

# ASIA PACIFIC LEGAL GUIDE: ANTI-SEXUAL VIOLENCE



## END VIOLENCE AGAINST CHILDREN PROGRAM

AUSTRALIA | CHINA | HONG KONG | INDIA | INDONESIA | JAPAN | MALAYSIA  
PHILIPPINES | SINGAPORE | TAIWAN | THAILAND | VIETNAM



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## INTRODUCTION

# END VIOLENCE AGAINST CHILDREN (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 Organization<sup>1</sup>, 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.



“ 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

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## THE ASIA PACIFIC LEGAL GUIDES

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

The Asia Pacific Legal Guides will confront the following themes:

1. Child Trafficking
2. Physical Violence
3. Sexual Violence
4. Child Marriage
5. Child Neglect
6. Psychological Abuse

## 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)<sup>2</sup>

and its corresponding three optional protocols that include: (1) the Optional Protocol on the Involvement of Children in Armed Conflict (2002), (2) the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2002) and lastly, (3) the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (2014). For more information on this human rights treaty, please refer to the United Nations Human Rights Office of the High Commissioner website at <https://www.ohchr.org/EN/Pages/Home.aspx>.

## ANTI- SEXUAL VIOLENCE GUIDE INTRODUCTION


This Anti-Sexual Violence Guide has been produced by Baker & McKenzie, World Vision, Citigroup, MSD, and Khaitan & Co. to support the End Violence Against Children Program. This third legal guide addresses frequently asked questions encountered by World Vision relating to protecting child victims of sexual violence

in Australia, China, 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 sexual violence.

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<sup>2</sup> <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>



A close-up photograph of a young boy with dark skin and short, dark hair, smiling broadly at the camera. He is sitting at a wooden table, and his hands are visible, playing with colorful plastic toys. The background is blurred, showing other children and a red and white striped object. The lighting is natural and warm.

“ 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

# AUSTRALIA

## 1. What is the definition of a child under domestic law in the context of sexual activities?

There are variations in the way Australian laws describe and define children.

Generally, in the context of sexual activities, a child is a person who is under the age of 16 years, except in South Australia and Tasmania where the relevant age is 17 years.

Most State legislation also addresses situations where a sexual act is committed against a child by a person with authority over them, in which case a child is a person under the age of 18 years.

## 2. Is there domestic legislation which deals with sexual violence against children?

Yes. Sexual activities with children are prohibited under general criminal law.

The Criminal Codes and Crimes Acts of each Australian State and Territory contain provisions prohibiting sexual intercourse or acts of indecency with a young person; grooming; maintaining a sexual relationship with a young person; sexual exploitation of children; the possession or transmission of child pornography; and more.

Federal legislation prohibits child trafficking; use of a carriage service (including mobile phones and internet) for sexual activities and child abuse material; and sexual activities with children outside Australia.

In addition, there are legal frameworks which provide protections for children in need of care and protection or at risk of harm, including sexual abuse.

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

The Criminal Codes and Crimes Acts of each State and Territory and/or Federal legislation prohibit various forms of sexual activities with children, including the following.

- Sexual intercourse with a child: Where penetration occurs to the mouth, vagina or anus.
- Indecent acts or assault of a child: Where an adult exposes a child to, or involves them in, an indecent act. An act is indecent if it would offend the ordinary person. For example:
  - intentionally exposing a child to indecent video or photos;
  - intentionally exposing themselves to a child;
  - touching a child's genitals or where an ordinary person would consider the touching to be sexual.
- Grooming or procuring a child for sexual activity: Where an adult engages with a child with the intention of committing an act of indecency or sexual activity. This includes exposing the child to indecent material or providing alcohol or drugs.
- Possessing, sharing or involving a child in child pornography and child exploitation material: Child exploitation material includes sexually abusive images of children, online or otherwise.

## 4. In particular, do domestic laws prohibit:

### (a) child marriage as a form of sexual violence?

### (b) child trafficking?

- Maintaining a sexual relationship with a young person: Where a person participates in multiple sexual acts with a young person (eg: two or three or more acts, varying between jurisdictions).
- Sexual abuse by adults in authority: Where a person in a position of authority over a child under 18 years commits an act of indecency or has sexual intercourse with that child. Examples of a person in authority include parents, guardians, teachers, foster carers, sporting coaches and persons providing religious instruction.
- Child marriage: Where a person is married who is not of marriageable age. A person is of marriageable age if they are 18 years old, or 16 years old if the marriage is authorised by a court.
- Child trafficking: Where a person organises or facilitates the transport of a child under 18 years within or in or out of Australia for sexual purpose or exploitation.
- Sexual servitude: Where a person is forced to provide sexual services and, because of the use of force or threat, is not free to cease providing those services or leave the place where the services are provided. Specific offences apply when the person is under 18 years.
- Child prostitution: Where any sexual service is provided by a child for the payment of money or provision of other material thing, for the sexual arousal or gratification of another person.

Federal legislation makes it an offence to engage in certain sexual activities with children *outside* Australia.

Federal legislation makes it an offence to marry a person who is not of marriageable age. A person is of marriageable age if they are 18 years or older, or 16 years old if the marriage is authorised by a court.

Federal legislation also makes it an offence to:

- engage in conduct causing another person to enter into a forced marriage; and/or
- be a party to a forced marriage (when they are not the victim of the forced marriage).

Both offences are considered aggravated offences and attract a harsher penalty if the victim is under 18 years.

A forced marriage is a marriage where one party enters into the marriage without freely and fully consenting because:

- of the use of coercion, threat or deception; or
- the party was incapable of understanding the nature and effect of the marriage ceremony.

Yes. Federal legislation prohibits organizing or facilitating the transport of a person under 18 years within, or in or out of, Australia for sexual purposes or exploitation in circumstances where the organiser/facilitator intends or is reckless as to whether, the child will be used to provide sexual services or will otherwise be exploited.



**(c) child pornography  
(including online  
pornography)?**

Exploitation is defined to occur in conditions of slavery, conditions similar to slavery, servitude, forced labour, forced marriage or debt bondage.

It is also an offence to harbor or conceal a victim of child trafficking.

Yes. Various State and Territory legislation make it an offence to:

- use or involve a child in child pornography, child abuse material or child exploitation material;
- intentionally possess child pornography, child abuse material or child exploitation material;
- produce, publish, offer or sell child pornography, child abuse material or child exploitation material;
- intentionally access child abuse material.

Federal legislation makes it an offence to:

- use a carriage service for child abuse material;
- possess, control, produce, distribute, obtain, or facilitate the production or distribution of child abuse material for use through a carriage service;
- possess, control, produce, distribute or obtain, or facilitate the production or distribution of child abuse material outside Australia;
- use a carriage service for various sexual activities with a child under 16 years. The specified acts include: sexual activity; procuring a child for sexual activity; grooming a child for sexual activity; and transmitting indecent communications to a child.

'Child exploitation material' and 'child abuse material' are defined in each jurisdiction, generally referring to material that depicts, in a way that the reasonable person would find offensive, a person who is, or appears to be a child:

- as a victim of torture, cruelty or physical abuse;
- engaged in a sexual pose or sexual activity; or
- in a sexual context.

Federal legislation also prohibits the posting of intimate images of other people without consent on social media, the internet or on an electronic service. As children are generally not considered capable of providing informed consent, posting of intimate images of children would be prohibited by this legislation. For more information see Question 12(a) below.

**(d) sexual acts between  
an adult and a child,  
conducted with the  
consent of the parents  
or guardians of the  
child?**

Yes.

In some limited circumstances and jurisdictions, there are defences to criminal laws which allow children below the prescribed age to engage in consensual sexual activities with another person who is a similar age to them. See Question 4(d) below.

However, it is the consent of the child which is relevant, not the consent of the parents or guardians.

**(e) all sexual acts between an adult and a child? What is the minimum age at which a young person is legally capable of providing consent?**

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

In Australia, all forms of sexual activity are prohibited if an individual is below a prescribed age ('age of consent'). This includes instances where both of the individuals are below the age of consent. The prescribed age is 16 years in all states and territories of Australia except Tasmania and South Australia, where the prescribed age is 17 years.

Some States and Territories (Victoria, South Australia, the Australian Capital Territory, Tasmania and Western Australia) have a defence to these laws which allows children below the prescribed age to engage in consensual sexual activities with another person who is a similar age to them. The age difference varies depending on jurisdiction and, in some cases, the age of the child.

The penalties for sexual abuse of children vary depending upon the nature of the offence and the legislative provisions in the relevant jurisdiction.

Further, in some jurisdictions, legislation specifies that certain prohibited conduct with a child of an age lower than 16 years, or in certain circumstances, comprises an aggravated form of the offence and attracts harsher penalties.

For example in New South Wales, the maximum penalty for sexual intercourse:

- with a child under 10 years is life imprisonment;
- with a child over 10 years and under 14 years is imprisonment for 16 years;
- with a child over 14 years and under 16 years is imprisonment for 10 years;
- with a child over 10 years and under 14 years in certain prescribed circumstances is imprisonment for 20 years;
- with a child over 14 years and under 16 years in certain prescribed circumstances is imprisonment for 12 years.

Those certain prescribed circumstances include that:

- the alleged offender deprived the victim of their liberty before or after the commission of the offence;
- the alleged offender inflicted actual bodily harm, on the alleged victim or other person at the time of, or immediately before or after the commission of the offence;
- the alleged offender was in the company of another person or persons.

Penalties can also be imposed upon internet service providers and internet content hosts. For example: it is an offence for internet service providers and internet content hosts not to refer child abuse material to the Australian Federal Police within a reasonable time of being made aware of the material. The penalty is 800 penalty units or AUD168,000.

**6. Do religious and customary laws impact upon the dealing of sexual violence against children?**

Religious laws do not impact upon the dealing of sexual violence against children in Australia.

Courts may take into account the offender's cultural background as a relevant factor in sentencing. However, legislation in the Northern Territory and the Commonwealth state that courts in the relevant jurisdictions cannot take cultural practice or customary law into consideration when determining the seriousness of the offence committed.

**7. Does domestic law reflect international laws and conventions regarding sexual 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?**

Currently, there is no general enactment of international law and conventions regarding sexual violence against children into Australian legislation.

However, the Australian Capital Territory, Victoria and most recently Queensland have enacted human rights legislation requiring government bodies to consider human rights protection in all decision-making and action. These laws offer some protections to fundamental human rights drawn from international law and recognised in various international human rights treaties including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Other examples of domestic laws that reflect international law and conventions in relation to child sexual violence include:

- In New South Wales, Queensland and the Australian Capital Territory, domestic/family violence legislation has been enacted that is consistent with international human rights law, including the UN Convention on the Rights of the Child and the Declaration on the Elimination of Violence Against Women.
- Care and protection law and youth justice legislation across the states and territories have similar guiding principles in relation to the best interests of the child, early intervention and participation of children and young people in decision-making processes. For example, child protection legislation in Tasmania provides that any international convention relating to children to which Australia is a signatory and is in force will be taken into account in interpreting the legislation.
- Every five years the Australian Government reports to the UN Committee on the Rights of the Child (**UN Committee**) about its progress on children's rights. The Australian Government's most recent report was submitted on 15 January 2018.

In September 2019, Australia appeared before the UN Committee. In its concluding observations, the UN Committee stated that the Australian Government needs to take urgent measures in relation to sexual violence against children and expressed serious concern regarding:

- high rates of violence against children at home;
- high rates of historical institutional child sexual abuse;
- mistreatment of survivors of institutional sexual abuse including victims being required to sign "deeds of release", waiving their right to legal action;
- the grossly disproportionate rates of violence against Aboriginal and Torres Strait Islander Children;
- the disproportionate rates of violence against children living with disabilities;
- limited access to support services for children and families; and
- limited information regarding the rates of violence against children in remote areas, children with culturally diverse backgrounds and LGBTI children.

The UN Committee also made several recommendations, including that the Australian Government:

- enact a comprehensive national child rights legislation consistent with the UN Convention on the Rights of the Child; and
- ensure that all proposed legislation is completely compatible with the UN Convention on the Rights of the Child



## 8. In criminal prosecutions of sexual violence against children:

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

The relevant State or Territory police force.

(b) What evidence is required to prove sexual violence in a criminal prosecution?

The evidence required will depend upon the particular offence being prosecuted.

Evidence may include police reports, medical reports, photographs, and identification evidence such as DNA samples.

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

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

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

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

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 (amongst other circumstances):

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

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

(ii) 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

**(iii) 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.

**(iv) What other means of protection are available to children involved in prosecutions of sexual 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. Many jurisdictions specifically prohibit an accused from cross-examining a child in relation to sexual offences;
- make orders about the way evidence is given and the questioning of the child (including disallowing questions and preventing inappropriate or aggressive cross-examination of the child);
- hold the proceedings in private or exclude certain people from the court room;
- make orders for the court room to be arranged so that the child cannot see the accused or anyone else the court considers should be screened from the child; and
- make orders to prevent the publication of any material that would disclose 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; and
- 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 can refer a child to these services.

**(v) 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.

## 9. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?

In circumstances where it is necessary to hold a new trial (for example if a jury is 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.

Most jurisdictions in Australia have placed restrictions on requiring child sexual abuse complainants to give evidence at committal hearings.

### Criminal legislation

Federal legislation criminalises certain conduct that occurs outside Australia including:

- engaging in sexual intercourse and/or sexual activity with a child;
- causing a child to engage in sexual intercourse and/or sexual activity in the presence of the offender;
- procuring or grooming a child to engage in sexual activity outside Australia;
- possessing, controlling, producing, distributing, obtaining, or facilitating the production or distribution of child abuse material;
- encouraging, planning for or benefiting from sexual offences against children.

These offences apply to:

- Australia citizens;
- Australian residents;
- companies incorporated in Australia; or
- companies that carry on their activities principally in Australia.

It is a federal offence to traffic people, including children (within and **in or out** of Australia) with the intention that the child will be used to provide sexual services or will be otherwise exploited (ie. used for forced labour, forced marriage, slavery, debt bondage).

It is also a federal offence to use a postal service or a carriage service to:

- access, transmit, make available, publish, distribute, advertise, promote or solicit child abuse material;
- possess, control (this includes having control of data held in a computer that is in the possession of another person outside of Australia), produce, supply or obtain child abuse material for use through a postage or carriage service; or
- procure, groom or transmit indecent communication to a child.

### International Cooperation

Australia is a member of various international taskforces that assist in dealing with sexual violence against children when it cuts across several countries. For example:

- The [Virtual Global Taskforce](#) is an alliance of international law enforcement agencies (including the Australian Federal Police), non-government organisations and industry partners that work collaboratively to combat online child sexual abuse through data sharing and collaboration to apprehend child sex offenders.



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

- The International Criminal Police Organisation (INTERPOL) is an inter-governmental organisation that facilitates cross border police cooperation. Each member country (including Australia) hosts an INTERPOL National Central Bureau which links national police with the INTERPOL global network. INTERPOL enables its 194 member countries to share and access data on crimes and criminals. For example, INTERPOL's International Child Sexual Exploitation Image and Video Data Base allows investigators to share data on cases of child sexual abuse.

In respect of child trafficking, the Australian Government has launched the International Strategy to Combat Human Trafficking and Slavery (the **Strategy**) and is a party to international conventions that address child trafficking.

The Strategy outlines the Australian Government's commitment to work at bilateral, regional and multilateral levels to combat human trafficking (including child trafficking) and identifies South East Asia as the principal focus of Australia's engagement.

As part of the Strategy, Australia is engaged in the following:

- ASEAN Convention against Trafficking in Persons, Especially Women and Children;
- Australia Asia Program to Combat Trafficking in Persons;
- The Bali Process on People Smuggling and Human Trafficking; and
- UN Improving the coordination of efforts against trafficking in persons.

Each of these arrangements focus on member state cooperation to address trafficking, including information sharing and joint efforts to prosecute offenders.

Internationally, Australia has ratified the United Nations Convention against Transnational Organised Crime (UNTOC) and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (**Trafficking Protocol**).

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 sexual abuse 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 sexually abused 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.

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

- 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 below.

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.

**(b) In circumstances where World Vision is providing shelter and other support to a victim of sexual 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).

**(i) What criteria is 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.

**(ii) 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.

**(c) 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.

**(d) 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.



## 11. Which organisations provide pro bono legal services to help a child victim of sexual violence?

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.

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.

Numerous community legal centres specialise in providing pro bono legal services to children but their services often do not extend to child protection matters or personal injury.

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/was>
- 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/crime-and-police/victim-assist-queensland>
- WA Child Witness Service: <https://www.victimsofcrime.wa.gov.au/C/child.aspx>
- SA Witness Assistance Service: <https://www.dpp.sa.gov.au/category/witness-assistance-service/>

For matters which may be heard in the Family Court of Australia, children can also be appointed an Independent Children's Lawyer: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/parenting/independent-childrens-lawyer/>

## 12. Do domestic laws prohibit:

### (a) consensual sex activities between minors (including sexting)?

In Australia, all forms of sexual activity are prohibited if an individual is below a prescribed age ('age of consent'). This includes instances where both of the individuals are below the age of consent. The prescribed age is 16 years in all states and territories of Australia except Tasmania and South Australia, where the prescribed age is 17 years.

Some States and Territories (Victoria, South Australia, the Australian Capital Territory, Tasmania and Western Australia) have a defence to these laws which allows children below the prescribed age to engage in consensual sexual activities with another person who is a similar age to them. The age difference varies depending on jurisdiction and, in some cases, the age of the child.

Sexting and revenge porn (ie: distribution of intimate images of someone else, including a threat to do so) is illegal if the images are of children under the age of 18 years. It is an offence under federal criminal laws to send sexually explicit photos of a person under the age of 18 over a 'carriage service'. This includes mobile phones or the internet. Whilst the position under state laws is that a young person can consent to sexting at the age of 16 or 17, depending on the jurisdiction (see above), given that the sexually explicit photos will be sent via internet or a mobile phone, the person will breach the federal criminal laws. This means that whilst state laws may allow for sexting by individuals over the prescribed age but under 18 years of age, the federal law will still be contravened. This applies even if the photo is taken of the individual by them self.

**(b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)**

**13. If so, what are the penalties for violation of these laws?**

**14. Is there a policy mandate that a government agency be responsible for disseminating information to the public, especially children? (i.e., hot-line information, punishments, etc.)**

Some states have provisions in these laws which help protect young persons involved in instances of revenge porn. For example, in New South Wales, laws relating to revenge porn prohibit the prosecution of offenders under the age of 16 years except where the Director of Public Prosecutions grants approval. This provision helps ensure that revenge porn laws do not inappropriately criminalise activity by, or between, young people.

As discussed above, all forms of sexual activity are prohibited if the person is below the age of consent. The position in all states and territories of Australia is that individuals below this age of consent do not have the capacity to consent to any form of sexual activity.

As identified in part (a), there are some defences to these laws in some states which would allow a minor to engage in sexual activity with another person if they are a similar age (which could include if that the person is of adult age). For example, in the state of Victoria, where the age of consent is 16 years, the law allows someone aged between 12 years and 16 years to have consensual sex with another individual who is less than 2 years older than them. Under these laws, someone aged 15 years (i.e. a minor) would be able to engage in sexual activity with someone aged 17 years (i.e. someone above the age of consent).

In the states of Western Australia, Victoria, South Australia and Tasmania there are limited defences available if the person was lawfully married to the child.

For penalties relating to sexual activities between a minor and an adult, refer to Question 5 and Question 12(a) and (b) above.

The position in Australia is less certain where two minors have engaged in consensual sexual activity and a legal defence is not available. According to the law, each individual has committed an offence against the other, however, whether the minors will be charged and prosecuted will be at the discretion of the prosecutor.

Yes.

The Office of the eSafety Commissioner has been established to promote and encourage online safety for all Australians. As part of its functions, it publishes educational information aimed at adults and children in relation to online safety (and includes topics such as revenge porn, cyberbullying, sexting etc.). More information can be found here: <https://www.esafety.gov.au/>.

Other government resources that provide general information about child sexual abuse and the support services available to children include the following:

- [Respect.gov.au](https://www.respect.gov.au/), provides information about support services available to children, including:
  - [Kids helpline](#) (telephone, email and web counselling for children and young people); and
  - [Australian childhood foundation](#) (counselling for children and young people affected by abuse).
- The [Communities and Justice New South Wales](#) website provides general information to the public regarding how to identify children at risk of harm and neglect (including sexual abuse) and steps to take if a person believes a child is at risk. The website also provides information about available services and support. Each Australian state and territory has a similar resource available.

### **Royal Commission into Institutional Responses to Child Sexual Abuse**

On 15 December 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse published its final report (the **Report**) which made a number of recommendations to educate and raise public awareness about child sexual abuse including:

- social marketing campaigns;
- prevention education delivered through preschools and schools;
- online safety education for children, delivered via schools;
- prevention education for persons entering child related occupations;
- information and help-seeking services to support people who are concerned they, or someone they know, may be at risk of sexually abusing children, or may be at risk of sexual abuse or harm.;

The National Office for Child Safety is in the process of planning and implementing the recommendations in the Report.



# CHINA

1. What is the definition of a child under domestic law in the context of sexual activities?

The effect of the law in China appears to be that in the context of sexual activities, a child is a person below 14 years of age.<sup>1</sup>

2. Is there domestic legislation which deals with sexual violence against children?

The Criminal Law of the People's Republic of China (the "**Criminal Law**") and several judicial opinions deal with sexual violence against children. In the Chinese legal system, guidance on the Criminal Law and approaches to these issues are provided from the Chinese Courts through judicial interpretation of the Criminal Law.

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

The Criminal Law and its judicial interpretation documents have loosely categorized rape, indecent assault against a child, and crimes involving 'child prostitution' as child sexual abuse offences.

**Statutory Rape:** Article 236 of the Criminal Law provides that sexual relations with a girl younger than 14 is considered as rape (even if there was consent from the victim). However, there needs to be some indication to help determine that an offender is aware of the girl's age, unless she is younger than 12.

However, under the PRC legal regime, a male (regardless of his age) cannot be considered the object of rape. If a male or a boy is forced to have sexual intercourse, the perpetrator would probably be punished under the crime of indecent assault. Both a male and female can commit the crime of rape. Females that take a secondary or auxiliary role in a joint crime of rape with males shall be punished as an accomplice under Article 27 of the Criminal Law.

Article 6 of the Interpretation of the Supreme People's Court on Some Issues Concerning the Specific Application of Law in the Trial of Criminal Cases Involving Minors provides that if a person who has reached the age of 14 but not the age of 16 occasionally has sex with a girl under the age of 14 with a minor circumstance and which has not caused serious consequences, the act shall not be considered a crime.

**Indecent Assault:** Article 237 of the Criminal Law does not set out the specific acts that are covered by indecent assault. The criminal intent of indecent assault is for sexual gratification in various forms that does not include sexual intercourse.

It protects persons of any age, though when the victim is a child (up to 14 years), a more severe punishment shall be imposed. This criminal offense includes molestation of a child (up to 14 years) whether a boy or a girl.

**Child Prostitution:** Article 358 of the Criminal Law provides that organizing or forcing girls under the age of 18 into prostitution is a criminal offence that may result in a fixed-term imprisonment of 5 to 10 years; if the circumstances are serious, the perpetrator shall be sentenced to a fixed-term of imprisonment not less than 10 years, or life imprisonment and a fine, or confiscation of property.

<sup>1</sup> The Criminal Law of the People's Republic of China, Articles 236 and 359.

#### 4. In particular, do domestic laws prohibit:

##### (a) child marriage as a form of sexual violence?

In addition, inducing girls under the age of 14 into prostitution is a criminal offence and may result in fixed-term imprisonment of not less than 5 years and a fine, according to Article 359 of the Criminal Law.

The Criminal Law has removed the crime of having sexual intercourse with girls under the age of 14 acting as a prostitute. Such conduct would be treated as rape, even if the girl acting as a prostitute consents to having sex.

**Promiscuity:** Under Article 301 of the Criminal Law, seducing minors into mass promiscuous activities is a criminal offence "to be severely punished" which could lead to imprisonment of not more than 5 years, criminal detention or public surveillance. The Criminal Law does not provide a definition of "promiscuous activities."

##### (b) child trafficking?

In China, child marriage is not permitted, as women younger than 20 years old are not allowed to get married according to the Article 6 of the PRC Marriage Law. That being said, child marriage is not prohibited as a form of sexual violence. In a reply letter issued by the Supreme People's Court of China in 1953, marriage with a child under the age of 14 is not considered as sexual violence.<sup>2</sup>

Further, Article 15 of Chinese Law on the Protection of Minors requires that the parents or other guardians shall not permit or force minors to marry, or undertake an engagement for the minors.

According to Article 240 of the Criminal Law, abducting and trafficking children is a criminal offence.

Offenders are to be sentenced to 5 to 10 years in prison plus a fine. Aggravating circumstances leading to prison for 10 or more years, life imprisonment, confiscation of property (and those committing especially serious crimes being sentenced to death in addition to confiscation of property) includes:

- 1) Primary elements of rings engaging in abducting and trafficking children;
- 2) Abducting and trafficking more than 3 women and/or children;
- 3) Inducing or forcing a woman who is abducted and trafficked in to engage in prostitution, or selling such woman to any other person who would force her to engage in prostitution;
- 4) Kidnapping children or using force, coercion or narcotics, for the purpose of selling them;
- 5) Causing abducted children or their family members serious injuries or death, or causing other grave consequences (other grave consequences not defined); and
- 6) Selling abducted children to outside the country.

Article 241 of the Criminal Law provides that buying abducted children is a criminal offence which can lead to a sentence of 3 or fewer years in prison, or being under criminal detention or surveillance.

The offence includes illegally depriving children of or restricting their physical freedom, or injuring or insulting them. Those convicted will be punished for committing more than one crime.

<sup>2</sup> The Reply Letter that Marriage with Person under the Age of 14 Shall not be Punished as Raping a Girl Issued by the Supreme People's Court in 1953 (最高人民法院关于同未滿 14 周岁的人结婚不应以奸淫幼女罪论处的函). See at [http://www.china.com.cn/law/flfg/txt/2006-08/08/content\\_7061623.htm](http://www.china.com.cn/law/flfg/txt/2006-08/08/content_7061623.htm).

**(c) pornography (including online pornography)?**

Those buying and selling abducted children are to be convicted and punished according to Article 240 of the Criminal Law.

Buying an abducted child without maltreating the child or obstructing the rescue of the child may lead to a lighter penalty.

The Interpretations of the Supreme People's Court on Several Issues concerning the Specific Abduction of Law in the Trial of Criminal Cases of Abduction and Trafficking of Women and Children specifies that for the crime of abducting and trafficking of child, a child is below 14 years of age.<sup>3</sup>

**Criminal Punishment:** The Criminal Law does not specifically regulate child pornography, but the Criminal Law prohibits the distribution of all kinds of pornographic materials, including child pornography.

Article 364 of the Criminal Law prohibits the distribution of pornographic materials, and distributing obscene material to minors under age 18 is a criminal offence which is "to be severely punished" (carrying heavier penalties than to non-minors which could include a prison sentence and paying a fine.)

Obscene materials includes erotic books, magazines, motion pictures, video tapes, audio tapes, pictures or other obscene materials that graphically describe sexual intercourse or explicitly publicize pornography.

**Administrative penalty:** According to Article 64 of the Law of the People's Republic of China on the Protection of Minors (the "Law on the Protection of Minors"), whoever makes or sells, leases or disseminates by any other means to minors books, newspapers, magazines, audio and video products, electronic publications or network information, etc. of pornography, violence, homicide, terror or gambling, etc. shall be ordered by the competent department to correct illegal conducts, and be given administrative penalties according to law.

**(d) sexual acts between an adult and a child, conducted with the consent of the parents or guardians of the child?**

Consent given by parents or guardians would not legalize sexual acts performed between adults and children.

Parents or guardians are forbidden to give such consent to harm the interest of the children under the Law on the Protection of Minors. Even if there is consent from the parents or guardians, an adult engaging in sexual acts with a child commits a crime under the Criminal Law and the parent(s) / guardian(s) could be responsible for the maltreatment of the minor, which could include being subject to imprisonment.

Article 260 introduced a 9th amendment to the Criminal Law that has expanded the scope of application of the abuse offence to cover more than just family members, as it previously stipulated, which has been extended to caregivers and legal guardians in institutions and other facilities—with such institutions and facilities also liable for fines.

Additionally, if such acts contemporaneously constitute other crimes in accordance with the law, the perpetrator shall be charged and punished pursuant to the provisions containing heavier punishments.

<sup>3</sup> Interpretations of the Supreme People's Court on Several Issues concerning the Specific Abduction of Law in the Trial of Criminal Cases of Abduction and Trafficking of Women and Children (最高人民法院关于审理拐卖妇女儿童犯罪案件具体应用法律若干问题的解释), Article 9. See at <http://courtapp.chinacourt.org/fabu-xiangqing-33641.html>.

(e) all sexual acts between an adult and a child? What is the minimum age at which a young person is legally capable of providing consent?

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

The minimum age at which a young person is legally capable of providing consent appears to be 14 years of age, with a reference to Articles 236 and 359 of the Criminal Law.

See the other sections of this document which also provide commentary on penalties:

**1. Rape**

Article 236 of the Criminal Law provides that whoever, by violence, coercion or other means, rapes a woman, is to be sentenced to not less than 3 years and not more than 10 years of fixed-term imprisonment.

Sexual relations with a girl under 14 is considered as rape and is to be given a heavier punishment accordingly.

Aggravating circumstances to be sentenced to not less than 10 years of fixed-term imprisonment, life imprisonment, or death:

- Rape a woman or have sexual relations with a girl and when the circumstances are odious ('odious' meaning extremely unpleasant / repulsive);
- Rape several women or have sexual relations with several girls;
- Rape a woman in a public place and in the public;
- Rape a woman in turn with another or more persons; and
- Cause the victim serious injury, death or other serious consequences.

**2. Indecent Assault**

Article 237 of the Criminal Law provides that whoever by violence, coercion or other means, forces or molests a child or humiliates a child shall be sentenced to prison for a period of not more than 5 years.

Assembling a crowd to commit, committing in a public place the above crime, or if there are particularly bad circumstances, perpetrators shall be sentenced to prison for a period of not less than 5 years.

**3. Abducting and Trafficking**

Article 240 of the Criminal Law provides that persons abducting or trafficking women and children are to be sentenced to 5 to 10 years in prison plus a fine. Aggravating circumstances leading to prison for 10 or more years, life imprisonment, confiscation of property (and those committing especially serious crimes being sentenced to death in addition to confiscation of property):

- Primary elements of rings engaging in abducting and trafficking children;
- Abducting and trafficking more than 3 women and/or children;
- Inducing or forcing the woman who is abducted and trafficked in to engage in prostitution, or selling such woman to any other person who would force her to engage in prostitution;
- Kidnapping children or using force, coercion or narcotics, for the purpose of selling them;

## 6. Do religious and customary laws impact upon the dealing of sexual violence against children?

- Causing abducted children or their family members serious injuries or death, or causing other grave consequences (other grave consequences not defined); and
- Selling abducted children to outside the country.

Also, according to Article 241 of the Criminal Law, persons buying abducted children are to be sentenced to 3 or fewer years in prison, or put under criminal detention or surveillance. Buying an abducted child without maltreating the child or obstructing the rescue may be given a lighter penalty.

Offence includes illegally depriving children or restricting their physical freedom, or injuring or insulting them. Those convicted will be punished for committing more than one crime.

Those buying and selling abducted children are to be convicted and punished according to Article 240.

### 4. Child Prostitution

Article 359 of the Criminal Law provides that those seducing young girls under 14 years of age into prostitution are to be sentenced to 5 years or more in prison, in addition to a fine.

### 5. Broadcasting or Showing Pornography to Child

Article 364 of the Criminal Law provides that those broadcasting or showing obscene materials to minors under 18 years of age are to receive a punishment of not more than 2 years and a fine.

China is a country with multiple races, and every citizen enjoys freedom of religious belief.<sup>4</sup> Some races and religions may have their own customs or governance rules. However, there are no so-called religious or customary "laws" that have legal binding force. Under the Legislation Law of the People's Republic of China, legislation includes without limitation laws, administrative regulations, local regulations, autonomous regulations, all of which are promulgated by competent authorities. Religious or customary rules may be for reference use but could not serve as formal legal basis in general.

There were, and may still exist, certain remote areas where minorities prefer having boys over girls. A typical situation was that girls might have no chance to receive an education in school, which could have adverse impacts on their ability to protect themselves as well as their social status.

Currently gender equality is a basic policy of China. Women enjoy equal rights with men in all spheres of life, in political, economic, cultural, social and family life.<sup>5</sup> The state has been placing emphasis on balanced development of compulsory education and safeguarding the education rights of girls.<sup>6</sup> In addition, the government is strengthening the caring and protection of stay-at-home children in rural areas by establishing and improving relevant protection and aid mechanisms.<sup>7</sup> These policies and regulations are conducive to the protection of rights and interests of children and reducing exposure to violence.

<sup>4</sup> Chapeau and Article 36 of Constitution of the People's Republic of China.

<sup>5</sup> Article 48 of Constitution of the People's Republic of China.

<sup>6</sup> Article 3 of Decision of the State Council on Expediting the Development of Ethnic Education (国务院关于加强发展民族教育的决定).

<sup>7</sup> Article 4 of Opinions of the State Council on Strengthening the Caring and Protection Work for Stay-at-Home Children in Rural Areas (国务院关于加强农村留守儿童关爱保护工作的意见).



**7. Does domestic law reflect international laws and conventions regarding sexual 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?**

China has taken steps to ratify international laws and conventions in this regard. To be specific, China has ratified the UN Convention on the Rights of the Child and its 2 protocols.<sup>8</sup> Also, China has ratified the Convention on the Elimination of All Forms of Discrimination against Women and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.<sup>9</sup> Further, China is a member of the drafting committee of the Universal Declaration of Human Rights.<sup>10</sup>

At the local level, China has enacted the Law on the Protection of Minors in 1991, with adherence to the UN Convention on the Rights of the Child.<sup>11</sup>

**8. In criminal prosecutions of sexual violence against children:**

**(a) What agency or agencies have the authority to refer a case to the prosecutor?**

The Public Security Bureau (“**PSB**”) is the only authority that has investigatory power into criminal cases involving violence against children. After the PSB completes a criminal investigation, it shall refer the case to the People’s Prosecutor for prosecutions.

Any individual or entity has the right to report a criminal case to the PSB if they discover any facts of a crime or criminal suspects. Moreover, according to the Opinions on Punishing the Crimes of Sexual Abuse of Minors, where persons have special duties, such as guardianship, education, training, assistance, nursing care, and medical care, for minors (the “persons with special duties”) and other citizens and entities discover that minors have been sexually abused, they shall have the right and obligation to report the cases to or tip off the PSB, prosecutors, or courts.<sup>12</sup>

**(b) What evidence is required to prove physical violence in a criminal prosecution?**

Evidence required for prosecution requires a case-by-case analysis. Article 12 of the Opinions on Punishing the Crimes of Sexual Abuse of Minors suggests a list of evidence that the PSB shall collect in usual cases concerning sexual violence against children. The list of evidence includes:

- 1) Conducting a personal inspection of the minor victim and the criminal suspect;
- 2) Collecting biological samples such as body fluids, hair; residues in the nails of the victim and the suspect, fingerprints, footprints, shoe prints, and other traces, clothing, buttons and other articles;
- 3) Inspecting documentary evidence such as accommodation registration forms, on-site surveillance video and other audio-visual materials; and
- 4) Collecting victim statements, witness testimony, and statements of criminal suspects.<sup>13</sup>

<sup>8</sup> See the Treaty Database of the Ministry of Foreign Affairs, at <http://treaty.mfa.gov.cn/Treaty/web/list.jsp>.

<sup>9</sup> *Id.*

<sup>10</sup> See at <https://www.un.org/en/sections/universal-declaration/drafters-universal-declaration-human-rights/index.html>.

<sup>11</sup> See at [http://old.moe.gov.cn/publicfiles/business/htmlfiles/moe/moe\\_622/200409/3166.html](http://old.moe.gov.cn/publicfiles/business/htmlfiles/moe/moe_622/200409/3166.html).

<sup>12</sup> Opinions on Punishing the Crimes of Sexual Abuse of Minors, Article 9.

<sup>13</sup> *Id.*, Article 12.

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

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

Theoretically speaking, any person, including children, who have information regarding a case shall have the obligation to testify.<sup>14</sup> However, in the case of a minor, testimony made by minors may carry less weight, since they may not have sufficient competence to express himself/herself. Also, no statutory punishment or liability could be imposed on a child (as the victim) if he/she refuses to testify.

Moreover, the Opinions on Punishing the Crimes of Sexual Abuse of Minors requires the judges, prosecutors, investigators and lawyers to adhere to the principle of no harm when questioning a child and the inquiring process shall be made in a gentle manner.<sup>15</sup>

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

Yes. When feasible, the court may use video to play statements and testimony of the minor(s), and take protective measures when playing the video.<sup>16</sup>

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

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

As mentioned above, if it is necessary for the minor victim or witnesses to appear in court, the court shall take protective measures such as not revealing their appearance and real voice depending on the circumstances of the case.<sup>17</sup>

**(iv) What other means of protection are available to children involved in prosecutions of sexual violence?**

Various protection measures are available to children in this circumstance, including:

#### **1. Protecting the Confidentiality of Children's information**

In prosecutions of sexual violence involving children, all participants in the proceeding, including the judges, prosecutors, investigators and lawyers, shall keep identity information of minor victims, information that may infer minor's identity and details of sexual violence confidential.

#### **2. Special Arrangements for Children**

Sexual violence cases involving children shall be handled by investigators, prosecutors and judges who are familiar with the physical and mental characteristics of minors. In the case of female minor victims, there shall be female officials handling the case.

If the judicial authorities (i.e. court, prosecutors, PSB) have established dedicated working groups or teams to handle criminal cases involving minors, such cases may be recommended to these dedicated working groups or teams.

<sup>14</sup> Article 62 of the PRC Criminal Procedure Law.

<sup>15</sup> Opinions on Punishing the Crimes of Sexual Abuse of Minors, Article 14.

<sup>16</sup> *Id.*, Article 18.

<sup>17</sup> *Id.*, Article 18.

**(v) Can the child be required to testify more than once?**

**9. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?**

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

### 3. Special Inquiring Requirements

As mentioned, judges, prosecutors, investigators and lawyers, who handle criminal cases involving minor victims shall avoid causing harm to the minor victims when questioning them and the inquiring process shall be made in a gentle manner.

### 4. Legal Aid

Minor victims or their guardians or close relatives have the right to apply for legal aid if they have financial difficulties appointing a lawyer.

Yes. Under PRC law, there is no explicit limitation on the number of times a child may be requested to testify. The court may require the child to testify more than once based on necessity and the complexity of the cases. But, it is also suggested that facts related to sexual abuse crimes involving children shall be thoroughly inquired about on a single occasion to avoid repeated inquiries.

China has very broad jurisdiction over cross-border criminal cases. For instance, China may have jurisdiction over criminal cases taking place in China, or if the perpetrator or victim is Chinese.

China enacted the Law on International Judicial Assistance in Criminal Matters in 2018 and it regulates the cooperation on evidence collecting, assistance in investigation, illegal gains confiscation and transfer of sentenced persons. China has signed numerous bilateral treaties for mutual assistance in criminal matters, extradition of criminals etc.

Besides, China has acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementary to the United Nations Convention against Transnational Organized Crime, which provides a series of cooperation measures that include information exchange and border control to prevent and sanction transnational trafficking.

Minor victims can obtain civil remedies for reasonable expenses such as medical expenses, nursing expenses, transportation expenses etc.<sup>18</sup>

If a minor victim of sexual abuse suffering personal injury cannot promptly obtain compensation and faces severe difficulties, the courts, prosecutors, or PSB may grant judicial aid to him/her on a priority basis.<sup>19</sup>

When necessary, the court will announce a prohibition order, to prohibit criminals from engaging in work and activities related to minors, and from entering primary and secondary schools, kindergartens, and other places where minors may be.<sup>20</sup>

The civil affairs department in China set up a minor rescue and protection institution to receive minors suffering from infringement of guardians and the institution can perform temporary guardianship responsibilities.<sup>21</sup>

If the guardians are perpetrators of sexual violence, a broad scope of persons and institutions can apply to the court to disqualify the guardians. The court can also make a personal safety protection order to protect the minors.

<sup>18</sup> *Id.*, Article 14.

<sup>19</sup> Opinions on Punishing the Crimes of Sexual Abuse of Minors, Article 34.

<sup>20</sup> *Id.*, Article 28.

<sup>21</sup> Opinions on Several Issues concerning the Handling in Accordance with the Law of the Infringement upon the Rights and Interests of Minors by Their Guardians, Part 3.

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

Under Article 27 of Chinese General Rules of the Civil Law, parents should be the guardian of a child in the first place, and secondarily, when parents pass away or are no longer competent to be guardians, paternal or maternal grandparents and elder brothers or sisters could be guardians. Alternatively, other individuals or organizations that are willing can act as guardians provided that they receive approval from the neighborhood or village committee in place of the minor's domicile. The Civil Affairs Department can also act as the child's guardian.

However, the Civil Law does not specify the scope or criteria of organizations that qualify as guardians.

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

According to Article 36 of Chinese General Rules of the Civil Law, organizations that may apply for disqualification of the guardian to the court, include the neighborhood committees, village committees, schools, medical institutions, women's federations, disabled persons' federations, organizations protecting minors, organizations established according to the law for the elderly, and civil affairs departments.

World Vision as an organization protecting minors could apply to disqualify the previous guardian of the child, but that does not necessarily mean World Vision would be the new guardian.

The court would appoint a new guardian according to the law based on the principle of benefiting the ward to the largest extent under Article 36 of Chinese General Rules of the Civil Law. In practice, the organizations granted guardianship are always local and governmental-related organizations.

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

The Civil Law does not specify the scope or criteria of organizations that could qualify as guardians. In general, the authorities shall follow the principles of respecting the true will of the ward and benefiting the ward to the largest extent in appointing a guardian from persons and entities legally qualified to be a guardian according to Article 36 of Chinese General Rules of the Civil Law.

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

If the guardian of the child agrees, World Vision could provide financial and technical assistance on the selection and entrustment of a lawyer.

The power of attorney required for the court trial shall be signed by the guardian of the child, which means World Vision can appoint a lawyer to assist the child only when it is recognized as the child's guardian.

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

Yes. Articles 101 and 104 of the Chinese Criminal Procedural Law provides that a victim that suffers from material losses due to criminal acts have the right to bring an incidental civil action during criminal proceedings. An incidental civil action shall in principle be heard together with the criminal case.

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

Yes. As mentioned above, the court, in hearing an incidental civil case, may issue a ruling or judgment according to the material losses to compensate the minor victim under Article 103 of the Chinese Criminal Procedural Law.

The specific amount of compensation shall be based on the extent of harm the child suffered from sexual violence and a calculation of reasonable expenses such as medical expenses, disability compensation, nutrition expenses etc.

**11. Which organisations provide pro bono legal services to help a child victim of sexual violence?**

1. The national judicial assistance work is an important function of the procuratorial organs. The judicial protection of minors is the responsibility of the procuratorial organs.
  - (a) The Criminal Appeal Procuratorial Department (刑事申诉检察部门) is responsible for accepting and reviewing applications for assistance, proposing suggestions on assistance application reviews, and issuing assistance funds. The Juvenile Prosecution Department is responsible for giving other related work in relation to assistance.
  - (b) If it is necessary to pay assistance funds, it shall be promptly handed over to the Criminal Appeal Procuratorial Department. If it is necessary to give other means of assistance, it shall be promptly handed over to juvenile prosecution department to handle the case.<sup>22</sup>
2. Legal service agencies such as law firms, notary offices, and legal stations at local levels should actively provide various forms of legal services for minors.<sup>23</sup>
3. The Communist Youth League organizations at all levels shall take the initiative to establish links with the judicial administrative departments and legal service agencies, and jointly do legal aid work for minors.<sup>24</sup>
4. The judicial administrative departments at all levels and the Communist Youth League organizations should take the initiative to establish contacts and close cooperation with units and organizations such as education, women's federations, and labor unions to jointly provide the assistance for minors.<sup>25</sup>
5. Led by the Communist Youth League, the 12355 Youth Service Desk has been established by cities. The "12355 Youth Rights Protection Action" was implemented in cases involving violations of the rights and interests of minors. Lawyers, volunteer counselors, and social workers in youth affairs can provide legal assistance, psychological counseling, contradictory mediation, and other assistance for minors.

**12. Do domestic laws prohibit:**

**(a) consensual sex activities between minors (including sexting)?**

The answer depends on the age of the minors.

1. In China, consensual sex activities (including sexting) between two minors are generally not prohibited if both minors are under the age of 14, or if both are at or above the age of 14.
2. But if a person at or above 16 engages in sex activities with a person under the age of 14, such activities should constitute rape or child molestation under China's Criminal Law even when the activities are "consensual".<sup>26</sup>

As for consensus sex activities between 2 minors, one of whom is at or above 14 but below 16, and another is a girl below 14, as long as such sex activities only happen on an occasional basis and have not caused serious consequences, the elder minor will not be held criminally liable.<sup>27</sup>

<sup>22</sup> Opinions of the Supreme People's Procuratorate on Comprehensively Strengthening Juvenile Judicial Assistance.

<sup>23</sup> Notice of the Ministry of Justice and the Central Committee of the Communist Youth League on Safeguarding the Legal Rights and Interests of Juveniles, Article 3.

<sup>24</sup> *Id.*, Article 4.

<sup>25</sup> *Id.*, Article 5.

<sup>26</sup> Criminal Law of the P.R.C., Articles 236, 237.

<sup>27</sup> Opinions on Punishing the Crimes of Sexual Abuse of Minors, Article 27.



**(b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)**

**13. If so, what are the penalties for violation of these laws?**

As mentioned above, China's Criminal Law prohibits any sexual activities between an adult (anyone at or above the age of 16) and a child (anyone below 14), and does not recognize informed consent by the child.<sup>28</sup>

Consensual sexual activities performed between an adult and a minor at or above the age of 14 are not prohibited under the Criminal Law of China.

1. In China, people can generally be held criminally liable when reaching the age of 16.<sup>29</sup>
2. If a person at or above 16 engages in sexual activities (i.e. sexual intercourse) with a girl under the age of 14, such activities should constitute the crime of rape, and the person can be sentenced to prison for a time of not less than 3 years to not more than 10 years, and in serious situations, the person can be sentenced from at least 10 years imprisonment, life imprisonment, or death;<sup>30</sup>
3. If a person at or above 16 engages in molestation with a girl under the age of 14 or in sexual activities with a boy under the age of 14, such activities should constitute child molestation, and the person can be sentenced to prison time of not more than 5 years or criminal detention, and in serious situations, the person can be sentenced to not less than 5 years of fixed-term imprisonment.<sup>31</sup>

Violators may also face civil liabilities under China's tort laws and administrative penalties under China's Law on Penalties for the Violation of Public Security Administration. Persons who molest a person who has not attained the age of 14 shall be detained for not less than 10 days but not more than 15 days as an administrative penalty.

**14. Is there a policy mandate that a government agency be responsible for disseminating information to the public, especially children? (i.e., hot-line information, punishments, etc.)**

Yes.

Certain PRC government agencies are charged with the responsibility of disseminating information regarding the law in order to provide legal education to the public, and especially children.

In June 2016, the Ministry of Justice, the Ministry of Education, and several other legal publicity working offices jointly published the Notice on Legal Education to Teenagers (《青少年法治教育大纲》, the "Notice") to promote proper legal education for children.<sup>32</sup>

Hotlines, such as the 12355 platform, are publicized for legal consulting and mental health consulting for teenagers.<sup>33</sup>

<sup>28</sup> Criminal Law of the P.R.C., Articles. 236, 237.

<sup>29</sup> *Id.*, Article 17.

<sup>30</sup> *Id.*, Article 236.

<sup>31</sup> *Id.*, Article 237.

<sup>32</sup> See the Notice (in Chinese) at [http://www.gov.cn/xinwen/2016-07/18/content\\_5092493.htm](http://www.gov.cn/xinwen/2016-07/18/content_5092493.htm).

<sup>33</sup> See Article 11 (in Chinese) at [http://www.moe.gov.cn/srcsite/A06/s3325/201611/t20161111\\_288490.html](http://www.moe.gov.cn/srcsite/A06/s3325/201611/t20161111_288490.html).



Judicial organs also publish statistics regarding child sexual abuse and other offenses,<sup>34</sup> sample cases,<sup>35</sup> and other instructions on crime prevention.<sup>36</sup>

Shanghai and Guangzhou have taken the lead in setting up information databases of child sex abuse offenders. These databases are monitored by local prosecutors. Personnel listed in the database will be subject to employment restrictions and other administrative punishments.<sup>37</sup> Additionally, a nation-wide database is likely to be established and incorporated into the national Social Credit System.

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<sup>34</sup> See the Report at [https://mp.weixin.qq.com/s?\\_\\_biz=MzA3MjEwNzYzOQ==&mid=402319521&idx=1&sn=76c3e3acef56f739869dc367a618da3e&scene=5&srcid=0307svgYWxkE819ct0pgLYuj#rd](https://mp.weixin.qq.com/s?__biz=MzA3MjEwNzYzOQ==&mid=402319521&idx=1&sn=76c3e3acef56f739869dc367a618da3e&scene=5&srcid=0307svgYWxkE819ct0pgLYuj#rd).

<sup>35</sup> See the official guideline at (this link is accessible outside Citrix/from local server) <http://www.court.gov.cn/zixun-xiangqing-172962.html>.

<sup>36</sup> See the Instruction at [https://www.spp.gov.cn/spp/zdgz/201905/t20190527\\_419755.shtml](https://www.spp.gov.cn/spp/zdgz/201905/t20190527_419755.shtml). Also see the Report at [http://www.xinhuanet.com/legal/2019-03/19/c\\_1124253998.htm](http://www.xinhuanet.com/legal/2019-03/19/c_1124253998.htm).

<sup>37</sup> See news regarding the databases at <http://industry.people.com.cn/n1/2019/0624/c413883-31176028.html>.

# HONG KONG

## 1. What is the definition of a child under domestic law in the context of sexual activities?

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 Offenders Ordinance (Cap. 226) (“**JOO**”) defines “child”<sup>1</sup> as a person under the age of 14. The Protection of Children and Juveniles Ordinance (Cap. 213) (“**PCJO**”) adopts the same definition of “child” as JOO.<sup>2</sup> However, there is a presumption as to the age of a girl in the context of a person being charged with an offence under the PCJO in respect of a girl. If the girl appears to be under a specified age in the charge or indictment to the court, the girl would be deemed to be under that age unless contrary is proved.<sup>3</sup>

For the purpose of granting “vulnerable witness” status in court proceedings relating to sexual abuse offences, section 79A of the Criminal Procedure Ordinance (Cap. 221) defines a “child” as a person who is under the age of 17.

Both the Crimes Ordinance (Cap. 200) (“**CO**”) and the Offences Against the Person Ordinance (Cap. 212) do not define “child” but categorize certain crimes by reference to age. For example, section 146 of the CO concerns “*indecent conduct towards child under 16*”.

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.<sup>4</sup>

Under the Interpretation and General Clauses Ordinance (Cap. 1), an “infant” or “minor” means a person who has not attained the age of 18.<sup>5</sup>

The Child Abduction and Custody Ordinance (Cap. 512) gives effect to the Hague Convention on the Civil Aspects of International Child Abduction, which defines a “child” as a person below the age of 16.<sup>6</sup>

Under the Prevention of Child Pornography Ordinance (Cap. 579), a “child” means a person under the age of 16.<sup>7</sup>

<sup>1</sup> Section 2 of JOO which deals with offenders below the age of 16 and restricts punishment on children and young persons.

<sup>2</sup> Section 2 of Protection of Children and Juveniles Ordinance (Cap. 213).

<sup>3</sup> Section 27 of Protection of Children and Juveniles Ordinance (Cap. 213).

<sup>4</sup> Refer to Article 1 of the United Nations Convention on the Rights of the Child, the full text of which is viewable at: <https://www.unicef.org/what-we-do/un-convention-child-rights/>.

<sup>5</sup> Section 3 of the Interpretation and General Clauses Ordinance which consolidates and amends the law relating to the construction, application and interpretation of laws, to define terms and expressions used in laws and public documents, etc.

<sup>6</sup> Refer to Article 4 of the Hague Convention on the Civil Aspects of International Child Abduction, the full text of which is viewable at: [https://www.unicef.org/protection/hague\\_on\\_child\\_abduction.pdf](https://www.unicef.org/protection/hague_on_child_abduction.pdf).

<sup>7</sup> See section 2 of the Prevention of Child Pornography Ordinance (Cap. 579).

**2. Is there domestic legislation which deals with sexual violence against children?**

Yes.

The Crimes Ordinance (Cap. 200), the Protection of Children and Juveniles Ordinance (Cap. 213) and the Prevention of Child Pornography Ordinance (Cap. 576) provide for a number of offences designed to protect children against sexual abuse.

In summary, a child sexual abuse perpetrator can be prosecuted for various offences under these ordinances including incest, rape, indecent assault, unlawful sexual intercourse, or for producing, publishing and/or possessing child pornography.

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

Crimes Ordinance (Cap. 200) ("CO")

Offences under the CO specifically to protect persons under the age of 13 / 16 / 18 / 21:

- Unlawful sexual intercourse with a girl under the age of 13 (section 123 of CO);
- Permitting a girl or boy under 13 to resort to or be on premises or vessel for intercourse (section 140 of CO);
- Incest by a man with a woman under the age of 16 years who is, to his knowledge, his granddaughter, daughter, or sister (section 47 of CO);
- Incest by a woman of or over 16 with a man who is, to her knowledge, her brother or son (section 48 of CO);
- Homosexual buggery with a man under the age of 16 (section 118C of CO);
- Gross indecency with or by a man under 16 (section 118H of CO);
- Intercourse with girl under 16 unless the man believes her to be his wife and he has reasonable cause for the belief (section 124 of CO);
- Abduction of unmarried girl under 16 against the will of the parent or guardian with the intention to have unlawful sexual intercourse (section 126 of CO);
- Causing or encouraging prostitution of, intercourse with, or indecent assault on, a girl or boy under 16 (section 135 of CO);
- Indecent conduct (or incitement to commit such conduct) towards a child under the age of 16 unless he believes her to be his wife and has reasonable cause for the belief (section 146 of CO);
- Use, procurement or offer of persons under the age of 18 (with increased penalties for persons under the age of 16) for making pornography or for live pornographic performances (section 138A of CO);
- Abduction of unmarried girl under 18 for sexual intercourse (section 127 of CO);
- Buggery with girl under 21 (section 118D of CO);
- Procurement of a girl under the age of 21 to have unlawful sexual intercourse in Hong Kong, or elsewhere (section 132 of CO); and
- Permitting a young person (for the purpose of unlawful sexual intercourse, meaning a girl under the age of 16; for the purpose of buggery or an act of gross indecency, meaning a girl or boy under the age of 21) to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act (section 141 of CO).

Offences under the CO relating to unlawful sexual activities on all persons:

- Rape (unlawful sexual intercourse with a woman who at the time of the intercourse he knows does not consent to the intercourse or he is reckless as to whether she consents to it) (section 118 of CO);

#### 4. In particular, do domestic laws prohibit:

##### (a) child marriage as a form of sexual violence?

- Non-consensual buggery (section 118A of CO);
- Assault with intent to commit buggery (section 118B of CO);
- Procurement by threats or intimidation, to do an unlawful sexual act in Hong Kong or elsewhere (section 119 of CO);
- Procurement by false pretences or false representations, to do an unlawful sexual act in Hong Kong or elsewhere (section 120 of CO);
- Administering drugs to obtain or facilitate unlawful sexual act (section 121 of CO);
- Indecent assault on another person unless he believes her to be his wife and has reasonable cause for the belief (section 122 of CO);
- Trafficking in persons to or from Hong Kong for the purpose of prostitution (section 129 of CO);
- Control over persons for purpose of unlawful sexual intercourse or prostitution (section 130 of CO);
- Procuring a person to engage in prostitution or commercial sex acts (section 131 of CO);
- Detention for intercourse or in vice establishment (section 134 of CO); and
- Living on earnings of prostitution of others (section 137 of CO).

#### Protection of Children and Juveniles Ordinance (Cap. 213) ("PCJO")

- Unlawful abduction of child or juvenile (section 26 of PCJO);
- Powers of detention of children or juveniles in a place of refuge, or to protect children and juveniles from moral or physical danger (sections 34E and 35 of PCJO).

#### Prevention of Child Pornography Ordinance (Cap. 579) ("PCPO")

- Printing, making, producing, reproducing, copying, importing or exporting child pornography (section 3(1) of PCPO);
- Publishing child pornography (section 3(2) of PCPO);
- Possessing child pornography unless the possessor is the only person pornographically depicted in the child pornography (section 3(3) of PCPO); and
- Publishing advertisement about child pornography (section 3(4) of PCPO).

Under common law, there is also the offence of acts outraging public decency. Examples of such conduct include having sexual intercourse in a public area witnessed by members of the public, posting messages on the Internet to organize a "flash mob" rape, or video recording up the skirt of a female in a public place.

Not specifically. However, the Marriage Ordinance (Cap. 181) sets the minimum legal age of marriage at 16 years for both sexes, but additional parental consent or judicial approval is required for persons younger than 21 years. Violence against children can be addressed under four legal frameworks: the Crimes Ordinance (Cap. 200); the Offences against the Person Ordinance (Cap. 212); the Domestic Violence Ordinance (Cap. 189) and the Prevention of Child Pornography Ordinance (Cap. 579). However, there is no legislation specifically addressing violence against children.



**(b) child trafficking?**

The Law Reform Commission of Hong Kong in November 2016 recommended that there should not be any kind of marital defence to unlawful sexual offences involving children. However, under the currently applicable law, marital defence is still a valid statutory defence to intercourse with girl under 16 (section 124 of CO) and indecent conduct towards child under 16 (section 146 of CO) even if the marriage is invalid under the Marriage Ordinance.

Marriage Ordinance (Cap. 181)

- A marriage shall be null and void if at the time of its celebrations any party is under the age of 16 (section 27); and
- Marrying or assisting or procuring any other person to marry a person under the age of 21 without the required consent by the child's parent or guardian is an offence subject to fine at level 5 and 2 years imprisonment (section 29).

Yes.

Although there is no legislation in Hong Kong which deals with child trafficking in particular, there are several provisions under different laws wherein offences related to trafficking may be prosecuted and punished.

Offences against the Person Ordinance (Cap. 212)

- Unlawful transfers of possession, custody or control of other persons for a valuable consideration is an offence subject to 2 years imprisonment (section 44); and
- Forcible taking or detention of any man or boy, women or female child, with the intent to sell him or her or to procure a ransom or benefit for his or her liberation is an offence subject to life imprisonment (section 42).

Hong Kong Bill of Rights Ordinance (Cap. 383)

- Prohibition of slavery and slave trade in all their forms, and no one shall be held in servitude (section 8, article 4).

Crimes Ordinance (Cap. 200)

- Trafficking in persons to or from Hong Kong for the purpose of prostitution is an offence subject to 10 years imprisonment (section 129).

Yes.

Prevention of Child Pornography Ordinance (Cap. 579) prohibits child pornography, pornographic performances by children and child sex tourism strengthening the protection of children by criminalizing the printing, making, producing, reproducing, copying, importing, exporting, publishing, possessing and advertising of child pornography (*Please see answer to Q 5*).

Section 138A of the Crimes Ordinance (Cap. 200) prohibits making pornography, or for a live pornographic performance, in which the other person is or is to be pornographically depicted. The penalties for conviction on indictment are as follows:

- Fine of \$3,000,000 and 10 years imprisonment for using, procuring or offering a person under the age of 16; and
- Fine of \$1,000,000 and 5 years imprisonment for using, procuring or offering a person under the age of 18.

**(c) child pornography  
(including online  
pornography)?**

**(d) sexual acts between an adult and a child, conducted with the consent of the parents or guardians of the child?**

Yes.

Consent of parents or guardians is not a defence to any sexual offence committed against children listed in this guide. Moreover, if a parent or guardian consents to another adult to intercourse with or indecently assault his/her children, the parent or guardian might have committed the following crimes:

- Procurement of a girl under the age of 21 to have unlawful sexual intercourse in Hong Kong, or elsewhere (section 132 of CO);
- Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16 (section 135 of Crimes Ordinance (Cap. 200) ("CO"));
- Permitting a girl or boy under 13 to resort to or be on premises or vessel for intercourse (section 140 of CO); and
- Permitting a young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act (section 141 of CO).

**(e) all sexual acts between an adult and a child? What is the minimum age at which a young person is legally capable of providing consent?**

Yes.

In general, the age of consent in Hong Kong is 16. In addition to the legal regimes in Hong Kong which provide for several offences pertaining to unlawful sexual acts with a child under the age of 16, there are provisions for unlawful sexual activities committed against persons under the age of 21 which may be prosecuted and penalized on conviction.

A recommendation was made by the Law Reform Commission of Hong Kong in November 2016 that there should be a uniform age of consent in Hong Kong of 16 years of age, which should be applicable irrespective of gender and sexual orientation.

*(Please see answer to Q2 and Q3)*

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

Under the Crimes Ordinance (Cap. 200) and Criminal Procedure Ordinance (Cap. 221) ("**CPO**"), penalties range from maximum imprisonment of (unless otherwise specified, sections referred to below are sections in the Crimes Ordinance):

- 2 years for gross indecency with man under 16 (section 118H);
- 5 years for procurement by false pretenses or false representations to do an unlawful sexual act (section 120); unlawful sexual intercourse with a girl under the age of 16 (section 124); procurement of a girl under the age of 21 to have unlawful sexual intercourse (section 132); use, procurement or offer of persons under the age of 18 but above the age of 16 for making pornography or for live pornographic performances (section 138A);
- 7 years for abduction of unmarried girl under 18 for sexual intercourse (section 127), and common law offence of acts outraging public decency (section 101I of CPO);
- 10 years for assault with intent to commit buggery (section 118B); indecent assault (section 122); abduction of unmarried girl under 16 (section 126); human trafficking (section 129); causing prostitution (section 131); causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16 (section 135); living on earnings of prostitution of others (section 137); use, procurement or offer of persons under the age of 16 for making pornography or for live pornographic performances (section 138A); indecent conducts towards a child under the age of 16 (section 146);

**6. Do religious and customary laws impact upon the dealing of sexual violence against children?**

**7. Does domestic law reflect international laws and conventions regarding sexual 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?**

- 14 years for incest by man (sections 47&48); procurement by threats to do unlawful sexual act (section 119); administering drugs to obtain or facilitate unlawful sexual act (section 121); harbouring another person or exercising control over another person for the purpose of unlawful sexual acts with others or prostitution (section 130); detention for intercourse or in vice establishment (section 134); permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act (section 141); and
- Life imprisonment for unlawful sexual intercourse with a girl under the age of 13 (section 123); rape (section 118); non-consensual buggery (section 118A); buggery with a man under the age of 16 (section 118C); and permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse (section 140).

Under section 3 of the Prevention of Child Pornography Ordinance (Cap. 579), penalties range from:

- Fine of \$1,000,000 and maximum imprisonment of 5 years for possession of child pornography; to
- Fine of \$2,000,000 and maximum imprisonment of 8 years for printing, making, producing or publishing child pornography.

No religious laws apply in Hong Kong.

The only customary laws that apply in Hong Kong is the Chinese customary law. They are however not concerned with sexual violence against children.

Yes.

Hong Kong is a party to the UN Convention on the Rights of the Child ("**UNCRC**") which has established a Commission on Children to "promote and promulgate children's rights as articulated in the UN Convention on the Rights of the Child"<sup>8</sup>. Children are also entitled to the rights and protections granted by the Basic Law and the Bill of Rights Ordinance (Cap. 383), 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"<sup>9</sup>.

Article 19 of the UNCRC addresses sexual abuse in relation to a child. It sets out that legislative, social and education measures should be implemented to provide necessary support for the child as well as for forms of prevention, identification, and investigation etc. of instances of such kind of child maltreatment.

The Crimes Ordinance (Cap. 200) contains offences designed to deter sexual abuse/violence and to protect persons under the age of 16. For instance, a person under the age of 16 cannot consent to unlawful sexual activities, such as sexual intercourse or sexual activities short of intercourse. If these offences involve children under the age of 13, the defendant is punishable with imprisonment for life<sup>10</sup>.

<sup>8</sup> Refer to press release on the establishment of the Commission on Children: <https://www.info.gov.hk/gia/general/201805/31/P2018053100340.htm>.

<sup>9</sup> Article 39 of The Basic Law of the Special Administrative Region of Hong Kong; Section 20 of Bill of Rights Ordinance (Cap. 383); Article 24(1) of International Covenant on Civil and Political Rights.

<sup>10</sup> Sections 122, 123 and 124 of Crimes Ordinance (Cap. 200).

## 8. In criminal prosecutions of sexual violence against children:

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

(b) What evidence is required to prove physical violence in a criminal prosecution?

Besides, several domestic legislations also provide the necessary support for the child in case of investigation. Sections 79B, 79C of the Criminal Procedure Ordinance (Cap. 221) as well as the Live Television Link and Video Recorded Evidence Rules (Cap. 221J)<sup>11</sup> allow vulnerable witnesses, such as child witnesses, to be accompanied by a support person when testifying through video link. In cooperation with the police, the Social Welfare Department has established a witness support programme which is designed to reduce the trauma of giving evidence for child witnesses and to provide emotional support.

The Government also implemented the Sexual Conviction Record Check ("**SCRC**") through the Police in accordance with the advice of the Law Reform Commission in 2011.<sup>12</sup> SCRC aims to allow organizations or enterprises to check whether the prospective employees have any criminal convictions records against a specified list of sexual offences. It covers prospective employees and contract renewal staff applying to organizations or enterprises for work relating to children. These organizations include (but not limited to) schools, private tutorial centres and private interest/ activity institutions, such as swimming clubs. Although it is not a mandatory requirement for these organizations to adopt the SCRC scheme while employing staffs, the Education Bureau strongly advise schools to implement such scheme with the relevant circulars/ guideline issued by the Education Bureau.<sup>13</sup>

Generally, only law enforcement agencies are authorized to file a criminal case directly with the prosecutor. Moreover, 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.<sup>14</sup>

Whether the prosecutor decides ultimately to pursue a case depends on the circumstances of the case and the sufficiency of evidence.<sup>15</sup> 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).

<sup>11</sup> Section 3 of Live Television Link and Video Recorded Evidence Rules (Cap. 221J); refer to article by Family Community Legal Information Centre: <https://familycllc.hk/en/topics/Child-and-youth-affairs/Childrens-protection-and-welfare/Protection-of-child-victims-at-trial/#content>.

<sup>12</sup> Refer to press release on the protection of children from physical and sexual abuse, 24 January 2019: <https://www.info.gov.hk/gia/general/201801/24/P2018012400462.htm>.

<sup>13</sup> Education Bureau Circular No. 5/2018, Handling Suspected Cases of Child Abuse and Domestic Violence, 20 August 2018: <https://applications.edb.gov.hk/circular/upload/EDBC/EDBC18005E.pdf>.

<sup>14</sup> Social Welfare Department, Procedural Guide for Handling Child Abuse Cases, Chapter 10: [https://www.swd.gov.hk/doc/fcw/proc\\_guidelines/childabuse/Chapter10.pdf](https://www.swd.gov.hk/doc/fcw/proc_guidelines/childabuse/Chapter10.pdf).

<sup>15</sup> Section 5 of Department of Justice, Prosecution Code (2013): <https://www.doj.gov.hk/eng/public/pdf/2014/pdcode1314e.pdf>.

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

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

By way of example, for the offence of indecent assault under Section 122 of the Crimes Ordinance (Cap. 200), the prosecution would need to prove that the accused (a) intentionally assaulted the victim; (b) that the assault and/or the circumstances accompanying it, are capable of being considered by right-minded persons as indecent; and (c) the accused intended to commit such an assault as mentioned in (b) above.<sup>16</sup>

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.<sup>17</sup> The standard of proof (i.e. evidential threshold) required to secure a criminal conviction is beyond a reasonable doubt.<sup>18</sup>

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

It is stated in Article 3 of The Convention on the Rights of the Child adopted by the United Nations (Resolution 44/25) in 1989 (the "**Convention**") that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

It is stated in Article 4 of the Convention provides that "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention."

Therefore, if it is not in the best interest of the child, the child victim may refuse the prosecutor's request to testify as a witness.

Generally, all witnesses, including a victim of sexual violence, will be called upon by the court if they are likely to have material evidence.<sup>19</sup> If a witness is unlikely to comply with the court summons, the prosecutor may make an application to the court to order the victim to testify by issuing a warrant for the witness' arrest.<sup>20</sup> However, the court will not issue such arrest warrants lightly and will first consider whether or not the evidence sought is critical to the case concerned, when determining whether to issue such a warrant.<sup>21</sup>

If a victim fails to testify, it may have an adverse impact on the prosecution. However, it should be noted that the child's best interest is still the primary consideration.

<sup>16</sup> *R v Court* [1989] AC 28

<sup>17</sup> Paragraph 5.5 of Department of Justice, Prosecution Code (2013): <https://www.doj.gov.hk/eng/public/pdf/2014/pdcode1314e.pdf>.

<sup>18</sup> "Beyond a reasonable doubt" refers to evidence or proof that is of such convincing character that a reasonable person would not hesitate to rely or act upon it.

<sup>19</sup> Section 34 of Criminal Procedure Ordinance (Cap. 221); Section 21 of Magistrates Ordinance (Cap. 227).

<sup>20</sup> Section 37 of Criminal Procedure Ordinance (Cap. 221); Section 21 of Magistrates Ordinance (Cap. 227).

<sup>21</sup> *R v Bradford JJ, Ex p Wilkinson* 91 Cr App R 390, contained in 8-19 of Archbold (2018).



**(ii) 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.<sup>22</sup>

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.<sup>23</sup>

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

Yes, such victim may provide testimony separately without a court appearance by providing (a) a pre-recorded video of an interview, (b) a deposition or (c) conduct an interview via live television link from outside of Hong Kong.

Provided that leave (i.e. permission) is obtained from the court:

- a pre-recorded video recording of an interview with a child victim may be admitted into evidence;<sup>24</sup>
- a deposition in writing may be taken from a child victim by a magistrate in respect of proceedings where (a) for good reason it is unavoidable that a trial cannot be heard without delay, or (b) exposure to a full trial would endanger the physical or mental health of the child;<sup>25</sup> and
- a party to a criminal case (other than the defendant) may give evidence to the court by way of a live television link from a place outside of Hong Kong, subject to the following considerations: (a) whether the person concerned is actually in Hong Kong, (b) whether the evidence can be more conveniently given in Hong Kong; (c) whether there are any measures to ensure that the person concerned is giving evidence without coercion; and (d) whether it is in the interests of justice to do so.<sup>26</sup>

**(iv) What other means of protection are available to children involved in prosecutions of sexual violence?**

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 generally stands as direct evidence. This means that, although children generally can be cross-examined in a courtroom setting,<sup>27</sup> 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).<sup>28</sup>

<sup>22</sup> Section 79B(4) of Criminal Procedure Ordinance (Cap. 221).

<sup>23</sup> Section 79B(1) of Criminal Procedure Ordinance (Cap. 221).

<sup>24</sup> Sections 79C and 79D of Criminal Procedure Ordinance (Cap. 221).

<sup>25</sup> Section 79E of Criminal Procedure Ordinance (Cap. 221).

<sup>26</sup> Section 79I of Criminal Procedure Ordinance (Cap. 221).

<sup>27</sup> *HK SAR v TPD* [2018] HKCU 1546.

<sup>28</sup> Sections 79C(7), 79D and 79E(8) of Criminal Procedure Ordinance (Cap. 221).

**(v) Can the child be required to testify more than once?**

**9. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?**

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

To reduce the trauma of giving evidence, a child's evidence in criminal proceedings must be given unsworn.<sup>29</sup> Hong Kong law provides that any evidence given by a child (defined under the Evidence Ordinance (Cap. 8) as a person under the age of 14), despite being unsworn, is capable of corroborating the testimony of another person<sup>30</sup> and age alone is not a sufficient basis to exclude the unsworn evidence of a child.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup>

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.<sup>34</sup>

In compliance with the United Nations Convention on the Rights of Child to protect children against sexual exploitation, the Crimes Ordinance (Cap. 200) ("CO") has been amended to add an extra-territorial reach to a range of serious sexual offences, in particular those related to young persons. Those offences include intercourse with girl under the age of 16 and causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16.

Under Section 153P of the CO, if a relevant sexual offence has been committed outside Hong Kong, the person committing the act will be caught by the CO if that person and/or the victim is a permanent resident of Hong Kong.

However, note that the offence of making or producing child pornography prohibited under Section 138A of the CO or Section 3 of the Prevention of Child Pornography Ordinance (Cap. 579) does not have an extra-judicial reach.

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).<sup>35</sup> The court may also make an order for the child to be committed to the care and custody of an institution willing to undertake such care.<sup>36</sup>

Further, if 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.<sup>37</sup>

<sup>29</sup> Section 4(1) of Evidence Ordinance (Cap. 8).

<sup>30</sup> Section 4 of Evidence Ordinance (Cap. 8).

<sup>31</sup> *DPP v M* [1997] 2 WLR 604

<sup>32</sup> Section 4(2) of Evidence Ordinance (Cap. 8).

<sup>33</sup> Section 79B(2) of Criminal Procedure Ordinance (Cap. 221).

<sup>34</sup> Sections 79D and 79E(8) of Criminal Procedure Ordinance (Cap. 221).

<sup>35</sup> Section 34 of Protection of Children and Juveniles Ordinance (Cap. 213).

<sup>36</sup> Section 34(1)(b) of Protection of Children and Juveniles Ordinance (Cap. 213).

<sup>37</sup> Section 3A of Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).

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

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

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

Moreover, 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:<sup>38</sup>

- 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 (Cap. 13), 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 (Cap. 13).

Any person may apply to the court to be appointed as the lawful guardian of a child or minor (i.e. below the age of 18),<sup>39</sup> 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.<sup>40</sup> While any person may make an application, the court will only appoint the person to be guardian of a minor "if [the court] thinks fit".<sup>41</sup>

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.<sup>42</sup>

The guardian may also make claims and participate in any proceedings as *guardian ad litem* ("in the best interests of the child").<sup>43</sup>

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.<sup>44</sup> 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".<sup>45</sup> 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.<sup>46</sup>

Just as any other legal person, World Vision may apply to the court to be appointed as the guardian of a child or minor.<sup>47</sup>

<sup>38</sup> *Re McGrath (Infants)* [1893] 1 Ch 143, [148].

<sup>39</sup> *Re G (A Minor)* [2018]; Sections 8D(2) and 8G of Guardianship of Minors Ordinance (Cap. 13).

<sup>40</sup> Section 8D of Guardianship of Minors Ordinance (Cap. 13).

<sup>41</sup> Section 8D(2) of Guardianship of Minors Ordinance (Cap. 13).

<sup>42</sup> Order 80, Rule 2 of The Rules of the High Court (Cap. 4A).

<sup>43</sup> Order 80, Rule 2 of The Rules of the High Court (Cap. 4A).

<sup>44</sup> Section 34 of Protection of Children and Juveniles Ordinance (Cap. 213); Sections 8D(2) and 8G of Guardianship of Minors Ordinance (Cap. 13).

<sup>45</sup> *CLP v CSN* [2016] 1 HKLRD 272, [13].

<sup>46</sup> Section 3(1) of Guardianship of Minors Ordinance (Cap. 13).

<sup>47</sup> *Re G (A Minor)* [2018]; Sections 8D(2) and 8G of Guardianship of Minors Ordinance (Cap. 13).

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

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.<sup>48</sup> However, this is again subject to the considerations that the court is required to have as explained above.

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

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.<sup>49</sup>

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.

**11. Which organisations provide pro bono legal services to help a child victim of sexual violence?**

While there are no organisations specifically catered to provide legal services to child victims of sexual violence, there are a variety of consultative legal aid options available to victims as a starting point. Examples include the Hong Kong Law Society's Free Legal Consultation Service, Duty Lawyer Scheme and Bar Free Legal Service Scheme.<sup>50</sup>

A legal aid application can also be made to the Legal Aid Department directly with a view to bringing court action against the perpetrator.<sup>51</sup> Where the victim satisfies the means and merits tests and a legal aid certificate is issued by the Legal Aid Department, the victim will be assigned a lawyer who will then be able to provide the victim with legal advice on a pro bono basis.

**12. Do domestic laws prohibit:**

**(a) consensual sex activities between minors (including sexting)?**

Yes.

There are various sexual offences specifically relating to children under certain age in the Crimes Ordinance (Cap 200) ("CO") and the Prevention of Child Pornography Ordinance (Cap. 579) ("PCPO"), as discussed in Q3 and Q4 above. In most of those offences, the child's consent does not provide a defence, except for the following:

Intercourse with a girl under 16 (Section 124 of CO)

There is a marital defence if the man believes the girl under 16 to be his wife and has reasonable cause for the belief, despite the marriage being invalid.

<sup>48</sup> Section 34 of Protection of Children and Juveniles Ordinance (Cap. 213); Sections 8D(2) and 8G of Guardianship of Minors Ordinance (Cap. 13).

<sup>49</sup> Order 80, Rule 2 of The Rules of the High Court (Cap. 4A).

<sup>50</sup> List of options available here: <http://www.lasc.hk/eng/links/advice.html>.

<sup>51</sup> See application procedures here: <https://www.lad.gov.hk/eng/las/civil/ap.html>.

**(b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)**

Act of gross indecency towards child under 16 (Section 146 of CO)

The marital defence is available if the defendant is, or believes on reasonable grounds that he or she is, married to the child (section 146(3) of CO).

Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances (Section 138A of CO)

There is a limited defence if the child is above 16 and under 18, and consents, and the pornography or live pornographic performance is for personal use only.

Indecently assaulting another person (Section 122 of CO)

Consent is a defence to indecent assault. However, persons under 16 years of age cannot consent to activity which amounts to an indecent assault. An example would be where the defendant exposes his or her private parts and invites the child to touch those private parts.

Consensual sexting between minors can also constitute the offence of publishing and possessing child pornography under s.3 of the Prevention of Child Pornography Ordinance (Cap. 579), unless both minors are above 16 and the sexting is for personal use only.

Except for the above exceptions, consent by the child is not a defence to the other sexual offences as set out in Q3 and Q4 above. However, the perpetrator must be above 10 years old in order to be found guilty (Section 3 of the Juvenile Offenders Ordinance Cap 226). Before 2012, there was a common law presumption that boys under 14 were incapable of sexual intercourse and therefore may not be found guilty for certain offences relating to sexual intercourse. This presumption was abolished by section 118O of CO in 2012. However, for offenders between 10 and 14, prosecutors must prove that they know what they are accused of is "seriously wrong" and not just "naughty and mischievous", under the principle of *doli incapax*.

Generally, as mentioned in Q12(a) above, consent by the child is not a defence to sexual offences against children, no matter the perpetrator of the offence is a minor or an adult, subject to the following exceptions:

- A child above 16 and under 18 may consent to be used for making pornography or for live pornographic performances (Section 138A of the Crimes Ordinance (Cap. 200) ("CO"))
- For indecent assault (Section 122 of CO), consent by a child above 16 can be a defence.
- Marriage is a valid defence to intercourse with girl under 16 (Section 124 of CO) and indecent conduct towards child under 16 (Section 146 of CO) if the perpetrator reasonably believes the child to be his or her spouse.
- Hong Kong has extra-territorial jurisdiction for offences under Schedule 2 of CO committed by or towards a HK resident outside Hong Kong. These offences include those as set out in Q3 above except for incest (Sections 47 and 48 of CO), abduction of unmarried girl under 18 for sexual intercourse (Section 127 of CO), causing prostitution (Section 131 of CO), living on earnings of prostitution of others (Section 137 of CO), and use, procurement or offer of persons under 18 for making pornography or for live pornographic performances (Section 138A of CO). However, if these offences are committed during a valid marriage in another jurisdiction where the marriage was solemnized, the sexual act was done or the defendant's residence, the marriage can be a defence (Section 153P of CO).

**13. If so, what are the penalties for violation of these laws?**

(Please see answer to Q5)

**14. Is there a policy mandate that a government agency be responsible for disseminating information to the public, especially children? (i.e., hot-line information, punishments, etc.)**

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Legal aid, the Duty Lawyer Scheme, governmental departments (such as the Education Bureau and the Social Welfare Department) and relevant NGOs may also provide further support in the form of advice, information and counselling (in the case of NGOs, such as End Child Sexual Abuse Foundation).



# INDIA

**1. What is the definition of a child under domestic law in the context of sexual activities?**

The legislation often referred to in India in the context of redressal of grievances for children affected by sexual activities is the Protection of Children from Sexual Offences Act, 2012 (the "**POCSO Act**"). The POCSO Act defines a child as any person below eighteen years of age.<sup>1</sup>

**2. Is there domestic legislation which deals with sexual violence against children?**

The POCSO Act primarily deals with children affected by sexual violence in India. However, there are standalone provisions in the Indian Penal Code, 1860, which contain relevant sexual violence provisions.<sup>2</sup>

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

The POCSO Act prohibits the following forms of sexual violence:

- (a) Penetrative Sexual Assault – Insertion of penis/object/another body part in the child's vagina/urethra/anus/mouth, or asking a child to do so with them or another person.<sup>3</sup>
- (b) Sexual Assault – When a person touches a child, or makes a child touch them or someone else.<sup>4</sup>
- (c) Sexual Harassment – making sexually coloured remarks, sexual gestures/noises, repeatedly following, flashing, etc.<sup>5</sup>
- (d) Child Pornography – using a child in any form of media (irrespective of whether it is disbursed publicly or is used for personal purposes) for any obscene representation of a child.<sup>6</sup>
- (e) Aggravated Penetrative Sexual Assault and Aggravated Sexual Assault – penetrative sexual assault and sexual assault will become aggravated if the acts are committed by (i) a police officer; or (ii) a member of the armed forces or security forces; or (iii) management staff of a governmental or private educational institution or of a remand, observational or correctional home, or (iv) if there is a gang penetrative or sexual assault on a child.<sup>7</sup>

The POCSO Act is gender-neutral for both children and for the accused and also makes the abetment of the forms of sexual violence mentioned above a punishable offence.

<sup>1</sup> Section 2(1)(d) of the POCSO Act. The POCSO Act was recently amended by the Protection of Children from Sexual Offences (Amendment), 2019)

<sup>2</sup> Section 354, 376 and 377 of the Indian Penal Code.

<sup>3</sup> Section 3 of the POCSO Act.

<sup>4</sup> Section 7 of the POCSO Act.

<sup>5</sup> Section 11 of the POCSO Act.

<sup>6</sup> Section 13 of the POCSO Act.

<sup>7</sup> Section 4 and 9 of the POCSO Act.

#### 4. In particular, do domestic laws prohibit:

##### (a) child marriage as a form of sexual violence?

The Prohibition of Child Marriage Act, 2006 ensures protection of children from child marriage. Below are the governing laws that penalize sexual violence against minors through child marriage:-

- (i) The POCSO Act, 2012 penalizes penetrative sexual assault on a child by anyone related to the child through marriage.

The Indian Penal Code penalizes sexual acts with a girl below eighteen years of age. Hence, husbands can now be arrested for raping their minor wives.

##### (b) child trafficking?

India has a wide range of laws enacted by the Parliament as well as provisions in the Constitution of India that prohibit child trafficking.

They are listed as follows:-

- (i) Constitution of India
  - Prohibits child trafficking, bonded labour among humans and children below fourteen years of age from engaging in hazardous employment.<sup>8</sup>
- (ii) Indian Penal Code, 1860
  - Induce any minor girl under eighteen years of age or traffic any girl under twenty-one years of age to go to any place with the intent to force or seduce illicit intercourse with another person.<sup>9</sup>
  - Compel any person to labour against their will.<sup>10</sup>
  - Sell and buy minors for the purpose of prostitution.<sup>11</sup>
- (iii) Juvenile Justice (Care and Protection) Act, 2000
  - Exploitation of juveniles or child employees by any means for the purpose of hazardous employment.<sup>12</sup>
- (iv) Immoral Traffic (Prevention) Act, 1956
  - Seduce or solicit a minor for the purpose of prostitution.<sup>13</sup>

##### (c) pornography (including online pornography)?

Yes, under the POCSO Act, possession, storage for transmission, propagation, display or distribution of child pornography, in any manner, is considered as an offence, as per Section 15 of the POCSO Act. A person who is guilty of using a child for pornographic purposes shall be punished with imprisonment, and also be liable to pay a fine. (For storing and possessing pornographic material with intention to share or transmit – Not less than Rs. 5000/- for first offence and not less than Rs.10,000/- for second and subsequent offences For storing and possessing for transmitting or propagating or displaying or distributing – imprisonment and fine [imposed on a case by case basis – will not be less than what is stated above])

'Child pornography' was inserted into the POCSO Act via an amendment dated on 5th August, 2019.

<sup>8</sup> Article 23 and 24 of the Constitution of India.

<sup>9</sup> Section 366A and 366B of the Indian Penal Code.

<sup>10</sup> Section 374 of the Indian Penal Code.

<sup>11</sup> Section 372 and 373 of the Indian Penal Code.

<sup>12</sup> Section 26 of the Juvenile Justice (Care and Protection Act) 2000.

<sup>13</sup> Section 8 and 9 of the (iv) Immoral Traffic (Prevention) Act, 1956.

**(d) sexual acts between an adult and a child, conducted with the consent of the parents or guardians of the child?**

**(e) all sexual acts between an adult and a child? What is the minimum age at which a young person is legally capable of providing consent?**

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

**6 Do religious and customary laws impact upon the dealing of sexual violence against children?**

The term 'child pornography' is defined under the POCSO Act to mean 'any visual depiction of sexually explicit conduct involving a child which includes photographs, video, digital or computer generated images indistinguishable from an actual child, and images created, adapted, or modified, but appear to depict a child'.

The fine, if imposed under the POCSO Act, will be directly paid to victims for medical expenses and rehabilitation needs.

Any person using a child for pornographic purposes shall be punished with imprisonment for a term not less than 5 years and pay a fine.

In the event of a repeat offence, the term of punishment will be not less than 7 years and the accused will be liable to pay a fine.

Any person who stores or possesses pornographic material in any form involving a child will be liable to pay a fine not less than INR 5000. If any person is involved in transmitting, propagating, displaying, or distrusting in any manner except for the purpose of reporting the material shall be punished with imprisonment up to 3 years or pay a fine, or both.

Any sexual acts performed with a child, with or without consent, will be considered as a sexual offence.

Under the POCSO Act, 'child' is defined to mean any person below eighteen years of age. The POCSO Act does not make any exception for sexual acts performed between adults and children, even if the sexual acts were conducted with the consent of the parents or guardians of the children.

Yes, all sexual acts between adults and children are recognized as sexual offences.

The minimum age of consent is eighteen.

The POCSO Act provides for the following punishments:

- i) Sexual Harassment - Fine and imprisonment for a term which may extend to 3 years.
- ii) Sexual Assault- Fine and imprisonment for a term which shall not be less than 3 years, but which may extend to 5 years.
- iii) Aggravated Sexual Assault - Fine and imprisonment for a term which shall not be less than 5 years, but which may extend to 7 years.
- iv) Aggravated Penetrative Sexual Assault - Fine and imprisonment for a term which shall not be less than 10 years, but which may extend to imprisonment for life.
- v) Punishment for using children for pornographic purposes: Fine and imprisonment for a term which shall not be less than 10 years, but which may extend to imprisonment for life.

No, the law of the land applies to all religions.

The Ministry of Women and Child Development, the department of the Government of India, is the highest government department that creates and administers the rules, regulations, and laws relating to women and child development in India. More specifically, this subject is governed under the Integrated Child Protection Scheme under the Ministry.

**7. Does domestic law reflect international laws and conventions regarding sexual 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?**

- (1) Article 19 of the UN Convention on the Rights of the Child (the “**UNCRC**”) provides that countries who are signatories to the convention shall take appropriate legislative measures, among other things, to protect children from all forms of physical or mental violence that includes sexual abuse, among other forms of abuse while in the care of parent(s), legal guardian(s) or any other person who cares for children.  
  
Article 34 of the UNCRC provides that signatories should protect children from all forms of sexual exploitation and sexual abuse.<sup>14</sup>  
  
Article 39 of the UNCRC states that signatories shall take appropriate measures to support the physical recovery, psychological recovery, and social reintegration of child victims.
- (2) Domestic laws which have been made based on the UNCRC are:-
  - (a) The POCSO Act
  - (b) The Juvenile Justice (Care and Protection of Children) Act, 2015 (the “**JJ Act**”)<sup>15</sup>
  - (c) The Commissions for Protection of Child Rights Act, 2005 (the “**Commissions Act**”)<sup>16</sup>
- (3) Other laws, although not enacted pursuant to International Law and Convention but deal with the prevention of sexual violence against children are:
  - (a) Immoral Traffic (Prevention) Act, 1956<sup>17</sup>
  - (b) The Prohibition of Child Marriage Act, 2006<sup>18</sup>

<sup>14</sup> For these purposes, State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

<sup>15</sup> 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 UNCRC, 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.

<sup>16</sup> India acceded to the UNCRC 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.

<sup>17</sup> (a) Section 4 – Punishment for living on the earnings of prostitution [at least 10 years if the earnings relate to the prostitution of a child [below 16 years of age] or minor [between 16 years to 18 years of age]  
(b) Section 5 – Procuring, inducing or taking persons for the sake of prostitution [in case person is a child, imprisonment can extend from 7 years to life; in case of minor imprisonment from up to 7 years to 14 years]  
(c) Section 6 – Punishment for detaining a person in a premises where prostitution is carried on [where a person is found with a child in brothel, it shall be presumed he has detained the child with the intention that the child may have sexual intercourse.]  
(d) Section 7 – Punishment for carrying on prostitution in or in the vicinity of public places  
(e) Section 8 – Punishment for seducing or soliciting for purposes of prostitution  
(f) Section 9 – Punishment for seduction of a person in custody

<sup>18</sup> (a) Section 3 – Child marriage (where in a marriage either party is a male less than 21 years of age or a woman less than 18 years of age marriage is voidable at option of the party who was a child at the time of marriage.)  
(b) Section 12 – If a minor is married by force or deceitful means or is sold, the marriage is void i.e., a nullity  
(c) Section 9 provides for punishment that can be given to a male adult marrying a child.  
(d) Section 10 – Punishment for solemnising a child marriage  
(e) Section 11 – Punishment for promoting or permitting solemnisation of child marriages.

(c) The Indian Penal Code<sup>19</sup>

(d) The Information Technology Act, 2000<sup>20</sup> (the “IT Act”)

- (4) Although there is no general enactment of international conventions regarding sexual violence against children in Indian legislation, Indian domestic law is principally consistent with international law and conventions.
- (5) 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:
- although 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;
  - although National Policy for Children 2013 has been adopted, plans of action to implement the policy have yet to be developed;
  - 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.
- (6) Before 2017, an exception to rape<sup>21</sup> existed in the Indian Penal Code whereby sexual intercourse by a husband with his wife, if the wife was older than fifteen years of age, would not constitute rape. However, the Supreme Court of India in a landmark case<sup>22</sup> ruled that sexual intercourse with a wife below eighteen years of age would constitute rape under the Indian Penal Code. Therefore, Indian domestic law is now harmonised with international law.

<sup>19</sup> (i) Section 344A. Procuration of minor girl  
 (ii) Section 366B. Importation of girl from foreign country  
 (iii) Section 370. Trafficking of person  
 (iv) Section 370A. Exploitation of a trafficked person  
 (v) Section 372. Selling minor for purposes of prostitution, etc.  
 (vi) Section 373. Buying minor for purposes of prostitution, etc.  
 (vii) Section 375. Rape  
 (viii) Section 376. Punishment for rape

<sup>20</sup> Section 67B. Punishment for publishing or transmitting of material depicting children in sexually explicit acts, etc. in electronic form

<sup>21</sup> Exception 2 to Section 375 of the Indian Penal Code, 1860

<sup>22</sup> *Independent Thought v. Union of India*, (2017) 10 SCC 800: It was held by the Supreme Court of India that there was a conflict between the provisions of Exception 2 to Section 375 of IPC and the provisions of the POCSO Act. The rape of a married girl child (a girl child between 15 and 18 years of age) is not recognised as rape under the IPC and therefore not an offence in view of Exception 2 of Section 375 of the IPC but it is an offence of aggravated penetrative sexual assault under Section 5 (n) of the POCSO Act. It resolved the conflict between the two Acts by holding that the provision of Exception 2 to Section 375 IPC be read as: “Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.”

The Supreme Court also took note of the various reports and documentary evidence that highlighted the detrimental effect of an early marriage and sexual intercourse at an early age. It appreciated the amendment to the Prohibition of Child Marriage Act, 2006 brought in by the State of Karnataka by adding Sub-section (1-A) in Section 3 declaring child marriages to be void ab initio. It advised all State Governments to take the same steps. The Supreme Court also held that Section 42-A of the POCSO Act, inserted by an amendment made on 03.02.2013, provides that the provisions of the POCSO Act will override or prevail over any other laws (including IPC) to the extent they are not consistent with the POCSO Act. The Supreme Court observed that securing the best interest of a child is an obligation cast upon the government of India having acceded to the UNCRC

## 8. In criminal prosecutions of sexual violence against children:

### (a) What agency or agencies have the authority to refer a case to the prosecutor?

Under the Commissions Act, National and State Commissions for the Protection of Child's rights and Children's Courts have been constituted.<sup>23</sup>

These commissions can look into complaints and take discretionary notice of matters relating to the deprivation of child rights that include physical violence against children.<sup>24</sup> These commissions have the power to forward any case to a Magistrate.<sup>25</sup> After looking into complaints, commissions may recommend government authorities to launch prosecution proceedings against the accused.

Under the JJ Act<sup>26</sup> Child Welfare Committees ("**Committees**") have been created for every District by the concerned State Government.

The functions and responsibilities of the Committees include conducting an inquiry and giving direction to the Police or District Child protection unit or Childline services or labour department, with regard to the abuse of a child in any child care institution and taking action to rehabilitate sexually abused children who are reported as children in need of care and protection to Committees by the Special Juvenile Police Unit or local unit under the POCSO Act.<sup>27</sup>

The Juvenile Board can, order police to register 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.<sup>28</sup>

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 the accused, in co-ordination with the police, voluntary and non-governmental organisations. In every State, Special Juvenile Police Units shall be created in each district to co-ordinate all functions of police related to children.<sup>29</sup>

Rule 54(1), (2) (3) and (4) of the Juvenile Justice (Care and Protection) Model Rules, 2016 (the "**Juvenile Justice Rules**") provide that (a) a complaint can be made to a Child Welfare Officer regarding commission of an offence affecting the human body<sup>30</sup> against a child, (b) the Child Welfare Officers shall register a First Information Report (FIR) and make an entry into the Daily Diary which shall be transmitted to the Magistrate (c) the Magistrate shall direct investigations under sub-section (2) of Section 155 of the Code of Criminal Procedure, 1973.

<sup>23</sup> This was enacted pursuant to India acceding to the UNCRC which also includes protecting 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 children.

<sup>24</sup> Section 13 (1) (j) read with Section 24 of the Commissions Act

<sup>25</sup> Section 15 of the Commissions Act

<sup>26</sup> Section 27 of the JJ Act, 2015

<sup>27</sup> Section 30 of the JJ Act, 2015

<sup>28</sup> Section 8(1) of the JJ Act, 2015

<sup>29</sup> Section 107 of the JJ Act, 2015

<sup>30</sup> Chapter XVI of the Indian Penal Code, 1860 deals with offences affecting the human body; [Sections 299- 318 – of offences affecting life]; [Sections 319-338 – of hurt]; [Sections 339 –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 non-bailable) and which are non- cognizable depending on the gravity of the offence. Offences affecting human body are cognizable and non-bailable based on their grave nature.



**(b) What evidence is required to prove physical violence in a criminal prosecution?**

Under the POCSO Act, the various State Governments in consultation with the Chief Justice of the respective High Court have created a Special Court<sup>31</sup> to try offences<sup>32</sup>.

Any person including children who are aware that an offence is likely to be committed or that an offence has been committed can provide information to –

- (a) the Special Juvenile Police Unit; or
- (b) the local police<sup>33</sup>

The Special Juvenile Police Unit or local police shall within 24 hours report the matter to the Child Welfare Committee and the Special Court, or where there is no Special Court, to the Court of Session.

Under the IT Act any person who publishes or transmits material depicting children performing sexually explicit acts in electronic form shall be punished, in case of first conviction for 5 years with a fine of Rs. 10 lacs or more and in case of a second or subsequent conviction, with imprisonment for 7 years and with a fine which may extend to Rs. 10 lacs<sup>34</sup>.

Under the IT Act a police officer not below the rank of Inspector shall investigate any offence under the IT Act<sup>35</sup>.

Under the Immoral Traffic (Prevention) Act, 1956, the State Government shall appoint a Special Police Officer for dealing with the offence under the Act who shall not be below the rank of an Inspector of police. The Central Government for dealing with sexual exploitation of persons and offences committed in more than one state shall appoint a number of police officers as trafficking police officers.

Under the Prohibition of Child Marriage Act, 2006, the State Government shall appoint a Child Marriage Prohibition Officer who shall, among other things, prevent solemnisation of child marriage by taking actions such as submitting a criminal complaint for offences described under the Act.

Evidence to prove sexual 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 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)<sup>36</sup>.

<sup>31</sup> Section 28. Designation of Special Courts

<sup>32</sup> (i) Section 3. Penetrative sexual assault

(ii) Section 4. Punishment for penetrative sexual assault

(iii) Chapter II. Sexual offences against children

(iv) Chapter III. Using children for pornographic purposes and punishment therefor

(v) Chapter IV. Abetment of and attempt to commit an offence – Induce a person to do an offence enact in a conspiracy to commit an offence or intentionally aid a person to commit an offence.

<sup>33</sup> Section 19 of the POCSO Act - Reporting of offences

<sup>34</sup> Section 67B of the IT Act – Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form

<sup>35</sup> Section 78 of the IT Act – Power to investigate offences

<sup>36</sup> Section 3 of the Indian Evidence Act, 1872. As per the interpretation clause, Section 3 of the Indian Evidence Act, 1872 "Proved" is defined as a fact said to be proven when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a reasonable man ought, under the circumstances of the particular case, to act upon the assumption that it exists.

To prove sexual violence, required evidence includes:

- (a) Statement of the child victim relating to the fact in issue and connected facts<sup>37</sup>;
- (b) Statement of persons present at the time when the crime was committed;
- (c) Confessions made by the accused;
- (d) Medical examination report, if any, of the victim within 24 hours after the crime was committed<sup>38</sup>;
- (e) Facts before the crime was committed and after which may be the occasion, cause or effect or the fact in issue;
- (f) Facts relating to establishing a motive, preparation and past and future conduct. When the conduct of any person is relevant, any statement made to him/her or in his/her 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 accused;
- (i) If any weapon is used, whether the weapon belongs to the accused and the wounds, if any, are caused by the same weapon<sup>39</sup>.
- (j) Section 53 of Cr.P.C. provides for examination of accused by a medical practitioner at the request of a 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.

Under the POCSO Act a person prosecuted for commission of an offence of penetrative sexual assault (Section 3 of POCSO Act – penetrative sexual assault) (Section 5 of the POCSO Act – aggravated penetrative sexual assault) (Section 7 of POCSO Act – sexual assault) (Section 9 of the POCSO Act – aggravated sexual assault) shall be presumed to have committed the offence unless proved contrary (Section 29 of the POCSO Act – presumption as to certain offences).

Under the POCSO Act, the Special Court shall presume the existence of such mental state on the part of the accused that he or she intended to commit the offence under the POCSO Act and it is for the accused to prove that he/she had no such mental state<sup>40</sup>. Further, a fact has to be proved 'beyond reasonable doubt'.<sup>41</sup> The Special Court shall not believe a fact to exist merely because it is probable.

<sup>37</sup> (i) Section 24 of the POCSO Act – Recording the statements of children

(ii) Section 35 of the POCSO Act – Statement of child to be recorded within 30 days of Special Court starting an inquiry

<sup>38</sup> (i) Section 27 of the POCSO Act – Medical examination of a child

(ii) Section 164A of the Cr.P.C Act, 1973 – Medical examination of rape victims

<sup>39</sup> In a warrant case where police have the power to arrest a person without warrant, Section 52 of the Cr.P.C. provides for the power to seize offensive weapons.

<sup>40</sup> Section 30 of the POCSO Act – Presumption of culpable mental state

<sup>41</sup> Section 30(2) of the POCSO Act

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

These provisions are a deviation from the general maxim “Innocent till proven guilty”.

The POCSO Act further makes a provision for a family member, guardian, friend, or relative in whom the child has trust or confidence to be present in Court along with the child<sup>42</sup>. Further, the POCSO Act does not permit aggressive questioning or character assassination of the child.<sup>43</sup> It further obligates the Special Court to ensure that the child is not called repeatedly to Court.<sup>44</sup>

Yes, children can testify against the accused.

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/she need not testify in front of the accused.

Similarly, Section 24 of the POCSO Act provides that the police officer making the investigation shall ensure that at no point in time the child comes in contact with the accused.

Section 36 of the POCSO Act provides that the child shall not see the accused at the time of testifying.

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 kind<sup>45</sup>.

As per Rule 54 (18)(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, courts in India have taken a view that evidence of child witnesses are not required to be rejected per se; but the 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 thereon<sup>46</sup>.

The Supreme Court of India held in the case of Gagan Kanojia versus State of Punjab<sup>47</sup> that part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part. ‘Tutored’ in this context means a statement that a child is taught to give by an adult who has a strong influence on the child rather than the child’s own version of the incident. This is to prevent any misuse of the law.

Further, the Supreme Court of India held that the deposition of a child witness may require corroboration, but in case his/her deposition inspires the confidence of the Court and there is no embellishment or improvement therein, the Court may rely upon his/her evidence. Only in cases where there is evidence to show that a child has been tutored can the Court reject his/her statement partly or fully<sup>48</sup>.

<sup>42</sup> Section 33(4) of the POCSO Act

<sup>43</sup> Section 33(6) of the POCSO Act

<sup>44</sup> Section 33(5) of the POCSO Act

<sup>45</sup> Section 118 of the Indian Evidence Act, 1872

<sup>46</sup> Golla Yelugu Govindu v. State of Andhra Pradesh (2008) 16 SCC 769

<sup>47</sup> 2006(13)SCC 516

<sup>48</sup> State of Madhya Pradesh v. Ramesh and Another (2011) 4 SCC 786

**(i) 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 him/her. 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.

Under the POCSO Act, any person who fails to report the commission of an offence under the Act to the Special Juvenile Police Unit or to the local police<sup>49</sup>, or fails to provide information of any material or object which is sexually exploitative of the child through the use of any medium<sup>50</sup> shall be punished with imprisonment for up to 6 months or with a fine.

However, the same does not apply to children under the POCSO Act.

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.

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

Yes.

Under Section 36(2) of the POCSO Act, the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.

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<sup>51</sup>:

- (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 that includes a home or institution where he/she resides.
- (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) Children may be accompanied by parents, guardians, or social workers.

The Supreme Court of India<sup>52</sup> established certain guidelines when holding child sex abuse or rape trials.

<sup>49</sup> Section 21 of the POCSO Act read with Section 19 of the POCSO Act – Reporting of offences

<sup>50</sup> Section 21 of the POCSO Act read with Section 20 of the POCSO Act – Obligation of media, studio and photographic facilities to report cases

<sup>51</sup> (i) Section 24 of the POCSO Act – Recording of statement of a child

(ii) Section 25 of the POCSO Act – Recording of statement of a child by Magistrate

(iii) Section 26 of the POCSO Act – Additional provisions regarding statement to be recorded

<sup>52</sup> Sakshi v. Union of India and Others (2004) 5 SCC 518; State of Maharashtra v. Dr. P.B. Desai (2003) 4 SCC 601

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

Yes.

Under Section 37 of POCSO Act, if the Special Court is of the opinion that the child needs to be examined at a place other than the Court, it shall issue a commission under Section 284 of Cr.P.C. for examination of the child where he or she resides.

Under Section 24 of POCSO Act, the statement of the child shall be recorded at the residence of the child or at a place where he/she usually resides or at a place of his/her choice.

Section 33(2) of POCSO Act provides that the advocate of the accused shall communicate the questions to be put to the child to the Special Court, which shall in turn put those questions to the child.

Section 36 of the POCSO Act provides that children shall not be physically present around the accused at the time of recording of the evidence but at the time, the accused should be in a position to hear the statement of the child and communicate with his advocate. Therefore, the Special Court may record the statements of children through video conferencing in the event children do not make a court appearance.

Under Section 4 of the JJ Act, the State Government is empowered to create for every district, one or more Juvenile Justice Boards for dealing exclusively with all proceedings under the 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 Committee or the Board is satisfied that the attendance of the child is not essential for the purposes of inquiry, the attendance of the child is not required.

As per Rule 54(15) of the Juvenile Justice Rules, if child victims or witnesses do not belong to the District, State, or Country, the statement, interview, or deposition of children 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.

**(iv) What other means of protection are available to children involved in prosecutions of sexual violence?**

As per Section 34 of the POCSO Act, where offences under the Act are committed by children, such children shall be dealt with under the provisions of the JJ Act.

As per Rule 54 of the Juvenile Justice Rules:

- (a) Children and family shall be provided access to paralegal volunteers under the District Legal Service Authority.
- (b) An immediate need assessment of children 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 facilities for separate spaces for children waiting and children who are giving their statement or interview; separate entrances, wherever feasible; video-conferencing facilities for interacting with children, wherever possible; provision for entertainment for children such as books, games, etc.

**(v) Can the child be required to testify more than once?**

**9. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?**

- (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-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 children 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 a fit institution identified, or psychologist appointed by the Committee or Court, shall accompany children at all times, on approval of the Court.
- (f) Psychological counselling may also be provided to children wherever necessary.
- (g) In a situation where the Court becomes aware that parents or guardians may have been involved in the commission of a crime, or where the child is living in a place where the child is at risk of further trauma, the Court maintains the discretion to direct the child to be taken out of the custody or care of the parents or guardians, or out of such situation. The child should be immediately produced before the Committee.
- (h) Special permission from school and arrangements for remedial classes for days lost are ensured by school authorities.
- (i) Section 74 of the JJ Act provides for prohibition on the disclosure of children's identities.

Under Section 23 of the POCSO Act, a procedure for media has been prescribed and no report or comment on any child may be published which has the effect of lowering his/her reputation or infringes on his/her privacy or discloses his/her identity.

Under Section 37 of the POCSO Act, the Special Court shall try cases only in the presence of the parents of the child or any other person whom the child has trust or confidence.

Yes. However, Section 33(5) of the POCSO Act provides that the Special Court shall ensure that the child is not called repeatedly to testify in the Court.

The Government of India has signed Memorandums of Understanding with Bangladesh, UAE and Bahrain on the prevention of Human Trafficking. The MOUs provide for strengthening cooperation between the countries to prevent human trafficking, to ensure speedy investigation and prosecution of traffickers, and repatriation of victims to the home country. India is also holding talks with other countries such as Myanmar to enter into similar MOUs.



India has also made provisions to block foreign websites hosting child pornography. The IT Act<sup>53</sup> along with the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 state that any Government agency or intermediary can be directed to block access of the public to any online information<sup>54</sup>. However, the power to block websites can be used only in the certain circumstances.<sup>55</sup> The reasons for the order has to be recorded in writing.<sup>56</sup> Further, a committee has been formed to examine every request for blocking of websites consisting of a designated officer<sup>57</sup> and representatives of Ministry of Law and Justice, Home Affairs, Information and Broadcasting and Indian Computer Emergency Response Team.<sup>58</sup>

During the examination of a request to block a website, the Committee first sends a notice to the person or intermediary who has hosted information sought to be blocked on its website. The intermediary or such person may submit their reply and clarifications to the Committee within a specified period.<sup>59</sup> If the person or intermediary is a foreign entity, notice is served through email, fax or by way of letters.<sup>60</sup> After examining whether the online information sought to be blocked is within the parameters specified in Section 69A(1)<sup>61</sup> of the IT Act, the Designated officer issues an order to block the website after receiving approval from the Secretary, Department of Information Technology.<sup>62</sup> The websites may also be blocked after an order is passed by a competent Court. Therefore, the IT Act and the Rules provide for a reasoned order to be passed only after a hearing is given to the person or intermediary.

Under Section 79(3)(b) of the IT Act, the intermediary is required to take down unlawful content upon receiving actual knowledge from a court order or on being notified by the Government. The intermediary is held liable if it fails to remove content or fails to disable access to the material despite receiving a court order or information by the Government. In August 2015 following a Supreme Court directive, the Government had unsuccessfully tried to block porn websites. On October 27, 2018, the Department of Telecommunications again issued an order<sup>63</sup> under Section 79(3)(b) directing internet service providers to block 857 porn websites on grounds of morality and decency. In a subsequent order, it was clarified that websites with child pornography are to be blocked. Even though some sites were blocked, mirror websites were launched with a slightly different name.

<sup>53</sup> Section 69A of the IT Act

<sup>54</sup> Rule 5 of the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009

<sup>55</sup> The interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to the above.

<sup>56</sup> Section 69A(1) of the IT Act

<sup>57</sup> Designated officer notified by the Central Government who issues directions for blocking of websites under Rule 3 of Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009

<sup>58</sup> Rule 7 of the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009

<sup>59</sup> Rule 8 of Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009

<sup>60</sup> Ibid.

<sup>61</sup> Although pornography does not fall strictly within the scope of Section 69A of the IT Act, the Government has in the past issued orders under this section. The said orders have been criticised.

<sup>62</sup> Ibid.

<sup>63</sup> Order may be downloaded from the URL: <https://cis-india.org/internet-governance/resources/dot-morality-block-order-2015-07-31/view>.

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

In a recent newspaper article (Times of India – 23.12.2019) it has been reported that platforms like WhatsApp and Signal do not cooperate with law enforcement agencies regarding issues of pornography on social media and its effect on children, citing “end to end encryption. They are known not to honour requisitions made under the IT Act on the ground that their servers are governed by the laws of the hosting country. In some cases, data is shared and in some cases mutual legal assistance treaty or letters rogatory (formal requests from one court to another court in a foreign country for some type of judicial assistance) is insisted upon, which is a time consuming process.

In cases where the intermediary fails to comply, it shall be punished with the maximum sentence of seven years and a fine. However, its punishment is difficult to be enforced if the website is hosted offshore. The Extradition Act, 1962 is the Indian law governing extradition of fugitive criminals to and from India, which recognizes extradition treaties and arrangements. India has extradition treaties with 43 countries around the world<sup>64</sup> and has extradition arrangements with various countries<sup>65</sup>. If there is no treaty or arrangement, the Act<sup>66</sup> provides that any relevant convention in respect of the offences to which India and a foreign State are parties may be treated as an extradition treaty made by India with that foreign state.

Under the Code of Criminal Procedure, 1973, every State Government has to prepare a scheme for providing funds for the purpose of compensation to victims who have suffered loss or injury as a result of crime and require rehabilitation.<sup>67</sup>

As per the Central Victim Compensation Scheme Fund (the “CVCF”) Guidelines, the minimum amount of compensation for rape is Rs.3 Lakh; the rehabilitation of victims of human trafficking is Rs. 1 lakh and for sexual assault (excluding rape) is Rs.50 lakh. If the victim is less than 14 years of age the compensation shall be increased by 50% over the said amounts mentioned in the guidelines.

Under the POCSO Rules, 2012, Rule 7 provides that the Special Court can pass an order for interim compensation to meet the immediate needs of children which can be adjusted against the final compensation. The compensation shall be awarded based on relevant factors relating to the loss and injury caused.<sup>68</sup>

The compensation under the POCSO Rules is to be paid by the State Government from the CVCF. The child or his parent or guardian can still make an application for seeking relief under any other compensation scheme of the Central Government or the State Government.

**Protection from disclosure of identity:**

Under the POCSO Act, any person making a report or presenting comment on any child from any form of media, which may have the effect of lowering the child’s reputation or infringing upon his privacy or disclosing the identity of the child without seeking permission for such disclosure, shall be punished with at least six months to one year imprisonment or a fine, or both.<sup>69</sup>

<sup>64</sup> Azerbaijan, Australia, Bahrain, Bangladesh, Belarus, Belgium, Bhutan, Brazil, Bulgaria, Canada, Chile, Egypt, France, Germany, Hong Kong, Indonesia, Iran, Kuwait, Malaysia, Mauritius, Mexico, Mongolia, Nepal, Netherlands, Oman, Poland, Philippines, Russia, Saudi Arabia, South Africa, South Korea, Spain, Switzerland, Tajikistan, Thailand, Tunisia, Turkey, UAE, UK, Ukraine, Uzbekistan, Vietnam.

<sup>65</sup> Antigua & Barbuda, Armenia, Fiji, Papua New Guinea, Peru, Singapore, Sri Lanka, Sweden, Tanzania.

<sup>66</sup> Section 3(4) of the Extradition Act, 1962

<sup>67</sup> Section 357A of the CrPC – VCS

<sup>68</sup> Rule 7(3) of the POCSO Rules, 2012 – Compensation

<sup>69</sup> Section 23 of the POCSO Act – Procedure for media – Media is not defined under the POCSO Act. It is also not defined under the IT

Under the JJ Act<sup>70</sup> and POCSO Act<sup>71</sup>, children are protected from disclosing their identities.

### **Registration of complaints before Childline (1098):**

Childline India Foundation (CIF)<sup>72</sup> operates a telephone helpline (1098) called CHILDLINE India to help children in distress and who are in need of care and protection. Recently '112' was launched as a pan-India emergency helpline number.

### **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<sup>73</sup>, including provisions for observation homes<sup>74</sup>, place of safety<sup>75</sup>, children's home<sup>76</sup> etc. for the placement of children for their care, protection, treatment, education, training, development and rehabilitation.

Under the Immoral Traffic (Prevention) Act, 1956 State Governments can establish protective homes and corrective institutions on fulfillment of conditions of licence issued by the State Government.<sup>77</sup>

### **National Commission:**

In case of the 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.<sup>78</sup>

### **Availability of assistance of an interpreter or expert:**

If a child has a mental or physical disability, the Special Court created under the POCSO Act may appoint a special educator or a person familiar with the manner of communication with the child.<sup>79</sup>

The Government has framed model Guidelines<sup>80</sup> under Section 39 of the POCSO Act for use of non-government organizations, professionals and experts<sup>81</sup> who can assist children with pre-trial and post-trial procedures.

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Act. Therefore reliance can be placed on the dictionary meaning which is "the main means of mass communication (broadcasting, publishing, and the Internet) regarded collectively." Since the POCSO Act is a beneficial act, a wide meaning will be given to the word 'media' to include social media platforms like Facebook, Twitter, WhatsApp, Telegram, Instagram etc.

<sup>70</sup> Section 74 of the JJ Act, 2015

<sup>71</sup> Section 23 (7) of the POCSO Act

<sup>72</sup> <https://www.childlineindia.org/cif-career7.htm>

<sup>73</sup> Section 40 of the JJ Act, 2015

<sup>74</sup> Section 47 of the JJ Act, 2015

<sup>75</sup> Section 49 of the JJ Act, 2015

<sup>76</sup> Section 50 of the JJ Act, 2015

<sup>77</sup> Section 21 of the Immoral Traffic (Prevention) Act, 1956 – Protective homes

<sup>78</sup> Section 15 of the Commissions for Protection of Child Rights Act, 2005

<sup>79</sup> Section 38(2) of the POCSO Act – Assistance of an interpreter or expert while recording evidence of child

<sup>80</sup> Guidelines for use of professional and experts under the POCSO Act, 2012 dated September 2013

<sup>81</sup> Expert in psychology, social work, physical health, mental health and child development

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

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

The family or guardians of children are entitled to assistance of legal counsel of their choice and if they are unable to afford a legal counsel, the legal service authority shall provide a lawyer to them.<sup>82</sup>

As per the Guardians and Wards Act, Guardian<sup>83</sup> is defined as a "person" having the care of the person of a minor or of his property or of both his person and property<sup>84</sup>.

Under the 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.<sup>85</sup>

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 property<sup>86</sup>.

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<sup>87</sup>. Therefore, World vision can apply to be the guardian of the child.

The JJ Act also provides provisions with respect to the registration of child-care institutions<sup>88</sup>. 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 to avoid consequences under the Act<sup>89</sup>.

Under the POCSO Act, any person who is aware that a sexual violence offence is likely to be committed, or has knowledge that such an offence has been committed, can make a report to the Special Juvenile Police Unit or the local police.<sup>90</sup>

The statements of children can be recorded in the presence of parents or any other person whom the child has trust or confidence in, which includes a guardian.<sup>91</sup>

Under the POCSO Act, the family or guardian of the child shall be entitled to the assistance of a legal counsel of their choice.<sup>92</sup>

<sup>82</sup> Section 40 of the POCSO Act – Right of children to accept the assistance of a legal practitioner

<sup>83</sup> Defined under Section 4(2) of the Guardians and Wards Act, 1890

<sup>84</sup> 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.

<sup>85</sup> Section 2 (31) of the JJ Act

<sup>86</sup> Section 4(2) of the Guardians and Wards Act, 1890

<sup>87</sup> 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.

<sup>88</sup> Section 41 of the JJ Act

<sup>89</sup> Section 42 of the JJ Act

<sup>90</sup> Section 19 of the POCSO Act – Reporting of offences

<sup>91</sup> Section 26 of the POCSO Act – Additional provisions regarding statements to be recorded

<sup>92</sup> Section 49 of the POCSO Act – Right of children to accept the assistance of legal practitioner

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

Medical examinations must be conducted in the presence of a parent or any other person, which includes guardians.<sup>93</sup>

World Vision would need 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 register, an application shall be submitted in Form 27 together with a copy of the rules, bylaws, memorandums of association, list of governing bodies, office bearers, list of trustees, balance sheets preceding three years, statements of past record of social or public service provided by the institution to the State Government along with a declaration regarding any previous conviction records 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)).

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

The Rules also provide criteria<sup>94</sup> 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 application<sup>95</sup> with respect to guardianship of a minor has to be made to the District Court having jurisdiction in the place where the minor 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).

<sup>93</sup> Section 27(3) of the POCSO Act – Medical examination of a child

<sup>94</sup> (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

<sup>95</sup> The information to be given in the application includes the qualifications of the proposed guardian, grounds on which a person

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

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

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

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.<sup>96</sup> The same documents as required for registration shall be provided.

Under the Immoral Traffic (Prevention) Act, 1956 any person seeking to establish any protective home shall do so only in accordance with the conditions of a licence issued under Section 21 of the Act by the State Government.<sup>97</sup>

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

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.

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 could otherwise be recovered through a civil suit. Compensation may be imposed by a criminal court when the sentence does not include fine<sup>98</sup>.

Under Section 33(8) of the POCSO Act read with Rule 7 of the POCSO Rules, the Special Court may direct payment of compensation to the child.

The Government of India has set up the CVCF Guidelines 2016 to encourage States / UTs to effectively implement the Victim Compensation Scheme (the "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.

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 factors<sup>99</sup>. Though no limit has been prescribed to the compensation under the law, the Court has to consider what would be reasonable compensation in the case<sup>100</sup>.

claims to be a guardian, and the causes which have led to the making of the application.

<sup>96</sup> 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.

<sup>97</sup> (i) Conditions may require that management of protective whom shall be entrusted to women.  
(ii) The State Government shall make a full and complete investigation in respect of the application.  
(iii) The licence shall not be transferable

<sup>98</sup> 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.

<sup>99</sup> Sarwan Singh versus State of Punjab [AIR 1978 SC 1525]; Rachpal Singh versus State of Punjab [2002] 6 SCC 462]

<sup>100</sup> [K Bhaskaran versus Sankaran Vaidhyan Balan [1999 SCC(cri) 1284]



### 11. Which organisations provide pro bono legal services to help a child victim of sexual violence?

The National Legal Services Authority have prepared a Model VCS pursuant to the directions of the Hon'ble Supreme Court of India in *Nipun 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 VCS. For example, the Union Territory of Delhi, on 27 June 2019, notified the Delhi VCS, 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.

Under Section 12(c) of the Legal Services Authorities Act, 1987, every child who has to file or defend a case shall be entitled to legal services under this Act.

The POCSO Act, 2012 confirms the right to free legal aid under Section 40, providing that the child or his/her family shall be entitled to a legal counsel of their choice, and that where they are unable to afford such counsel, they shall be entitled to receive one from the Legal Services Authority. In every District, a District Legal Services Authority has been constituted to implement the Legal Services Programmes in the District. The District Legal Services Authority is usually situated in the District Courts Complex in every District and chaired by the District Judge of the respective district.

As per our knowledge following organisations provide services to child victims of sexual violence:

- (a) Guria India – Guria provides legal aid for survivors of sexual assault. - [www.guriaindia.org](http://www.guriaindia.org)
- (b) Childline India foundation - Once a rescue call is made, volunteers will make an intervention with the help of police authorities, social workers etc. and also rehabilitate victims. - <https://www.childlineindia.org>
- (c) Child Rights Trust – It is engaged in advocacy for child rights, imparting awareness and training to NGOs and village communities and deals with child marriage issues. - [www.childrightstrust.in](http://www.childrightstrust.in)
- (d) Arpan – NGO that provides prevention and intervention services relating to child sexual abuse. It provides psychotherapeutic support to survivors of sexual abuse. - <https://www.arpan.org.in>
- (e) Rahi foundation – focused on women survivors of incest and child sexual abuse. Its work includes support and recovery through the distinctive RAHI Model of Healing; awareness and education about incest and child sexual abuse, training and intervention, and research and capacity building. - <https://www.rahifoundation.org>
- (f) HEAL – NGO that works for prevention of child sexual abuse, responding to survivors and advocacy for child rights. - <https://www.healcsa.com>
- (g) Protsahan – NGO that empowers adolescent survivors of sexual abuse by imparting education and entrepreneurial skills. - <https://protsahan.co.in>

**12. Do domestic laws prohibit:**

- (a) consensual sex activities between minors (including sexting)?**
- (b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)**

No, officially in India, the legal age of consent is eighteen years of age while a minor is defined as a person below eighteen years of age.

Minors consent is invalid and illegal. Refer to point (a) above for legal age.

**13. If so, what are the penalties for violation of these laws?**

Depending upon the nature of the offence, the penalties would vary. Overall, the POCSO Act, 2012 will apply. Please refer to Question 5.

**14. Is there a policy mandate that a government agency be responsible for disseminating information to the public, especially children? (i.e., hot-line information, punishments, etc.)**

Under Section 43 of the POCSO Act, every State Government and the Central Government shall take all measures to ensure that:

- (a) The provision of this Act is given wide publicity through media, including television, radio, and print media at regular intervals to make the general public, children, parents, and guardians aware of the POCSO Act.
- (b) Officers of Central and State Governments and other persons (including police officers) are provided periodic training related to implementing the provisions of the POCSO Act.

# INDONESIA

## 1. What is the definition of a child under domestic law in the context of sexual activities?

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. Thus, if a person is not yet 21 years old or married, he/she is not considered as an adult. Fetuses are also considered children when it is in their interest.
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 as amended by Law No. 16 of 2019 on Marriage ("**Marriage Law**") states that a child under 18 years or that has never been married remains under the custody of its parents.
7. Article 7 paragraph 1 of the Marriage Law allows marriage if both the man and woman are at least 19 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 ("**Trafficking Law**") defines a child as anyone under the age of 18, including fetuses.
10. Article 1 point 4 of Law No. 44 of 2008 on Pornography ("**Pornography Law**"), defines a child as anyone under the age of 18.
11. Article 1 of the Convention on the Rights of a Child, that was ratified by Presidential Decree No. 36 of 1990 states that a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

**2. Is there domestic legislation which deals with sexual violence against children?**

Yes. Among others, the following:

1. Various Articles of the Child Protection Law deals with sexual violence, among others:

(i). 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.

(ii). Article 76E of the Child Protection Law

*"Every person is prohibited from committing violence or threat of violence, coercing, guile, making a series of lies, or persuading children to commit or allow obscene acts."*

(iii). Article 76I of the Child Protection Law

*"Every person is prohibited from placing, letting, doing, ordering to do, or participating in economic and/or sexual exploitation of children."*

(iv). Article 76C of the Child Protection Law

*"Every person is prohibited from placing, letting, doing, ordering to do, or participating in violence against children."*

(v). Article 76D of the Child Protection Law

*"Every person is prohibited from committing violence or threat of violence forcing the child to have intercourse with him/her or with others."*

(vi). Article 76F of the Child Protection Law

*"Every person is prohibited from placing, allowing, committing, committing, or participating in kidnapping, selling, and / or trafficking children."*

(vii). Article 78 of the Child Protection Law

*"Every person who knowingly and deliberately exposes a child to an emergency situation as stated in Article 60 of this Law, or knowingly and deliberately allows a child to find themselves in dealings with the law, a child from a minority and isolated group to be mistreated, a child to be exploited economically or sexually, a child to be traded, a child to become the victim of the misuse of narcotics, alcohol, psychotropic substances, and other addictive substances, a child to become the victim of kidnapping, sale and trafficking, a child to become the victim of violence as stated in Article 59 of this Law, knowing that such a child needs help and must be assisted, is to be subject to a term of imprisonment of not more than 5 (five) years and/or a maximum fine of Rp. 100,000,000 (one hundred million Rupiah)."*

**Sanctions:**

(viii). Article 80 of the Child Protection Law

*"(1) Every person who commits an act of violence or threatens violence against, or tortures a child, is to be subject to a term of imprisonment of not more than 3 (three) years and 6 (six) months, and/or a maximum fine of Rp. 72,000,000 (seventy-two million Rupiah)."*

*(2) Should a child as stated in (1) above be seriously injured, then the perpetrator is to be subject to a term of imprisonment of not more than 5 (five) years and/or a maximum fine of Rp. 100,000,000 (one hundred million Rupiah).*

*(3) Should a child as stated in (2) above die, then the perpetrator is to be subject to a term of imprisonment of not more than 10 (ten) years and/or a maximum fine of Rp. 200,000,000 (two hundred million Rupiah).*

*(4) The punishments provided for in (1), (2), and (3) above is to be increased by one-third should the perpetrator be a parent of the child."*

(ix). Article 81 of the Child Protection Law

*"(1) Every person who through the deliberate use or threat of violence forces a child to engage in sexual intercourse with him/her or with other people is to be subject to a maximum term of imprisonment of 15 (fifteen) years and a minimum term of 3 (three) years, and a maximum fine of Rp. 300,000,000 (three hundred million Rupiah) and a minimum fine of Rp. 60,000,000 (sixty million Rupiah).*

*(2) The punishments set out in (1) above is to also be applicable to any person who employs tricks, lies or deception to persuade, or who encourages, a child to engage in sexual intercourse with him/her or with some other person."*

(x). Article 82 of the Child Protection Law

*"Every person who uses violence or the threat of violence to force, or who employs tricks, lies or deception to persuade, or who encourages, a child to engage in indecent behavior, or who allows such indecent behavior to occur, is to be subject to a maximum term of imprisonment of 15 (fifteen) years and a minimum term of 3 (three) years, and a maximum fine of Rp. 300,000,000 (three hundred million Rupiah) and a minimum fine of Rp. 60,000,000 (sixty million Rupiah)."*

(xi). Article 83 of the Child Protection Law

*"Every person who trades in, sells, or kidnaps a child either for their own purposes or for sale is to be subject to a maximum term of imprisonment of 15 (fifteen) years and a minimum term of 3 (three) years, and a maximum fine of Rp. 300,000,000 (three hundred million Rupiah) and a minimum fine of Rp. 60,000,000 (sixty million Rupiah)."*

## Protection

(xii). Article 9 of the Child Protection Law

*"(1) Every child is to have the right to an education and training in the context of their personal and intellectual development based upon their interests and talents.*

*(2) Every child, as stated in (1) above, particularly disabled children who are entitled to receive special-needs education meanwhile gifted children are entitled to receive special education."*

(xiii). Article 13 of the Child Protection Law

*"(1) Every child under the care of their parents, guardians, or any other person who are responsible for the child's care, is to be entitled to receive protection from the following: a Discrimination; b Exploitation of an economic or sexual nature; c Neglect; d Harsh treatment, violence, and abuse; e Injustice; and f Other forms of mistreatment.*

*(2) Should a parent, guardian or person responsible for the care of a child subject the child to one of the forms of mistreatment stated in (1) above, they is to be subject to legal penalty."*

(xiv). Article 15 of the Child Protection Law

*"Every child is to be entitled to protection from the following:*

- a. Misuse for political activities;
- b. Involvement in armed conflict;
- c. Involvement in social unrest;
- d. Involvement in events that involve violence; and
- e. Involvement in war."

(xv). Article 54 of the Child Protection Law

*"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"*

(xvi). Article 17 of the Child Protection Law

*"(1) Every child whose liberty has been taken away is entitled to:*

- a. Receive humane treatment and be housed separately from adults;
- b. Receive legal aid or any other effective assistance at every stage of the legal process; and
- c. Defend themselves and to receive a fair trial in an objective and impartial children's court closed to the public.

*(2) Every child who is a victim or perpetrator of sexual abuse or who finds themselves having dealings with the law is to be entitled to have their identity kept confidential."*

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

(i). Article 287 of the IPC

*"Any person who out of marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of fifteen years or, if it is not obvious from her age, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years*

*A prosecution shall be instituted only by complaint, unless the woman has not yet reached the age of twelve years or one of the cases of articles 291 and 294 is present."*

(ii). Article 288 of the IPC

*"Any person who in marriage has carnal knowledge of a woman of whom he knows or should have reasonably presumed, shall, if the act results in bodily harm, be punished by a maximum imprisonment of four years*

*If the act results in serious physical injury a maximum imprisonment of eight years shall be imposed*

*If the act results in death, a maximum imprisonment of twelve years shall be imposed."*

(iii). Article 289 of the IPC

*"Any person who by using force or threat of force forces someone to commit or tolerate obscene acts, shall, being guilty of factual assault of the chastity, be punished by a maximum imprisonment of nine years."*



## (iv). Article 290 of the IPC

*"By a maximum imprisonment of seven years shall be punished:*

*1st, any person who commits obscene acts with someone who he knows that he is unconscious or helpless;*

*2nd-ly, any person who commits obscene acts with someone who he knows or reasonably should presume that he has not yet reached the age of fifteen years or, if it is not obvious from her age, not yet marriageable;*

*3rd-ly, any person who seduces someone whom he knows or reasonably should presume that he has not yet reached the age of fifteen years or, if it is not obvious from the age, is not yet marriageable, to commit or tolerate obscene acts or to have carnal knowledge, out of marriage, of a third party."*

## (v). Article 291 of the IPC

*"If one of the crimes described in articles 286, 287, 289 and 290 results in a serious physical injury, a maximum imprisonment of twelve years shall be imposed.*

*If one of the crimes described in articles 285, 286, 287, 289 and 290 results in death, a maximum imprisonment of fifteen years shall be imposed."*

## (vi). Article 292 of the ICC

*"Any adult who commits any obscene act with a minor of the same sex whose minority he knows or reasonably should presume, shall be punished by a maximum imprisonment of five years."*

## (vii). Article 293 of the IPC

*"Any person who by gifts or promises of money or goods, abuse of dominance resulting from factual relationship or deceit, intentionally moves a minor of irreproachable conduct, whose minority he knows or reasonably should presume, to commit any obscene act with him or to tolerate such act, shall be punished by a maximum imprisonment of five years.*

*A prosecution shall be instituted only upon complaint of the person against whom the crime has been committed.*

*The term referred to in article 74 shall for this complaint respectively amount to nine and twelve years."*

## (viii). Article 294 of the IPC

*"Any person who commits any obscene act with his under age child, step-child or foster-child, his pupil, a minor entrusted to his care, education or vigilance or his under age servant or subordinate, shall be punished by a maximum imprisonment of seven years.*

*By the same punishment shall be punished:*

*1st, the official who commits any obscene act with a person who is officially subordinate to him or has been entrusted or recommended to his vigilance;*

*2nd-ly, the executive, physician, teacher, official, overseer or attendant at a prison, labour institution of the country, educational institution, orphanage, hospital, lunatic asylum or charity institution, who commits any obscene act with a person admitted thereto."*

## (ix). Article 295 of the IPC

*"Any person shall be punished:*

*1st, by a maximum imprisonment of five years, if he with deliberate intent causes or facilitates the commission of any obscene act by his under age child, step-child or foster-child, his pupil, a minor entrusted to his care, education or vigilance or his under age servant or subordinate, with a third party;*

*2nd-ly, by a maximum imprisonment of four years, if he except the cases enumerated under 1st, with deliberate intent causes or facilitates the commission of any obscene act by a minor, whose minority he knows or must reasonably suspect, with a third party.*

*If the offender makes an occupation or a habit of the commission of the crime, the punishments may be enhanced with one third."*

3. Article 1 of Law No. 23 of 2004 on Elimination of Household Violence (**"Elimination of Household Violence Law"**)

*"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."Elucidation Article 8 of Household Violence Law*

*"What is meant by "sexual violence" in this provision is any act in the form of coercion of sexual relations, coercion of sexual relations in an unnatural and/or disliked manner, coercion of sexual relations with others for commercial purposes and/or specific purposes."*

4. 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"*

5. 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."*

6. Regulation of the Minister of Education and 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"*

7. Various Articles of the Pornography Law provides as follows:

(i). Elucidation of Article 4 (1) (f) of the Pornography Law

*"Child Pornography is all forms of pornography involving children or involving adults who act or behave like children."*

(ii). Article 11 of the Pornography Law

*"Every person is prohibited from involving children in activities and/or as objects as referred to in Article 4, Article 5, Article 6, Article 8, Article 9, or Article 10."*

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

4. In particular, do domestic laws prohibit:

(a) child marriage as a form of sexual violence?

(iii). Article 12 of the Pornography Law

*"Everyone is prohibited from inviting, persuading, using, letting, abusing power or forcing children to use pornographic products or services."*

(iv). Article 15 of the Pornography Law

*"Everyone has the obligation to protect children from the influence of pornography and prevent children's access to pornographic information."*

(v). Article 16 of the Pornography Law

*"The government, social, academic and religious institutions, accompaniment and recovery of social, physical and mental health for every child who is a victim or perpetrator of child pornography."*

#### Sanctions

(vi). Article 38 of the Pornography Law

*"Every person who is inviting, enticing, using, letting, abusing power, or forcing a child to use pornographic products or services as referred to in Article 12 shall be sentenced to a maximum imprisonment of 6 (six) months and a maximum of 6 (six) years and / or a minimum fine of Rp. 250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp. 3,000,000,000.00 (three billion rupiah)."*

8. Article 2 of Law No. 10 of 2012 on the Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography ("**Optional Protocol**")

*"(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;*

*(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;*

*(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes."*

Please refer to point. 2

As stipulated in Article 288 of the IPC, "Any person who in marriage has carnal knowledge of a woman of whom he knows or should have reasonably presumed is not yet ready to be married, shall, if the act results in bodily harm, be punished by a maximum imprisonment of four years

This means a man cannot force his wife to perform sexual activities if the wife is actually not yet of marriageable age (i.e., the marriage was through the consent of the parents). However, there is a threshold that this is criminalized only if the sexual activity the husband is forcing to be performed "results in bodily harm". Note that this is a single sex-oriented law, namely it is only focusing on acts against wives (not husband).

**(b) child trafficking?**

Article 2 (a) of the Optional Protocol defines the “sale of children” as any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

This refers to children being sold or trafficked for any purpose that exploits them and creates a benefit to those who get involved in these activities.

(a) In the context of sale of children as defined in article 2:

- (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
  - a. Sexual exploitation of the child;
  - b. Transfer of organs of the child for profit;
  - c. Engagement of the child in forced labour;

**(c) pornography (including online pornography)?**

Yes, please see point 2.

**(d) sexual acts between an adult and a child, conducted with the consent of the parents or guardians of the child?**

Yes, please see point 2.

**(e) all sexual acts between an adult and a child? What is the minimum age at which a young person is legally capable of providing consent?**

Marriage Law does not provide a minimum age at which a person is legally capable of providing consent sexual activities.

Marriage Law actually does not recognize the existence of child marriage or adult marriage. The Marriage Law only provides a minimum ideal age limit for citizens to get married, that is, after the age of 19 years, for both men and women. Marriage Law allows men and women under 19 years old to get married, while getting dispensation from the court and under 21 years old, must get permission from both parents.

In relation to consent, it may be argued that the minimum age a person is legally capable of providing consent is the same as the legal age to marry, i.e., 19 years old.

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

Please refer to point 2

**6. Do religious and customary laws impact upon the dealing of sexual violence against children?**

No.

However, it is stated in the general the elucidation of the Child Protection Law, states it is necessary for the role of the community, whether through child protection institutions, religious institutions, non-governmental organizations, community organizations, social organizations, the business world, mass media, or educational institutions to deal with the development and protection of children.

7. Does domestic law reflect international laws and conventions regarding sexual 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
4. Law No. 10 of 2012 on the Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

8. In criminal prosecutions of sexual violence against children:

(a) 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.

(b) 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 and sexual 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.

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

(i) 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.

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

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.

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

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

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

(iv) What other means of protection are available to children involved in prosecutions of sexual 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

Further, Article 17 (2) of Child Protection Law states that a child who is a victim or perpetrator of sexual abuse is to be entitled to have their identity kept confidential.

(v) 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. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?

Article 3 (1) of the Optional Protocol states that a State Party shall ensure that at a minimum, acts and activities are fully covered under criminal or penal law, whether the offences are committed domestically or transnationally.

10. What other protections and remedies are available under domestic law for child victims of sexual 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.
- e. Further, civil remedies will always be available to the victim.

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

1. Parents/legal guardians
2. 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 "LPKS").
3. 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.

(b) In circumstances where World Vision is providing shelter and other support to a victim of sexual 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.

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

See our response to para above 10(b)(i).

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

See our response to para above 10(b)(i).

(c) 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.

(d) 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).

11. Which organisations provide pro bono legal services to help a child victim of sexual 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**")

12. Do domestic laws prohibit:

(a) consensual sex activities between minors (including sexting)?

Domestic law does not regulate this. As described in point 4(e), Indonesian law does not provide the legal age for consensual sex.

Domestic law regulates and criminalizes sexual activities when:

1. conducted with a married person (Article 284 of the IPC)
2. conducted with a minor (Article 287 jo. Article 290 of the IPC)
3. conducted with force or threat of force (Article 285 of the IPC)
4. conducted when the person is unconscious (Article 286 of the IPC)

Other than the acts elaborated above, there are no provisions under Indonesian law that covers sexual acts committed between two consenting people who both are not married. This includes when the actors of the sexual act are underage.

**(b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)**

Yes. Please refer to the actions provided in point 2

**13. If so, what are the penalties for violation of these laws?**

Yes. Please refer to the actions provided in point 2

**14. Is there a policy mandate that a government agency be responsible for disseminating information to the public, especially children? (i.e., hot-line information, punishments, etc.)**

There is no specific mandate for a particular government agency to be responsible for disseminating information to the public. However, it is provided by law (among others) that "*the State, Government, Regional Government, Community, Family and Parents or Guardians has the obligation and responsibility over the implementation of Child Protection*" (Article 20 of the Child Protection Law).

# JAPAN

## 1. What is the definition of a child under domestic law in the context of sexual activities?

The term "child" means a person who is under 18 of age (Child Welfare Act Article 4 (1), Child Abuse Prevention Act Article 2, and Child Prostitution and Pornography Prohibit Act Article 2).

While the existing Civil Code provides that the age of majority is reached when a person has reached the age of 20 (Article 4), the revision to Civil Code will change the age to 18 from April 2022.

In addition, under the Juvenile Act, the age under 20 will be subject to this Act in principle and this act governs proceedings about criminal conduct and certain other misconduct of the "Juvenile". There is a discussion to change that age to 18 also.

## 2. Is there domestic legislation which deals with sexual violence against children?

Penal Code

Child Welfare Act

Child Abuse Prevention Act (Act on the Prevention, etc. of Child Abuse)

Child Prostitution and Pornography Prohibit Act (Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children)

Local Municipal Governments' Ordinances

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

Penal Code prohibits Forcible Indecency and Intercourse against a child, and Kidnapping, Buying or Selling of Minors.

Child Welfare Act prohibits causing a child to commit an obscene act.

Child Abuse Prevention Act prohibits child abuse including engaging in indecency against the child or causing the child to engage in indecency.

Child Prostitution and Pornography Prohibit Act prohibits Child Prostitution and Child Pornography.

Most of local municipal governments establish ordinances which prohibit adults from having sexual relationship (sexual intercourse and similar action) with youth (i.e., a person under 18).

## 4. In particular, do domestic laws prohibit:

### (a) child marriage as a form of sexual violence?

No. However, the existing Civil Code provides that only a man who has attained 18 years of age, and a woman who has attained 16 years of age may enter into marriage (Article 731), and a minor (namely, under 20) shall obtain the consent of both parents to marry (Article 737 (i)). The revision to Civil Code will change the age at which a woman may enter into marriage to 18 years of age, and allow a man and a woman who has attained the age to enter into marriage without their parents' consent from April 2022.

**(b) child trafficking?**

In addition, Penal Code prohibits Kidnapping for the purpose of marriage (Article 225), or Buying or Selling of Human Beings for the purpose of marriage (Article 226-2 (3)), regardless whether the victim is a child or not.

Penal Code prohibits Kidnapping of Minors (Article 224) and Buying or Selling of Minors (Article 226-2 (2)).

Child Prostitution and Pornography Prohibit Act prohibits trafficking in children for the purpose of child prostitution (Article 8).

**(c) pornography (including online pornography)?**

Child Prostitution and Pornography Prohibit Act defines photographs, recording medium containing electronic or magnetic records or any other medium which depicts any image of sexual intercourse or any conduct similar to sexual intercourse with a Child or between Children, etc., in a form recognizable by the sense of sight as "Child Pornography" (Article 2 (2)), and prohibits possession and provision of Child Pornography (Article 7).

**(d) sexual acts between an adult and a child, conducted with the consent of the parents or guardians of the child?**

Article 34(1) of Child Welfare Act lists the prohibited conduct, which shall also be subject to the criminal prosecution under Article 60. Article 34(1)(vi) is the conduct to cause a child to commit an obscene act.

Child Prostitution and Pornography Prohibit Act defines sexual intercourse, etc. with a child in return for giving or promising remuneration to the child, the person who has intermediated sexual intercourse with the child, and the guardian of the child as "Child Prostitution" (Article 2 (2)), and prohibits Child Prostitution (Article 4).

**(e) all sexual acts between an adult and a child? What is the minimum age at which a young person is legally capable of providing consent?**

Penal Code prohibits a person who commits sexual intercourse with or an indecent act upon a male or female under 13 years of age (Articles 176 and 177). Thus, 13 is deemed to be the minimum age at which a young person is legally capable of providing consent.

However, most of local municipal governments establish ordinances which prohibit adults from having sexual relationship (sexual intercourse and similar action) with youth (i.e., a person under 18), even if such acts are based on the youth's consent.

**5. What are the penalties for violation of domestic laws relating to sexual violence against children?****Penal Code:**

- Forcible Indecency: imprisonment with work for not less than 6 months but not more than 10 years (Article 176)
- Forcible Intercourse: imprisonment with work for a definite term of not less than 5 years (Article 177)
- Kidnapping of Minors: imprisonment with work for not less than 3 months but not more than 7 years (Article 224)
- Kidnapping for specific purpose (including indecency and marriage): imprisonment with work for not less than 1 year but not more than 10 years (Article 225).

6. Do religious and customary laws impact upon the dealing of sexual violence against children?

7. Does domestic law reflect international laws and conventions regarding sexual 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?

8. In criminal prosecutions of sexual violence against children:

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

- Kidnapping for transferring out of Japan: imprisonment with work for not less than 2 years (Article 226).- Buying or Selling of Minors: imprisonment with work for not less than 3 months but not more than 7 years (Article 226-2 (ii))

#### Child Welfare Act:

- Causing a child to commit an obscene act: imprisonment with work for not more than 10 years or a fine of not more than 3,000,000 yen or both (Article 60 (1), 34(1)(vi))

#### Child Prostitution and Pornography Prohibit Act

- Child Prostitution: imprisonment for not more than 5 years or a fine of not more than 5,000,000 yen or both (Article 4)
- Possession of Child Pornography: imprisonment for not more than 1 year or a fine of not more than 1,000,000 yen (Article 7 (1))
- Provision of Child Pornography: imprisonment for not more than 3 years or a fine of not more than 3,000,000 yen (Article 7 (2))
- Trafficking in Children for the Purpose of Child Prostitution: imprisonment for not less than 1 year and not more than 10 years (Article 8 (i))

Local Municipal Governments Ordinances prohibit adults from having sexual relationship (sexual intercourse and similar action) with youth (i.e., a person under 18) and such conduct shall be subject to criminal penalty. :

- While the penalties vary from ordinance to ordinance, most of ordinances impose imprisonment with work for not more than 2 years, which is the maximum penalty local municipal governments may impose under Article 14 (3) of Local Autonomy Act.

No.

Japan ratified the UN Convention on the Rights of the Child in 1994.

Respecting the spirit of the UN Convention, the Child Welfare Act was revised in 2016. The definition of child and basic principle in the Child Welfare Act are same as those in the UN Convention.

In addition, with the ratification of the UN Convention as one of backgrounds, the Child Abuse Prevention Act was established in 2000.

There is no specific agency with 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, upon becoming aware of a 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) if necessary, and bring matters to the prosecutor's office.

**(b) What evidence is required to prove physical violence in a criminal prosecution?**

Generally speaking, there is no specific evidence in such criminal prosecution which is mandatorily required. Also, the types of evidence required to build a case vary from case-to-case. However, in the practice, there are certain evidences which are necessary in almost all such cases de facto.

For assaulting, evidence would typically consist of circumstantial evidence, such as establishing the intentions of assaulting, in addition to evidence to prove the assaulting objectively (Penal Code Article 208).

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

In addition to the evidence above, testimony is almost always important to prove the specific conduct, circumstances and whole story.

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

**(i) 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 Article 143) unless there is a justifiable reason for refusing (unless, for instance, the victim's testimony would be self-incriminatory (Criminal Procedure Code Article 146)), though in practice prosecutors rarely compel victims to testify when they do not wish to testify.

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

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

**(iii) 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 wishes to examine them in principle. In practice, documents which contain statements made before prosecutors are often submitted to the courts under certain conditions set forth in Article 321 through 328 in Criminal Procedure Code. The most typical one is the documents for which the defending attorney or defendant agree to the submission (Article 326). Another example is that the written documents recording the statement of the person who is out of country (Criminal Procedure Code Article 321(1)(ii)). For instance, depending on the contents of the statement and other evidence, a victim providing 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 at court. The prosecutor will need to submit the evidence and ask for grant of permission.



**(iv) What other means of protection are available to children involved in prosecutions of sexual violence?**

Below are several means of protection available, judge permitting: 1) the victim may provide his/her testimony on a date aside from a trial date (Criminal Procedure Code Article 158); 2) with a screen concealing him/her 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 child) (Criminal Procedure Code Article 157-4); 4) exclusion of the criminal defendant and/or a specific spectator (who in the presence of, is deemed to or will cause the witness to be unable to comfortably provide sufficient testimony) from the court room while remaining in the presence of the judge, the prosecutor and the criminal defendant's attorney (Criminal Procedure Code Article 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 Article 290-3).

**(v) Can the child be required to testify more than once?**

This depends on each case, but typically, the court would consider the burden and try to keep it as minimum as possible if the prosecutor requests so.

**9. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?**

The legal system in Japan clamps down on sexual violence under the Child Prostitution and Child Pornography Act when it cuts across several countries. However, the prohibition and criminal sanction under Article 4 through 6 of this Act shall apply to certain misconduct (i.e., child prostitute and its procurement and solicitation) committed outside of Japan by person who has Japanese nationality (Article 10).

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

- Temporary protective custody (*ichiji hogo* in Japanese) by child guidance center (*jidou soudan jyo* in Japanese);
- Compensation order (*songai baishou meirei* in Japanese); and
- Civil remedies (e.g. compensation for damages / injunctive remedies).

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

Temporary protective custody (*ichiji hogo* in Japanese): Child guidance center (*jidou soudan jyo* in Japanese).

Compensation order (*songai baishou meirei* in Japanese) and / or civil remedies: Legal representative (*houtei dairinin* in Japanese) (e.g. parents (*shinkensha* in Japanese) and guardian of minor (*miseinen kouken nin* in Japanese)).

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

No. However, when there is no person who has custody of a minor due to the death of his/her parent or other circumstances, the family court may appoint World Vision as a guardian of minor (*miseinen kouken nin* in Japanese) by a petition of such minor, his/her relative or other interested person (e.g. child guidance center (*jidou soudan jyo* in Japanese) and public prosecutor).

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

Whether World Vision is appointed as a guardian of minor (*miseinen kouken nin* in Japanese) is determined by (i) whether the type and nature of its business can benefit the minor and (ii) whether there are any conflicts of interests between World Vision / its representative and the minors. World Vision should ask the petitioner to list World Vision as a candidate of guardian of minor in the written petition.

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

Yes.

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

Temporary protective custody (*ichiji hogo* in Japanese) and / or civil remedies: Yes.

Compensation order (*songai baishou meirei* in Japanese): A victim has to file a petition with the criminal court for a compensation order during the criminal trial. Procedures for the compensation order takes place after the conviction.

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

Temporary protective custody (*ichiji hogo* in Japanese): No.

Compensation order (*songai baishou meirei* in Japanese) and / or civil remedies: Yes. The amount of compensation would be based on the amount of economic damage and non-economic damage (*isha ryou* in Japanese) that is in a causation with illegal activities (e.g. sexual violence). The amount of non-economic damage would be determined by various factors such as the social status, occupation and assets of the victim and the perpetrator, intentional or degree of negligence of the perpetrator, and the nature of the illegal activities.

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

Japan Legal Support Center, "Houterasu"

12. Do domestic laws prohibit:

(a) consensual sex activities between minors (including sexting)?

Not generally. However, sexting between two minors may be an illegal act if it hits specific criteria of the crime such as (i) production/possession of child pornography (Art. 7 of the Child Prostitution and Pornography Prohibit Act) and (ii) exposure/distribution of the obscene object (Art. 175 of the Penal Code).

(b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)

Article 34(1)(vi) of Child Welfare Act prohibits causing a child to commit an obscene act (including sexual intercourse and similar action including oral sex). It is understood that certain "control" over the minor shall be required for the application of this provision. If there is any due consent (not forced, not controlled) by the minor before such sexual action, this Act will not be applied.

However, the ordinances of almost all local governments prohibit adults from (i) having sexual relationship (sexual intercourse and similar action) with minor and (ii) requesting a minor for his/her pornographic images. Under these ordinances, even the informed consent will not justify the adult's sexual act with the minors.

13. If so, what are the penalties for violation of these laws?

Article 7(1) of Child Prostitution and Pornography Prohibit Act: 1 year of imprisonment with work or a fine of not more than 1,000,000 yen for possession of child pornography.

Article 7(2)~(5) of Child Prostitution and Pornography Prohibit Act: 3 years of imprisonment with work or a fine of not more than 3,000,000 yen for provision of child pornography and relevant misconduct.

**14. Is there a policy mandate that a government agency be responsible for disseminating information to the public, especially children? (i.e., hot-line information, punishments, etc.)**

Article 7(6)~(8) of Child Prostitution and Pornography Prohibit Act: 5 years of imprisonment with work or a fine of not more than 5,000,000 yen for public distribution etc. of child pornography and relevant misconduct (including export and import).

Article 175 of Penal Code: 2 year of imprisonment or a fine of not more than 2,500,000 yen for exposure/distribution of obscene object.

Article 60(1) and 34(1)(vi) of Child Welfare Act: imprisonment with work for not more than 10 years or a fine of not more than 3,000,000 yen or both.

Penalties under the ordinances of local governments depend on each violation, but generally, imprisonment with work for not more than 2 years or a fine of not more than 1,000,000 yen.

Some laws and ordinances do. For example, Child Prostitution and Pornography Prohibit Act mandates the national/local government to educate and foster the people and do research for the better understanding of the rights of the children (Art. 14). More precisely, this Act orders Ministry of Health Labour and Welfare, Ministry of Justice, Police, Child Guidance Center, Welfare Center and other relevant agencies to take necessary steps to approach to the minor victims and protect them (Art. 15).

However, generally speaking, there are no systemized (unified) organizational mandate as for the disseminating information. Therefore, each of the public agencies (police, Ministry of Health, Child Guidance Center, Local government etc.) are taking care of such dissemination of the information separately.

# MALAYSIA

**1. What is the definition of a child under domestic law in the context of sexual activities?**

Generally in the context of sexual activities, a child is anyone under the age of 18 years' old (unless otherwise specified in the specific offences below). Any references to a child victim in respect of the sexual offences described under Questions 3, 4(c) and 4(e) below shall also include a person whom an accused believes is a child.

The age of consent to sexual intercourse is 16 years' old. A man who has sexual intercourse with a woman under 16 years of age with or without her consent, is said to commit rape.

**2. Is there domestic legislation which deals with sexual violence against children?**

Yes. The main legislations in Malaysia which deal with sexual violence against children are:

- (a) Sexual Offences Against Children Act 2017 [Act 792];
- (b) Penal Code (Malaysia) [Act 574]; and
- (c) Child Act 2001 [Act 611].

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

The following forms of sexual violence are prohibited under Malaysian laws.

Section	Offence	Penalties
Sexual Offences Against Children Act 2017		
14	Physical sexual assault on a child, including the following acts carried out for sexual purposes:  (a) touching any part of the body of a child; (b) making a child touch any part of the body of such person or of any other person; (c) making a child touch any part of the child's own body; or (d) doing any other acts that involve physical contact with a child without sexual intercourse.	Imprisonment for a term not exceeding 20 years and whipping
15	Non-physical sexual assault on a child, including the following acts:  (a) for sexual purposes: (i) utters any word or makes any sound, or makes any gesture or exhibits any object or his body or any part of his body with the intention that such word or sound shall be heard, or such gesture or object or body or part of his body shall be seen by a child;	Imprisonment for a term not exceeding 10 years and/or fine not exceeding RM 20,000

(ii) makes a child exhibit the child's body or any part of the child's body so as it is seen by such person or any other person; or	Imprisonment for a term not exceeding 20 years and whipping
(iii) repeatedly or constantly follows or watches or contacts a child by any means;	
(b) threatens to use any visual, audio and/or written representation by any means of a body of a child or any part of a body of a child or of a child engaged in an activity that is sexual in nature;	
(c) engages in an activity that is sexual in nature in the presence of a child;	
(d) causes a child to watch such person or any other person engaging in an activity that is sexual in nature;	
(e) causes a child to watch or hear any visual, audio and/or written representation by any means of such person or any other person engaged in an activity which is sexual in nature; or	
(f) makes a child engage in an activity that is sexual in nature.	

#### Penal Code (Malaysia)

354	Assaulting or using criminal force to any person, intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person.	Any 1 or 2 of the following:  (a) imprisonment for a term of up to 10 years; (b) fine; and (c) whipping
375	Rape, including having sexual intercourse with a woman with or without her consent, when she is under 16 years of age.	Imprisonment for a term of up to 30 years and whipping
375B	Gang rape (i.e. raped by one or more in a group of persons).	Imprisonment for a term of between 10 to 30 years
376A	Incest (i.e. having sexual intercourse with another person whose relationship to him or her is such that he or she is not permitted, under the law, religion, custom or usage applicable to him or her, to marry that other person).	Imprisonment for a term of between 10 to 30 years and whipping
377A	Carnal intercourse against the order of nature (i.e. having sexual connection with another person by the introduction of the penis into the anus or mouth of the other person).	Imprisonment for a term of up to 20 years and whipping

377C	Committing carnal intercourse against the order of nature without consent (i.e. committing carnal intercourse against the order of nature on another person without the consent, or against the will, of the other person, or by putting the other person in fear of death or hurt to the person or any other person).	Imprisonment for a term of between 5 years to 20 years, and whipping
377CA	Sexual connection by object (i.e. having sexual connection with another person by the introduction of any object or any part of the body, except the penis into the vagina or anus of the other person without the other person's consent (except for medical or law enforcement purposes)).	Imprisonment for a term of between 5 years to 30 years, and whipping
377D	Outrages on decency (i.e. committing or abetting, procuring or attempting to procure any person to commit, any act of gross indecency with another person, in public or private)	Imprisonment for a term of up to 2 years
377E	Inciting a child to an act of gross indecency (i.e. inciting a child under the age of <b>14 years</b> to any act of gross indecency with him or another person)	Imprisonment for a term of between 3 years to 15 years and whipping
509	Uttering any word, making any sound or gesture, or exhibiting any object, intending to insult the modesty of any person, and intending that such word or sound shall be heard, or that such gesture or object shall be seen by such person, or intrudes upon the privacy of such person	Imprisonment for a term up to 5 years and/or fine

#### Child Act 2001

31	<p>Ill-treatment, neglect, abandonment or exposure of children, including the following acts committed by a person having the care of a child:</p> <p>(a) abusing, neglecting, abandoning or exposing the child or acting negligently in a manner likely to cause him physical or emotional injury or causes or permits him to be so abused, neglected, abandoned or exposed; or</p> <p>(b) sexually abusing the child or causing or permitting him to be so abused.</p>	<p>Imprisonment for a term not exceeding 20 years and/or fine not exceeding RM 50,000, and the following:</p> <p>(a) execute a bond with sureties to be of good behavior for such period; and</p> <p>(b) perform community service.</p>
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**4. In particular, do domestic laws prohibit:**

**(a) child marriage as a form of sexual violence?**

Child marriage in itself is not deemed to be a form of sexual violence under Malaysian laws. Please also refer to our responses under Question 6 below on child marriages.

**(b) child trafficking?**

Yes, trafficking in persons (including children) for the purpose of exploitation is prohibited under Section 14 of the Anti-Trafficking in Persons and Anti-smuggling of Migrants Act 2007.

Under Section 2 of the Anti-Trafficking in Persons and Anti-smuggling of Migrants Act 2007:

- (a) "trafficking in persons" refers to all actions involved in acquiring or maintaining the labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person; and
- (b) "exploitation" means all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs.

The following child trafficking related activities, among others, are further prohibited under Sections 43, 48 and 49 of the Child Act 2001:

- (a) taking part in any transaction for the object of transferring or conferring the possession, custody or control of a child for any valuable consideration; and
- (b) unlawfully harbouring or has in his possession, custody or control a child who has been transferred or conferred for valuable consideration by any other person within or outside Malaysia;
- (c) under false pretence or representation, or by fraudulent or deceitful means, either within or outside Malaysia, bringing or assisting in bringing a child into Malaysia;
- (d) selling, letting for hire or otherwise disposing of, or buying or hiring or otherwise obtaining possession of, a child with intent that the child is to be employed or used for the purpose of prostitution, either within or outside Malaysia, or knowing or having reason to believe that the child will be so employed or used;
- (e) procuring a child for purposes of prostitution or for the purposes of having sexual intercourse with any other person, either within or outside Malaysia;
- (f) under false pretence or representation, or by fraudulent or deceitful means, either within or outside Malaysia, bringing or assisting in bringing into or taking out of or assisting in taking out of Malaysia, a child with intent that the child is to be employed or used for purposes of prostitution, either within or outside Malaysia, or knowing or having reason to believe that the child will be so employed or used;
- (g) bringing into Malaysia, receiving or harbouring a child knowing or having reason to believe that the child has been procured for purposes of prostitution or having sexual intercourse with any other person or for immoral purposes, either within or outside Malaysia, and with intent to aid such purpose; and



**(c) pornography (including online pornography)?**

- (h) knowing or having reason to believe that a child has been brought into Malaysia in the circumstances as set out in paragraph (c) or has been sold, let for hire, or hired or purchased in the circumstances as set out in paragraph (a), or in contravention of any other written law receiving or harbouring the child with intent that he is to be employed or used for purposes of prostitution either within or outside Malaysia.

The following child pornography related activities are prohibited under the Sexual Offences Against Children Act 2017:

Section	Offence	Penalties
5	Making, producing, directing the making or production of, or participating, engaging or is involved, in any way, in the making, production or the directing of the making or production of, any child pornography	Imprisonment for a term not exceeding 30 years and whipping of not less than 6 strokes
6	Making, preparing to make, producing or directing the production of any child pornography	Imprisonment for a term not exceeding 10 years and whipping
7	Using a child in the preparation to make, produce or direct the production of any child pornography	Imprisonment for a term not exceeding 20 years and whipping of not less than 5 strokes
8	Exchanging, publishing, printing, reproducing, selling, letting for hiring, distributing, exhibiting, advertising, transmitting, promoting, importing, exporting, conveying, offering or making available, in any manner, any child pornography  Obtaining, collecting or seeking any child pornography  Participating in or receiving profits from any business with knowledge or reason to believe is related to any child pornography	Imprisonment for a term not exceeding 15 years and whipping of not less than 3 strokes
9	Selling, letting for hire, distributing, exhibiting, advertising, transmitting, promoting, conveying, offering or making available, in any manner, any child pornography to a child	Imprisonment for a term not exceeding 15 years and whipping of not less than 5 strokes
10	Accessing, or having in possession or control, any child pornography	Imprisonment for a term not exceeding 5 years and/or a fine not exceeding RM 10,000

Under Section 4 of the Sexual Offences Against Children Act 2017, "child pornography" refers to any visual, audio and/or written representation by any means:

- (a) of a child engaged in sexually explicit conduct;

- (b) of a person appearing to be a child engaged in sexually explicit conduct;
- (c) of realistic or graphic images of a child engaged in sexually explicit conduct; or
- (d) of realistic or graphic images of a person appearing to be a child engaged in sexually explicit conduct.

As for non-child pornography, Section 5 of the Film Censorship Act 2002 provides that no person shall: (a) have or cause himself to have in his possession, custody, control or ownership; or (b) circulate, exhibit, distribute, display, manufacture, produce, sell or hire, any film or film-publicity material which is obscene or is otherwise against public decency (i.e. pornography). Any person convicted of this offence may be liable for imprisonment for a term not exceeding 5 years and/or a fine of between RM 10,000 and RM 50,000.

Besides being prohibited under the Sexual Offences Against Children Act 2017 and Film Censorship Act 2002, the dissemination of pornography online is also prohibited under the Communications and Multimedia Act 2002:

Section	Offence	Penalties
211	Provision of content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person (i.e. pornography) by a content applications service provider, or other person using a content applications service.	Imprisonment for a term not exceeding 1 year and/or a fine not exceeding RM 50,000, with a further fine of RM 1,000 for every day or part of a day during which the offence is continued after conviction
233	<ul style="list-style-type: none"> <li>(a) Knowingly initiates the transmission of any communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person by means of any network facilities or network service or applications service;</li> <li>(b) initiates a communication using any applications service with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address;</li> <li>(c) knowingly provides any obscene communication for commercial purposes to any person by means of a network service or applications service; and</li> <li>(d) knowingly permits a network service or applications service under the person's control to be used for an activity described in paragraph (c) above.</li> </ul>	Imprisonment for a term not exceeding 1 year and/or a fine not exceeding RM 50,000, with a further fine of RM 1,000 for every day during which the offence is continued after conviction

**(d) sexual acts between an adult and a child, conducted with the consent of the parents or guardians of the child?**

Section 89 of Penal Code provides that an act done in good faith for the benefit of a person under 12 years of age by consent of the guardian or other person having lawful charge of that person, is not an offence by reason of any harm which it may, is intended to or known to be likely to be caused to that person.

**That said, this defence is usually applicable when the sexual acts are committed for medical reasons.**

Please note that this defence does not extend to:

- (a) acts which are offences independently of any harm which they may, be intended to or is known to be likely to be caused to the person giving the consent, or on whose behalf the consent is given
- (b) the intentional causing of, or attempt to cause, death;
- (c) the doing of anything which the person doing it knows is likely to cause death for any purpose other than the preventing of death or grievous hurt, or for the curing of any grievous disease or infirmity;
- (d) the voluntary causing of, or attempt to cause, grievous hurt, unless it is for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;
- (e) the abetment of any offence, the committing of which offence the exception would not extend.

**(e) all sexual acts between an adult and a child? What is the minimum age at which a young person is legally capable of providing consent?**

The following sexual activities are also prohibited under the Sexual Offences Against Children Act 2017:

Section	Offence	Penalties
11	Sexually communicating with a child or encouraging a child to sexually communicate by any means.  A person is said to "sexually communicate" if the communication or any part of it relates to an activity that is sexual in nature; or any reasonable person would consider any part of the communication to be sexual, except if the communication is for education, scientific or medical purposes.	Imprisonment for a term not exceeding 3 years
12	Communicating by any means with a child with the intention to commit or to facilitate the commission of the child sexual offences discussed under Questions 3 and 4(c) above.	Imprisonment for a term not exceeding 5 years and whipping
13	Having communicated by any means with a child, travelling to meet with the child or meeting with the child with the intention to commit or to facilitate the commission of any of the sexual offences discussed under Questions 3 and 4(c) above.	Imprisonment for a term not exceeding 10 years and whipping

Generally, most of the child sexual offences discussed above do not expressly provide that valid consent would excuse an offence or establish a defence, except for the following sexual offences:

- (a) rape / gang rape - the age of consent to sexual intercourse is 16 years' old;
- (b) committing carnal intercourse against the order of nature without consent (i.e. having sexual connection with another person by the introduction of the penis into the anus or mouth of the other person);

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

- (c) having sexual connection with another person by the introduction of any object or any part of the body; and
- (d) incest.

Please refer to our responses to Question 3, 4(c) and 4(e) above.

6. Do religious and customary laws impact upon the dealing of sexual violence against children?

Yes, religious and customary laws do have an impact on the dealings of sexual violence against children.

Generally, the minimum age for marriage in Malaysia is 18 years' old unless for a female who has completed her 16th year, the solemnisation of such marriage was authorised by a licence granted by the Chief Minister<sup>1</sup> ("**Statutory Minimum Age**").

However, the Statutory Minimum Age does not apply to the Muslim community in Malaysia as Syariah laws permit marriages for children under the age of 16 years with the permission of a Syariah court in certain circumstances<sup>2</sup>. As recent as 2018, the Syariah court approved the union of a 15-year-old girl to a 44-year-old man. Although the marriage drew condemnation from the United Nations, the Deputy Prime Minister Wan Azizah Wan Ismail suggested there was little the government could do to stop the union, as Islamic courts have jurisdiction over the issue of marriage between Muslims.

Marriages of the Hindu community in Malaysia are also customary in nature, for example, a marriage between an uncle and his niece is permitted as part of Hindu custom<sup>3</sup>. While the Statutory Minimum Age is applicable to the Hindu community, there are cases whereby Hindus marry under the Statutory Minimum Age according to Hindu rites and subsequently register their marriage upon attaining the age of majority.

The Statutory Minimum Age also does not apply to any native of Sabah or Sarawak or any aborigine of West Malaysia whose marriage is governed by native customary law or aboriginal custom. This means that these particular communities may marry according to custom at an age younger than the Statutory Minimum Age.

7. Does domestic law reflect international laws and conventions regarding sexual 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?

By way of background, both UN Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination against Women have been ratified by Malaysia. The Malaysian government accepted the Universal Declaration of Human Rights when passing the Human Rights Commission of Malaysia Act 1999, requiring relevant parties to have regard to the Universal Declaration of Human Rights for purposes of the Act, to the extent that it is not inconsistent with the Federal Constitution.

In terms of sexual violence, Malaysian laws are largely consistent with those prescribed under the UN conventions described above. As discussed in other parts of this questionnaire, Malaysia has enacted various child-related legislation including among others the Sexual Offences Against Children Act 2017 and Child Act 2001, and implemented administrative measures (as discussed in our responses to Question 14 below) to address sexual violence against children.

<sup>1</sup> Section 10 of the Law Reform (Marriage and Divorce) Act 1976

<sup>2</sup> Section 8 of the Islamic Family Law (Federal Territories) Act 1984

<sup>3</sup> This is recognised in Section 11 of the Law Reform (Marriage and Divorce) Act 1976

**8. In criminal prosecutions of sexual violence against children:**

**(a) What agency or agencies have the authority to refer a case to the prosecutor?**

One area in which Malaysia law is different with the UN conventions described above is with respect to child marriages. For example, as discussed in our responses to Question 6, whilst the Statutory Minimum Age for marriage in Malaysia is 18 years' old, it does not apply to the Muslim community as Syariah laws permit marriages for children under the age of 16 years with the permission of a Syariah court in certain circumstances. The Syariah courts receive a sizeable amount of applications for marriages involving children each year.

Generally, the police investigating officer ("IO") will refer the case to the prosecutor after a police report has been made and the case has been investigated.

Additionally, a Magistrate may also receive and examine complaints, provided that they submit the complaint to Public Prosecutors. The Human Rights Commission of Malaysia can also receive and examine complaints associated to human rights violations, providing that the subject matter is not pending before a court or has not been finally determined by any court<sup>4</sup>.

Hospitals and medical personnel can report potential child abuse to the police, where the IO will then instigate an investigation into the alleged abuse. The police may detain the aggressor for more than 24 hours but not more than 14 days after obtaining an Order from the Magistrates Court.

**(b) What evidence is required to prove physical violence in a criminal prosecution?**

Oral and/or documentary evidence are required to establish the elements of the offence. In general, this includes the testimony by the victim on how the victim has been physically abused and evidence relating to the alleged physical violence (e.g. medical reports).

The following aspect of history must be clearly stated in a medical record:

- (a) the date and time when the injury is alleged to have occurred;
- (b) details of the nature and circumstances of the injury;
- (c) details of any force involved or any other alternative causes;
- (d) details of any contributing factors by the injured person; and
- (e) the source of information identified.

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

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

As a child witness, the child does not have the right to refuse if the child is a competent person. If a child is compelled but refuses to testify, such action can be regarded as a contempt of court. Case laws in Malaysia have established that the court may compel a competent witness to give evidence in court.

<sup>4</sup> Section 12 of the Human Rights Commission of Malaysia Act 1999

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

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

**(iv) What other means of protection are available to children involved in prosecutions of sexual violence?**

**(v) Can the child be required to testify more than once?**

**9. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?**

To test for competence of a child witness, the trial court should conduct a *voir dire* (trial within a trial) whereby the capacity of a witness is tested by putting forward proper questions. The court has a wide discretion to examine the intellectual capacity and understanding of witnesses who are children of tender years. A child is competent to testify if he understands the questions put to him and gives rational answers. Competency is not tested based on age, but only based on a person's (or child's) capacity to understand.

Yes. The court has the discretion to allow a child witness to give evidence via a live video or live television link in any trial or inquiry to ensure that the child is not required to confront their abuser or accused<sup>5</sup>.

Yes, where a video recording of a child witness is given in evidence, such video recording shall be admitted as evidence of examination-in-chief of the child witness, provided the contents of the video recording shall be subjected to the Evidence Act 1950 (i.e. relevancy of the document, the document not being privileged, etc.).

Furthermore, it must be accompanied by a transcript of the original language used in the video recording and a translation of the transcript of the original language into the national language if the language used in the video recording is other than the national language. 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 and form an opinion as to whether the child victim possesses sufficient intelligence and understands the duty of speaking the truth, though not given upon oath.

The child's identity is protected by the law. Any particulars that may lead to the identification of the child witness, such as name and address of the child, educational institutions the child attends, and any 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.

Yes, provided that the court exercises its discretion to allow the child to be recalled to testify.

If the criminalised offences are committed by a Malaysian citizen against a child in any place outside Malaysia, the offender may be prosecuted as if the offence had been committed anywhere within Malaysia<sup>6</sup>.

<sup>5</sup> Section 272B of the Criminal Procedure Code and Section 3 Evidence of Child Witness Act 2007

<sup>6</sup> Section 3 of Sexual Offences against Children Act 2017, Section 4 of the Malaysian Penal Code and the Extra-Territorial Offences Act 1976

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

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

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

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

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

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

There are laws in place that ensure the protection and rehabilitation of children<sup>7</sup>.

The court may order the child to be:

- (a) sent to a probation hostel, place of safety and/or place of refuge;
- (b) sent to an approved school or a Henry Gurney School;
- (c) separated from the accused (e.g. parents/guardian); and/or
- (d) referred to a Social Welfare Officer or under the care and custody of a foster parent/fit and proper person.

Any person who is appointed by the court may act as the child's guardian. In cases where it is undesirable that the child be entrusted to either parent, the court may place the child in the custody of any relative of the child, association of objects including children welfare, or any other suitable person<sup>8</sup>.

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 World Vision.

World Vision may file an application to court to apply for the guardianship and custody of the child.

Yes. World Vision, in its capacity as a lawful guardian may appoint a lawyer to represent the child to pursue compensation in a civil case. However, please note that 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).

A child's statutory or testamentary guardian shall be entitled to be their litigation representatives.

Yes. A civil claim can be brought for civil remedies whereby the cause of action would be tort of sexual harassment. However, note that under certain circumstances Malaysian courts may exercise discretionary powers to order a stay in proceedings in a civil suit until the conclusion of the hearing and final disposal of the criminal proceedings.

<sup>7</sup> Section 38 and 39 of the Child Act 2001 ("CA")

<sup>8</sup> Section 88 of the Law Reform (Marriage and Divorce) Act 1976



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

The compensation of child victims of sexual exploitation is not a well-established process in Malaysia.

#### **Criminal Proceedings**

Generally, the court may make an order to pay any sum of money by way of costs or compensation, including:

- allow time for the payment of that sum;
- direct payment of that sum to be made by installments;
- issue a warrant for the levy of that sum by distress and sale of any property belonging to that person;
- direct that in default of payment or of a sufficient distress to satisfy such sum that person shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may be sentenced or to which he may be liable under a commutation of sentence;
- direct that person be searched and that any money found on him when so searched or which in the event of his being committed to prison, may be found on him when taken to prison shall be applied towards the payment of that sum, the surplus, if any, being returned to him.<sup>9</sup>

#### **Civil Proceedings**

The determination of compensation amount for an abused victim in a civil case is a fact sensitive exercise and will depend on the cause(s) of action raised by the abused victim against the abuser as well as the type of harm or injury suffered by the abused victim.

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

- (a) Compensatory damages - compensatory damages are meant to restore the claimant back to his or her position before the injury occurred. There are generally two types of compensatory damages: (i) economic, also known as special damages (for example, lost earnings, medical expenses, cost of psychiatric care etc.); and (ii) non-economic loss, also known as general damages (for example, loss of enjoyment of life, physical pain suffered by the victim, emotional distress such as, among others, post-traumatic stress disorder (PTSD), suffered by the victim, etc.);
- (b) Exemplary damages - exemplary damages are generally awarded to punish and deter grievous 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.).

**11. Which organisations provide pro bono legal services to help a child victim of sexual violence?**

The following organisations generally provide pro bono services to help a child victim of sexual violence:

- (a) Protect and Save the Children ([link here](#));
- (b) SUKA Society ([link here](#));
- (c) Suriana Welfare Society Malaysia ([link here](#));
- (d) Women's Centre for Change (WCC) ([link here](#)); and
- (e) Women's Aid Organisation ([link here](#)).

**12. Do domestic laws prohibit:**

**(a) consensual sex activities between minors (including sexting)?**

The sexual offences under Sexual Offences Against Children Act 2017 and Penal Code (Malaysia) discussed above (e.g. rape, sexual assault, child pornography related offences, sexually communicating with a child) apply equally to adults and children.

That said, Sections 82 and 83 of the Penal Code (Malaysia) provides that any act committed by the following persons is not an offence:

- (a) a child under 10 years of age; and
- (b) a child above 10 years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.

**(b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)**

Generally yes, as Malaysian laws prohibit a wide range of sexual activities directed towards a child. Please refer to our responses to Questions 3, 4(c) and 4(e) above for the specific child sexual offences (e.g. sexual violence, child pornography and child grooming).

Generally, most of the child sexual offences discussed above do not expressly provide that valid consent would excuse an offence or establish a defence, except for the following sexual offences:

- (a) rape / gang rape - the age of consent to sexual intercourse is 16 years old;
- (b) committing carnal intercourse against the order of nature without consent (i.e. having sexual connection with another person by the introduction of the penis into the anus or mouth of the other person);
- (c) having sexual connection with another person by the introduction of any object or any part of the body; and
- (d) incest.

**13. If so, what are the penalties for violation of these laws?**

The penalties for violation of child sexual offences are set out under our responses to Questions 3, 4(c) and 4(e).

**14. Is there a policy mandate that a government agency be responsible for disseminating information to the public, especially children? (i.e., hot-line information, punishments, etc.)**

The Ministry, Family and Community Development is the government agency responsible for prevention and awareness of child abuse / sexual violence in Malaysia. Some of the Ministry's initiatives targeted towards child abuse are set out below:

- (a) Child abuse hotlines (1 800 88 3040 / 15999);
- (b) Child Protection Team established in states and districts to serve as a support system of child protection services;
- (c) Children's Activity Centers established according to the needs of the local community; and
- (d) Witness Support Service which provides support to children who are criminal victims.

# PHILIPPINES

## 1. What is the definition of a child under domestic law in the context of sexual activities?

In general, Philippine laws define "Child" as:

1. a person below eighteen (18) years of age; or
2. a person over eighteen (18) years of age and who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of himself fully because of a physical or mental disability or condition or of protecting himself from abuse.

## 2. Is there domestic legislation which deals with sexual violence against children?

Yes.

1. Republic Act ("RA") 7610 entitled "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act";
2. RA 9262 entitled "Anti-Violence Against Women and Their Children Act of 2004";
3. RA 9344 entitled "Juvenile Justice and Welfare Act of 2006";
4. RA 10630 entitled "An Act Strengthening the Juvenile Justice System in the Philippines, amending for the purpose RA 9344"
5. Revised Penal Code of the Philippines

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

### 1. Child Prostitution and Other Sexual Abuse

Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. (RA 7610 Section 5)

### 2. Child Trafficking.

Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter (RA 7610 Section 7)

### 3. Obscene Publications and Indecent Shows.

Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, pose, or model in obscene publications or pornographic materials or to sell or distribute the said materials (RA 7610 Section 7)

### **RA 7610 Implementing Rules and Regulation ("IRR") SEC. 2**

"Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;

“Lascivious conduct” means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person;

“Exploitation” means the hiring, employment, persuasion, inducement, or coercion of a child to perform in obscene exhibitions and indecent shows, whether live or in video or film, or to pose or act as a model in obscene publications or pornographic materials, or to sell or distribute said materials; and

#### **RA 9262 IRR**

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; and
- c) prostituting the woman or her child.

#### **Revised Penal Code of the Philippines - Articles 335 to 346**

Involving crimes of rape, acts of lasciviousness, seduction, corruption of minors, white slave trade, abduction against minors

#### **RA 9344 IRR**

Rule 32.g. Harassment and Abuse - All duty-bearers shall not sexually harass or abuse, or make sexual advances on the child in conflict with the law.

Rule 58. Allegation of Torture or Ill-treatment - If there is an allegation of torture or ill-treatment of a child in conflict with the law, during the arrest or detention or a violation of the prohibited acts, pursuant to the Act, and these Rules, it shall be the duty of the Prosecutor to investigate the same and initiate the corresponding legal action, whenever necessary.

Rule 91. Other Prohibited Acts - The following acts are likewise prohibited: (1) Violation of the confidentiality of proceedings, involving a child in conflict with the law, as provided in Section 43 of the Act and RULE 7 of these Rules, due to acts and omissions, such as but not limited to the following: (a) Disclosure to the media of records, including photographs, of children in conflict with the law; (b) Failure to maintain a separate police blotter for cases involving children in conflict with the law; and (c) Failure to adopt a system of coding to conceal material information, which will lead to the child’s identity. (2) Commission of prohibited acts under Section 21 of the Act and RULE 32 on 37 Prohibited Acts when in custody of a child. 38 (3) Failure to comply with the registration, licensing and accreditation requirements 39 under RULE 80 and RULE 80.j.

4. In particular, do domestic laws prohibit:

- (a) child marriage as a form of sexual violence?
- (b) child trafficking?
- (c) pornography (including online pornography)?
- (d) sexual acts between an adult and a child, conducted with the consent of the parents or guardians of the child?
- (e) all sexual acts between an adult and a child? What is the minimum age at which a young person is legally capable of providing consent?

Rule 88. Labelling and Shaming - As mandated by Section 60 of the Act, in the conduct of the proceedings from the initial contact with the child, the competent authorities must refrain from branding or labelling children as young criminals, juvenile delinquents, deviants, prostitutes, vagrants or other similar derogatory labels, and attaching to them, in any manner, any other derogatory names.

**R.A. 9344 in connection with Rule 88 above of its IRR**

Sec. 60. Prohibition Against Labeling and Shaming. - In the conduct of the proceedings beginning from the initial contact with the child, the competent authorities must refrain from branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names. Likewise, no discriminatory remarks and practices shall be allowed particularly with respect to the child's class or ethnic origin.

Sec. 61. Other Prohibited Acts. - The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited:

- (a) Employment of threats of whatever kind and nature;
- (b) Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement;
- (c) Employment of degrading, inhuman and cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and
- (d) Compelling the child to perform involuntary servitude in any and all forms under any and all instances.

In the Philippines, child marriages are void as the minimum legal age for marriage is 18 years old.

Yes. Republic Act 7610 Article IV Sections 7 and 8 on Child Trafficking

Yes. Republic Act 7610 Article V Section 9 on Obscene Publications and Indecent Shows

Yes. Republic Act 7610 Article V Section 9 on Obscene Publications and Indecent Shows

Yes. All sexual acts between an adult and a child are prohibited. The minimum age at which a person is legally capable of providing consent is 18 years old.

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

**R.A. 7610**

**CHILD PROSTITUTION**

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

- (a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
  - (1) Acting as a procurer of a child prostitute;
  - (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
  - (3) Taking advantage of influence or relationship to procure a child as a prostitute;
  - (4) Threatening or using violence towards a child to engage him as a prostitute;
  - (5) Giving monetary consideration, goods or other pecuniary benefit to a child with the intent to engage such child in prostitution.
- (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and
- (c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

**SEC. 6. Attempt to Commit Child Prostitution.**

A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper case, under the Revised Penal Code.

**CHILD TRAFFICKING**

Offender shall suffer the penalty of *reclusion temporal* to *reclusion perpetua*. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age.

***Attempt to Commit Child Trafficking***

A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 7 hereof shall be imposed upon the principals of the attempt to commit child trafficking shall suffer the penalty of *prision mayor* in its medium period.

If the child used as a performer, subject or seller/distributor is below twelve (12) years of age, the penalty shall be imposed in its maximum period.

Any ascendant, guardian, or person entrusted in any capacity with the care of the child who shall cause and/or allows such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of *prision mayor* in its medium period.

#### ARTICLE VI -OTHER ACTS OF ABUSE

SEC. 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.*

- (a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.
- (b) Any person who shall keep or have in his company a minor, twelve (12) years or under or who is ten (10) years or more his junior in any public or private place, hotel, motel, beer joint, discothèque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places shall suffer the penalty of *prision mayor* in its maximum period and a fine of not less than fifty thousand pesos (P50,000): *Provided*, That this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition, or acts in the performance of a social, moral or legal duty.
- (c) Any person who shall induce, deliver or offer a minor to any one prohibited by this Act to keep or have in his company a minor as provided in the preceding paragraph shall suffer the penalty of *prision mayor* in its medium period and fine of not less than Forty thousand pesos (P40,000): *Provided, however*, That should the perpetrator be an ascendant, stepparent or guardian of the minor, the penalty to be imposed shall be *prision mayor* in its maximum period, a fine of not less than Fifty thousand pesos (P50,000), and the loss or parental authority over the minor.
- (d) Any person, owner, manager or one entrusted with the operation of any public or private place of accommodation, whether for occupancy, food drink, or otherwise, including residential places, who allows any person to take along with him to such place or places any minor herein described shall be imposed a penalty of *prision mayor* in its medium period and a fine of not less than Fifty thousand pesos (P50,000.00) and the loss of the license to operate such a place or establishment.
- (e) Any person who shall use, coerce, force or intimidate a streetchild or any other child to:
  - (1) Beg or use begging as a means of living;
  - (2) Act as conduit or middlemen in drug trafficking or pushing; or
  - (3) Conduct any illegal activities, shall suffer the penalty of *prision correctional* in its medium period to *reclusion perpetua*.

For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under twelve (12) years of age. The penalty for the commission of acts punishable under Articles 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with the consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years of age.



## ARTICLE VII - SANCTIONS FOR ESTABLISHMENTS OR ENTERPRISES

SEC. 11. *Sanctions for Establishments or Enterprises which Promote, Facilitate, or Conduct Activities Constituting Child Prostitution and Other Sexual Abuse, Child Trafficking, Obscene Publications and Indecent Shows, and Other Acts of Abuse.* - All establishments and enterprises which promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse shall be immediately closed and their authority or license to operate cancelled, without prejudice to the owner or manager thereof being prosecuted under this Act and/or the Revised Penal Code, as amended, or special laws. A sign with the words "off limits" shall be conspicuously displayed outside the establishments or enterprises by the Department of Social Welfare and Development for such period which shall not be less than one (1) year, as the Department may determine. The unauthorized removal of such sign shall be punishable by *prision correctional*.

An establishment shall be deemed to promote or facilitate child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse if the acts constituting the same occur in the premises of said establishment under this Act or in violation of the Revised Penal Code, as amended. An enterprise such as a sauna, travel agency, or recruitment agency which: promotes the aforementioned acts as part of a tour for foreign tourists; exhibits children in a lewd or indecent show; provides child masseurs for adults of the same or opposite sex and said services include any lascivious conduct with the customer; or solicits children for activities constituting the aforementioned acts shall be deemed to have committed the acts penalized herein.

### Article XII SEC. 31. *Common Penal Provisions.*

- (a) The penalty provided under this Act shall be imposed in its maximum period if the offender has been previously convicted under this Act;
- (b) When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period;
- (c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;
- (d) When the offender is a foreigner, he shall be deported immediately after service of sentence and forever barred from entry to the country;
- (e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: *Provided, however,* That if the penalty imposed is *reclusion perpetua* or *reclusion temporal*, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: *Provided, finally,* That if the penalty imposed is *prision correctional* or *arresto mayor*, the penalty of suspension shall also be imposed; and
- (f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

**R.A. 9262**

SEC. 6. *Penalties.* - The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

- (a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code. If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of prision mayor; those constituting less serious physical injuries shall be punished by prision correccional; and those constituting slight physical injuries shall be punished by arresto mayor.

Acts falling under Section 5(b) shall be punished by imprisonment of two (2) degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than arresto mayor.

- (b) Acts falling under Section 5(c) and 5(d) shall be punished by arresto mayor;
- (c) Acts falling under Section 5(e) shall be punished by prision correccional;
- (d) Acts falling under Section 5(f) shall be punished by arresto mayor;
- (e) Acts falling under Section 5(g) shall be punished by prision mayor;
- (f) Acts falling under Section 5(h) and Section 5(i) shall be punished by prision mayor.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in this section. In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than Three hundred thousand pesos (P300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

**R.A. 9344 as amended by RA 10630**

Chapter 3 Sec. 62. Violation of the Provisions of this Act or Rules or Regulations in General. - Any person who violates any provision of this Act or any rule or regulation promulgated in accordance thereof shall, upon conviction for each act or omission, be punished by a fine of not less than Twenty thousand pesos (P20,000.00) but not more than Fifty thousand pesos (P50,000.00) or suffer imprisonment of not less than eight (8) years but not more than ten (10) years, or both such fine and imprisonment at the discretion of the court, unless a higher penalty is provided for in the Revised Penal Code or special laws. If the offender is a public officer or employee, he/she shall, in addition to such fine and/or imprisonment, be held administratively liable and shall suffer the penalty of perpetual absolute disqualification.

**Revised Penal Code of the Philippines**

Art. 335 - The crime of rape shall be punished by reclusion perpetua. Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death. When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. (As amended by R.A. 2632, approved June 18, 1960, and R.A. 4111, approved June 20, 1964).

Art. 336. *Acts of lasciviousness*. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional.

Art. 337. *Qualified seduction*. — The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by prision correccional in its minimum and medium periods.

The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.

Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

Art. 338. *Simple seduction*. — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by arresto mayor.

Art. 339. *Acts of lasciviousness with the consent of the offended party*. — The penalty of arresto mayor shall be imposed to punish any other acts of lasciviousness committed by the same persons and the same circumstances as those provided in Articles 337 and 338.

Art. 340. *Corruption of minors*. — Any person who shall promote or facilitate the prostitution or corruption of persons underage to satisfy the lust of another, shall be punished by prision mayor, and if the culprit is a public officer or employee, including those in government-owned or controlled corporations, he shall also suffer the penalty of temporary absolute disqualification. (As amended by Batas Pambansa Blg. 92).

Art. 341. *White slave trade*. — The penalty of prision mayor in its medium and maximum period shall be imposed upon any person who, in any manner, or under any pretext, shall engage in the business or shall profit by prostitution or shall enlist the services of any other for the purpose of prostitution (As amended by Batas Pambansa Blg. 186.)

Art. 342. *Forcible abduction*. — The abduction of any woman against her will and with lewd designs shall be punished by reclusion temporal.

The same penalty shall be imposed in every case, if the female abducted be under twelve years of age.

Art. 343. *Consented abduction*. — The abduction of a virgin over twelve years and under eighteen years of age, carried out with her consent and with lewd designs, shall be punished by the penalty of prision correccional in its minimum and medium periods

**6. Do religious and customary laws impact upon the dealing of sexual violence against children?**

Art. 344. *Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness.* — The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes.

Art. 345. *Civil liability of persons guilty of crimes against chastity.* — Person guilty of rape, seduction or abduction, shall also be sentenced:

1. To indemnify the offended woman.
2. To acknowledge the offspring, unless the law should prevent him from so doing.
3. In every case to support the offspring.

Art. 346. *Liability of ascendants, guardians, teachers, or other persons entrusted with the custody of the offended party.* — The ascendants, guardians, curators, teachers and any person who, by abuse of authority or confidential relationships, shall cooperate as accomplices in the perpetration of the crimes embraced in chapters, second, third and fourth, of this title, shall be punished as principals.

Teachers or other persons in any other capacity entrusted with the education and guidance of youth, shall also suffer the penalty of temporary special disqualification in its maximum period to perpetual special disqualification.

Any person falling within the terms of this article, and any other person guilty of corruption of minors for the benefit of another, shall be punished by special disqualification from filling the office of guardian.

The 1987 Philippine Constitution states that the separation of Church and State shall be inviolable. Thus, none of our laws should be based on any religious law, doctrine, or teaching; otherwise, the separation of Church and State will be violated. However, in reality, religious practices may have an impact on how sexual violence against children are dealt with.

For culture / customs, the Constitution likewise provides that the State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies. Nonetheless, it is likewise provided that customs which are contrary to law, public order or public policy shall not be countenanced.

**7. Does domestic law reflect international laws and conventions regarding sexual 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 sexual violence against children:**

**(a) 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

**(b) What evidence is required to prove physical violence in a criminal prosecution?**

To prove 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.

**(c) If the prosecutor requires a child to testify against the alleged perpetrators of sexual 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,"

**(i) 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.

**(ii) 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.<sup>1</sup>

**(iii) 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.<sup>2</sup>

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.

**(iv) What other means of protection are available to children involved in prosecutions of sexual 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.

**(v) 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.<sup>3</sup> The Court may also order that the testimony of the child should be taken during a time when the child is well-rested.<sup>4</sup>

**9. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?**

The Expanded Anti-Trafficking in Persons Act grants power to the State to exercise jurisdiction over any act defined and penalized under said law, even if committed outside the Philippines and whether or not such act or acts constitute an offense at the place of commission, the crime being a continuing offense, having been commenced in the Philippines and other elements having been committed in another country, if the suspect or accused:

- a. Is a Filipino citizen; or
- b. Is a permanent resident of the Philippines; or
- c. Has committed the act against a citizen of the Philippines.

The Cybercrime Prevention Act penalizes child pornography, as defined under the Anti-Child Pornography Act, committed through a computer system.

<sup>1</sup> A.M. No. 004-07-SC, Sec. 25(f).

<sup>2</sup> A.M. No. 004-07-SC, Sec. 25 (f) and 27.

<sup>3</sup> Sec. 15.

<sup>4</sup> Sec. 14

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

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

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

Further, the law provides that the Regional Trial Court shall have jurisdiction over any violation of the provisions of this law, including any violation committed by a Filipino national regardless of the place of commission. Jurisdiction shall lie if any of the elements was committed within the Philippines or committed with the use of any computer system wholly or partly situated in the country, or when by such commission any damage is caused to a natural or juridical person who, at the time the offense was committed, was in the Philippines.

A child involved in the prosecution of cases of sexual 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.

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.<sup>5</sup>

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.<sup>6</sup> However, World Vision may assist the victims and their parents in locating a capable representative to file the Petition for Protection Order.

<sup>5</sup> RA 9262, Sec. 9.

<sup>6</sup> *Id.*



<p>(i) What criteria is World Vision required to satisfy and how does World Vision apply to be the guardian?</p>	<p>N/A</p>
<p>(ii) Can World Vision appoint a lawyer to assist the child?</p>	<p>No. However, World Vision may assist the child victim and their family in finding able legal representation.</p>
<p>(c) Can these other remedies be pursued at the same time as a criminal case?</p>	<p>Yes, the Petition for Protection Order may be filed as an independent action in any civil or criminal case involving violence.<sup>7</sup></p>
<p>(d) Do these remedies provide for an award of compensation to the child? If so, how is the amount of compensation determined?</p>	<p>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.</p> <p>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 pay slips (to prove loss of income), and other similar documents.</p>
<p>11. Which organisations provide pro bono legal services to help a child victim of sexual violence?</p>	<p>There are a number of government and private organizations who are able to provide pro bono legal services for child victims of sexual violence. Some of these are:</p> <ul style="list-style-type: none"> <li>(a) Integrated Bar of the Philippines</li> <li>(b) Ateneo Law School Legal Services Center</li> <li>(c) University of the Philippines Office of Legal Aid</li> <li>(d) San Beda Legal Aid Bureau</li> <li>(e) Free Legal Assistance Group ("FLAG")</li> <li>(f) Public Attorney's Office</li> <li>(g) Department of Social Welfare and Development</li> </ul> <p>Certain law firms are also able to provide pro bono legal services to child victims.</p>
<p>12. Do domestic laws prohibit:</p> <p>(a) consensual sex activities between minors (including sexting)?</p> <p>(b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)</p>	<p>No, domestic laws do not prohibit consensual sex activities between minors (including sexting). In fact, minors may even be exempted from criminal liability, depending on circumstances of each case.</p> <p>Act No. 3815 or the Revised Penal Code of the Philippines, as amended, penalizes as rape all forms of sexual activities with a person under 12 years of age. Under the law, the sexual activity is considered rape regardless of whether or not the person below 12 years old has given consent or not. Persons under 12 years of age are not legally able to consent to sexual activity.</p>

**13. If so, what are the penalties for violation of these laws?**

On the other hand, there is no law prohibiting consensual sexual activity with a minor aged 12 years old and above. However, the penalties for rape, when the victim is a minor (under 18 years of age), is considered aggravated if the offender is the parent, ascendant, stepparent, guardian, or relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

Lastly, rape is likewise aggravated if the victim is a child below 7 years old.

Under the Revised Penal Code, the penalty for rape is *reclusion perpetua* or life imprisonment. On the other hand, the penalties for rape, when there is an aggravating circumstance, is death. However, the imposition of death penalty is suspended under Republic Act No. 9346.

**14. Is there a policy mandate that a government agency be responsible for disseminating information to the public, especially children? (i.e., hot-line information, punishments, etc.)**

The Philippine National Police has created the Women and Children Protection Center ("**WCPC**"), which is mandated to initiate related advocacy measures and conduct public awareness campaigns.

# SINGAPORE

## 1. What is the definition of a child under domestic law in the context of sexual activities?

Under the Children and Young Persons Act (Chapter 38 of Singapore) ("**CYPA**"), a "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.

The Women's Charter (Chapter 353 of Singapore) ("**Women's Charter**") defines a child as a "child of the marriage who is below 21 years".

The Penal Code (Chapter 224 of Singapore) ("**Penal Code**") has no definition of a child, but there is legislation that deals with sexual offences involving minors of different ages.

## 2. Is there domestic legislation which deals with sexual violence against children?

Yes. Three legislation provide for this. These are the CYPA, the Women's Charter and the Penal Code.

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

There is no specific definition of "sexual violence" in these legislation. However, these legislation provide for different sexual and related offences against children and young persons. These can be considered sexual violence offences.

Section 7 of the CYPA provides that any person who, in public or private, commits any obscene or indecent act with any child or young person shall be guilty of an offence. It is also an offence for any person to abet the commission of, procure or attempt to procure the commission by any person of such an offence. Any person who procures or attempts to procure the commission of any obscene or indecent act by any child or young person also commits an offence. The punishment for such offences is a fine of up to S\$10,000 or imprisonment of up to 5 years or both. Penalties increase for subsequent convictions of the offences to a fine of up to S\$20,000 or to imprisonment of up to 7 years or both.

The Women's Charter criminalises the prostitution of girls. Examples of such offences are:

- selling, letting for hire or obtaining possession of any girl with intent that she be employed or used for the purpose of prostitution in or outside Singapore, which is punishable with imprisonment of up to 5 years and a fine of up to S\$10,000 (s 140(a));
- bringing into Singapore, receiving or harbouring any girl knowing or having reason to believe that she has been procured for prostitution, which is punishable with imprisonment of up to 5 years and a fine of up to S\$10,000 (s 140(d));
- detaining any girl against her will in a brothel, which is punishable with imprisonment of up to 5 years and a fine of up to S\$10,000 (s 140(g)/(h));

- trafficking any girl for the purpose of prostitution, which is punishable with imprisonment of up to 5 years and a fine of up to S\$10,000 (unless for the purpose of her marriage or adoption where such can be solemnized or made under Singapore law) (s 141);
- causing or encouraging the prostitution of a girl below the age of 18 years, or unlawful sexual penetration of a girl below the age of 16 years, which is punishable with a fine of up to S\$2,000 or to imprisonment of up to 3 years or both (s 145);
- knowingly lives wholly or in part on the earnings of prostitution of a girl, which is punishable with imprisonment of up to 5 years and a fine of up to S\$10,000 (s 146);
- operating or maintaining in Singapore, in the course of business, a remote communication service that offers or facilitates prostitution, which is punishable with a fine of up to S\$3,000 or to imprisonment of up to 3 years or both for the first offence, and a fine of up to S\$10,000 or to imprisonment of up to 5 years or both for subsequent offences. A 'remote communication services' means any website, web service or Internet application, any service using voice telephony, any service using a messaging system, or any other kind of electronic or technology for facilitating communication (s 146A).

The Women's Charter also makes it any offence for any person to have sexual intercourse with a girl below the age of 16 years (even with her consent) unless she is the spouse and has consented. This is punishable with imprisonment of up to 5 years and a fine of up to S\$10,000.

Other than the above, there is a slew of offences in the Penal Code criminalising the following:

- rape (s 375), which is sexual penetration without consent and with consent where the woman is below 14 years of age, which is punishable with imprisonment of up to 20 years and a fine or caning. Acts of sexual penetration are also offences where the victim is below the age of 16 even where there was consent (unless she is the spouse and has consented) and, unless found guilty for rape (see penalty above), if committed against (i) a person above 14 but below 16 years of age, in a case where the offender is in an exploitative relationship, shall be punishable with imprisonment of up to 20 years and to a fine or caning and, in any other case, with imprisonment for up to 10 years or with a fine or both or (ii) a person under 14 years of age, shall be punishable with imprisonment of up to 20 years and to a fine or caning;
- it is also an offence under s 376AA where a person is in a relationship that is exploitative of a person between the age of 16 and 18 years of age and commits sexual penetration of the person, even where there was consent, which is punishable with imprisonment of up to 15 years and a fine or caning. In deciding whether an exploitative relationship is present, regard is given to the age of the minor, the age difference between the minor and the suspect, the nature of the relationship and the degree of control or influence exercised;
- commercial sex (meaning payment is made for sexual services) with a person who is under 18 years of age, which is punishable with imprisonment of up to 7 years or with fine or both. Communicating with another person for the purpose of commercial sex with a person under 18 years of age is also an offence, which is punishable with imprisonment of up to 2 years or a fine or both. These offences (under section 376B of the Penal Code) are extra territorial as against a citizen or permanent resident of Singapore, in that such a person who does any act outside Singapore that would constitute an offence under section 376B of the Penal Code, shall be guilty of an offence;

#### 4. In particular, do domestic laws prohibit:

##### (a) child marriage as a form of sexual violence?

- organising any travel arrangements for any other person in or outside Singapore to facilitate commercial sex with a person below 18 years of age, which is punishable with imprisonment of up to 10 years or with a fine or both (s 376D). The printing, publication or distribution of any information intended to promote such conduct, or assisting any other person, in such conduct, is also an offence;
- grooming (whether in or outside Singapore) of a person under 16 years old age so as to involve such a person in sexual offences under the Penal Code (ss 376E/376EA), CYPA or prostitution offences under the Women's Charter, which are punishable (i) if committed against a victim below 14 years of age, with imprisonment of up to 4 years or with a fine or both or (ii) in any other case, with imprisonment of up to 3 years or with a fine or both;
- sexual communication with a person below 16 years of age, which is for the purpose of obtaining sexual gratification or of causing humiliation, alarm or distress (ss 376EB/376EC), which is punishable (i) if committed against a victim below 14 years of age, with imprisonment of up to 3 years or with a fine or both or (ii) in any other case, with imprisonment of up to 2 years or with a fine or both; and
- engaging in sexual activity in the presence of a person below 16 years or causing such a person to observe a sexual image (ss 376ED/376EE), which is punishable (i) if committed against a victim below 14 years of age, with imprisonment of up to 3 years or with a fine or both or (ii) in any other case, with imprisonment of up to 1 year or with a fine or both.

No, there is no such specific prohibition as a form of sexual violence. However, under the Women's Charter, a marriage solemnized in Singapore or elsewhere between persons below the age of 18 years is void, unless a special marriage licence has been granted by the Minister.

Whether a person below the age of 18 is married or not, sexual offences may be made out if the facts satisfy the elements of the offences provide in the various legislation. However, s 375(4) of the Penal Code enables a man to have sexual relations with his spouse who is under 14 years of age, with the consent of that spouse.

##### (b) child trafficking?

Yes. The following legislation criminalises human trafficking:

- (a) the Prevention of Human Trafficking Act 2014 (No. 45 of 2014) ("**PHTA**");
- (b) the CYPA;
- (c) the Penal Code; and
- (d) the Women's Charter.

Under the PHTA, a "child" means an individual below the age of 18 years and it is an offence for any person to recruit, transport, transfer, harbour or receive a child for the purpose of the exploitation (whether in Singapore or elsewhere) of the child. It does not matter whether the act of child trafficking is done partly in and partly outside Singapore provided that the act, if done wholly in Singapore, would constitute an offence under the PHTA. It also constitutes an offence to abet the trafficking of a child (such as by instructing, providing or arranging any form of financing, transport, shelter, accommodation or any other facility or doing any act to promote the exploitation of the child, with intent to facilitate the offence) or to receive any payment in connection with the exploitation in Singapore of a trafficked victim.

**(c) pornography (including online pornography)?**

Under the CYPA, a “child” means a person who is below the age of 14 years and the unlawful transfer of possession, custody or control of a child, importation of a child under any false pretence, false representations or fraudulent or deceitful means made or used either within or outside Singapore and sexual exploitation of children are offences.

Under the Penal Code the following constitute offences:

- the importing, exporting, removing, buying, selling, disposing, trafficking or dealing with any person as a slave, or accepting, receiving or detaining against his will, any person as a slave (whether habitually or not); and
- the selling, letting to hire, or otherwise disposing of or buying, hiring or otherwise obtaining possession of any person under the age of 21 years with intent, or knowing it likely, that such person be employed or used for prostitution, illicit intercourse or for any unlawful and immoral purpose.

Under the Women’s Charter, it shall be an offence for any person who buys, sells, procures, traffics in, or brings into or takes out of Singapore for the purpose of such traffic any woman or girl (whether or not for the purpose of prostitution). There are also offences in the Women’s Charter related to prostitution and importation of women or girls by false pretences.

It is an offence under the Films Act (Chapter 107 of Singapore) for any person to make or reproduce, import, distribute or exhibit any obscene film. Such prohibition also extends to possession and advertisement of an obscene film. The punishment is more severe on any individual who causes or procures any child to commit or abet in the commission of any of these offences.

The Penal Code prohibits any sale, import and, among others, advertisement of obscene books, with increased punishment if the book depicts an image of a person who appears to be below 16 years of age. In this regard there is some overlap with the Undesirable Publications Act (Chapter 338 of Singapore) where a similar prohibition applies in respect of all “publications”, including books.

It should also be pointed out that the word “obscene” means any thing or matter the effect of which is to tend to deprave or corrupt persons who are likely to see or hear the thing or matter in question.

Recently, new laws on the subject have also come into effect under the Penal Code. The Penal Code now make it offences to produce, distribute, sell, seek, possess or gain access to “child abuse material”, which is broadly defined to include pornography involving a person below 16 years of age.

The Internet Code of Practice promulgated by the Info-communications Media Development Authority requires all internet service providers and content providers licensed under the Broadcasting Act (Chapter 28 of Singapore) to use his best efforts to ensure that prohibited material (which by its definition would in most circumstances include pornography) is not broadcast via the Internet to users in Singapore.

**(d) sexual acts between an adult and a child, conducted with the consent of the parents or guardians of the child?**

Under the Penal Code, consent by a guardian or other person having lawful charge of a child (under 12 years of age) does not validate the abetment of any offence. The offences relating to sexual acts between an adult male and a child apply whether or not the child has given his or her consent, with the exception where they are married (see s 375(4) of the Penal Code).

(e) all sexual acts between an adult and a child? What is the minimum age at which a young person is legally capable of providing consent?

The Penal Code prohibits sexual acts between an adult and a person under 14 years of age, above 14 but below 16 years of age and above 16 but below 18 years of age with varying degrees of punishment. The minimum age at which a young person is legally capable of providing consent is 18.

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

Please see the responses to question 3 above.

6. Do religious and customary laws impact upon the dealing of sexual violence against children?

No. However, it is worthwhile to note that the Administration of Muslim Law Act ("**AMLA**") is the main codified law that governs matters relating to marriage and family relations of the Muslim minority community in Singapore. Muslim law, as set out in the AMLA, is administered by various agencies including the Islamic Religious Council of Singapore ("**MUIS**"), the Shari'ah courts and the Registry of Muslim Marriages ("**ROMM**").

7. Does domestic law reflect international laws and conventions regarding sexual 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?

Singapore has ratified the UN Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. It has not ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women or the Optional Protocol to the Convention on the Rights of the Child.

Under the Penal Code, rape is defined in terms of non-consensual sexual penetration. The Committee on the Elimination of All Forms of Discrimination against Women has recommended the revision of the Penal Code to ensure that the definition of rape includes any non-consensual sexual act.

Section 375(4) of the Penal Code enables a man to have sexual relations with his spouse who is under 14 years of age, with the consent of that spouse. The Committee on the Rights of the Child has recommended the removal of this provision.

8. In criminal prosecutions of sexual violence against children:

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

The main agency dealing with violence against children, including sexual violence, is the Child Protection Service ("**CPS**") under the Ministry of Social & Family Development ("**MSF**"). The Singapore Police Force may also refer cases to the prosecutor.

(b) What evidence is required to prove physical violence in a criminal prosecution?

The prosecution bears the burden of proof. As such, the prosecution has to prove its case beyond reasonable doubt. Such evidence may include testimony in court (from the victim or other witnesses), medical reports of injuries, police reports made by the victim or other witnesses, dated pictures of the injuries.

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



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

Under Singapore law, all witnesses that are competent to give evidence are compellable. Under s 120 of the Evidence Act (Chapter 97 of Singapore) ("**Evidence Act**"), all witnesses are competent to give evidence unless the court considers that they are prevented from understanding the questions put to them or giving rational answers due to tender age or mental infirmity.

As such, the prosecution can compel the child to testify unless the court considers that they are prevented from understanding the questions put to them or giving rational answers by reason of his or her tender age.

There are however some safeguards to protect the identity of child witnesses. Section 35 of the CYPA prohibits the publication of any information that may lead to the identification of any child or young person involved in any court proceedings either as being the person against or in respect of whom the proceedings are taken or as witnesses. The publication or broadcasting of any pictures of or which includes any child or young person involved in any court proceedings is also prohibited.

In addition, under section 7 of the State Courts Act (Chapter 321 of Singapore) ("**SCA**") and section 8 of the Supreme Court of Judicature Act (Chapter 322 of Singapore) ("**SCJA**"), the court is empowered to make a gag order to prevent the publication of the identity of the accused person in cases where the child witness is related to the accused in order to protect the anonymity of the witness.

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

If the accused is charged with a sexual offence or a child abuse offence, then the court must order that the evidence of the victim be given in camera and via video link, as provided under section 281B of the Evidence Act.

Further, an application can be made under section 281 of the Criminal Procedure Code (Chapter 68 of Singapore) ("**CPC**") for evidence to be given via video link in a criminal proceeding.

It is also provided under section 8 of the SCJA that the Court has the power to hear certain proceedings in camera if the Court is satisfied that it is expedient in the interests of justice to do so. (see also section 153(3) Women's Charter and section 7(2) SCA).

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

No. The court may however make an order allowing the witness to give evidence while prevented by a shielding measure from seeing the accused, as provided under section 281A of the CPC.

**(iv) What other means of protection are available to children involved in prosecutions of sexual violence?**

There are 3 regimes available for the protection of children subjected to sexual violence:

**1. The Personal Protection Order ("PPO") regime under the Women's Charter**

Under section 65 of the Women's Charter, the court may grant a PPO where a family member has been subjected to, or is likely to be subjected to, family violence. A family member, which extends to any relatives who in the opinion of the court should be regarded as a member of the family of the person, may apply for a personal protection order for a victim of family violence. If there is imminent danger to the victim, under section 66 of the Women's Charter, the Court may grant an Expedited Order, which can be granted as fast as the day of the application. A breach of the Personal Protection Order is an arrestable criminal offence, which means that the aggressor may be arrested by the police without a warrant if he or she is in breach of the conditions of the PPO.

**(v) Can the child be required to testify more than once?**

**9. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?**

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

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

## **2. The Enhanced Care and Protection Order under the CYPA**

In cases where the Court have assessed that some families are not fit to care for the child and that it is not appropriate to place the child under the care of these families, then the Court may order for the child to be placed under the care of other caregivers, such as foster parents. In such cases, the new Enhanced Care and Protection Order (ECPO) empowers caregivers such as foster parents to make day-to-day, as well as more substantive decisions for the child that would normally require parental consent.

## **3. Removal of child or young person to place of temporary care and protection**

Under section 9 of the CYPA, social welfare officers, as authorised by the Director of Social Welfare, may remove a child or young person to place of temporary care and protection without warrant if the Director of a police officer is satisfied on reasonable grounds that the child is in need of care or protection.

There is no special provision that caters to evidence given by witnesses who are children and victims of abuse. As such, a child can be required to testify more than once. However, like any other criminal proceedings, there must be sufficient reason to justify the child to give a second testimony.

Sections 376C and 377BO of the Penal Code gives extra-territorial effect to the offences relating to child sex tourism and child pornography. Both provisions make it an offence for a Singapore citizen or permanent resident to commit those offences outside of Singapore.

Section 12(2) of the CYPA makes it an offence for any person to harbour or have in his possession, custody or control any child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person within or outside Singapore without lawful authority or excuse.

The court may make a compensation order, requiring a convicted offender to make compensation to his victim as provided under section 359 of the CPC. This is subject to the court's discretion and the victim cannot apply for this remedy.

Under the PPO regime, as provided under the Women's Charter, a family member can apply for the PPO. A "family member" as defined under the Women's Charter, extends beyond immediate family members and includes any relatives who in the opinion of the court should be regarded as a member of the family of the person.

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

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

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

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

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

**11. Which organisations provide pro bono legal services to help a child victim of sexual violence?**

**12. Do domestic laws prohibit:**

**(a) consensual sex activities between minors (including sexting)?**

Currently, the law does not permit organisations to be the legal guardian of the child. As such, World Vision would not have the locus standi to apply for PPO or maintenance of the child under the Women's Charter.

As stated above, under section 9 of the CYP, social welfare officers, as authorised by the Director of Social Welfare, may remove a child or young person to place of temporary care and protection without warrant if the Director of a police officer is satisfied on reasonable grounds that the child is in need of care or protection.

A child placed under such temporary care and protection may be placed under the care of foster parents. Foster parents have to be married and their applications will be reviewed by MSF or its appointed agencies.

Not applicable.

Yes, though a child lacks the legal capacity to bring, defend, conduct or intervene in any legal proceeding if he has not attained the age of 18 years (see section 36, Civil Law Act).

Yes, these remedies (the PPO and the ECPO) can be pursued outside of or in parallel with criminal proceedings.

Not directly. It should be noted that section 69(2) of the Women's Charter provides for a parent's legal obligation to provide for the maintenance of a child. Such application can be made by the legal guardian of the child or by the child's siblings who has attained the age of 21 years. As such, a parent, who had abused his or her child, can be legally compelled to provide maintenance for the child under the Women's Charter.

Singapore Children's Society: <https://www.childrensociety.org.sg/society-overview>

Legal Aid Bureau: <https://lab.mlaw.gov.sg/>

Association of Women for Action and Research (AWARE): [www.aware.org.sg](http://www.aware.org.sg)

Yes. Generally, the laws for consensual sex between minors and that of a minor and an adult are similar. Nonetheless, it is not clear cut as to how judges in Singapore will mete out the punishments. It is made on a case by case basis.

Some offences involving a minor under the Penal Code however can only be committed by a person of or above 18 years old. This includes sexual grooming (ss 376E/ 376EA); sexual communication (ss 376EB/ 376EC); and exposing a minor to a sexual activity or image (ss 376ED/ 376EE).

**(b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)**

**13. If so, what are the penalties for violation of these laws?**

Generally except where a minor is married as s 375(4) of the Penal Code enables a man to have sexual relations with his spouse who is under 14 years of age, with the consent of that spouse.

(Minors and Adults)

1. The legal age to have sex in Singapore is 16 years old. This means that it is a punishable offence to have sex (whether vaginal, oral or anal) with persons below 16 years old, as stated in section 376A of the Singapore Penal Code.
2. The genders of the parties do not matter. It also does not matter whether the minor had consented to having sex.
3. Sending sexually suggestive messages to a person under 16 years old may result in a prosecution under section 7 of the CYPA or section 376E of the Penal Code.
4. The penalties for a person found guilty of having underage sex depends on the age of the minor:
  - (a) If the minor was between 14 years old and 16 years old, the offender can be jailed up to 20 years, and either fined or caned, if the offender was in an exploitative relationship with the minor. (See below for what it means to be in an exploitative relationship.) If the parties were not in such a relationship, the offender can be fined and/or jailed up to 10 years.
  - (b) If the minor was under 14 years old, the offender can be jailed up to 20 years, and either fined or caned. If the parties were of the opposite sex and the girl was under 14, the man can be convicted of rape instead (see below).

If the minor was between 16 and 18 years old, the offender could also be charged if the parties were in an exploitative relationship.

**14. Is there a policy mandate that a government agency be responsible for disseminating information to the public, especially children? (i.e., hot-line information, punishments, etc.)**

MSF actively disseminates and provides information around child abuse. In particular, MSF trains community and grassroots bodies like Singapore Indian Development Association and MUIS, also known as the Islamic Religious Council of Singapore to detect and manage abuse cases

# TAIWAN

1. What is the definition of a child under domestic law in the context of sexual activities?

- Under *The Protection of Children and Youth Welfare and Rights Act*, a "child" is any person under the age of 12, and a "youth" is any person between the ages of 12 and 18.
- The *Criminal Code* does not specifically define a "child" but contains statutory rape provisions that punish a person who has sexual intercourse with a male or female under the age of 16. More severe punishments would be imposed if a child is under the age of 14.

2. Is there domestic legislation which deals with sexual violence against children?

*The Child and Youth Sexual Exploitation Prevention Act*, the *Protection of Children and Youth Welfare and Rights Act*, and the *Criminal Code* contain provisions that deal with sexual violence against children.

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

Article 2 of the *Child and Youth Sexual Exploitation Prevention Act* prohibits the following:

- Causing a child or youth to engage in sexual intercourse or obscene acts in exchange for monetary reward or other consideration;
- Using a child or youth to engage in sexual intercourse or obscene acts for others to watch;
- Filming a child or youth engaging in sexual intercourse or obscene acts, or producing pictures, photographs, films, videotapes, compact disks, electronic signals or other objects that show a child or youth engaging in sexual intercourse or obscene acts; and
- Causing a child or youth to act as a host/hostess in a bar or club, or engage in acts associated with escorting, singing, or dancing companion services that involve sexual activities.

Article 49 of *The Protection of Children and Youth Welfare and Rights Act* prohibits any person from forcing, seducing, acting as brokers for, children and youth to undertake obscene or sexual acts.

The *Criminal Code* prohibits any person from having or attempting to have sexual intercourse with or committing an obscene act against, a minor under the age of 16.

4. In particular, do domestic laws prohibit:

(a) child marriage as a form of sexual violence?

There is no specific prohibition of child marriage as a form of sexual violence. However, child marriage is restricted or prohibited in the following ways:

- *Civil Code*: The legal age to marry in Taiwan is 18 for men and 16 for women. However, men and women under the age of 20 require the consent of their statutory agents (such as parents or guardians) to marry.

**(b) child trafficking?**

- *The Protection of Children and Youth Welfare and Rights Act* prohibits the coercion of a child (under the age of 18) to marry and imposes fines on perpetrators.
- A person who marries a child or assists in performing a child marriage by means of fraud, seduction or abduction, violates the *Criminal Code's* provisions.

Yes. *Human Trafficking Prevention Act* and *Child and Youth Sexual Exploitation Prevention Act* both prohibit child trafficking.

In addition, pursuant to the *Criminal Code*, any person who transports an abducted child or youth under the age of 20 beyond the jurisdiction of Taiwan will be sentenced to imprisonment for no less than seven years.

**(c) pornography (including online pornography)?**

Yes. Article 235 of the *Criminal Code* prohibits distributing, broadcasting, selling, publicly displaying, or by other means, showing pornography.

Additionally, Articles 35 and 36 of *The Child and Youth Sexual Exploitation Prevention Act* prohibit child pornography and impose more severe punishments.

**(d) sexual acts between an adult and a child, conducted with the consent of the parents or guardians of the child?**

Yes. Sexual acts with a minor under the age of 16 are prohibited under the *Criminal Code* regardless of whether the consent of the minor or his or her parents/guardians has been obtained. Persons violating such prohibitions will be sentenced to imprisonment.

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

Under the *Criminal Code*, the penalties are as follows:

- Article 227:  
Have or attempt to have sexual intercourse with
  - a) a minor under the age of 14: the perpetrator would be subject to 3 to 10 years of imprisonment.
  - b) a minor over the age of 14 but under the age of 16: the perpetrator would be subject to no more than 7 years of imprisonment.
- Commit an obscene act against
  - a) a minor under the age of 14: the perpetrator would be subject to 6 months to 5 years of imprisonment.
  - b) a minor over the age of 14 but under the age of 16: the perpetrator would be subject to no more than 3 years of imprisonment.
- Subparagraph 2, Paragraph 1, Article 222:  
Have or attempt to have sexual intercourse with a minor under the age of 14 against his/her will: the perpetrator would be subject to no less than 7 years of imprisonment.

Under the *Child and Youth Sexual Exploitation Prevention Act*:

- Paragraph 2, Article 31:  
Having sexual intercourse or conducting obscene acts with minors above the age of 16 in exchange for monetary or other considerations: the perpetrator would be subject to imprisonment for no more than 3 years, detention, or a fine of no more than NT\$100,000.

**6. Do religious and customary laws impact upon the dealing of sexual violence against children?**

**7. Does domestic law reflect international laws and conventions regarding sexual 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?**

**8. In criminal prosecutions of sexual violence against children:**

■ Paragraph 1, Article 33:

Causing a child or youth to engage in sexual intercourse or obscene acts by means of violence, coercion, intimidation, control, drugs, or other means that would his/her free will: the perpetrator would be subject to imprisonment for no less than 7 years, or in addition thereto, a fine of up to NT\$7,000,000.

■ Paragraph 1, Article 35:

Causing a child/youth to engage in sexual intercourse or obscene acts for others to watch through recruitment, seduction, exploitation, or other means: the perpetrator would be subject to imprisonment for 1 to 7 years, or in addition thereto, a fine of up to NT\$500,000.

■ Paragraph 1, Article 36:

Filming or producing child/youth pornography: the perpetrator would be subject to imprisonment for 1 to 7 years, or in addition thereto, a fine of up to NT\$1,000,000.

■ Paragraph 1, Article 38:

Distributing, broadcasting, selling, or publicly displaying child/youth pornography: the perpetrator would be subject to imprisonment for not more than 3 years, or in addition thereto, a fine of up to NT\$5,000,000.

■ Paragraph 1, Article 45:

Using a child/youth as a host/hostess in a bar, club, or for such services as escorting, singing or dancing that involve sexual activities: the perpetrator would be subject to a fine of NT\$60,000 to 300,000, and in the case where the perpetrator is an entity, it would be required to make improvements within a specified period of time, failure of which, its business could be suspended.

In general, persons who commit or aid in performing the offences above or other sexual exploitation offenses are all subject to long-term imprisonment or heavy fines.

No, sexual violence in Taiwan is governed by the regulations mentioned herein. Religious laws and customary laws play no part in dealing with sexual violence.

Yes, the UN Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women are reflected in domestic law/legislation.



**(a) What agency or agencies have the authority to refer a case to the prosecutor?**

Article 7 of *The Child and Youth Sexual Exploitation Prevention Act* provides a list:

- Medical personnel
- Social workers
- Educational personnel
- Caregivers
- Immigrant management personnel
- Employees of immigration service agencies
- Household registration personnel
- Village officers
- Police officers
- Judicial officers
- Employees of tourism businesses
- Employees of electronic game arcade businesses
- Employees of computer entertainment businesses
- Employment service personnel
- Other personnel carrying out child or youth welfare services

**(b) What evidence is required to prove sexual violence in a criminal prosecution?**

A diagnosis certificate provided by a doctor from a clinic or hospital is the most common evidence accepted in a sexual violence case. Other evidence that proves and indicates the circumstances, based on injuries arising from sexual violence, would also help. In addition, testimony made by victims and children may not be used as a sole basis to convict an accused perpetrator. Corroborating evidence is very often required by courts.

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

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

- If the prosecutor does not summon the child or minor victim to testify as a witness, but just identifies the child or minor as a victim, this victim can refuse to testify. However, if the victim refuses to testify, it would be more difficult for the prosecutor to build a case.
- Nevertheless, if the prosecutor summons the child or minor victim to testify as a witness, the victim only has limited grounds to refuse to testify that include:
  - certain relationship with the alleged sexual abuser; and
  - self-incrimination.

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

- Yes. It is within the prosecutor or judge's authority under the *Sexual Assault Crime Prevention Act* to allow a victim to testify via video link from another room or any other appropriate methods that can achieve the goal of separating the victim from the defendant.
- In addition, any sexual abused victims located outside the country may testify through audiovisual telecommunications equipment in a Taiwan embassy or representative office

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

Yes. Under the *Sexual Assault Crime Prevention Act*, the statements of a child victim to prosecutors or police officers during an investigation can be admitted as evidence into a court without a court appearance.

(iv) What other means of protection are available to children involved in prosecutions of sexual violence?

*The Child and Youth Sexual Exploitation Prevention Act* requires the competent authorities to:

- Provide an appropriate place for emergency placement, protection, services, and assistance, if necessary, upon discovering or rescuing a child victim. (Article 15);
- Apply for a court order to extend placement within 72 hours of such placement if deemed necessary. (Article 16);
- The placement can be in a welfare institution, a foster family, a transition school, or another appropriate medical or educational institution. The placement can be extended to, at most, when the victim reaches 20 years old, but only if it is deemed necessary after an evaluation every three months, and must have a court order to do so;
- During an investigation or a trial, ensure the child victim's safety; proper isolation procedures may be used if necessary, whether it is inside or outside the court. (Article 12); and
- The protective order under the *Witness Protection Act* can also be issued to a child victim. (Article 11)

(v) Can the child be required to testify more than once?

In general, a child victim should only be asked to testify once. Child victims should be accompanied by a social worker in a separate and private room during an investigation or trial, and the testimony should be recorded in order to avoid repeated examination. The judge should examine the video recordings first, and should not summon the victim unless it is necessary.

9. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?

*The Human Trafficking Prevention Act* provides protection (emergency placement, temporary visitor/work permit, etc.) for human trafficking and sexual exploitation victims, and punishes traffickers with years in prison and heavy fines (up to NT\$7,000,000). Those fines would be provided as compensation to victims. Moreover, the Taiwan government has been cooperating closely with other countries on this issue, and has signed memorandum of understandings concerning cooperation in immigration affairs and human trafficking prevention with 20 countries, including U.S.A., Belgium, Japan, Vietnam, Indonesia, Mongolia, Guatemala, Honduras, etc.

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

Please refer to our response in 8(c)(iv).

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

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

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

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

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

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

- *The Child and Youth Sexual Exploitation Prevention Act* requires competent authorities to investigate and decide whether to pursue the relevant remedies and/or provide other assistance for child victims.
- In cases where parents are not suitable to be guardians, a court may appoint 1) the department of social welfare of the local government where the child resides; or 2) a social welfare institute to be the child's guardian.
- Unless approved by the court, the local World Vision organization cannot be regarded as the guardian of a child or minor victim.
- However, with the approval of a child, minor victim, or his/her guardian appointed by the court, the local World Vision organization could assist in appointing a lawyer on behalf of the victim.

There is no law that allows an institution to apply to be the guardian of a child. However, if a court finds that appointing World Vision as the guardian is in the best interests of a child, it may do so. But usually courts would only appoint government institutions as guardians.

- With the approval of a child, minor victim, or his/her guardian appointed by the court, the local World Vision organization could assist in appointing a lawyer on behalf of the victim.
- Under the Taiwan legal system, criminal cases and civil cases are separate and are reviewed and investigated by different courts. Usually, the injured party/victim is the one to initiate both civil and criminal action separately.
- Notwithstanding, under current criminal proceedings, if the injured party files a criminal complaint against the perpetrator, the injured party may also initiate a civil action against the perpetrator alongside the criminal procedure. In this case, a victim does not have to pay court fees for initiating the supplementary civil action that is normally required in a standalone civil lawsuit.
- Under Taiwan laws, compensation is limited to monetary compensation for actual injury and the losses suffered by victims. The courts grant compensation to the extent that damages can be proven. The victim may also request for compensation for the pain suffered by the victim as a result of severe damage to their body, health, reputation, liberty, credit, privacy, or chastity.
- According to recent court judgments, the courts generally take into account the circumstances of the case including the circumstances surrounding the victims, the status, position, the financial condition of the victims and perpetrator, to determine the proper compensation amount.

**11. Which organizations provide pro bono legal services to help a child victim of sexual violence?**

- Legal Aid Foundation (法律扶助基金會)
- Awakening Foundation (婦女新知基金會)
- Taipei Women's Rescue Foundation (婦女救援基金會)

## 12. Do domestic laws prohibit:

### (a) consensual sex activities between minors (including sexting)?

- Modern Women's Foundation (現代婦女基金會)
  - The Garden of Hope Foundation (勵馨社會福利事業基金會)
- 
- Article 227 of the *Criminal Code* defines two sexual offenses against persons under the age of 16:
    - Having or attempting to have sexual intercourse with a person under the age of 16, *with or without consent*.
    - Committing an obscene act, e.g. sexting, against a person under the age of sixteen, *with or without consent*.
  - Minors who have reached the age of 12 that commit the above crimes will be subject to the *Juvenile Delinquency Act* instead of the *Criminal Code*. Juvenile protective measures will be substituted for criminal penalties.
  - Minors above the age of 14 (the threshold age of criminal capability in Taiwan) may still be charged with the above crimes and transferred to the prosecutor if the Juvenile Court finds the offense serious and a criminal disposition proper based on the results of the investigation and the juvenile's character, personality, and experience.
  - For minors above the age of 16, *consensual* sexual activities are not forbidden by the law, except for the case of child/youth sexual exploitation as mentioned above.
  - If the sexual activities between minors involve the exchange of money or other consideration, or are considered as other types of sexual exploitation, both the *Juvenile Delinquency Act* and *The Child and Youth Sexual Exploitation Prevention Act* would apply to the perpetrator, even though there might be mutual consent.

### (b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)

- Sexual activities between minors under the age of 16 and adults, with or without consent, are considered crimes under Article 227 of the *Criminal Code*.
- For people above the age of 16, consensual sexual activities are not forbidden by law, except for the case of child/youth sexual exploitation.
- Adults who conduct "child/youth sexual exploitation" or try to induce child/youth into such situations would be punishable under *The Child and Youth Sexual Exploitation Prevention Act*.

## 13. If so, what are the penalties for violation of these laws?

- The applicable laws and penalties are different based on the offenses and the age of the perpetrators.
  - Perpetrators under the age of 12: incapable of being charged criminally.
  - Perpetrators between the ages of 12 and 14: the *Juvenile Delinquency Act* applies and the perpetrators will be subject to a trial by a Juvenile Court. The penalties will be correctional measures like warning, guidance counseling, probation, labor services, sending to a proper welfare or correction institute.
  - Perpetrators between the ages of 14 and 18: the *Juvenile Delinquency Act* applies and perpetrators will be subject to a trial by a Juvenile Court (may be transferred to a prosecutor for criminal charges if the Juvenile Court found the offense serious and a criminal disposition proper based on the result of the investigation and the juvenile's character, personality, and experience, but the investigation/prosecution/trial needs to follow the procedure in the *Juvenile Delinquency Act*). The penalties would be correctional measures. If transferred to a prosecutor, the perpetrator may be sentenced to imprisonment (the statutory terms are the same as adults), but the punishment shall be reduced or remitted for minor offenders (Article 227-1 of the *Criminal Code*).

**14. Is there a policy mandate that a government agency be responsible for disseminating information to the public, especially children? (i.e., hot-line information, punishments, etc.)**

- For offenders over the age of 18: please refer to our response to Q5 above.
- Concerning the penalties for violation of *The Child and Youth Sexual Exploitation Prevention Act*, please refer to our response to Q5 for detail information.
- There is no policy mandate in Taiwan that a certain government agency be responsible for disseminating information to the public. Instead, each government agency should be responsible for disseminating the information it governs.
- According to Article 7 of *The Protection of Children and Youth Welfare and Rights Act*, authorized government agencies should cooperate with different competent government agencies on matters relating to the welfare of children and youth. The competent government agencies include, but are not limited to, agencies in charge of health, education or labor, etc. Each agency will disseminate relevant information to the public.

# THAILAND

## 1. What is the definition of a child under domestic law in the context of sexual activities?

Under the Child Protection Act B.E. 2546 (2003) (the "**Child Protection Act**"), the definition of a "child" means **a person who is under the age of 18 years**, unless such person becomes *sui juris* through the act of marriage<sup>1</sup>.

### Note:

*The Criminal Code Amendment Act (No. 19) B.E. 2550 (2007) expanded the definition of statutory rape to cover sex with a person under 15 years old of any sex, whereby consent is not a defence.*

*The age of consent in Thailand is **15 years old**. The age of consent is the minimum age at which an individual is considered legally old enough to consent to participate in sexual activity. Individuals below the age of 15 in Thailand are not legally able to consent to sexual activity, and such activity may result in prosecution for **statutory rape**.*

*Thailand's statutory rape law is violated when an individual has consensual sexual intercourse with a person under the age of 15. However, sex with a minor under the age of 18 may also be a compoundable offence, regardless of consent.*

## 2. Is there domestic legislation which deals with sexual violence against children?

Thailand has two main legislations which deal with sexual violence against children, namely:

### 1. The Child Protection Act

**Sections 26 of the Child Protection Act** stipulates that, irrespective of whether the child consents or not, no person may act or refrain from acting in a manner which is an "abusive act" towards the body or mind of the child.

The term "abusive act" is defined broadly under the Child Protection Act to include any acts which endanger the physical or mental wellbeing of the child, as well as sexual offences which are committed against the child.

### 2. The Criminal Code

**The Criminal Code as the latest Amended (No. 27) B.E. 2562 (2019)** also stipulates several provisions in relation to sexual violence against children, which includes (but is not limited to):

- (a) Section 277 stipulates that **whoever has sexual intercourse with a child whose age does not exceed 15 years (and whereby the child is not such person's wife or husband)**, irrespective of whether such child shall consent or not, shall be punished with imprisonment of 5 to 20 years and a fine of Baht 100,000 to 400,000.

<sup>1</sup> **Section 1448 of the Civil and Commercial Code** stipulates that a marriage can take place only when the man and woman are both seventeen years of age. But the courts may, where there is an appropriate reason, allow them to marry before attaining such an age.

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

4. In particular, do domestic laws prohibit:

(a) child marriage as a form of sexual violence?

(b) child trafficking?

If the commission of the offence according to the first paragraph is committed **against a child whose age does not exceed 13 years**, the offender shall be punished with imprisonment of 7 to 20 years and a fine of Baht 140,000 to 400,000, or imprisonment for life.

(b) Section 278 stipulates that whoever commits **an indecent act against a person over 15 years of age** by threatening through any means, by doing any act of violence, whereby such person is not in the condition to resist, or by causing such person to mistake him/her for another person, shall be punished with imprisonment for a term not exceeding 10 years, or a fine not exceeding Baht 200,000, or both.

(c) Section 279 stipulates that whoever commits **an indecent act against a child whose age does not exceed 15 years**, irrespective of whether such child shall consent or not, shall be punished with imprisonment for a term not exceeding 10 years, or a fine not exceeding Baht 200,000, or both.

If the commission of the offence according to the first paragraph is committed **against a child whose age does not exceed 13 years**, then the offender shall be punished with imprisonment of 1 to 10 years, or a fine of Baht 20,000 to 200,000, or both.

If in the commission of the above offences, the offender commits it by threatening through any means, by doing any act of violence, whereby such child is not in the condition to resist, or by causing such child to mistake him/her for another person, then the offender shall be punished with imprisonment of 1 to 15 years, or a fine of Baht 20,000 to 300,000, or both.

There does not appear to be any specific definition for the term "sexual violence" under the relevant laws.

Notwithstanding the foregoing, as noted under our responses to Question 2 above, the Child Protection Act broadly defines any acts which are abusive to include sexual offences which are committed against children.

Moreover, the Penal Code also specifically stipulates offences for sexual intercourse with, and indecent acts against, children.

The relevant laws do not appear to specifically prohibit child marriage as a form of sexual violence.

Notwithstanding the foregoing, as noted in our response to Question 1 above, the Civil and Commercial Code itself provides that a marriage can take place only when the man and woman are both seventeen years of age. However, the courts may allow them to marry before attaining such an age where there is an appropriate reason to do so.

The Prevention and Suppression of Human Trafficking Act B.E. 2551 (2008), as amended by the Prevention and Suppression of Human Trafficking Act (No. 2) B.E. 2558 (2015), and the Prevention and Suppression of Human Trafficking Act (No. 3) B.E. 2560 (2017) (collectively, the "**Anti-Trafficking Act**") is the primary piece of legislation combatting human trafficking in Thailand.



The Anti-Trafficking Act, while not explicitly established to solely combat the trafficking of children, does have sections covering the issue. The latest amendment provided clarifications and added provisions which have increased protection for children under the age of 18 (e.g. heavier penalties when the offence is committed against a child). The Anti-Trafficking Act mandates that if any person commits the following actions for the purpose of exploitation, that person is guilty of committing the crime of human trafficking:

- (i) Section 6 (1): procuring; buying; selling; vending; bringing from or sending to; detaining or confining; harboring; or receiving any person by means of threat or use of force; abduction; fraud; deception; abuse of power; illegal exertion of influence over others on account of their physical, psychological, educational or any kind of vulnerability; threat to take abusive legal action against others; or the giving of money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or
- (ii) Section 6 (2): "procuring; buying; selling; vending; bringing from or sending to; detaining or confining; harboring; or receiving a child."

Distinguishing between the two sub-provisions above, when dealing with a child, there is no requirement that trafficking acts are conducted through the use of threats or force, abduction, fraud, etc., unlike the sub-provision for adults as stipulated in Section 6 (1). Therefore, it would be easier to prove that an alleged defendant has committed an offence of human trafficking against a child under Section 6 (2) than it is to prove under Section 6 (1). In this sense, the Anti-Trafficking Act provides higher protection for children than adults.

In addition, any person engaging in any of the following actions will also be classified as committing the offence of human trafficking:

- a. abetting human trafficking;
- b. subsidizing trafficking by providing property to or procuring a place for meeting or lodging for the trafficker;
- c. assisting the trafficker by any means so that they are not arrested;
- d. demanding, accepting, or agreeing to accept property or any other benefits from the trafficker to prevent him or her from being punished; or
- e. inducing, suggesting, or contacting a person to become a member of an organized criminal group, for the purpose of human trafficking.

With respect to the penalties for committing human trafficking crimes under the Anti-Trafficking Act, if the victim is between the ages of 15 and 18, the defendant may be subject to imprisonment for 6 to 15 years and a fine of Baht 600,000 to 1,500,000. If the victim is not over 15 years old or is a person with disabilities or mental impairment, the defendant may be subject to imprisonment for 8 to 20 years and a fine of Baht 800,000 to 2,000,000. In other cases in which the victim is an adult, the defendant may be subject to imprisonment for 4 to 12 years and a fine of Baht 400,000 to 1,200,000.

If human trafficking is committed by a legal person, the legal person may be subject to a fine ranging from Baht 1,000,000 to 5,000,000. The director, manager, or responsible persons of the juristic person may also be subject to imprisonment for 6 to 12 years and a fine of Baht 600,000 to 1,200,000 if human trafficking is committed under the representative's instruction, action or failure to do their duty to instruct or act. If the offence is committed against a child, as mentioned above, the representative is subject to the same penalty as the offender themselves. Different penalties will be applied depending on whether the victim is an adult or child. If the victim is an adult, the penalties mentioned in the beginning of this paragraph would apply. If the victim is a child, the representative is subject to the same penalty as the offender themselves, which are the penalties applied to child victims as mentioned in the previous paragraph.

The Child Protection Act ensures that trafficked children are legally afforded protection. The Child Protection Act was enacted to ensure that all children in Thailand are protected from any practices that can impair their physical or mental wellbeing. Guardians must ensure that their children are raised in a responsible manner and that their needs are cared for. State officers are also obligated to protect children affected by human trafficking. The Child Protection Act also states that regardless of whether the child's consent is provided, no person may:

- a. act or fail to act in any manner which leads to torture of a child's physical or mental condition;
- b. compel; threaten; induce; encourage; or allow a child to act inappropriately;
- c. compel; threaten; induce; encourage; or allow a child, or act in a way that results in the child becoming a beggar; living on the street; being used as an instrument for begging or committing crimes; or acting in any way that results in the exploitation of a child;
- d. use or employ a child; or ask a child to work or act in such a way that might be physically or mentally harmful to the child, affect the child's growth, or hinder the child's development;
- e. compel; threaten; use; induce; instigate; encourage; or allow a child to commit any acts indicative of commercial exploitation in a manner which hinders the child's growth and development or constitutes an act of torture against the child; or
- f. compel; threaten; use; induce; instigate; encourage; or allow a child to perform or act in a pornographic manner, regardless of whether the intention is to obtain monetary consideration.

The Penal Code also prohibits numerous offences committed against children's rights, for example: in Section 282, Paragraphs 2 and 3 (indecent for sexual gratification with victim's consent); Section 283 (indecent for sexual gratification by deceitful means); Section 283 *bis* (indecent against a child irrespective of consent given); Section 312 *bis* in conjunction with Section 312 (child slavery); Section 312 *ter* (taking of a child); Section 313 (kidnapping of a child); Section 316 (confinement or abduction); Section 317 (abduction of a child under 15); Section 318 (abduction of a child who is at least 15 years old but has not reached 18 years old); and Section 319 (abduction for lucre or indecency).

**(c) pornography (including online pornography)?**

According to Section 287 of the Penal Code, a person may be liable for an offence if they are involved in the following;

- (1) for the purpose of trade or by trade, for public distribution or exhibition, makes, produces, possesses, brings or causes to be brought into the kingdom, sends or causes to be sent out of the kingdom, brings or causes to bring, or spreads by any means, any document, drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematograph film, audio or video tape, or any other thing which is obscene;
- (2) carries on trade, or takes part or participates in the trade concerning the aforesaid obscene material or thing, distributes or exhibits to the public, or hires out such material or thing; or
- (3) in order to assist the circulation or trading of the aforesaid obscene material or thing, advertises or spreads the news by any means whatsoever that there is a person committing the act which is an offence according to this Section, or advertises or spreads the news that the aforesaid obscene material or thing may be obtained from any person or by any means.

In such case, the offender shall be punished with imprisonment for a term not exceeding 3 years, or a fine not exceeding Baht 60,000, or both.

Moreover Section 287/1 also specifically stipulates that it is an offence for any person to possess "child pornography" for the sexual gratification of that person or others. A person who commits such an offence will be liable to imprisonment for a term not exceeding 5 years, or a fine not exceeding Baht 100,000, or both. If such an offender also sends the child pornography to others, they will also be liable to imprisonment for a term not exceeding 7 years, or a fine not exceeding Baht 140,000, or both.

The term "child pornography" is defined broadly under the Penal Code to include any materials or objects (in whatever format) which show the sexual acts of a child (or sexual acts with the child), whereby the age of the child does not exceed 18 years of age, including materials which are stored on computer systems or other electronic devices.

**(d) sexual acts between an adult and a child, conducted with the consent of the parents or guardians of the child?**

As noted in our response to Question 1 above, the age of consent in Thailand is **15 years of age**.

However, we are not aware of any specific offences where a parent or guardian of a child consents to the sexual act between an adult and a child in their care.

Notwithstanding the foregoing, as noted in our response to Question 2 above, it is possible that such an act may be deemed to be an offence related to an abusive act under the Child Protection Act.

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

Please see the relevant penalties for the violation of the applicable domestic laws in our responses to Questions 2 and 4 above.

**6. Do religious and customary laws impact upon the dealing of sexual violence against children?**

Thailand has a long-established Muslim community mainly residing in Thailand's three most southern states (Pattani, Narathiwat and Yala) bordering Malaysia. Most of the residents in these three states are Malay-Muslims and belong to the Sunni faction of Islam.

A Royal Decree on the Application of Islamic Law in Thailand was adopted on 10th December 1901 by King Rama V and this decree is still in force today. Article 32 of the decree states:

7. Does domestic law reflect international laws and conventions regarding sexual 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?

8. In criminal prosecutions of sexual violence against children:

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

(b) What evidence is required to prove physical violence in a criminal prosecution?

"Criminal and Civil Code are to be carried out in all cases in which both the plaintiff and defendant or the defendant alone is Muslim, except the civil concerning husband and wife or inheritance. In the latter group of cases, Islamic law will be applied instead of the Code."

Therefore, Islamic law will only be applied in family cases and inheritance disputes. For any matter concerning sexual violence against children, Thai law will prevail.

The status of Islamic law in Thailand has been challenged and the system was revoked by the National Culture Act (1943) and the Civil and Commercial Code (1943). In 1946, both the preceding laws were revoked and the Royal Decree Act (Thailand) (1946) was enacted to amend the Criminal and Civil Codes, and Islamic law was reinstated as a form of law in Thailand. Further, the Act on the Application of Islamic Law in the Provinces of Pattani, Narathiwat, Yala and Satun was enacted, which resulted in Islamic personal law being officially applied in these provinces, but only in the terms of personal law.

Thailand's domestic laws do generally reflect the requirements relating to the prevention of sexual violence against children as provided under the relevant international laws and conventions.

More specifically (and as mentioned in our response to Question 4 above), the Child Protection Act was enacted to ensure that all children in Thailand are protected from any practices that can impair their physical or mental wellbeing.

**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.

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 courts:

1. External elements, being:
  - (a) harm to another person, which causes bodily or mental harm to such 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 eye witnesses and police reports of the alleged wrongful act.

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

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.

If the prosecutor requires a child to testify against the alleged perpetrators, under Sections 133 bis and 171 of the Criminal Procedure Code, the child will be afforded additional protections during the provision of his/her testimony.

For example, the testimony may be provided in a place which is suitable for the child; a psychologist, social worker or other person requested by the child shall be present during the provision of the child's testimony; if the psychologist or social worker is of the opinion that any question may have a strong mental effect on the child, the prosecutor shall ask the questions through the psychologist or social worker (whereby the child shall not have to listen to the prosecutor's questions directly and the child shall not be subject to the same repeated questions without an appropriate reason).

Please see our detailed response in Question 8 (c)(iv) below.

**(i) 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.

**(ii) 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 a "certain necessity", 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 the court's proceedings as if the witness were him/herself present in court.

Note, however, that the term "certain necessity" is vague and there is neither court precedent nor official guideline on this issue.

**(iii) 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 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 evidences are sufficient to prove the defendant's guilt is subject to the court's discretion.

**(iv) What other means of protection are available to children involved in prosecutions of sexual violence?**

The Criminal Procedure Code provides several protections to child victims or child witnesses, as described below.

With respect to the criminal investigation process, Section 133 bis of the Criminal Procedure Code states that with respect to offences 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, or 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, or 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 applied 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.

**(v) 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. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?

#### CHILD TRAFFICKING

As noted in our response to Question 4 (b) above, child trafficking is considered an offence under the Anti-Trafficking Act. The Anti-Trafficking Act expands its scope and application to an offence which is committed with a cross-border element through two provisions.

The first one is Section 10, which stipulates that:

"Paragraph 1: If the offence under Section 6 [human trafficking] is committed jointly by three persons or more, or is committed by a member/ members of a Criminal Organization [defined in Section 4], such persons/ member/members shall be liable to a heavier penalty by a half than that prescribed by the law.

...

Paragraph 3: If the offence under Paragraph 1 of this Section is committed **so that a victim who has been transported into or out of the Kingdom becomes subject to the power of someone else without lawful cause**, the persons/member/members shall be liable to a heavier penalty by a double than that prescribed for such offence".

Since neither this provision nor any other provision in the Anti-Trafficking Act specifies that the victim must be a person or a child with Thai nationality, the Anti-Trafficking Act therefore applies to persons engaging in human trafficking regardless of the nationality of the victim.

Another safeguarding provision is Section 11, specifically targeting overseas traffickers:

Anyone committing the offence under Section 6 [human trafficking] outside of the Kingdom shall be liable for penalty in the Kingdom as prescribed by this Act, with Section 10 of the Penal Code being applied *mutatis mutandis*"

■ Enforcement of the Anti-Trafficking Act in overseas territories

Regarding the issue of enforcement of the Anti-Trafficking Act in overseas territories, Section 11 aforementioned extends jurisdiction of Thai courts to child traffickers committing the offence outside Thailand. However, the question of how to actually enforce the provision (for example, arresting the suspects or searching the suspects' premises) remains the matter of international law, particularly Thailand's bilateral agreements entered into with the nation(s) in which the suspect resides or operates. To illustrate, it may be possible for Thai authorities to co-ordinate a search and arrest with local authorities or governments with whom Thailand has extradition and/ or anti-human trafficking treaties. In the past, there has been instances where Thai authorities have joint law enforcement programmes with international organisations, like the International Organisation for Migration and the UN Migration Agency, as well as national governments, like Cambodia and China. Moreover, the authorities might request assistance from the International Criminal Police Organisation (Interpol) or other transnational agencies. But apart from the discussed avenues, actual enforcement of the Anti-Trafficking Act remains relatively limited.



#### ■ Assisting the victims of human trafficking

Regarding the issue of assisting the victims of human trafficking activities (addressed in Chapter 4 of the Anti-Trafficking Act), two scenarios can be distinguished: the first one whereby a Thai child has been transported out of the country; and a second one whereby a foreign child has been transported into Thailand.

In the first scenario, Section 39 of the Anti-Trafficking Act stipulates as the First Paragraph that: "In a case where a Thai national becomes victim to the human trafficking offence committed abroad, if such person wishes to return to the Kingdom or his place of residence, the officials shall verify such persons' Thai nationality. If his nationality has been verified, the officials shall do whatever that is necessary to bring such person back to the Kingdom or his place of residence without delay, with due consideration of the safety and wellbeing of such person".

As for the second scenario, the Anti-Trafficking Act contains a number of provisions that are aimed at helping foreign victims who are transported into Thailand.

- The overarching provision is Section 33, which states in the First Paragraph that: "The Ministry of Social Development and Human Security shall have discretion to provide appropriate assistance to individuals who are victim to the human trafficking offence, including food, accommodation, medical treatment, physical and emotional recovery treatment, education, training, legal counsel, repatriation, and legal claim for compensation as prescribed by the Minister. This shall be done with due consideration to the victim's human dignity, gender difference, age, nationality, ethnicity, culture and customs, including the declaration of the victim's right to protection in every step before, during, and after the assistance, as well as the amount of time entailed in each of the step of such assistance, with the victim's opinions being taken into account";
- Section 36, Paragraph 3 obligates officials to co-ordinate with the authorities in the country in which the victim resides to arrange for constant protection of and safety for the victim and his family;
- Section 37 allows a foreign victim to temporarily reside and work in Thailand for the benefit of the legal proceeding against the human trafficker;
- Section 38, Paragraph 2 obligates the officials to consider the safety and wellbeing of the victim in arranging for their repatriation;
- Section 39, Paragraphs 2 and 3 grant and guarantee to foreign victims who are, respectively, permitted resident of Thailand or travelers without documents who do or use to reside in the country a safe return to Thailand; and
- Section 41 shields foreign victims from being prosecuted for illegal immigration.

#### ONLINE PORNOGRAPHY (BOTH ADULTS AND CHILDREN)

As noted in our response to Question 4 (c) above, the possession of child pornography is an offence under the Penal Code.

Given the above, it may be reasonably assumed that "possessing" for the purpose of this provision also includes online possession or possession of electronic copies of such pornographic materials. This assumption is supported by a number of Supreme Court decisions holding that pornographic medias contained in a VCD, tape cassette, or videotape constitute pornographic medias for the purpose of offences relating to pornography.

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

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

Furthermore, Section 287/2 of the Penal Code stipulates that: "Anyone who (1) for wish of trading or by trading, for public distribution or exhibition, makes, produces, possesses, imports or causes to import, exports or causes to export, takes away or causes to take away, or disseminates by any means child pornographic medias...". The wording of the definition explicitly includes a situation whereby the pornographic materials in question are produced in Thailand and then sent abroad, as well as a situation whereby such materials are transported into the country. Nevertheless, there has not been an authoritative judicial direction that addresses whether the uploading or downloading of child pornographic files to and from the internet constitutes, respectively, "importing or causing to import" and "exporting or causing to export" pornographic materials for the purpose of this provision or not.

### Protections

Section 43 of the Child Protection Act provides that:

In the case where the child's guardian or relative is the one committing the abusive act against the child, if criminal proceedings are instituted against the perpetrator and there is a reason to believe that the accused will repeat the abusive act, the court which considers such case shall have the power to determine measures for controlling such person's behavior, as well as to forbid them from entering a specific area or to come close to the child within a specified proximity, in order to prevent any repetition of such 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 the abusive act will be repeated against a child, a competent official, administrative official or police officer, a person having a 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 that the abusive act will not be repeated, the court shall have the power to order the police to arrest any person believed to have the intention to abuse 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, that person shall compensate the victim for such action.

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.

**(b) In circumstances where World Vision is providing shelter and other support to a victim of sexual 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 wider than the definition of "guardian" under the Civil and Commercial Code.

Under the 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 by the deceased parents (Section 1587 of the Civil and Commercial Code).

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 stepparents, guardian of the child's welfare, employer, as well as any other person providing care or shelter to the child.

**(i) 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 a guardianship under the Civil and Commercial Code, it has to confirm whether or not parental power of the minor's parents have been revoked through a 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 the Civil and Commercial Code includes 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 parents (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 before the proceedings may begin.

**(ii) 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 the child's 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 such 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, aunties, etc.) can request for 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.

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

Civil remedies can be requested under the Criminal Procedure Code:

Section 44/1: As 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 victims 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 the case on this 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.

Regarding calculation of remedies, there are actual costs and extra cost that can be awarded if the victim has suffered some form of mental impairment.

The actual cost can be calculated from medical costs, while awards for mental damages will have to be decided by the court.

An action against the Civil and Commercial Code 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 that it is foreseeable or ought to have been foreseeable at the time of the act.

**11. Which organisations provide pro bono legal services to help a child victim of sexual violence?**

There are local and national organizations in both the public and private sector in Thailand which provide pro bono legal services to help a child victim of sexual violence. Generally, the child will have access to lawyers, police officers, state attorneys and/or social workers, who will take down the child's testimony for further legal action.

Examples of these organizations include:

- Social Assistance Center, Ministry of Social Development and Human Security
- Family Network Foundation
- Foundation for Women
- Association for the Promotion of the Status of Women
- Center for the Protection of Children's Rights Foundation
- Pavena Foundation For Children and Women

**12. Do domestic laws prohibit:**

**(a) consensual sex activities between minors (including sexting)?**

Thailand does not have a close-in-age exemption. Close-in-age exemptions, commonly known as "Romeo and Juliet laws" in the United States, are put in place to prevent the prosecution of individuals who engage in consensual sexual activity when both participants are significantly close in age to each other, and one or both partners are below the age of consent.

Because there is no close-in-age exemption in Thailand, it is possible for two individuals both under the age of 15 who willingly engage in intercourse to both be prosecuted.

Notwithstanding the above, where the offender's age does not exceed 18 years and whereby he/she has consensual sex with a child who is older than 13 but whose age does not exceed 15 years, then the court is empowered to review whether it may be more appropriate to issue a protection order instead of a punishment.

(b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)

13. If so, what are the penalties for violation of these laws?

The age of consent in Thailand is **15 years old**. The age of consent is the minimum age at which an individual is considered legally old enough to consent to participate in sexual activity. Individuals below the age of 15 in Thailand are not legally able to consent to sexual activity, and such activity may result in prosecution for statutory rape.

Please see the details regarding the penalties for the relevant offences in our response to Question 2 above.

# VIETNAM

## 1. What is the definition of a child under domestic law in the context of sexual activities?

A child is any person below the age of 16.

## 2. Is there domestic legislation which deals with sexual violence against children?

Yes, including the following:

- The Law No. 102/2016/QH13 on Children ("**Law on Children**"), adopted on 5 April 2016 by the National Assembly of Vietnam, deals with child protection, including protection from sexual violence, as well as other types of abuse.
- Law No. 100/2015/QH13 ("**Penal Code**") on the Penal Code, adopted on 27 November 2015 and amended and supplemented on 20 June 2017 by the National Assembly of Vietnam, deals with criminalization of sexual violence against children.

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

The Law on Children prohibits using violence, threatening to use violence, forcing, inducing, or seducing a child to engage in sexual acts that include the following:

- Rape ("hiếp dâm" in Vietnamese)
- Coerced sex ("cưỡng dâm" in Vietnamese)
- Sexual intercourse
- Molestation ("dâm ô" in Vietnamese)
- Use of children for prostitution or pornography in any form.

Under the Penal Code, the following forms of sexual violence against children constitute as crimes:

Under the Penal Code, the following forms of sexual violence against children constitute as crimes:

- (i) Rape of a child<sup>1</sup>
  - For children from ages 13 to 16 years old: "rape" means using violence, threatening to use violence, abusing children's defenseless states<sup>2</sup> or using other means<sup>3</sup> to have sexual intercourse or engage in other sexual contact<sup>4</sup> with them against their will;

<sup>1</sup> Under the Penal Code, the legal definition of rape as a crime varies depending on the victim's age. If the child is below the age of 13, just having sexual intercourse or other sexual acts with them is rape, regardless of consent. However, if the child is from fully 13 years old to 16 years old, rape is subject to more conditions.

<sup>2</sup> "Defenseless state" may include the child's inability to defend himself/herself (e.g., being disabled, tied up or losing consciousness) or inability to acknowledge and control his/her own actions (e.g., being drunk, drugged with sleeping pills or anesthetics).

<sup>3</sup> "Other means" may include poisoning, drugging the child with sleeping pills or anesthetics, giving the child alcohol or other strong stimulants to induce the child's inability to acknowledge and control his/her own actions.

<sup>4</sup> "Other sexual acts" means using a male's reproduction organ, other body parts (e.g., fingers, tongue, etc.) or sex tools to penetrate a female's reproduction organ, mouth, or anus.

#### 4. In particular, do domestic laws prohibit:

(a) child marriage as a form of sexual violence?

- For children below the age of 13: "rape" means having sexual intercourse or other sexual contact with them.
  - (ii) Coerced sex with a child:<sup>5</sup> Using any means<sup>6</sup> to coerce children from the ages of 13 to 16 years old, who are dependent<sup>7</sup> or in distress<sup>8</sup>, into having sexual intercourse or other sexual acts.
  - (iii) Sexual intercourse or other sexual acts with children from the age of 13 to 16 years old, other than rape or coerced sex
- Child molestation<sup>9</sup> without any intention to have sexual intercourse or other sexual acts.

No.

The Penal Code provides that only the act of organizing a child marriage is a criminal offence, under Article 183. Such provision is under the Penal Code's section on Criminal Offences Against Family Law.

(b) child trafficking?

Yes.

Article 151 of the Penal Code has provisions against the trafficking of persons under the age of 16.

(c) pornography (including online pornography)?

Yes.

Article 147 of the Penal Code has provisions penalizing the employment of a person under the age of 16 for pornographic purposes.

(d) sexual acts between an adult and a child, conducted with the consent of the parents or guardians of the child?

Not specifically.

There is no provision regarding parents or guardians of a child providing consent for sexual acts between that child and an adult.

(e) all sexual acts between an adult and a child? What is the minimum age at which a young person is legally capable of providing consent?

Yes.

The minimum age at which a young person is legally capable of providing consent for sexual acts is 16 years old.

<sup>5</sup> If the child is below the age of 13, having sexual intercourse or other sexual acts with them is already categorized as rape, regardless of consent or means, instead of as coerced sex with a child.

<sup>6</sup> The means may include blackmail, promises of favors or material benefits (e.g., money, assets) or non-material benefits (e.g. good marks at school, opportunities to study abroad) to induce the obedience of the child.

<sup>7</sup> "Dependent" means that the child is financially dependent on the perpetrator (e.g., the child is fostered by the perpetrator, or the perpetrator provides the child with living expenses), mentally, professionally, educationally or religiously dependent on the perpetrator (e.g., the child is an employee of the perpetrator, or a student and the perpetrator is his/her teacher).

<sup>8</sup> "In distress" means that the child is in a difficult or desperate situation that requires help and assistance from others (e.g. the child has terminal illness without any money to cure himself or herself).

<sup>9</sup> "Child molestation" means the direct or indirect physical contact of a sexual nature through clothing with the reproduction organs, sensitive body parts, or other body parts of a child.



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

Depending on the acts and the age of the child, the criminal offences may be as follows:

- Sexual intercourse or other sexual activities with a person under 13 years old: from 7 years of imprisonment to death sentence. Additional punishment includes prohibition from holding certain positions or doing certain works for 01 to 05 years.<sup>10</sup>
- Raping a person under 16 years old: from 7 years of imprisonment to death sentence. Additional punishment includes prohibition from holding certain positions or doing certain works for 01 to 05 years.<sup>11</sup>
- Forcible compulsion of a person from 13 years old to 16 years old: from 05 years of imprisonment to life sentence. Additional punishment includes prohibition from holding certain positions or doing certain works from 01 to 05 years.<sup>12</sup>
- Engaging in sexual intercourse or other sexual activities with a person from 13 years old to under 16 years old: 01 to 15 years of imprisonment. Additional punishment includes prohibition from holding certain positions or doing certain works from 01 to 05 years.<sup>13</sup>
- Molesting a person under 16 years old: from 06 months to 12 years of imprisonment. Additional punishment includes prohibition from holding certain positions or doing certain works for 01 to 05 years.<sup>14</sup>
- Using person under 16 years old for pornographic purposes: from 06 months to 12 years of imprisonment. Additional punishment includes prohibition from holding certain positions or doing certain works for 01 to 05 years.<sup>15</sup>
- Trafficking a person under the age of 16: from 7 years imprisonment to a life sentence. Additional punishment include monetary fine of from VND10 million to VND50 million (approx. US\$430 – US\$2,154),<sup>16</sup> prohibition from holding certain positions or doing certain works from 01 to 05 years.<sup>17</sup>
- Organizing a marriage entered into by a person under the marriageable age, and has been sanctioned with an administrative penalty for the same offence: a fine of from VND10 million to VND30 million (approx. US\$430 – US\$1,295) or up to 02 years' community sentence.<sup>18</sup>

## 6. Do religious and customary laws impact upon the dealing of sexual violence against children?

Vietnam does not have religious laws.

The Civil Code<sup>19</sup> and the Law on Marriage & Family<sup>20</sup> acknowledge the application of customary laws, provided that the State law is silent and that such customary laws do not violate the spirit and letter of the State law.<sup>21</sup>

<sup>10</sup> Article 142, Penal Code.

<sup>11</sup> *Id.*

<sup>12</sup> Article 144, Penal Code.

<sup>13</sup> Article 145, Penal Code.

<sup>14</sup> Article 146, Penal Code.

<sup>15</sup> Article 147, Penal Code.

<sup>16</sup> Based on the currency conversion rate of US\$1 ≈ VND23,212.

<sup>17</sup> Article 151, the Penal Code.

<sup>18</sup> Article 183, the Penal Code.

<sup>19</sup> Law No. 91/2015/QH13 on the Civil Code, issued by the National Assembly on 24 November 2015 ("**Civil Code**").

<sup>20</sup> Law No. 52/2014/QH13 on Marriage & Family, issued by the National Assembly on 26 June 2014 ("**Law on Marriage & Family**").

<sup>21</sup> Article 5, the Civil Code; Article 7, the Law on Marriage & Family.

**7. Does domestic law reflect international laws and conventions regarding sexual 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?**

However, the authorities have been slow to take action, despite the law recognizing a policy of eliminating customs that are harmful to the health of children. For instance, discipline and physical punishment have been considered as “ordinary” types of discipline for disobedience under Vietnamese tradition in many areas, especially rural and remote areas.<sup>22</sup>

Customary laws regarding child marriage increases the risk of sexual violence against children. Some communities assume new roles and responsibilities for children at an early age. This assumption is not limited to some ethnic minority groups, but is a widespread cultural and legal notion in Vietnam.<sup>23</sup> The current Law on Children may have reflected this by defining the “child” as someone under the age of 16.<sup>24</sup> The Vietnamese family law does list child marriage as one of the customs that are “encouraged to be abolished”, although this custom is not within the list of customs whose application are strictly prohibited.<sup>25</sup>

Vietnam was the first country in Asia to ratify the Convention on the Rights of the Child (“**CRC**”), including the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (“**OPSC**”), without any reservation. In principle, Vietnamese law generally adequately reflects the rights of children provided in international laws and conventions regarding sexual violence against children.

In addition, the rights and principles of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was reflected in the Law No. 73/2006/QH11 on Gender Equality, dated 29 November 2006 (“**Law on Gender Equality**”).<sup>26</sup> This law recognizes and gives precedent to international conventions.<sup>27</sup>

As mentioned above, the age limit for the definition of a “child” is still 16 under Vietnamese law, which differs from the uniform threshold of 18 years old used in the CRC as well as other international agreements and conventions.

Having said that, this is not considered a deviation from the CRC. In any case, Law<sup>28</sup> No. 53/2005/QH11 on Youth (“**Youth Law**”) states that the CRC shall be applied for teenagers from the age of 16 to 18, having regard to the current conditions of Vietnam.<sup>29</sup> The Law on Children does not have this provision, but it requires the authorities to prepare periodic national reports on implementation of the CRC.

However, there are concerns that the loopholes within the law would render Vietnam as falling short of its responsibilities in the CRC and the Optional Protocols. For instance, the fact that Vietnamese law considers a “child” to be under 16 years old means that a lot of the offenses against children within the Criminal Code only protects children under the age of 16 (e.g., rape, sexual abuse, molestation enticing a child to participate in a pornographic performance)<sup>30</sup>. Moreover, given this definition of a child, all of the special protections and support measures for child sexual abuse victims under the Law on Children technically only apply to children who are under 16 years of age.

<sup>22</sup> See <http://www.vtctravel.net/en/Vietnam-Culture/vietnam-culture.php>

<sup>23</sup> For more information, UNICEF has prepared a report on the topic of child marriage in Vietnam. See <https://www.unicef.org/vietnam/reports/ending-child-marriage-empowering-girls>.

<sup>24</sup> Article 1, the Law on Children; Vietnam is one of the last four remaining Asian countries still keeping the 16-age threshold.

<sup>25</sup> Appendix to Decree No. 126/2014/ND-CP, dated 31 December 2014, detailing a number of articles and measures for implementation of the Law on Marriage & Family.

<sup>26</sup> See <https://moj.gov.vn/qt/tintuc/Pages/thong-tin-khac.aspx?ItemID=2713>

<sup>27</sup> Article 3, the Law on Gender Equality.

<sup>28</sup> Law No. 53/2005/QH11 on Youth, issued by the National Assembly on 29 November 2005 (“**Youth Law**”).

<sup>29</sup> Article 31, Youth Law.

<sup>30</sup> Articles 142, 144-147, Penal Code.

## 8. In criminal prosecutions of sexual violence against children:

### (a) What agency or agencies have the authority to refer a case to the prosecutor?

According to some commentators, despite recent guidance in Resolution No. 06,<sup>31</sup> the definition of “molestation” (*dâm ô*) still puts too much emphasis on physical contact between the molester and the children, while non-contact offenses are not adequately recognized (e.g., exposing oneself to a child or inducing children to expose themselves).

On the related subject of child pornography, the Penal Code penalizes distribution of pornographic materials.<sup>32</sup> However, there is no specific offence for pornographic materials which depict minors, and the simple possession of child pornography is not yet a crime. The OPSC requires member states to address, at the minimum, the act of “[p]roducing, distributing, disseminating, importing, exporting, offering, selling or possessing” child pornography.”<sup>33</sup>

### (b) What evidence is required to prove physical violence in a criminal prosecution?

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.

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.

For the purpose of a denunciation and/or reports to the competent Police Investigation Agency as described in the response to Question #7 above, the denouncer is not required to submit to the police concrete evidence showing physical violence in a criminal prosecution. While there is no clear guidance on whether or not the denouncer is required to submit any evidence to the police, in practice, the police usually agrees to receive the denunciation if the denouncer can show that he/she has a reason to believe that the child has suffered from physical violence from the offender.

<sup>31</sup> Article 3.3, Resolution No. 06/2019/NQ-HĐTP, dated 1 October 2019, guiding the application of a number of regulations of articles 141,142,143,144,145, 146 and 147 of the Penal Code and settlement of cases of sexual exploitation and abuse of persons under 18 (“Resolution No. 06”).

<sup>32</sup> Article 326, Penal Code.

<sup>33</sup> Article 3, OPSC.

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

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

As a general requirements, the Criminal Procedure Code<sup>34</sup> provides that representatives of persons less than 18 years of age can attend the session of deposition and interrogation of such persons under 18. Such representatives can submit evidences, documents, items, requests, complaints and Charges. They can read, transcribe and photocopy documents related to charges against persons aged below 18 from the case file after the investigative activities have ended.<sup>35</sup>

Vietnamese law does not provide clear regulations on this matter. A child's refusal to testify does not constitute the corresponding crime under the Penal Code, nor does it constitute any direct violation of the Criminal Procedure Code. This may imply that the child has the right to refuse. However, the fact that the child refuses to testify may hinder the prosecution of the child's abuse case.

There are various requirements concerning the testimony, which takes the child into consideration. For example, the questions must be suitable with the child's age, and the defense counsel or representatives of the child must accompany the child during the session of taking testimony. Furthermore, the child's testimony taken in the investigation and prosecution stage can be reused at the hearing so that the child would not be summoned to the hearing.<sup>36</sup>

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

Vietnamese law does not have any specific regulations on this matter.

During the trial, the trial panel will isolate the child and the perpetrator. The child shall be placed in an isolated room. Information about the hearing's developments shall be broadcasted via a video live streaming platform or otherwise communicated to ensure that the child can follow all developments of the hearing and exercise the child's rights and perform the child obligations.<sup>37</sup>

However, in some certain circumstances where the child cannot be present at the court for providing evidence, it is practically permissible for them to provide evidence via video link.

**(iii) 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, in accordance with the procedures provided by law, and are admitted into evidence by the presiding judge.

**(iv) What other means of protection are available to children involved in prosecutions of sexual violence?**

Under the Criminal Procedure Code, there are some further means of protection to children involved in prosecutions of sexual 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.

<sup>34</sup> Law No. 101/2015/QH13, dated 27 November 2015, on the Criminal Procedure Code ("**Criminal Procedure Code**").

<sup>35</sup> Article 420.2, Criminal Procedure Code.

<sup>36</sup> Article 7.3(a), Resolution No. 06.

<sup>37</sup> Article 10, Circular No. 02/2018/TT-TANDTC dated 21 September 2018 on criminal trials with participants in criminal proceedings who are under 18 years of age under the jurisdiction of the Family and Minor Court ("**Circular No. 02**").

**(v) Can the child be required to testify more than once?**

- 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.
- courtrooms must be congenial and conformable to persons less than 18 years of age.<sup>38</sup>
- the trial shall be carried out in closed session, though the judgments must be announce publicly.<sup>39</sup>
- the confrontation between the child and the perpetrator can be held only in order to clarify circumstances of the case which cannot be settled without such confrontation.<sup>40</sup>

Pursuant to Article 50 of the Law on Children, the following certain protective measures can be applied to children involved in prosecutions of sexual violence:

- Giving health care, psychological treatment, physical and mental health rehabilitation to abused children;
- Arranging a safe temporary residence for children and separate them from an environment or individuals that are threatening or committing acts of violence;
- Arranging provisional or long-term alternative care for child victim in the case the perpetrators abusing the child is the child's parents;
- Implementing other measures to assist abused children and their families;
- Monitoring and assessing the safety of abused children or children at risk of abuse.

Under the Law on Legal Aid,<sup>41</sup> children have the right to receive legal aid services without paying service fees.<sup>42</sup> The legal aid can be performed by the way of legal aid assistants or lawyers participating in legal proceedings as protectors of the child's lawful rights and interests, providing legal consultancy, or performing extrajudicial representation.

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.<sup>43</sup>

<sup>38</sup> Article 423.4, Criminal Procedure Code; Article 3.4, Circular No. 01/2017/TT-TANDTC dated 29 July 2017 prescribing on courtrooms ("**Circular No. 01**").

<sup>39</sup> Article 25, Criminal Procedure Code; Article 71(d), Circular No. 02.

<sup>40</sup> Article 421.6, Criminal Procedure Code.

<sup>41</sup> Law No. 11/2017/QH14 on Legal Aid, issued by the National Assembly on 20 June 2017 ("**Law on Legal Aid**").

<sup>42</sup> Article 8.1, Law on Legal Aid.

<sup>43</sup> Article 421.4, Criminal Procedure Code.

**9. How does the legal system in your country deal with sexual violence (including child trafficking and online pornography) when it cuts across several countries?**

For acts that fall under the category of administrative violations (e.g., the use of a child's image in pornographic materials)<sup>44</sup> committed within the territory of Vietnam:<sup>45</sup>

- Foreign individuals and organizations that commit administrative violations within the territory, the contiguous zone, the exclusive economic zone and continental shelf of Vietnam; in aircrafts and sea vessels having Vietnamese nationality shall be subject to administrative sanctions in accordance with Vietnamese law, except otherwise provided in the international treaty of which Vietnam is member.
- Administrative handling measures (e.g., measures applied for individuals who commit acts of law violation on security, social order and safety, however, do not constitute crimes, including measures of education at communes, wards, towns; sending to reformatories; sending to compulsory education establishments and sending to compulsory detoxification establishments)<sup>46</sup> shall not apply to foreign individuals.

For acts that fall under the category of criminal offences committed within the territory of Vietnam:<sup>47</sup>

- The Penal Code applies to (i) all criminal offences committed on Vietnam's territory, and (ii) all criminal offences and consequences of the criminal offences that occur on sea vessels and/or aircrafts having Vietnamese nationality or operates in the exclusive economic zone or continental shelf of Vietnam.
- For foreign entities committing criminal offences in the territory of Vietnam that are granted diplomatic immunity as under Vietnamese law, international agreements of which Vietnam is a member, or international practice, the criminal liability of such foreign entities shall be dealt with in accordance with the international such agreement or practice. If the case is not provided in such agreement or there is no such international practice, the criminal liability of such foreign entities shall be dealt with in a diplomatic manner.

For acts that fall under the category of criminal offences committed outside the territory of Vietnam:<sup>48</sup>

- Any Vietnamese citizen, stateless resident in Vietnam or Vietnamese commercial legal entity that commits a criminal offence (as defined in the Criminal Code) outside Vietnam's territory may face criminal prosecution in Vietnam in accordance with the Criminal Code.
- Any foreign individual or foreign commercial legal entity that commits a criminal offence outside Vietnam's territory may face criminal prosecution in accordance with the Criminal Code if such criminal offence infringes the lawful rights and interests of Vietnamese citizens or the interests of Vietnam or as under the international agreement of which Vietnam is a member.

<sup>44</sup> Article 26, Decree No. 144/2013/ND-CP dated 29 October 2013 of the Government on administrative sanctions in social patronization, social aids, protection and caretaking for children.

<sup>45</sup> Article 5, Law No. 15/2012/QH13 on handling administrative violations dated 20 June 2012 of the National Assembly ("**Law on Handling Administrative Violations**").

<sup>46</sup> Article 2.2, Law on Handling Administrative Violations.

<sup>47</sup> Article 5, the Penal Code.

<sup>48</sup> Article 6, the Penal Code.

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

- Where a criminal offence or the consequence of a criminal offence occurs on sea vessels and/or aircrafts not having Vietnamese nationality and operating at sea or airspace limit that is outside Vietnam's territory, the criminal offender may face criminal prosecution in accordance with the Criminal Code if provided under the international agreement of which Vietnam is a member.

Civil damage claims having foreign elements are claims falling under one of the followings:<sup>49</sup>

- at least one party is a foreign individual or foreign legal entity.
- the parties are Vietnamese entities but the basis for the establishment, modification or termination of such claim occurs offshore.
- the parties are Vietnamese entities but the subject matter of the civil damage claim is located offshore.

For such civil damage claims, the applicable law shall be determined as follows:<sup>50</sup>

- The international agreements of which the Socialist Republic of Vietnam ("Vietnam") is a member or Vietnamese law; or
- As agreed by the parties (in the civil damage claim) in case the parties have the right to select the applicable law as under The international agreements of which Vietnam is a member or under Vietnamese law; or

In case the above fails to be determined, the applicable law will be the law of the country that has the strongest association with the civil damage claim.

### 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 (iv) intervention.<sup>51</sup> If a child is a victim of sexual violence, the following measures in the intervention level will be applied in order to prevent the sexual violence acts and assist the victims in recovery and social inclusion,<sup>52</sup> 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 themselves the perpetrators of sexual violence.<sup>53</sup> 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;<sup>54</sup>
- Assisting children in family reunification, school integration and social integration;

<sup>49</sup> Article 663.2, Civil Code.

<sup>50</sup> Article 664, Civil Code.

<sup>51</sup> Article 471, Law on Children.

<sup>52</sup> Article 50, Law on Children.

<sup>53</sup> Article 62, Law on Children.

<sup>54</sup> Article 671(a)(b), Law on Children.



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

- 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;
- Other measures for assisting the victims and their family as mentioned in Article 43.1 (State's healthcare policy for children), 44.1 (State's education policy for children) and 49.2(d) (Support for the child and the family of such child to access to supporting sources for improving living conditions for children) 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 sexual violence against their children,<sup>55</sup> emergency intervention will be applied within 12 hours from the receipt of the information.<sup>56</sup> 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.<sup>57</sup>

#### Civil remedies

Vietnam's Civil Code provides no specific provision on remedies for child victims of sexual violence. However, the Civil Code does have a general provision on compensation claims for causing damage to the life, health, honor, dignity, reputation, property and/or other legal rights or interests of a person.<sup>58</sup>

Based on this provision, civil remedies can be taken against perpetrators of child sexual violence.

#### Protections provided under the Law on Children

For each case of sexual violence, there must be an intervention plan formulated to include the applicable intervention measures.<sup>59</sup> 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.<sup>60</sup>

With regard to children whose parents or caretakers are perpetrators of sexual violence or 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.<sup>61</sup>

<sup>55</sup> Article 31.1, Decree No. 56/2017/ND-CP dated 09 May 2017 of the Government on detailing a number of provisions of the Law on Children ("**Decree No. 5**").

<sup>56</sup> Article 31.2, Decree No. 56.

<sup>57</sup> Article 31.3, Article 31.4 and Article 31.5, Decree No. 56.

<sup>58</sup> Article 584.1, Civil Code.

<sup>59</sup> Article 52.1, Law on Children.

<sup>60</sup> Article 52.2, Law on Children.

<sup>61</sup> Article 52.3, Law on Children.

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.<sup>62</sup>

### Civil remedies

The legal representative of the child is entitled to initiate a court petition to claim for damages resulting from sexual violence.<sup>63</sup>

By law, the legal representative of a child are their parents,<sup>64</sup> or their guardians in following cases:<sup>65</sup>

- 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 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 order:<sup>66</sup>

- 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. In case of a dispute among the guardians as mentioned above or a dispute on the guardian appointment, the Court will appoint the guardian.<sup>67</sup>

<sup>62</sup> Articles 31.3, Article 31.4 and Article 31.5, Decree No. 56.

<sup>63</sup> Article 69.4, Article 69.5 and Article 69.6, Civil Procedure Code No. 92/2015/QH13 dated 25 November 2015 of the National Assembly ("**Civil Procedure Code**"); Article 3.1, Joint Circular No. 06/2018/TTLT-VKSNDTC-TANDTC-BCA-BTP-BLDTBXH dated 21 December 2018 of the Supreme People's Procuracy of Vietnam, the Supreme People's Court of Vietnam, Ministry of Public Security, Ministry of Justice, Ministry of Labors, War Invalids and Social Affairs on the coordination to implement a number of provisions of the Criminal Procedure Code on the procedure for persons below 18 years old ("**Joint Circular No. 06**").

<sup>64</sup> Article 136.1, Civil Code.

<sup>65</sup> Article 136.2, Article 47.1, Civil Code.

<sup>66</sup> Article 52, Civil Code.

<sup>67</sup> Article 54.1, Civil Code.

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

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

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

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

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

- Under the Civil Code, only individuals can apply to become guardians for children.

Under the Civil Code, only individuals can apply to become guardians for children.

World Vision can support children and their guardians by paying for a lawyer to assist the children for the protection of their legitimate rights and interests. However, only the claimant or their authorized representatives/guardians can appoint a lawyer to represent them.

Yes, civil issues (i.e., civil remedies) in a criminal case are solved during the settlement of a criminal case. If the damage claims in a criminal case are backed by insufficient evidence but does not affect the settlement of such criminal case, the civil issues will be separated to be settled through civil procedure.<sup>68</sup> We note that these other protections and remedies can be applied to the children being victims of sexual violence whether or not a criminal case is initiated.<sup>69</sup>

While the protection under the Law on Children does not provide for an award of compensation, initiating a damage claim via civil procedure or criminal procedure can help the child claim for compensation of damage caused by the sexual violence.

By law, the damage caused by harm to health comprises:<sup>70</sup>

- Reasonable costs for treating, nursing and rehabilitating 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.

<sup>68</sup> Article 30, Criminal Procedure Code.

<sup>69</sup> Articles 5 and Article 47, Law on Children.

<sup>70</sup> Article 590.1, Civil Code.

## 11. Which organisations provide pro bono legal services to help a child victim of sexual violence?

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.<sup>71</sup> The general minimum wage is VND1.49 million/month (approx. US\$64.30) from 1 July 2019.<sup>72</sup>

Sexually abused children can seek pro bono legal services<sup>73</sup> from any legal aid-providing organization which has been published by the Ministry of Justice or the local Department of Justice<sup>74</sup>. Several notable pro bono legal service providers for sexually abused children include:

- **National Legal Aid Agency (Ministry of Justice)**  
58-60 Tran Phu, Ba Dinh District, Hanoi, Vietnam  
Tel: (+84) 24 373395386  
<http://legalaids.gov.vn/slideshow/legal-aid-ministry-justice-vietnam>
- **Children Department (Ministry of Labor, Invalid and Social Affairs)**  
35 Tran Phu, Ba Dinh District, Hanoi, Vietnam  
Hotline: 111 or 18001567  
<http://treem.gov.vn/Home/tabid/41/language/en-US/Default.aspx>
- **Vietnam Lawyers Association**  
3rd Floor, Star Tower, Duong Dinh Nghe, Yen Hoa, Cau Giay District, Hanoi, Vietnam  
Tel: (+84) 24 62634940 / (+84) 24 62733160 (Juvenile's Legal Consultancy Centre - Vietnam Lawyers Association)  
<http://hoiluatgiavn.org.vn:8080/>

## 12. Do domestic laws prohibit:

### (a) consensual sex activities between minors (including sexting)?

It depends. The Penal Code has different provisions on criminal liabilities in the case of consensual intercourse and other sexual activities (only limited to activities using reproductive organs or other body parts etc.)<sup>75</sup> between minors under 18 years old, depending on their age. In particular:

- Between minors aged under 14: No criminal liability.
- Between a minor aged 14 or above<sup>76</sup> with a minor aged under 13: The former may be deemed as committing "*rape of a person under 16 years old*"<sup>77</sup>.
- Between a minor aged 14 or above with a minor aged 13 or above: No criminal liability

<sup>71</sup> Article 590.2, Civil Code.

<sup>72</sup> Article 3.2, Decree No. 38/2019/ND-CP dated 09 May 2019 of the Government on statutory pay rate for public officials and public employees and the armed forces.

<sup>73</sup> Article 10.1(I), Law on Children; Article 21, Decree No. 56.

<sup>74</sup> Article 10, Law on Legal Aid.

<sup>75</sup> Article 3.2, Resolution No. 06.

<sup>76</sup> Article 12.2, Penal Code

<sup>77</sup> Article 142.1, Penal Code

**(b) all forms of sexual activities between minors and adults? (Are there any circumstances in which domestic laws provide for informed consent by the child?)**

**13. If so, what are the penalties for violation of these laws?**

On a related note, sexting is not stipulated among "*other sexual activities*" falling into the scope of the above offence. Alternatively, sexting may be regarded as "*distribution of pornographic materials*", standards of which are however high in order to be criminalized (e.g. involving data of digital size from 1 GB and more, or distribution to more than 10 people, etc.).<sup>78</sup>

It depends. The Penal Code has different provisions on criminal liabilities in case of intercourse and other sexual activities between minors under 18 years old and adults (18 years old and more). In particular:

- Between an adult and a minor aged under 13:
  - The former may be deemed committing "*rape of a person under 16 years old*"<sup>79</sup>, regardless whether the sexual activity is consented or not consented by the minor.
  - The former may be deemed committing "*molestation of a person under 16*"<sup>80</sup> if having molestation acts as defined under the law.<sup>81</sup>
- Between an adult and a minor aged from 13 to under 16:
  - The former may be deemed committing "*engaging in sexual intercourse or other sexual activities with a person aged from 13 to under 16*"<sup>82</sup>, if the activity is consented by the minor.
  - The former may be deemed committing "*rape of a person under 16 years old*"<sup>83</sup> or "*sexual abuse of a person under 16 years old*"<sup>84</sup> if the activity is not consented by the minor.
  - The former may be deemed committing "*molestation of a person under 16*"<sup>85</sup> if having molestation acts as defined under the law.<sup>86</sup>
- Between an adult and a minor aged 16 or more:
  - No criminal liability if the activity is consented by the minor.

The former may be deemed committing "*rape*"<sup>87</sup> or "*sexual abuse*"<sup>88</sup> if the activity is not consented by the minor.

Penalties vary depending on the type of offence and its associated serious consequences. Generally, they involve prison sentences, life sentences and death sentences (in case of having serious aggravating factors such as the crime is committed in a well-organized manner, or by more than one person against a child, or against a child under 10 years old etc.)<sup>89</sup>. The offender may also be forbidden from practicing his/her job or carrying out certain jobs in a certain period of time.

<sup>78</sup> Article 326, Penal Code.

<sup>79</sup> Article 142, Penal Code.

<sup>80</sup> Article 146, Penal Code.

<sup>81</sup> Article 3.3, Resolution No. 06.

<sup>82</sup> Article 145, Penal Code.

<sup>83</sup> Article 142, Penal Code.

<sup>84</sup> Article 144, Penal Code.

<sup>85</sup> Article 146, Penal Code.

<sup>86</sup> Article 3.3, Resolution No. 06.

<sup>87</sup> Article 141, Penal Code.

<sup>88</sup> Article 143, Penal Code.

<sup>89</sup> Article 142.3, Penal Code.

**14. Is there a policy mandate that a government agency be responsible for disseminating information to the public, especially children? (i.e., hot-line information, punishments, etc.)**

Yes, the Law on Children requires Ministries to hold responsibilities to spread out information, educate children on their rights. Key authorities include:

- The Ministry of Labor-Invalids and Social Affairs (the Children's Department) operates the National Telephone Exchange for Child Protection that provides child protection services and regulates the information dissemination and advertisement about its hotline (i.e., 111) and child protection services<sup>90</sup>;
- The Ministry of Education and Training educates and disseminates knowledge about children's rights to pupils, teachers and provide skills training for pupils;<sup>91</sup> and

Ministry of Information and Communication regulates the press, publishing, telecommunication, Internet, radio and television broadcasting and other forms of informing and dissemination exclusive for children; and carries out measures for providing and disseminating knowledge on children's rights.<sup>92</sup>

<sup>90</sup> Articles 22 and 23, Decree No. 56.

<sup>91</sup> Article 85.3, Law on Children.

<sup>92</sup> Articles 87.3 and 4, Law on Children.

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# CONTRIBUTORS

## AUSTRALIA

### Baker McKenzie

Kate Gillingham  
Partner  
kate.gillingham@bakermckenzie.com

Adrian Lawrence  
Partner  
adrian.lawrence@bakermckenzie.com

Duncan McGrath  
Partner  
duncan.mcgrath@bakermckenzie.com

Elisabeth White  
Partner  
elisabeth.white@bakermckenzie.com

Adam Jeffrey  
Special Counsel  
adam.jeffrey@bakermckenzie.com

Sabrina Chan  
Senior Associate  
sabrina.chan@bakermckenzie.com

Anthony Guerrieri  
Paralegal  
anthony.guerrieri@bakermckenzie.com

Christie Wilson  
Graduate at Law  
christie.wilson@bakermckenzie.com

Claudia Walters  
Summer Clerk  
claudia.walters@bakermckenzie.com

Ben Jones  
Summer Clerk  
ben.jones@bakermckenzie.com

Carmen Massey  
Summer Clerk  
carmen.massey@bakermckenzie.com

### Citigroup

Lisa Cuman  
Director  
lisa.cuman@citi.com

Alison Castle  
Senior Vice President  
alison.castle@citi.com

### MSD

Georgina Diab  
Legal and Compliance Director  
georgina.diab@merck.com

Sharon Sadler  
Legal Counsel  
sharon.sadler@merck.com

James John Yule  
Director, Investigations (Legal)  
james.john.yule@merck.com

## CHINA

### Baker McKenzie

Simon Hui  
Partner  
simon.hui@bakermckenziefenxun.com

Emma Chen  
Associate  
emma.chen@bakermckenziefenxun.com

### Citigroup

Ryan Carlos  
Senior VP  
ryan.carlos@citi.com

### MSD

James Yuan  
Director of Global Investigations  
Office of General Counsel  
james.yuan@merck.com

Lee Zhang  
Associate Director, Legal and Compliance  
lee.zhang@merck.com

Angela Li  
Compliance Officer, Legal and Compliance  
zhao.ting.li@merck.com

Shirleen Hong  
Associate Director, Legal and Compliance  
shirleen.hong@merck.com

Chen Pan  
Senior Specialist, Legal and Compliance  
pan.chen@merck.com

## HONG KONG

### Baker McKenzie

Gillian Lam  
Associate  
gillian.lam@bakermckenzie.com

Julia Chia  
Trainee Solicitor  
julia.chia@bakermckenzie.com

Rainbow Fu  
Trainee Solicitor  
rainbow.fu@bakermckenzie.com

Terry Yung  
Trainee Solicitor  
terryyung@bakermckenzie.com

Lesley Luo  
Trainee Solicitor  
lesley.luo@bakermckenzie.com

Vivian Tsang  
Trainee Solicitor  
vivian.tsang@bakermckenzie.com

William Tsang  
Trainee Solicitor  
william.tsang@bakermckenzie.com

### Citigroup

Pearl Wai  
Director  
pearl.wai@citi.com

Geoff Williams  
Director  
geoff.williams@citi.com

Peter Fisher-Jones  
Managing Director  
peter.fisherjones@citi.com



Marcus Au Yeung  
Director  
marcus.ayeung@citi.com

Shraddha Mandhana  
Legal Counsel  
shraddha.mandhana@citi.com

## INDIA

### Baker McKenzie

Ashish Chugh  
Local Principal  
ashish.chugh@bakermckenzie.com

### Khaitan & Co.

Ajay Bhargava  
Partner  
ajay.bhargava@khaitanco.com

Vanita Bhargava  
Partner  
vanita.bhargava@khaitanco.com

Trishala Trivedi  
Senior Associate  
trishala.trivedi@khaitanco.com

### Citigroup

Sanjana Roy  
Associate Counsel  
sanjana.roy@citi.com

Tasneem Bharmal  
Legal Counsel  
tasneem.bharmal@citi.com

Pragati Shetty  
Officer  
pragati.vasantha.shetty@citi.com

Nisha Mistry  
Assistant Vice President  
nisha.mistry@citi.com

### MSD

Muralidhar Karanam  
Director, Legal & Compliance  
muralidhar.karanam@merck.com

Devangi Shah  
Manager, Legal, Compliance, and CS  
devangi.shah@merck.com

## INDONESIA

### Baker McKenzie

Andi Kadir  
Principal  
andi.kadir@bakermckenzie.com

Zarina Marta Dahlia  
Associate  
zarina.dahlia@bakermckenzie.com

Agung Wijaya  
Associate  
agung.wijaya@bakermckenzie.com

Nabila F. Oegroseno  
Legal Assistant  
nabila.oegroseno@bakermckenzie.com

### Citigroup

Juniar Juniar  
Vice President  
juniar.juniar@citi.com

## JAPAN

### Baker McKenzie

Kei Matsumoto  
Partner  
kei.matsumoto@bakermckenzie.com

Akiko Hosokawa  
Partner  
akiko.hosokawa@bakermckenzie.com

Yu Okamura  
Senior Associate  
yu.okamura@bakermckenzie.com

Masao Tozaki  
Senior Associate  
masao.tozaki@bakermckenzie.com

Takuya Wada  
Senior Associate  
takuya.wada@bakermckenzie.com

### MSD

Jamochi Yumi  
Director, Legal & Compliance  
yumi.jamochi@merck.com

## MALAYSIA

### Baker McKenzie

Esther Chik  
Partner  
esther.chik@wongpartners.com

Eddie Chuah  
Partner  
eddie.chuah@wongpartners.com

Kellie Allison Yap  
Senior Associate  
kellieallison.yap@wongpartners.com

Karine Chaw  
Associate  
karine.chaw@wongpartners.com

Yee Syuan Cham  
Associate  
syuancham.yee@wongpartners.com

### Citigroup

Ruth Lin  
Legal Counsel  
ruth.lin@citi.com

## PHILIPPINES

### Baker McKenzie

Marvin Masangkay  
Senior Associate  
marvin.masangkay@quisumbingtorres.com

Neonette Pascual  
Associate  
neonette.pascual@quisumbingtorres.com

Rafael Roman Cruz  
Associate  
rafaelroman.cruz@quisumbingtorres.com

Zarah Mae Rovero  
Associate  
zarahmae.rovero@quisumbingtorres.com

Alvin Tan  
Associate  
alvin.tan@quisumbingtorres.com

Jose Angelo Tiglao  
Associate  
joseangelo.tiglao@quisumbingtorres.com

Kevin Catapusan  
Associate  
kevin.catapusan@quisumbingtorres.com

### Citigroup

Carla Dejeris  
Vice President  
carla.dejeris@citi.com

Elaine Khoo  
Senior Vice President  
elaine.ai.ling.khoo@citi.com

## SINGAPORE

### Baker McKenzie

Celeste Ang  
Principal  
celeste.ang@bakermckenzie.com

Daryl Yang  
Trainee  
daryl.yang@bakermckenzie.com

Chuan Lee  
Trainee  
chuan.lee@bakermckenzie.com

### Citigroup

Audrey Ng  
Director  
audrey.k.ng@citi.com

Natalie Everaert  
Director  
natalie.everaert@citi.com

Ruth Lin  
Senior Vice President  
ruth.lin@citi.com

Cara Sim  
Vice President  
cara.sim@citi.com

Cheryl Goh  
Vice President  
cheryl.hsueh.ling.goh@citi.com

Marcus Lim  
Vice President  
marcus.lim@citi.com

Andrew Chan  
Vice President  
andrew.hy.chan@citi.com

### MSD

Hwa Jiunn Gan  
Associate Director L&C  
hwa.jiunn.gan@merck.com

## TAIWAN

### Baker McKenzie

Bee Leay Teo  
Foreign Senior Consultant  
beeleay.teo@bakermckenzie.com

Daisy Chung  
Partner  
daisy.chung@bakermckenzie.com

Hui-Heng Hong  
Associate  
hui-heng.hong@bakermckenzie.com

Sophia Huang  
Associate  
sophia.huang@bakermckenzie.com

Cindy Chen  
Associate  
cindy.chen@bakermckenzie.com

### Citigroup

Michelle Wan  
Vice President  
michelle.wan@citi.com

## THAILAND

### Baker McKenzie

Paralee Techajongjintana  
Principal  
paralee.techajongjintana@bakermckenzie.com

Praween Chantanakomes  
Legal Professional  
praween.chantanakomes@bakermckenzie.com

Papon Kanungvanichakul  
Legal Professional  
papon.kanungvanichakul@bakermckenzie.com

Teerapat Chanpiwat  
Legal Professional  
teerapat.chanpiwat@bakermckenzie.com

Napas Na Pombejra  
Legal Professional  
napasna.pombejra@bakermckenzie.com

Pimvipa Kunanusorn  
Legal Professional  
pimvipa.kunanusorn@bakermckenzie.com

Eui Young Cha  
PG Coordinator  
euiyoung.cha@bakermckenzie.com

Thanawat Kheawdoknoi  
Marcom Coordinator  
thanawat.kheawdoknoi@bakermckenzie.com

## VIETNAM

### Baker McKenzie

Thuy Hang Nguyen  
Partner  
thuyhang.nguyen@bakermckenzie.com

Minh Tri Quach  
Partner  
minhtri.quach@bakermckenzie.com

Thao Nguyen  
Paralegal  
thao.nguyen@bakermckenzie.com

Huu Tuan Nguyen  
Associate  
huutuan.nguyen@bakermckenzie.com

Nguyen Minh Ta  
Law Clerk  
nguyenminh.ta@bakermckenzie.com

Thi Binh Nguyen  
Associate  
thibinh.nguyen@bakermckenzie.com

Mai Nhu Thuy Pham  
Intern  
mainhuthuy.pham@bakermckenzie.com

Thu Minh Le  
Trainee Solicitor  
thuminh.le@bakermckenzie.com

Anh Khue Ho  
Associate  
anhkhue.ho@bakermckenzie.com

Khanh Chi Vu  
Trainee Solicitor  
khanhchi.vu@bakermckenzie.com

Anh Thu Nguyen  
KM Coordinator  
anhthu.nguyen@bakermckenzie.com

---

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**World Vision**

Kathrine Yee

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Bee Leay Teo, Celeste Ang, Kate Gillingham, John Lau and Ashish Chugh

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Creative Services Team Manila, Chris von Bieberstein

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