be understood by the child witness. An intermediary shall not prompt the child witness to answer any question, influence the answers of the child witness or disrupt the questioning of the child witness.

Further, an unrepresented accused is not entitled to question a child witness directly but may do so through an intermediary.<sup>30</sup>

Media reporting and publication that may lead to identification of a child witness is prohibited. This includes picture of the child witness, name and address of the child witness, and name and other particulars of the educational institution the child witness attends. Contravention of this prohibition is an offence, punishable upon conviction with a fine not exceeding MYR 10,000 and/or imprisonment for a term not exceeding five years.<sup>31</sup>

**12. What legal protections or remedies are available to children who are the victims of illegal labour practices?**

Pursuant to the CYPEA, only a the Public Prosecutor is permitted to initiate proceedings for offences or its order or regulation (e.g., illegal labour practices).

In such cases, the Director General has the right to appear and be heard in any proceedings (including the right to appear and represent a child or young person in such proceedings).

The Child Act 2001 also provides legal protections over children who fall victim to illegal labour practices such as:-

Section	Protection
7	<p><b>Establishment of Child Protection Teams</b></p> <p>"Child Protection Teams" ("<i>Pasukan Perlindungan Kanak-kanak (PPKK)</i>" in Malay language) were established by the National Council for Children (established under the Child Act 2001) ("<b>Council</b>") in various states and districts in Malaysia for the purpose of co-ordinating locally-based services to families and children if children are or are suspected of being in need of care and protection. Among the activities conducted by the Child Protection Teams is the Children's Activity Center (PAKK) which has been planned and implemented according to the needs of the local community.</p> <p>A Child Protection Team shall consist of less than 7 people with experience relating to the care and protection of children, a medical officer and a senior police officer.</p> <p>The Child Protection Teams may be contacted via the details stated <a href="#">here</a>.</p>

28 Sections 3(1)(a) and 4 of the Evidence of Child Witness Act 2007.

29 Section 9 of the Evidence of Child Witness Act 2007.

30 Section 8 of the Evidence of Child Witness Act 2007.

31 Section 14 of the Evidence of Child Witness Act 2007.

7A	<p><b>Establishment of Child Welfare Teams</b></p> <p>The Council has established "Child Welfare Teams" ("<i>Pasukan Kebajikan Kanak-kanak (PKKK)</i>" in Malay language) in various states and districts in Malaysia for the purpose of co-ordinating locally- based services to families and children if children are or are suspected of being in need of protection and rehabilitation.</p> <p>The list of Child Welfare Teams in the respective states and districts (as at 17 September 2021) is provided <a href="#">here</a>. However, the contact details of the respective Child Welfare Teams are not publicly available. If required, an inquiry may be made to the Department of Social Welfare to obtain the contact details of the Child Welfare Teams in the relevant state or district.</p>
30	<p><b>Protection of children who are brought before the Court for Children</b></p> <p>Where a child in need of protection is brought before the Court for Children, the court may inter alia, order his parent or guardian to execute a bond to exercise proper care and guardianship or place the child in the custody of a fit and proper person for a period specified by the Court.</p> <p>Alternatively, the Court may also:-</p> <ul style="list-style-type: none"> <li>▪ place the child in a centre<sup>32</sup>; or</li> <li>▪ place the child in a place of safety<sup>33</sup></li> </ul> <p>for a period of three years from the date of the order or until he attains the age of eighteen years, whichever is the shorter.</p>
54	<p><b>Places of Safety</b></p> <p>The Minister may, by notification in the Gazette, establish or appoint any place, institution or centre to be a place of safety for the care and protection of children or children who are guilty of any offence.</p>

### 12.1 Who can act as the child's guardian (or equivalent) in pursuing remedies?

As discussed above, any proceedings for violation of CYPEA is only permitted to be initiated by the Public Prosecutor. A guardian is therefore not required for purposes of pursuing remedies for illegal labour practices.

That said, we understand from our enquiries with the Labour Policy Department, Department of Labour Malaysia on a no-names basis that, any member of the public, including body corporate, non-governmental organisations and a guardian of a child (appointed in accordance with the Guardianship of Infants Act 1961 ("**GIA**")) may act on behalf of the child to raise concerns or lodge a complaint to the Department of Labour to raise the same to the Public

Prosecutor for their further action.

#### **Guardianship**

By way of background, the appointment of a child's guardian is governed by GIA.

#### *Appointment of testamentary guardian*

An appointment of a testamentary guardian may be made by way of a deed or will made by the parent of an infant (i.e., person who has not attained 18 years old), appointing any person to be the legal guardian of the infant after that parent's death. Generally, such guardian shall act jointly with the surviving parent.<sup>34</sup>

<sup>32</sup> Section 2 of the Child Act 2001 defines "centre" as a shelter established or operated by any person including a State Government, either (a) individually; or (b) through a co-operation or joint-venture with the Federal Government, Federal Government, as approved by the Minister for the purpose of care, protection and rehabilitation of children under section 53A.

<sup>33</sup> There is a capacity of approximately 1510 places of safety in Malaysia (link [here](#)).

<sup>34</sup> Section 7 of the Guardianship of Infants Act 1961

*Guardian of an orphan*

If both parents of an infant have died without appointing a testamentary guardian, any Magistrate, *penghulu*, police officer or Protector may cause the infant to be taken before the Court, and the Court shall appoint a legal guardian of the infant's person and property or either of them.<sup>35</sup>

*Appointment of Protector*

If there is no other suitable person that is willing and able to care for an infant, and he/she (i) has been abandoned by his parent or guardian; or (ii) has no

parent or guardian, then the Court:

- (a) shall appoint a Protector<sup>36</sup> to be a temporary guardian of the infant's person and property or either of them, until such time as a guardian of the infant's person and property can be appointed;
- (b) shall determine the extent of the powers and duties of the Protector as a temporary guardian in relation to the infant's person and property; and
- (c) may impose such other terms and conditions as, having regard to the welfare of the infant, the Court thinks fit.<sup>37</sup>

## 12.2 In circumstances where World Vision is providing shelter and other support to a survivor of child labour:

- (a) Can World Vision apply to be the guardian of the child for the purpose of pursuing those remedies?

It is unclear from the GIA 1961 if a body corporate or an institution is permitted to be a guardian of a child. That said, the case laws with respect to guardianship generally involved a natural persons instead of a body corporate or an institution.

Considering the duties required of a guardian for an infant under the GIA 1961 such as having the custody of the infant, be responsible for his support, health and education,<sup>38</sup> we anticipate that World Vision is

unlikely to be the guardian of a child.

This interpretation is also consistent with the definition of "guardian" provided in the Malaysian Child Act, which means in relation to a child, includes any person who, in the opinion of the Court For Children having cognizance of any case in relation to the child or in which the child is concerned, has for the time being the charge of or control over the child.

- (b) What criteria is World Vision required to satisfy and how does it apply to be the guardian?

The Court will take into account primarily the welfare of the infant and consider the wishes of their parents (where the infant has a parent or parents) in appointing a guardian for the infant.

- (c) Can World Vision appoint a lawyer to assist the child?

There is nothing prohibiting World Vision to appoint a lawyer to assist a child for civil proceedings (given that criminal proceedings will need to be initiated by the Public Prosecutor), provided that the guardian or parents consent to the same.

<sup>35</sup> Section 8 of the Guardianship of Infants Act 1961

<sup>36</sup> 34 A "Protector" as defined in GIA means:

- (a) the Director General of Social Welfare;
- (b) the Deputy Director General of Social Welfare;
- (c) a Divisional Director of Social Welfare, Department of Social Welfare;
- (d) the State Director of Social Welfare of each of the States, and includes any Social Welfare Officer appointed under any law regulating the appointment of a Protector.

<sup>37</sup> Section 8A of the Guardianship of Infants Act 1961

<sup>38</sup> Section 3 of the Guardianship of Infants Act 1961

### 12.3 Can these other remedies be pursued at the same time as a criminal case?

There is nothing prohibiting other remedies (for example, a separate civil proceeding) to be pursued at the same time as a criminal case. However, note that under certain circumstances

Malaysian courts may exercise discretionary powers to order a stay in proceedings in a civil suit until the conclusion of the hearing and final disposal of the criminal proceedings.

### 12.4 Do these remedies provide for an award of compensation to the child? If so, how is the amount of compensation determined?

There are no remedies provided for the child under the CYPEA 1966 in the event of criminal action. That said, the child may be awarded an award of compensation in the event a civil proceeding is brought against the employer for breach of contract of service.

Generally, the Court has broad discretion to

determine the compensation (if any) payable to the plaintiff (e.g., the child). The determination of the same will generally be subject to (a) general damages (damages awarded for harm that is not quantifiable, such as discomfort / pain / suffering); and (b) special damages (where damages suffered is readily quantifiable in monetary terms, e.g., loss of earnings).

## 13. Which organisations provide pro bono legal services to assist survivors of child labour?

The following organisations offer pro bono and/or other services to assist survivors of child labour in Malaysia:

#### (a) **Legal Aid Department ("LAD")** (link [here](#))

Malaysian citizens who cannot afford legal advice in the ordinary way may apply through the LAD to the Director General of Legal Aid to obtain oral advice on legal questions under Malaysian laws.<sup>39</sup> A registration fee of MYR 10 will be charged for such service.<sup>40</sup>

#### (b) **Bar Council Kuala Lumpur Legal Aid Centre ("KLLAC")** (link [here](#))

The KLLAC provides walk-in legal services and advice for those who are unable to afford legal services. The contact details of other Bar Council Legal Aid Centres outside Kuala Lumpur may be obtained via the link [here](#).

#### (c) **Yayasan Chow Kit** (link [here](#))

Yayasan Chow Kit offers a 24-hour crisis and drop-in centre to provide meals, activities, therapy, case management, and educational programmes for at-risk children and teenagers around Chow Kit, Kuala Lumpur. These include assistance through the legal processes and representation in court.

#### (d) **Global Shepherds** (link [here](#))

Global Shepherds focuses on assisting women and children, those who are trafficked, forced into migration, refugees and asylum seekers who have experience gender based violence through shelters and outreach programmes, that include case management, counselling, awareness raising and other forms of interventions.

#### (e) **SUKA Society** (link [here](#))

SUKA Society aims to protect and preserve the best interests of both local and foreign children. The organisation provides therapeutic, welfare and community development programmes for children who are at risk and for their families.

<sup>39</sup> Sections 2A(2) and 29 of, and Fourth Schedule to, the Legal Aid Act 1971.

<sup>40</sup> Regulation 2 of, and First Schedule to, the Legal Aid (Fees and Contributions) Regulations 2017.

# PHILIPPINES

## 1. What is the legal minimum working age under domestic law?

In general, no child below fifteen (15) years of age shall be employed except in certain instances allowed by law.

## 2. Is there domestic legislation that regulates the employment of children?

Yes.

- Section 12 of Republic Act (RA) No. 7610 ("Special Protection of Children Against Abuse, Exploitation and Discrimination Act"), as amended by RA 7658 ("An Act Prohibiting the Employment of Children Below 15 Years of Age in Public and Private Undertakings") and RA 9231 ("An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, as amended, Otherwise Known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act")
- RA 10917 ("An Act Amending Certain Provisions of Republic Act No. 9547 Otherwise Known as an Act Strengthening and Expanding the Coverage of the Special Program for Employment of Students, Amending for the Purpose Provisions of Republic Act No. 7323, Otherwise Known as the Special Program for Employment of Students")
- Articles 137 & 138, Labor Code of the Philippines
- Section 16 of RA 10361 ("Domestic Workers Act" or "Batas Kasambahay")

## 3. Under what circumstances does the law allow a child to work?

A child below fifteen (15) years of age may only be allowed to work under the following situations:

1. When a child works directly under the sole responsibility of his/her parents or legal guardian and where only members of the employer's family are employed subject to the following conditions:
  - a. The employment must not endanger the child's his life, safety, health and morals, or impairs his/her normal development; and
  - b. The parent or legal guardian must provide the child with the prescribed primary and/or secondary education.
2. Where a child's employment or participation in public entertainment or information through cinema, theater, radio or television is essential subject to the following conditions:
  - a. The employment contract is concluded by the child's parents or legal guardian, with the express agreement of the child, if possible;
  - b. The employment contract is approved by the Department of Labor and Employment subject to strict compliance with the following requirements in all instances:
    - i. The employer shall ensure the protection, health, safety, morals and normal development of the child;
    - ii. The employer shall institute measures to prevent the child's exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and

- iii. The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.

- 3. Any person of either sex, between 15 and 18 years of age can only be employed in non-hazardous work.

**4. What restrictions and prohibitions does the law impose upon the employment of children?**

**Hours of Work:**

- 1. Below fifteen (15) years - not more than twenty (20) hours a week but not more than four (4) hours per day.
  - No child below fifteen (15) years of age shall be allowed to work between 8pm to 6am.
- 2. Fifteen (15) but below eighteen (18) years of age - not more than eight (8) hours a day, and in no case beyond forty (40) hours a week.
  - No child fifteen (15) years of age but below eighteen (18) shall be allowed to work between 10pm to 6am of the following day.

**Prohibition Against Worst Forms of Child Labor**

No child shall be engaged in the worst forms of child labor. The phrase "worst forms of child labor" shall refer to any of the following:

- 1. All forms of slavery, as defined under the "Anti-trafficking in Persons Act of 2003", or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment of children for use in armed conflict; or
- 2. The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances; or
- 3. The use, procuring or offering of a child for illegal or illicit activities, including the production and trafficking of dangerous drugs and volatile substances prohibited under existing laws; or
- 4. Work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it:
  - a. Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or

- b. Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or
- c. Is performed underground, underwater or at dangerous heights; or
- d. Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or
- e. Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or
- f. Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations; or
- g. Is performed under particularly difficult conditions; or
- h. Exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, nematodes and other parasites; or
- i. Involves the manufacture or handling of explosives and other pyrotechnic products.

**Access to Education and Training for Working Children**

No child shall be deprived of formal or non-formal education. In all cases of employment of children, the employer shall provide a working child with access to at least primary and secondary education.

### Prohibition on the Employment of Children in Certain Advertisements

No child shall be employed as a model in any advertisement directly or indirectly promoting alcoholic beverages, intoxicating drinks, tobacco and its by-products, gambling or any form of violence or pornography.

### Prohibition Against Child Discrimination

No employer shall discriminate against any person in respect to terms and conditions of employment on account of his age."

### Employment Age of Domestic Workers

It is unlawful to employ any person below fifteen (15) years of age as a domestic worker.

## 5. What penalties apply for breach of laws relating to the employment of children?

### Section 16 of RA 7610, as amended by RA 9231

Sec. 16. Penal Provisions -

- a) Any employer who violates Sections 12, 12-A, and Section 14 of RA 7610, as amended, shall be penalized by imprisonment of six (6) months and one (1) day to six (6) years or a fine of not less than Fifty thousand pesos (P50,000.00) but not more than Three hundred thousand pesos (P300,000.00) or both at the discretion of the court.
- b) Any person who violates the provision of Section 12-D of RA 7610 or the employer of the subcontractor who employs, or the one who facilitates the employment of a child in hazardous work, shall suffer the penalty of a fine of not less than One hundred thousand pesos (P100,000.00) but not more than One million pesos (P1,000,000.00), or imprisonment of not less than twelve (12) years and one (1) day to twenty (20) years, or both such fine and imprisonment at the discretion of the court.
- c) Any person who violates Sections 12-D(1) and 12-D(2) of RA 7610 shall be prosecuted and penalized in accordance with the penalty provided for by R. A. 9208 otherwise known as the "Anti-trafficking in Persons Act of 2003": Provided, That Such penalty shall be imposed in its maximum period.
- d) Any person who violates Section 12-D (3) of RA 7610 shall be prosecuted and penalized in accordance with R.A. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002"; Provided, That such penalty shall be imposed in its maximum period.
- e) If a corporation commits any of the violations afore-cited, the board of directors/trustees and officers, which include the president, treasurer and secretary of the said corporation who participated in or knowingly allowed the violation, shall be penalized accordingly as provided for under this Section.
- f) Parents, biological or by legal fiction, and legal guardians found to be violating Sections 12, 12-A, 12-B and 12-C of RA 7610 shall pay a fine of not less than Ten thousand pesos (P10,000.00) but not more than One hundred thousand pesos (P100,000.00), or be required to render community service for not less than thirty (30) days but not more than one (1) year, or both such fine and community service at the discretion of the court: Provided, That the maximum length of community service shall be imposed on parents or legal guardians who have violated the provisions of this Act three (3) times; Provided, further, That in addition to the community service, the penalty of imprisonment of thirty (30) days but not more than one (1) year or both at the discretion of the court, shall be imposed on the parents or legal guardians who have violated the provisions of this Act more than three (3) times.
- g) The Secretary of Labor and Employment or his/her duly authorized representative may, after due notice and hearing, order the closure of any business firm or establishment found to have violated any of the provisions of this Act more than three (3) times. He/she shall likewise order the immediate closure of such firm or establishment if:
  - (1) The violation of any provision of this Act has resulted in the death, insanity or serious physical injury of a child employed in such establishment; or
  - (2) Such firm or establishment is engaged or employed in prostitution or in obscene or lewd shows.

- h) In case of such closure, the employer shall be required to pay the employee(s) the separation pay and other monetary benefits provided for by law.

**Section 40, RA 10361 (“Domestic Workers Act” or “Batas Kasambahay”)**

SEC. 40. Penalty. – Any violation of the provisions of this Act declared unlawful shall be punishable with a fine of not less than Ten thousand pesos (P10,000.00) but not more than Forty thousand pesos (P40,000.00) without prejudice to the filing of appropriate civil or criminal action by the aggrieved party.

**6. Are there gaps in the domestic laws compared to international legal standards such as those set out in the International Labour Organisation’s *Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*?**

Philippine laws are generally in line with international legal standards. The Philippines has ratified both the International Labour Organisation’s *Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*. Therefore, the said conventions have the force and effect of domestic law in the Philippines.

The Philippines also adheres to the following child protection frameworks that support the country’s international commitments:

- a. Philippine National Strategic Framework for Plan Development for Children (Child 21)
- b. National Plan of Action for Children
- c. Comprehensive Program on Child Protection
- d. National Framework to End Violence Against Children
- e. Philippine Program Against Child Labor Framework

**7. What government agencies are responsible for enforcement of laws regulating the employment of children?**

- a. Department of Labor and Employment
- b. Department of Social Welfare and Development
- c. Council for the Welfare of Children
- d. Department of Justice

**8. Who can report illegal child labour practices?**

Any person

**9. Who should illegal child labour practices first be reported to?**

- a. Barangay
- b. Local offices of the Department of Labor and Employment
- c. Local offices of the Department of Social Welfare and Development
- d. Prosecutor’s Office
- e. Police

**10. Are there any legal protections provided to persons who report illegal child labour practices?**

Generally, none.



## 11. In a criminal case in connection with child labour:

### 11.1 Which agency or agencies have the authority to file a case with the prosecutor?

In general, the authority to file a case with the prosecutor is not specifically vested with any agency. The offended party may, by himself or herself, even file a complaint directly with the prosecutor.

However, if the offended party requests for advice and/or assistance in relation to filing a criminal case for violence or abuse against children, the incident(s) may be reported to the following government agencies:

#### (a) Department of Social Welfare & Development

- a. Council for Welfare of Children (8461-6620; 8366-1910)
- b. Sectoral Program Division under Program Management Bureau (8931-8101 loc. 10051; 8931-9141 loc. 10018)
- c. Field office of DSWD where the violation occurred.

#### (b) National Bureau of Investigation

- a. Complaints Division (8526-6201)
- b. Violence Against Women and Children Division (8525-6028)

#### (c) Commission on Human Rights

- a. Child Rights Center (8294-8640)

#### (d) Philippine National Police

- a. Aleng Pulis (0919-7777-377; 0966-7255-961)
- b. Woman and Children Protection Center (8723-0401, loc. 6962)
- c. PNP Hotline (177)

#### (e) Department of Interior and Local Government

- a. Emergency Hotline (911)

#### (f) Department of Justice

- a. Inter-Agency Council Against Trafficking (8527-2363; 8525-2131; 8524-8939)
- b. Nearest Provincial, City or Regional Prosecutor

#### (g) Department of Labor and Employment

- a. DOLE Hotline (1349)
- b. Regional Office where the violations occurred

#### (h) Local Barangay Council for the Protection of Children

Masterlist of Barangay Officials is available through <https://www.dilg.gov.ph/barangay-officials-directory/masterlist>

### 11.2 In general, what evidence is required to build the case against the alleged perpetrators of a child labour case?

To prove prohibited child labour in a criminal prosecution, the following may serve as evidence:

- (a) Sworn complaint from the victim / parent / legal guardian of the victim / other parties allowed by law to file under the circumstances;
- (b) Testimonies of the victim and other witnesses; and
- (c) Evidence of the offended party's minority.

Depending on the circumstances involved, these may also serve as evidence for prosecution:

- (a) Medical examination results, if there is an allegation of violence / sexual abuse; and
- (b) The employment contract of the child, if available.

In some instances, especially those involving child trafficking, law enforcement authorities may also conduct entrapment operations in an attempt to catch the perpetrator right before, during, or right after the violation of child labour laws.

With regard to the evidence of the offended party's minority, the Supreme Court has outlined the guidelines in appreciating age -- either as an element of a crime or as a qualifying circumstance -- in the case of *People v. Sariago* (G.R. No. 203322, 24 February 2016):

- i. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

- ii. In the absence of a certificate of live birth, similar authentic documents, such as baptismal certificate and school records which show the date of birth of the victim, would suffice to prove age.
- iii. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
  - a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
  - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
  - c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
- iv. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

The Court further held that it is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

**11.3 If the prosecutor requires a child labour survivor to testify against alleged perpetrators, (e.g. parents or close relatives):**

The relevant rules for examination of child witnesses are the Rules on Evidence, as well as A.M. No. 004-07-SC or "Rule on Examination of a Child Witness," which is the more specific rule regarding testimony given by children.

**(a) Does the child have the right to refuse?**

A.M. No. 004-07-SC does not compel a child to be a witness or to testify in a criminal case.

Moreover, under the Rules on Evidence, a child may refuse to testify against his or her direct ascendants (e.g., a parent or grandparent). However, the exception to this rule is when the child's testimony is indispensable in a crime against that person or by one parent against the other.

Should the child testify, such testimony may increase the probability of conviction. In a long line of cases, including *People v. Alberca* (G.R. No. 217459, 7 June 2017) and *Ricalde v. People* (G.R. No. 211002, 31 January 2015), the Supreme Court ruled that the testimony of the child is given full weight and credibility. To protect the best interests of the child, full confidentiality is observed, even up to the level of the Supreme Court.

**(b) Can the child give evidence via video link (eg: from another room)?**

Yes, under A.M. No. 004-07-SC, the child may testify via video link from another room if there is a substantial likelihood that the child would suffer serious emotional trauma from testifying in the presence of the accused, his counsel or the prosecutor.

**(c) Can the child's evidence be admitted into evidence without a court appearance?**

Yes, under A.M. No. 004-07-SC, the child may give a videotaped deposition without having to make a court appearance. The Court may admit the videotaped deposition into evidence if the child is substantially likely to suffer serious emotional trauma from testifying in open court.

The Court may also admit as evidence videotaped and audiotaped in-depth investigative or disclosure interviews in child abuse cases if the child witness is unable to testify, under certain other conditions, including the availability at trial of the person who interviewed the child.

**(d) What other legal protections are available to the child?**

Under A.M. No. 004-07-SC, the following, among others, may be made available to the child witness:

- (a) A guardian *ad litem*;
- (b) An interpreter;
- (c) A facilitator, who will pose the questions to the child;
- (d) Support persons;
- (e) A waiting area, separate from other persons;

- (f) A comfortable courtroom environment;
  - (g) Testimonial aids, such as dolls, puppets, or mannequins for assistance;
  - (h) An emotional security item;
  - (i) The exclusion of the public;
  - (j) Screens, one-way mirrors, and other devices to shield the child from the accused; and
- Court-issued protective orders, including but not limited to confidentiality and privacy orders.

**12. What legal protections or remedies are available to children who are the victims of illegal labour practices?**

The protections are found in (a) Presidential Decree No. 442, as amended or the Labor Code of the Philippines; (b) Republic Act No. 7658, which prohibits the employment of children below 15 year of age; (c) Republic Act No. 7610, which

protects children from abuse, exploitation, and discrimination and penalizes the same; and (d) Republic Act No. 9231, which eliminates the worst forms of child labour.

**12.1 Who can act as the child's guardian (or equivalent) in pursuing remedies?**

Aside from the child's parent or legal guardian, the law allows teachers, or persons having care or custody of the child to take action to protect children victims. The State may also intervene on behalf of the child, should the mentioned individuals or entities fail to do so.

Executive Order No. 209 or the Family Code of the Philippines also allows the child's actual custodian over 21 years of age to exercise substitute parental authority over a child and to represent the child in all matters affecting his/her interests.

**12.2 In circumstances where World Vision is providing shelter and other support to a survivor of child labour:**

- (a) Can World Vision apply to be the guardian of the child for the purpose of pursuing those remedies?

Yes. According to A.M. No. 03-02-05-SC on Rules on Guardianship of Minors, any other person or institution, who in the sound discretion of the

court would serve the best interests of the minor, may be appointed as the guardian of the person, property, or both of a minor.

- (b) What criteria is World Vision required to satisfy and how does it apply to be the guardian?

Guardianship of Minors, in appointing a guardian, the court shall consider the following:

- (a) moral character;
- (b) physical, mental and psychological condition;
- (c) financial status;
- (d) relationship of trust with the minor;

- (e) availability to exercise the powers and duties of a guardian for the full period of the guardianship;
- (f) lack of conflict of interest with the minor; and ability to manage the property of the minor.

(c) Can World Vision appoint a lawyer to assist the child?

Yes. The Philippine Rules on Criminal Procedure allow the private offended party in a criminal case to intervene by counsel in the prosecution of the offense

12.3 Can these other remedies be pursued at the same time as a criminal case?

Yes. There is no provision under Philippine law and Rules that prohibits pursuing the Petition for Guardianship of the Child parallel to any criminal case that may be pending.

12.4 Do these remedies provide for an award of compensation to the child? If so, how is the amount of compensation determined?

Yes. Institution of criminal proceedings in the Philippines carry with it the institution of civil action for the recovery of civil liability arising from the offense charged. An independent civil action may likewise be instituted, but damages may not be recovered twice for the same act or omission charged in the criminal action.

In an independent civil action, compensation is usually in the form of: (a) actual damages

or the damages actually suffered by the child and sufficiently proved in the proceedings; (b) moral damages or the damages awarded due to the physical suffering, mental anguish, freight, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury suffered by the child; and (c) exemplary damages by way of example or correction for the public good.

13. Which organisations provide pro bono legal services to assist survivors of child labour?

There are a number of government and private organizations who are able to provide pro bono legal services for child victims of sexual violence. Some of these are:

- (a) Integrated Bar of the Philippines;
- (b) Ateneo Law School Legal Services Center;
- (c) University of the Philippines Office of Legal Aid;

- (d) San Beda Legal Aid Bureau;
- (e) Free Legal Assistance Group;
- (f) Public Attorney's Office; and
- (g) Department of Social Welfare and Development.

Some law firms also provide *pro bono* legal services to child victims.

# SINGAPORE

## 1. What is the legal minimum working age under domestic law?

The legal minimum working age in Singapore is: (a) 13 years (for light work in a non-industrial undertaking or in an industrial undertaking if working with family members); and (b) 15 years (for work in an industrial undertaking), subject to certain conditions. Please refer to the responses under Question 3 and Question 4 for details.

## 2. Is there domestic legislation that regulates the employment of children?

Part VIII of the Employment Act 1968 and provisions of the Employment (Children and Young Persons) Regulations (Rev. Ed 2000) regulate the employment of children and young persons in Singapore.

## 3. Under what circumstances does the law allow a child to work?

Children and young persons aged 13 years to less than 16 years may be employed but this is subject to certain restrictions on the type of work that such children and young persons may perform. The circumstances under which a child may work include:

1. A child aged 13 to less than 15 may engage in light work in a non-industrial setting. For instance, as a server/cleaner in a café
2. A child aged 13 to less than 15 may work in an industrial setting in which only members of the same family are employed.
3. Young persons aged 15 to less than 16 may

work in an industrial environment only if the employer has informed the Commissioner of Labour within 30 days of his employment, and submitted a medical certificate certifying his fitness for work.

An industrial setting/environment includes work relating to:

- the extraction of minerals from the earth (e.g., mines, quarries);
- manufacturing;
- construction; or
- transport for passengers or goods.

## 4. What restrictions and prohibitions does the law impose upon the employment of children?

The law prohibits the employment of any child who is below the age of 13 years in any occupation.

In addition, employment of any child or young persons under 16 in the following scenarios is prohibited:

- as a workman during the night or any part thereof.
- in any occupation or in any place or under working conditions injurious or likely to be injurious to the health of that child or young person.

- in any service involving management of, or attendance on or proximity to any live electrical apparatus not effectively insulated.
- in any underground work.

A child or young person could engage in some work subject to the following conditions/restrictions:

- No child, except a child employed under an approved apprenticeship scheme, shall be employed as a workman on any vessel unless the vessel is under the personal charge of the parent of the child.

- No child or young person shall be employed in any service involving management of, or attendance on machinery in motion without the written approval of the Commissioner, and the Commissioner shall not grant his approval unless he is satisfied that the child or young person is employed under a scheme of training approved by the Ministry of Education or the Institute of Technical Education, Singapore.

There are also restrictions in relation to the employment of children or young persons in terms of the hours of work as follows:

- no child shall be employed as a workman for (a) for more than 3 hours without a break of 30 minutes; or (b) more than 6 hours in any day.
- no child or young person shall, without the

written permission of the Commissioner, be employed as a workman in an industrial undertaking for (a) more than 4 hours without a break of 30 minutes; or (b) more than 7 hours in any one day.

- Children under 15 who are still attending school may only work 6 hours per day. Young persons between 15 to 16 who are still attending school may only work 7 hours per day. The exception is where the child or young person is employed upon work carried on in any Government or other technical school, or under any approved apprenticeship scheme.
- No child or young person shall, without the written permission of the Commissioner, be employed as a workman on a rest day.

**5. What penalties apply for breach of laws relating to the employment of children?**

Any person who employs a child or young person in contravention of the provisions of the Employment Act 1968 or any regulations thereunder or any parent / guardian who knowingly or negligently permits or allows such employment shall be guilty of an offence and is liable

- to a fine not exceeding SGD 5,000; and/or;
- to imprisonment not exceeding 2 years.

Where a child or young person suffers serious injury or death resulting from the breach of the Employment Act 1968 or any regulations thereunder, the offender shall be punished with a fine of SGD 5,000 and shall also be liable to imprisonment not exceeding 2 years.

**6. Are there gaps in the domestic laws compared to international legal standards such as those set out in the International Labour Organisation's *Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*?**

Singapore laws relating to the employment of children are broadly consistent with international standards.

For example, the legal minimum working age, the number of working hours, and the permissible type of employment under Singapore laws

are consistent with the standards set out in the *Minimum Age Convention 1973*. Singapore's Children and Young Persons Act 1993 also sets out laws against the sexual exploitation of and trafficking in children and young persons, consistent with the standards set out in the *Worst Forms of Child Labour Convention 1999*.

**7. What government agencies are responsible for enforcement of laws regulating the employment of children?**

The Ministry of Manpower is primarily responsible for enforcing employment laws in Singapore, including that involving children.

However, depending on the nature of the laws being enforced, other government agencies such

as the Ministry of Social and Family Development (for offences under the Children and Young Persons Act 1993) and the Singapore Police Force may also be involved.

## 8. Who can report illegal child labour practices?

Anyone can report illegal child labour practices.

## 9. Who should illegal child labour practices first be reported to?

Illegal child labour practices should first be reported to the Ministry of Manpower as it is the government agency primarily responsible for enforcing employment laws in Singapore, including that involving children.

Illegal child labour practices may also be reported to the Director-General of Social Welfare, an appointed protector under the Children and Young Persons Act 1993, or a police officer.

## 10. Are there any legal protections provided to persons who report illegal child labour practices?

A person who reports illegal child labour practices to the Ministry of Manpower may request to remain anonymous to the party whom the report is made against. If this is requested, the reporter's identity and information given will be kept confidential. However, the reporter will still need to disclose his or her identity to the Ministry of Manpower.

Persons who notify the Director-General of Social Welfare, a protector appointed under the Children and Young Persons Act 1993, or a police officer of a child in need of care or protection are generally protected from civil or criminal liability and from breaching any code of professional etiquette or ethics. Further, witnesses in proceedings cannot be compelled to disclose the identity of such persons or be compelled to produce any documents that may lead to their identification.

## 11. In a criminal case in connection with child labour:

### 11.1 Which agency or agencies have the authority to file a case with the prosecutor?

Law enforcement agencies such as the Singapore Police Force, or Government departments and agencies.

The Legal Services Division of the Ministry of Manpower (which conducts prosecutions) and the Child Protective Service (which conducts investigations and refers the case to the PP as necessary).

### 11.2 In general, what evidence is required to build the case against the alleged perpetrators of a child labour case?

There have been no reported decisions in Singapore till date that deal with child labour. However, as with any criminal proceeding in Singapore, the Prosecution would have to satisfy the court that the alleged perpetrators have committed the relevant offences beyond reasonable doubt.

In terms of evidence, photographs, videos, correspondence (e.g. emails, text messages, WhatsApp messages etc.) that serve as proof of the relevant offences would be required. Witnesses (including the victim(s)) can also give sworn evidence in court against the alleged perpetrators.

### 11.3 If the prosecutor requires a child labour survivor to testify against alleged perpetrators, (e.g. parents or close relatives):

#### (a) Does the child have the right to refuse?

No. The child may not refuse a subpoena or a summons to a witness.

- The refusal of a court order may result in a

contempt of court charges being pressed against the person who refuses, per s 4 of the Administration of Justice (Protection) Act 2016.

#### (b) Can the child give evidence via video link (eg: from another room)?

Yes.

- Section 281(1) of the Criminal Procedure Code allows the evidence of a witness to be given through a live video or live television link if:
  - o Per s 281(1)(a) CPC, the witness is below 18 years of age; or
  - o Per s 281(2)(b) CPC, the proceedings is in respect of a child abuse offence.

A child abuse offence is defined in s 2(1) of the CPC as including the offence of ill-treatment of a child in s 6(1) of the CYPA. Ill-treatment is further defined in s 6(3)(b) as unreasonably causing the child to do any act which endangers or is likely to endanger their safety or cause them unnecessary physical pain, suffering or injury. Child Labour likely falls into this category.

#### (c) Can the child's evidence be admitted into evidence without a court appearance?

No.

- Per s 230(e) of the CPC, the prosecutor must examine its witnesses, each of whom may then be cross-examined by the accused and every co-accused.

#### (d) What other legal protections are available to the child?

Where the proceedings are in respect of a child abuse offence, the court must order that the evidence of the witness to be given in private.

If the child elects to give evidence in an open and public court, the court may make an order allowing the child to give evidence while prevented by a shielding measure from seeing the accused.

## 12. What legal protections or remedies are available to children who are the victims of illegal labour practices?

An employer carrying out unlawful child labour practices may face both criminal and civil penalties. Please refer to the responses under Questions 5 and 12(b) for details.

### 12.1 Who can act as the child's guardian (or equivalent) in pursuing remedies?

The child must make his or her claim through a Litigation Representative. This Litigation Representative cannot be a minor, and must himself/herself have the legal capacity to commence proceedings. Further, it is a requirement for the litigation representative to act by a solicitor.

The following persons can generally be Litigation Representatives, subject to the Court's discretion:

- Parent(s) and guardian(s) of the child; or
- An applicant who has an interest in the child's well-being (with the approval of the Director General of Social Welfare).



## 12.2 In circumstances where World Vision is providing shelter and other support to a survivor of child labour:

### (a) Can World Vision apply to be the guardian of the child for the purpose of pursuing those remedies?

A representative of World Vision can apply to be the child's litigation representative in pursuing those remedies in Singapore.

### (b) What criteria is World Vision required to satisfy and how does it apply to be the guardian?

To apply to be the child's litigation representative, World Vision will need to:

- Show that it does not have an interest in the proceedings that is adverse to that of the child in the proceedings.

To apply to be a guardian, World Vision would have to:

- Show that the child's parents have passed away; or
- Show that it is necessary for the protection of the child.

If it can show either of the above, World Vision can make a Guardianship Application to the Court.

### (c) Can World Vision appoint a lawyer to assist the child?

Yes. Where World Vision act as the child's litigation representative, it is in fact a requirement for World Vision to act by a solicitor.

## 12.3 Can these other remedies be pursued at the same time as a criminal case?

Yes. The pursuit of civil remedies runs independently of any concurrent criminal proceedings.

## 12.4 Do these remedies provide for an award of compensation to the child? If so, how is the amount of compensation determined?

Civil remedies may include an award of compensation to the child if the latter has suffered loss that is quantifiable in terms of damages. Some of the more common types of claims in the employment setting include:

- Unpaid wages - the amount of compensation will be determined by the employment contract between the child and the employer (if any) or on a quantum meruit, i.e., a reasonable sum based on the work done by the child.

- Workplace injuries - such claims may arise if the injuries suffered arose out of the employer's negligence or where the employer's statutory liability for compensation under the Work Injury Compensation Act 2019 is triggered. The amount of compensation will be determined by factors such as the medical costs incurred and loss of future earnings resulting from the injury (if any).

## 13. Which organisations provide pro bono legal services to assist survivors of child labour?

There are a number of organisation providing pro bono legal services to assist survivors of child labour.

The Law Society provides such assistance though the Family Justice Support Scheme to eligible applicants. The Legal Aid Bureau and the Community Justice Centre also provide pro bono legal services to eligible applicants.

# TAIWAN

## 1. What is the legal minimum working age under domestic law?

Legal minimum working age: 15 years old.<sup>1</sup>

## 2. Is there domestic legislation that regulates the employment of children?

Yes, Chapter V of the Labour Standards Act (LSA).<sup>2</sup>

## 3. Under what circumstances does the law allow a child to work?

- A. LSA allows a child under the age of 15 to work where –
- (i) the child has graduated from junior high school, or the nature and environment of the work have been determined and authorised by the competent authority, indicating no harm will result to the child’s mental and physical health; and
  - (ii) the work to be performed by the child is not potentially dangerous or hazardous in nature.<sup>3</sup>
- B. LSA allows a child from the age of 15 but less than the age of 16 years old to work where –
- (i) the work to do by the child is not potentially dangerous or hazardous in nature;
  - (ii) the child’s daily working hours does not exceed 8 hours, the child’s weekly working hours does not exceed 40 hours, and the child does not work on regulated day off; and
  - (iii) the child does not work between 8 pm and 6 am the next day.<sup>4</sup>
- C. LSA allows a person from the age of 16 years but less than the age of 18 years to only do work that is not potentially dangerous or hazardous in nature.

## 4. What restrictions and prohibitions does the law impose upon the employment of children?

- Age-related prohibition: Minimum legal age of 15 years.<sup>5</sup>
- Compulsory education level restriction: Restricted from employing a child who has not completed compulsory education level, i.e. graduation from junior high school.<sup>6</sup>

<sup>1</sup> Article 45 of Taiwan’s Labor Standards Act (last amended 2020-06-10). Source: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>

<sup>2</sup> Sources: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001> and <https://english.mol.gov.tw/21004/21015/21016/21035/21037/21233/post>

<sup>3</sup> Articles 44 and 45 of Taiwan’s Labor Standards Act (last amended 2020-06-10). Source: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>

<sup>4</sup> Articles 44, 45, 47 and 48 of Taiwan’s Labor Standards Act (last amended 2020-06-10). Source: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>

<sup>5</sup> Article 45 of Taiwan’s Labor Standards Act (last amended 2020-06-10). Source: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>

<sup>6</sup> Article 45 of Taiwan’s Labor Standards Act (last amended 2020-06-10). Source: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>

- Prohibition against work that may affect child's well-being: Prohibition against any work which may harm child's mental and physical health, or any potentially dangerous or hazardous work.<sup>7</sup> This includes any works that are against public order and boni mores, inside tunnels and in restricted spaces; and any work evaluated by a medical doctor to be beyond the burden of a child's physical and mental capacity.<sup>8</sup>
- Duration of work restrictions: Not more than 8 hours daily and 40 hours weekly. No working permitted between 8 pm and 6 am next day, and on regulated off days.<sup>9</sup> For every 2 hours of continuous work, a child must have at least 15 minutes break.<sup>10</sup> An employer also has to set maximum working hours and working days for a child's work during school semesters and school breaks according to the child's age.<sup>11</sup>
- Application process: There appears to be an application process to regional competent labour authorities that have to be completed before employing a child. Approved employment period is a maximum of 1 year per application.<sup>12</sup>
- Record keeping requirement: To employ a person less than the age of 18 years old, employer must keep letters of consent from legal guardians and age certificates of such person on file.<sup>13</sup>

#### 5. What penalties apply for breach of laws relating to the employment of children?

The employer who violates one of the regulations described in Paragraph 2 of Article 44, Paragraph 1 of Articles 45, Article 47, Article 48 of the LSA (as introduced above) will be sentenced to a maximum of 6 months imprisonment, detained, or fined a concurrent maximum amount of NT\$300,000<sup>14</sup>.

The employer who hires the employee less than eighteen years old does not obtain the letters of consent from the legal guardians and age certificates of the employee shall be subject to

fining between NT\$20,000 and NT\$300,000. The competent authority may increase the penalty by an additional 50% above the maximum amount of the fine<sup>15</sup>. In addition to the punitive measures stipulated in Article 77, 79 and 79-1 of the LSA (as introduced above), for the employer who is fined for violations of the LSA, the name of the employer legal entity or its owner(s), the person(s) in charge, the date of the disposition, the violation of the provisions and the amount of the disposition will be made public<sup>16</sup>.

#### 6. Are there gaps in the domestic laws compared to international legal standards such as those set out in the International Labour Organisation's *Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*?

No, Taiwan's laws prohibiting child labour and the applicable exceptions are generally in line with international legal standards such as those set out in the International Labour Organisation's *Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*.

7 Articles 44 and 45 of Taiwan's Labor Standards Act (last amended 2020-06-10). Source: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>

8 Source: <https://english.mol.gov.tw/21004/21015/21016/21035/21037/21233/post>

9 Articles 47 and 48 of Taiwan's Labor Standards Act (last amended 2020-06-10). Source: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>

10 Source: <https://english.mol.gov.tw/21004/21015/21016/21035/21037/21233/post>

11 Source: <https://english.mol.gov.tw/21004/21015/21016/21035/21037/21233/post>

12 Source: <https://english.mol.gov.tw/21004/21015/21016/21035/21037/21233/post>

13 Article 46 of Taiwan's Labor Standards Act (last amended 2020-06-10). Source: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001>

14 Article 77 and 79-1 of the Labor Standards Act.

15 Paragraph 3 and 4 of the Article 79 of the Labor Standards Act.

16 Article 80-1 of the Labor Standards Act.

**7. What government agencies are responsible for enforcement of laws regulating the employment of children?**

The competent authority shall be the Ministry of Labor of Taiwan at the central level, the municipal government at the municipal level, and the county (city) government at the county (city) level<sup>17</sup>.

**8. Who can report illegal child labour practices?**

Any person who is aware of the illegal child labour practices can report to the competent authority.

**9. Who should illegal child labour practices first be reported to?**

Either Ministry of Labor of Taiwan or the Labor Affairs Bureau of municipal or county (city) government<sup>18</sup>. For criminal offense, such offense can be reported to any police or prosecutor office.

**10. Are there any legal protections provided to persons who report illegal child labour practices?**

The competent authority shall keep confidential for the complaints and petitions cases<sup>19</sup>.

If any government employees violate the confidentiality, in addition to being held liable to criminal laws and administratively responsible,

they shall be liable for the damages to the persons who report illegal child labour practices, and the employer may not take any unfavourable measures against the employee who report illegal child labour practices<sup>20</sup>.

**11. In a criminal case in connection with child labour:**

**11.1 Which agency or agencies have the authority to file a case with the prosecutor?**

Generally speaking, anyone who discovers a crime can file a report with the prosecutor.<sup>21</sup>

In common situation, this kind of case should be

more easily discovered during labour inspection conducted by local Labour Bureau, which can be a routine inspection or triggered by anyone's report/complaint.

**11.2 In general, what evidence is required to build the case against the alleged perpetrators of a child labour case?**

To build a case in the crime against the alleged perpetrators of a child labour case, the prosecutor will generally need to prove that: (1) the real age of victim; (2) the fact that the child was working; (3) whether the work was agreed by victim's custodian; (4) whether the work was agreed by

the victim's school; (5) whether the work was permitted in advance by the local Labour Bureau; (6) whether there was any breach of specially regulated working hour; (7) whether the work was dangerous and may cause physical or mental harm to the victim, etc.

17 Article 4 of the Labor Standards Act.

18 Article 4 of the Labor Standards Act.

19 Article 74 of the Labor Standards Act and Article 6 of the Confidentiality for the cases reported under the Labor Standards Act (勞動基準法檢舉案件保密及處理辦法)

20 Paragraph 2, 3, 5 and 6 of Article 74 of the Labor Standards Act and Article 28 of Personal Data Protection Act.

21 Article 240 of the Code of Criminal Procedure

**11.3 If the prosecutor requires a child labour survivor to testify against alleged perpetrators, (e.g. parents or close relatives):**  
**(a) Does the child have the right to refuse?**

Yes, when the specific case of child labour involves litigation proceedings, the victim could refuse to testify against the alleged perpetrators if they are/were the victim's parents or within certain closeness of kinship.<sup>22</sup>

**(b) Can the child give evidence via video link (eg: from another room)?**

Yes, after taking into account the circumstances of the case and the physical and mental conditions of the victim, the prosecutor office or the court may, upon the petition of the victim or on its own initiative, apply appropriate isolation facilities such as screens, to prevent the victim from being seen by the accused or a third party.<sup>23</sup>

**(c) Can the child's evidence be admitted into evidence without a court appearance?**

Yes, such testimony can be provided and admitted without a court appearance if certain conditions are satisfied.

In general, any person's evidence, including that of a child, will not be admitted into evidence if he/she does not make a court appearance.<sup>24</sup>

However, if the child's evidence falls under one of the following situations, it can be admitted into evidence even if he/she does not appear at the court:

- The child's evidence is given to a judge outside of the trial<sup>25</sup>, or it is given to a prosecutor during the criminal investigation and the evidence is not obviously unaccountable.<sup>26</sup>
- The child's evidence is given to a public prosecuting affairs official, judicial police officer, or judicial policeman, and it is proved to be highly accountable and necessary to prove the facts of a crime, when the child is in the following circumstances:<sup>27</sup>
  - death
  - lost his/her memory or is unable to give evidence for a trial due to disability
  - failure to appear or to be summoned on a trial because he/she is currently in a foreign country or his/her location is unknown
  - refusal to give evidence in a trial without justifiable reasons
- The child's evidence is in the form of a written document and it is proved accountable.<sup>28</sup>

<sup>22</sup> Article 180 and 181 of Code of Criminal Procedure.

<sup>23</sup> Article 248-3 and Article 271-2 of Code of Criminal Procedure.

<sup>24</sup> Article 159 I of Code of Criminal Procedure: Unless otherwise provided by law, oral or written statements made out of trial by a person other than the accused, shall not be admitted as evidence.

<sup>25</sup> Article 159-1 I of Code of Criminal Procedure: Statements made out of trial by a person other than the accused to the judge shall be admitted as evidence

<sup>26</sup> Article 159-1 II of Code of Criminal Procedure: Statements made in the investigation stage by a person other than the accused to the public prosecutor, shall be admitted as evidence unless it appears to be obviously unreliable.

<sup>27</sup> Article 159-3 of Code of Criminal Procedure: Statements made in the investigation stage by a person other than the accused to the public prosecuting affairs official, judicial police officer, or judicial policeman may be admitted as evidence, if one of the following circumstances exists in trial and after proving the existence of special circumstances indicating its reliability and its necessity in proving the facts of criminal offense: (1) The person died; (2) The person has lost his memory or has been unable to make a statement due to physical or emotional impairment; (3) The person cannot be summoned or has failed to respond to the summons due to the fact that he is staying in a foreign country or his whereabouts are unknown; (4) The person has refused to testify in court without justified reason.

<sup>28</sup> Item 3, Article 159-4 of Code of Criminal Procedure: In addition to the circumstances specified in the preceding three articles, the following documents may also be admitted as evidence: (3) Documents made in other reliable circumstances in addition to the special circumstances specified in the preceding two items.

- The parties to a trial agree to admit the child's evidence and the judge considers this appropriate.<sup>29</sup> Such consent will also be considered granted if the parties of a trial has

knowledge that the testimony is provided without a court appearance but does not object to the admissibility of such evidence.<sup>30</sup>

(d) What other legal protections are available to the child?

Not found.

12. What legal protections or remedies are available to children who are the victims of illegal labour practices?

1. Civil tort damages:

If any right or interest of the victims is damaged, they may claim civil tort damages from the person who committed the illegal labour practices.

Article 47 (restrictions on working hours of child labourers); and Article 48 (child labourers are prohibited from working at night) of the LSA. If an employer violates the above provisions, he/she shall be punished by imprisonment of up to 6 months, detention, or a fine of up to NT\$ 300,000, in accordance with Article 77 and Article 79-1 of the LSA.

2. Criminal complaint:

If an employer employs child labour in violation of the LSA, it will constitute a criminal violation. The relevant provisions include Articles 44 and 45 (regulations and exceptions regarding the age of child labourers, child labourers are not allowed to engage in dangerous or hazardous work); Article 46 (employers should have a legal representative's consent and proof of age);

3. Administrative complaint:

The victims may file a complaint with the labour department of the municipal government, so that the labour department may conduct a labour inspection of the employer and impose subsequent fines or other penalties if there is any violation.

12.1 Who can act as the child's guardian (or equivalent) in pursuing remedies?

1. The child's statutory agents (the child's parents).

For the statutory guardian, the candidates for statutory guardian include the child's grandparents and siblings.

2. The child's statutory guardian or appointed guardian.

Where both parents cannot exercise the rights nor assume the duties in regard to a minor child, or where the parents die without appointing any guardian by a will, or the appointed guardian refuses to be sworn in, the court will determine the guardian of the child by the statutory guardian and the appointed guardian in order.

For the appointed guardian, the court may, upon the application of the child, any relative within the fourth degree of kinship, the public prosecutor, competent authority, or the other interested person, for the best interests of the minor child, appoint the child's elder collateral relative by blood within the third degree of relationship, competent authority, the social welfare institution, or any other proper person as the appointed guardian.<sup>31</sup>

<sup>29</sup> Article 159-5 I of Code of Criminal Procedure: Statements made out of trial by a person other than the accused, although not consistent with the provisions of the preceding four articles, may be admitted as evidence, if the party consents to its admissibility as evidence in the trial stage and the court believes its admissibility is proper after considering the circumstances under which the oral or written statement was made.

<sup>30</sup> Article 159-5 II of Code of Criminal Procedure: The party, agent, or defense attorney shall be deemed to have granted his consent specified in the preceding section, if during the investigation of evidence in the court he has knowledge of the existence of the circumstances specified in section I of Article 159 as to the inadmissibility of the evidence and fails to object to its admission before the conclusion of oral argument.

<sup>31</sup> Article 1094 and Article 1094-1 of Civil Code.

## 12.2 In circumstances where World Vision is providing shelter and other support to a survivor of child labour:

### (a) Can World Vision apply to be the guardian of the child for the purpose of pursuing those remedies?

Yes, World Vision can apply to be the guardian of the child, and as long as World Vision is appointed by the court to serve as the child's appointed guardian, the World Vision may pursue those remedies on behalf of the child.

However, the courts are less likely to select a social welfare agency as the child's appointed guardian than the child's relatives because the courts tend to consider relatives to be more suitable to be the guardian and because the guardian will also have to handle the minor's property.

### (b) What criteria is World Vision required to satisfy and how does it apply to be the guardian?

Under the applicable laws, the courts must consider the "best interests of the minor child" as the goal in appointing a guardian.<sup>32</sup>

According to Taiwan court precedents, the so-called "best interests of the minor child"

is determined by considering the relationship between the person applying for guardianship and the child, the age of the child, the child's current living environment, and the willingness of other persons eligible to serve as guardians.

### (c) Can World Vision appoint a lawyer to assist the child?

If World Vision is appointed by the courts as the child's guardian, yes.

Otherwise, World Vision can only assist a child's statutory agent or guardian in appointing a lawyer to assist the child.

## 12.3 Can these other remedies be pursued at the same time as a criminal case?

Yes, a civil claim for damages or an administrative complaint can be pursued in conjunction with a related criminal case.

## 12.4 Do these remedies provide for an award of compensation to the child? If so, how is the amount of compensation determined?

Yes, a civil claim for damages provides for an award of compensation to the child.

The amount of compensation will be determined by the courts for the child's tangible damage and intangible damage separately.

For tangible damages, the court will specifically calculate the actual loss.

For intangible damages, the court will consider the subjective feelings of the child, including the identity, status, occupation, financial status, education, and degree of suffering of the child, the relationship with the family, and all other factors.

## 13. Which organisations provide pro bono legal services to assist survivors of child labour?

1. Legal Aid Foundation
2. Workforce Development Agency, Ministry of Labour (hotline: 1955)
3. Labour department of each county and municipal government

<sup>32</sup> Article 1094 and Article 1094-1 of Civil Code.

# THAILAND

## 1. What is the legal minimum working age under domestic law?

According to section 44 of the Labour Protection Act B.E. 2541 (1998) (the "**LPA**"), an employer shall not employ a child under 15 years of age as an employee.

The prohibition also varies for specific works e.g. the prohibition to hire a child to work on board a ship is specified for a child who is under 16 years of age or under 18 years of age for a child to work on a sea fishery boat.

## 2. Is there domestic legislation that regulates the employment of children?

Yes, Chapter 4 of the LPA regulates the employment of children.

## 3. Under what circumstances does the law allow a child to work?

Under the LPA, for a child under 15 years of age, their employment is totally prohibited.

However, under the LPA an employer may hire

a child who is at least 15 years of age but under 18 years of age to work, subject to certain restrictions and requirements which we described further in 4 below.

## 4. What restrictions and prohibitions does the law impose upon the employment of children?

Under the LPA, for employing a child at least 15 years of age but under 18 years of age, the employer shall:

- (1) notify a labour inspector regarding the employment of a child employee within 15 days of the child employee commencing work (per Section 45 of the LPA);
- (2) prepare a record of employment conditions in case of a change taken place to be kept at the place of business or at the office of the employer available for inspection by a labour inspector during working hours (per Section 45 of the LPA);
- (3) notify a labour inspector regarding the termination of employment of a child employee within seven days from the date of child employee being dismissed (per Section 45 of the LPA);
- (4) provide a rest period for a child employee of not less than one consecutive hour after the employee has worked for not more than four

hours; and during the period of four hours, the child employee shall have rest periods as fixed by the employer (per Section 46 of the LPA);

- (5) not require a child employee under 18 years of age to work between 22.00 hours and 6.00 hours unless written permission is granted by the Director General or a person entrusted by the Director-General. The employer may hire a child employee to be a performer in a film, theatre or other similar acts during said period but the employer shall provide the child employee with proper rest periods (per Section 47 of the LPA);
- (6) not require a child employee under 18 years of age to work overtime or to work on a holiday (per Section 48 of the LPA);
- (7) not employ or hire for the following works (per Section 49 of the LPA):
  - metal smelting, blowing, casting or rolling;



- metal pressing;
  - work involving heat, cold, vibration, noise and light of an abnormal level which may be hazardous as prescribed in the Ministerial Regulations;
  - work involving hazardous chemical substances as prescribed in the Ministerial Regulations;
  - work involving poisonous microorganisms which may be a virus, bacterium, fungus, or any other germs as prescribed in the Ministerial Regulations;
  - work involving poisonous substances, explosive or inflammable material, other than work in a fuel service station as prescribed in the Ministerial Regulations;
  - driving or controlling a forklift or a crane as prescribed in the Ministerial Regulations;
  - work using an electric or motor saw;
  - work that must be done underground, underwater, in a cave, tunnel or mountain shaft;
  - work involving radioactivity as prescribed in the Ministerial Regulations;
  - cleaning of machinery or engines while in operation;
  - work which must be done on scaffolding ten metres or more above the ground; or
  - other work as prescribed in the Ministerial Regulations. (i.e. loading or unloading cargos in the sea liner, except for ship cleaning or stock arrangement which the employer is allowed to hire a child who is 16 years of age or above);
- (8) not employ or hire in the following places (per Section 50 of the LPA):
    - slaughterhouse;
    - a gambling place;
    - a recreation place in accordance with the law governing recreation places; or
    - any other place as prescribed in the Ministerial Regulations (i.e. Factory operating business concerning aquatic animals according to the Factory law, and place operating business concerning the processing of aquatic animals according to the Emergency Decree on Fisheries);
  - (9) not demand or receive a security deposit for any purpose from a child employee (per Section 51 of the LPA);
  - (10) pay wages of the child employee to any other person (per Section 51 of the LPA); and
  - (11) a child employee shall be entitled to take leave for attending meetings or seminars, obtaining education or training; or leave for another matter, which is arranged by an academic institute, or a government or private agency approved by the Director-General. Provided that the child employee shall notify the Employer in advance stating clearly the reason for the leave and presenting relevant evidence (if any), and the Employer shall pay wages to the child employee equivalent to the wages of a working day throughout the period of leave, but not exceeding 30 days per year (per Section 52 of the LPA).

#### 5. What penalties apply for breach of laws relating to the employment of children?

- (1) Employer who violates Section 44 of the LPA shall be subject to imprisonment of not more than two years, or a fine between THB 400,000 – 800,000 per prohibited employee, or both (per Section 148/1 of the LPA).
- (2) Employer who violates Section 45 of the LPA, shall be subject to fine not exceeding THB 20,000 (per Section 146 of the LPA).
- (3) Employer who violates Sections 46, 47, 48 or 51 of the LPA, shall be subject to imprisonment of not more than 6 months, or a fine not exceeding one THB 100,000, or both (per Section 144 of the LPA).
- (4) Employer who violates Section 47 or 48 of the LPA causing physical or mental injury or death to a child employee shall be subject to imprisonment of not more than 1 year, or fine not exceeding THB 200,000, or both (per Section 144 of the LPA).
- (5) Employer who violates Section 49 or 50 of the LPA shall be subject to imprisonment of not more than 2 years, or a fine between THB

400,000 – 800,000 per prohibited employee, or both (per Section 148/2 of the LPA).

- (6) If the violation of Section 49 or 50 of the LPA causes physical or mental injury or death to a child employee, the employer shall be subject to imprisonment of not more than 4 years,

or a fine between THB 800,000 – 2,000,000 per prohibited employee, or both (per Section 148/2 of the LPA).

- (7) Employer who violates Section 52 of the LPA, shall be subject to a fine not exceeding THB 10,000 (per Section 149 of the LPA).

**6. Are there gaps in the domestic laws compared to international legal standards such as those set out in the International Labour Organisation's *Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*?**

There is no gap between Thai laws compared to international legal standards, namely:

- (1) The international legal standards of:

- minimum age for admission to employment or work of not less than 15 years (per Art. 2 of International Labour Organisation's *Minimum Age Convention 1973*); and
- the minimum age for admission of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years (per Art. 3 of International Labour Organisation's *Minimum Age Convention 1973*),

are reflected under the LPA (i.e. Section 44 prohibits an employer from hiring children under 15 years of age and Section 45 states the conditions for employing a child from 15 to 18 years of age).

- (2) Additionally, the international legal standards that:

- the term child shall apply to all persons under the age of 18 (per Art. 2 of International Labour Organisation's *Worst Forms of Child Labour Convention 1999*); and

- the worst forms of child labour comprises:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (per Art. 3 of International Labour Organisation's *Worst Forms of Child Labour Convention 1999*),

are reflected under Section 4 and Section 26 of the Child Protection Act B.E. 2546 (2003) (the "**Child Protection Act**").

**7. What government agencies are responsible for enforcement of laws regulating the employment of children?**

- The competent officer under the Department of Labour Protection and Welfare, Ministry of Labour (the "**DLPW**"), who is empowered to initiate an investigation on any non-compliance issues under the LPA and order the employer to rectify and comply with the LPA.
- The competent police officer for criminal proceeding against the offender.
- The competent courts of Thailand in case the injured parties wish to pursue criminal actions against the offender by themselves.

## 8. Who can report illegal child labour practices?

- The law is silent on this issue. In practice, any person shall have the right to report the non-compliance to the competent labour official of DLPW under the LPA.
- However, the injured parties (e.g. the child employee who has been violated, or their legal representatives) may file a criminal complaint to the police officer to initiate a criminal proceeding as well as any person (even an uninjured party) may also report the violation to the police officer as well.

## 9. Who should illegal child labour practices first be reported to?

Illegal child labour practices should be reported to:

- (1) the competent officer at the Provincial Office of Labour Protection and Welfare or the Bangkok Office of Labour Protection and Welfare (currently, including Areas 1-10); or
- (2) the police officer.

## 10. Are there any legal protections provided to persons who report illegal child labour practices?

- The LPA is silent on this issue. However, the report or complaint filed to the labour official of DLPW or the police officer may be done anonymously, subject to the applicable legal requirements and official guideline in dealing with anonymous reports. Moreover, there are several legislations that may help protect the confidentiality of the relevant parties as follows:
- There is a criminal penalty under the LPA by imprisonment not exceeding one month and/ or a fine not exceeding THB 2,000 for any official, who discloses any fact in relation to the business of an employer which he or she obtains or is made aware of as a result of performance of duties under LPA, which is a fact normally kept confidential by the employer (except the disclosure is beneficial to the performance of duties under this act or for labour protection, investigation or case proceeding.
- In addition, under the Child Protection Act, there is also a criminal offence punishable by imprisonment of not exceeding six months and/ or a fine not exceeding THB 60,000 for any person who advertises or discloses through any forms of mass communication or media of any information relating to a child (aged under 18 years old) or their parent with an intention to cause damages to the child's mentality, reputation, prestige, or other interest of the child or to gain undue benefits for him/herself or the others in an unlawful manner.
- Also, pursuant to Section 15 of the Official Information Act B.E. 2540 (1997), the governmental official is also empowered to not disclose the information it receives in several circumstances, including, if the person who provides such information does not wish for the information to be further disclosed or the disclosure may cause harm to any person's life and safety.

## 11. In a criminal case in connection with child labour:

### 11.1 Which agency or agencies have the authority to file a case with the prosecutor?

There are two main authorities, who are able to file a case with the prosecutor, being:

1. **Inquiry Police Officer:** Generally, an inquiry officer has a duty under the Criminal Procedure Code to gather evidence relating to criminal cases reported to the police and forward the case file to the public prosecutor.
2. **Department of Special Investigation:** The Department of Special Investigation (the "DSI") is an organization under the Ministry of Justice. The DSI has been granted power to investigate and inquire in special criminal cases which may have significant impacts to the economic, social and political systems. Forced labour cases, pursuant to the Anti-Human Trafficking Act B.E. 2551 (2008), also come under the DSI's authority.

**11.2 In general, what evidence is required to build the case against the alleged perpetrators of a child labour case?**

The evidence, which is required to build a case, will depend on the charges filed against the alleged perpetrators. The plaintiff has a burden to prove that the perpetrators committed a wrongdoing to the extent of beyond reasonable doubt.

Under Thai laws, criminal cases relating to child labour generally include:

**1. Illegal employment of a child**

Under Section 44 of the LPA, an employer is prohibited from employing a child who is under 15 years of age as an employee.

**2. Forced labour**

Under Section 6/1 of the Anti-Human Trafficking Act B.E. 2551 (2008), any person who compels another person, who is in a situation where he/she is unable to resist, to work by the means, as prescribed in such section, including use of force or intimidation, such person is considered to commit the offence of forced labour.

Supporting evidence against the alleged perpetrator can be a child's birth certificate or identification card, employment agreement, salary payment, working attendance record, photos, video or voice records, or any other written or verbal records. Also, a witness can testify to the court that he or she witnesses a child worked for the alleged perpetrator.

**11.3 If the prosecutor requires a child labour survivor to testify against alleged perpetrators, (e.g. parents or close relatives):  
(a) Does the child have the right to refuse?**

There is no specific Thai law regarding the right of the victim to refuse to testify in court. However, under the Criminal Procedure Code section 172 ter and based on past court rulings, in circumstance where it is unable to bring the child witness to give testimony due to extremely necessary cause,

the court may admit the preserved image and voice of the victim's testimony during the inquiry stage or the preliminary examination, as if it is his or her testimony at trial, provided that the court admits the testimony complementary with other evidence.

**(b) Can the child give evidence via video link (eg: from another room)?**

Under section 172 ter. of the Criminal Procedure Code, if a child not yet over 18 years of age is to testify, the court must arrange a suitable room for the testimony (i.e. a separate room with appropriate surroundings), and must make available in the main courtroom a reproduction of the image and voice. In this regard, a social welfare worker or a psychologist must accompany the child at all times during the court proceedings.

If the court deems it appropriate, or if either party requests with reasonable cause (which is considered to be detrimental if not granted) the court may instead admit the child's testimony recorded during the inquiry stage or the preliminary examination, as if the testimony is provided during the trial in court. The parties are still entitled to proceed with additional witness examination, cross-examination, or re-examination, all of which must be within the scope of necessity and to the extent the court deems appropriate.

**(c) Can the child's evidence be admitted into evidence without a court appearance?**

By virtue of section 230/1 of the Criminal Procedure Code, the Regulation of the President of the Supreme Court on Examination of Witness in Criminal Case via Video Conference B.E. 2556

(2019) was issued to prescribe the method and criteria for the examination of a witness using video conference. Under such regulation, a court may exercise its discretion to examine a

witness using video conference only in the case of necessity. Examples of necessity as provided in the regulation are (i) illness of the witness; (ii) residence of witness is far from the adjudicating court or outside of Thailand; and (iii) any other unavoidable necessity.

In addition, under section 230/2 of the Criminal Procedure Code, if a witness is unable to testify in court, and a party requests it or the court deems it appropriate, the court may allow for a written testimony of the witness to be admitted instead of oral testimony in court, provided that the witness must have a residence outside of Thailand.

#### (d) What other legal protections are available to the child?

The judge may order the following during the testimony:

- (i) to examine the witness in person (provided that the judge states the issues and facts of each point) or through a social welfare worker or psychologist; or
- (ii) to arrange for the parties to examine, cross-examine, or re-examine through a social welfare worker or psychologist.

In addition, the legal guardian of the child is also entitled to file a request for the child to be protected under the Witness Protection Act B.E. 2546 (2003). If granted, the child will be offered, among others, a security protection by the police, and an arrangement to stay at the place, deemed to be safest for the child. The child's information, including name, address, and photos, will also be kept confidential.

#### 12. What legal protections or remedies are available to children who are the victims of illegal labour practices?

Legal protections to children who are victims of illegal labour practices are provided under the Child Protection Act in the form of welfare assistance and/or welfare protection.

Welfare assistance includes having a competent official:

1. provide support and assistance to the child or his/her family or person providing care for the child, if such assistance is appropriate;
2. where the foregoing support may not be possible or in the best interests of the child, place the child into the care of a suitable person who consents to care for said child for a period of not longer than one (1) month;
3. facilitate the adoption of the child by a third person;
4. send the child to be cared for by an appropriate foster family or nursery which consents to take the child into their care;
5. send the child to be cared for by a shelter;
6. send the child to be cared for by a welfare centre; or

7. send the child to receive education or occupational training or to receive rehabilitation, education or occupational training at a development and rehabilitation centre or send the child to receive mental discipline based on religious principles in a Buddhist temple or other religious place which consents to caring for the child,

provided that the forms of assistance mentioned in sub-paragraphs 4 to 7 above shall require the consent of the child's guardian. Where the guardian refuses to give consent without appropriate reason or is unable to give consent for any reason, the relevant provincial governor or secretary of the Ministry Social Development and Human Security (or any persons designated by them) shall be empowered to send the child for assistance according to such measures after receiving the relevant reports and opinions from social welfare and medical experts in this regard.

In addition, child victims of illegal labour practices who fall within the definition of Tortured Children, Children at Risk of Wrongdoing or children in a state warranting welfare protection shall receive welfare protection under the Child Protection Act.

Where monetary restitution is sought as a remedy, a child's legal representative may sue (or appoint an attorney to sue) for damages against

the child's employer or other persons responsible for causing the harm or injury to the child on the basis of torts.

12.1 Who can act as the child's guardian (or equivalent) in pursuing remedies?

***In respect of remedies under the Child Protection Action***

Under Section 34 of the Child Protection Act, a child's Guardian or his/her relatives may take the child to apply for welfare assistance at the Department of Social Development and Welfare or the relevant Social Development and Welfare Provincial Office, or a shelter, welfare centre or private development and rehabilitation centre.

A "Guardian" as defined in the Child Protection Act is a parent, caretaker, adoptive parent or legal guardian of a child, including step-parent, employer, guardian of a child's welfare or safety, and any other person providing care or shelter to the child.

In addition, Section 24 of the Child Protection Act also empowers a competent official or a person having the duty to protect the welfare and safety of children living in areas under their jurisdiction (namely, permanent secretaries of the Ministry of Social Development and Human Security, provincial governors, district or local administration organization directors, sub-district

or sub-administration organization chiefs or assistant chiefs or other administrative heads of local administration organisations) to seek welfare assistance and welfare protection for the affected child.

***In respect of remedies for tort***

A child's legal representative may sue (or appoint an attorney to sue) for damages against the child's employer or other persons responsible for causing the harm or injury to the child on the basis of torts. Under the Civil and Commercial Code of Thailand, a child's legal representative may be the child's natural guardians (i.e. persons exercising parental power over the child) or custodian/caretaker (where the child is adjudicated incompetent or quasi-incompetent) or a legal guardian appointed by the court.

A legal guardian may be appointed by the court where the person exercising parental power over a child is adjudicated incompetent or quasi-incompetent or abuses his/her parental power as regards the child's person or is guilty of gross misconduct.

12.2 In circumstances where World Vision is providing shelter and other support to a survivor of child labour:

- (a) Can World Vision apply to be the guardian of the child for the purpose of pursuing those remedies?

***In respect of remedies under the Child Protection Action***

If World Vision has obtained a valid license to operate as either a "Shelter" (i.e. a place which cares for and shelters a child on a temporary basis for the purpose of investigating and observing the child and his/her family to develop suitable assistance and welfare protection guidelines), a "Welfare Centre" (i.e. a place which provides care and development for over 6 children in need of welfare assistance), a "Development and Rehabilitation Centre" (i.e. a place, school, institution or centre established for the purpose of treating and rehabilitating the physical and mental conditions of a child who is in need of

special welfare assistance or welfare protection, as well as providing such child with education, guidance and occupational training), then the person acting as the Welfare Guardian of World Vision shall have the power to, among other things, seek and provide welfare assistance and welfare protection to such child victims. The Welfare Guardian may also petition the Permanent Secretary or provincial governor to be appointed as a child's welfare protector under Section 48 of the Child Protection Act.

A competent official may also petition the Permanent Secretary or the provincial governor to appoint a welfare protector for a child for a term of two years. The welfare protector may be

appointed from among competent officials, social workers or any other person who is both willing and suitable to be the child's welfare protector.

***In respect of remedies for tort***

To be appointed as a legal guardian of a child who has at least one living parent, a petition must be made to the court by either the court's own motion or by a close relative of the child or by the public prosecutor to deprive the child's parent of his/her parental power either partly or wholly. Grounds for a parent being deprived of parental power include such parent having been

adjudicated incompetent or quasi-incompetent or abusing his or her parental power as regards the child's person or being found guilty of gross misconduct.

Alternatively, the court may also appoint a legal guardian for the child where he/she has no living parents.

In either of these cases, World Vision may need the cooperation of the child's relative or the public prosecutor in order to be named for appointment as the child's legal guardian.

**(b) What criteria is World Vision required to satisfy and how does it apply to be the guardian?**

Any person who has achieved the age of maturity (over 20 years of age) and does not fall within the following scope of prohibited persons may be appointed as a legal guardian of a minor:

- (a) persons adjudicated incompetent or quasi-incompetent;
- (b) bankrupt persons;
- (c) persons unfit to take charge or custody of the person or property of the minor;
- (d) persons who have or who had filed a lawsuit against the minor, an ascendant of the minor or the full blooded or half-blooded siblings of the minor;
- (e) persons who have been excluded by name from guardianship by the last surviving parent.

**(c) Can World Vision appoint a lawyer to assist the child?**

If an officer of World Vision has been appointed by the court as the legal guardian of the child, then such person may appoint a lawyer to assist the child in pursuing remedies or in undertaking other acts for the benefit and in the interest of the child.

**12.3 Can these other remedies be pursued at the same time as a criminal case?**

Yes.

**12.4 Do these remedies provide for an award of compensation to the child? If so, how is the amount of compensation determined?**

Under the Child Protection Act, the Fund Management Committee (the "**Committee**") of the Child Protection Fund (the "**Fund**") has the power to consider the approval of payment of monies from the Fund for the purpose of assistance, welfare protection and behaviour promotion of a child, including payments to the child's family or foster family. The amount of payment may be determined according to regulations specified by the Committee or by court order.

Monetary damages may also be generally sought at law for harm and injury to the child to be paid by a wrongdoer, in which case the court will award compensation for an actual damage as proven. However, if the child or their representatives cannot prove the actual damage, the court will exercise its right to determine the appropriate amount of damages to be awarded.

**13. Which organisations provide pro bono legal services to assist survivors of child labour?**

The organizations which generally provide pro bono legal services to children who require assistance include:

1. World Vision Foundation of Thailand
2. The Center for the Protection of Children's Rights
3. The Paveena Foundation for Children and Women
4. Foundation for Child Development
5. Human Development Foundation (Mercy Center)



# VIETNAM

## 1. What is the legal minimum working age under domestic law?

The minimum working age is 15 years, except for certain cases as prescribed under Section 1, Chapter XI, Law No. 45/2019/QH14 dated 20 November 2019 on the Labour Code ("**Labour Code**"). Please see further details in the response to question 3 below.

## 2. Is there domestic legislation that regulates the employment of children?

Yes, these are:

- The Labour Code
- Circular No. 09/2020/TT-BLDTBXH dated 12 November 2020 (*detailing and guiding the implementation of a number of articles of the Labour Code regarding minor employees*) ("**Circular No. 09**");
- Law No. 102/2016/QH13 dated 05 April 2016 (*on Children*) ("**Children Law**");
- Decree No. 12/2022/ND-CP dated 17 January 2022 (*regarding regulations on administrative sanctions in the sectors of labour, social insurance, Vietnamese employees sent overseas to work under contracts*) ("**Decree No. 12**").
- Law No. 100/2015/QH13 dated 27 November 2015 (*on the Penal Code*), amended and supplemented by Law No. 12/2017/QH14 adopted on 20 June 2017 ("**Penal Code**").

## 3. Under what circumstances does the law allow a child to work?

The Children Law defines a child as a human being below 16 years of age<sup>1</sup>, while the Labour Code defines a minor employee as an employee under 18 years of age.<sup>2</sup> A child is therefore considered a minor employee.

Minor employees may only perform jobs suitable to their health conditions so as to ensure their physical, intellectual and personality development. Employers are to<sup>3</sup>:

- provide such employees with care of their work, health and study whilst working
- obtain the consent of such employees' parents or guardians
- arrange for periodical health checks and formulate books to keep track of records of such health checks

- create opportunities for such employees to receive general and vocational education, training and improvement of occupational knowledge and skills.

Furthermore, under Section 1, Chapter XI of The Labour Code as read together with Circular No. 09, employees:

- from 15 to under 18 years of age may not perform the jobs or work in the places specified in Article 147 of the Labour Code (please see the responses to question 4 below)<sup>4</sup>;
- from full 13 years to under 15 years of age may only perform the easy jobs in the list issued by the Minister of Labour, Invalids and Social Affairs (the "**Minister of Labour**")<sup>5</sup>, provided that such jobs are not carried out at certain workplaces<sup>6</sup>.

<sup>1</sup> Article 1, Children Law.

<sup>2</sup> Article 143, Labour Code.

<sup>3</sup> Article 144, Labour Code.

<sup>4</sup> Article 143.2, Labour Code.

<sup>5</sup> Article 3.5(a), Circular No. 09.

<sup>6</sup> Article 3.5(b), Circular No. 09.

- under 13 years may only perform jobs in the fields of arts and physical training and sports, provided that such jobs are not harmful to physical, intellectual and personality development of these persons, and such employment must be approved by the provincial-level Departments of Labour, Invalids and Social Affairs.<sup>7</sup>

In addition, when employing a person under 15 years of age, the employer shall<sup>8</sup>:

- enter into a written labour contract with this person and his/her legal representative;
- arrange working time which does not affect the school hours of this person;
- arrange breaks for persons under 15
- obtain a health certificate from a competent health establishment stating that the health of this person is suitable to his/her job, and organize health checks at least once every 6 months;
- ensure working and occupational safety & hygiene conditions suitable to the age of this person;

Notably, the person - who represents the employer's side when entering the labour contract with a person under 15 - must have a criminal record certificate issued within 6 months before

the date of the labour contract conclusion which shows no previous criminal conviction for child abuse acts and confirm (using a specified form) that he/she has never been examined for penal liability or administratively sanctioned for child abuse acts.<sup>9</sup>

A labor contract with a person aged under 15 must have the contents specified in Article 21 of the Labor Code and the following contents<sup>10</sup>:

- Full name; date of birth; gender; place of residence; telephone number (if any); serial number of citizen card or ID card or passport of the legal representative of the person aged under 15 years;
- Accommodations for persons aged under 15 years working far from their families;
- Assurance of learning conditions.

In terms of recruiting and employing a person aged under 13 years, the employer shall obtain written approval of the provincial-level Department of Labor, Invalids and Social Affairs of the locality where the employer's head office is located or the locality stated in the enterprise registration certificate when the employer is an enterprise. Labor contracts with persons aged under 13 years may become effective only after obtaining such written approval<sup>11</sup>.

#### 4. What restrictions and prohibitions does the law impose upon the employment of children?

The working time of minor employees shall include short breaks during working hours (in addition to any other breaks as required by the Labour Code)<sup>12</sup> and must not exceed:

- 4 hours per day and 20 hours per week for persons under 15 years of age;<sup>13</sup>
- 8 hours per day and 40 hours per week for persons from 15 to under 18 years of age (these persons may work overtime or at night for the occupations and jobs on the list issued by the Minister of Labour, Invalids and Social Affairs)<sup>14</sup>

Apprentices or on-the-job trainees must:

- be 14 years old or older; and
- meet health requirements of their relevant occupations or jobs, with a minimum age for certain hard, hazardous and dangerous occupations and jobs.<sup>15</sup>

Moreover, Article 147 of the Labour Law states that employees who are 15 to under 18 years of age are prohibited:

- from performing the following jobs:

<sup>7</sup> Article 145.3, Labour Code and Article 3, Circular No. 09.

<sup>8</sup> Article 145.1, Labour Code and Article 3, Circular No. 09.

<sup>9</sup> Article 4.1, Circular No. 09.

<sup>10</sup> Article 4.2, Circular No. 09.

<sup>11</sup> Article 4.3 and Article 5.1, Circular No. 09.

<sup>12</sup> Articles 109 and 146, Labour Code.

<sup>13</sup> Article 146.1, Labour Code.

<sup>14</sup> Article 146.2, Labour Code.

<sup>15</sup> Article 61.4, Labour Code.

- carrying and lifting heavy objects beyond a minor's physical strength;
  - manufacturing and trading in alcohol, wine, beer, cigarettes, mental stimulants or other addictive substances;
  - manufacturing, using or transporting chemicals, gas or explosives;
  - maintaining equipment and machinery;
  - dismantling construction works;
  - melting, blowing, casting, rolling, molding and welding metals;
  - sea diving, offshore fishing;
  - other jobs which are harmful to physical, intellectual or personality development of minors (as prescribed by the Minister of Labour).
- in the following workplaces:
    - underwater, underground, in caves and tunnels;
    - construction sites;
    - livestock slaughterhouses;
    - casinos, bars, dance halls, karaoke parlours, hotels, saunas and massage establishments, lottery business locations and video game service provision establishments;
- other workplaces which are harmful to the physical, intellectual or personality development of minors (as prescribed by the Minister of Labour).
- Besides, pursuant to the Children Law:
- Article 6 prohibits:
    - the exploitation of children<sup>16</sup>, which refers to "the act of forcing the child to work against the law on labour [...] and other acts of using the child for profiteering purpose"<sup>17</sup>; and
    - the failure to provide or conceal or preclude the provision of information concerning children who are threatened to be exploited to their families, educational establishments or competent agencies and officials.<sup>18</sup>
  - Article 26 of the Children Law further states that children have the right to be protected, in any form, from labour exploitation. They shall not work when they are under the working age and they shall not work overtime or do arduous, harmful or dangerous works as regulated by the laws. They are protected from being forced to do jobs or to work in workplaces which may have an adverse influence on their personality and comprehensive development.

## 5. What penalties apply for breach of laws relating to the employment of children?

With respect to child labor, Vietnamese law provides for criminal penalties/sanctions under the Penal Code and administrative sanctions under Decree No. 12. Please see below the specific details of these provisions.

### Decree No. 12

Article 29 of the Decree sets out penalties imposed on employer (being an organization) who violates regulations on minor employees. Specifically as follows:

- a fine of between VND 2,000,000 and VND 4,000,000 for any employer that fails to make a separate record book for minor employees or makes a separate record book but fails to fully

record the contents as prescribed in Article 144.3 of the Labour Code when employing minor employees or failing to provide it at the request of a competent state agency;<sup>19</sup>

- a fine of between VND 40,000,000 and VND 50,000,000 for any employer that commits one of the following acts<sup>20</sup>:
  - employing minor employees without the consent of their parents or guardians;
  - employing a person under 15 years of age but failing to enter into a labour contract in writing with this person and his/her legal representative; arranging working time which affects the school hours of this person; failing to obtain a health

<sup>16</sup> Article 6.1, Children Law.

<sup>17</sup> Article 4.7, Children Law.

<sup>18</sup> Article 6.7, Children Law.

<sup>19</sup> Article 29.1, Decree No. 12.

<sup>20</sup> Article 29.2, Decree No. 12.

certificate issued by a competent health establishment stating that the health of this person is suitable to his/her job; failing to organize health checks at least once every 6 months or failing to ensure working and occupational safety & hygiene conditions suitable to the age of this person;

- employing minor employees to work beyond the working time specified in Article 146 of the Labour Code;
- employing persons under 15 years of age to work overtime or work at night;
- employing persons who are between 15 to under 18 years of age to work overtime or work at night in occupations or jobs prohibited by the laws;
- a fine of between VND 100,000,000 and VND 150,000,000 for any employer that commits one of the following acts<sup>21</sup>:
  - employing a person from 13 to under 15 years of age to perform the jobs beyond the list permitted by the laws in accordance with Article 143.3 of the Labour Code;
  - employing persons under 13 years of age to perform the jobs beyond the list permitted by the laws in accordance with Article 145.3 of the Labour Code, or employing persons under 13 years of age to perform jobs on the list permitted by the laws but failing to obtain the consent of specialized agencies in charge of labour under provincials-level People's Committees;
  - employing employees from 15 to under 18 years of age to perform the prohibited jobs or work at the prohibited workplaces as specified in Article 147 of the Labour Code but this act is not serious enough to be examined for penal liability.

The Decree includes other penalties for other violations which may relate to the employment of children, specifically as below:

- a fine of between VND 40,000,000 and VND

50,000,000 for an employer that enters into labour contracts with employees of 15 to under 18 years of age without the written consent of such employees' legal representatives;<sup>22</sup>

- a fine of between VND 100,000,000 and VND 150,000,000 for any employer that commits one of the following acts:
  - making use of apprenticeship or on-the-job training for the purpose of self-seeking and exploiting labour, or enticing or compelling apprentices or on-the-job trainees to carry out illegal activities;<sup>23</sup>
  - recruiting apprentices or on-the-job trainees who are under 14 years of age, unless for occupations and jobs permitted by the laws;<sup>24</sup>
- a fine of between VND 40,000,000 and VND 50,000,000 for any employer that implements normal working hours more than that prescribed by the laws;<sup>25</sup>
- a fine ranging between VND 10,000,000 and VND 150,000,000 (depending on the number of employees involved) for any employer who fails to allow employees to take breaks during working hours or shift breaks as prescribed by the laws;<sup>26</sup>

### Penal Code

Criminal cases regarding child labour may include the offences of "violations against regulations on using employees who are under 16 years old"<sup>27</sup> and "coercive labour"<sup>28</sup>.

Particularly, Article 296 of the Penal Code provides that "any person employs a person under 16 to do heavy or dangerous jobs or jobs that involve contact with harmful substances listed by the State" shall face a fine ranging from VND 30,000,000 to VND 200,000,000 or face a penalty of up to 3 years' community sentence, or face sanctions ranging from 6 months to 10 years imprisonment, depending on the nature of each violation. Besides, an additional monetary fine amount of VND 10,000,000 to VND 50,000,000 may be further imposed.

<sup>21</sup> Article 29.3, Decree No. 12.

<sup>22</sup> Article 9.2(c), Decree No. 12.

<sup>23</sup> Article 14.2(a), Decree No. 12.

<sup>24</sup> Article 14.2(b), Decree No. 12.

<sup>25</sup> Article 18.3(a), Decree No. 12.

<sup>26</sup> Article 18.4, Decree No. 12.

<sup>27</sup> Article 296, Penal Code.

<sup>28</sup> Article 297, Penal Code.

In addition, Article 297 of the Penal Code provides that "Any person that uses violence or threat of violence or other methods to force a person to work against his/her will" shall be liable for a fine ranging from VND 50,000,000 to VND 200,000,000 or face a penalty (non-custody sentence) of up to 3 years of community

service or 6 months - 12 years of imprisonment, depending on the nature of each violation. The offender of this violation may also be subject to a fine ranging from VND 30,000,000 to VND 100,000,000 or prohibited from holding certain positions or doing certain jobs for 1 - 5 years.

**6. Are there gaps in the domestic laws compared to international legal standards such as those set out in the International Labour Organisation's *Minimum Age Convention 1973* and the *Worst Forms of Child Labour Convention 1999*?**

The domestic laws, notably the Labour Code as read together with Circular No. 09, Children Law and the Decree, appear to be broadly consistent with the International Labour Organisation's *Minimum Age Convention 1973* ("**ILO Minimum Age Convention**") and the *Worst Forms of Child Labour Convention 1999* ("**ILO Child Labor Convention**"); there is only few points of the Vietnamese laws which are not consistent with the international standards.

Vietnam ratified the ILO conventions on child labour - Convention No. 182 on the elimination of worst forms of child labour and Convention No. 138 on minimum age to work, respectively on 17 November 2000 and 24 June 2003. Under Vietnamese law, there is no specific definition of 'child labour' but the law states that 'minor' employees are under 18 years old. Minor employees are divided into three categories of age groups: (i) 15 to 18 years old, (ii) 13 to 15 years old, and (iii) under 13 years old. Vietnam was also the first country in Asia to ratify the Convention on the Rights of the Child ("**CRC**").

The age limit for the definition of a "child" is still 16 under Vietnamese law, which differs from the uniform threshold of 18 years old used in the **ILO Child Labor Convention**, the CRC as well as other international agreements and conventions. Having said that, this is not considered a deviation from the internal standards. In any case, Youth Law<sup>29</sup> states that the CRC shall be applied for teenagers from the age of 16 to 18, having regard to the current conditions of Vietnam.<sup>30</sup> The Law on Children does not have this provision, but it requires the authorities to prepare periodic national reports on implementation of the CRC.

However, the inconsistency of Vietnam's

definition of "children" compared to those of international standards leads to the fact that victims of labour exploitation or employment below the minimum working age may not receive the special protections available under the Law on Children just by virtue of being 16 or older. Of note, persons under 18 may still enjoy certain special treatments, regimes and protections under Vietnamese law.

Besides, the ILO Minimum Age Convention provides in Article 1 that each member for whom this Convention is in force (which includes Vietnam) undertakes to pursue a national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. Subject to certain exclusions permitted under Article 4 of the ILO Minimum Age Convention, Article 3.3 states that, "... national laws or regulations or the competent authority may, after consultation with the organizations or employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity". Under domestic laws, persons under 16 years of age are permitted to work in certain specified areas, though it may be that these may fall within the exclusions listed under Articles 4 and 6 of the ILO Minimum Age Convention. It is also not entirely clear if the list of prohibited jobs and workplaces under the Labor Code covers, as a minimum, the areas of work that the ILO Minimum Age Convention specifies under Article

<sup>29</sup> Law No. 53/2005/QH11 on Youth, issued by the National Assembly on 29 November 2005 ("**Youth Law**").

<sup>30</sup> Article 31, Youth Law.

5.3 being: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

Additionally, the ILO Child Labor Convention provides that each member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency. For the purposes of the ILO Child Labor Convention, the term **the worst forms of child labour** comprises:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use

in armed conflict;

- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

These are broadly covered by the Children Law which not only prohibits child abuse, child exploitation and child sexual abuse, but also goes on to specify the duties of the Vietnamese government to implement support and assistance policies, and promulgate standards of regulations on the care of children according to the age level and those for disadvantaged children.

## 7. What government agencies are responsible for enforcement of laws regulating the employment of children?

The following government agencies are responsible for enforcement of laws regulating the employment of children.

- The Ministry of Labour, Invalids and Social Affairs<sup>31</sup>
- Provincial-level, district-level and ward-level People's Committee with their according department of Labour, Invalids and Social Affairs.<sup>32</sup>
- Labour inspectors and persons assigned the task of specialized inspection<sup>33</sup>
- Chief Inspector of the Ministry of and the Provincial-level Department of Labour, Invalids

and Social Affairs<sup>34</sup>

- The Head of the Ministerial-level labour inspectorate delegation<sup>35</sup>
- The Head of the Provincial-level Department, the Head of the specialized inspectorate delegation of a state management agency assigned to conduct specialized inspection on labor<sup>36</sup>
- The General Director of the Police Department for Administrative Management of Social Order, the General Director of the Police Department for Investigation of Crimes related to Social Order<sup>37</sup>

## 8. Who can report illegal child labour practices?

According to Decree No. 24/2018/ND-CP of the Government dated 27 February 2018 regulating the settlement of complaints, denunciations

in the field of labor, vocational education, Vietnamese guest workers, employment, occupational safety and hygiene ("**Decree No.**

<sup>31</sup> Article 213.2, Labour Code.

<sup>32</sup> Article 213.4, Labour Code; Article 11, Circular No. 09; Article 48, Decree No. 12.

<sup>33</sup> Article 49.1, Decree No. 12.

<sup>34</sup> Article 49.2, 49.3 Decree No. 12.

<sup>35</sup> Article 49.4, Decree No. 12.

<sup>36</sup> Article 49.5, Decree No. 12.

<sup>37</sup> Article 53.4, Decree No. 12.

24"), illegal child labour practices can be reported by a denouncer - who may be a citizen, employee, intern, apprentice, probation worker, student of a vocational education institution, Vietnamese

employee sent to work overseas under contract, a person participating in the national assessment of vocational skills, an unemployment insurance beneficiary.<sup>38</sup>

## 9. Who should illegal child labour practices first be reported to?

Disclosures of illegal child labour practices should **first** be made to:

- the employer (for complaints)<sup>39</sup>

- the Chief Inspector of local provincial-level Department on Labor, Invalids and Social Affairs (for denunciation)<sup>40</sup>

## 10. Are there any legal protections provided to persons who report illegal child labour practices?

Yes. The following protections are available to persons who report illegal practices ("**denunciator**") under the Law No. 25/2018/QH14 dated 12 June 2018 on denunciation ("**Law on Denunciation**"):

- protections in terms of information confidentiality<sup>41</sup>:

A competent agency, organization or person shall base on practical conditions to apply the following measures:

- Keeping confidential the full name, address, autograph and other personal information of the denunciator in the course of exploiting and using information and documents provided by the denunciator.
- Removing the full name, address, autograph and other personal information of the denunciator from the denunciation and accompanying documents and evidence for management as confidential information when assigning an agency, organization or individual to verify denunciation contents.
- Arranging working time and places and selecting appropriate working methods to keep information confidentiality for the denunciator when working directly with the denounced and related agencies, organizations and individuals.

- protections in terms of job position<sup>42</sup>:

- Measures to protect the working position or job of the protected person being a cadre, civil servant or public employee include:

- Suspending or cancelling part of or the whole of the decision to discipline the protected person or another decision infringing upon his/her lawful rights and interests;
- Restoring the working position or job, incomes and other lawful benefits from such working position or job for the protected person;
- Considering the arrangement of another working position for the protected person, if having his/her consent in order to avoid repression or discriminatory treatment;
- Handling according to competence or proposing a competent agency, organization or person to handle - in accordance with the laws - persons who have taken revenge on, repressed or intimidated the protected person, thus infringing upon his/her lawful rights and interests.

- Measures to protect the job of a protected person working under a labor contract include:

- Requesting the employer to terminate the violation; restoring the job, incomes and other lawful interests from such job for the protected person;
- Handling according to competence or proposing a competent agency,

38 Article 3.9, Decree No. 24.

39 Article 15.1, Decree No. 24.

40 Article 39, Decree No. 24.

41 Article 56, Law on Denunciation.

42 Article 57, Law on Denunciation.

- organization or person to handle the violation in accordance with the laws.
- protections in terms of life, health, assets, honor, dignity<sup>43</sup>:
    - Taking protected persons to safe places.
    - Arranging forces, means and tools to directly protect the lives, health, property, honor and dignity of protected persons at necessary places.
    - Applying necessary measures to prevent
- or handle acts harming or threatening to harm the lives, health, property, honor and dignity of protected persons in accordance with the laws.
- Requesting persons who commit acts harming or threatening to harm the lives, health, property, honor and dignity of protected persons to stop their acts.
  - Other measures provided by the laws.

## 11. In a criminal case in connection with child labour:

### 11.1 Which agency or agencies have the authority to file a case with the prosecutor?

Any individual/organization/agency has the right to report a criminal offence to: (i) the investigation authority (e.g., the police); (ii) the authority assigned to carry out investigation activities; (iii) the procuracy at all levels; and (iv) other authorities such as the commune-level police departments, police stations or units, courts at all levels, press agencies and other organizations as permitted by law.<sup>44</sup> Besides, competent state authorities may file a written proposal on initiating a criminal case to the investigation authority or procuracy.<sup>45</sup>

The above agencies would then transfer the denunciation and/or reports to the competent police investigation agency for officially investigating the case. The decision to prosecute the case can be issued by the competent authorities, mentioned in items (i) to (iii) above, and the court, depending on the circumstance.<sup>46</sup> The competent police agency in the area would be the one to file a criminal case to the prosecutor of the same jurisdiction for prosecution of the criminal after its investigation and collection of sufficient evidence for prosecution and issuance of an official investigation conclusion on committing the crime.

### 11.2 In general, what evidence is required to build the case against the alleged perpetrators of a child labour case?

The law does not specifically cite the specific evidences of offences. In criminal cases involving victim being child or minor, there should be evidence to determine the age of the child or minor (e.g., birth certificate, identity card, passport, residence's book, or the result of expert examinations).

Criminal cases regarding child labour include the offences of "violations against regulations on using employees who are under 16 years old"<sup>47</sup> and "coercive labour"<sup>48</sup>.

For "violations against regulations on using

employees who are under 16 years old", there should be evidence that the child involved is under 16 years old and such child is assigned to do jobs which are heavy, hazardous, dangerous or to contact with dangerous substances as listed by the State.

For "coercive labour", there should be evidence that the child involved is under 16 years old and such child is forced to work against his/her will, due to the influence of violence, threat or other tricks delivered by others.

<sup>43</sup> Article 58, Law on Denunciation.

<sup>44</sup> Article 144.1, Law No. 101/2015/QH13 on the Criminal Procedure Code ("**Criminal Procedure Code**"); and Article 5.1, Joint Circular No. 01/2017/TTLT-BCA-BQP-BTC-BNN&PTNT-VKSNDTC on cooperation between various authorities in implementation of the Criminal Procedure Code regarding receipt and handling of crime reports and petitions for prosecution.

<sup>45</sup> Article 144.3, Criminal Procedure Code.

<sup>46</sup> Article 153, Criminal Procedure Code.

<sup>47</sup> Article 296, Penal Code.

<sup>48</sup> Article 297, Penal Code.



### 11.3 If the prosecutor requires a child labour survivor to testify against alleged perpetrators, (e.g. parents or close relatives):

As a general requirement, the Criminal Procedure Code provides that representatives of persons less than 18 years of age can attend the session of deposition and interrogation of such persons under 18. Such representatives can submit

evidence, documents, items, requests, complaints and charges. They can read, transcribe and photocopy documents related to charges against persons aged below 18 from the case file after the investigative activities have ended.<sup>49</sup>

#### (a) Does the child have the right to refuse?

Vietnamese law does not provide clear regulations on this matter. A child's refusal to testify does not constitute the corresponding crime under the Penal Code, nor does it constitute any direct violation of the Criminal Procedure Code. This may imply that the child has the right to refuse. However, the fact that the child refuses to testify may hinder the prosecution of the case.

On a related note, there are various requirements concerning testimony, which takes the child

into consideration. For example, the questions must be suitable with the child's age, and the defense counsel or representatives of the child must accompany the child during the session of taking testimony. Furthermore, regarding the trial of cases concerning the sexual assault against persons under 18, the child's testimony taken in the investigation and prosecution stage can be reused at the hearing so that the child would not be summoned to the hearing.<sup>50</sup>

#### (b) Can the child give evidence via video link (eg: from another room)?

Vietnamese law has not mentioned this matter.

During the investigation, the victim may testify to the authorities at their residence or where they study, work, or are a member. Otherwise, the testimony may be taken at the place of investigation; and in this case, this place must be arranged in a manner that is friendly and psychologically appropriate for persons under 18.<sup>51</sup> The interrogation can be recorded in audios or videos.<sup>52</sup>

During the trial, the trial panel can isolate the child and the perpetrator in the case of a child being abused or sexually abused, a child being less than 10 years of age, at the request of the

child or his/her representative, or in other cases that the trial panel seem suitable to protect the best benefits of the child. The child shall be placed in an isolated room. Information about the hearing's developments shall be broadcasted via a video live streaming platform or otherwise communicated to ensure that the child can follow all developments of the hearing and exercise the child's rights and perform the child obligations.<sup>53</sup>

In some certain circumstances where the child cannot be present at the court for providing evidence, it is practically permissible for them to provide evidence via video link.

#### (c) Can the child's evidence be admitted into evidence without a court appearance?

All participants of criminal proceedings must

attend the trial if subpoenaed, and child victims

<sup>49</sup> Article 420.2, Criminal Procedure Code.

<sup>50</sup> Article 7.3(a), Resolution No. 06/2019/NQ-HDTP dated 01 October 2019.

<sup>51</sup> Article 14.1, Joint Circular No. 06/2018/TTLT-VKSNDTC-TANDTC-BCA-BTP-BLDTBXH dated 21 December 2018 on the coordination of implementing a number of provisions of the criminal procedural code on procedural procedures for people under 18 years old ("**Joint Circular No. 06**").

<sup>52</sup> Article 14.2, Joint Circular No. 06, and Article 9, Joint Circular No. 03/2018/TTLT-BCA-VKSNDTC-TANDTC-BQP dated 1 February 2018 on guiding the order and procedures for making audio recordings or audio-visual recordings during investigation, prosecution or trial; and the use, preservation and archive of these audio recordings and audio-visual recordings.

<sup>53</sup> Article 10, Circular No. 02/2018/TT-TANDTC dated 21 September 2018 on criminal trials with participants in criminal proceedings who are under 18 years of age under the jurisdiction of the Family and Minor Court ("**Circular No. 02**").

are also not exempted from this obligation.

<sup>54</sup> However, in practice, the court may, at its discretion or at the victim's proposal, decide not to summon victims to trial for their best interests and try to obtain their testimonies in other forms that are deemed convenient. In such circumstance,

the testimony given by the child is entitled to be admitted as evidence without a court appearance, provided that such testimony are presented in a factual and objective manner, in accordance with the procedures provided by law, and are admitted into evidence by the presiding judge.

#### (d) What other legal protections are available to the child?

Under Article 420 and 423 of Criminal Procedure Code Article 5 of Joint Circular No. 06 and Article 7 of Circular No. 02, there are some further means of protection to children as follows:

- A representative of a person aged under 18, a teacher or a representative of the school, Youth Union and other organizations, where such person studies, works and participates in common activities, has the right and obligation to participate in proceedings under a decision of the investigation body, procuracy or court to help the minor exercise his/her rights.<sup>55</sup>
- Officers who conduct the criminal proceedings involving persons under 18 years old must satisfy one of the following statutory requirements:
  - They must be experienced with criminal proceedings involving persons under 18 years old;
  - They must be trained or educated on skills necessary for criminal proceedings involving persons under 18 years old; or
  - They must be trained or educated in psychology or in the education sciences for dealing with persons under 18 years old.<sup>56</sup>
- The composition of the first-instance trial panel of a criminal case must include an assessor who is a teacher or Youth Union cadre or has experience and knowledge about the psychology of persons aged under 18.

- The court may decide to conduct in-camera trial to protect the child or minor.
- The inquiry of, and exchange of arguments with the victim aged under 18 at a hearing shall be conducted in a way suitable to their age and development level.
- The trial panel shall restrict the contact between the child/minor victim and the defendant.
- The courtroom shall be arranged in a friendly way to ensure the best interest of persons under 18 years old; the judge wears the administrative office attire of the people's court staff (without overcoat).<sup>57</sup>
- The trial shall be carried out in closed session, though the judgments must be announce publicly.<sup>58</sup>

The hearing panel must limit interaction between the minor victim and defendant(s) when the victim testifies in court. <sup>59</sup> The confrontation between the child and the perpetrator can be held only in order to clarify circumstances of the case which cannot be settled without such confrontation. <sup>60</sup>

<sup>54</sup> Article 62.4(a), Criminal Procedure Code.

<sup>55</sup> Article 420, Criminal Procedure Code.

<sup>56</sup> Article 5, Joint Circular No. 06.

<sup>57</sup> Article 7, Circular No. 02.

<sup>58</sup> Article 25, Criminal Procedure Code; Article 7.1(d), Circular No. 02.

<sup>59</sup> Article 423.5, Criminal Procedure Code.

<sup>60</sup> Article 421.6, Criminal Procedure Code.

## 12. What legal protections or remedies are available to children who are the victims of illegal labour practices?

In terms of legal protections, apart from the above-mentioned means of protection in criminal proceedings, children who are the victims of illegal labour practices may also be entitled to civil protections. To be specific, during any civil court proceeding, one or multiple “temporary emergency measures” listed under the Civil Procedure Code<sup>61</sup> can be requested as protection measures for victims.<sup>62</sup> In particular, minors (i.e., under 18 years old) can be handled over to a suitable person or organization to care for them in case there is no guardian.<sup>63</sup>

In terms of remedies, children who are the victims of illegal labour practices may file a civil lawsuit against the perpetrator who conducts such illegal labour practices to seek compensation, provided that the children are able to prove that their life, health, honour, dignity, reputation, assets, or other legitimate rights and interests was violated.<sup>64</sup>

For further information, beside the risk of being sued in civil proceedings, an employer who violates the regulations on minor employees may also face administrative fines ranging from VND 2 million (approx. USD 87) to VND 150 million (approx. USD 6522).<sup>65</sup>

### 12.1 Who can act as the child's guardian (or equivalent) in pursuing remedies?

Under Article 47 of the Civil Code, children need guardianship when:

- they lost capacity of civil acts or have difficulties in awareness or control of their acts;
- they lost their parents or their parents cannot be identified;
- both of their parents lack capacity for civil acts; have difficulties in awareness or control of their acts or have restricted capacity for civil acts;
- competent court decides to restrict the rights of their parents towards them; or
- their parents do not have the means to care for and educate them.

There are two forms of guardianships: natural and appointed. When a child is in need of guardianship, natural guardians - which are relatives of the child<sup>66</sup> - will be prioritized to act as the guardian. If the child has no natural guardians, the Commune-level People's Committee where the child resides will appoint a guardian. If the child in need of guardianship is 6 years old or above, the People's Committee will take the child's opinion and consent into account for guardian appointment.<sup>67</sup>

### 12.2 In circumstances where World Vision is providing shelter and other support to a survivor of child labour:

- (a) Can World Vision apply to be the guardian of the child for the purpose of pursuing those remedies?

Yes, if World Vision meets all requirements under the Civil Code to become a guardian, World Vision may apply to be the child's guardian, but only in the event that the child needs guardianship but has no natural guardian.

61 Law No. 92/2015/QH13 dated 25 November 2015 on Civil Procedure Code ("**Civil Procedure Code**").

62 Article 111, 114, Civil Procedure Code.

63 Article 115, Civil Procedure Code.

64 Article 584.1, Law No. 91/2015/QH13 on the Civil Code adopted on 24 November 2015 of the National Assembly ("**Civil Code**").

65 Article 29, Decree No. 12.

66 Natural guardians is regulated under Article 52 of the Civil Code and determined in the order of: Eldest biological siblings - paternal or maternal grandparents - biological uncle or aunt.

67 Article 54, Civil Code.

### (b) What criteria is World Vision required to satisfy and how does it apply to be the guardian?

To become a child's guardian, World Vision must:

- first, meet all requirements under the Civil Code, which are:<sup>68</sup>
  - having full civil capacity to act as a guardian; and
  - having necessary means to exercise and fulfill the rights and obligations of a guardian.
- second, be appointed as the child's guardian

by the Commune-level People's Committee where the child resides.

The law is silent on how World Vision may apply to be appointed as the guardian; practically speaking, World Vision may notify the Commune-level People's Committee where the child resides of World Vision's will to act as the child's guardianship as well as its meeting all the statutory requirements to become a guardian for the consideration of such People's Committee before they appoint a guardian for the child.

### (c) Can World Vision appoint a lawyer to assist the child?

If World Vision is appointed as the guardian, it would act as the legal representative of the child and can directly appoint a lawyer to protect such child's legitimate rights and interests in court procedures.<sup>69</sup>

## 12.3 Can these other remedies be pursued at the same time as a criminal case?

Civil issues (i.e., compensation for the victim of child labour) can be resolved during the settlement of a criminal case and not required to be lodged as a separated civil case.

In the event that the damage claims in the criminal case are not backed by sufficient evidence but does not affect the settlement of such criminal case, the civil issues can be separated to be resolved through civil procedures.<sup>70</sup>

## 12.4 Do these remedies provide for an award of compensation to the child? If so, how is the amount of compensation determined?

Under the Civil Code, compensation amount is decided based on the damage caused. In cases of child labour, potential claims for compensation may arise from damage to the child's physical, mental health as well as honor, dignity and reputation.

The Civil Code provide provisions for compensation calculation for the above damage as follows:

For damage to physical and mental health; compensation amount includes:<sup>71</sup>

- Reasonable amount for medical attention, nursing and rehabilitation, functional losses and impairments of the child;

- Reasonable costs and actual income losses of the caretaker(s) of the child during treatment period. If the child loses the ability to work and requires a permanent caretaker, the compensation amount shall also include reasonable costs for taking care of such child;
- Other loss and damage as provided by the laws;
- Compensation for mental suffering. This amount is to be agreed between the parties in a civil case. If no agreement is reached, the maximum amount payable for physical and mental damage is 50 times of the general minimum wage provided by the State.<sup>72</sup>

<sup>68</sup> Article 50, Civil Code.

<sup>69</sup> Article 69.4, 69.5 and 69.6, the Civil Procedure Code.

<sup>70</sup> Article 30, Criminal Procedural Code.

<sup>71</sup> Article 590, Civil Code.

<sup>72</sup> The general minimum wage may vary on a yearly basis. For 2021, the general minimum wage is VND1,490,000 (approx. USD 65).

For damage to honor, dignity and reputation; compensation amount includes:<sup>73</sup>

- Reasonable amount for mitigation and remedy of such damage;
- Other loss and damage as provided by the laws;

Compensation for mental suffering. This amount is to be agreed between the parties in a civil case. If no agreement is reached, the maximum amount payable for damage to the child's honor, dignity and reputation is 10 times of the general minimum wage provided by the State.

### 13. Which organisations provide pro bono legal services to assist survivors of child labour?

Victims of child labour can seek pro bono legal services from any legal aid-providing organization which has been published by the Ministry of Justice or the local Department of Justice (Article 10, Law on Legal Aid). Several notable pro bono legal service providers for children include:

- **National Legal Aid Agency (Ministry of Justice)**  
58-60 Tran Phu, Ba Dinh District, Hanoi, Vietnam  
Tel: (+84) 24 627 39631  
<https://tGPL.moj.gov.vn/Pages/TrangChu.aspx#>
- **Children Department (Ministry of Labor, Invalid and Social Affairs)**  
35 Tran Phu, Ba Dinh District, Hanoi, Vietnam  
Hotline: 111 or 18001567  
<http://treem.gov.vn/Home/tabid/41/language/en-US/Default.aspx>
- **Vietnam Lawyers Association**  
3rd Floor, Star Tower, Duong Dinh Nghe, Yen Hoa, Cau Giay District, Hanoi, Vietnam  
Tel: (+84) 24 62634940 / (+84) 24 62733160  
(Juvenile's Legal Consultancy Centre - Vietnam Lawyers Association)  
<http://hoiluatgiavn.org.vn:8080/>

**Vietnam's national child protection hotline is 111.** This hotline is tasked with, amongst others, providing child protection services; receiving information, reports and denunciations about children and send them to the competent authorities; assist commune-level child protection officers in making and implementing assistance and intervention plans; and providing psychological and legal counseling for children and parents, family members and caregivers of children.

<sup>73</sup> Accordingly, maximum compensation for this case is VND74,500,000 (approx. USD 3,250).

<sup>73</sup> Article 592, Civil Code.

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