

ASIA PACIFIC LEGAL GUIDE: ANTI-PHYSICAL VIOLENCE



**Baker
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ABOUT WORLD VISION END VIOLENCE AGAINST CHILDREN PROGRAM (EVAC)

The End Violence Against Children (**EVAC**) program is a five-year global initiative launched by World Vision to fortify protections, ignite community movements and eradicate violence against vulnerable children by 2021. 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 labor, 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. According to data collected by the International Labour Organization¹, the Asia Pacific region contains the highest amount of working children in the world, representing a significant challenge for local communities to provide adequate support to these vulnerable children.

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.

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 Asia Pacific Legal Guides will confront the following themes:

- Child Trafficking
- Physical Violence
- Sexual Violence
- Child Marriage
- Child Neglect
- Psychological Abuse



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Anti- Physical Violence Legal Guide Introduction

This Anti-Physical Violence Legal Guide has been produced by Baker McKenzie, World Vision, State Street, 3M, Khaitan & Co., and Starbucks to support the End Violence Against Children Program. This second legal guide addresses frequently asked questions encountered by World Vision relating to protecting child victims of physical violence and abuse in Australia, Hong Kong, India, Indonesia, Japan, 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 physical violence.

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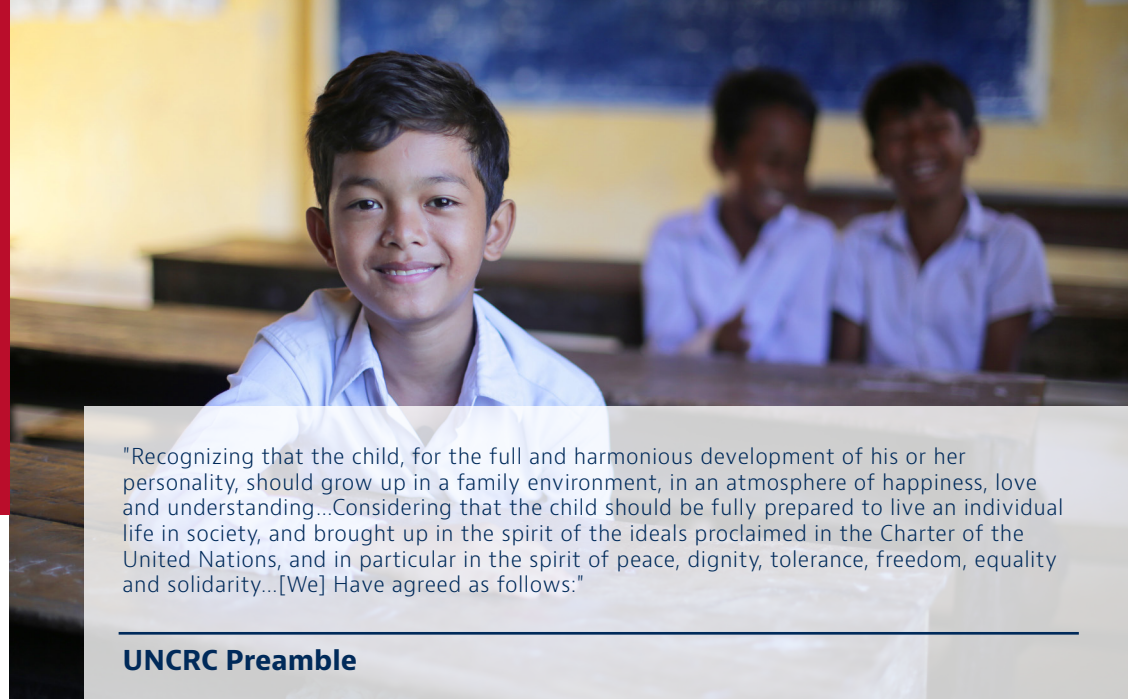
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¹ <http://www.ilo.org/ipec/Regionsandcountries/Asia/lang--en/index.htm>



"Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding...Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity...[We] Have agreed as follows:"

UNCRC Preamble

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"To positively impact the lives of millions of the most vulnerable boys and girls by 2021, making a significant contribution towards ending violence against children as a contribution towards achieving the Sustainable Development Goals."

- World Vision, EVAC Mission Statement

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>.

AUSTRALIA





1. What is the definition of a child under domestic law?

There are variations in the way Australian laws describe and define 'children'. Generally, in the context of physical violence, a child is a person who is under the age of 18 years.

2. Is there domestic legislation which deals with physical violence against children (eg: shoving, hitting, slapping, shaking, throwing, punching, burning and kicking)?

Yes.

Physical violence against children is dealt with under general criminal law. The Criminal Codes and Crimes Acts of each Australian State and Territory contain provisions prohibiting all forms of unlawful physical contact, including in relation to children. In addition, there are legal frameworks which provide protections for:

- children in need of care and protection or at risk of harm; and
- children who have been exposed to family/domestic violence.

3. If so, what forms of physical violence against children are prohibited under domestic legislation? (Please include the legal definition of the forms of physical violence)

The Criminal Codes and Crimes Acts of each Australian State and Territory prohibit various forms of physical violence, including the following.

- Common or physical assault: Where a person intentionally or recklessly causes unlawful force of any kind (including striking, touching, contacting, moving) to be applied to the body or clothing of another without their consent.
 - It does not matter how much force was applied and it does not need to have harmed the child.

- Causing fear of immediate and unlawful violence may also constitute an assault.

- Aggravated assault: In some Australian jurisdictions, a common assault may be aggravated, giving rise to more serious penalties, where the offender is an adult and the victim is under a certain age, the victim is a child of the offender, or where the assault occurs on school premises.
- Assault occasioning actual bodily harm: Where a person's conduct involves an assault causing physical or psychological harm.
- Assaults causing particular types of harm are also prohibited in various States and Territories, for example:
 - Unlawful wounding (ie. injury that breaks the skin and penetrates below the epidermis);
 - Choking, suffocation and strangulation;
 - Unlawfully or recklessly inflicting grievous bodily harm (ie. causing serious injury, including significant and longstanding injury, permanent disfigurement and endangering a person's life).

4. Does domestic legislation permit physical violence against children in some circumstances? If so, what circumstances?

Yes.

Physical violence is permitted in the following circumstances.

- Physical contact that would generally be acceptable in the ordinary conduct of everyday life.
- Physical contact in the course of a sporting activity where the force used is not in contravention of the rules of the game.
- Parents (and, in general, persons acting in the place of a parent) are permitted to apply a reasonable and not-excessive



amount of force by way of corporal punishment to a child for the purpose of discipline or correction. In New South Wales, this has been limited to prohibit force applied to the head, neck, or other area of the body that would cause harm for more than a short period.

Subject to minor exceptions, all forms of corporal punishment are strictly prohibited in schools and child-care centres.

5. What are the penalties for violation of domestic laws relating to physical violence against children?

Under criminal law, imprisonment or fines may be imposed, and will vary depending on the seriousness of the offence. For example:

- Common assault: fines or 1 to 3 years imprisonment;
- Assault resulting in harm: 5 to 7 years imprisonment;
- Assault occasioning grievous bodily harm: up to 25 years or life imprisonment.

6. What forms of physical violence are not covered (and therefore permitted) under domestic legislation?

All forms of physical violence are covered under legislation, except, physical contact that would generally be acceptable in the ordinary conduct of everyday life and reasonable corporal punishment by parents (see 4 above).

7. Does domestic law reflect international laws and conventions regarding physical violence against children (eg: The UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Universal Declaration of Human Rights)? If not, what are the differences?

There is no general enactment of international conventions regarding physical violence against children into Australian legislation. However, some domestic legislation is consistent with such international conventions. For example:

- Family/domestic violence legislation in New South Wales, Queensland and the Australian Capital Territory states that the purpose of the legislation is to enact provisions consistent with international human rights law, including the Declaration on the Elimination of Violence against Women and the UN Convention on the Rights of the Child.
- Legislation across the states and territories has similar guiding principles in respect of the best interests of the child, early intervention and the participation of children and young people in decision-making processes.
- Child protection legislation in the Australian Capital Territory provides that youth justice principles are intended to be interpreted consistently with relevant human rights instruments and jurisprudence, and provides the Convention of the Rights of the Child as an example.
- Some human rights guidance for child protection is included in the *Human Rights Act* in the Australian Capital Territory and New South Wales and in the *Charter of Human Rights and Responsibilities Act* in Victoria.

Every five years the Australian Government reports to the UN Committee on the Rights of the Child (**the UN Committee**) about its progress on children's rights. Australia's latest report was submitted in January 2018 and the UN Committee will provide



Australia with a list of issues which must be addressed by August 2019.

The last 2012 report by the UN Committee criticised Australia's legal framework in this area, including that:

- there are inconsistencies in the way in which juvenile justice and child protection laws are administered throughout Australia. There is no comprehensive child rights Act at the national level giving full and direct effect to the Convention on the Rights of the Child;
- corporal punishment in homes, schools and other care settings should be explicitly prohibited and "reasonable chastisement" should not be used as a defence to a charge of assault of a child;
- the juvenile justice system requires substantial reforms for it to conform to international standards, eg. to increase the minimum age of criminal responsibility, and measures to ensure children with mental illnesses in conflict with the law are dealt with using appropriate alternative measures.

8. In criminal prosecutions of physical violence against children:

8.1 What agency or agencies have the authority to refer a case to the prosecutor?

The relevant State or Territory police force.

8.2 What evidence is required to prove physical violence in a criminal prosecution?

The evidence needed will depend upon the offence being prosecuted.

For common assault, evidence is required to prove beyond a reasonable doubt that:

- a person caused unlawful force to be applied to the body or clothing of a child or threatened to use unlawful physical force;
- the application of force was intentional (deliberate rather than accidental) or reckless (the person realised that harm may be caused but continued their actions regardless); and
- the application of force was without lawful justification or excuse (consent, carrying out an ordinary social activity, lawfully correction of a child by a parent).

In proving physical or psychological harm, photographs of injuries, police and medical reports may be necessary. Identification evidence may also be needed in relevant circumstances.

8.3 If the prosecutor requires a child to testify against the alleged perpetrators of physical violence (e.g. parents or teachers):

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
- are able to understand the question that they are being asked and can give an answer that can be understood.

The child may 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 an assault on the child or domestic violence.

In determining whether to excuse the child from giving evidence the court will consider matters including:

- 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;
- whether it is likely that harm might be caused to the child if they give evidence and whether the nature and extent of that harm outweighs the desirability of receiving the evidence.

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

Yes.

The court may permit the child to give evidence from a separate room via closed-circuit television or an audio-visual link.

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?

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. Such questioning may be via video link.

d. What other means of protection are available to children involved in prosecutions of physical violence?

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.

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;
- make orders to prevent the publication of any material that would disclose the child's identity.

Legislation in Queensland, Tasmania and the Northern Territory provides that the following principles apply when a child is a witness in a criminal proceeding:

- the child is to be treated with dignity, respect and compassion;
- measures should be taken to limit, to the greatest practical extent, the distress or trauma suffered by the child when giving evidence;
- the child should not be intimidated when giving evidence;
- the proceeding should be resolved as quickly as possible.

Each of the Australian States and Territories has child witness assistance services. These services provide court education and support for child witnesses appearing in criminal proceedings.



Any person may refer a child to these services.

e. Can the child be required to testify more than once?

In general, a victim is required to testify only once in court for the purposes of:

- providing evidence in chief (if it has not been pre-recorded);
- cross-examination; and
- re-examination.

In circumstances where it is necessary to hold a new trial (eg. jury dismissed) or there is a subsequent criminal or civil hearing, a child may be required to give evidence at the new hearing.

Alternatively, in some circumstances, the court may admit an official audio-visual or written record of the evidence already given by the child.

9. What other protections and remedies are available under domestic law for child victims of physical violence (eg. intervention orders, victims of crime statutory schemes, civil remedies)?

The protections and remedies vary between the different States and Territories of Australia and include the following.

- Domestic or Family Violence protection or intervention orders are available in all jurisdictions except Queensland to protect a child, in his or her own right, from physical violence where the child is related to or in a dependent care arrangement with the alleged perpetrator of the violence.
- Violence protection or restraining orders may also be available where the violence against the child does not constitute family violence.
- Care and protection orders may be made where a child has been or is likely to be physically abused or ill-treated which

may include removing the child from the care of a parent or guardian.

- Victims of crime statutory schemes exist in all States and Territories. Under these schemes victims of violence can apply for access to counselling services, financial assistance for immediate needs (eg. medical expenses), and for economic loss that is a direct result of the act of violence, up to certain capped amounts, and prescribed recognition compensation payments.
- Compensation from the offender: In some jurisdictions, victims can apply for a compensation order against the offender as part of the sentencing process (where there is a guilty verdict), but separately from the offender's punishment.
- Civil remedies: Victims may sue offenders for tortious damages in the civil jurisdiction of relevant courts. Court rules require that children who are plaintiffs in proceedings be assisted by a tutor or litigation guardian. See 9.1 below.

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

Domestic violence/violence protection or intervention orders can be sought on application to a court by a police officer.

- In some jurisdictions (Victoria, South Australia Western Australia, Australian Capital Territory and Tasmania), a parent, legal guardian or another person with the consent of the parent or leave of the court may be able to apply for such an order.
- In Victoria children over 14 can apply for a personal safety intervention order with the leave of the court.
- In Tasmania, a child may apply for a family violence order if the court is satisfied that the child is capable of understanding the nature of the proceedings.



Care and protection orders: Only a police officer or the relevant government department may apply for such orders.

Victims of crime statutory schemes: An application may be made by the parent/legal guardian of a primary victim who is a child. In some jurisdictions, an application can also be made on behalf of a victim by any other person who is approved by the decision-maker and who has a genuine interest in the welfare of the victim. There is no statutory limitation on who this could be (eg. a relative, a child welfare worker). In Queensland, a child who is at least 12 years old and is represented by a lawyer may apply for victim assistance.

Compensation from offender: In practice, an application for compensation from an offender is generally made by the prosecutor as part of the sentencing process (where there is a guilty verdict).

Civil 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 is eligible to apply to hold this position. Unless the court orders otherwise, the tutor/guardian may not commence or conduct proceedings except by a solicitor. The court has the power to remove and substitute tutors/guardians.

9.2 In circumstances where World Vision is providing shelter and other support to a victim of physical violence, can World Vision apply to be the guardian of the child for the purpose of pursuing these remedies? If so:

Civil remedies: 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.

Domestic violence orders/victims of crime statutory schemes: A representative of World Vision may also be able to apply for

domestic violence orders or victims of crime relief on behalf of a child in some jurisdictions, provided that the relevant decision maker (eg: court or Victims Services) has given their consent or approval. Otherwise, a World Vision employee is likely to need to apply to become the legal guardian of the child in order to seek these remedies/protections.

Care and protection orders: Only a police officer or the relevant government department may apply for such orders.

Compensation from offender: In practice, an application for compensation from an offender is generally made by the prosecutor as part of the sentencing process (where there is a guilty verdict).

a. What criteria are World Vision required to satisfy and how does World Vision apply to be the guardian?

Civil remedies: The relevant World Vision representative must show that they have no interest in the proceedings adverse to the child. There is no application process required in order to act as a tutor/litigation guardian. The person must retain a solicitor and can then file court documents commencing the proceeding on the child's behalf.

Victims of crime statutory schemes: In some jurisdictions, application forms for victims of crime relief can be completed by any representative of the child. The relevant decision maker will then determine whether it consents to that person applying on behalf of the child. (There are no published criteria that are applied). In other jurisdictions, World Vision could only make an application if a representative is appointed as a legal guardian of the child (see below).

Domestic violence/violence protection or intervention orders: In jurisdictions where any person can apply for orders on behalf of a child with the decision-maker's approval, a World Vision representative would need to make an application to the Court for leave to appear on behalf of the child. There are no specified



criteria that are applied. However, the court is likely to consider all of the circumstances and the best interests of the child. In other jurisdictions, World Vision could only make an application if a representative is appointed as a legal guardian of the child (see below).

Appointment as legal guardian: In order to become a legal guardian, a relevant World Vision representative would need to be subject to a detailed review and assessment process and apply to the relevant Children's/Family Court for a guardianship order. The representative would need to show sufficient interest in the child and that they could provide a safe, nurturing, stable and secure environment in order to be eligible to become a guardian. References, statements, medical reports, checks and inspections are also usually required. The court will decide guardianship applications based on the best interests of the child.

b. Can World Vision appoint a lawyer to assist the child?

Yes

If a World Vision employee is acting as tutor/litigation guardian in order for the child to pursue civil remedies, it must conduct proceedings by a solicitor except with the leave of the court.

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

Yes, except that in jurisdictions where it is possible to apply for compensation from the offender as part of the sentencing process in criminal proceedings, a guilty verdict must have already been obtained.

A guilty finding may be relied on in a civil case as evidence but is not a prerequisite.

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

Victims of Crime statutory schemes: Compensation amounts are awarded based on evidence of expenses incurred or likely to be incurred and economic loss flowing from the act of violence. Prescribed recognition (ie: compensation) payments may be made based on the nature of the offence committed against the victim and the degree of injury caused. Statutory caps on the amounts that can be awarded apply in each State and Territory.

Civil remedies: Compensatory damages may be awarded based on evidence of economic loss flowing from the act of violence 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 and any injury caused.

Compensation from the offender: In some criminal proceedings the Court may order the offender to pay compensation to the child victim. The amount is assessed in a similar manner to that described in the paragraph above (civil remedies). The amount may be capped, eg: in New South Wales the amount is capped at \$50,000.

An award of compensation made by a court or government organisation to a particular victim will be reduced to take into account an award of compensation to the same victim made by any other court or government organisation in respect of the same act of violence.



10. Which organisations provide pro bono legal services to help a child victim of physical violence?

There are numerous community legal centres that specialise in providing pro bono legal services to children including:

- Youth Law Australia - <https://yla.org.au/>
- The Shopfront Youth Legal Centre (Sydney) - <https://www.theshopfront.org/>
- Marrickville Legal Centre's Youth Legal Service (Sydney)- <http://www.mlc.org.au/youth>
- Inner City Legal Centre Youth Clinic (Sydney) - <https://www.twenty10.org.au/legal-clinic/>
- Youthlaw Young People's Legal Rights Centre (Victoria) - <http://youthlaw.asn.au/>
- Youth Legal Service (Western Australia) - <http://youthlegalserviceinc.com.au/>

Children may also be able to obtain pro bono legal advice from organisations that specialise in providing pro bono legal services to victims of family violence.

Australian organisations that provide witness assistance services to children that are witnesses in criminal proceedings include:

- NSW Witness Assistance Service: <https://www.odpp.nsw.gov.au/victims-witnesses/children-and-young-people>
- VIC Child Witness Service: <https://www.victimsofcrime.vic.gov.au/going-to-court/child-witness-service>
- QLD Victim Assist Queensland: <https://www.qld.gov.au/law/court/victim-coordination-program>
- WA Child Witness Service: <https://www.victimsofcrime.wa.gov.au/C/child.aspx>
- SA Witness Assistance Service: <https://www.dpp.sa.gov.au/was/witnesses/child-victimswitnesses/>

- NT Witness Assistance Service: <http://www.dpp.nt.gov.au/witness-assistance/Pages/default.aspx>
- ACT Witness Assistance Service: www.dpp.act.gov.au/witness_and_victim_services/the_witness_assistance_service
- TAS Witness Assistance Service: https://www.dpp.tas.gov.au/witnesses_and_victims

11. Does domestic legislation deal with physical violence against children in circumstances where the alleged perpetrator is also a child (eg: physical bullying)? If so:

Yes

11.1 What penalties apply?

The maximum penalties for a criminal offence are the same as for an adult, however sentencing laws dictate that the punishment of a child should, to the extent that is appropriate, be the least restrictive form of punishment possible and that children should receive a sentence that encourages rehabilitation.

Youth is a relevant factor when a court is sentencing a child. There is a sentencing principle that the younger the offender, the greater the weight to be attached to the element of youth. A court will only sentence a child to imprisonment as a last resort and may make alternative orders for punishment such as good behaviour bonds, community service work, probation orders, rehabilitation orders, fines or compliance with outcome plans arising from a youth justice conference.

In most cases, a child will be dealt with in the Children's Court, where the court has the discretion to deal with criminal offences under general legislation or according to the more lenient provisions of the States and Territories specific children's criminal proceedings legislation.

Where a penalty for a child involves imprisonment, the child will be held in a juvenile justice facility rather than an adult facility.

AUSTRALIA

11.2 Can the matter be referred to prosecutors for criminal prosecution?

Crimes committed by children over the age of 10 years can generally be referred to prosecutors for criminal prosecution.

However, for children between the ages of 10 and 14 years there is a rebuttable presumption that a child does not have the capacity to know that their actions are criminally wrong. It is therefore unlikely that children in this age range will be referred for criminal prosecution. Where they are referred, the prosecution will bear the onus of proving the child had the capacity to understand that their actions were wrong.

11.3 How do domestic laws protect the rights of the alleged perpetrator?

Where a child has committed an offence, each State and Territory has enacted Youth Justice Principles to guide a Court in dealing with the child. These principles include:

- The child should receive the least restrictive form of sanction that is appropriate in the circumstances.
- The child is entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain that advice.
- Children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties.
- A child should only be detained in custody for an offence as a last resort and for the least time that is justified in the circumstances.

HONG KONG





1. What is the definition of a child under domestic law?

There is no universal definition of “child” under Hong Kong law.

Depending on the situation, the definition of a “child” varies from Ordinance to Ordinance.

The Juvenile Offender Ordinance (Cap. 226)¹ defines “child” as a person under the age of 14.

For the purpose of granting “vulnerable witness” status in court proceedings, section 79A of the Criminal Procedure Ordinance (Cap. 221) defines a “child” as a person who is under 17 years of age, and under 14 years of age in the context of any offence other than sexual abuse.

Both the Crimes Ordinance (Cap. 200) and the Offences Against the Person Ordinance (Cap. 212) do not define “child” but categorise certain crimes by reference to age.

Under the United Nations Convention on the Rights of the Child, a “child” is defined as a human being below the age of 18, unless the age of majority is attained earlier, under a law applicable to the child.²

Under the Interpretation and General Clauses Ordinance (Cap.1) an “infant” or “minor” means a person who has not attained the age of 18.³

2. Is there domestic legislation which deals with physical violence against children (eg: shoving, hitting, slapping, shaking, throwing, punching, burning and kicking)?

HK does not have legislation that deals directly with physical violence (such as shoving, hitting, slapping, shaking, throwing, punching, burning and kicking) against children. However, the Offences Against the Person Ordinance (Cap 212) (“**OAPO**”), contains a number of offences that relate to the unlawful use of force against any person.

3. If so, what forms of physical violence against children are prohibited under domestic legislation? (Please include the legal definition of the forms of physical violence)

In addition to offences against any person, including children, the following offences are expressly prohibited against children under the age of 16: Willful assault, ill-treatment, neglect, abandonment, or exposure in a manner likely to cause suffering or injury.⁴

4. Does domestic legislation permit physical violence against children in some circumstances? If so, what circumstances?

In Hong Kong, “corporal punishment” of children is lawful in the home and other care settings. There is no specific definition of corporal punishment in Hong Kong.

Home: Article 8 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (1997) states that the common law previously in force (i.e. prior to 1 July 1997) shall be maintained (post 30 June 1997). In this connection, the Law Reform Commission of Hong Kong has confirmed

1 The Ordinance deals with offenders below the age of 16, which restricts punishment on children and young persons.

2 UN Convention on Child Rights: <https://www.unicef.org/uk/what-we-do/un-convention-child-rights/>.

3 The Ordinance is used to consolidate and amend the law relating to the construction, application and interpretation of laws, to define terms and expressions used in laws and public documents, etc.

4 Offences Against the Person Ordinance (Cap. 212) (“**OAPO**”), s.27. (The “child” under this section refers to child under the age of 16.)



that the common law right of parents “to inflict moderate punishment” exists in Hong Kong.⁵

Under common law, an act is not an assault if it is done in the course of lawful correction of a child by a parent.⁶

Similarly, the common law defence of “lawful chastisement or correction” continues to apply as an exception to the criminal offences of common assault, assault occasioning actual bodily harm, and wounding or inflicting grievous bodily harm under ss. 19, 39 and 40 OAPO. To rely on the defence it must be shown that the punishment / chastisement was moderate and reasonable in the circumstances.⁷

We are not aware of any cases where the Hong Kong Courts have interpreted provisions against violence and abuse in the Protection of Children and Juveniles Ordinance (Cap 213), the Domestic and Cohabitation Relationships Violence Ordinance (Cap 189), the OAPO, and the Crimes Ordinance (Cap. 200) as prohibiting corporal punishment against children in the home.

School setting: Corporal punishment of pupils by teachers has been prohibited since 1991 with the implementation of Regulation 58 of the Education Regulations (Cap. 279A) and Regulation 15 of the Child Care Services Regulations (Cap. 243A), which state that no person shall administer corporal punishment to a child in a school or in a child care center, respectively.

While a parent who causes his **child** to attend school is presumed to give to the head teacher and the **child’s** class teacher or tutor the authority to administer punishment, such punishment is restricted to moderate and reasonable punishment such as placing the child in detention. A teacher is not permitted to administer corporal punishment. Punishment inflicted by a teacher will only be considered moderate and reasonable if it (1)

is not dictated by any bad motive; (2) is such as is usual in the school; and (3) is such as the parent might expect that the **child** would receive if the **child** did wrong.⁸

Alternative care settings: Pursuant to section 34(4) Protection of Children and Juveniles Ordinance (Cap. 213), any person or institution to whose care a child or juvenile is committed under an order of the juvenile court shall, whilst the order is in force, have the like control over the child or juvenile as the parent.

Similarly, Regulation 7 of the Protection of Children and Juveniles (Places of Refuge) Regulations (Cap. 213A), confers the Director of Social Welfare with the power to approve any rules made by the management of any place of refuge not wholly maintained by public funds for the welfare education and control of any ward or inmate of any place of refuge detained there pursuant to the provisions of the Protection of Children and Juveniles Ordinance. However, such powers are not deemed to authorize the making or approval of any rules for the punishment, restraint or correction of any person other than such punishment, restraint or correction as a parent could lawfully administer to a child.

5. What are the penalties for violation of domestic laws relating to physical violence against children?

Under the OAPO, penalties range from maximum imprisonment of

- 1 year for an offence common assault;⁹
- 3 years for offences such as wounding or inflicting grievous bodily harm,¹⁰ or assault occasioning actual bodily harm¹¹;

5 Law Reform Commission of Hong Kong (2002), Report: Guardianship of Children.

6 Halsbury’s Law of Hong Kong, Criminal Law, 2nd ed (2017), Vol 20, para 130.354.

7 *Attorney General’s Reference (No. 6 of 1980)* [1981] QB 715; 73 Cr App R 63.

8 Halsbury’s Law of Hong Kong, Education, 2nd ed (2018), Vol 23, para 135.212.

9 OAPO, s. 40.

10 OAPO, s. 19.

11 OAPO, s. 39.



- 10 years on indictment for the offence of ill-treatment or neglect by those in charge of a child or young person (i.e. a person under the age of 16) in a manner likely to cause suffering or injury;¹²
- 10 years on indictment for the more specific offence of exposing a child (i.e. a person under the age of 2) in a manner whereby the child's life is endangered to the extent that "the health of the child is or is likely to be permanently injured";¹³ to
- life imprisonment for offences under such as murder,¹⁴ conspiring or soliciting to commit murder,¹⁵ administering poison or wounding with intent to murder,¹⁶ attempting to choke, suffocate or strangle in order to commit an indictable offence.¹⁷

6. What forms of physical violence are not covered (and therefore permitted) under domestic legislation?

Please see answer to question 4 above.

7. Does domestic law reflect international laws and conventions regarding physical violence against children (eg: The UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Universal Declaration of Human Rights)? If not, what are the differences?

While Hong Kong is a party to the UN Convention on the Rights of the Child, there has not been any specific legislation enacted

to adopt the convention. Instead, the Hong Kong government has established a Commission on Children which claims to "promote and promulgate children's rights as articulated in the UN Convention on the Rights of the Child".¹⁸ Children are also entitled to the rights and protections granted by the Basic Law and the Bill of Rights Ordinance, which reflect provisions for the rights of children under the International Covenant on Civil and Political Rights such as the right to "such measures of protection as are required by [the child's] status as a minor".¹⁹

8. In criminal prosecutions of physical violence against children:

8.1 What agency or agencies have the authority to refer a case to the prosecutor?

In Hong Kong, the social welfare department ("SWD") and the police form the Child Protection Special Investigation Team ("CPSIT"), which is responsible for investigating cases of suspected or alleged child abuse. The CPSIT can also receive referrals from people who are not directly involved with child protection work and from professionals engaged in child protection work. Like any other law enforcement agency, the CPSIT is authorized to file a criminal case directly with a prosecutor.²⁰

¹² OAPO, s. 27.

¹³ OAPO, s. 26.

¹⁴ OAPO, s. 2.

¹⁵ OAPO, s. 5.

¹⁶ OAPO, s. 10.

¹⁷ OAPO, s. 20.

¹⁸ Press release on the establishment of the Commission on Children: <https://www.info.gov.hk/gia/general/201805/31/P2018053100340.htm>.

¹⁹ The Basic Law of the Special Administrative Region of Hong Kong, Art. 39; Bill of Rights Ordinance (Cap. 383), s. 20; International Covenant on Civil and Political Rights, art. 24(1).

²⁰ Social Welfare Department, Procedural Guide for Handling Child Abuse Cases, Chapter 10: https://www.swd.gov.hk/doc/fcw/proc_guidelines/childabuse/Chapter10.pdf.



8.2 What evidence is required to prove physical violence in a criminal prosecution?

Whether the prosecutor decides ultimately to pursue a case depends on the circumstances of the case and the sufficiency of evidence.²¹ Evidence differs from offence to offence and from Ordinance to Ordinance. In all cases, the prosecution will need to prove actus reus (i.e. that the act itself was committed) and mens rea (i.e. the necessary intention to commit the offence). By way of example, for the offence of wounding under s. 19 OAPO, the prosecution would need to prove that the accused (i) wounded or (ii) inflicted grievous bodily harm upon the victim; and (iii) the wounding or inflicting of grievous bodily harm was malicious and unlawful. The Prosecution must also prove that the defendant either intended to cause physical harm or foresaw yet ignored the risk that his harm would cause physical harm to the victim.²²

Any prosecution case must be supported by legally sufficient evidence. The test for sufficiency is whether the evidence (being reliable and admissible to court, together with any reasonable inferences) demonstrates a reasonable prospect of conviction.²³ The standard of proof (i.e. evidential threshold) required to secure a criminal conviction is beyond a reasonable doubt.²⁴

8.3 If the prosecutor requires a child to testify against the alleged perpetrators of physical violence (e.g. parents or teachers):

a. Does the child have the right to refuse?

Yes, a child victim may refuse the prosecutor's request to testify as a witness.

According to the Policy for Prosecuting Cases involving Domestic Violence (2009) (the "**Policy**")²⁵, if a victim decides to withdraw support for the prosecution, the prosecutor must decide whether or not to prosecute. If the information about the victim's decision has come from the accused, the police will be asked to make further inquiries. If the victim confirms that the information is true, the police will be asked to take a written statement from the victim explaining why support has been withdrawn, saying whether the original statement was true and indicating whether the victim has been put under any pressure to withdraw support and providing any other valuable information.²⁶

The prosecutor will ask the police to give their views about the evidence in the case and how they think the victim might react to being required to attend court. If the victim confirms that the complaint is true but still wishes to withdraw, the prosecutor should consider whether it is possible to continue without the victim's evidence and if so whether it is in the public interest to prosecute. The safety of the victim, children or any other potentially vulnerable person will be a prime consideration in deciding how to proceed.²⁷

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

Yes, under section 79B(2) of the Criminal Procedure Ordinance (Cap. 221), a child (other than the defendant) can give evidence via video link with respect to certain sexual or violent offences.

With respect to other offences, if the child victim qualifies as a 'witness in fear', the court may, either on application by the victim or on its own volition, allow such victim to give evidence by way of a live television link subject to conditions as the court considers appropriate in the circumstances.²⁸

²¹ Department of Justice, Prosecution Code (2013), s. 5: <https://www.doj.gov.hk/eng/public/pdf/2014/pdcode1314e.pdf>.

²² *HKSAR v Lin Peng* [2017] HKCU 578, [34].

²³ Department of Justice, Prosecution Code (2013), para 5.5: <https://www.doj.gov.hk/eng/public/pdf/2014/pdcode1314e.pdf>.

²⁴ "Beyond a reasonable doubt" refers to evidence or proof that is of such convincing character that a reasonable person would not hesitate to rely on or act upon it.

²⁵ Department of Justice, The Policy for Prosecuting Cases involving Domestic Violence (2009) (the "**Policy**"): <https://www.doj.gov.hk/eng/public/domesticviolence.html>.

²⁶ The Policy, para 20.

²⁷ The Policy, para 21.

²⁸ Criminal Procedure Ordinance (Cap. 221) ("**CPO**"), s. 79B(4).



A witness qualifies as a 'witness in fear' if the court hearing the evidence is satisfied on reasonable grounds, that the witness is apprehensive as to his/her own safety or to the safety of any family member, if he/she gives evidence.²⁹

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

Sections 79C and 79D of the Criminal Procedure Ordinance (Cap. 221) specifically allow for the video recording of an interview with a child witness of certain sexual or violent offences to be used in criminal proceedings. Subject to the leave (i.e. permission) of the Court, such video recordings may be given in evidence, as long as:³⁰

- the child is not the accused;
- the child is available for cross-examination; and
- the circumstances in which the recording was made have been properly disclosed pursuant to the Court's procedural rules.

Additionally, section 79B(2) of the Criminal Procedure Ordinance (Cap. 221) allows children to testify through a live television video link system (provided they are not the defendant in the relevant proceedings), and the admission of video recorded evidence as evidence-in chief, in respect of certain sexual or violent offences

As mentioned above, children may also testify through a live television video link system in respect of any offence if they qualify as "witnesses in fear", subject to conditions that may be imposed by the court.³¹

Pursuant to the Live Television Link and Video Recorded Evidence Rules (Cap. 221J), child witnesses may be accompanied by a support person in giving evidence through a CCTV system after obtaining leave of the court to do so. The support person must not be a witness in the case or have been involved in the investigation of the case.³²

The SWD, in co-operation with the Police, has established a Witness Support Program under which child witnesses can arrange for support persons to accompany them in giving evidence under Cap. 221J.³³

d. What other means of protection are available to children involved in prosecutions of physical violence?

To reduce the trauma of giving evidence, a child's evidence in criminal proceedings must be given unsworn.³⁴ Hong Kong law provides that any evidence given by a child (defined under the Evidence Ordinance (Cap. 8) as a person under 14 years of age),³⁵ despite being unsworn, is capable of corroborating the testimony of another person³⁶ and age alone is not a sufficient basis to exclude the unsworn evidence of a child.³⁷ Furthermore, a deposition of a child's unsworn evidence may be taken for the purpose of criminal proceedings as if that evidence had been given on oath.³⁸

Additionally, subject to the court's approval (which is usually given in proceedings involving children or minors), any testimony provided by a child via video recording or deposition may be admitted as evidence. Evidence admitted in such a manner

29 CPO, s. 79B(1).

30 CPO, s. 79C.

31 CPO, s. 79B(4).

32 Live Television Link and Video Recorded Evidence Rules (Cap. 221J), s. 3.; Social Welfare Department, Procedural Guide for Handling Child Abuse Cases, Chapter 3: https://www.swd.gov.hk/doc/fcw/proc_guidelines/childabuse/Chapter03_updated_at_April08.pdf, [3:14].

33 Ibid.

34 Evidence Ordinance (Cap. 8) ("EO"), s. 4(2).

35 EO, s. 4(1).

36 EO, s. 4.

37 *DPP v M* [1997] 2 WLR 604.

38 EO, s. 4(2).



generally stands as direct evidence. This means that, although children generally can be cross-examined in a courtroom setting,³⁹ any matter which has, in the court's opinion, already been adequately dealt with in the video or recording or deposition may **not** be the subject of any examination-in-chief or cross-examination of the child in court).⁴⁰

e. Can the child be required to testify more than once?

Yes, with the court's approval.

In practice, if a child accepts a request to testify, then he/she will be called to testify at least once. In the cases of any child that is not the defendant in the proceedings, such testimony can be provided through video link as explained above.⁴¹

In the case of a child victim giving evidence, the court's approval is usually required in order to make a request for such child victim to be examined or cross examined for a second time in subsequent proceedings.⁴²

9. What other protections and remedies are available under domestic law for child victims of physical violence (eg. intervention orders, victims of crime statutory schemes, civil remedies)?

The court can grant a supervision order or appoint a legal guardian in respect of a child who is in need of care or protection under the Protection of Children and Juveniles Ordinance (Cap. 213).⁴³ As explained above, the court can also make an order for the child to be committed to the care and custody of an institution willing to undertake such care.⁴⁴

39 *HKSAR v TPD* [2018] HKCU 1546.

40 CPO, ss. 79C(7), 79D, 79E(8).

41 CPO, s. 79B(2).

42 CPO, ss. 79D, 79E(8).

43 Protection of Children and Juveniles Ordinance (Cap. 213) ("**PCJO**"), s. 34.

44 PCJO, s. 34(1)(b).

Additionally, where the child is a victim of domestic violence, the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) empowers the court to grant an injunction order, on application by a party to a marriage, or a man and a woman in cohabitation relationship, to restrain the other party from molesting the domestic violence victim and the child living with the victim.⁴⁵

Furthermore, the common law recognizes the "welfare principle", which is used to guide the court in its decision-making in all cases involving children. This principle is an evolving concept which encapsulates the "widest possible meaning" and includes the following considerations:⁴⁶

- money and physical comfort for the child;
- the child's social, intellectual, moral and religious welfare; and
- the child's ties of affection.

To some extent, the "welfare principle" is also codified in section 3 of the Guardianship of Minors Ordinance, which requires the court to take into account the best interests of the minor as the "first and paramount consideration" in all decisions made under the Guardianship of Minors Ordinance.

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

Any person may apply to the court to be appointed as the lawful guardian of a child or minor (i.e. age below 18),⁴⁷ provided that there is no natural living parent, formally appointed guardian or other person that has parental rights in respect of the child or minor in question.⁴⁸ While any person may make an application, the court will only appoint the person to be guardian or a minor "if [the court] thinks fit".⁴⁹

45 Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189), s. 3A.

46 *Re McGrath (Infants)* [1893] 1 Ch 143, [148].

47 *Re G (A Minor)* [2018]; Guardianship of Minors Ordinance (Cap. 13) ("GMO"), ss. 8D(2), 8G.

48 GMO, s. 8D.

49 GMO, s. 8D(2).



The court is empowered, as it thinks fit, to commit the care of a child to any person who is willing to undertake the care of the child or to any institution which is willing to do so.⁵⁰ The power of the court to make such an order is broad such that a “stranger” could “successfully apply for custody and care and control”.⁵¹ However, the court is obligated to take into account the best interests of the minor as the “first and paramount consideration”, including the views of the minor where practicable, as well as any material information (including any report of the Director of Social Welfare) available at the hearing.⁵²

The guardian of the child may appoint a lawyer on behalf of the child or minor in order to pursue compensation in a civil proceeding.⁵³

The guardian may also make claims and participate in any proceedings as *guardian ad litem* (“in the best interests of the child”).⁵⁴

9.2 In circumstances where World Vision is providing shelter and other support to a victim of physical violence, can World Vision apply to be the guardian of the child for the purpose of pursuing these remedies? If so:

a. What criteria is World Vision required to satisfy and how does World Vision apply to be the guardian?

Just as any other legal person, World Vision may apply to the court to be appointed as the guardian of a child or minor.⁵⁵

The court is empowered, as it thinks fit, to commit the care of the child, to any person who is willing to undertake the care of the

child or to any institution which is willing to do so.⁵⁶ However, this is again subject to the considerations that the court is required to have as explained above.

b. Can World Vision appoint a lawyer to assist the child?

If World Vision obtains court approval to be appointed as the guardian of the child or minor, then it may appoint a lawyer on behalf of the child or minor in order to pursue compensation or other remedies in a civil proceeding.⁵⁷

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

Yes, however the defendant may apply to have the civil proceedings stayed (i.e. put on hold) pending the outcome of the criminal proceedings under Order 1B, Rule 1 of the Rules of High Court (Cap. 4A).

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

There is no specific statutory provision relating to how much compensation is awardable. Amount of compensation, as in any civil case, will likely be calculated on a case-by-case basis.

10. Which organisations provide pro bono legal services to help a child victim of physical violence?

While there are no organisations specifically catered towards providing legal services to child victims of physical violence, such victims can seek pro bono legal services from the following organisations/government programmes:⁵⁸

⁵⁰ PCJO, s. 34; GMO, ss. 8D(2), 8G.

⁵¹ *CLP v CSN* [2016] 1 HKLRD 272, [13].

⁵² GMO s. 3(1).

⁵³ The Rules of the High Court (Cap. 4A) (“RHC”), Order 80, r. 2.

⁵⁴ RHC, Order 80, r.2.

⁵⁵ *Re G (A Minor)* [2018]; GMO, ss. 8D(2), 8G.

⁵⁶ PCJO, s. 34; GMO, ss. 8D(2) and 8G.

⁵⁷ RHC, Order 80, r. 2.

⁵⁸ End Trafficking in Persons – AP Legal Guide 2016, p. 29; https://www.hklawsoc.org.hk/pub_e/probono/; Other services can be found at: <http://www.choosehklawyer.org/>; <http://www.dutylawyer.org.hk/en/duty/duty.asp>; <https://hkba.org/zh-hant/content/bar-free-legal-services-scheme>; <http://www.justicecentre.org.hk/free-legal-services-for-refugees/>.



- Hong Kong Law Society's Free Consultation Service
- Duty Lawyer Scheme
- Bar Free Legal Service Scheme
- Justice Centre.

In addition, the Hong Kong Committee on Children's Rights, the Hong Kong Society for the Protection of Children and UNICEF's HK Child Rights Advocacy Project are all organisations that seek to promote children's rights in Hong Kong through the promotion of law reform.

11. Does domestic legislation deal with physical violence against children in circumstances where the alleged perpetrator is also a child (eg: physical bullying)? If so:

There is no specific legislation governing physical violence against children where the alleged perpetrator is also a child in Hong Kong.

11.1 What is the minimum age of a child perpetrator who may be held liable for physical violence?

No child under the age of 10 years can be found guilty of an offence.⁵⁹

11.2 What penalties apply?

See answers to question 5 and to question 11 (d) below.

11.3 Can the matter be referred to prosecutors for criminal prosecution?

Yes, charges against a child or young person can be prosecuted so long as the case is heard by a juvenile court.⁶⁰

11.4 How do domestic laws protect the rights of the alleged perpetrator?

If the alleged perpetrator is a child under 10 years old, then the law prevents him/her from being found guilty of an offence.⁶¹

If the alleged perpetrator is over 10 years old but is still a child (i.e. between the age of 10 and 14), there are certain restrictions on punishment even upon conviction. In particular,

- no child under the age of 14 shall be sentenced to imprisonment or committed to prison in default of payments of fines, damages or costs;
- no young person (i.e. aged 14 or above but below 16) can be sentenced to imprisonment if he can be suitably dealt with in any other way; and
- young persons sentenced to imprisonment shall not be allowed to associate with adult prisoners.⁶²

Notwithstanding the above restrictions, with respect to convictions on indictment of the crimes of manslaughter, murder or wounding with intent to cause grievous bodily harm of children or young persons, the court may sentence the offender to be detained in such place and on such conditions for any period as the court orders. There is no statutory limit on the period of detention that can be ordered by the court in such cases.⁶³

Above all, the alleged perpetrator's right to a fair trial is guaranteed under Art. 87 of the Basic Law.

⁵⁹ Juvenile Offenders Ordinance (Cap. 226) ("JOO"), s. 3.

⁶⁰ JOO, s. 3C.

⁶¹ JOO, s. 3.

⁶² JOO, s. 11.

⁶³ JOO, s. 12.

INDIA



Please note that this India chapter has been jointly produced by Khaitan & Co. and 3M India legal teams only*



1. What is the definition of a child under domestic law?

The word 'child' is defined differently by different legislation in India¹. The legal definition of child tends to depend upon the purpose of each legislation. However, The Juvenile Justice (Care and Protection of Children) Act, 2015 ("JJ Act") which is the most important national legislation enacted exclusively to protect children defines child as a person who has not completed eighteen years of age.

2. Is there domestic legislation which deals with physical violence against children (eg: shoving, hitting, slapping, shaking, throwing, punching, burning and kicking)?

Yes

The Juvenile Justice (Care and Protection of Children) Act, 2015 ("JJ Act") is the key national legislation enacted for the protection and care of children. It also ensures legislative protection of children in conflict.

In addition, the following national legislation are also available for dealing with physical violence against children:

- The Indian Penal Code 1860 protects the children from any form of physical violence.
- The Right of Children to Free and Compulsory Education (RTE) Act, 2009 effective 1 April 2010, prohibits physical punishment and mental harassment of a child.
- The Protection of Women from Domestic Violence Act, 2005 covers all children below the age of 18 years (including adopted step or foster child) and make them entitled to relief if subjected to any kind of domestic violence.

- The Commissions for Protection of Child Rights (CPCR) Act, 2005 provides for the Constitution of a National Commission and State Commissions for protection of child rights and Children's courts for providing speedy trial of offences against children or for violation of child rights which as per the United Nations convention on the Rights of the Child includes protection against physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

In addition, India has various other rules and policies that have been formulated to protect children from all kinds of physical abuse and improvement in their status. e.g., National Policy for Children, 1974, National Charter for Children, 2004, National Plan of Action for Children, 2005, The School Education Rules etc.

3. If so, what forms of physical violence against children are prohibited under domestic legislation? (Please include the legal definition of the forms of physical violence)

India prohibits various forms of physical violence against children through its legislation that include the following acts:

- Assault: Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. Explanation. Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault. (SEC 351 IPC)
- Abandonments, Abuse, Exposure or Willful Neglect of the Child
- Hurt: Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. (Sec 319 IPC)

¹ Section 2 (b) of the Protection of Women from Domestic Violence Act, 2005; Section 2(c) of the Right to Education Act, 2009; Section 4(i) of the Guardians and Wards Act, 1890.



- Grievous hurt: The following kinds of hurt only are designated as "grievous" -

Firstly - Emasculation.

Secondly - Permanent privation of the sight of either eye.

Thirdly - Permanent privation of the hearing of either ear.

Fourthly - Privation of any member or joint.

Fifthly - Destruction or permanent impairing of the powers of any member or joint.

Sixthly - Permanent disfiguration of the head or face.

Seventhly - Fracture or dislocation of a bone or tooth.

Eighthly - Any hurt which endangers life, or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits (Sec 320 IPC)

- Physical/corporal punishment: "Corporal punishment" means the subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child (JJ Act).

4. Does domestic legislation permit physical violence against children in some circumstances? If so, what circumstances?

No. There is no legislation which permits physical violence against children.

Though any form of physical violence or physical punishment is not permitted under the law, there are few exceptions² which provide immunity to a person who does such actions when the:

- act is done in good faith for a person's benefit

- act is done in good faith for the benefit of a person under twelve years of age

Thus, law does not effectively recognize corporal punishment as an 'offence' due to such exceptions. However, contrary to these provisions, the Gujarat High Court in its judgement **Hasmukhbhai Gokaldas Shah v. State of Gujarat, 17 November 2008**, has clearly stated that "corporal punishment to child in present days ... is not recognized by law".

5. What are the penalties for violation of domestic laws relating to physical violence against children?

Under the JJ Act³, whoever causes any mental or physical suffering to a child is liable to imprisonment for a period of 3 years to 10 years and/or with fine of INR 1 lakh to 5 lakhs. Also, whoever subjects a child to corporal punishment with the aim of disciplining the child shall be liable for a fine of ten thousand rupees and for every subsequent offence, the person shall be liable for imprisonment which may extend to three months or fine or with both. In addition, if a person employed in an institution is convicted of an offence under that sub-section, such person shall also be liable for dismissal from service and shall also be debarred from working directly with children thereafter.

Under Indian Penal Code⁴, fine, imprisonment or both can be imposed based on the severity of the offence committed:

- Assault - Fine or 3 months of imprisonment or both;
- Hurt - Fine or 1-3 years of imprisonment or both;
- Grievous Hurt - 7 to 10 years of imprisonment and shall also be liable for a fine.

² Sections 88 and 89 of Indian Penal Code

³ Sections 75 and 82 of The Juvenile Justice (Care and Protection of Children) Act, 2015

⁴ Sections 352, 323-326 of Indian Penal Code



6. What forms of physical violence are not covered (and therefore permitted) under domestic legislation?

All forms of physical violence are collectively covered under Indian legislation and is considered as an offence, except any action which is done in good faith for a person's benefit, or for the benefit of a person under twelve years of age (see question 4).

7. Does domestic law reflect international laws and conventions regarding physical violence against children (eg: The UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Universal Declaration of Human Rights)? If not, what are the differences?

There is no general enactment of international conventions regarding physical violence against children in Indian legislation. However, some domestic legislation is consistent with such international conventions. For example:

India acceded to the Convention on the Rights of the Child in 1992 and as a result enacted the Commissions for Protection of Child rights Act, 2005 which provides for the constitution of a National Commission and State Commissions for protection of child rights and children's courts for providing speedy trial of offences against children or violation of child rights

The JJ Act, 2015 was enacted to make comprehensive provisions for children alleged and found to be in conflict with law (CICL) and children in need of care and protection (CNCP), taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993), and other related international instruments.

The JJ Act incorporates the core principles of UNCRC in Section 3 through the General Principles of Care and Protection of Children. While Section 3(ii) of the Act applies the Principle of Dignity and Worth to ensure protection of a CICL from ill-treatment by the police or any other person, S 3 (vi) applies the Principle of Safety to ensure that no harm, abuse and maltreatment shall be inflicted on a CICL.

For the first time "corporal punishment" was defined by this Act as subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child and made it an offence punishable under law.

India is a signatory to the Universal Declaration of Human Rights and has ratified The International Covenant on Civil and Political Rights (ICCPR) and The International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1979. Containing the spirit of right to education enshrined in these instruments, India enacted Right of Children to Free and Compulsory Education Act 2009. Along with providing the right to free and compulsory education to children, this Act prohibited physical punishments and mental harassment of children in schools.

Like other state parties to the UNCRC, India submits periodic reports to the Committee on Rights of the Child. In the concluding observations on the consolidated third and fourth periodic reports of India published on 13 June 2014, the Committee on the Rights of the Child made certain observations on India's legal framework that include:

- though India has adopted or amended a number of federal laws to strengthen the legislative framework for children's rights, the legislation still does not cover the full scope of the Convention on the Rights of Child;
- though National Policy for Children 2013 has been adopted, plans of action to implement the policy is yet to be developed;



- though the corporal punishment is prohibited by law in all educational and care institutions, it remains a concern that: (a) Such prohibition in educational institutions only applies to children between 6 and 14 years; (b) Corporal punishment is still lawful in non-institutional care settings; (c) Corporal punishment as a disciplinary measure and as sentence for a crime is not prohibited throughout the territory of the State party; and (d) Despite the efforts of the State party, corporal punishment continues to be widely used within the family, alternative care settings, the school and within the penal system;
- it is greatly concerned regarding reports of widespread violence, abuse, including sexual abuse, and neglect of children. This includes family settings, alternative care institutions, schools, and the community.

8. In criminal prosecutions of physical violence against children:

8.1 What agency or agencies have the authority to refer a case to the prosecutor?

Under The Commissions for Protection of Child Rights Act, 2005 ("**The Commissions Act**"), National Commission and State Commissions for Protection of Child's rights and Children's Courts have been constituted.⁵

These commissions can inquire into complaints and take discretionary notice of matters relating to deprivation of child rights that include physical violence against the child.⁶ It has the power to forward any case to a Magistrate.⁷ It may after completion of inquiry recommend to the concerned government authority the initiation of proceedings for prosecution.

Under the JJ Act⁸ Child Welfare Committees ("**Committee**") have been constituted for every District by the concerned State Government.

The functions and responsibilities of the Committees includes conducting an inquiry and giving direction to the Police or District Child protection unit or Childline services or labour department, with regard to an abuse of a child in any child care institution⁹.

The Juvenile Board can, order police for registration of a First Information Report (FIR) for offences committed against any child in need of care and protection under law on a written complaint by a committee in this regard.¹⁰

In every police station, at least one officer may be designated as the Child welfare police officer to exclusively deal with children either as victims or perpetrators in co-ordination with the police, voluntary and non-governmental organisations. In every State, Special Juvenile Police Units shall be constituted in each district to co-ordinate all functions of police related to children.¹¹

As per Rule 54(1), (2) (3) and (4) of the Juvenile Justice (Care and Protection) Model Rules, 2016 ("**Juvenile Justice Rules**") , upon

⁵ This was enacted pursuant to India acceding to the United Nations Convention on the Rights of the Child which inter alia includes protecting the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

⁶ Section 13 (1) (j) read with Section 24 of the Commissions Act

⁷ Section 15 of the Commissions Act

⁸ Section 27 of the JJ Act, 2015

⁹ Section 30 of the JJ Act, 2015

¹⁰ Section 8(1) of the JJ Act, 2015

¹¹ Section 107 of the JJ Act, 2015



a complaint being made regarding a cognizable¹² non bailable offence, against a child the Child welfare officer shall register a First Information Report (FIR) and make an entry in the Daily Diary which shall be transmitted to the Magistrate concerned forthwith who shall direct investigation under sub-section (2) of section 155 of the Code of Criminal Procedure, 1973.

8.2 What evidence is required to prove physical violence in a criminal prosecution?

Evidence to prove physical violence could be either in the form of oral evidence or documentary evidence. Evidence under the Indian Evidence Act, 1872 includes-

- all statements which the Court permits or requires to be made before it by the witnesses, in relation to a matter of fact under inquiry (Oral Evidence);
- All documents including electronic records produced for inspection of the Court (Documentary Evidence)¹³.

To prove physical violence, required evidence includes:

- (a) Statement of the victim relating to the fact in issue and connected facts;
- (b) Statement of persons present at the time when crime was perpetrated;
- (c) Confessions made by the perpetrator;
- (d) Medical examination report, if any, of victim right after crime was committed;

In cases of physical violence against children a MLC may be prepared at the time of examination by a doctor.¹⁴

- (e) Facts before the perpetration of crime and after which may be the occasion, cause or effect or the fact in issue;
- (f) Facts relating to establishment of motive, preparation and previous and subsequent conduct When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.
- (g) Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling; when the existence of any such state of mind or body or bodily feeling, is in issue or relevant
- (h) Previous convictions of the perpetrator;
- (i) If any weapon is used, that the weapons belongs to the perpetrator and the wounds if any, are caused by the weapon.¹⁵
- (j) Section 53 of Cr.P.C. provides for examination of accused by medical practitioner at the request of the police officer if there are grounds to believe that such examination will afford evidence as to the commission of an offence.

As per Rule 54 (18(vii) of the Juvenile Justice rules (vii) no statement of the child to be disregarded as evidence in the trial solely on the basis of the age of the child.

¹² Chapter XVI of the Indian Penal Code, 1860 deal with offences affecting the human body; [Sections 299- 318 – of offences affecting life];[Sections 319-338 – of hurt]; [Sections339 -348 – of wrongful restraint and wrongful confinement];[Sections 349 -358 – of criminal force and assault]; [Sections 359-374 – of kidnapping, abduction, slavery and forced labour]; [Sections 375 -376E – sexual offences] The First Schedule of the Cr.P.C. prescribes which offences are cognizable and which are non cognizable.

¹³ Section 3 of the Indian Evidence Act, 1872. As per interpretation clause, Section 3 of the Indian Evidence Act, 1872 “Proved” is defined as a fact said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

¹⁴ Medico Legal Case (MLC) is defined as “any case of injury or ailment where, the attending doctor after history taking and clinical examination, considers that investigations by law enforcement agencies (and also superior military authorities) are warranted to ascertain circumstances and fix responsibility regarding the said injury or ailment according to the law”. Medico Legal reports are prepared by the hospital on the instruction of the Police authorities. The reports are used by the police to establish guilt during prosecution. Medico legal cases include certificates of Physical Examination of any person, by a Specialist Medical Officer or Team of Specialist Medical Officers, on the written requisition from a Judicial or Police Officer.

¹⁵ In a warrant case where a police has power to arrest a person without warrant, Section 52 of Cr.P.C. provides for power to seize offensive weapons



8.3 If the prosecutor requires a child to testify against the alleged perpetrators of physical violence (e.g. parents or teachers):

Yes, the child can testify against the perpetrators.

As per Rule 54 (18) (xi) of the Juvenile Justice Rules a child shall, at no stage of the trial come in front of the accused. Therefore, he need not testify in front of the perpetrators.

All persons including a child can testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, disease (whether body or mind), or any other cause of the same kind¹⁶.

As per Rule 54 (vi) of the JJ Rules, before the statement of the child is recorded, the Court needs to ensure that the child is capable of making a voluntary statement.

Accordingly, the courts in India have taken a view that evidence of child witness is not required to be rejected *per se*; but Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and record conviction, based thereon¹⁷.

It has been held by the Supreme Court of India in the case of Gagan Kanojia versus State of Punjab¹⁸ that part of the statement of a child witness, even if tutored, can be relied upon, if tutored part can be separated from the untutored part.

Further, the Supreme Court of India held that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the Court and there is no embellishment or improvement therein, the Court may rely upon his evidence. Only in cases where there is evidence to show that a child has been tutored, the Court can reject his statement partly or fully¹⁹.

a. Does the child have the right to refuse?

Yes.

A child has a right to remain silent or refuse where the deposition is likely to incriminate him²⁰. Under Section 161(2) of the Code of Criminal Procedure, 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.

As per Rule 54 (18) (vi) of the Juvenile Justice Rules before the statement of the child is recorded, the Court has to ensure that the child is capable of making a voluntary statement.

Certain norms are prescribed in Rule 54(18) of the Juvenile Justice rules to ensure a child friendly atmosphere during trial.²¹

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

Yes.

As per Rule 54 (12) and (13) of the Juvenile Justice Rules, statements and interviews, other than during trial of children who are, victims, or witnesses, shall be recorded through a 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 under section 164 of the Code of Criminal Procedure, 1973 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.

¹⁶ Section 118 of the Indian Evidence Act, 1872

¹⁷ Golla Yelugu Govindu v. State of Andhra Pradesh (2008) 16 SCC 769

¹⁸ 2006(13)SCC 516

¹⁹ State of Madhya Pradesh v. Ramesh and Another (2011) 4 SCC 786

²⁰ Selvi and Others v. State of Karnataka (2010) 7 SCC 263

²¹ The rules also provide that in case of young children, or otherwise incapacitated child, alternative methods of interaction and evidence collection that is less intimidating to be adopted; Images or statements admissible in the interview of the child not to be detrimental to the mental or physical well-being of the child; Length and questions admissible at the interview not to be taxing and to be suitable to the attention span of the child; the Court has to ensure that at no stage during trial, the child comes face to face with the accused.



- (ii) The statement shall be recorded verbatim as spoken by the child.
- (iii) The statement may also be recorded by audio-visual means as per the provisions of sub-section (1) of section 164 of the Code of Criminal Procedure, 1973.
- (iv) The child may be accompanied by parent or guardian or social worker.

Orders for video-conferencing may be passed by the Court, on an application moved by the support person or paralegal volunteer or by the Legal Services Authority, on behalf of the child.

In holding trial of child sex abuse or rape, certain guidelines have been laid down by the Supreme Court of India, which principles can be sought to be applied in cases of physical violence against children.²²

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

Yes.

Under Section 4 of the JJ Act, State Government is empowered to constitute for every district, one or more Juvenile Justice Boards for inter alia deal exclusively with all proceedings under this Act relating to children in conflict with law – a child alleged or found to have committed an offence. Section 91 of the JJ Act provides that if at any stage of the inquiry, the Committee²³ or the Board²⁴

is satisfied that the attendance of the child is not essential for the purposes of inquiry, the attendance of the child shall be dispensed with.

As per Rule 54(15) of the Juvenile Justice Rules, 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

Rule 54(17) provides that separate rooms for vulnerable witnesses may be designated in every Court Complex to record the evidence of child witnesses.

d. What other means of protection are available to children involved in prosecutions of physical violence?

As per Rule 54 of the Juvenile Justice Rules

- (a) The child and his family shall be provided access to paralegal volunteers under the District Legal Service Authority.
- (b) An immediate need assessment of the child will be conducted in terms of the need for food, clothing, emergency medical care, counselling, psychological support and the same shall be immediately extended to the child at the police station.
- (c) Special children's rooms may be designated in every Court Complex with facility for separate space 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 for children such as books, games, etc.
- (d) The Legal Services Authority may provide a support person or paralegal volunteer for pre-trial counselling and to accompany the child for recording of the statement who shall also familiarize the child with the Court and Court environment in advance, and where the child is found to have been disturbed by the experience of coming to the Court, orders for video-

22 Sakshi v. Union of India and Others (2004) 5 SCC 518; State of Maharashtra v. Dr. P B Desai (2003) 4 SCC 601.

(i) A screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused

(ii) The questions put in cross examination on behalf of the accused, insofar as they relate directly to the incident should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in language which is clear and not embarrassing

(iii) The victim of child abuse or rape while giving testimony in court should be allowed sufficient breaks as and when required.

23 Child Welfare Committee as provided under Section 27 of the JJ Act, 2015

24 Juvenile Justice Board as provided under Section 4 of the JJ Act, 2015



conferencing may be passed by the Court, on an application moved by the support person or paralegal volunteer or by the Legal Services Authority, on behalf of the child.

- (e) Parents or guardian(s) shall accompany the child at all times (only if it is in the best interest of the child). If the said person has a conflict of interest, another person of the child's choice, or fit person, or representative of the fit institution identified, or psychologist appointed by the Committee or Court, shall accompany the child at all times, on approval of the Court.
- (f) Psychological counselling may also be provided to the child wherever necessary.
- (g) In a situation where parents or guardians may have been involved in the commission of the crime, or where the child is living in a place where the child is at risk of further trauma, and the same is brought to the notice of the Court, or the Court on its own motion shall direct the child to be taken out of the custody or care, or out of such situation and the child should be immediately produced before the Committee.
- (h) Special permission from school and arrangement for remedial classes for days lost to be ensured by the school authorities.
- (i) Section 74 of the JJ Act provides for prohibition on disclosure of identity of children.

e. Can the child be required to testify more than once?

Yes. There is no formal rule under Indian Law which prohibits that deposition can take place only once.

9. What other protections and remedies are available under domestic law for child victims of physical violence (eg. intervention orders, victims of crime statutory schemes, civil remedies)?

Compensation:

Under Central Victim Compensation Scheme Fund, a victim of minor physical abuse is entitled to a compensation of 2 lac rupees. Children below 14 years of age are provided an additional 50% compensation.²⁵

Protection from disclosure of identity:

Under the JJ Act²⁶, children are protected from disclosure of their identity.

Registration of complaints before Childline (1098):

Childline India Foundation (CIF) launched CHILDLINE, operates a telephone helpline (1098) called CHILDLINE India to help children in distress and who are in need of care and protection.

Children's Home/Child Care Institutions:

Under the JJ Act, provisions have been made with respect to restoration and protection of children in need of care and protection,²⁷ including provisions for observation homes,²⁸ place of safety²⁹, children's home³⁰ etc. for the placement of children for their care, protection, treatment, education, training, development and rehabilitation.

²⁵ <http://vikaspedia.in/social-welfare/social-security/central-victim-compensation-fund-scheme-cvcf#section-3>.

²⁶ Section 74 of the JJ Act, 2015

²⁷ Section 40 of the JJ Act, 2015

²⁸ Section 47 of the JJ Act, 2015

²⁹ Section 49 of the JJ Act, 2015

³⁰ Section 50 of the JJ Act, 2015



National Commission:

In case of violation of child rights of a serious nature or contravention of provisions of any law, the National Commission for Protection of Child Rights (NCPCR) can i. initiate proceedings for prosecution or such other action; ii. approach the Supreme Court, High Court for directions, writs, orders and recommend to the Government or authority for Interim relief to the victim or his family members if required.³¹

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

As per the Guardians and Wards Act, Guardian³², is defined as a "person" having the care of the person of a minor or of his property or of both his person and property³³.

As per JJ Act, "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.³⁴

9.2 In circumstances where Word Vision is providing shelter and other support to a victim of physical violence, can World Vision apply to be the guardian of the child for the purpose of pursuing these remedies? If so:

Yes. The Guardians and Wards Act, 1890 define guardian as a "person" having the care of the person of a minor or of his property or of both his person and property³⁵.

In the Comments of Section 4A of the Guardians and Wards Act it is clarified that the term 'guardian' does not necessarily imply that

it has to be a natural person. Even registered societies too can act as guardians in case of orphans.³⁶ Therefore, World vision can apply to be the guardian of the child.

The JJ Act also provides provisions with respect to registration of child care institutions.³⁷ Child care institutions have been defined under Section 2 (21) to mean children home, open shelter, observation home, special home, place of safety, specialized adoption agency and a fit facility recognized under the Act for providing care and protection to children, who are in need of such services.

Thus, if World Vision is providing shelter it must register under the JJ Act, so as to avoid consequences under the Act³⁸.

a. What criteria is World Vision required to satisfy and how does World Vision apply to be the guardian?

Firstly, World Vision would have to register themselves as a child care institution under Section 41 of the JJ Act.

Rule 21 of the Juvenile Justice Rules provides for the manner of registration of child care institutions

In order to get registered, an application shall be submitted in Form 27 together with a copy each of rules, byelaws, memorandum of association, list of governing body, office bearers, list of trustees, balance sheet of preceding three years, statement of past record of social or public service provided by the institution to the State Government and along with a declaration regarding any previous conviction record or involvement in any immoral act or in an act of child abuse or employment of child labour or that it has not been black listed by the Central or State Government (Rule 22 of Juvenile Justice Rules (JJ Rules).

31 Section 15 of the Commissions for Protection of Child Rights Act, 2005

32 Defined under Section 4(2) of the Guardians and Wards Act, 1890

33 As per Section 24 of the Guardians and Wards Act, 1890 a guardian of the person is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

34 Section 2 (31) of the JJ Act

35 Section 4(2) of the Guardians and Wards Act, 1890

36 Neither the Guardians Act nor the Juvenile Act defines "person". The General Clauses Act, 1977 defines "person" to include any company or association or body of individuals, whether incorporated or not .

37 Section 41 of the JJ Act

38 Section 42 of the JJ Act



The State Government shall then determine and record the capacity and purpose of the institution and shall issue a registration certificate as children home, open shelter, observation home, special home, place of safety or specialized adoption agency after the required verification.

The Rules also provide the criteria³⁹ that may be considered by the State Government before taking a decision on the Application for registration.

Rule 29 to 40 of the Juvenile Justice Rules provide for the criteria for physical infrastructure, clothing and bedding, daily routine, nutritional intake etc.

Rule 61 provides for the duties of a “person in charge” to be appointed by a child care institution.

In addition, as per the Guardians and Wards Act, an application⁴⁰ with respect to guardianship of a minor has to be made to the District Court having jurisdiction in the place where the minor

-
- 39 (i) registration of the organisation under any law for the time being in force;
- (ii) details of physical infrastructure, water and electricity facilities, sanitation and hygiene, recreation facilities;
- (iii) financial position of the organization and maintenance of documents along with audited statement of accounts for the previous three years;
- (iv) resolution of the Governing Body to run the institution or an open shelter;
- (v) plan to provide services for children such as medical, vocational, educational, counselling, etc., in case of new applicants and details of such services provided in case of existing institutions;
- (vi) arrangements of safety, security and transportation;
- (vii) details of other support services run by the organisation;
- (viii) details of linkages and networking with other governmental, non-governmental, corporate and other community based agencies on providing need-based services to children;
- (ix) details of existing staff with their qualification and experience;
- (x) details of registration under Foreign Contribution Regulation Act and funds available, if any;
- (xi) a declaration from the person or the organisation regarding any previous conviction record or involvement in any immoral act or in an act of child abuse or employment of child labour;
- (xii) any other criteria as prescribed by the State Government

40 The information to be given in the Application inter alia includes the qualification of the proposed guardian, grounds on which a person claims to be a guardian and the causes which have led to the making of the Application.

ordinarily resides. The application shall be submitted along with a declaration of the willingness of the proposed guardian to act and the declaration must be signed by him and attested by two witnesses (Section 9 and 10).

World vision can also be recognized as a facility that is willing to temporarily receive a child for a specific purpose or for group foster care.⁴¹ The same documents as required for registration shall be furnished.

b. Can World Vision appoint a lawyer to assist the child?

Yes, World Vision can appoint a lawyer for seeking legal remedies on behalf of the child.

9.3 Can these other remedies be pursued at the same time as a criminal case.

Yes. There is no provision of law which excludes the jurisdiction of a civil court to proceed with a suit for damages even when a criminal case is being pursued. If the criminal court has granted compensation in the case, the compensation paid may be adjusted in the decree passed by the civil court.

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

Yes. The remedies provide for an award of compensation to the child. In a criminal case, the court can order the fine imposed to be applied in payment of compensation for any loss or injury which

41 Under Rule 27 of the Juvenile Justice Rules, the Board or the Committee shall on an application made in Form 38 from any institution or organisation run by Government or non-governmental organisation, recognise the facility as a fit facility provided the manager of that facility is willing temporarily to receive a child for a specific purpose or for group foster care.

Any facility for recognition as a fit facility shall:

- (i) meet the basic standards of care and protection to the child;
- (ii) provide basic services to any child placed with it;
- (iii) prevent any form of cruelty, exploitation, neglect, or abuse of any kind; and
- (iv) abide by the orders passed by the Board or the Committee.



could otherwise be recovered through a civil suit. Compensation may be imposed by a criminal court when the sentence does not include fine⁴².

The Government of India has set up a Central Victim compensation Fund Scheme (CVCF) Guidelines 2016 to encourage States / UTs to effectively implement the Victim Compensation Scheme (VCS) notified by them under the provisions of Section 357A and continue financial support to victims of various crimes that specifically includes crime against children. For physical abuse of minor minimum amount of compensation provided is Rs. 2 lakhs. If the victim is less than 14 years of age, compensation shall be increased by 50% over the amount specified.

While awarding compensation the Court considers various factors like capacity of the accused to pay, nature of the crime, nature of the injury suffered, need of the victim's family and other relevant factors⁴³. Though no limit has been prescribed to the compensation under the law, the Court has to consider what would be reasonable compensation in the case⁴⁴.

The National Legal Services Authority have prepared a Model Victim Compensation Scheme pursuant to the directions of the Hon'ble Supreme Court of India in Nitin Saxena versus Union of India. The Hon'ble Supreme Court directed all the State Government/Union Territories to implement the same. Accordingly, many States have brought into force their respective Victims Compensation Scheme. For example, the Union Territory of Delhi, on 27 June 2019, notified the Delhi Victims Compensation Scheme, 2018 which provides for the procedure for applying compensation,

eligibility for compensation and the factors to be considered while awarding compensation. It also provides for grant of interim relief to the victims and medical treatment of the victims. It also provides for a limitation period of three years for making the claim from the date of occurrence of the offence or conclusion of the trial. For 'physical abuse of minor' minimum limit is 2 lakhs and upper limit is 5 lakhs. Different minimum and upper limits have been prescribed for loss of life, loss of limb resulting in various disabilities, previous injury etc and it has been provided that in case victim is less than 18 years of age, compensation amount may be increased by up to 50% more than specified.

10. Which organisations provide pro bono legal services to help a child victim of physical violence?

Various non-government organisations and Child Welfare Committee constituted under the Juvenile Justice (Care and Protection of Children) Act, 2015 provide for pro bono legal services.

Details of some of the organisations are:

Lawyer's Collective

Third Floor, C- 65, Nizamuddin East,
New Delhi – 110013
(They only deal with female child victims)

Human Rights Law Network

c/o Socio-Legal Information Center
576, Masjid Road, Jungpura
New Delhi – 110014
contact@hrln.org

Haq: Centre for Child Rights

B-1/2 Ground Floor, Malviya Nagar, New Delhi-110017

42 Under Section 357 of the Cr.P.C. when a court imposes a sentence of fine or a sentence of which fine forms a part, it can, while passing judgment, order the whole or part of the fine to be applied in the payment to any person of compensation for any loss or injury when compensation is, in the opinion of the court, recoverable by such person in a civil court. The court can also direct payment of compensation where sentence does not include fine.

No order shall be made till the period allowed for presenting an appeal has elapsed. An order under this section can also be made by the Appellate court.

43 Sarwan Singh versus State of Punjab [AIR 1978 SC 1525]; Rachpal Singh versus State of Punjab [2002] 6 SCC 462]

44 [K Bhaskaran versus Sankaran Vaidhyan Balan [1999 SCC(cri) 1284]



11. Does domestic legislation deal with physical violence against children in circumstances where the alleged perpetrator is also a child (eg: physical bullying)? If so:

Yes⁴⁵. JJ Act and JJ Rules deals with the physical violence against children in circumstances where the alleged perpetrator is also a child⁴⁶.

11.1 What is the minimum age of a child perpetrator who may be held liable for physical violence?

JJ Act does not provide minimum age of a child perpetrator. Under the JJ Act, "Child in conflict with law" has been defined as a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of an offence. However, according to Section 82 of Indian Penal Code (IPC), nothing is an offence which is done by a child under seven years of age. In addition, Section 83 of IPC does not consider it an offence if committed by a child between the age of 7 and 12 if he/she has not attained sufficient maturity to understand the natural consequences of his/her conduct on that occasion.

11.2 What penalties apply?

Section 18 of the Juvenile Justice Act provides that where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, based on the nature of offence, specific need for Preliminary supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

- Direct to send home the child perpetrator after an inquiry and counselling or direct him to participate in group counselling; or
- Order the child perpetrator to perform community service; or
- Order the parents/guardian of child perpetrator to pay fine; or
- Direct the child to be released on probation of good conduct in the care of a parent, guardian or fit person who shall execute a bond, with or without surety for a period not exceeding three years. The child may also be put in the care of a facility.
- Direct the child to be sent to a special home which provides reformatory and psychiatric services. It may in certain cases send the child to a place of safety. The Board may also direct that a child attend school, vocational training centre, therapeutic centre or under go a de-addiction programme
- Prohibit a child from visiting a specified place

If the Board feels there is a need for trial of the child as an adult, then the Board may transfer the trial of the case to a Children's Court⁴⁷

- Once the child perpetrator attains the age of twenty-one, transfer the person to a jail to complete his/her rehabilitation term.

The Children's Court may decide that—

- (i) there is a need for a trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 and pass appropriate orders after trial subject to the provisions of this section and section 21 of the JJ Act, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;
- (ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18 of the JJ Act.

⁴⁵ Chapter IX of the JJ Act, 2015 provides for "Offences against children". Child in conflict with law means a child who is alleged or found to have committed an offence and who has not completed the age of eighteen years on the date of commission of the offence and Rule 54 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 also provides that a complaint may be made by a child against a child.

⁴⁶ Section 89 of the JJ Act, 2015 provides that any child who commits any offence under Chapter IX which includes physical violence shall be considered as a child in conflict with law under the Act. Chapter IV of the JJ Act read with Chapter III of the Juvenile Justice Rules provides for the procedure in relation to children in conflict with law.

⁴⁷ Section 18(3) of the JJ Act



The Children's Court shall follow a procedure prescribed to ensure rehabilitation of the Child including follow up

The Children's Court shall ensure that a child who is found to be in conflict with law is sent to a place of safety till he/she attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

The Children's Court shall ensure that there is a periodic follow up report every year

After the completion of the procedure above Children's Court may—

- (i) decide to release the child on such conditions as it deems fit which includes
 - appointment of a monitoring authority for the remainder of the prescribed term of stay;
- (ii) decide that the child shall complete the remainder of his term in a jail:

No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.⁴⁸

11.3 Can the matter be referred to prosecutors for criminal prosecution?

Yes⁴⁹.

48 Section 21 of the JJ Act, 2015

49 Section 19 (1) of the JJ Act, 2015

11.4 How do domestic laws protect the rights of the alleged perpetrator?

Rights of the alleged perpetrator are protected:

- (i) In cases where a child in conflict with law of prosecution against a child, they shall be produced before the Juvenile Justice Board without any loss of time but within a period of twenty-four hours.⁵⁰
- (ii) By ensuring that child rights are protected throughout the process of apprehending the child, inquiry, after-care and rehabilitation⁵¹;
- (iii) By ensuring availability of legal aid for the child through the legal services institutions⁵²;
- (iv) By providing a child friendly atmosphere to the child during the proceedings⁵³;
- (v) By giving the child perpetrator an opportunity of being heard and participate in the inquiry⁵⁴;
- (vi) By ensuring that the child shall not be tried jointly with a person who is not a child⁵⁵;
- (vii) By ensuring that the child once convicted or acquitted is not tried for the same offence again;⁵⁶
- (viii) By ensuring that no influence shall be used to induce a perpetrator to disclose or withhold any matter within his knowledge⁵⁷;
- (ix) By ensuring that the child perpetrator is produced before the

50 Section 10 of the JJ Act

51 Section 8(3)(b) of the JJ Act, 2015

52 Section 8(3)(c) of the JJ Act, 2015 and Section 304 of the Code of Criminal Procedure, 1973

53 Section 14(5) (b) of the JJ Act, 2015

54 Section 14(5) (c) of the JJ Act, 2015

55 Section 23(1) of the JJ Act, 2015

56 Section 300 of the Code of Criminal Procedure, 1973 and Article 20 (2) of the Constitution of India

57 Section 316 of the Code of Criminal Procedure, 1973

Juvenile Justice Board without any loss of time but within a period of twenty-four hours⁵⁸;

- (x) By ensuring that the responsibility of the child perpetrator is given to a person throughout the course of proceedings who shall also be responsible for the maintenance of the child⁵⁹;
- (xi) By ensuring that a child perpetrator is exempted from furnishing of security at the time of sentencing⁶⁰;
- (xii) By ensuring that a child perpetrator shall not suffer disqualification due to a conviction of an offence⁶¹;
- (xiii) By ensuring that the child shall not be handcuffed or fettered⁶²; and
- (xiv) By ensuring that the FIR shall be registered only in case of heinous offences defined under JJ Act⁶³.

Additionally, guidelines have also been laid down by the Supreme Court of India⁶⁴ in cases of arrest as preventive measures which shall extend to the child perpetrators too.

Section 8 of the Juvenile Justice Act provides that the Board shall be responsible for ensuring informed participation of the child, protection of his rights throughout the process of apprehending the child, inquiry, aftercare and rehabilitation; recognizing that a child in conflict with law can also be a child in need of protection; disposing of the matter and passing a final order that includes an individual care plan for child's rehabilitation.⁶⁵

58 Section 10 of the JJ Act, 2015

59 Section 11 of the JJ Act, 2015

60 Section 22 of the JJ Act, 2015

61 Section 24 of the JJ Act, 2015

62 Rule 8 (3) (ii) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016

63 Chapter III of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016

64 D K Basu v. State of West Bengal (1997) 1 SCC 416

65 Chapter IV of the Juvenile Act and Chapter III of the Juvenile Justice Rules – Rules 8-14 deals with the procedure in relation to children in conflict with law.

INDONESIA





1. What is the definition of a child under domestic law?

Indonesian law has various definitions of a child, as follows:

1. Article 45 of the Indonesian Penal Code ("**IPC**") defines a child as someone who is under the age of 16.
2. Under the Indonesian Civil Code ("**ICC**"), the legal age of a person (where he/she is able to do legal act) is 21 years old, or if he/she has been married.
3. Law No. 23 of 2002 (as amended by Law No. 35 of 2014) on Child Protection ("**Child Protection Law**") defines a child as a person under the age of 18 years old, including an unborn baby. This definition is also consistent with Presidential Decree No. 36 of 1990 on the Ratification of the Convention on the Rights of the Child.
4. Article 1 point 2 of Law No. 4 of 1979 on Child Welfare defines a child as someone under the age of 21 and that has never been married.
5. Article 1 point 26 of Law No. 13 of 2003 on Manpower defines a child as every person under the age of 18 years.
6. Article 47 of Law No. 1 of 1974 on Marriage ("**Marriage Law**") defines a child as under 18 years or not married yet. Thus, if the person is married, then they will not be considered as a child.
7. Article 7 paragraph 1 of the Marriage Law allows marriage if the man is at least 19 years old and the woman is at least 16 years old. People under 21 years old must have permission from both parents to marry.
8. Article 1 point 5 of Law No. 39 of 1999 on Human Rights defines a child as anyone under the age of 18 who has not married. Fetuses are also considered children when it is in their interest.

9. Article 1 point 5 of Law No. 21 of 2007 on Eradication of Human Trafficking Crimes defines a child as anyone under the age of 18, including fetuses.
10. Law No. 20 of 1999 on Ratification of the ILO Convention No. 138 (1973) on Minimum Age Admission for Employment
 - Article 2, in industrialized countries the minimum working age depends on the years it takes to complete compulsory schooling, which is on average 15 to 16 years old. Developing countries may initially set a minimum age of 14 and raise it to 15 across time.
 - Article 3, Children under 18 are forbidden from doing work that is dangerous, unhealthy, or bad for their morals, "hazardous work"
11. Article 2 of Law No. 1 of 2000 on Ratification of the ILO Convention No. 182 (1999) on Worse Forms of Child Labor defines a child as anyone under the age of 18.

2. Is there domestic legislation which deals with physical violence against children (eg: shoving, hitting, slapping, shaking, throwing, punching, burning and kicking)?

Yes. Among others, the following:

1. Article 13 paragraph (1) of the Child Protection Law states that all children are entitled to protection against:
 - a. discrimination;
 - b. exploitation, both economical or sexual;
 - c. abandonment;
 - d. violence, assault and torture;
 - e. injustice; and
 - f. other forms of mistreatment.



2. Various Articles of the IPC deals with physical violence, among others:

Article 351 paragraph 4 of the IPC

"Maltreatment shall be identified as intentional injury to the health"

Article 354 paragraph 1 of the IPC

*"Any person who deliberately cause another person serious **physical injury** shall be guilty of serious maltreatment, and punished by a maximum imprisonment of eight years"*

Article 355 paragraph 1 of the IPC

"Serious maltreatment committed with premeditation shall be punished by a maximum imprisonment of twelve years"

3. Law No. 54 of Article 35 of 2014

"Children under an educational system are entitled to protection against physical, mental, and sexual abuse, as well as other forms of harm that are caused by their educators, members of staff, other students, and/or other parties. As mentioned in the first clause, children are protected from harms caused by their educators, members of staff, government officials, and/or members of society"

4. Law No. 23 of Article 1 of 2004 on Elimination of Household Violence

"Violence in Household shall be any act against anyone particularly woman, bringing about physical, sexual, psychological misery or suffering, and/or negligence of household including threat to commit act, forcing, or seizure of freedom in a manner against the law within the scope of household."

5. Regulation of the State Minister for Women's Empowerment and Child Protection of the Republic of Indonesia No. 2 of 2011 concerning Guidelines for Handling Child Victims of Violence

"Violence against children is every act of children resulting in physical, mental, misery, or suffering sexual, psychological, including neglect and ill-treatment threatening body integrity and degrading children by parties who must be responsible for the child or those who have power over children, who should ideally be trusted, for example parents, close family, teachers, and assistants"

6. Regulation of the State Minister for Women's Empowerment and Child Protection of the Republic of Indonesia No. 6 of 2011 concerning Guidelines for Preventing Violence against Children in Families, Communities, and Educational Institutions

"Violence against children is every act against children with or without purpose, which results in emergence sexual, physical, mental misery or suffering, including neglect and mistreatment discrimination threatening children's body integrity and degrading dignity in its growth period."

7. Regulation of the Minister of Education Culture No. 82 of 2015 concerning the deterrence and prevention of violence in educational environments concerning the deterrence and prevention of violence in educational environments.

"Violence is behavior that is carried out physically, psychologically, sexually, on a network (online), or through textbooks that reflect aggressive actions and attacks that occur in the environment of educational units that result in fear, trauma, damage to property, injury, disability, and or death"



3. If so, what forms of physical violence against children are prohibited under domestic legislation? (Please include the legal definition of the forms of physical violence)

What actions can constitute physical violence can be deduced from the following regulations:

1. Article 76 (C) of the Child Protection Law provides that:
"Every person is prohibited to allow, conduct, order or participate in violence against children."
2. The Child Protection Law defines violence as every act against a child that results in physical, psychological, sexual and/or neglectful misery or suffering, including threats to commit acts, coercion or deprivation of liberty against the law.
3. Under Article 351 paragraph (4) of the IPC, maltreatment shall be identified as intentional injury to the health.
4. Law No. 21/2007 concerning Eradication of Human Trafficking Crimes

Article 1 paragraph 1

"Trafficking of Persons shall mean the recruitment, transportation, harbouring, sending, transfer, or receipt of a person by means of threat or use of force, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within the country or cross border, for the purpose of exploitation or which causes the exploitation of a person."

Article 1 paragraph 7

"Exploitation shall mean an act committed with or without the consent of the victim which includes but is not limited to prostitution, forced labour or service, slavery or practices similar to slavery, repression, extortion, physical abuse, sexual abuse, abuse of the reproductive organs, or the illegal transfer or transplantation of body organs or the use of another persons' labour or ability for one's own material or immaterial profit."

Article 1 paragraph 8

"Sexual Exploitation shall mean any form of the use of sexual organs or other organs of the victim for the purpose of obtaining profit, including but not limited to all acts of prostitution and sexually indecent acts."

Article 1 paragraph 11

"Force shall mean any unlawful act, with or without the use of an instrument, against the physical and psychological aspect of a person that threatens the life or body, or causes the deprivation of such person's freedom."

Article 1 paragraph 12

"Threat of Force shall mean any illegal act in the form of verbal statements, writing, pictures, symbols, or body movements, with or without the use of instruments, which invoke fear or restricts the fundamental freedom of a person."

From the above definitions, we can see that they include various acts of physical violence. However, there is no specific definition of what actions constitute physical violence.



4. Does domestic legislation permit physical violence against children in some circumstances? If so, what circumstances?

No.

5. What are the penalties for violation of domestic laws relating to physical violence against children?

Article 80 of the Child Protection Law provides that:

- (1) Anyone who commits an act of child violence is subject to imprisonment of a maximum three years six months and/or a fine of a maximum IDR 72 million.
- (2) If the Child as mentioned in paragraph (1) is seriously injured, then the offender shall be subject to criminal imprisonment of a maximum five years and/or a fine of a maximum IDR 100 million.
- (3) If the Child as mentioned in paragraph (2) dies, then the offender shall be subject to criminal imprisonment of a maximum 15 years and/or a fine of a maximum IDR 3 billion.
- (4) The criminal sanction is added with one-third of the provisions as mentioned in paragraph (1), paragraph (2), and paragraph (3) if the offender is a parent.

Article 351 of the IPC

- (1) Maltreatment shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of three hundred rupiah
- (2) If the act results in a serious physical injury, the offender shall be punished with a maximum imprisonment of five years
- (3) If it results in death, he/she shall be punished by a maximum imprisonment of seven years

Article 352 of the IPC

- (1) Except for the articles 353 and 356 maltreatment which does not result in an illness or obstacle in the performance of official or professional activities, shall, as light maltreatment, be punished by a maximum imprisonment of three months or a maximum fine of three hundred rupiahs. This sentence may be enhanced with one third in respect of the offender, who commits the crime against a person who is in service with him or who is his subordinate
 - (2) Attempt to this crime shall not be punished
1. Article 2 paragraph 1 of Law No. 21/2007 concerning Eradication of Human Trafficking Crimes

"Anyone who recruits, transports, harbors, sends, transfers, or receives a person through the threat of force, use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit despite the giving of consent by another individual having charge over the person, for the purpose of exploiting the person within the territory of the Republic of Indonesia shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah)."
 2. Articles 5 and 6 of Law No. 21/2007 concerning Eradication of Human Trafficking Crimes provides that anyone who adopts or sends a child within or to another country with the intention if exploitation shall be punishable by a prison sentence of a minimum period of 3 (three) years and maximum of 15 (fifteen) years and fine ranging from Rp120,000,000.00 (one hundred and twenty million rupiahs) to Rp600,000,000.00 (six hundred million rupiahs).



3. Article 44 of Laws no 23 2004 on Eliminating Violence in Households
 - (1) *Anyone committing act of physical violence in household as referred to in Article 5 letter a shall be punished with imprisonment of no longer than 5 (five) years or fine of not more than Rp15,000,000.00 (fifteen million rupiah).*
 - (2) *In case the act referred to in paragraph (2) causes the victim to be sick or to sustain serious injury, the perpetrator shall be punished with imprisonment of no longer than 10 (ten) years or fine of not more than Rp30,000,000.00 (thirty million rupiah).*
 - (3) *In case the act referred to in paragraph (2) brings about death of the victim, the perpetrator shall be punished with imprisonment of no longer than 15 (fifteen) years or fine of not more than Rp45,000,000.00 (forty-five million rupiah).*
 - (4) *In case the act referred to in paragraph (1) is committed by a husband against the wife or vice versa not bringing about sickness or obstruction to perform work of the position or to earn daily livelihood or activity, the perpetrator shall be punished with imprisonment of no longer than 4 (four) months or fine of not more than Rp5,000,000.00 (five million rupiah).*

Article 48

"In case the act referred to in Article 46 and Article 47 causes the victim to sustain injury providing no hope for healing at all, suffering from mental or spiritual disorder for at least 4 (four) weeks continuously or 1 (one) month not continuously, miscarriage or death of fetus, or causes dysfunction of reproductive organ shall be punished with imprisonment of at least 5 (five) years and imprisonment of no longer than 20 (twenty) years or fine of at least Rp25,000,000.00 (twenty-five million rupiah) and fine of not more than Rp500,000,000.00 (five hundred million rupiah)."

6. What forms of physical violence are not covered (and therefore permitted) under domestic legislation?

Indonesian Laws and regulations, including the Child Protection Law have broad definitions of violence; therefore they should provide broad protection over various types of violence, including physical violence.

Please see definitions of violence in point 3 above.

7. Does domestic law reflect international laws and conventions regarding physical violence against children (eg: The UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Universal Declaration of Human Rights)? If not, what are the differences?

Yes. Indonesia has ratified, among others, the following:

1. Universal Declaration of Human Rights (UDHR), through Law No. 39 of 1999 on Human Rights.
2. Presidential Decree No. 36 of 1990 on the Ratification of the Convention on the Rights of the Child.
3. Law No. 7 of 1984 on the Ratification of the Convention On The Elimination Of All Forms Of Discrimination Against Women

8. In criminal prosecutions of physical violence against children:

8.1 What agency or agencies have the authority to refer a case to the prosecutor?

The Indonesian National Police.



However, anyone is able to file a report to the police if they suspect or have information of any conduct of child violence. After the police receive information of a possible 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, the police will launch an investigation to build a case.

8.2 What evidence is required to prove physical violence in a criminal prosecution?

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. This includes evidence for any case of child violence.

However, in physical violence cases, Visum et Repertum (VeR) is considered as strong evidence. However, VeR is weighed and considered to be evidence in the form of a letter. VeR is considered as authentic letter as it is made by an officer and based on the oath of that officer in accordance with the prevailing laws.

8.3 If the prosecutor requires a child to testify against the alleged perpetrators of physical violence (e.g. parents or teachers):

a. Does the child have the right to refuse?

Yes.

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

In addition to that, Indonesian law provides that children under the age of 15 that have never been married may give testimony not under oath.

The testimony given by a child will not be considered as binding evidence, but it will be considered as information to help the consideration of the judges.

Essentially, a child has the right to refuse to provide testimony for a criminal case.

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

Yes.

Possible arrangements for a child to give evidence include:

- video conference
- pre-recorded interviews
- holding the proceedings in private or excluding certain people from the court room

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

Yes.

Possible arrangements for a child to give evidence include:

- video conference
- pre-recorded interviews
- holding the proceedings in private or excluding certain people from the court room



d. What other means of protection are available to children involved in prosecutions of physical violence?

Article 3 of Law No. 11 of 2012 on the System of Juvenile Court ("**Juvenile Court Law**") provides that every child involved in prosecution has the right to, among other things,

- be treated humanely by paying attention to their needs according to their age
- be separated from adults (e.g., detained in separate areas);
- conduct recreational activities
- be free from torture, punishment or treatment of others that is cruel, inhuman and degrading
- not sentenced to death or life sentence
- not arrested, detained, or imprisoned, except as a last resort and for the minimum time
- obtain justice before a juvenile court that is objective, impartial, and with the hearing closed to the public
- have their identity unpublished
- obtain assistance from parents/guardians and people trusted by the child
- obtain education and health services

e. Can the child be required to testify more than once?

A child can be required to testify more than once. There is no standard number of times for a victim to appear in court. It will depend on the panel of judges that presides over the case.

9. What other protections and remedies are available under domestic law for child victims of physical violence (eg. intervention orders, victims of crime statutory schemes, civil remedies)?

In addition to the arrangements stated above, Article 59 of the Child Protection Law stipulates that the Government, Regional Government, and other state institutions have the obligation and responsibility to provide special protection for children.

The special protection for children includes protection for children who are victims of child violence.

The special protection for children is given in the form of:

- a. Immediate handling, including physical and psychological treatment and/or rehabilitation, and prevention of diseases and other health issues.
- b. Psychosocial assistance during treatment until recovery.
- c. Provision of social assistance for children from poor families.
- d. Providing protection and assistance in every judicial process.

Further, civil remedies will always be available to the victim.

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

1. Parents/legal guardians

People or agencies that in reality care for the child as the parent, e.g., the Agency for Organizing Social Welfare (*Lembaga Penyelenggaraan Kesejahteraan Sosial* or "**LPSK**").

Technical Implementation Unit for the Protection of Women and Children (Unit *Pelaksana Teknis Daerah Perlindungan Perempuan dan Anak* or "**UUPTD PPA**"). UUPTD PPA was previously known as women empowerment and child protection agency or Integrated Services for Women and Child Empowerment (*Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak* or "**P2TP2A**") as



changed by Ministerial Regulation No. 4 of 2018 on Guidelines to Form a Technical Implementation Unit for the Protection of Women and Children.

9.2 In circumstances where Word Vision is providing shelter and other support to a victim of physical violence, can World Vision apply to be the guardian of the child for the purpose of pursuing these remedies? If so:

No. The provision of protection and support to victims is conducted by LPSK. Essentially,

World Vision would only refer to P2TP2A and the police.

a. What criteria is World Vision required to satisfy and how does World Vision apply to be the guardian?

See our response to para above 9(b)(i).

b. Can World Vision appoint a lawyer to assist the child?

See our response to para above 9(b)(i).

9.3 Can these other remedies be pursued at the same time as a criminal case.

A civil case can be lodged in court at the same time as a criminal case.

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

Yes, one of the main aims to pursue civil remedies is for a court granted restitution, one of which is compensation. An application for compensation granted to a victim against the abuser is submitted by the victim, or his/her family or attorney to the court through LPSK. The application shall 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:

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

10. Which organisations provide pro bono legal services to help a child victim of physical violence?

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

11. Does domestic legislation deal with physical violence against children in circumstances where the alleged perpetrator is also a child (eg: physical bullying)? If so:

Yes.

INDONESIA

11.1 What is the minimum age of a child perpetrator who may be held liable for physical violence?

The minimum age of a child perpetrator who may be liable is 12 years old.

11.2 What penalties apply?

Article 82 of the Juvenile Court Law provides Actionable Sanctions that include: returning the child to the parents/guardian, care in mental hospital, care at LPKS, obligation to take formal education and/or training held by the government or private entity, revocation of driver's license, and/or rehabilitation from the criminal act.

Article 71 of the Juvenile Court Law provides criminal sanctions that are also available, which include, criminal warning, conditional sanctions (guidance outside the institution, community service, or supervision), work training, jail time, deprivation of profits derived from criminal acts or compliance with customary obligations.

11.3 Can the matter be referred to prosecutors for criminal prosecution?

Yes.

11.4 How do domestic laws protect the rights of the alleged perpetrator?

See response to para above 8(c)(iv).

JAPAN





1. What is the definition of a child under domestic law?

The definition of a child in the context of child welfare is generally a person under the age of 18 (Child Welfare Act Article 4(1), (iii) and Act on the Prevention, etc. of Child Abuse (the “**Child Abuse Prevention Act**”) Article 2).

The current Civil Code defines a minor as a person under age 20 but will be amended to be under age 18 effective 1 April 2022 (Civil Code Article 4).

The Juvenile Act defines Juvenile as a person under age 20 (Juvenile Act Article 2(i))

2. Is there domestic legislation which deals with physical violence against children (eg: shoving, hitting, slapping, shaking, throwing, punching, burning and kicking)?

Yes

1. Civil Code

There are no particular provisions which deal with physical violence against children, but it will constitute a tort under the Civil Code (Civil Code Article 709)

2. Penal Code

There is no criminal legislation which specifically deals with physical violence against children. Basically, physical violence against children is penalized under the Penal Code in the same way as that against adults. Under the Penal Code, assault and inflicting injury are specified as a criminal act (Penal Code Article 204 and 208).

3. Child Abuse Prevention Act

While it is not penal legislation, the Child Abuse Prevention Act prohibits assault of a child in a manner that will cause or is likely

to cause external injury to the body of the child. However, there are no criminal punishment provisions in the act (Child Abuse Prevention Act Article 2(i)).

3. If so, what forms of physical violence against children are prohibited under domestic legislation? (Please include the legal definition of the forms of physical violence)

Under the Civil Code, Penal Code and Child Abuse Prevention Act, no specific form of physical violence is clearly specified. However, assault is generally interpreted as the exercise of illegal tangible power against a human body, which also includes exercise of tangible power which does not directly touch the human body under the Penal Code, which would apply to the interpretation under the Civil Code and the Child Abuse Prevention Act in the same way. Therefore, it can include not only direct violence like shoving, hitting, and slapping but also swinging a knife in a small room.

4. Does domestic legislation permit physical violence against children in some circumstances? If so, what circumstances?

This is not very clear under Japanese legislation.

Under the Civil Code, there is a provision that a person who exercises parental authority may discipline the child to the extent necessary (Civil Code Article 822). Because there is no clear definition of “discipline,” there would be room to interpret that it may include an exercise of physical violence. Therefore, physical violence based on discipline as part of parental authority may not be regarded as a criminal act as a justifiable action, and therefore, it may also be regarded as a justifiable action under the Civil Code and the Child Abuse Prevention Act. However, the unnecessary exercise of physical violence will at least be regarded as an abuse of parental authority and therefore a criminal act, etc.



5. What are the penalties for violation of domestic laws relating to physical violence against children?

1. Penal Code

Under the Penal Code, a person who causes another to suffer injury shall be punished by imprisonment with work for not more than 15 years or a fine of not more than 500,000 yen (Penal Code Article 208).

When a person assaults another without injuring the other person, the person shall be punished by imprisonment with work for not more than 2 years, a fine of not more than 300,000 yen, misdemeanor imprisonment without work or a petty fine (Penal Code Article 204).

2. Child Abuse Prevention Act

The Child Abuse Prevention Act has no penalty.

6. What forms of physical violence are not covered (and therefore permitted) under domestic legislation?

As mentioned in 3, direct physical violence is generally prohibited.

7. Does domestic law reflect international laws and conventions regarding physical violence against children (eg: The UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Universal Declaration of Human Rights)? If not, what are the differences?

The Child Abuse Prevention Act was established in 2000 with adherence to the UN Convention on the Rights of the Child in 1996.

8. In criminal prosecutions of physical violence against children:

8.1 What agency or agencies have the authority to refer a case to the prosecutor?

There is no specific agency with the authority to do so. Any person or agency, including the Child Guidance Center, Immigration Bureau, the Labor Standards Office, an individual, NGOs or the local municipal government, after becoming aware of suspected physical violence against children, can file a complaint with the police/prosecutor. If the police receive a complaint, they can investigate, make arrests (under writ) and bring matters to the prosecutor's office.

8.2 What evidence is required to prove physical violence in a criminal prosecution?

The types of evidence required to build a case vary from case to case. For assault, evidence typically consists of circumstantial evidence, such as establishing the intentions of assault, in addition to evidence to objectively prove the assault (Penal Code Article 208).

For injury, in addition to the evidence of assault, there must be evidence that a person was injured (e.g., a medical certificate) as well as a causal relationship between the assault and the injury (Penal Code Article 204).

8.3 If the prosecutor requires a child to testify against the alleged perpetrators of physical violence (e.g. parents or teachers):

a. Does the child have the right to refuse?

Prosecutors can generally obtain a writ from the court requiring testimony from witnesses with relevant information. Victims (like any other witness) do not have a right to refuse to testify (Criminal Procedure Code 143) unless there is a justifiable reason for refusing (unless, for instance, the victim's testimony would



be self-incriminatory (Criminal Procedure Code 146)), though in practice prosecutors rarely compel victims to testify when they do not wish to testify.

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

Yes) (Criminal Procedure Code 157-4). Permission is typically granted by judges.

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

No. Victims need to appear in court to provide testimony if the court intends to examine them, in principle. In practice, documents which contain statements made before prosecutors are often submitted to the courts under certain conditions; two of the justifications are that: (i) the defending attorney or defendant agrees to the submission; or (ii) the person making the statements is out of the country (Criminal Procedure Code 321(1) (ii)). For instance, depending on the content of the statement and other evidence, a victim provides statements to the prosecutor before the court proceeding starts, leaves Japan and then the prosecutor submits the documents.

Procedurally, this process should be subject to the decision of the judge - whether or not the judge permits the submission of evidence by document rather than the witness appearing in court. The prosecutor will need to submit the evidence and ask for a grant of permission.

d. What other means of protection are available to children involved in prosecutions of physical violence?

Below are several means of protection available, judge permitting: 1) the victim may provide their testimony on a date apart from a trial date (Criminal Procedure Code 158); 2) with a screen concealing them from the criminal defendant and/or the spectators (Criminal Procedure Code 157-5); 3) with the assistance of someone who is deemed appropriate (e.g., mother of the

child) (Criminal Procedure Code 157-4); 4) exclusion of the criminal defendant and/or a specific spectator (whose presence is believed will cause the witness to be unable to comfortably provide sufficient testimony) from the courtroom while remaining in the presence of the judge, the prosecutor and the criminal defendant's attorney (Criminal Procedure Code 281-2).

We also note that the court may keep the identity of the victim confidential during the court proceedings or during its ruling (Criminal Procedure Code 290-3).

e. Can the child be required to testify more than once?

This depends on each case, but typically, the court considers the burden and tries to keep it as minimum as possible if the prosecutor requests this.

9. What other protections and remedies are available under domestic law for child victims of physical violence (eg. intervention orders, victims of crime statutory schemes, civil remedies)?

1. Loss or Suspension of Parental Authority

If a perpetrator of physical violence is the child's father or mother, the family court may make a ruling of loss or suspension of parental authority with regard to the father or mother (Civil Code Articles 834 and 834-2).

2. Child Welfare Act and Child Abuse Prevention Act

(1) Child Welfare Act stipulates general measures for bringing up children in good mental and physical health:

- Notification (Child Welfare Act Article 25)

A person who discovers an aid-requiring child shall give notification to a welfare office or child guidance center established by the local government.



- Inspection, etc. (Child Welfare Act Article 29)

The local government is entitled to enter the domicile or residence of the child or his/her workplace and make necessary inspections or perform questioning.

- Temporary Custody (Child Welfare Act Article 33)

A director of the child guidance center may take temporary custody of the child.

- Admission into Shelter (Child Welfare Act Article 28)

The local government may admit the child into a shelter with approval from the family court.

- (2) The Child Abuse Prevention Act stipulates, in order to enhance the effectiveness of child protection, the measures for protection of children who have suffered child abuse.

- Notification of Child Abuse (Child Abuse Prevention Act Article 6 (1))

A person who has detected a child who appears to have suffered child abuse shall promptly give notification to the municipality or the welfare office or child guidance center established by the prefecture.

- Measures Taken on Receipt of Notification or Referral (Child Abuse Prevention Act Articles 8 to 9.9)

The mayor of the municipality or the director of the welfare office shall take measures to confirm the safety of the relevant child, refer the child to a child guidance center, and notify the prefectural governor or the director of the child guidance center about the relevant child.

The director of the child guidance center shall take measures to confirm the safety of the child and temporary custody as necessary.

A prefectural governor may request the custodian of the relevant child to make an appearance with the child, or cause an official engaged in the affairs regarding the welfare of children to conduct on-site investigations, inspection, or search, etc.

- Request for Assistance from Police (Child Abuse Prevention Act Articles 10)

The director of the child guidance center may ask the police for assistance.

3. Victims of Crime Benefit Act

The Victims of Crime Benefit Act provides support for the bereaved, whereby the government issues benefits to those who have not received enough restitution from the criminal or public relief after the victim is killed, seriously injured, or suffers from a severe disease or residual disability through deliberate criminal conduct.

4. Japan Sports Council Act

This remedy is limited to cases in schools or nurseries but can be used for violence cases at these sites.

The Injury and Accident Mutual Aid Benefit System provides benefits (medical expenses, disability compensation or death compensation) in cases of injury, illness, disease, accident, or death that occur to students and younger children while under the supervision of schools or nurseries (Japan Sports Council Articles 15 (vii) to 18).

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

1. Loss or Suspension of Parental Authority

If there is no person who can become a guardian of a minor, the family court may appoint a guardian for a minor upon request (Civil Code Article 840 (1)).



2. Child Abuse Prevention Act

Child Welfare Act and Child Abuse Prevention Act do not limit the range of persons who have obligations to promptly give notification (Child Welfare Act Article 25, Child Abuse Prevention Act Article 6 (1)).

3. Victims of Crime Benefit Act

A person has parental authority in relation to the child or a person who is appointed as a guardian of a minor by the family court. Foreign residents, however, are not eligible to receive support from this act.

4. Japan Sports Council Act

The child's guardian, foster parent, or the person recognized by the operator of the school has custody of and provides education to the child (Japan Sports Council Act Article 15 (vii)).

9.2 In circumstances where Word Vision is providing shelter and other support to a victim of physical violence, can World Vision apply to be the guardian of the child for the purpose of pursuing these remedies? If so:

1. Loss or Suspension of Parental Authority

The family court may appoint a juridical person as a guardian of a minor. There are actual cases where social welfare juridical persons or nonprofit organizations have been appointed as guardians of minors.

a. What criteria is World Vision required to satisfy and how does World Vision apply to be the guardian?

1. Loss or Suspension of Parental Authority

In the appointment of a guardian of a minor, if the person to become the guardian of a minor is a juridical person, the family court shall consider its type and content of business and the

existence of any vested interest between the minor ward and the juridical person or its representative, the opinion of the minor ward, and all other circumstances (Civil Code Article 840 (3)).

b. Can World Vision appoint a lawyer to assist the child?

Yes.

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

Yes.

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

1. Loss or Suspension of Parental Authority

No. However, the child and his or her guardian appointed by the family court may seek compensation against the perpetrator through a tort action.

2. Child Abuse Prevention Act

No.

3. Victims of Crime Benefit Act

Yes.

- Survivor Benefits:

These are paid to bereaved families such as parents and siblings. The amount depends on the case but is approximately from 3 million yen to 30 million yen.



- Serious Injury or Sickness Benefits:

This is paid to victims who have suffered serious injury or serious illness. The combined amount of the medical fee the victim has paid and the damages due to taking leave from work (maximum of 1.2 million JPY) will be paid to the victim for up to one year.

- Disability Benefits:

This is paid to victims who have suffered disability as a result of the crime. Its amount depends on the disability but is approximately from 0.2 million yen to 40 million yen.

4. Japan Sports Council Act

Yes.

- Medical expenses

These are four-tenths of the amount of the expenses required for the medical treatment at the medical insurance level.

However, if the victim becomes a subject of high-cost medical care expenses, the amount can add one-tenth of the amount of the expenses required for the medical treatment to the copays.

If the victim bears the standard copays for dietary treatment costs charged for the time in the hospital, the amount is added to the costs of the amount above.

- Disability compensation

410 thousand yen to 37.7 million yen

- Death compensation

14 million yen or 28 million yen

10. Which organisations provide pro bono legal services to help a child victim of physical violence?

- **Japanese legal support center (Hou Terrace)**

The Japanese legal support center provides legal support to a child for administrative procedures, litigation, and related legal advice on consignment from the Japan Federation of Bar Associations.

- **Human Rights Now**

According to its website, Human Rights Now is an international human rights NGO based in Tokyo, Japan and its members include over 700 individuals and organizations, including lawyers, scholars, journalists, law firms, former UN officials, retired Japanese Supreme Court Justices, and activists. It works for the promotion and protection of human rights for people around the world, with a special focus on Asia.

- **Some Law Firms**

There are some law firms or individual lawyers who work on pro bono legal services and some of the work is to help child victims.

11. Does domestic legislation deal with physical violence against children in circumstances where the alleged perpetrator is also a child (eg: physical bullying)? If so:

Yes.

1. Civil liability

Under the Civil Code, physical violence against children in circumstances where the alleged perpetrator is also a child may be dealt with as a tort as described below.



2. Criminal liability

Under the Penal Code, physical violence against children in circumstances where the alleged perpetrator is also a child may be dealt with as a crime as described below.

3. The Act for the Measures to Prevent Bullying

The Act for the Measures to Prevent Bullying lists measures to be taken by the school such as (i) confirmation of the facts of the bullying and a report to the operator of the school, (ii) support for the child who suffered the bullying and his or her custodian, (iii) guidance for the child who bullied and advice to his or her custodian, as well as coordination with police when the school recognizes that the bullying should be dealt with as a crime.

11.1 What is the minimum age of a child perpetrator who may be held liable for physical violence?

1. Civil liability

The Civil Code stipulates that in cases where a minor has inflicted damages on others, if the minor does not have sufficient intellectual capacity to appreciate his/her liability for his/her own act, the minor shall not be liable to compensate for that act (Civil Code Article 712). Generally, a minor 12 or 13 years and upward is thought to be liable.

2. Criminal liability

The Penal Code stipulates that an act of a person less than 14 years of age is not punishable (Penal Code Article 41). However, the Juveniles Act stipulates that a juvenile under 14 years of age who has violated laws and regulations of a criminal nature may be subject to a hearing and decision by the family court (Juveniles Act Article 3). In addition, this decision by the family court shall not be for a criminal penalty but for an educative measure (e.g., a juvenile training school).

11.2 What penalties apply?

1. Civil liability

A child perpetrator shall be liable to compensate any damages resulting in consequences through a tort action (Civil Code Article 709).

2. Criminal liability

A child perpetrator may be subject to criminal penalties. However, the Juveniles Act stipulates the mitigation of the death penalty and life imprisonment (Juveniles Act Article 51) and limitation of the minimum and maximum terms of imprisonment with or without work (Juveniles Act Article 52).

11.3 Can the matter be referred to prosecutors for criminal prosecution?

2. Criminal liability

Yes.

- Referral to a public prosecutor (Juveniles Act Article 20)

The family court shall, through a ruling, refer a case punishable by the death penalty or imprisonment with or without work to a public prosecutor in the public prosecutors' office that corresponds to the district court with the jurisdiction of the case if the disposition to refer the case to criminal procedures is found appropriate for the case as a result of the investigation in light of the nature of the crime and circumstances. Practically, the family court rarely refers cases to the prosecutor's office. These cases are limited to very serious cases or cases where a juvenile asserts his/her innocence.

11.4 How do domestic laws protect the rights of the alleged perpetrator?

2. Criminal liability

The Juveniles Act implements special measures for juvenile criminal cases for the purpose of Juveniles' sound development.

- Hearing (Juveniles Act Articles 22)

If the alleged perpetrator is a Juvenile, he or she shall be referred to a hearing and decision from the family court instead of a criminal procedure. Hearings are not open to the public.

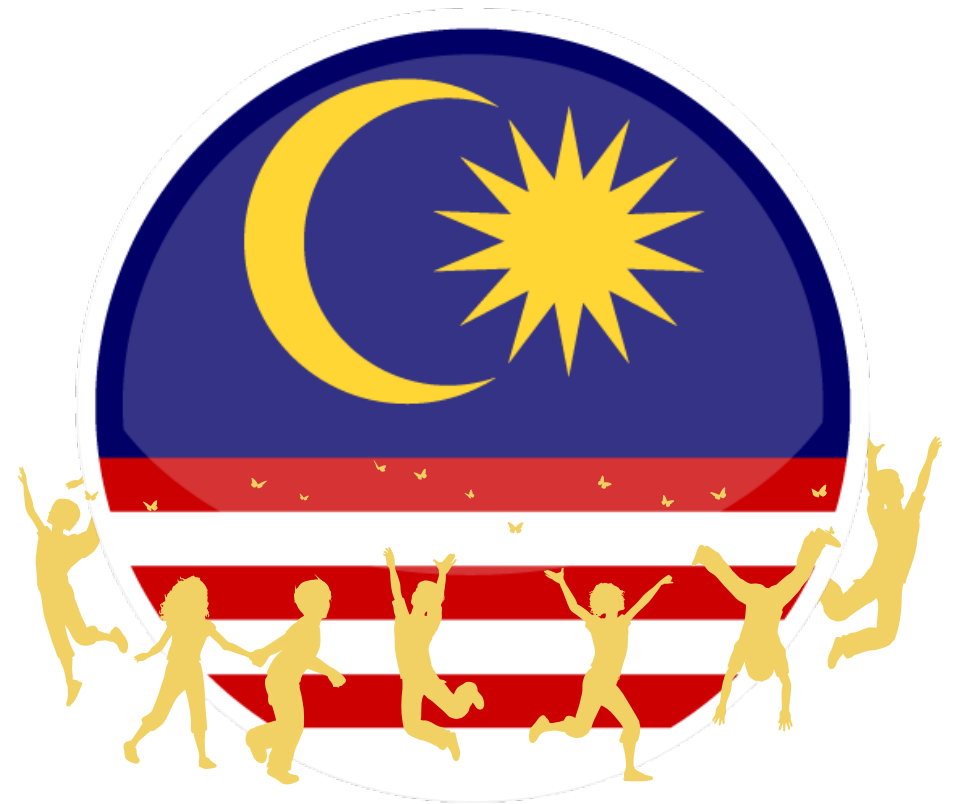
- Attendant (Juveniles Act Article 10)

A Juvenile or the Custodian of the Juvenile may, with the family court's permission, appoint an attendant; provided, however, that no permission is needed to appoint an attorney at law as the attendant.

- Court-appointed attendant (Juveniles Act Article 22-3)

If the Juvenile has no attendant who is an attorney at law in a case of a Juvenile for a certain serious crime, the court shall appoint an attendant who is an attorney at law.

MALAYSIA





1. What is the definition of a child under domestic law?

Pursuant to the Malaysian Child Act 2001 ("CA"), "child" is defined as a person under the age of 18. The Domestic Violence Act 1994 ("DVA") also defines a child as a person below the age of 18 who is living as a member of the offender's family in the context of child abuse in domestic violence.

Similarly, "minor" is defined under the Age of Majority Act 1971 as one who has not attained the age of majority (i.e. 18 years old).

However, for the purposes of the Evidence of Child Witness Act 2007 ("ECWA"), "child witness" is defined as a person under the age of 16 who is called or proposed to be called to give evidence in any proceedings but does not include an accused or a child charged with any offence.

2. Is there domestic legislation which deals with physical violence against children (eg: shoving, hitting, slapping, shaking, throwing, punching, burning and kicking)?

Yes, Child Act 2001 ("CA") and the Domestic Violence Act 1994 ("DVA").

3. If so, what forms of physical violence against children are prohibited under domestic legislation? (Please include the legal definition of the forms of physical violence)

Physical or Emotional Injury / Sexual Abuse / Neglect

Pursuant to Section 31 CA, it is an offence for a person having the care of a child to (1) abuse, neglect, abandon or expose the child in a manner likely to cause physical or emotional injury, or causes or permits him to be so abused, neglected, abandoned or exposed; (2) sexually abuses the child or causes or permits him to be so abused.

Section 17(2)(a) CA goes on to define that a child is physically injured if there is substantial and observable injury as a result of the non-accidental application of force or an agent to the child's body that is evidenced by, amongst other things, a laceration, a contusion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain, haemorrhaging, the rupture of a viscus, a burn, a scald, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth.

Domestic violence

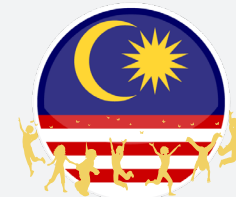
Domestic violence is an offence under the DVA, as is defined under Section 2 DVA as the commission of one or more of the following acts:

- knowingly or attempting to put the victim in fear of physical injury;
- causing physical injury to the victim;
- using force to compel or threaten victim to engage in any act which the victim has a right to abstain;
- confining or detaining the victim against the victim's will;
- destruction of property to cause distress to the victim;
- causing psychological abuse and emotional injury to the victim.

4. Does domestic legislation permit physical violence against children in some circumstances? If so, what circumstances?

No. Any physical violence against children as set out above is an offence.

Nonetheless, caning is used as a form of judicial corporal punishment in Malaysia. It may be divided into three contexts: judicial/prison, school, and Sharia.



In the context of school, according to the Education (School Discipline) Regulations 1959 and the 2003 Corporal Punishment Guidelines issued by the Ministry of Education, only male students who commit medium and serious offences may be punished with a light rattan cane. The caning is limited to a maximum of 3 blows with a light cane on the palm of the hand or on the buttocks over the clothes and can be done only by the head teacher or any staff member. For heavy or serious offences, offenders are given up to 3 strokes on their buttocks. Serious offences include threatening teachers or students, taking or distributing drugs, bullying, peeping (insulting the modesty of others) and distributing pornography.

Those who commit moderate or medium offences can be caned up to 3 times on their palms. These offences comprise abuse of school facilities, cheating at examinations or leaving school without permission.

Minor offences such as arriving late, being noisy in class, failing to bring books or complete homework or not paying attention in class can only be dealt with via a warning and counselling sessions.

The caning cannot be carried out in public and a record of corporal punishments should be kept in a confidential form approved by the Registrar.

Judicial punishment and Sharia caning may not be implemented on child offenders.

5. What are the penalties for violation of domestic laws relating to physical violence against children?

Physical or Emotional Injury / Sexual Abuse / Neglect

Any person having the care of a child who abuses, neglects, abandons or exposes the child to physical or emotional or sexual abuse or causes the child to be so abused commits an offence and

would be liable to a fine up to RM 50,000 or to imprisonment for up to 20 years or to both. The offender would also be required to execute a bond (make a promise) to be of good behavior for a period and under conditions determined by the court and perform community service. (section 31 CA)

Domestic Violence

Pursuant to section 10 DVA, the court may award reasonable compensation for the injury suffered by taking into account of:

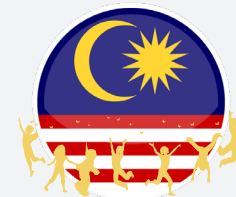
- pain and suffering (nature and extent of physical injury or psychological abuse);
- medical expenses; and
- necessary and reasonable lodging, transport and moving expenses or expenses of setting up separate household.

6. What forms of physical violence are not covered (and therefore permitted) under domestic legislation?

Female genital mutilation ("FGM") and child marriage for 16 years old Muslim girls with parent consent under Sharia law.

7. Does domestic law reflect international laws and conventions regarding physical violence against children (eg: The UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Universal Declaration of Human Rights)? If not, what are the differences?

The CA incorporates the core principles of the Convention of the Rights of the Child ("CRC") on non-discrimination, best interests of the child, the right to life, survival and development as well as respect for the views of the child.



However, Malaysia has not implemented Article 37 of the CRC which provides for a child to be free from torture and deprivation of liberty due to its incompatibility with the Constitution, national law and policies including the Sharia law.

Furthermore, despite the ratification of CRC and Universal Declaration of Human Rights, the practice of FGM and child marriage are still legally permitted in Malaysia. Also, the inconsistencies in the definition of the child under national laws remain under both civil and Sharia law.

8. In criminal prosecutions of physical violence against children:

8.1 What agency or agencies have the authority to refer a case to the prosecutor?

The Police or investigating officer, by submitting an investigation report (section 120 Criminal Procedure Code). The Department of Social Welfare may also investigate child abuse (section 109 CA) and refer a case to the prosecutor, but the commencement of prosecution would require the filing of a police report. No prosecution for an offence under CA shall be instituted except by or with the written consent of the Public Prosecutor.

8.2 What evidence is required to prove physical violence in a criminal prosecution?

Oral and/or documentary evidence establishing the elements of the offence. In general, this includes the testimonies by the victim, his family members or any relevant parties, medical report, photo, CCTV and etc. evidencing physical injury as set out in the answers to Question 3 above has been inflicted on the child.

8.3 If the prosecutor requires a child to testify against the alleged perpetrators of physical violence (e.g. parents or teachers):

a. Does the child have the right to refuse?

Yes. However, the refusal to testify will weaken the prosecutor's case.

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

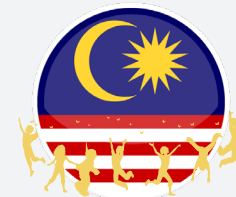
Child victims may give evidence by means of a live link from a location other than the courtroom. This location would be deemed to be a part of the courtroom in which the proceeding is being held (section 5 ECWA).

Alternatively, the child witness may ask to have a screen between him and the accused to prevent being seen by the accused (section 4 ECWA).

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

Yes, a video recording may be admitted as evidence of the child victim, provided that it is accompanied by a transcript of the original language used in the video recording and its translation if the language used is not the national language (section 6 ECWA).

However, such evidence is not ideal as it deprives the accused the opportunity to cross examine the child witness. In the case of evidence of a child victim of tender years, the Court, when considering statements in the video recording as evidence, shall assess whether the child victim possesses sufficient intelligence and understands the duty of speaking the truth, though not given upon oath. A child is treated as competent to give evidence if he understands the nature of question put to him and gives a rational answer (section 228 Evidence Act 1950).



d. What other means of protection are available to children involved in prosecutions of physical violence?

The child's identity is protected by the law. Any particulars that may lead to the identification of the child witness, such as name, address of the child, educational institutions the child attends, and picture, persons or place that may lead to the identification of the child witness shall not be published in any mass-media or transmit through any electronic medium (Section 15 CA and section 14 ECWA).

During court proceedings, a child victim may be accompanied

by an adult, typically a legal guardian or an officer from the Department of Social Welfare to give physical comfort and assurance (section 9 ECWA).

Further, the child victim may be questioned through an intermediary who communicates the questions put to the child witness and communicates the child's answer to the person putting the questions. He also explains the questions and answers to be understood by the child (section 8 ECWA).

e. Can the child be required to testify more than once?

A victim who gives evidence in court will go through the trial process of examination-in-chief, cross examination and re-examination once, unless there is an appeal or a re-trial, where the victim would go through the same trial process.

Where a video recording is admitted as evidence of examination-in-chief, the child witness shall be called to be further examined-in-chief by the party who tendered the video recording in evidence on any matter which, in the opinion of such party, has not been dealt with adequately in the child witnesses recorded testimony (Section 6(4) ECWA). The child may give evidence by having a screen between him and the accused or by means of a live link (Section 6(5) ECWA).

9. What other protections and remedies are available under domestic law for child victims of physical violence (eg. intervention orders, victims of crime statutory schemes, civil remedies)?

Duty to inform relevant authority of abuse

The following parties have a duty to inform a Social Welfare Office ("**SWO**") if there are reasonable grounds that a child is physically abused:

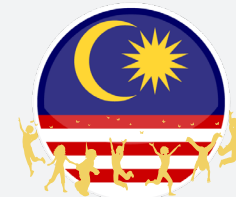
- Medical officers / practitioner (section 27 CA);
- members of family such as parent, guardian, extended family or household member (section 28 CA);
- child care provider (section 29 CA); and
- any other persons (section 29A CA) - this would extend to neighbours and teachers as well.

Failure in reporting such abuse would attract fine or imprisonment or both. Reporting may be made to Talian Nur Hotline at 15999 or a hospital or the police. On receiving report, the SWO will visit the place where abuse has taken place to conduct a social investigation and prepare a social report.

Temporary Custody / Medical Attention

If the protector (Department of Social Welfare) or police officer is satisfied on reasonable grounds that a child is physically abused, they may decide to:

- take the child into temporary custody / place of safety (section 18 CA);
- take the child to the medical officer (section 20 CA);
- direct the parent/guardian to take the child to a medical officer;
- lodge a police report; or
- apply for an interim protection order from the court.



The SWO usually prepares a social report based on the interviews with the child, parent/guardian, family members, teachers, medical officers or anyone related to the child. The report will be tendered to the Court for Children for the final decision to be made.

Pursuant to section 30 CA, the court may order the parent or guardian to execute a bond (promise) to exercise proper care and guardianship for a period specified by the court. Also, subject to the best interest of the victim child, the court may order that the child victim to be placed in the care of:

- a fit and proper person for a period specified by the court;
- foster parent found to be suitable by the Director General for 2 years / until he/she attains the age of 18 years old, whichever is shorter;
- centre for 3 years / until he/she attains the age of 18 years old, whichever is shorter; or
- place of safety for 3 years / until he/she attains the age of 18 years old, whichever is shorter;

In addition, the court may order the child to be under supervision of a protector (Department of Social Welfare) or other court appointed person for a period specified by the court.

Domestic Violence

Pursuant to the DVA, the court may make the following orders to safeguard children subject to domestic violence:

- protection order restraining use of violence against the child (sections 4 and 5 DVA);
- right of exclusive occupation to allow child to reside at a safe place and a prohibition order prohibiting the perpetrator from entering / communicating with the child victim (section 6 DVA); or
- parties to be referred to rehabilitative therapy (section 11 DVA).

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

Under the Adoption Act 1952, guardian means any person or body of persons other than its natural parents, who has custody of the child.

On the other hand, under the CA, a guardian includes any person who has control over the child in the opinion of the Court For Children (section 2 CA).

Persons outside the above definition may also be a "guardian" if they have:

- been lawfully appointed by deed or will or by a court order to be the guardian of the child; or
- lawfully adopted the child

(section 34(2) CA)

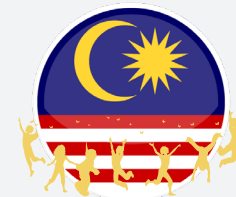
9.2 In circumstances where Word Vision is providing shelter and other support to a victim of physical violence, can World Vision apply to be the guardian of the child for the purpose of pursuing these remedies? If so:

- a. What criteria is World Vision required to satisfy and how does World Vision apply to be the guardian?

World Vision will only be regarded as the guardian of a child if it has been lawfully appointed as a guardian or has legally adopted the child - the mere provision of shelter to the abused child will not automatically grant guardianship status to the local World Vision organization.

- b. Can World Vision appoint a lawyer to assist the child?

Yes, World Vision in its capacity as a lawful guardian, may, on behalf of a child, appoint a lawyer to represent the child to pursue compensation in a civil case.



An abused child or minor cannot file civil complaints independently. All actions on behalf of children must be commenced through a litigation representative (typically the child's next-of-kin or a guardian that a court appoints to watch after the child during the case), who has to act by a solicitor.

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

Yes.

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

The determination of compensation amount for an abused child will depend on the facts of the case and the cause(s) of action raised by the abused child against the perpetrator as well as the type of harm or injury suffered by the abused child.

As an overview, the determination of remedies will generally be based on the following key heads of damages, which the Court may grant in favour of the abused child in the event that a civil suit can successfully be established against the perpetrator:

- Compensatory damages - to restore the claimant back to his or her position before the injury occurred. There are generally two types of compensatory damages:
 - economic / special damages such as lost earnings, medical expenses, cost of psychiatric care, lodging, transport and moving expenses or expenses incurred in setting up separate household to separate child victim from perpetrator etc.; and
 - non-economic loss / general damages such as loss of enjoyment of life, physical pain suffered by the victim, emotional distress such as PTSD suffered by the victim etc.);
- Exemplary damages - to punish and deter egregious conduct. The award of exemplary damages is highly arbitrary and

within the discretion of the judge and may only be awarded in limited circumstances (for example, in instances involving false imprisonment etc.)

10. Which organisations provide pro bono legal services to help a child victim of physical violence?

The following key organisations generally provide pro bono services in aid of child victim of physical violence:

Bar Council Legal Aid Centre (<https://www.kllac.com/lac-program/>);

Women's Aid Organisation (<https://wao.org.my/our-services/>);

Malaysian Association for the Protection of Children (MPAC);

Protect and Save the Children (<https://www.psthechildren.org.my/aboutus.html>);

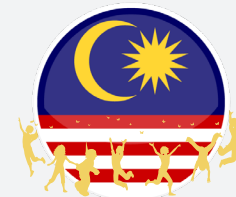
SURIANA Welfare Society Malaysia (<https://surianaresources.com/portfolio-card-boxed-style-3-column/>);

Voice of the Children (<http://www.voc.org.my/>); and

SUKA Society (<http://www.sukasociety.org/about-suka/>).

Women's Centre for Change (<https://wccpenang.org/>)

SHELTER Home (<http://www.shelterhome.org/>)



11. Does domestic legislation deal with physical violence against children in circumstances where the alleged perpetrator is also a child (eg: physical bullying)? If so:

11.1 What is the minimum age of a child perpetrator who may be held liable for physical violence?

The law presumes that children under the age of 10 are incapable of committing a crime and so, any child under 10 will not be liable for any offence. But this depends on the child's degree of understanding of the nature and consequences of his act at the time of the crime. (section 82 Penal Code)

Children between the age of 10 - 12 who have not attained sufficient maturity or understanding to judge the nature and consequences of his conduct on that occasion are treated as incapable of committing an offence. (section 83 Penal Code)

Children above the age of 12 are expected to share the responsibility of an adult and will be liable for physical violence according to the standards of an adult. However, they are subject to a different court system, i.e., the Court of Children, and thus, enjoy more protection (see 11(d) below) and are less likely to be subjected to equal mode of punishment.

11.2 What penalties apply?

Physical or Emotional Injury / Sexual Abuse / Neglect

Pursuant to section 91 CA, when the court is satisfied that an offence has been proved, the court has the power to:

- order the child to pay a fine, compensation or costs;
- make a community service order up to 120 hours within 6 months (section 97 CA);
- order the child to be sent to an approved school or a Henry Gurney School (only if offence committed is not serious and school is conducive to reformation - section 67 CA);

- order probation of child in a place of detention for period of 1-3 years (only if child perpetrator is above 10 and committed any grave crime or voluntarily caused severe and permanent injury and the nature of the offence and character of the child deems it appropriate to make such order) (section 98 and 62 CA); or
- order imprisonment (only if child perpetrator is aged 14 years and above and none of the above penalty is sufficient to deal with the child - section 96(2))

In addition to the above, the court may also order the child perpetrator's parent or guardian to:

- pay a fine or compensation or costs;
- give security (promise) for the good behavior of the child without finding the child guilty;
- report at regular intervals at the welfare department or police station;
- attend interactive workshops at designated centres;
- visit child at approved school or Henry Gurney School; (Section 93 CA); or
- make contributions for child placed in the care of fit and proper person / approved school / probation hostel (section 108 CA)

Domestic Violence

Reasonable compensation for physical injury - see answer to Question 5 above.

11.3 Can the matter be referred to prosecutors for criminal prosecution?

Yes

11.4 How do domestic laws protect the rights of the alleged perpetrator?

Court Procedure for children (section 91 CA)

The court has a duty to explain to the child in simple language suitable to his age, maturity and understanding the substance of the alleged offence and evidence against him to ask for his explanation. If the child is not represented by a lawyer, instead of cross-examining the child, questions may be put to the child as may be necessary to bring out explanation.

Restrictions on order of imprisonment (section 96 CA)

Further, the court shall not order the imprisonment of a child under the age of 14 if he can be suitably dealt with in any other way whether by probation, or fine, or being sent to a place of detention or an approved school, or a Henry Gurney School. If ordered to be imprisoned, the child shall not be allowed to associate with adult prisoners.

Restrictions on order of death sentence (section 97 CA)

The court shall not deliver a death sentence against a person who committed the offence when he was a child.

Restrictions on media reporting and publication applies to child perpetrators too. (see Question 8(c)(iv))

PHILIPPINES





1. What is the definition of a child under domestic law?

A child may refer to either:

- (a) a person below 18 years old¹; or
- (b) a person who is over 18 years old, but could not take care of himself/herself fully because of a physical or mental disability or condition (RA 7610).

2. Is there domestic legislation which deals with physical violence against children (eg: shoving, hitting, slapping, shaking, throwing, punching, burning and kicking)?

Yes. The following domestic laws deal with violence against children:

- (a) Republic Act No. 7610 or the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act";
- (b) Republic Act No. 9262 or the "The Anti-Violence Against Women and their Children Act of 2004"; and
- (c) Act No. 3815 or the "Revised Penal Code".

3. If so, what forms of physical violence against children are prohibited under domestic legislation? (Please include the legal definition of the forms of physical violence)

Under RA 7610

Child abuse – refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

- (a) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

- (b) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (d) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (e) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death. (Section 3[b], RA 7610)

Under RA 9262

Physical violence – refers to acts that include bodily or physical harm (Section 3[A]);

Sexual violence – refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

- (a) Rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;
- (b) Acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;
- (c) Prostituting the woman or child. (Section 3[B])

Battery – refers to an act of inflicting physical harm upon the woman or her child resulting to the physical and psychological or emotional distress. (Section 3[D-b])

¹ Republic Act No. 9344 or the "Juvenile Justice and Welfare Act of 2006", Sec. 2(a); Republic Act No. 7610 or the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act", Sec. 3(a).



Under The Revised Penal Code:

Mutilation - depriving a child, totally or partially, of some essential organ of reproduction.

Parricide, Infanticide, Murder, Homicide - killing a child. The specific classification will depend on the attending circumstances such as the age of the child, the relationship of the accused to the child, and presence of qualifying circumstances.

Serious, Less Serious Physical Injury or Slight Physical Injury - wounding, beating, assaulting, or inflicting physical injuries to a child, or administering injurious substances or beverages to a child, without intent of killing him / her.

4. Does domestic legislation permit physical violence against children in some circumstances? If so, what circumstances?

Yes, discipline administered by a parent or legal guardian to a child is not cruelty for as long as it is reasonably administered and moderate in degree and does not cause physical or psychological injury (Rules and Regulations on the Reporting and Investigation of Child Abuse Cases issued pursuant to RA 7610).

5. What are the penalties for violation of domestic laws relating to physical violence against children?

Under RA 7610, RA 9262, and the Revised Penal Code

The following criminal penalties may be imposed against persons who commit violence against children:

- (a) imprisonment; and
- (b) fine.

The number of years in prison and the amount of fine may vary depending on several factors such as:

- (a) type of violence / harm inflicted to the child;
- (b) age of the victim, *i.e., infant, below 12 years old, etc.*;
- (c) relationship of the accused to the child;
- (d) participation of the accused to the crime;
- (e) effect of the violence to the child.

6. What forms of physical violence are not covered (and therefore permitted) under domestic legislation?

Corporal punishment or discipline given by a parent or legal guardian on a child, which is reasonably administered and moderate in degree and does not cause physical or psychological injury.

Teachers and school administrators, however, may not inflict corporal punishment upon children (Art. 233, Family Code).

7. Does domestic law reflect international laws and conventions regarding physical violence against children (eg: The UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Universal Declaration of Human Rights)? If not, what are the differences?

Yes.

In addition to the domestic laws against violence against children (*i.e.* RA 7610, RA 9262), the Philippines is a State Party to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.



Also, the Philippine Supreme Court has considered the Universal Declaration of Human Rights as binding upon the Philippines (*Republic v. Sandiganbayan*, GR No. 104768, 21 July 2003).

8. In criminal prosecutions of physical violence against children:

8.1 What agency or agencies have the authority to refer a case to the prosecutor?

Cases of violence or abuse against children may be reported to the following government agencies:

- (a) Department of Social Welfare & Development or to the Child Health and Intervention and Protective Service (CHIPS) Tel. No. 734-4216;
- (b) Anti-Child Abuse, Discrimination, Exploitation Division (ACADED) National Bureau of Investigation Tel. Nos. 525-6028/525-8231 loc. 403 & 444;
- (c) Commission on Human Rights Child Rights Center Tel. No. 927-4033 (Mon-Fri during office hours);
- (d) Philippine National Police Operation Center Tel. Nos. 712-8613/722-0540 & 724 8749 or nearest police station;
- (e) DOJ Task Force on Child Protection, Tel. Nos. 523-8481 to 89 or contact the nearest Provincial, City or Regional Prosecutor
- (f) Local Barangay Council for the Protection of Children (<https://www.doj.gov.ph/child-protection-program.html>)

8.2 What evidence is required to prove physical violence in a criminal prosecution?

To prove physical violence in a criminal prosecution, the following may serve as evidence:

- (a) Sworn complaint from the victim or parent / legal guardian of the victim;

- (b) Testimonies of witnesses; and
- (c) Medical examination results

8.3 If the prosecutor requires a child to testify against the alleged perpetrators of physical violence (e.g. parents or teachers):

The relevant rule for examination of child witnesses is A.M. No. 004-07-SC or "Rule on Examination of a Child Witness,"

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.

However, the child's testimony may increase the probability of conviction. In a long line of cases, such as *People v. Alberca* (GR No. 217459, 7 June 2017) and *Ricalde v. People* (GR 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 Supreme Court.

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

Yes, the child may testify via video link from another room if there is a substantial likelihood that the child would suffer trauma from testifying in the presence of the accused, his counsel or the prosecutor.²

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

Yes, the child may give a videotaped deposition. The Court may admit the videotaped deposition into evidence if the child is substantially likely to suffer trauma from testifying in open court.³

² A.M. No. 004-07-SC, Sec. 25(f).

³ A.M. No. 004-07-SC, Sec. 25 (f) and 27.



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 means of protection are available to children involved in prosecutions of physical violence?

Under the A.M. No. 004-07-SC, the following, among others, may be made available to the child witness:

- (a) An interpreter;
- (b) A facilitator, who will pose the questions to the child;
- (c) A waiting area, separate from other persons;
- (d) A comfortably courtroom environment;
- (e) Testimonial aids, such as dolls, puppets, or mannequins for assistance;
- (f) An emotional security item;
- (g) The exclusion of the public;
- (h) Screens, one-way mirrors, and other devices to shield the child from the accused; and
- (i) Court-issued protective orders, including but not limited to confidentiality and privacy orders.

e. Can the child be required to testify more than once?

Yes, however, A.M. No. 004-07-SC provides that the child may be allowed recesses or periods of relief as often as necessary.⁴ The Court may also order that the testimony of the child should be taken during a time when the child is well-rested.⁵

⁴ Sec. 15.

⁵ Sec. 14..

9. What other protections and remedies are available under domestic law for child victims of physical violence (eg. intervention orders, victims of crime statutory schemes, civil remedies)?

A child involved in the prosecution of cases of physical violence may avail of the following protection orders:

- (a) Barangay Protection Order ("BPO");
- (b) Temporary Protection Order ("TPO"); and
- (c) Permanent Protection Order ("PPO") (Sec. 8, RA 9262)

Remedies such as civil remedies and bond to keep the peace are likewise available.

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

The parents and/or legal guardian of the child may pursue the remedies listed above.

A Petition for Protection Order may be filed by any of the following:

- (a) the offended party;
- (b) parents or guardians of the offended party;
- (c) ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity (i.e. grandparents, first cousins, brothers/sisters of parents, great grandparents);
- (d) officers or social workers of the DSWD or social workers of local government units (LGUs);
- (e) police officers, preferably those in charge of women and children's desks;
- (f) *Punong Barangay* or *Barangay Kagawad*; and



(g) lawyer, counselor, therapist or healthcare provider of the petitioner.

At least two (2) concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed.⁶

9.2 In circumstances where Word Vision is providing shelter and other support to a victim of physical violence, can World Vision apply to be the guardian of the child for the purpose of pursuing these remedies? If so:

No, an organization may not be appointed guardian of the child for the purpose of pursuing these remedies or file the Petition for Protection Order on their behalf.⁷ However, World Vision may assist the victims and their parents in locating a capable representative to file the Petition for Protection Order.

a. What criteria is World Vision required to satisfy and how does World Vision apply to be the guardian?

N/A

b. Can World Vision appoint a lawyer to assist the child?

No. However, World Vision may assist the child victim and their family in finding able legal representation.

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

Yes, the Petition for Protection Order may be filed as an independent action in any civil or criminal case involving violence.⁸

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

Yes, a Protection Order may provide for restitution of actual damage caused by the violence inflicted, including but not limited to property damage, medical expenses, childcare expenses, and loss of income.

Actual damages are computed according to the actual amount lost cause by the injury. These may be proven by documentary evidence such as receipts, medical bills, previous payslips (to prove loss of income), and other similar documents.

10. Which organisations provide pro bono legal services to help a child victim of physical violence?

There are a number of government and private organizations who are able to provide pro bono legal services for child victims of physical 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 (FLAG)
- (f) Public Attorney's Office
- (g) Department of Social Welfare and Development

Certain law firms are also able to provide pro bono legal services to child victims.

⁶ RA 9262, Sec. 9.

⁷ *Id.*

⁸ RA 9262, Sec. 11.



11. Does domestic legislation deal with physical violence against children in circumstances where the alleged perpetrator is also a child (eg: physical bullying)? If so:

Yes, under Philippine laws, child perpetrators are referred to as "Children in Conflict with the Law" ("CICL").

The relevant laws for CICL are Republic Act No. 9344 or the "Juvenile Justice and Welfare Act", as amended, and AM No. 02-18-SC or the "Rule of Juveniles in Conflict with the Law".

11.1 What is the minimum age of a child perpetrator who may be held liable for physical violence?

The minimum age of criminal responsibility is currently 15 years old. However, a child between 15 -18 years old may only be held criminally liable if he/she acted with the full knowledge of the consequences of his unlawful act.⁹

11.2 What penalties apply?

CICL are subject to the same penalties under the law imposable on adults. However, if the crime charged is punishable under the Revised Penal Code, the Court may impose a penalty lower by one degree.¹⁰

RA 9344, however, also contains special provisions on imposing sentences on CICL.

First, the Court may place the CICL under a Diversion System, if the maximum imposable penalty of the offense is not more than 12 years.¹¹

Second, the Court shall place the child under suspended sentence, and will instead be required to engage in any or a combination of the following disposition measures:

- (a) Care, guidance, and supervision of orders;
- (b) Community service orders;
- (c) Drug and alcohol treatment
- (d) Participation in group counseling and similar activities; and
- (e) Commitment to the Youth Rehabilitation Center of the Department of Social Welfare and Development or other centers for children in conflict with the law authorized by the Secretary of the Department of Social Welfare and Development.¹²

If the CICL complies with the disposition measures, the child may be finally discharged.

If the CICL is found (a) is incorrigible; or (b) has not shown the capability of becoming a useful member of society; or (c) has willfully failed to comply with the conditions of the disposition or rehabilitation program; (d) or the child's continued stay in the training institution is not in the child's best interest, the Court will impose the sentence.¹³

11.3 Can the matter be referred to prosecutors for criminal prosecution?

Yes, but a Preliminary Investigation may be conducted only if diversion measures have failed, are not agreeable to the parents or the children, or when a social worker assess that diversion is inappropriate.¹⁴

A specially trained prosecutor shall be assigned to conduct the inquest, preliminary investigation and prosecution of the case involving a CICL. The child, on the other hand, shall be assisted by a private lawyer or if there is none, a lawyer from the Public Attorney's Office.¹⁵

9 RA 9344, Sec. 6.

10 Revised Penal Code, Art. 68.

11 RA 9344, Sec. 37.

12 A.M. No. 02-18-SC, Sec. 49.

13 A.M. No. 02-18-SC, Sec. 51.

14 A.M. No. 02-18-SC, Sec. 20.

15 A.M. No. 02-18-SC, Sec. 19.



11.4 How do domestic laws protect the rights of the alleged perpetrator?

CICL are entitled to all rights of the accused enshrined under the 1987 Constitution and the Rules of Court on Criminal Procedure.

In addition, Sec. 39, AM No. 02-18-SC, lists the rights of CICL in all criminal proceedings as follows:

- (a) To be presumed innocent until guilt is proved beyond reasonable doubt;
- (b) To be informed promptly and directly of the nature and cause of the charge and if appropriate, through the child's mother, father, legal guardian, or appropriate custodian;
- (c) To be present at every stage of the proceedings, from arraignment to promulgation of judgement. The child may, however, waive presence at the trial pursuant to the stipulations set forth in the bail bond, unless presence at the trial is specifically ordered by the court for purposes of identification. The absence of the child without justifiable cause at the trial of which there was due notice shall be considered a waiver of the right of the child to be present. Escape by the child under custody shall be deemed a waiver of the right to be present in all subsequent hearings until custody over such child is gained;
- (d) To have legal and other appropriate assistance in the preparation and presentation of the child's defense; in case of a child arrested for reasons related to armed conflict, to have immediate free legal assistance;
- (e) If detained, to be released:
 - (i) on recognizance to the willing and responsible mother or father or appropriate guardian or custodian, or in the absence thereof, the nearest relative;
 - (ii) on bail; or

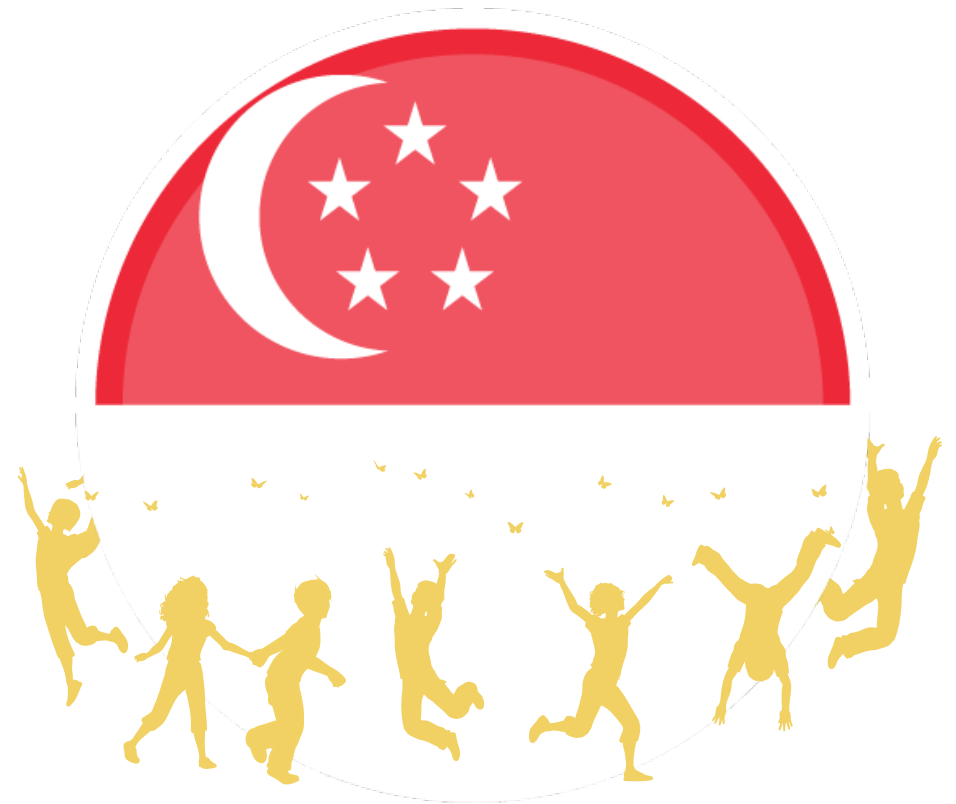
- (iii) by commitment to a youth detention home or youth rehabilitation center,
- (f) Not to be detained in a jail or transferred to an adult facility pending trial or hearing of the case, unless detention is used as a last resort which must be done for the shortest time possible, and only upon order by the court;
- (g) In the case the child has been arrested for reasons related to armed conflict, either as combatant, courier, guide or spy:
 - (i) To be segregated and have separate detention quarters from adults except where families are accommodated as family units;
 - (ii) To immediate free legal assistance in the absence of private counsel;
 - (iii) To immediate notice of such arrest to the parents, guardians or custodians or nearest relatives of the child; and
 - (iv) To be released on recognizance within twenty-four (24) hours to the custody of the Department of Social Welfare and Development or any responsible member of the community as determined by the court.
- (h) To testify as a witness in his/her own behalf; and subject to cross-examination only on matters covered by direct examination. The child shall not be compelled to be a witness against himself/herself and the child's silence shall not in any manner prejudice him/her;
- (i) To confront and cross-examine the witnesses against him/her;
- (j) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in the child's behalf;

PHILIPPINES

- (k) To have a speedy and impartial trial, with legal or other appropriate assistance and preferable in the presence of the child's parents or legal guardian or custodian, unless such presence is considered not to be in the best interest of the child taking into account the latter's age or other peculiar circumstances;
- (l) To be accorded all the rights under the Rule on Examination of a Child Witness;
- (m) To have the child's privacy fully protected in all stages of the proceedings; and
- (n) To appeal in all cases allowed and in the manner prescribed by law.

As a rule, the records of a youthful offender are also privileged and may not be disclosed except for the determination of suspension of sentence, probation, or the child's civil liability (A.M. No. 004-07-SC).

SINGAPORE





1. What is the definition of a child under domestic law?

Under the Children and Young Persons Act (CYPA), “child” means a person who is below the age of 14 years and “young person” means a person who is 14 years of age or above and below the age of 16 years.

Under the Employment Act, a “child” means a person who has not completed his 15th year of age.

The Women’s Charter defines a child as a “child of the marriage who is below 21 years”.

2. Is there domestic legislation which deals with physical violence against children (eg: shoving, hitting, slapping, shaking, throwing, punching, burning and kicking)?

Yes, the CYPA, which seeks to, *inter alia*, provide for the welfare, care and protection of children and young persons.

There are also punishable offenses under the Penal Code which cover violence against other persons generally (and not just children), including voluntarily causing hurt and assault.

The Women’s Charter gives the court of Singapore the power to issue a protection order if family violence has been committed or is likely to be committed against a family member.

3. If so, what forms of physical violence against children are prohibited under domestic legislation? (Please include the legal definition of the forms of physical violence)

CYPA

There is no legal definition of “physical violence” under the CYPA. It is, however, an offence under the CYPA for a person who has the custody, charge or care of a child or young person to ill-treat

the child or young person, or procures or knowingly permits the child or young person to be ill-treated by any other person. “Ill-treatment” is broadly defined and includes:

- subjecting the child to physical or sexual abuse;
- endangering the safety of the child;
- causing unnecessary physical pain, suffering or injury to the child;
- Neglecting, abandoning or exposing the child with full intention of abandoning the child in circumstances that are likely to endanger the safety of the child;
- Causing injury to a child’s health or development.

Penal Code

There is no definition of “physical violence” under the Penal Code. There are punishable offenses under the Penal Code which cover violence against other persons generally (and not just children), including voluntarily causing hurt and assault.

Woman’s Charter

There is no definition of “physical violence” under the Women’s Charter. The Women’s Charter gives the court of Singapore the power to issue a protection order if family violence has been committed or is likely to be committed against a family member. “Family violence” means the commission of any of the following acts:

- (a) wilfully or knowingly placing, or attempting to place, a family member in fear of hurt;
- (b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt;
- (c) wrongfully confining or restraining a family member against his will; or



(d) causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member, but does not include any force lawfully used in self-defence, or by way of correction towards a child below 21 years of age.

4. Does domestic legislation permit physical violence against children in some circumstances? If so, what circumstances?

None under the CYPA. The CYPA punishes all manner of broadly defined “ill treatment” (or causing or knowingly permitting the ill-treatment) of a child or young person by a person who has the custody, charge or care of a child or young person.¹

The Women’s Charter provides for protection orders to be granted restraining a person from committing “family violence” against a child. Although “family violence” includes “causing hurt to a family member”, it specifically excludes “any force lawfully used ... by way of correction towards a child below 21 years of age”. On balance, moderately meted physical punishment inflicted against a child as “correction” is unlikely to constitute a punishable contravention of Singapore’s criminal law.

There are also punishable offenses under the Penal Code which cover violence against other persons generally (and not just children), including voluntarily causing hurt and assault. Section 89 of the Penal Code provides that nothing, which is done in good faith for the benefit of a person under 12 years of age, by or by consent, either express or implied, of the guardian or other person having lawful charge of that child, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to the child. This exception does not extend to causing death, doing anything which the person knows is likely to cause death or the causing or attempting to cause grievous hurt to a child.

¹ With the exception of caning in the domestic setting for the purposes of discipline and as corporate punishment in schools. Kindly refer to the answer to Q7.

5. What are the penalties for violation of domestic laws relating to physical violence against children?

Section 5(5) of the CYPA provides that a person guilty of the ill-treatment of a child or young person is liable upon conviction to a fine not exceeding SGD 4 000 or to imprisonment not exceeding 4 years, or to both. Where death is caused to the child or young person, the penalty will be a fine not exceeding SGD 20 000 or to imprisonment not exceeding 7 years or to both.

6. What forms of physical violence are not covered (and therefore permitted) under domestic legislation?

None. The protection of children from all forms of violence is provided for under the CYPA. The CYPA criminalises the ill-treatment, sexual exploitation and trafficking of a child or young person and institutes punishment on perpetrators of violence against children.

7. Does domestic law reflect international laws and conventions regarding physical violence against children (eg: The UN Convention on the Rights of the Child (“UNCRC”), the Convention on the Elimination of All Forms of Discrimination against Women, and the Universal Declaration of Human Rights)? If not, what are the differences?

Singapore is a party to the major treaties concerning the rights of children (UNCRC, Convention on the Elimination of all Forms of Discrimination Against Women (“CEDAW”), Universal Declaration of Human Rights (“UDHR”). Under these treaties, Singapore has the obligation to ensure that its laws conform to the rules of international law. To this end, Singapore’s domestic legislation has largely mirrored international law. In particular, Singapore has entered a declaration with respect to Article 3 of the UNCRC, which provides that all actions concerning the child shall take full account of his/her best interests.



Singapore also ensures that children are taken care of health-wise, with various school programs and government initiatives that provide immunization and high quality healthcare

The only notable difference between other States and Singapore is that – Singapore permits light caning (whereas some other countries have commented that this is corporeal punishment and therefore runs afoul of international law). Caning is permitted in schools and as a disciplinary measure at home.

However, caning is only permitted in a controlled manner, and there are many safeguards in place. In the context of school caning – express consent is required from the school principal and the number of strokes is limited between 1 to 3 strokes.

As far as parental caning is concerned, it is only allowed insofar as it does not amount to abuse. Caning may be considered abuse if it causes grave emotional injury, causes unnecessary physical pain, suffering or injury. The law will step in if caning is used as a pretext for abuse. For example, the court may order the child to be taken away from the parents by ordering a PPO if the abuse is recurring and dangerous to the safety and well-being of the child (e.g. *BHR v Child Protector* 2013 SGJC 2). The law will not help a parent that uses violence to exert power over the child rather than for the child's benefit (Leong Wai Kum, *Elements of Family Law* (2nd Edition, LexisNexis, 2013), 136-137.

8. In criminal prosecutions of physical violence against children:

8.1 What agency or agencies have the authority to refer a case to the prosecutor?

Primarily, the Child Protective Service ("CPS") of the MSF takes charge of cases involving violence against children. However, the Police or the Ministry for Culture, Community and Youth ("MCCY") can also step in and refer the case to the PP.

8.2 What evidence is required to prove physical violence in a criminal prosecution?

There are various forms of evidence that can be used – oral evidence from the child (e.g. in *TCV v TCU* [2015] SGFC 3), doctor's testimony from examining the child, other family members who were present at the scene when the abuse took place, and any other evidence that would normally be used to prove an injury.

Do note however, that the court is wary of accepting a child's testimony/evidence at face value. In *Lee Kwang Peng v PP*, Yong Pung How CJ (as he then was), noted that young children had the tendency to "invent and distort, to confuse fantasy with reality". However, this skepticism is to be applied contextually and in different degrees.

8.3 If the prosecutor requires a child to testify against the alleged perpetrators of physical violence (e.g. parents or teachers):

a. Does the child have the right to refuse?

If a writ of summons is issued against a child, the child will be assigned a Volunteer Support Person (VSP) under the Vulnerable Witness Support Program.

As of now, there is no legislation allowing a child to refuse giving evidence.

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

Yes, in *TCV v TCU*, the victim gave evidence via video-link. S 62A of the Evidence Act and s 281 of the CPC also allow child-victims to give evidence via video-link where permitted by the courts.

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

Yes, the child can give evidence by video or in a private hearing with the Judge.



d. What other means of protection are available to children involved in prosecutions of physical violence?

The VSP shall also arrange for the child to visit the court to ensure that the child becomes familiar with basic court procedure and knows what to expect when his/her case comes before the court. The VSP can also be with the child when the child gives evidence, by way of video or otherwise.

e. Can the child be required to testify more than once?

There are no regulations governing this, so presumably a child may be required to testify more than once.

9. What other protections and remedies are available under domestic law for child victims of physical violence (eg. intervention orders, victims of crime statutory schemes, civil remedies)?

Personal Protection Order (PPO), Adoption Order, Care and Protection Order (CPO), Expedited Order, Domestic Exclusion Order. Civil Remedy may be sought in tort law (e.g. assault, battery). The court may also require the perpetrator of the violence (e.g. parent) to enter into a bond to exercise proper care and guardianship of the child (e.g. see *BJJ v Child Protector* [2013] SGJC 3)

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

Relative, Social Worker (Assigned by government-authorised agencies like the Child Protection Services, Big Love, AWARE), Child Protection Officer (appointed by Director of Social Welfare)

9.2 In circumstances where Word Vision is providing shelter and other support to a victim of physical violence, can World Vision apply to be the guardian of the child for the purpose of pursuing these remedies? If so:

While MSF has worked with World Vision to organise events to raise awareness on child abuse, this has not yet translated to allowing WV to represent the child in pursuing legal remedies.

Primarily, the CPS of the MSF still takes charge of applying to the court on behalf of the child for the available remedies.

a. What criteria is World Vision required to satisfy and how does World Vision apply to be the guardian?

b. Can World Vision appoint a lawyer to assist the child?

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

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

10. Which organisations provide pro bono legal services to help a child victim of physical violence?

General Pro Bono Services – Law Society of Singapore (Community Legal Clinics), Singapore Management University Pro Bono Centre,

Pro Bono Service for child abuse – MCCY, MSF, AWARE



11. Does domestic legislation deal with physical violence against children in circumstances where the alleged perpetrator is also a child (eg: physical bullying)? If so:

Domestic Legislation does not specifically deal with bullying-type situations. However, there is the possibility that children may bear similar obligations as adults, insofar as physical violence is concerned.

Under the Penal Code ("PC"), any child will not be liable for an offence if he was below 7 years old during the commission of the crime (s 82 of the PC). Additionally, for children between 7-12 years old, the court can also acquit the child if they find that the child has not "attained sufficient maturity of understanding (s83 PC). Therefore, any child that commits acts of violence against other children could be liable for his acts if he is above 12 years old, or between 7-12 years and possesses sufficient maturity of understanding to judge the nature and consequence of his conduct.

Under the CYPA, any person who has "custody, charge or care" of the child must not ill-treat the child (s 5 CYPA). There is no age restriction of who this person might be, and theoretically could also be an older child/young person. (e.g. sibling).

Notably, there is case law to suggest that schools do owe a duty of care to students to provide a "safe and secure environment for learning and growing" (see *AYW v AYX* [2016] 1 SLR 1183 at [3]). Therefore, child victims of physical bullying may have recourse against the school if the violence happened on school grounds and was within the broad nature of the school's duty.

11.1 What is the minimum age of a child perpetrator who may be held liable for physical violence?

7 years old and above (s 82 PC). Do note that up till 12 years old, the court can refuse to impose criminal liability on a child if they find that the he/she has not attained sufficient maturity of understanding to judge the nature and consequence of his/her conduct on that occasion (s 83 PC).

11.2 What penalties apply?

Under s 44 of the CYPA, the Youth Court has the discretion to order the following --

1. Discharge Order (based on a bond of good behavior);
2. Commit offender to the care of a relative or other fit person for a period specified by the Court;
3. Probation Order;
4. Fine or Damages;
5. Community Service (up to 240 hours);
6. Detention (not exceeding 6 months);
7. Juvenile Rehabilitation Centre (not more than 3 years);
8. Jail-time (for grave crimes like murder, culpable homicide not amounting to murder, voluntarily causing grievous hurt);
9. Counselling, Psychotherapy; and
10. Reformatory Training (if the offender is 14 years of age but below 16 years of age and has been previously sent to the juvenile rehabilitation centre and the youth courts are satisfied that it is expedient that he be reformed).

11.3 Can the matter be referred to prosecutors for criminal prosecution?

Yes. This is especially so if the offence is only triable by the High Court, or the youth is jointly charged with an adult offender, for acts of grave violence (murder, culpable homicide not amounting to murder, voluntarily causing grievous hurt).

11.4 How do domestic laws protect the rights of the alleged perpetrator?

Singapore places strong emphasis on the need to rehabilitate youth/child offenders even in the case of serious offences (see *PP v ASR* [2019] 3 SLR 709 at [57]).

SINGAPORE

There are several measures taken to protect child offenders from the harshness of criminal justice system, and to give them a chance to change their ways. A few measures taken are –

1. Children and Youth Offenders are tried in the Youth Courts unless the crime committed can only be tried in the High Court. The Youth Court has a wide remit in ordering the child or youth to rehabilitative procedures, instead of merely punishing the child or youth.
2. The Child/Youth is not exposed to adult offenders, to prevent their interaction with "hardened criminals"
3. The Youth Court is presided over by judges who have the benefit of advice from a panel of advisors (school principals, teachers, social workers, psychologists and community leaders) who can advise them on the best route for the child/youth's rehabilitation.
4. The child/youth offender's name is redacted to protect his/her identity. The press are forbidden from releasing any information that may leak the identity of the child/youth.
5. The child/youth is not labelled as a criminal and words like "conviction" and "sentence" are not used in court proceedings.

TAIWAN





1. What is the definition of a child under domestic law?

According to Article 2 of the "Protection of Children and Youths Welfare and Rights Act," children and youths are people below the age of 18. Children are aged below 12, and youths are aged between 12 and 18.

2. Is there domestic legislation which deals with physical violence against children (eg: shoving, hitting, slapping, shaking, throwing, punching, burning and kicking)?

Yes – domestic legislation includes:

1. Protection of Children and Youths Welfare and Rights Act
2. Early Childhood Education and Care Act
3. Fundamental Law of Education
4. Criminal Code of the Republic of China
5. Juvenile Delinquency Act

3. If so, what forms of physical violence against children are prohibited under domestic legislation? (Please include the legal definition of the forms of physical violence)

The Protection of Children and Youth Welfare and Rights Act protects children from "physical and mental mistreatment" (see Article 49). In addition, physical violence is not permitted in schools and childhood care institutions, including preschools and community, tribal and workplace cooperative care institutions for children between two and six, pursuant to Article 25 of the Early Childhood Education and Care Act and Article 8 of the Fundamental Law of Education. Currently, there is no specific definition of physical violence.

4. Does domestic legislation permit physical violence against children in some circumstances? If so, what circumstances?

Domestic legislation does not specifically permit physical violence against children. On the other hand, legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment of children. There is no specific definition for "reasonable chastisement" and there is no explicit prohibition of physical violence at home or other places that include preschools and community, tribal and workplace cooperative care institutions, and schools as stated in the Early Childhood Education and Care Act.

5. What are the penalties for violation of domestic laws relating to physical violence against children?

1. Anyone who violates one of the regulations described in each paragraph of Article 49 of the Protection of Children and Youths Welfare and Rights Act will be fined a sum of no less than NT\$ 60,000 and no more than NT\$ 300,000 and their names or titles will be announced. See Article 97 of the Protection of Children and Youths Welfare and Rights Act.
2. In addition to the punitive measures stipulated in Article 97 of the Protection of Children and Youths Welfare and Rights Act for acts that violate Article 49 of the Act, any responsible persons or other personnel at an early childhood care center who violate Paragraph 1 of Article 25 of the Early Childhood Education and Care Act will be subject to the following punitive measures, and the name of the perpetrator and institution will be made public:
 - (1) For inflicting corporal punishment: a fine of not less than NT\$ 60,000 and not more than NT\$ 500,000
 - (2) For committing sexual harassment: a fine of not less than NT\$ 60,000 and not more than NT\$ 300,000



- (3) For using inappropriate discipline: a fine of not less than NT\$ 6,000 and not more than NT\$ 30,000

6. What forms of physical violence are not covered (and therefore permitted) under domestic legislation?

Corporal punishment within certain limits of necessity is lawful in the home.

7. Does domestic law reflect international laws and conventions regarding physical violence against children (eg: The UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Universal Declaration of Human Rights)? If not, what are the differences?

Yes, the "Implementation Act of the Convention on the Rights of the Child" was announced on 4 June 2014 and implemented on 30 November 2014. The Act was made to implement the 1989 Convention on the Rights of the Child, to fulfill the physical and mental development of children and youths and to substantiate the protection and promotion of the rights of children and youth.

8. In criminal prosecutions of physical violence against children:

8.1 What agency or agencies have the authority to refer a case to the prosecutor?

1. Any person who is aware of a case of physical violence against children has the authority to refer a case to prosecutors.
2. Please note that a government official who is aware of physical violence against children is obligated to file/ report each case.

3. Please note that the personnel / agencies related to the functions below, whether government agencies or not, are obligated to file / report a case:

- (1) medical services
- (2) social affairs
- (3) education
- (4) caregiving
- (5) preschool education
- (6) police service
- (7) judicial affairs
- (8) immigrant affairs
- (9) household registration affairs
- (10) village chief or manager
- (11) child or youth welfare services.

8.2 What evidence is required to prove physical violence in a criminal prosecution?

Any evidence that proves and indicates that physical violence was committed against children would be helpful such as video, pictures, injury diagnosis certificate, etc.

8.3 If the prosecutor requires a child to testify against the alleged perpetrators of physical violence (e.g. parents or teachers):

a. Does the child have the right to refuse?

1. If the prosecutor does not summon the child to testify as a witness, but simply identifies the child as a victim, this victim can refuse to testify. However, if the victim refuses to testify, it will be more difficult for the prosecutor to build a case.



2. Nevertheless, if the prosecutor summons the child to testify as a witness, only on limited grounds does the victim have the right to refuse to testify, including:
 - (1) certain relationship with the perpetrator such as the child is a lineal blood relative, blood relative within the third degree of kinship, of the perpetrator, or the perpetrator is the statutory agent of the child.
 - (2) self-incrimination

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

In a domestic physical violence against children case, the victim can apply to testify outside the court. It is also within the prosecutor / judge's authority to allow a victim to testify via video link from another room or any other appropriate method that can achieve the goal of physically separating the victim from the defendant.

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

1. 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.
2. 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:
 - (1) The child's evidence is given to a judge outside of the trial, or it is given to a prosecutor during the criminal investigation and the evidence is not obviously unaccountable.

- (2) 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:
 - 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
- (3) The child's evidence is in the form of a written document and it is proved accountable.
- (4) The parties to a trial agree to admit the child's evidence and the judge considers this appropriate.

d. What other means of protection are available to children involved in prosecutions of physical violence?

1. The child involved in prosecutions for domestic physical violence can request a family member, physician, psychiatrist, counselor or social worker to accompany him/her during the investigation. The person whom accompanies the child can state his/her opinions during the investigation.

When the child makes this request, the prosecutor cannot refuse unless it is considered intervening in the prosecution.

In addition, the prosecutor should inform the child that he/she has the right to request the person mentioned to accompany him/her.



2. In general, as a victim of domestic physical violence, the child's name or any information that could reveal his/her identity is prohibited from being publicized in any publication, radio, TV, Internet or other media.

e. Can the child be required to testify more than once?

Yes.

1. If the victim reported his/her situation to the police, he/she will provide his/her testimony to the police first.
2. The prosecutor will review his/her first testimony and then summon the victim to confirm the facts and/or to clarify more details as a witness during the investigation procedure.
3. If the victim's testimony is challenged in court, the judge will normally allow a motion to summon the victim to testify again.

9. What other protections and remedies are available under domestic law for child victims of physical violence (eg. intervention orders, victims of crime statutory schemes, civil remedies)?

Under Taiwan law, there are three remedies available to child victims of physical violence.

1. Remedy 1: Under the Taiwan Civil Code, child victims of physical violence are entitled to civil compensation for their injuries. If they are severely injured, the compensation covers not only their physical injuries but also their mental anguish.
2. Remedy 2: In the event of domestic violence, they can also apply to the court for a protection order which can be valid for up to 2 years. With the protection order, the perpetrator will be prohibited from committing domestic violence, harassing, stalking, or communicating with the child victims, or be ordered to move out of the house where the victims

are living, to stay away from the their school, workplace or other places they often visit. In addition, he/she could be ordered to give daily necessities to them or to pay rent for their places of domicile or residence, living expenses, medical care, assistance, shelter, property damage or other necessary expenses. Before the protection order expires, the victims can apply for an extension, and each of these cannot exceed two years.

3. Remedy 3: Moreover, if the child's life or body is in immediate danger, the authorities must take urgent protection or placement acts. For example, he/she could be placed in a foster family or institution.

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

In principle, the child's parents are his/her guardians when pursuing the remedies above. However, if both parents cannot or refuse to act as guardians, the child's grandparents and elder siblings living with him/her can act as his/her guardian. Also, if these persons cannot act as guardians, the court can, in the best interests of the child, appoint the child's elder relative by blood within the third degree of relationship, the competent authority, the social welfare institution or any other person as the guardian.

9.2 In circumstances where Word Vision is providing shelter and other support to a victim of physical violence, can World Vision apply to be the guardian of the child for the purpose of pursuing these remedies? If so:

As mentioned in our response to question 9(a), the child's parents are in principle his/her guardians except under certain circumstances. Under these circumstances, the court has the right to appoint the child's elder relative, the competent authority, the social welfare institution or any other person to be his/her guardian. Because the court has the authority, World Vision will not be able to obtain guardianship of the child by filing an



application. However, it is possible that World Vision might be appointed by the court as the child's guardian when pursuing these remedies.

a. What criteria is World Vision required to satisfy and how does World Vision apply to be the guardian?

1. As mentioned in our responses to question 9(a) and 9(b), under certain circumstances, the child's elder relative, the competent authority, the social welfare institution might be considered and designated to be the child's guardian.
2. Because World Vision Taiwan is a social welfare institution recognized by the Taipei Municipal Government Social Affairs Bureau, World Vision is competent to be the child's guardian.

b. Can World Vision appoint a lawyer to assist the child?

With the approval of the child or his/her guardian appointed by the court, World Vision can appoint a lawyer to assist the child.

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

Yes, the three remedies can be pursued at the same time as a criminal case.

1. Civil compensation: The victims can bring a civil action during a criminal prosecution to request compensation from the perpetrator before the close of oral arguments in the court of second instance.
2. Protection order: When a criminal case is being considered, the victims can apply for a protection order requesting the court to issue an injunction prohibiting the perpetrator from committing domestic violence, harassing, stalking, or communicating with the victim, and so on (as mentioned in our response to question 9).

3. Protection or placement assistance: The authorities must take protection or placement actions if the child suffers domestic violence even while a criminal case is in process.

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

Yes, the child victims can be awarded compensation in the following two cases.

1. As mentioned in our response to question 9, child victims can seek compensation for both their physical injuries and mental suffering. Medical expenses and other expenses incurred because of the injuries will be included in compensation for the victim's physical injuries. In the event that the injuries cause the child victims to lose or decrease his/her capability to work, compensation could also include the damage arising from losing or decreasing this capability. In terms of mental suffering, the court will take into consideration the degree of violence the perpetrators committed, the impact of the violence on the victims, their respective social and financial status, and so on when determining the amount of compensation.
2. As mentioned, the court can order the perpetrator to pay rent for the victims' places of domicile or residence, expenses for living, medical care, assistance, shelter, property damage or other necessary expenses when issuing a protection order. In practice, the victims fill in an application form when applying for a protection order. On this form, they have to state the amounts of these items they are requesting the perpetrator to pay. However, it is up to the court to make the final decision on the amounts. Both the perpetrator's financial status and the victim's needs will be taken into consideration when the decision is made.



10. Which organisations provide pro bono legal services to help a child victim of physical violence?

Taiwan Fund for Children and Families

11. Does domestic legislation deal with physical violence against children in circumstances where the alleged perpetrator is also a child (eg: physical bullying)? If so:

There is no law specifically defining "bully" or "children's bullying behavior." However, such physical violence has been stipulated in different laws: "The Protection of Children and Youths Welfare and Rights Act," "Administrative Penalty Act," "Criminal Code of the Republic of China" and "Juvenile Delinquency Act."

11.1 What is the minimum age of a child perpetrator who may be held liable for physical violence?

In the case there is a breach of "The Protection of Children and Youths Welfare and Rights Act," according to Article 9 of the "Administrative Penalty Act," an act committed by a person who has not reached the age of 14 years is not punishable. In the event that there is a breach of the "Criminal Code of the Republic of China," according to 85-1 of the "Juvenile Delinquency Act": "when a child between ages of 7 and 12 violates the criminal laws, the juvenile court can apply the rules for juvenile delinquent protection," where the lowest age can be 7 years old.

11.2 What penalties apply?

Anyone who violates one of the regulations regarding Mental and physical abuse" described in each paragraph of Article 49 of "The Protection of Children and Youths Welfare and Right Act" will be fined a sum of no less than NT\$ 60,000 and no more than NT\$ 300,000 and their names or titles will be announced in

accordance with paragraph 1 of Article 97 of the Act. However, the penalty can be reduced for an act committed by a person who is 14 years of age or older but has not reached the age of 18 years old. (Article 9 of the Administrative Penalty Act)

In the case there is a breach of the "Criminal Code of the Republic of China," such as Offenses of Causing Injury (Article 277 or 278) or Offenses Against Freedom through violent means (Article 304), the criminal liabilities are as follows:

Article 277:

A person who causes injury to another can be sentenced to imprisonment for not more than three years, short-term imprisonment, or a fine of not more than one thousand New Taiwan Dollars.

If death results from the commission of an offense specified in the preceding paragraph, the offender can be sentenced to life imprisonment or imprisonment for not less than seven years, and if serious physical injury results, the offender can be sentenced to imprisonment for not less than three years but not more than ten years.

Article 278

A person who causes serious physical injury to another can be sentenced to imprisonment for not less than five years but not more than 12 years.

If death results from committing an offense specified in the preceding paragraph, the offender can be sentenced to life imprisonment or imprisonment for not less than seven years.

An attempt to commit an offense specified in paragraph 1 of Article 278 is punishable.



Article 304:

A person who through violence or threats causes another to do a thing which he has no obligation to do or who prevents another from doing a thing that he has the right to do can be sentenced to imprisonment for not more than three years, short-term imprisonment, or a fine or not more than three hundred New Taiwan Dollars.

An attempt to commit an offense specified in the preceding paragraph is punishable.

However, the penalty can be reduced or adjusted in a different way for an act committed by a person who has not reached the age of 18 years old according to Article 18 of the "Criminal Code of the Republic of China" and "Juvenile Delinquency Act."

11.3 Can the matter be referred to prosecutors for criminal prosecution?

Yes, if it is a breach of "Criminal Code of the Republic of China," such as Offenses of Causing Injury (Article 277 or 278) or Offenses Against Freedom through violent means (Article 304).

11.4 How do domestic laws protect the rights of the alleged perpetrator?

In addition to the reduced sentence for a person who is below 18 years of age as explained above in 11(b), according to Article 1 of the "Juvenile Delinquency Act," this Act stipulates: The Law is promulgated to ensure the sound growth of juveniles, adjust their environment, and rectify their character. Therefore, it provides different approaches than the "Criminal Code of the Republic of China," such as:

1. For a minor case, Article 29 of the Juvenile Delinquency Act specifies a "ruling not to hear the case":

The juvenile court can pronounce a ruling not to hear the case and order the following disposition after finding

the delinquency trivial, or finding it proper to not try the case pursuant to results of an investigation by a juvenile investigator:

- (1) Transfer the juvenile to a child or juvenile welfare or orphanage for appropriate tutoring.
- (2) Send a child or juvenile to his/her statutory agent or a person who currently protects the juvenile for strict discipline.
- (3) Issue a warning.

Dispositions in the preceding paragraph will be executed by the juvenile investigator.

The juvenile court has the discretion to order the juvenile to perform all of the following items before pronouncing a ruling in Paragraph 1 of Article 29 if consented to by the juvenile, his/her statutory agent, and the victim:

- (1) To apologize to the victim
- (2) To write a repentance letter
- (3) To compensate the victim

A juvenile's statutory agent will be jointly liable for the item under Subparagraph 3 of the preceding paragraph, and it can be the title for civil compulsory execution.

2. Article 30 specifies "ruling to initiate a trial": Where a juvenile court finds it proper to initiate a trial pursuant to the investigation, it will initiate a trial by ruling.
3. Article 31 defines a "defender":

A juvenile, his/her statutory agent or a person currently protecting the juvenile can select a defender for the juvenile at any time.



When a juvenile commits an offense that could lead to a sentence of more than 3 years of imprisonment and has not selected a defender, the juvenile court will appoint a proper person to defend the juvenile, and the same rule also applies to other cases if necessary.

When a selected defender fails to appear in court without good reason in the case, the juvenile court can also appoint a defender.

The juvenile court can appoint a proper person to defend the juvenile if there are no public defenders in the area.

4. Article 34 defines "private hearing and auditing": The investigation and hearing cannot be public, provided that relatives, teachers, persons engaging in juvenile delinquency protection, or other relevant persons can audit the trial.
5. Article 35 stipulates a gentle trial approach: The trial should be conducted in an amiable and sincere atmosphere. The judge can hear the case outside the courtroom in accordance with the nature of the case, mental and physical condition of the juvenile and environmental circumstances.
6. Article 36 defines a "statement by a statutory agent": On the trial date, when the juvenile is being questioned, the statutory agent, a person who currently protects the juvenile and the defender must be given opportunities to make statements.
7. Article 39 stipulates a "statement by a juvenile investigator":
A juvenile investigator must appear in court on the trial date to express opinions regarding the investigation and measures.

When the juvenile court does not adopt the opinions of a juvenile investigator, the reasons must be set forth in the ruling.

8. Article 42 defines "ruling for protective measures and treatment":

The juvenile court can, in addition to dispositions in the preceding 2 Articles (Articles 40 and 41), pronounce a ruling regarding one of the following protective measures when hearing a case:

- (1) To pronounce a warning and order rehab coaching on holidays/weekends
- (2) To send a juvenile to probation and supervision and to order labor services
- (3) To send a juvenile to a proper welfare institution or orphanage
- (4) To send a juvenile to a rehabilitation institute for reformatory education

THAILAND





1. What is the definition of a child under domestic law?

The definition of a child and minor is given in several pieces of legislation in Thailand, each with slightly different definitions:

- Section 4 of the Child Protection Act B.E. 2546 (2003): a child means a person below the age of 18 years old, excluding those who have attained majority through marriage;
- Section 4 of the Juvenile and Family Court and Juvenile and Family Case Procedure, Act B.E. 2553 [2010]: a child means a person below the age of 15 years old, while a minor means a person of or above 15 years old but who has not reached 18 years old;
- Section 19 of the Civil and Commercial Code ("CCC"): when people reach the age of maturity (20 years old), they will not be classified as a minor; and

In addition to Thai domestic laws, the Convention on the Rights of the Child, which Thailand is a state party to, defines a child as "every human being below the age of eighteen years, unless, under the law applicable to the child, maturity is attained earlier."

2. Is there domestic legislation which deals with physical violence against children (eg: shoving, hitting, slapping, shaking, throwing, punching, burning and kicking)?

Yes, the following laws prohibit physical violence against children in Thailand:

- Criminal Code, B.E. 2499 (1956)
- Child Protection Act, B.E. 2546 (2003)
- Victims of Domestic Violence Protection Act, B.E. 2550 (2007) (the "**Domestic Violence Act**") replaced by the Act on Family Institute Development Promotion and Protection 2019 (**AFIDPP**). AFIDPP will come into effect on 20 August 2019.
- Juvenile and Family Court and Procedure Act, B.E. 2553 (2010)

The Domestic Violence Act was not enacted to specifically deal with physical violence against children. However, it provides a definition of "Persons in the family" which also includes offspring and adopted children. Therefore, the Domestic Violence Act addresses issues relating to physical violence against children. Offspring shall include both a legitimate child and an illegitimate child of the father. However, the act does not specify the age of the child.

AFIDPP has been enacted in order to improve the law relating to domestic violence. Please note that although Domestic Violence Act is superseded by AFIDPP, but all ministerial regulations, rules or orders issued under the Domestic Violence before AFIDPP come into effect remain in effect as long as they are not conflicting with the provisions in AFIDPP, and until further rules or announcements are issued.

3. If so, what forms of physical violence against children are prohibited under domestic legislation? (Please include the legal definition of the forms of physical violence)

Criminal Code

The Criminal Code criminalizes the general acts of physical violence including offences against life and body, abandonment, and offences against freedom and reputation. There are no specific provisions that criminalize acts of physical violence against children in particular except for offences relating to abandonment and freedom. The following acts are criminalized and will be subject to penalties under the Criminal Code:

(1) Offences relating to abandonment

- Physically deserting a child less than 9 years old in any place with the intention of wholly abandoning the child in a manner which will cause the child to be without a caretaker.



- Physically deserting a person who is helpless because of their age and is under their care either by law or contract, in a manner which will likely cause danger towards their life.

(2) Offences relating to freedom

- Defining or confining a child less than 15 years old, or by any means depriving his/her liberty, and forcing the child to commit any act for the offender or any other person.
- Bringing into or out of Thailand, removing, buying, selling, disposing, receiving, or detaining any child having an age of 15 years or less for the purpose of rendering the person to be a slave or any status comparable to a slave.

Child Protection Act

(Section 26) The Child Protection Act prohibits, among others, the following actions regardless of whether the child consents to such action:

- (1) actions or omission of actions which result in Torture against child's physical or mental state;
- (2) intentionally or negligently withhold things that are necessary to sustain life or healthcare of a child under his/her care to an extent which will likely cause physical or mental harm to the child;
- (3) force, threaten, use, induce, or allow a child to behave inappropriately or likely to be the cause of wrongdoing;
- (4) force, threaten, use, induce, allow, or act in any other way which results in a child becoming a beggar, a Homeless Child, or an instrument for begging or committing crimes, or to act in any way which results in the exploitation of the child;
- (5) use, employ, or ask a child to work or act in such a way which will likely cause physical or mental harm, affect the growth, or hinder the child's development;

- (6) force, threaten, use, induce, encourage, support, or allow a child to play sports or commit any acts indicative of commercial exploitation in a manner which hinders the growth or development of a child, or in a manner which Tortures the child; and

- (7) force, threaten, use, induce, encourage, support, or allow a child to perform or act in a pornographic manner, regardless of whether the intention is to obtain remuneration or for any purpose.

"Torture" includes acts which cause the deprivation of freedom, physically or mentally endangering the child, sexual abuse, using a child to act or behave in a manner which will likely cause physical or mental harm to the child, use the child to act in an unlawful or immoral way, regardless of the child's consent.

"Homeless Child" means a Child who has no Parents or Guardian, or whose Parents or Guardian either fails to or cannot afford to care for, causing the child to wander from place to place; or a child who develops a homeless lifestyle which is likely to be harmful to his or her welfare.

(Section 61) An owner, the Guardian of welfare, and staff of a Nursery, Shelter, Welfare Centre, Welfare Protection Centre, and Development and Rehabilitation Centre shall not assault, physically and mentally, detain, abandon or impose any other harsh measures of punishment on any child under the care and guardianship, except where such acts are reasonably applied for disciplinary purposes pursuant to the regulations specified by the Minister.

Domestic Violence Act

Section 4 in conjunction with Section 3 of The Domestic Violence Act prohibits "Domestic Violence" which is defined as any act intended to cause danger to the body, mind, or health, or any intentional act which may cause danger to the body, mind, or health of a family member, or forcing or using immoral power to control the family member to act, not act, or accept any certain act wrongfully, but not including an act of negligence.



AFIDDP

This Act deletes the exemption of negligence action from the definition of the term "domestic violence". Therefore, "domestic violence" under this Act is likely to include, willful act, an act that is likely to cause and an act of negligence which cause danger to the body, mind, or health, liberty or reputation of a family member. This also include forcing or using immoral power to control the family member to act, not act, or accept any certain act wrongfully.

4. Does domestic legislation permit physical violence against children in some circumstances? If so, what circumstances?

Criminal Code

The law does not expressly allow any physical violence against children.

Child Protection Act

(Section 61) As mentioned above, generally, an owner, the Guardian of welfare, and staff of a Nursery, Shelter, Welfare Centre, Welfare Protection Centre, and Development and Rehabilitation Centre shall not assault, physically and mentally, detain, abandon or impose any other harsh measures of punishment on any child under the care and guardianship. However, as an exception, such actions will be allowed as if such actions are reasonably applied for disciplinary purposes pursuant to the regulations specified by the Minister. The Regulations of the Ministry of Social Development and Human Security re: Child Punishment, B.E. 2548 (2005), allow a child to be disciplined if the child does not obey the rules, so long as the punishment is appropriate (e.g. scolding, point deductions, doing chores). However, under no circumstances shall the child be physically or mentally harmed, confined, abandoned or punished by excessively vicious acts.

Domestic Violence Act and AFIDDP

The law does not expressly allow any physical violence against children.

Civil and Commercial Code

Section 1567 (2) of the Civil and Commercial Code provides a general provision that the parent /guardian of a child has the right to punish the child in a reasonable manner for disciplinary purposes. However, details of the punishment or to what extent the punishment is allowed is not provided for within the Code.

5. What are the penalties for violation of domestic laws relating to physical violence against children?

Criminal Code

(1) Offences relating to abandonment

The penalties for offences relating to abandonment are imprisonment of not more than 3 years and a fine of not more than Baht 60,000, or both. If the abandonment also results in death or severe injury of the victim, the penalties will be higher i.e. imprisonment up to 15 years and a fine up to Baht 200,000.

(2) Offences relating to freedom

The penalties for offences relating to freedom are imprisonment of 3 to 10 years and a fine of not more than Baht 200,000. In addition, if the commitment of the offence causes any of the following, the penalties shall be as specified below:

- (i) physical or mental harm: imprisonment of 5 to 10 years and a fine of not more than Baht 300,000;
- (ii) severe physical harm: imprisonment for life or imprisonment of 7 to 20 years; and
- (iii) death: death penalty, imprisonment for life, or imprisonment of 15 to 20 years.



Child Protection Act

Any person who violates Section 26 of the Child Protection Act (described above) may be subject to imprisonment of no more than three months or fine of no more than Baht 30,000, or both.

Any person who violates Section 61 of the Child Protection Act (described above) may be subject to imprisonment of no more than six months or a fine of no more than Baht 60,000, or both.

If a Guardian or relative of a child commits torture against a child and criminal proceedings has been initiated against the offender and there is a reasonable ground to believe that this person may torture the child again, the court trying the case has the authority to impose a measure to control such person's behavior or a restriction order to prohibit the person from a certain area or be near the child. Any person who violates such an order from the court may be subject to imprisonment of no more than one month or fine of no more than Baht 10,000, or both.

The Child Protection Act also includes rehabilitation of offenders, activities to develop the family, parenting training, and monitoring the offenders.

Domestic Violence Act

Any person who commits any act which is considered domestic violence under Section 4 (as described above), the person shall be subject to an imprisonment of not more than six months or a fine of not more than Baht 6,000, or both. Such offence is a compoundable offence. However, the offence does not override other offences under the Criminal Code or other laws.

If such offence is also an offence under other laws and the penalties for the offence are higher than prescribed here, the case shall be prosecuted at the court having jurisdiction over the offence under other laws by applying the provisions under the Domestic Violence Act.

During the investigation or proceeding, the court shall have the authority to issue an order to prescribe measures or methods for relief under Section 10 or issue any order as appropriate. Any person who violates such order may be liable to an imprisonment of not more than six months or a fine of not more than Baht 60,000, or both.

In a case where the court finds the person who commits domestic violence guilty under Section 4, the court shall have the authority to determine the method to rehabilitate, treat, control the behavior of the offender, order the offender to compensate the relief, work for the public services, omit the act which causes domestic violence, or under parole in accordance with the method and duration prescribed by the court instead of punishing the offender.

Finally, the Domestic Violence Act provides that regardless of the extent which the domestic violence proceeding has been carried out, the court shall attempt to achieve a compromise between the parties by prioritizing the peace and co-existence of the family by considering the following principles:

- (1) protection of the rights of the victim of domestic violence;
- (2) preservation and protection of marital status as the center of men and women who voluntarily live together as husband and wife. If the marital status cannot be preserved, there shall be divorce with fairness and minimum damage **by considering the welfare and future of the child as a priority;**
- (3) family protection and support especially when the family is responsible for **taking care of and providing education to the family member who is a minor;** and
- (4) different measures to assist the husband and wife and person in the family to live in harmony and to **improve the relationship between themselves and the child.**



6. What forms of physical violence are not covered (and therefore permitted) under domestic legislation?

Thai law is silent on permissible actions and forms with regard to physical violence against children.

The law only provides for accepted grounds on which physical violence can be used. Please see our responses to Question 4 above.

7. Does domestic law reflect international laws and conventions regarding physical violence against children (eg: The UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Universal Declaration of Human Rights)? If not, what are the differences?

Yes, under international human rights law, children are entitled to the fundamental general human rights, e.g. to be free from “torture or to cruel, inhuman or degrading treatment or punishment,” as stated under the Universal Declaration of Human Rights. In addition, due to their vulnerability, they are also entitled to additional rights that provide special treatment and further protection, e.g. the Convention on the Rights of the Child imposes a duty on state parties to protect children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” Thailand recognizes both categories of rights to which children are entitled and as Thailand has endorsed and acceded to such international human rights instruments, it has upheld its obligations and duties by reflecting the prescribed principles in its domestic law.

Thailand addresses the issue by defining the acts of physical violence against children and prescribing legislative, administrative and social measures that work to protect children in need of assistance, such as through social welfare services, and

prevent the abuse in procedure, from the identification of the issue through to the judicial involvement.

8. In criminal prosecutions of physical violence against children:

8.1 What agency or agencies have the authority to refer a case to the prosecutor?

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.

8.2 What evidence is required to prove physical violence in a criminal prosecution?

In order to prove physical violence to the extent that it will be possible to prosecute someone on the grounds of bodily harm under the Criminal Code of Thailand, the following will need to be proved to the extent satisfactory to the Court:

1. External elements, being:
 - (a) harm to another person, which causes bodily or mental harm to the other person;
 - (b) other person, i.e. a bodily harm offence will not happen in cases of self harm or where the victim of such harm is already dead; and
 - (c) bodily or mental harm to another person, which is directly caused by such harm. In practice, evidence submitted to prove such harm will be in the form of a medical report of the sustained injury; video recording or eyewitnesses and police reports of the alleged wrongful act.
2. Internal element, being the intent of the wrongdoer who has acted by intending or having foreseen that his/her action will cause bodily or mental harm to another person.



In practice, a medical report which contains information that illustrates the above legal elements is usually used as evidence of inflicted harm on the victim.

8.3 If the prosecutor requires a child to testify against the alleged perpetrators of physical violence (e.g. parents or teachers):

a. Does the child have the right to refuse?

The public prosecutor cannot force anyone to testify against their will. However, if the person is an important witness, the public prosecutor may submit a motion to the court requesting that the court summon the person to testify.

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

If it is not reasonably possible for a witness to testify in court, the court may allow the witness to testify from another court, a government agency office, or any other place located within or outside Thailand by using teleconference technology, at the party's request or at the court's own discretion. This testimony will be deemed equally valid. Therefore, a victim of physical violence may testify via video from another location, with approval from the court.

In addition, in case of a child witness (whose age is not more than 18 years old), if there occurs a scenario where the witness cannot be present in court due to certain necessity (เหตุจำเป็นอย่างยิ่ง), the court, at its discretion, may accept a video or voice record at the stage of police investigation or the court's preliminary examination in court's proceedings as if the witness has in itself presented in court.

Note however that the term "certain necessity" is vague and there is neither a court precedent nor official guidelines on this issue.

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

In addition to our response to Question 8(c)(ii) above, this question falls within the ambit of general law applicable to proceedings of a criminal case in court—the Criminal Procedure Code.

Pursuant to section 226 of the Criminal Procedure Code, the following types of evidence, in addition to a witness, are admissible in court:

- (a) physical evidence; and
- (b) documentary evidence.

Please note however that under the Criminal Procedure Code, in order to convict a defendant, the plaintiff must prove to the court beyond reasonable doubt. As such, whether or not the physical and documentary evidence are sufficient to prove the defendant's guilt is subject to the court's discretion.

d. What other means of protection are available to children involved in prosecutions of physical violence?

The Criminal Procedure Code provides several protections to child victims or child witnesses, as described below.

With regard to the criminal investigation process, Section 133 bis of the Criminal Procedure Code states that with regard to offenses under the law on protection and suppression of the trafficking of women and children, if the victim or witness is a child (under 18 years old), the inquiry officer must, at the child's request, investigate the victim or witness separately, at a location suitable for the child, and in the presence of a psychologist or social worker, a person requested by the child, and a public prosecutor. If the psychologist or social worker believes that the investigation of any child or any question may have a severe impact on the mental condition of the child, the inquiry officer must convey the question through the psychologist or social worker, and the child must be prevented from hearing the



question. In addition, the child must not be questioned repeatedly without justifiable reasons. The inquiry officer has the obligation to inform the psychologist or social worker, the person requested by the child, the public prosecutor, and the child victim or witness of these rights. Furthermore, the inquiry officer must record both video and audio of the interview in a manner that can be reproduced as evidence. The Criminal Procedure Code also prescribes the approach to be taken when a child victim or witness is required to identify a suspect; this approach describes the steps necessary to prevent the suspect from seeing the child victim.

A victim may also file a complaint to an administrative or police official, who will then forward it to an inquiry officer. However, if the victim is a child, the aforementioned methods that apply to the criminal investigation process also apply.

The Criminal Procedure Code also addresses pre-trial depositions and trial proceedings in which the witness is a child. As for trial proceedings (e.g. witness examinations), per Section 172 ter of the Criminal Procedure Code, the court must arrange for the witness to be in an environment appropriate for a child, and either:

- examine the witness themselves, or through a psychologist or social worker; or
- allow the parties to examine, cross-examine, and re-examine the child through a psychologist or social worker. Prior to the witness examination, if the court deems it appropriate, or the child witness or any party submits a reasonable request, whereby it may be detrimental to the child if the request is not granted, the court must show before the parties, the video and audio of the child victim or witness which was recorded during the investigation pursuant to Section 133 bis and Section 171, paragraph 2 as part of the witness testimony. The parties may further examine, cross-examine, and re-examine the witness. The methods under sections 133 bis (as described above) and 172 ter also apply to pre-trial depositions.

e. Can the child be required to testify more than once?

Under Thai law, a witness is only required to testify once. However, in practice, the testimony of one witness may last longer than one court appointment, depending on the details of the case. Therefore, the victim may be required to attend court more than once for the same witness testimony.

9. What other protections and remedies are available under domestic law for child victims of physical violence (eg. intervention orders, victims of crime statutory schemes, civil remedies)?

Protections

Section 43 of Child Protection Act stipulates that:

In the case where the Child's Guardian or relative is the one committing torture against a child, if criminal proceedings are instituted against the perpetrator and there is a reason to believe that the accused will repeat the torture, the court which considers the case shall have the power to determine measures for controlling such person's behavior, to forbid from entering a specific area or to come close to the child within a specified proximity, in order to prevent any repetition of the act and may place a parole upon such person pursuant to the procedures stipulated in the Criminal Code.

If a criminal complaint has not been filed or there is no filing of a criminal complaint, but there are circumstances suggesting that torture will be repeated against a child, a competent official, administrative official or police officer, a person having duty to protect the child's welfare or public prosecutor shall submit a request to the court to give an order prohibiting such act by imposing measures to control the behavior and to be subject to parole.



In the case of paragraphs one and two, if the court deems that there is an urgent need to protect the child so the torture will not be repeated, the court shall have the power to order the police to arrest any person believed to have the intention to torture the child to be detained for a period not exceeding 30 days at a time.

The decision to order or demand parole under this section shall take into account the best interest of the child as an important consideration.

Remedies

Under the general principle of tort (section 420 of the Civil and Commercial Code), if a person illegally acts against another, whether or not willfully or negligently, which causes death, damage to body, health, freedom, assets or rights, shall compensate for such action.

Section 10 of Domestic Violence Act provides the following:

During the working process of the inquiry officer in gathering facts and evidence before forwarding the case file to the public prosecutor, the inquiry officer or person with equivalent status has the power to temporarily prescribe measures or methods to alleviate the suffering of the victim as necessary and appropriate e.g. order the offender to receive medical examination and treatment, order the offender to pay for the basic relief fund as appropriate to his or her status, prohibit the offender from entering the dwelling of the family or to be proximate to anyone in the family, and provide directions for taking care of the child.

Such order must be submitted to the court within 48 hours from the date of the issuance of the order. If the court agrees, the order will continue to be in force.

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

The child's parents or his/her guardian, and prosecutor can act in pursuing the remedies under the Child Protection Act.

In terms of compensation for tortious action, the person who is entitled to pursue such remedies on behalf of the child is the child's parents, or his/her guardian.

Section 5 of Domestic Violence Act provides that the victim of Domestic Violence or a person who witnesses or knows of the act of Domestic Violence has the duty to notify the Competent Official in order to implement this Act. This means that any person who witnesses or knows of domestic violence may report the case to the police and request the police to prescribe measures or methods to alleviate the suffering of the victim as necessary and appropriate.

9.2 In circumstances where Word Vision is providing shelter and other support to a victim of physical violence, can World Vision apply to be the guardian of the child for the purpose of pursuing these remedies? If so:

Whether or not World Vision or World Vision's agent can become a guardian of a child under its shelter will depend on the law that it intends to apply. This is because the general definition of "guardian" under the Child Protection Act is broader than the definition of "guardian" under the Civil and Commercial Code.

Under Civil and Commercial Code, a "guardian" is anyone who has reached legal age that is not adjudged incompetent or quasi-incompetent; bankrupt; or unfit to take charge of the person or property of the minor; or a person having or having had a lawsuit against the minor; ascendants or brothers and sisters of full blood or brothers and sisters of half blood of the minor; or a person having been excluded by name in writing from the guardianship be the deceased parent (Section 1587 of the Civil and Commercial Code).



While under section 4 of the Child Protection Act, “guardian” means parents, curator, adoptive parents, and guardian pursuant to the Civil and Commercial Code, and shall include step parents, guardian of the child’s welfare, employer, as well as any other person providing care or shelter to the child.

a. What criteria is World Vision required to satisfy and how does World Vision apply to be the guardian?

For World Vision’s agent to apply for guardianship under the Civil and Commercial Code, it has to confirm whether or not parental power of the minor’s parents has been revoked through court order. Such revocation can be ordered by the court’s own motion, or through the application of the minor’s relatives or public prosecutor (Section 1582 of the Civil and Commercial Code).

The criteria for appointment of a guardian under Civil and Commercial are anyone who has reached legal age that is not adjudged incompetent or quasi-incompetent; bankrupt; or unfit to take charge of the person or property of the minor; or a person having or having had a lawsuit against the minor; ascendants or brothers and sisters of full blood or brothers and sisters of half blood of the minor; or a person having been excluded by name in writing from the guardianship by the deceased parent (Section 1587 of the Civil and Commercial Code). If a foreigner seeks an appointment to be a guardian of a minor, the public prosecutor must forward the case to the Ministry of Interior for consideration prior to when the proceedings begin.

b. Can World Vision appoint a lawyer to assist the child?

For general legal advice, World Vision is free to appoint a lawyer to assist the child.

However, in terms of appointment of a lawyer for a legal representation in court, an appointment shall be made by a statutory agent.

Under Thai law, a statutory agent of a child is the person who exercises parental power which can be their parents or a person appointed to be a guardian that is entitled to exercise parental power. World Vision, as an entity, will not be able to appoint a lawyer to represent the child but World Vision’s agent who exercises parental power over the child will have this right.

c. Can these other remedies be pursued at the same time as a criminal case.

For Civil Remedies, only a victim or a legal representative of the victim (parents, grandparents, uncles, aunts, etc.) can request remedies on behalf of the child. If the child has no immediate family, the relevant child protection authority from the Ministry of Social Development and Human Security can represent the child in their request for civil remedies. It can be requested in court by a state prosecutor while suing for criminal acts or can also be requested during the police investigation.

Civil remedies can be requested under the Criminal Procedure Code:

Section 44/1: For a public prosecution, if the victim is entitled to claim compensation due to the fact that the defendant has caused him/her to lose his/her life, or sustain bodily or mental harm, personal liberty injury, reputation impairment or proprietary damage, he/she may ask the court trying the criminal case to ask the defendant to pay compensation for the victim’s suffering.

There is also the Criminal Compensation Act that allows a victim to request compensation from the state. Police officers also have the authority to assist with this case by coordinating with the relevant justice department of each province. The decision of costs will be made by the Criminal Compensation Committee. In practice, the Committee will make their decision when the court case has finished.



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

Regarding calculation of remedies, there are actual costs and extra costs that can be awarded if the victim has suffered some form of mental impairment.

The actual costs can be calculated from medical costs, while awards for mental damages will have to be decided by the court.

An action against the CCC will provide for damages for the child. It would need to be direct damages to the extent that it is actual and proven. Special damages are only awarded in cases where it is foreseeable or ought to have been foreseeable at the time of the act.

Remedies that the court may award as a consequence of a request from the inquiry officer under Domestic Violence Act are the basic relief fund as appropriate to the status of the offender.

10. Which organisations provide pro bono legal services to help a child victim of physical violence?

World Vision Foundation of Thailand

Address: 809 Soi Suphanimit, Pracha Uthit Road, Samsen Nok, Huai Khwang, Bangkok 10310

Phone: 02-022-9200 to 2

Fax: 02-022-9203 to 5

LINE: @worldvision-thai

E-mail: info@worldvision.or.th

Website: https://www.worldvision.or.th/index_eng.html

Pavena Foundation for Children and Women

Address: 84/14 M.2 Rungsit-Nakornnayok (Klong7), Lumphakkood, Thanyaburi, Prathumthani 12110

Phone: 02 577 0500 - 1, 02 577 0496 - 8

Mobile: 08 1814 0244, 06 2560 1636, 09 8478 8991 and 08 1890 1355

Hotline: 1134

Fax: 02 577 0499

Website: <https://pavenafoundation.or.th/en/>

Mercy Center

Address: 100/11 Kae-ha Klong Toey 4, Dhamrongratthaphiphat Rd., Klong Toey, Bangkok 10110 Thailand.

Phone: (662) 671-5313

Fax: (662) 671-7028

Email: info@mercycentre.org

Website: <https://www.mercycentre.org/en>

The Center for the Protection of Children's Rights Foundation

Address: 979 Charansanitwong 12 Road, Wat Tha Phra, Bangkokkokyai, Bangkok 10600, Thailand

Phone: +66 2 412 1196

Fax: +66 2 412 9833

Email: cpcrheadoffice1981@gmail.com

Website: <https://www.cpcrthailand.org>

Thailand Institute of Justice (Public Organization)

Address: GPF Building Tower B, 15-16 th FL., Witthayu Rd., Pathumwan, Bangkok, 10330, Thailand

Phone: +66 2 118 9400

Fax: +66 2 118 9425, +66 2 118 9426

Email: info@tijthailand.org

Website: <https://www.tijthailand.org/>



Childline Thailand Foundation (CTF)

Address: The Hub Saidek Youth Club
402-408 Maitri Chit Road (cnr Maitri Chit & Soi Nana)
Pomprab District Bangkok 10100, Thailand

Phone: 1387 , (+66) 02 623 3814
(Fax: ext.13)

Email: info@childlinethailand.org

Website: <https://www.childlinethailand.org/>

Foundation For Women (FFW)

Address: 295 Soi Charan Sanitwong 62, Bang Phlat District, Bang
Yi Khan District Bangkok 10700

Phone: 0-2433-5149, 0-2435-1246 Fax: 0-2434-6774

Email: info@womenthai.org

Website: <http://www.womenthai.org/>

11. Does domestic legislation deal with physical violence against children in circumstances where the alleged perpetrator is also a child (eg: physical bullying)? If so:

Yes.

- Criminal Code
- Child Protection Act, B.E. 2546 (2003)
- Juvenile and Family Court and Procedure Act, B.E. 2553 (2010)

11.1 What is the minimum age of a child perpetrator who may be held liable for physical violence?

Regarding the **Section 4 of Child Protection ACT B.E. 2546**, "Child" means a person whose age is less than 18 years but does not include those who attain majority through marriage.

Also, the Penal Code describes the minimum age of a child perpetrator who is *over 15*, that person may be held liable for physical violence (referred to Section 75). However, in this case, for a child over 15 years old but below 18 years old, the court is

required to take into account the child's sense of responsibility and other factors concerning such person in order to decide whether or not it is reasonable to render a judgment to impose a punishment upon such person. If the court is of the opinion not to render a judgment to impose punishment, it shall proceed according to section 74.

In the event that a child who is *less than 10 years of age* commits what is provided by the law to be an offence, shall not be punished (referred to section 73 of the Penal Code), but if a child perpetrator who is over 10 years but not yet over 15 years of age, the Court shall have the authorization to make a decision under section 74 as follows;

- (1) To admonish the child and then discharge him; and the Court may, if it thinks fit, summon the parents or guardian of the child or the person with whom the child is residing to be given an admonition also;
- (2) If the Court is of the opinion that the parents or guardian are able to take care of the child, the Court may give order to hand over the child to his parents or guardian by imposing the stipulation that the parents or guardian shall take care that the child does not cause any harm throughout the time prescribed by the Court, but not exceeding three years, and fixing a sum of money, as it thinks fit, which the parents or guardian shall have to pay to the Court, but not exceeding one thousand Baht for each time when the child causes harm;
- (3) If the child resides with a person other than his parents or guardian, and the Court does not think fit to summon the parents or guardian to impose the aforesaid stipulation, the Court may summon the person with whom the child resides for questioning as to whether or not he will accept the stipulation similar to that prescribed for the parents or guardian as aforesaid. If the person with whom the child resides consents to accept such stipulation, the Court shall give an order to hand over the child to the person by imposing the aforesaid stipulation;



- (4) In case the Court hands over the child to his parents, guardian or to the person with whom the child resides according to (2), the Court may determine the conditions for controlling the behavior of the child in the same manner as provided in Section 56 also. In such a case, the Court shall appoint a probation officer or any other official to control the behavior of the child;
- (5) If the child has no parents or guardian, or has them but the Court is of opinion that they are unable to take care of the child, or if the child resides with a person other than the parents or guardian, and this person refuses to accept the stipulation mentioned in (2), the Court may give an order to hand over the child to a person or organization, as the Court thinks fit, to take care of, to train and to give instruction throughout the period of time prescribed by the Court when consented to by the person or organization. In such a case, the person or organization shall have the same power as that of the guardian only for the purpose of taking care of, training and giving instruction as well as determining the residence and making arrangement for the work to be done by the child, as may be reasonable; or

To send the child to a school or place of training and instruction or a place established for training and giving instruction to children throughout the period of time prescribed by the Court but not longer than the time when the child reaches eighteen years of age.

11.2 What penalties apply?

Whenever any person over 15 years but not yet over 18 years of age commits any act provided by the law to be an offence, the Court shall take into account the sense of responsibility and all other things concerning such person in order to come to decision as to whether it is expedient to pass judgment inflicting punishment on the person or not. If the Court does not deem it expedient to pass a judgment inflicting punishment, it shall proceed according to Section 74, or if the Court deems

it expedient to pass a judgment inflicting punishment, it shall reduce the scale of punishment as provided for the offence by one-half (referred to section 75 of the Criminal Code).

Moreover, a child perpetrator is also liable for any compensation in accordance with the Civil and Commercial Code-section 420 (if any) and his/her parents are also liable with him/her unless they can prove that proper care in performing their duty or his duty of supervision has been extended (referred to section 429).

11.3 Can the matter be referred to prosecutors for criminal prosecution?

Yes, if a child who is over 15 years but not yet over 18 years of age commits what is provided by the law to be an offence, the matter can be referred to the prosecutors for criminal prosecution under section 75 and Juvenile and Family Court and Procedure Act B.E. 2553, (2010) section 99.

11.4 How do domestic laws protect the rights of the alleged perpetrator?

Section 27 of the AFIDDP stipulates that in the event that a child under the age of eighteen years old is a person who committed an act of domestic violence or a victim of domestic violence, the welfare protection process shall take into account the maximum interest of the child.

According to Juvenile and Family Court and Procedure Act B.E. 2553 (2010), there are procedures to protect the right of the alleged perpetrator as follows;

Investigation of Criminal Case:

- (1) Arrest cannot be done against a child alleged to have committed an offence unless the child commits a flagrant offence or has an arrest warrant or court order made against him or her. Arrest against a juvenile alleged to have committed an offence shall be in accordance with the Criminal Procedure Code (referred to section 66).



- (2) No custody, detention, confinement, probation, or other measures which cause the deprivation of the rights and freedom of child or juvenile, who are alleged to have committed an offence or as the delinquent, shall not be allowed except in case where there is a warrant or court order (referred to section 68).
- (3) When an inquiry officer accepts an arrested child who allegedly committed an offence is summoned, sent, or has come to, or appears before an inquiry officer, or has been accompanied to an inquiry officer and the case is under the jurisdiction of the Juvenile and Family Court, an inquiry officer shall conduct a preliminary enquiry on his or her first name, family name, age, nationality, domicile, birth place, and occupation as well as first name, family name, and detail of his or her father, mother, guardian, any person or organization where the child or juvenile resides and notify the alleged offence committed by the child to the persons and representative of the organization for the acknowledgement and the opportunity to demonstrate facts which are beneficial to the child (referred to section 70)
- (4) Before imposing an order to keep in custody or detain a child who is alleged to have committed an offence or who is a delinquent, the Court shall enquire of the child or his or her legal advisor whether there is any objection (referred to section 74).
- (5) Inquiry shall take place in an appropriate place with no discrimination and does not mix with other accused or has no unrelated persons in the place in a way that will cause defamation of the child (referred to section 75).
- (6) When notifying of charges and making an inquiry, the legal advisor must be presented. The inquiry officer shall notify the rights to give or not to give a statement and the statement given by the child may be used against him or her in the trial. And a father, a mother, a guardian or any person or organization with whom the child resides may attend the

inquiry (refer to section 75).

- (7) An officer who arrests the child or an inquiry officer shall not provide, permit or agree to have any photo taken or video recording made except for the purpose of the inquiry (section 76).
- (8) The criminal record of child shall not be disclosed or brought into consideration that may cause adverse effects or unfair discrimination over the child or juvenile, except as it is used at the discretion of a Court in stipulation of the measure for the child. A child who is alleged as committing an offence or is an accused shall be given the rehabilitation, both physical and mental, and be encouraged to reintegrate himself or herself in society as well as shall be treated with humanitarian and respect to human dignity (referred to section 84).

Criminal Prosecution:

No injured person shall institute a criminal prosecution in the Juvenile and Family Court unless permission from the Director of the Observation Centre having jurisdiction over the juvenile has been obtained (referred to section 99).

Special Measure in lieu of Criminal Prosecution:

This applies in a case where a child is alleged to have committed an offence which is punishable for a maximum term of imprisonment not exceeding five years without regard to fines, and the juvenile has not been sentenced by a final judgment to imprisonment except for an offence committed through negligence, or a petty offence, as well as when the juvenile shows his or her remorse before the prosecution (section 86).

VIETNAM





1. What is the definition of a child under domestic law?

Article 1 of Law No. 102/2016/QH13 on Children ("**Law on Children**") defines a "child" as a human being below the age of 16.

2. Is there domestic legislation which deals with physical violence against children (e.g.: shoving, hitting, slapping, shaking, throwing, punching, burning and kicking)?

The following regulations address physical violence against children:

- The Constitution;
- Law on Children;
- Law No. 02/2007/QH12 on domestic violence prevention and control ("**Law on Domestic Violence Prevention and Control**");
- Criminal Code No. 100/2015/QH13 ("**Criminal Code**");
- Decree No. 144/2013/ND-CP on administrative sanctions for violations of children's social support and aid as well as children protection and care ("**Decree No. 144**");
- Decree No. 167/2013/ND-CP on administrative sanctions for violations of social security, order and safety, prevention and fighting of social evils, fire and domestic violence ("**Decree No. 167**"); and
- Decree No. 80/2017/ND-CP of the Government, dated 17 July 2017, regarding the provision of safe, healthy and friendly education environments for the prevention and ending of school violence ("**Decree No. 80**").

3. If so, what forms of physical violence against children are prohibited under domestic legislation? (Please include the legal definition of the forms of physical violence)

The Constitution guarantees children the right to be protected and cared for by the State of Vietnam, by family, and by society. The Constitution specifically prohibits the harassment, persecution, maltreatment, abandonment, abuse of children, or other acts that violate children's rights. Additionally, acts that threaten a child's life or health are strictly prohibited under the Constitution.

The Law on Children broadly defines an act of violence against a child as follows:

acts of maltreating, persecuting or beating a child; taking physical abuse or causing harm to the child's health; reviling or offending honor or dignity of the child; segregating, driving the child away and other deliberate acts that cause physical and mental harm to the child.

The Law on Domestic Violence Prevention and Control provides that acts of domestic violence includes corporal beatings, ill-treatment, torture, or other purposeful acts that cause injuries to one's health and life, all of which are strictly forbidden.

Certain acts of physical violence against children are criminal offences under the Criminal Code, such as (i) deliberate infliction of bodily harm upon a child, and (ii) abuse or maltreatment of a child dependent.

Decree No. 80's definition of "school violence" includes, among others, torture, abuse and beating, physical abuse that damage the physical and mental health of students at educational institutions or in independent classes.

We note that specific acts (e.g., shoving, hitting, slapping, shaking, throwing, punching, burning, and kicking) are not further defined under Vietnamese law.



4. Does domestic legislation permit physical violence against children in some circumstances? If so, what circumstances?

There are no provisions that permit physical violence against children in any circumstances under Vietnamese law.

5. What are the penalties for violation of domestic laws relating to physical violence against children?

With respect to physical violence against children, Vietnamese law provides for criminal sanctions under the Criminal Code and administrative sanctions under Decree No. 144 and Decree No. 167.

With regards to violations related to physical violence against children, both the Criminal Code and administrative regulations, such as Decree No. 144, broadly provide on penalties against "acts of inflicting bodily harm to children". However, there are no provisions specifying the threshold or conditions delineating when such acts would be subject to the Criminal Code or to the administrative regulations. As such, it is largely up to the discretion of the authorities to determine which penalties should be applicable in each particular case.

There are also other types of special cases mentioned under the Criminal Code but that are not mentioned under administrative regulations. For example, any acts of infliction or abuse on persons who are "not capable of self-defense", or who have "severe or extremely severe disabilities or having a fatal disease" would be subject to the Criminal Code. These regulations may be relevant for the protection of children who may fall under certain special categories, such as children with disabilities, that are protected under the Criminal Code rather than administrative regulations.

Please see below for further details on the criminal sanctions under the Criminal Code and administrative sanctions under Decree No. 144 and Decree No. 167.

Criminal Code

We note that the Criminal Code does not provide a separate set of regulations/regime for penalties for physical violence against children, but instead provides on stricter sanctions on crimes of violence (in general), include sub-provisions addressing acts of physical violence against children.

Criminal sanctions (non-custodial sentence) of up to 3 years of community service or 6 - 36 months of imprisonment are imposed on either of the following acts:

- Deliberate infliction of bodily harm upon a child.¹
- Abuse or maltreatment of a child dependent.²

The act of deliberate infliction of bodily harm by a law enforcement officer of his/her official duties is subject to 2 – 7 years of imprisonment.³

A law enforcement officer in performance of his/her duty who commits manslaughter of a child as a result of a physical violence in circumstances other than those justified by law shall face a penalty of 8-15 years' imprisonment.⁴

Any person who cruelly treats, frequently oppresses, abuses or humiliates his/her child dependent to such an extent that the child dependent commits suicide shall face a penalty of 5-12 years' imprisonment.⁵

Decree No. 144

The following acts of physical violence against children are subject to administrative sanctions between VND5,000,000 and VND10,000,000:

¹ Article 134, Criminal Code.

² Articles 140 and 185, Criminal Code.

³ Article 137.2(c), Criminal Code.

⁴ Article 127.2(b), Criminal Code.

⁵ Article 130.2(b), Criminal Code.



- Infringement of the body, causing harm to the health of children.⁶
- Use of punitive measures to teach children, to hurt children, to cause physical and mental pain.⁷

Decree No. 167

Article 49 of Decree No. 167 provides for administrative sanctions applicable in the following instances:

- A fine between VND1,000,000 and VND1,500,000 shall be imposed for acts of violence in the form of beating that causes injury to family members.
- A fine between VND1,500,000 and VND2,000,000 shall be imposed for (i) use of tools, means, or other objects to cause injury to family members, or (ii) failure to take the victim for medical emergency treatment in circumstances the victim requires such treatment, or failure to take care of the victim during the treatment of injury that results from domestic violence, except in cases where the victim refuses such care.

Further, a public apology must be given for committing acts described in Article 49 if the victim so requests.

6. What forms of physical violence are not covered (and therefore permitted) under domestic legislation?

As mentioned in our response to Question 3 above, Vietnamese law defines physical violence against children in very broad terms. The absence of other forms does not mean that those forms are permitted under Vietnamese law.

7. Does domestic law reflect international laws and conventions regarding physical violence against children (e.g.: The UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Universal Declaration of Human Rights)? If not, what are the differences?

The Law on Children prohibits physical violence against children. The Law on Children defines “violence against children” as acts of maltreating, persecuting or beating a child, taking physical abuse or causing harm to the child’s health, reviling or offending the honor or dignity of a child, segregating, driving the child away, and other deliberate acts that cause physical and mental harm to the child. Under the Law on Children, children have the right to be protected from violence.

While the protection of children under the Law on Children reflects international laws and conventions, the Law on Children defines children as individuals under age 16. The UN Convention on the Rights of the Child and other international laws and conventions define children as those under age 18. This means that there is a discrepancy between Vietnamese law and international laws/conventions, and children between age 16 and under 18 are not fully protected under the category of child under the Law on Children. We further note that persons under 18 may enjoy certain special treatments, regimes and protections under Vietnamese law.

⁶ Article 27.2(a), Decree No. 144.

⁷ Article 27.2(d), Decree No. 144.



8. In criminal prosecutions of physical violence against children:

8.1 What agency or agencies have the authority to refer a case to the prosecutor?

Under Article 51.2 of the Law on Children, agencies regarding labor, invalids and social affairs, as well as police agencies at all levels and communal People's Committees are responsible for receiving and responding to information, reports and denunciations; cooperating to verify, appraise and initially investigate acts of harm to children, conditions leading to endangerment or harm to children and the level of risk of harm to children.

The above agencies would then transfer the denunciation and/or reports to the competent Police Investigation Agency for officially investigating the case. If the Police Investigation Agency issues an official investigation conclusion on committing the crime, they would refer the case to the prosecutor for prosecution.

8.2 What evidence is required to prove physical violence in a criminal prosecution?

Generally speaking, the evidence required to prove physical violence in a criminal prosecution should be anything demonstrating that the child has suffered from physical violence from the offender (e.g., wounds or other relevant physical traces on the victim's body). The competent investigators, where necessary, shall also physically examine the victim and record the findings in writing to serve as concrete evidence against the offender. In addition to this, it would be compulsory for competent investigators to request qualified and independent organizations (e.g., hospitals) for examining and verifying the seriousness of the child victim's injuries or harm.

8.3 If the prosecutor requires a child to testify against the alleged perpetrators of physical violence (e.g. parents or teachers):

a. Does the child have the right to refuse?

The law does not provide clear regulations on this matter. However, in practice, it is uncommon for a child to refuse the investigators' request for taking statements against the alleged perpetrators. However, by law, it is required that the defense counsel or representatives of the child must accompany the child during the session of taking testimony.

b. Can the child give evidence via video link (e.g. from another room)?

Vietnamese law does not have any specific regulations on this matter. However, from a practical perspective, in some certain circumstances where the child cannot be present at the court for providing evidence, it is permissible for them to provide evidence via video link.

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

Yes. The evidence/statements given by the child is entitled to be admitted as evidence without a court appearance, provided that such evidence/statements are presented in a factual and objective manner, and in accordance with the procedures provided by law.

d. What other means of protection are available to children involved in prosecutions of physical violence?

Under the Criminal Procedure Code, there are some further means of protection to children involved in prosecutions of physical violence as below:

- representatives of persons aged below 18, teachers and representatives of the school, Youth Union and other organizations, where persons aged under 18 pursue education



and perform daily activities, shall have the right to participate in legal proceedings as per the decisions of investigation authorities, procuracies and courts.

- representatives of persons less than 18 years of age can attend the session of deposition and interrogation of persons under 18;
- representatives can submit evidences, documents, items, requests, complaints and charges.

Pursuant to Article 50 of the Law on Children, the following certain protective measures can be applied to children involved in prosecutions of physical violence:

- Giving health care, psychological treatment, physical and mental health rehabilitation to abused children;⁸
- Arranging a safe temporary residence for children and separate them from an environment or individuals that are threatening or committing acts of violence or child exploitation;⁹
- Assisting child victims of violence with family reunification, school integration and social integration.¹⁰

e. Can the child be required to testify more than once?

Yes. However, the law mandates that there will be no more than two testimony sessions conducted per day, and each session must be less than 2 hours, except for certain cases that have a high level of complexity.

⁸ Article 50.2(a), Law on Children.

⁹ Article 50.2(b), Law on Children.

¹⁰ Article 50.2(d), Law on Children.

9. What other protections and remedies are available under domestic law for child victims of physical violence (e.g. intervention orders, victims of crime statutory schemes, civil remedies)?

Protections provided under the Law on Children

In general, the Law on Children categorizes child protection in three different levels, including: (i) prevention, (ii) support and (iii) intervention¹¹. If a child is a victim of physical violence, the following measures in the intervention level will be applied in order to prevent the physical violence acts and assist the victims in recovery and social inclusion¹², namely:

- Providing health care, psychological treatment, and physical and mental recovery;
- Arranging a safe temporary residence for children and to separate them from threatening and/or violent environments or individuals;
- Arranging temporary or long-term personnel for the caretaking of children who cannot live with their parents, and children whose parents are either unable to protect or raise them, or are actually the perpetrators committing the physical violence.
- During the process of arranging for a temporary or long-term caretaker, or if such a caretaker cannot be arranged, children may be placed at the care of a social aid facility;¹³
- Assisting children in family reunification, school integration and social integration;
- Providing advice and necessary knowledge and skills and legal assistance to parents, child caretakers and family members;
- Monitoring and evaluating the safety of the victims;

¹¹ Article 47.1, Law on Children.

¹² Article 50, Law on Children.

¹³ Article 67.1(a) and (b), Law on Children.



- Other measures for assisting the victims and their family as mentioned in Article 43.1, 44.1 and 49.2(d) of the Law on Children.

Apart from these intervention measures, if children and their life, health and/or dignity are under threat or are exposed to serious harm, or if parents or caretakers are committing physical violence against their children,¹⁴ emergency intervention will be applied within 12 hours from the receipt of the information.¹⁵ The persons in charge of child protection at the commune level, at police departments and at medical centers must be jointly responsible for helping the child victims in this emergency intervention.¹⁶

Civil remedies

Vietnam's Civil Code No. 91/2015/QH13 ("**Civil Code**") provides no specific provision on remedies for child victims of physical violence. However, the Civil Code does have a general provision on compensation claims for those intentionally or unintentionally causing damage to the life and health of a person.¹⁷

Based on this provision, civil remedies can be taken against those committing child physical violence.

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

Protections provided under the Law on Children

For each case of physical violence, there must be an intervention plan formulated to include the applicable intervention measures.¹⁸ By law, the People's Committee at the commune level where the victim resides must coordinate with agencies, organizations and individuals in charge of child protection to formulate, approve and

implement the plan; and arrange resources and individuals and/or organizations to implement or cooperate to implement and inspect the implementation of this plan.¹⁹

With regard to children who are subject to the threat of physical violence, or are actually under physical violence by their parents or caretakers, or those whose parents or caretakers refuse to implement the intervention plan, the Chairperson of the commune-level People's Committee, the district-level Divisions of Labor, War Invalids and Social Affairs can request competent courts to issue decisions on limiting rights of the children's parents or caretakers, or on temporary exclusion of the children from their parents or caretakers, and applying alternative measures to take care of the children.²⁰

For emergency intervention, as mentioned earlier, persons in charge of child protection at the commune level, police departments and medical centers must be jointly responsible for helping the child victims in this emergency intervention.²¹

Civil remedies

The legal representative of the child is entitled to initiate a court petition to claim for damages resulting from physical violence.²²

By law, the legal representative of a child are their parents²³, or their guardians in following cases²⁴:

- Children who have lost their parents, or whose parents are unidentifiable; or
- Children whose parents have lost their capacity for civil acts; have difficulty in awareness or control of their acts; have had

¹⁴ Article 31.1, Decree No. 56/2017/ND-CP.

¹⁵ Article 31.2, Decree No. 56/2017/ND-CP.

¹⁶ Articles 31.3, 31.4 and 31.5, Decree No. 56/2017/ND-CP.

¹⁷ Article 584.1, Civil Code.

¹⁸ Article 52.1, Law on Children.

¹⁹ Article 52.2, Law on Children.

²⁰ Article 52.3, Law on Children.

²¹ Articles 31.3, 31.4 and 31.5, Decree No. 56/2017/ND-CP.

²² Article 186, Civil Procedure Code.

²³ Article 136.1, Civil Code.

²⁴ Article 471, Civil Code.



their capacity for civil acts restricted; have had their rights toward the child restricted as declared by a court; or do not have the means to care for and educate their child and request a guardian.

The guardian of children is determined based on the following order²⁵:

- The eldest biological sibling shall be the guardian [for his/her younger siblings], if the eldest sibling fails to satisfy all conditions for acting as a guardian, the next eldest biological sibling shall be the guardian, unless there is agreement that another biological sibling shall act as the guardian.
- Where there is no guardian as prescribed in paragraph 1, the paternal grandparents or the maternal grandparents shall be the guardian; or these persons shall agree to nominate one or more of them to act as the guardian(s).
- Where there is no guardian as prescribed in paragraphs 1 and 2, a biological uncle or aunt shall be the guardian.

If the child has no guardian as mentioned above, the People's Committee at the commune level where the child resides will appoint a guardian for the child.²⁶

9.2 In circumstances where Word Vision is providing shelter and other support to a victim of physical violence, can World Vision apply to be the guardian of the child for the purpose of pursuing these remedies? If so:

World Vision can become the guardian of a child victim if:

- The child has no guardian as mentioned in Question 9(a).
- World Vision is appointed to become the guardian of the child by the People's Committee of commune where the child resides.²⁷

25 Article 52, Civil Code.

26 Article 54.1, Civil Code.

27 Article 54.1, Civil Code.

a. What criteria is World Vision required to satisfy and how does World Vision apply to be the guardian?

In order to apply for the guardian of the child, World Vision must first satisfy all of the following requirements:²⁸

- Having civil legal capacity suitable for guardianship.
- Having necessary means to exercise the rights and perform the obligations of the guardianship.

b. Can World Vision appoint a lawyer to assist the child?

Yes, World Vision can directly appoint a lawyer to assist the child for protection of their legitimate rights and interests if World Vision is the child's guardian.²⁹

9.3 Can these other remedies be pursued at the same time as a criminal case.

Yes, these other protections and remedies can be applied to the children as victims of physical violence whether or not a criminal case is initiated.³⁰

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

While the protection under the Law on Children does not provide for an award of compensation, initiating a civil court proceeding can help the child claim for compensation of damage caused by the physical violence.

By law, the damage caused by harm to health comprises:³¹

- Reasonable costs for treating, nursing and rehabilitating

28 Article 50, Civil Code.

29 Article 9.1 and Article 69.1, 69.2 and 69.3, Civil Procedure Code.

30 Articles 5 and 47, Law on Children.

31 Article 590.1, Civil Code.



health, and functional losses and impairment of the aggrieved person;

- Loss of or reduction in the actual income of the aggrieved person. If the actual income of the aggrieved person is irregular and is not able to be determined, the average income level for the type of work performed by the aggrieved person shall be applied;
- Reasonable costs and actual income losses of the caretakers of the aggrieved person during the period of treatment. If the aggrieved person loses his/her ability to work and requires a permanent caretaker, the damage shall also include reasonable costs for taking care of the aggrieved person.
- Other loss and damage as provided by law.

The person being responsible to pay compensation when the health of the child is harmed must pay the items as mentioned above together with an amount of money as compensation for mental suffering of the aggrieved person. The amount of compensation for mental suffering shall be as agreed by the parties; if the parties are not able to agree, the maximum sum payable to a person whose health is harmed shall not exceed fifty (50) times the general minimum wage provided by the Government.³² The general minimum wage are VND 1,390,000/ month for the period from 1 July 2018 to 30 June 2019, and VND 1,490,000/ month from 1 July 2019.³³

10. Which organizations provide pro bono legal services to help a child victim of physical violence?

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>

³² Article 590.2, Civil Code.

³³ Decree No. 72/2018/ND-CP, and Decree No. 38/2019/ND-CP.

National Legal Aid Agency

58 - 60 Tran Phu, Ba Dinh District, Hanoi, VIETNAM

Tel: +844373395386

<http://legalaid.gov.vn/slideshow/legal-aid-ministry-justice-vietnam>

11. Does domestic legislation deal with physical violence against children in circumstances where the alleged perpetrator is also a child (e.g.: physical bullying)? If so:

Yes, under the Criminal Code, children, within a limited age restriction, may be criminally liable for inflicting bodily harm onto another person.³⁴

Additionally, some may even face administrative sanctions if they are found to have violated regulations listed in Section 2 above. Specifically, Article 5 of the Law No. 15/2012/QH13 on Handling Administrative Violations, dated 20 June 2012, persons aged 14 to under 16 shall be administratively sanctioned for intentional administrative violations committed, whereas, persons aged 16 or older shall be administratively sanctioned for all administrative violations committed.

11.1 What is the minimum age of a child perpetrator who may be held liable for physical violence?

Persons aged from 14 and to under 16 shall be administratively sanctioned for intentional administrative violations committed, whereas, persons aged full 16 or older shall be administratively sanctioned for all administrative violations committed.

Criminal liability under the Criminal Code is only applicable to a person from 16 years of age and older, with a few exceptions as provided under the code.

Article 12.2 of the Criminal Code states that, a person from 14 years of age to under 16 years of age shall bear criminal responsibility for certain crimes, including: murder, deliberate

³⁴ Article 12, Penal Code No. 100/2015/QH13 dated 27 November 2015, effective on 1 January 2018.



infliction of bodily harm upon other people, raping, raping people under 16 years of age, sexual abuse of people from 13 to under 16 years of age, robbery, kidnapping for ransom; and other serious crimes.

11.2 What penalties apply?

Please see the response to question 5 above.

11.3 Can the matter be referred to prosecutors for criminal prosecution?

Crimes committed in violation of the Criminal Code may be referred to prosecutors for criminal prosecution.

11.4 How do domestic laws protect the rights of the alleged perpetrator?

An alleged perpetrator who is also a child is afforded the same rights and protections provided under the Criminal Procedure Code as an adult perpetrator.

Further, Chapter 28 of the Criminal Procedure Code provides for special procedures for legal proceedings of accused persons less than 18 years of age. For example, Article 414 provides that:

1. Legal proceedings must be congenial and conformable to the mentality, age level, maturity level and awareness of persons less than 18 years of age. Legitimate rights and interests of persons aged under 18 must be assured. Persons under the age of 18 must be guaranteed to gain the best benefits.
2. Personal information of individuals below 18 years of age must be kept confidential.
3. The right to participate in legal proceedings must be guaranteed for the representatives of persons under 18, schools, Youth Union, individuals with experience and knowledge of psychology and social affairs, places where persons aged below 18 pursue education and do daily activities.

4. The rights of persons under the age of 18 to attend and express opinions must be respected.
5. The rights of persons aged under 18 to defense and legal assistance must be guaranteed.
6. Principles of treatments as per the Criminal Code for persons less than 18 years of age must be assured.
7. The cases in connection with persons aged below 18 must be settled in swift and timely manners.

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