

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

ANTI-CHILD MARRIAGE LEGAL GUIDE

End Violence Against
Children program

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CONTENTS

INTRODUCTION	4
AUSTRALIA	7
CHINA PRC	19
INDIA	26
INDONESIA	44
MALAYSIA	50
PHILIPPINES	57
SINGAPORE	64
TAIWAN	70
THAILAND	78
VIETNAM	88
CONTRIBUTORS	98
ACKNOWLEDGEMENTS	101

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 Organization¹, the Asia Pacific region contains the highest amount of working children in the world, representing a significant challenge for local communities to provide adequate support to these vulnerable children.

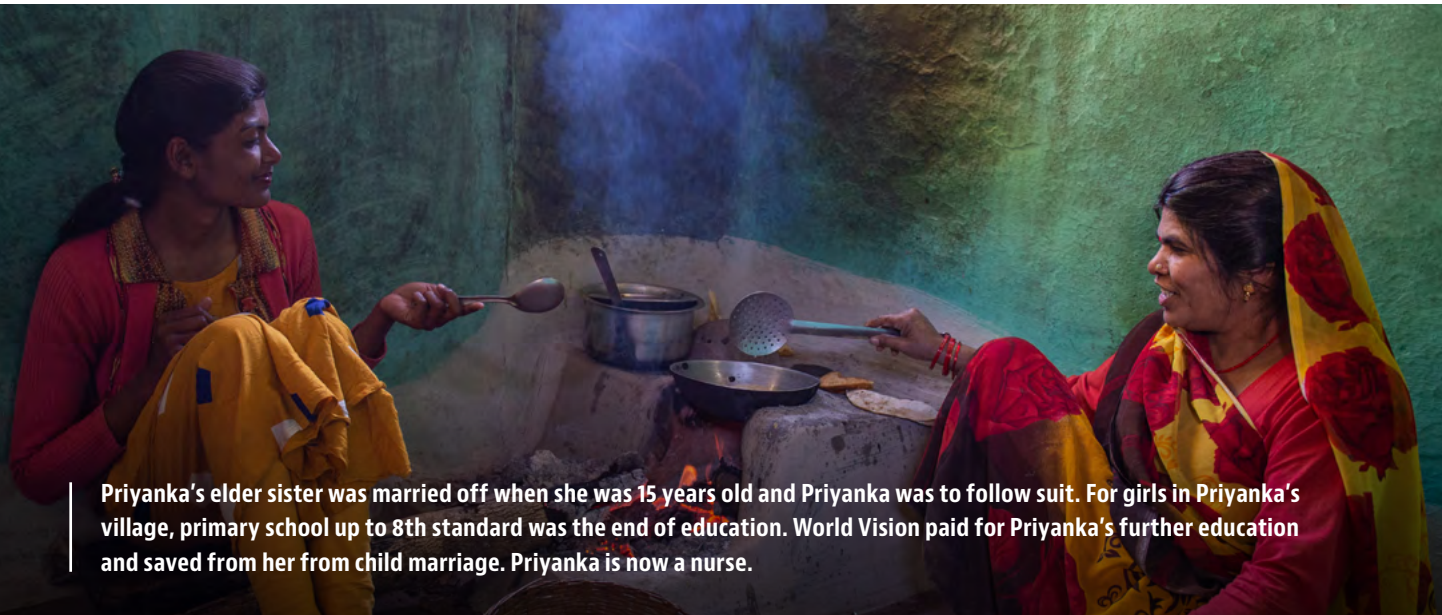
In line with the UN's Sustainable Development Goals and global CSR principles, World Vision and its corporate partners endeavour to provide essential protections and resources necessary to build new lives for affected children.



Mamita's mother fixed Mamita's marriage when she was 15. Mamita reached out to members of child club of World Vision, who, together with local authorities, counselled her mother and stopped the marriage from happening.

All pictures taken by and licensed to *World Vision*

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



Priyanka's elder sister was married off when she was 15 years old and Priyanka was to follow suit. For girls in Priyanka's village, primary school up to 8th standard was the end of education. World Vision paid for Priyanka's further education and saved her from child marriage. Priyanka is now a nurse.

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THE ASIA PACIFIC LEGAL GUIDES

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

community leaders and social workers in relation to core legal frameworks.

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

1. Child Trafficking
2. Physical Violence
3. Sexual Violence

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)² 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>.

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

ANTI-CHILD MARRIAGE GUIDE INTRODUCTION

This Anti-Child Marriage Guide has been produced by Baker & McKenzie, World Vision, GlaxoSmithKline, 3M and Khaitan & Co. to support the End Violence Against Children Program. This fourth legal guide addresses frequently asked questions encountered by World Vision relating to protecting victims of

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

Kamal and Rita got married at 16 and 18 years old, respectively. Due to sufferings from child marriage, Kamal now advocates against child marriage after being helped by World Vision. The couple now has a baby boy.



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AUSTRALIA

1. What is the legal definition of child and what is the legal definition of a minor?

There are variations in the way Australian state, territory and federal laws define a child and a minor. However, in the context of marriage, the federal *Marriage Act 1961 (Cth)* (the **Marriage Act**) defines a minor as a person under the age of 18 years.¹

2. Is there any specific legislation that deals with child marriage of children or minors?

Yes. Child marriage is dealt with under the federal *Criminal Code Act 1995 (Cth)* (**Criminal Code**), the *Marriage Act* and some state legislation.²

Marriage Act

Under the *Marriage Act*, a marriage is void if either of the parties is under the age of 18 years.³ It is an offence to go through a ceremony of marriage with a person who is under the age of 18 years, the penalty being 5 years' imprisonment.⁴ In certain circumstances, a person aged 16 or 17 years can marry a person aged over 18 years, but this requires a court order⁵ and the consent of the minor's parents or guardians.⁶ A court will only grant such an order when the 'circumstances of the case are so exceptional and unusual as to justify the making of the order'.⁷

See the response to Question 7 below for further information about the assessment of 'exceptional and unusual' circumstances for such an order to be granted.

Criminal Code

In 2013, 'forced marriage' was criminalised under the *Criminal Code*. Under the *Criminal Code*, a marriage is defined as a forced marriage if:

- either party was under 16 years;⁸ or
- a party enters into a marriage without freely and fully consenting due to the use of coercion, threat or deception or because they were incapable of understanding the nature and effect of the marriage ceremony.⁹

In the context of child marriage, it is an offence under the *Criminal Code*, punishable by 9 years' imprisonment, to be a party (not being the child victim) to a forced marriage;¹⁰ or to engage in conduct which causes a person under 18 years to enter into a forced marriage.¹¹

Child Protection Legislation

Each Australian state and territory has prescribed its own set of legislative grounds for

1 *Marriage Act 1961 (Cth)*, s5(1)

2 *Family Violence Protection Act 2008 (Vic)*, s 5; *Criminal Law Consolidation Act 1935 (SA)*, Part 3, Division 8A. See also *Modern Slavery Act 2018 (NSW)* which is not yet in force but expressly addresses child forced marriage.

3 *Marriage Act 1961 (Cth)*, s23B(1)(e)

4 *Marriage Act 1961 (Cth)*, s95(1)

5 *Marriage Act 1961 (Cth)*, s12

6 *Marriage Act 1961 (Cth)*, s13 to s16 and Schedule 1

7 *Marriage Act 1961 (Cth)*, s12(2)(b).

8 *Criminal Code Act 1995 (Cth)*; s270.7A(1)(b)

9 *Criminal Code Act 1995 (Cth)*; s270.7A(1)(a)

10 *Criminal Code Act 1995 (Cth)*, s270.7B(2) and s270.8(1)(a)

11 *Criminal Code Act 1995 (Cth)*, s270.7B(1) and s270.8(1)(a)

intervention in relation to a child or minor “in need of protection”. Conduct associated with child marriage including harm, abuse or exploitation of a child can be grounds for legislative intervention on the basis that the child is in need of protection.

Although anyone can report suspected abuse, in each state and territory there are laws that require certain professions, such as doctors, teachers and police officers, to make a report to the statutory child protection authority or the police if there are reasonable grounds to suspect

that a child has been or is being abused, neglected or is otherwise in need of protection.¹²

Family Law Act

The *Family Law Act 1975 (Cth)* (**Family Law Act**) does not specifically deal with child marriage but it provides that courts can make parenting orders and issue injunctions in the best interests of a child. This includes orders made for a young person’s personal protection and welfare to prevent a child marriage and orders to prevent a child being taken overseas for the purpose of marriage.¹³

3. Is there a legal definition of child marriage and/or illegal child marriage?

Australia’s legislative framework does not expressly define child marriage. However, under the *Marriage Act*, the marriage of a person under the age of 18 is void, unless that person is aged 16 or 17 and has both parental consent and court approval (which is only provided in ‘exceptional and unusual’ circumstances).

The *Criminal Code* prescribes offences relating to forced marriage. Under the *Criminal Code*, a

marriage is defined as a forced marriage if:

- either party was under 16 years;¹⁴ or
- a party enters into a marriage without freely and fully consenting due to the use of coercion, threat or deception or because they were incapable of understanding the nature and effect of the marriage ceremony.¹⁵

4. Is child marriage a violation of human rights and a form of violence against children?

The Australian government recognises, through legislation and public policy, that forced marriage is a slavery-like practice, a form of gender-based violence and an abuse of human rights.¹⁶

There are several international human rights instruments which prohibit forced marriage and promote the fundamental right to consent freely to marriage.¹⁷ Within that framework, and in the express context of children, the *United*

*Nations Convention on the Rights of the Child (CRC)*¹⁸ sets out the human rights of children, including the rights to survive and develop; the right to protection from harmful practices, abuse and exploitation; the right to express views freely on all matters affecting them; the right to participate fully in family, cultural and social life; and the right to enjoy all the rights of the CRC without discrimination. As children are

12 *Children and Young People Act 2008 (ACT)*, s356
Children and Young Persons (Care and Protection) Act 1998 (NSW), s23, s27
Care and Protection of Children Act 2007 (NT), s15, s26
Child Protection Act 1999 (Qld), s13E, *Commission for Children Young People and Child Guardian Act 2000 (Qld)*, s20
Children’s Protection Act 1993 (SA), s11
Children, Young Persons and Their Families Act 1997 (Tas.), s13, s14
Children, Youth and Families Act 2005 (Vic.), s182(1) a-l, s 183, s184, s162(1) c-d
13 *Family Law Act 1975 (Cth)*, Part VII, Division 6 - Parenting Orders; Division 9 - Injunctions; Division 12 - Jurisdiction (s69H to s69N). For an example of the use of the Family Law Act provisions to prevent a child being taken overseas for the purpose of marriage, see *Madley v Madley* [2011] FMCAfam 1007.
14 *Criminal Code Act 1995 (Cth)*; s270.7A(1)(b)
15 *Criminal Code Act 1995 (Cth)*; s270.7A(1)(a)
16 The *Criminal Code Act 1995 (Cth)* addresses forced marriage (including child marriage) as a specific ‘Slavery-like offence’. See also Department of Home Affairs website regarding forced marriage - <https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/people-smuggling-human-trafficking/forced-marriage>
17 For example, Article 16(2) of the Universal Declaration of Human Rights states that ‘Marriage shall be entered into only with the free and full consent of the intending spouses’. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights have similar provisions. Article 16(1)(b) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) prohibits forced marriage based on a right to freely and fully consent to marriage.
18 *UN Commission on Human Rights, Convention on the Rights of the Child.*, 7 March 1990

considered incapable of consent to marriage, child marriage is therefore a violation of a child's rights under the CRC.¹⁹ The CRC was ratified in Australia in December 1990 and offences regarding forced marriage and the marriage of minors are contained within the *Criminal Code* and the *Marriage Act*.

In addition to the specific offences contained in the above legislation, actions which may be associated with child marriage are also treated as a form of violence against children under Australian law. These include state, territory and Commonwealth criminal and child protection legislation for offences such as kidnapping, sexual assault, physical assault and child abuse.

5. What is the national minimum age of marriage? Is it legal to marry a person before 18 years of age?

The legal age of marriage in Australia is 18 years²⁰ but the *Marriage Act* does allow for children aged 16 or 17 to marry if they have both parental consent and court approval, which is only granted in 'exceptional and unusual' circumstances.²¹

It is an offence under the *Marriage Act* to marry a person who is under 18 years, unless that person

is 16 or 17 years and the requisite parental consent and court approval is obtained.²²

It is also an offence under the *Criminal Code*, to be a party to a marriage where the other party is under 16 years;²³ or to engage in conduct which forces a person under 18 years to enter into a marriage.²⁴

6. What penalties or sanctions exist within the national laws if anyone violates the law? (For the husband, parents, guardian of the child.)

The three main categories of offences and penalties that relate to child marriage in Australia are:

1. Forced marriage offences;
2. Marrying a minor offences; and
3. Solemnizing offences.

Forced marriage

Under the *Criminal Code*,²⁵ a forced marriage occurs where:

- a party to the marriage enters the marriage without freely and fully consenting because of the use of coercion, threat or deception; or
- a party was incapable of understanding the nature and effect of the marriage ceremony, or
- where either party to the marriage was under 16 years.

It is an offence to cause another person to enter into a forced marriage or to be a party to a forced marriage (other than as the victim of the forced marriage).²⁶ The penalty is 7 years imprisonment, except for an aggravated offence which attracts a penalty of 9 years imprisonment. An offence is an aggravated offence if:

- the victim is under 18 years; or
- the offender, in committing the offence:
 - subjects the victim to cruel, inhuman or degrading treatment; or
 - engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and is reckless as to that danger.²⁷

Forced marriage of children is also an offence under the people trafficking provisions of the

19 The UN Special Rapporteur on Trafficking in Persons has argued that as "children are, by definition, incapable of consent or of exercising the right of refusal, child marriage is forced marriage, and as such violates fundamental human rights standards and must therefore be strictly prohibited": Sigma Huda, Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, *UN Doc A/HRC/4/23* (24 January 2007).

20 *Marriage Act 1961* (Cth), s 11.

21 *Marriage Act 1961* (Cth), s 12 and 13

22 *Marriage Act 1961* (Cth), s 95(1)

23 *Criminal Code Act 1995* (Cth), s270.7B(2) and s270.8(1)(a)

24 *Criminal Code Act 1995* (Cth), s270.7B(1) and s270.8(1)(a)

25 *Criminal Code Act 1995* (Cth), s 270.7A(1)

26 *Criminal Code Act 1995* (Cth), s 270.7B

27 *Criminal Code Act 1995* (Cth), s 270.8(1)(a)

Criminal Code. It is an offence of trafficking in children to organise or facilitate the exit or proposed exit of a minor from Australia to provide sexual services and, therefore, to force a minor to marry. The penalty is 25 years' imprisonment.²⁸

Marrying a minor

Subject to the exception outlined below, under the *Marriage Act*, it is an offence to marry a person who is not yet 18 years. The penalty is 5 years' imprisonment.²⁹ It is a defence to prosecution if the party to the marriage can prove that he or she believed on reasonable grounds that the other person was 18 years.³⁰

In certain circumstances, a person aged 16 or 17 years can marry a person aged over 18 years, but this requires the consent of the minor's parents or guardians³¹ and court approval, which is only granted in 'exceptional and unusual' circumstances.³²

Improper solemnising

Under the *Marriage Act*, it is an offence to solemnize a marriage of a child under 16 years, or to solemnize a marriage where one of the parties is 16 or 17 years without the necessary consents and Court order.³³ The penalty is 6 months' imprisonment or 5 penalty units (AUD\$1,110).³⁴

7. What exceptions are being used for child marriage? E.g. parental consent, judicial consent/ authorization, religious practice, religious laws or when the child becomes pregnant.

Without exception, marrying a child under 16 years is not permitted. In certain circumstances, a person aged 16 or 17 years can marry a person aged over 18 years, but this requires the consent of the minor's parents or guardians³⁵ and court approval, which is only granted if the circumstances of the case are 'so exceptional and unusual as to justify the making of the order'.³⁶

Court approval

The *Marriage Act* does not contain guidance as to what circumstances should be considered to be 'so exceptional and unusual'. The *Marriage Act* requires the Judge or magistrate to 'hold an inquiry into the relevant facts and circumstances' and each case is considered in the light of its own particular facts. A judge or magistrate is required to exercise their discretion as to whether the person applying to be married is doing so freely and without coercion and whether the circumstances are sufficiently exceptional or unusual as to warrant the order.

Pregnancy of the minor is not, of itself, an exceptional or unusual circumstance but may be taken into consideration with other factors.³⁷ Similarly, parental consent is not adequate evidence on its own and overseas laws and customs are not considered 'exceptional' merely because they differ from those in Australia. In that respect, to justify the order sought, the exceptional and unusual circumstances must relate to the parties concerned and not merely to a class or kind of persons to which those parties belong such as a cultural group.³⁸ Other considerations taken into account have included the maturity of the minor; other influences on them; the length of their relationship; and the financial independence of the couple.

Parent / Guardian Consent

Written consent is also required from each of the parents or guardians of the minor³⁹ unless a prescribed authority⁴⁰ under the *Marriage Act*, such as the state and territory Registries of Births,

²⁸ *Criminal Code Act 1995 (Cth)*, s 271.4

²⁹ *Marriage Act 1961 (Cth)*, s 95(1).

³⁰ *Marriage Act 1961 (Cth)*, s 95(3).

³¹ *Marriage Act 1961 (Cth)*, s13 to s16 and Schedule 1

³² *Marriage Act 1961 (Cth)*, s12

³³ *Marriage Act 1961 (Cth)*, s 99.

³⁴ *Marriage Act 1961 (Cth)*, s 100.

³⁵ *Marriage Act 1961 (Cth)*, s13 to s16 and Schedule 1

³⁶ *Marriage Act 1961 (Cth)*, s 12.

³⁷ Ex parte Willis (1997) 21 Fam LR 479

³⁸ Re SG (1968) 11 FLR 326

³⁹ *Marriage Act 1961 (Cth)*, s 13.

⁴⁰ *Marriage Act 1961 (Cth)*, s 5 defines a 'prescribed authority' to be an officer or employee of the Commonwealth, a State or a Territory, appointed to be a prescribed authority. A list of prescribed authorities can be found on the Attorney-General's Department [website](#). They include the State Registries of Births, Deaths And Marriages and Registrars of Regional Local Courts.

Deaths and Marriages is satisfied consent is not needed because:

- it is impractical or unreasonable to get consent; and
- there is no reason to believe the parents or guardians would refuse consent.⁴¹

Where the parent, guardian or the prescribed authority refuses consent, the minor may then apply to the Court for consent. However, the

minor must first obtain a certificate from a family counsellor stating that they have received counselling in relation to the proposed marriage. A judge or magistrate may only give their consent where they are satisfied that consent has been refused unreasonably or that it would be unreasonable to refuse consent to the marriage when having proper regard to the welfare of the minor.⁴²

8. What legal protection or remedies are available to a victim of child marriage or marriage that takes place below the national minimum age of marriage?

Protection and Remedies - Police

Victims of child marriage can access protection, referrals and assistance with accommodation, counselling and other services, through state, territory and federal police.

The Australian Federal Police play a central role in assisting people who are in, or at risk of, a forced marriage by referring matters to be prosecuted and through referrals to the Support for Trafficked People Program⁴³. The program is currently delivered nationally by the Australian Red Cross. Among other things, the Support for Trafficked People Program provides:

- financial assistance and social support;
- intensive case management;
- secure and safe accommodation;
- counselling and medical services;
- access to legal and migration services; and
- support through the criminal prosecution process.

Of particular relevance in terms of protection available to child marriage victims, State and Territory police can provide children with protection through Family / Domestic violence orders or restraining orders. Although the process and orders vary between the states and territories, in general the police must apply for

Domestic / Family Violence protection where a child has or is likely to be the victim of an offence that results in injury, abuse or psychological harm.

Parenting Orders - Family Courts

Legal protection for victims or potential victims of child marriage is available in the form of parenting orders through the *Family Law Act* and Family Court of Australia. Parenting orders are designed to protect the best interests of the child. They may deal with who the child can live with, allocation of parental responsibility, how a child will communicate with a parent, and other aspects of care, welfare and development of the child.⁴⁴

They can be used to protect children whose present or future physical or psychological harm is threatened by reason of a current or planned marriage. This may occur in a number of ways – for example, parenting orders may:

- require that a child be removed from the custody of parent who has threatened child marriage,⁴⁵ or who placed the child into the forced marriage;⁴⁶
- minimise or cut off the time the child spends with any person who has threatened child marriage, or who placed the child into the forced marriage;⁴⁷
- place a child in care arrangements outside of the forced marriage (making it an offence to remove the child from the care of that person);⁴⁸

41 *Marriage Act 1961 (Cth)*, s 15.

42 *Marriage Act 1961 (Cth)*, s 16.

43 The Australian Government's Department of Social Services administers the [Support for Trafficked People Program](#)

44 *Family Law Act 1975 (Cth)*, s64B(2)

45 See, for example: *Essey & Elia [2013] FCCA 1525 (19 September 2013)*

46 *Family Law Act 1975 (Cth)*, ss 64B(2)(a) and 65M(2)

47 *Family Law Act 1975 (Cth)*, ss64B(2)(b) and 64B(2)(e)

48 *Family Law Act 1975 (Cth)*, ss 64B(2)(a) and 65M(2)

- require that a parent or guardian pay financial support to a child that has been removed from their custody;⁴⁹
- prevent a child from being removed from Australia for a forced child marriage (which may include an order that the child's passport be delivered to the Court).⁵⁰ Where a parenting order limits or prevents a child's overseas travel, an application can also be made to the Australian Federal Police to place the child on the Family Law Watchlist.⁵¹ The Watchlist will trigger an alert at any point of international departure when an attempt is made to remove the child from Australia. When the alert is raised, the child will be prevented by authorities from leaving Australia.

A parenting order may be applied for by:

- the child;
- either or both of the child's parents;
- a grandparent of the child; or
- any other person concerned with the care, welfare or development of the child.⁵²

In some cases the Court may order an independent children's lawyer to be appointed to represent a child's interests.⁵³

Care and Protection Orders

Each Australian state and territory has prescribed its own set of legislative grounds for intervention in relation to a child or minor "in need of protection". These laws apply to young people up to the age of 18.⁵⁴ Any person who is concerned that a child is in need of protection or at risk of child marriage, may voluntarily make a report to the relevant statutory child protection authority or the police. In addition, there are laws in each state and territory that require members of certain professions, such as doctors, teachers and police officers, to make a report to the statutory child protection authority or police if there are reasonable grounds to suspect that a child has been or is being abused or neglected.⁵⁵ These mandatory reporting requirements vary slightly by state and territory, in terms of who is required to report and the type of abuse that must be reported.

The type of intervention varies between the states and territories but, in general, Care and Protection Orders may be made where a child has been or is likely to be abused or suffer harm. Where the child is at serious risk or imminent harm, this may include removing the child from the care of a parent or guardian.

9. Are such protections or remedies available to a victim of child marriage, who is a foreign bride?

Yes.

The protections available under the criminal law of Australian's states and territories apply to all child victims, regardless of their nationality. Under the *Criminal Code*, for the purpose of the 'forced marriage' provisions, a marriage is defined to include 'a marriage recognised under the law of a

foreign country'.⁵⁶ A marriage of a minor outside Australia, which would not have been a valid marriage if it was held in Australia, is invalid for the purpose of Australian Law.⁵⁷

Parenting orders may also be made for a foreign bride who is residing in Australia at the time protection is sought or to prevent a child being

49 *Family Law Act 1975 (Cth)*, s64B(2)(f)

50 <https://www.ag.gov.au/families-and-marriage/publications/parenting-orders-what-you-need-know>

51 <https://www.afp.gov.au/sites/default/files/PDF/FamilyLawWatchlistRequestForm-04092020.pdf>

52 *Family Law Act 1975 (Cth)*, s65

53 *Family Law Act 1975 (Cth)*, s68L. A court may make an order for an Independent Children's Lawyer to be appointed on its own initiative or on the application of the child, an organisation concerned with the welfare of children or any other person.

54 Other than in NSW (up to 16 years old) and Victoria (up to 17 years old)

55 *Children and Young People Act 2008 (ACT)*, s356

Children and Young Persons (Care and Protection) Act 1998 (NSW), s23, s27

Care and Protection of Children Act 2007 (NT), s15, s26

Child Protection Act 1999 (Qld), s13E, *Commission for Children Young People and Child Guardian Act 2000 (Qld)*, s20

Children's Protection Act 1993 (SA), s11

Children, Young Persons and Their Families Act 1997 (Tas.), s13, s14

Children, Youth and Families Act 2005 (Vic.), s182(1) a-ea, s184, s162 c-d

56 *Criminal Code Act 1995 (Cth)* s 270.7A

57 *Family Law Act 1975 (Cth)*, s73, s 88D

taken offshore for the purpose of marriage.⁵⁸ In addition, the Australian government has developed a Human Trafficking Visa Framework⁵⁹ which enables foreign nationals who do not already hold a valid visa and are suspected victims of modern slavery, including forced marriage, to remain

lawfully in Australia on a temporary visa designed exclusively for this purpose. Visa-holders are then able to access support through the Australian government's Support for Trafficked People Program⁶⁰ and may eventually be eligible for a permanent visa.

10. What are the gaps in the national laws compared to international standard practices or laws related to child marriage, such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

There are a number of international instruments relevant to the prevention of child marriage.⁶¹ Although Australia is a signatory to most of these instruments, it is not signatory to the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*. Despite this, Australian laws relating to child marriage are broadly consistent with international standard practices.

The relevant international instruments require marriages to be entered into with the free and full consent of the intending spouses.⁶² They also define 'child' to be someone under 18 years of age⁶³ and prohibit child marriage.⁶⁴ However, they do not explicitly specify a minimum age for marriage, with the *Convention on Consent*

to Marriage, Minimum Age for Marriage and Registration of Marriages indicating that it is up to each signatory state to take legislative action to specify the minimum age.⁶⁵

In Australia, the legal age for marriage is 18 years,⁶⁶ but legislation allows for children aged 16 or 17 to marry if they have both parental and court consent.⁶⁷ In September 2019 Australia appeared before the United Nations Committee on the Rights of the Child (the **Committee**). In its concluding observations, the Committee recommended that Australia should review the Marriage Act to eliminate any exception to the minimum age of marriage of 18 years for girls and boys.⁶⁸ This recommendation has not yet been adopted by Australia.

11. In a criminal case in connection with the marriage of a child or minor:
11.1 Which agency or agencies have the authority to file a case with the prosecutor?

The Australian Federal Police is the agency that has authority to investigate contraventions of the *Marriage Act* and forced marriage offences in the *Criminal Code* and to file a case with the prosecutor for criminal prosecution.

State and territory police are the relevant authorities to investigate and prosecute other conduct associated with child marriage which falls under state and territory legislation. This includes offences related to physical assault, sexual assault, child abuse and kidnapping.

58 *Family Law Act 1975 (Cth)*, s69E

59 Department of Home Affairs [Human Trafficking Visa Framework](#)

60 The Australian Government's Department of Social Services administers the [Support for Trafficked People Program](#)

61 Relevant international instruments include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of a Child, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and the Convention on Celebration and Recognition of the Validity of Marriages.

62 Article 16(2), [Universal Declaration of Human Rights](#), Article 23(3), [International Covenant on Civil and Political Rights](#), Article 10(1), [International Covenant on Economic, Social and Cultural Rights](#)

63 Article 1, [Convention on the Rights of a Child](#)

64 Article 16, [Convention on the Elimination of all Forms of Discrimination against Women](#)

65 Article 2, [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#)

66 [Marriage Act 1961 \(Cth\)](#), s11

67 [Marriage Act 1961 \(Cth\)](#), ss12 and 13

68 [UN Convention on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Australia, 1 November 2019](#)

11.2. In general, what evidences are required to build the case against the alleged perpetrators of a child marriage case?

The evidence required will depend upon the particular offence being prosecuted. Evidence to support prosecution of child marriage offences may include police reports, birth certificates, passports, victim testimony and documentary evidence that the marriage occurred.

11.3 If the prosecutor requires the child marriage victim to testify against the alleged perpetrators, e.g. in many cases it will be parents or close relatives,
(a) does such victim have the right to refuse;

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

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

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

- the nature and gravity of the offence;
- whether any other evidence is reasonably available to the prosecutor;

- the substance and importance of any evidence the child might give and the likely weight of that evidence; and
- the likely harm that might be caused to the child if they gave evidence and whether that harm outweighs the desirability of receiving the evidence.

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

(b) can such victim testify via video link from another room?;

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

(c) can such victim provide testimony separately without a court appearance and return to the country of origin;

Yes, subject to the Court's discretion.

The Court may admit a recording of a statement made by the child to a police officer as the whole or part of a child's evidence in chief. However, the child must be available for questioning in Court for cross-examination and re-examination although such questioning may be via video-link in the Court's discretion.

For offences under the *Criminal Code*, including forced marriage, the court can direct that a

witness can give evidence from outside Australia by video link if the court is satisfied that attendance of the witness at the court to give evidence would cause the witness:

- (i). unreasonable expense of inconvenience; or
- (ii). psychological harm or unreasonable distress; or
- (iii). cause the witness to become so intimidated or distressed that his or her reliability as a witness would be significantly reduced.⁶⁹

69 *Criminal Code Act (1995) Cth* - Division 279 - Video-link evidence

In the Family Court of Australia, where an order is made for a child under the age of 18 years to be called as a witness, the evidence of the child can

be given either by affidavit, video conference, closed circuit television or other electronic communication.

(d) what other means of protection are available to a child or minor testifying in court.

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

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

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

- allow the child to be accompanied by a support person when giving evidence;
- appoint a person to conduct cross-examination and re-examination of the child when the accused is unrepresented. Many jurisdictions specifically prohibit an accused from cross-

examining a child in relation to sexual offences, which may be relevant in the context of child marriage;

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

11.4 How is a child marriage victim thoroughly prepared for his/her testimony before the appointed court date?

Each of Australia's states and territories has child witness assistance services to provide court education and support for child witnesses⁷⁰ and to reduce the anxiety and psychological trauma associated with court proceedings. Additional assistance and support for victims is available through the Australian Government's Support for Trafficked People Program.⁷¹ The services offered can include the following:

- trial preparation and counselling including explanation of the trial process;
- preparatory court visits;
- liaising with prosecutors or courts to keep the child informed of the progress of the case;

- attendance in court as the child's court companion or assistance in choosing a court companion;
- debriefing after giving evidence; and
- assistance in the preparation of Victim Impact Statements.

In all states and territories, a court may make orders for a 'court companion' or 'support person' to attend court with a child witness to provide practical and emotional support.⁷² Depending on the nature of the case, the court companion may be a parent, trusted family member, friend or counsellor with a witness support unit, although most jurisdictions prohibit someone who is a witness in the case from being another witness'

70 These services include: **(Western Australia)** [The Child Witness Service](#); **(Victoria)** [The Victorian Child Witness Service](#); **(New South Wales)** [NSW Witness Assistance Service](#); **(Northern Territory)** [Northern Territory Witness Assistance Service](#); **(ACT)** [ACT Witness Assistance Service](#); **(Tasmania)** [Court Support Officers](#); **(Queensland)** [Victim Assist Queensland](#); **(South Australia)** [South Australia Witness Assistance Service](#).

71 The Australian Government's Department of Social Services administers the [Support for Trafficked People Program](#)

72 See [Acts Amendment \(Evidence of Children and Others\) Act 1992 \(WA\)](#) s 106E; [Evidence Act 1977 \(Old\)](#), s21A(2)(d); [Evidence Act 1929 \(SA\)](#), s13(2)(e); [Evidence Act 1939 \(NT\)](#), s 21A(2AD); [Criminal Procedure Act 1986 \(NSW\)](#), s306ZK; [Evidence Amendment \(Children and Special Witnesses\) Act 2001 \(Tas\)](#) s4; [Criminal Procedure Act 2009 \(Vic\)](#), s365; [Court Procedures Act 2004 \(ACT\)](#), s74E.

court companion. In such cases, the companion may be someone previously unknown to the child and appointed by the court.’

Some jurisdictions have also legislated for the appointment of communicators or ‘child interpreters’ who can interpret questions in language that a child can understand or who can

interpret the child’s answers for the court.⁷³ The intended role of these interpreters is to reduce the risk of child witnesses suffering confusion and intimidation caused by incomprehensible questions, which can otherwise cause unnecessary distress and diminish the quality and clarity of the evidence provided by the child witness.

11.5 Can a child marriage victim be required to testify more than once and if so, how many times on average does such victim need to appear in court?

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

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

In circumstances where it is necessary to hold a new trial or there is a subsequent hearing, a child may be required to give evidence at the new hearing. Alternatively, in certain circumstances, the Court may admit an official audio visual or written record of the evidence already given by the child.

11.6 How does the law protect the best interests of a child marriage victim, who is a child or minor as a witness in a criminal proceeding?

See above and, in particular, the protections and factors described in response to question 11.3(d) and the support mechanisms described in response to question 11.4.

**12. In a civil case:
12.1 Whether the local World Vision organisation, which provides shelter to a victim of child marriage may be regarded as the guardian of such child or minor, and whether it can appoint a lawyer to represent the victim to pursue compensation in a civil case?**

Appointment as legal guardian:

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

The court will decide guardianship applications based on the best interests of the child and references, statements, medical reports and inspections are usually required. The World Vision representative would need to show that they have an established and positive relationship with the child and can provide a safe, nurturing, stable and secure environment.

Appointment of a lawyer in a civil case to pursue compensation

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 an 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.

A corporation or organisation, such as World Vision, cannot be a tutor/litigation guardian for the purposes of pursuing civil remedies. However,

⁷³ *Acts Amendment (Evidence of Children and Others) Act 1992 (WA)*, s106F.

an individual representative of World Vision could be the tutor/litigation guardian of the child and can then appoint a lawyer to represent the victim to pursue compensation in a civil case.

Domestic violence orders/victims of crime statutory schemes:

In some jurisdictions, a representative of World Vision may be able to apply for domestic violence orders or compensation through victims of crime statutory schemes on behalf of a child, provided that the relevant decision maker (e.g.: a Court or Victims Services) has given their consent or approval.

Family Law Act Orders

Although Australia does not have a specific regime of forced marriage protection orders, children at risk of forced marriage can obtain state protection by applying for a parenting order prohibiting the conduct that would enable the marriage. Under the *Family Law Act*, any person concerned with the ‘care, welfare or development of the child’ can apply for such an order so this would apply to a World Vision representative with care of a child victim.

12.2 Can a civil case be lodged in court at the same time as a criminal case?

Yes, a civil case can be lodged at the same time as a criminal case and need not be preceded by a criminal case or criminal conviction.

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

12.3 How will the court determine the compensation amount for a child marriage victim in a civil case?

Victims of Crime statutory schemes

As discussed in questions 2 and 6 above, the Australian response to the practice of forced marriage sits within a criminal justice framework. Therefore, the current regime for protection of minors who are victims of child marriage is focused on criminal rather than civil remedies.

Compensation schemes for victims of crime are run at state and territory level. Compensation amounts are awarded based on evidence of expenses incurred or likely to be incurred and economic loss flowing from an act of violence. Prescribed recognition (i.e. 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

If the conduct surrounding the child marriage offences also involve the commission of a tort, it may be possible for victims to sue offenders for tortious damages in the civil jurisdiction of relevant courts.

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

13. Where can World Vision look for pro bono legal services to help a victim of child marriage?

There are a number of specialist organisations that provide pro bono legal services to victims of child marriage in Australia:

- **Australian Federal Police (AFP):** The AFP coordinate Australia’s response to forced and child marriage through the Support for Trafficked People Program. The AFP can also

provide appropriate referrals to pro bono legal assistance. Initial support is available from the AFP even a victim is unsure if they want to assist with an investigation or prosecution. Contact with the AFP can be made anonymously.

- **Legal Aid:** Legal Aid operates nationally and provides a range of services for victims of

child marriage in criminal, family and civil law matters. In NSW, Legal Aid also operates a Family Law Early Intervention Unit which can assist with urgent family law watchlist applications.

- **My Blue Sky:** My Blue Sky is Australia's national website and helpline dedicated to forced marriage prevention. The service provides free legal advice, information, assistance and referral services.
- **Anti-Slavery Australia:** Provides legal advice and assistance for people who have been trafficked, enslaved or severely exploited in Australia or are concerned about someone in this situation. They provide confidential casework and advice services to people in slavery and slavery-like situations, including forced marriage.

CHINA (PRC)

1. What is the legal definition of child and what is the legal definition of a minor?

There is no legal definition of child under the PRC law. The legal definition of a minor is a natural person below age 18.¹

2. Is there any specific legislation that deals with child marriage of children or minors?

Yes. Pursuant to the Article 17 of the PRC Law on the Protection of Minors ("**Minor Protection Law**"), the parents or guardians of minors shall not permit or force minors to marry or to enter into an engagement.

Further, pursuant to the Article 1047 of the PRC Civil Code, no marriage shall be established before a man reaches the age of 22 and a woman reaches the age of 20.

3. Is there a legal definition of child marriage and/or illegal child marriage?

There is no clear legal definition of child marriage and/or illegal child marriage under the PRC law. That said, as mentioned, no marriage may be legally established or permitted before the man has reached 22 years of age or the woman 20 years of age.² Therefore, any marriage under the statutory age is illegal (except for certain national autonomous areas, the local authority may formulate adaptations).

4. Is child marriage a violation of human rights and a form of violence against children?

Child marriage is definitely a violation of human rights and a form of violence against children, both physically and mentally.

5. What is the national minimum age of marriage? Is it legal to marry a person below 18 years of age?

The national minimum age of marriage for man is 22 years old and for woman is 20 years old. National autonomous areas have the power to formulate adaptations regarding minimum age of marriage. (e.g. 20 years of age for man, 18 years of age for woman in Inner Mongolia).³

Hence, in any parts of China, it should be illegal to marry a person below 18 years of age.

Further, given the statutory limitation on the age of marriage, no legal and valid marriage can be established under the PRC law.

¹ PRC Law on the Protection of Minors, effective on 1 June 2021, Article 2.

² PRC Civil Code, Article 1047.

³ Decision of the Standing Committee of the Inner Mongolia Autonomous Region People's Congress on Amending the "Inner Mongolia Autonomous Region to Implement the Marriage Law of the People's Republic of China" Supplementary Provisions, available at: http://www.wlqglq.gov.cn/wlq_info/zfxxgksx/201802/t20180207_1972127.html.

6. What penalties or sanctions exist within the national laws if anyone violates the law? (for the husband, parents, guardian of the child)

The penalties or sanctions may depend on the specific characteristics of the violation (*i.e.*, child marriage).

As to parents or guardians, they have the legal obligation to perform their guardianship duties and protect the interests of minor being infringed.⁴ Child marriage would significantly infringe child's physical and psychological health. Hence, parents or guardians shall prevent and stop child marriage, even when the child is voluntary to enter into a marriage.

In addition, the residents' committees or villagers' committees in the place where the parent or guardian reside shall exhort them to perform their guardianship duties and stop their acts; if the circumstances are serious, the residents' committees or villagers' committees shall report to the public security organs without delay. After receiving such reports, public security organs shall admonish the parents or other guardians and may order them to accept the guidance of family education.⁵

Another serious circumstance is that violence is used to force a child marriage. In that circumstance, the person(s) use violence to force such marriage may constitute different crimes depending on the criminal acts as well as the consequence. Such crimes may include (i) crime of intentional injury, which can be sentenced to fixed-term imprisonment of not more than three years or criminal detention; or a fixed-term imprisonment of not less than three years but not more than 10 years, or even death penalty, if the consequence is serious⁶, (ii) crime of negligent homicide, which can be sentenced to fixed-term imprisonment of not less than three years⁷, (iii) the crime of causing serious injury by negligence, which can be sentenced to fixed-term imprisonment of not more than three years⁸, etc.

Lastly, if the victim of the child marriage is a girl under the age of 14, the husband may be deemed to have committed a crime of rape and can be given a fixed-term imprisonment of not less than three years⁹. One exception to this circumstance is when the husband is a boy under the age of 14, he shall not be criminally liable for the crime of rape.¹⁰

7. What exceptions are being used for child marriage? *E.g.* parental consent, judicial consent/ authorization, religious practice, religious laws or when the child becomes pregnant.

Under the PRC law, there is no exception for child marriage. Even in certain autonomous areas (e.g. Inner Mongolia) in China, the minimum age of marriage for male is 20 and for female is 18. Considering the legal definition of minor, in any areas of China, no marriage for child under 18 years old shall be allowed.

8. What legal protection or remedies are available to a victim of child marriage or marriage that takes place below the national minimum age of marriage?

Child marriage shall be null and void, and the parties shall be devoid of any rights or obligations of a husband and a wife.

In case when any damages have been caused to the victim, the victim has the legal right to claim damages in both civil and criminal proceedings, subject to the actual circumstances.

⁴ Article 7, PRC Law on the Protection of Minors.

⁵ Article 118, amended PRC Minors Protection Law, which was amended in 2020 and has become effective on June 1, 2021.

⁶ Article 234, the PRC Criminal Law.

⁷ Article 233, the PRC Criminal Law.

⁸ Article 235, the PRC Criminal Law.

⁹ Article 236, the PRC Criminal Law.

¹⁰ Article 17, the PRC Criminal Law.

9. Are such protection or remedies available to a victim of child marriage, who is a foreign bride?

Both criminal and civil protection and remedies are available to a victim of child marriage who is a foreign bride, if the place of common habitual residence of the parties is China. As the general principle, all civil activities within the territory of the PRC shall be governed by the PRC laws and regulations¹¹. Similarly, crimes committed within the territory of the PRC are generally governed by the PRC criminal laws¹².

10. What are the gaps in the national laws compare to international standard practices on laws related to child marriage, such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

The United Nations Convention on the Rights of the Child (UNCRC) is the most universally accepted human rights treaty to date. As a signatory to the Convention, China has committed to establishing a children's rights system made up of laws, policies, institutions, and processes to respect, protect, and fulfill the rights of children in the country.

China is not a party to the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages ("**Convention**"). However, China has adopted relevant rules in national laws, including:

- a. Under the PRC Civil Code, marriage shall be legally entered into with the full and free consent of both parties¹³. Marriage must be based upon the complete willingness of both man and woman. Neither party may use compulsion on the other party, and no third party may interfere.
- b. China set the minimum age of marriage to be 22 for boys and 20 for girls. Note that China is one of the few countries that do not allow exceptions, such as the exceptions based upon parental or court's consent, to the minimum age.
- c. Marriage registrations are mandatory in the PRC. Pursuant to Article 1049 of the PRC Civil Code, both the man and the woman who require marriage shall go to the marriage registration office to apply for marriage registration in person. Those that comply with the provisions of this law shall be registered and a marriage certificate shall be issued. The marriage registration is completed, that is, the marriage relationship is established.

11. In a criminal case in connection with the marriage of a child or minor: 11.1 Which agency or agencies have the authority to file a case with the prosecutor?

The prerequisite for this issue is that cases of child marriage constitute a criminal offence. In China, child marriage is not permitted and illegal, as women younger than 20 years old or men younger than 22 years old are not allowed to get married. That being said, child marriage is not prohibited as a crime, unless other criminal acts are involved (e.g. using violence, having sex with a girl under the age of 14).

In case that the case constitutes a crime, in China, the Public Security Bureau ("**PSB**") is the only authority that has investigatory power into criminal cases involving the child marriage. After the PSB

completes a criminal investigation, it shall refer the case to the People's Prosecutor for prosecutions.

In China, 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 Section 9 of Article 17 of PRC Law on the Protection of Minors, the parents or other guardians shall not permit or force minors to marry, or undertake an engagement for the minors, which indicates a heavier responsibility for children's parents or other guardians.

¹¹ Article 12, the PRC Civil Code.

¹² Article 6, the PRC Criminal Law.

¹³ Article 1046, the PRC Civil Code.

11.2 In general, what evidences are required to build the case against the alleged perpetrators of a child marriage case?

In general, a child marriage without using violence or having sexual relationship with the child may not constitute a criminal offense. Hence, it has to be analyzed case by case.

One typical example of crime that is related to a child marriage is a child marriage involving sexual violence against the child. Evidence required for prosecution may include¹⁴:

- a. Conducting a personal inspection of the minor victim and the criminal suspect;
- b. 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;
- c. Inspecting documentary evidence such as accommodation registration forms, on-site surveillance video and other audio-visual materials; and
- d. Collecting victim statements, witness testimony, and statements of criminal suspects.

11.3 If the prosecutor requires the child marriage victim to testify against the alleged perpetrators, e.g. in many cases it will be parents or close relatives, (a) does such victim have the right to refuse;

Theoretically speaking, any person, including children, who have information regarding a case shall have the obligation to testify.¹⁵ 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.¹⁶

(b) can such victim testify via video link 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.¹⁷

(c) can such victim provide testimony separately without a court appearance and return to the country of origin; and

This question requires a case-by-case analysis, and it depends on whether the statement made by the child is consistent with other evidence and its reliability could be strengthened by other evidence. In general, minor victims and witnesses who are permitted by the People's Court can

generally not testify in court; or testify in court after taking appropriate protective measures.¹⁸

In addition, there is no explicit regulation on whether such victim can return to the country of origin.

¹⁴ Article 12, the Opinions on Punishing the Crimes of Sexual Abuse of Minors.

¹⁵ Article 62, the PRC Criminal Procedure Law.

¹⁶ Article 14, the Opinions on Punishing the Crimes of Sexual Abuse of Minors.

¹⁷ Id., Article 18.

¹⁸ Several Opinions of the Leading Group of the Central Committee for the Prevention of Juvenile Delinquency, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of Justice and the Central Committee of the Communist Youth League on Further Establishing and Improving the Supporting Work System for Handling Juvenile Criminal Cases.

(d) what other means of protection are available to a child or minor testifying in court.

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

1. Legal Representatives accompany

After the People's Court determines the hearing date of the crime against minors, the court shall notify the minor victims and their legal representatives of the time and place of the hearing. The legal representative of the minor victim may accompany or represent the minor victim to attend the court hearing and present his or her views, except when the legal representative is the defendant of the crime of sexual assault.¹⁹

2. Special Arrangements for Children

Minor victims and witnesses who are permitted by the People's Court can generally not testify in court; or testify in court after taking appropriate protective measures.²⁰

For cases involving sexual violence, there is more detailed regulation. When People's Court hears sexual assault of minors, minor victims or witnesses, who really need to appear in court, should be taken protective measures including not revealing the appearance, the real voice and other measures according to the case. If applicable, the statements of minors shall be displayed via video and other methods, which should be also taken protective measures.

11.4 How is a child marriage victim thoroughly prepared for his/her testimony before the appointed court date?

There is no statutory difference of testimony preparation between child marriage victims and other victims. Moreover, as mentioned in 11.2, the specific evidence requirements depends on the sex of the child and the type of the alleged crime. Generally, child marriage victim can prepare for the cross-examination and other court investigation procedure, in order to render his/her testimony reliable and effective.

11.5 Can a child marriage victim be required to testify more than once and if so, how many times on average does such victim need to appear in court?

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. It is hard to give an average number since it requires a case-by-case analysis.

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.

11.6 How does the law protect the best interests of a child marriage victim, who is a child or minor as a witness in a criminal proceeding?

Various protection measures are taken to protect the best interests of children as a witness, including²¹:

1. Special arrangements for inquiry

When questioning minor victims and witnesses, especially victims of sexual crimes, a place conducive to minors shall be selected in accordance with the law, and a moderate manner

of questioning shall be conducted, and the legal representative shall be notified to be present.

The questioning of female victims of sexual crimes should generally be conducted by female case officers or in the presence of female case officers.

If the legal representative is unable or inappropriate to be present, the minor victim or

¹⁹ Article 17, Opinions on Punishing the Crimes of Sexual Abuse of Minors.

²⁰ Several Opinions of the Leading Group of the Central Committee for the Prevention of Juvenile Delinquency, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of Justice and the Central Committee of the Communist Youth League on Further Establishing and Improving the Supporting Work System for Handling Juvenile Criminal Cases.

²¹ Id.

witness may agree or notify the adult concerned to be present according to his or her wishes. Attention should be paid to avoid the possible adverse effects on their physical and mental health due to improper questioning methods.

2. Special arrangements for testimony

Minor victims and witnesses who are permitted by the People's Court can generally testify without appearing in court, or testify after taking appropriate protective measures.

12. In a civil case:

12.1 Whether the local World Vision organisation, which provides shelter to a victim of child marriage may be regarded as the guardian of such child or minor, and whether it can appoint a lawyer to represent the victim to pursue compensation in a civil case?

According to Article 27 of the Civil Code, where both parents of a minor are deceased or incapable of acting as a guardian, one of the following persons capable of acting as a guardian shall act as the guardian of the minor in the following order: (1) Paternal or maternal grandparents of the minor. (2) Elder brothers or sisters of the minor. (3) Other individuals or organizations willing to act as the guardian, provided that it is approved by the urban residents' committee, villagers' committee, or civil affairs department of the place of the minor's domicile. We note that World Vision has undergone registration formalities for the formation of representative offices in accordance with law. Therefore, World Vision's China rep offices could act as the guardian where

the parents, grandparents, elder brothers or sisters of the minor are incapable of acting as a guardian and the application shall be approved by the residents' committee, villagers' committee or civil affairs department.

In accordance with Article 57 of the Civil Procedure Law, the guardian of a person without competency to participate in an action shall participate in the action on behalf of the person as the person's legal representative. Thus, under the circumstance that World Vision is the guardian of the child marriage's victim, World Vision could participate in the action on behalf of the child and could appoint a lawyer to represent the child.²²

12.2 Can a civil case be lodged in court at the same time as a criminal case?

Yes. Child marriage is not in itself a criminal offense, but statutory rape of a minor under the age of 14 would apply if the couple had sexual intercourse. A civil case can be lodged for annulment of the marriage and economic compensation.

12.3 How will the court determine the compensation amount for a child marriage victim in a civil case?

This question depends on whether the case is a mere civil case or an incidental civil action (i.e. which is brought during criminal proceedings).

- a. In China, there is no specific law regulating the compensation for a child marriage victim in a mere civil case, and in addition, the emotional distress damages are hard to be supported by the court.
- b. If it is an incidental civil action, theoretically, 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, nursing expenses, traffic expenses, loss of working time etc. However, in practice, there are few costs of mental rehabilitation supported by the court, which is because the compensation in China is indemnification rather than exemplary damages, and it is also difficult for the victims to prove their emotional distress damages.

²² <https://ngo.mps.gov.cn/ngo/portal/toInfogs.do>.

13. Where can World Vision look for pro bono legal services to help a victim of child marriage?

According to Article 10 of the Regulation on Legal Aid, where any citizen needs a lawyer and fails to entrust one due to economic difficulties, he or she may apply to legal aid institutions for legal aid. The scope of legal aid includes criminal cases and certain specific civil and administrative cases, including: 1. requesting for state compensations; 2. requesting for social insurance treatment or minimum life alimony treatment; 3. requesting for survivor's pensions or relief funds; 4. requesting for the payment for supporting parents or grandparents, and children; 5. requesting for the payment of labor remunerations; and 6. claiming civil rights and interests arising from the brave act of righteousness. Therefore, under the current regulation, cases on child marriage are not included within the scope of state-mandated legal aid.

However, the new Legal Aid Law that will enter into force on 1 January 2022 expands the scope of legal aid.²³ In accordance with Article 22 of the new Legal Aid Law (Draft) and Article 2.3 of the Opinions on Improving Legal Aid System²⁴, it is reasonable to expect that marriage and family-related cases will be included into the scope of legal aid. In addition, Article 104 of the Law on the Protection of Minors (effective on June 1, 2021) stipulates that for minors who need legal aid or judicial relief, legal aid institutions, public security organs, procuratorates, courts or judicial administrative departments shall assist them in this regard and provide them with legal aid or judicial relief according to law. Therefore, upon the entering into effect of the Law on the Protection of Minors, we believe World Vision may help victims of child marriage to apply to legal aid institutions for legal aid.

²³ Available at: <http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808081773f34620177428980960540>.

²⁴ Available at: http://www.gov.cn/xinwen/2015-06/29/content_2886516.htm.

INDIA

1. What is the legal definition of child and what is the legal definition of a minor?

The word 'child' is defined differently by different legislation in India¹. The legal definition of a child tends to depend upon the purpose of each legislation.

According to Section 2(a) of the Prohibition of Child Marriage Act, 2006 ("PCMA") which is the most important national legislation enacted exclusively to prohibit the child marriage, "Child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age. As per Section 2(1)(d) of the Protection of Children from

Sexual Offences Act, 2012 ("POCSO Act"), a child is defined as any person below eighteen years of age irrespective of the sex of a person.

Similarly, the age of majority in India does not depend on the sex of a person. Section 3 of the Majority Act, 1875 says that every person domiciled in India shall attain the age of majority on his or her completing the age of eighteen years and not before. It means every person domiciled in India who is below the age of eighteen years is a minor.

2. Is there any specific legislation that deals with child marriage of children or minors?

Yes.

The PCMA is the key national legislation which deals with child marriage. This Act provides for the prohibition of solemnization of child marriages and for matters connected therewith or incidental thereto.

In addition, the following laws (statutory and personal laws) also deal with child marriage:

1. The Special Marriage Act, 1954 – Section 4 (c) of the Special Marriage Act, 1954 prescribes punishment for performing, conducting, and abetting child marriage. According to Section 4 (c) marriage between two persons may be solemnized only if, at the time of the marriage, the male has completed the age of twenty-one years and the female, the age of eighteen years. And, Section 24(1) considers the marriage between two people who do not meet these age requirements null and void.

2. The Hindu Marriage Act, 1955 – Section 5 of the Hindu Marriage Act, 1955 lays down certain conditions for solemnization of valid marriages amongst Hindus, and according to this Act, a marriage is valid if the bridegroom has completed the age of twenty-one years and the bride has completed 18 years of age at the time of marriage.
3. Muslim Personal Law – Under the Muslim Personal Laws there is no bar for child marriage. Any Muslim in a capacity of sound mind and who has attained majority (i.e., fifteen years) can be married, even with the consent of a guardian.
4. Indian Christian Marriage Act, 1872 – Section 3 of this Act defines a Minor as a person who has not completed the twenty-one years of age and is not a widower or a widow. Irrespective of the age of the parties involved, Sections 4 and 5 render the marriage as valid if it is consented to and solemnized under the provisions of the Act.

¹ Section 2(b) of the Protection of Women from Domestic Violence Act, 2005; Section 2(c) of the Right to Education Act, 2009; Section 4(i) of the Guardians and Wards Act, 1890; Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2015; Section 2(ii) of the Child and Adolescent Labor (Prohibition and Regulation) Act, 1986.

5. Parsi Marriage and Divorce Act, 1936 – According to Section 3 of this Act, marriage between a male who has not completed the age of twenty-one years and a female who has not completed the age of eighteen years is invalid.
6. Jewish/Hebrew Law – Jewish law in India is uncodified. However, a girl who is a minor under the Hebrew law, that is, she is below the age of thirteen years and a day, cannot marry. The consent of the man is also necessary.

3. Is there a legal definition of child marriage and/or illegal child marriage?

Yes.

Under Section 2(b) of the PCMA, Child marriage means “a marriage to which either of the contracting parties is a child” and under Section 2(a) of the PCMA, Child means “a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age”.

Occasionally terms like ‘early marriages’ or ‘forced marriages’ are also used to describe child marriages. ‘Early marriage’ is a marriage that occurs before the age of marriage recognized by the law. And the term ‘forced marriage’ highlights the lack of or incapacity to give full and free consent, regardless of age.

4. Is child marriage a violation of human rights and a form of violence against children?

Yes. The Supreme Court of India² has recognized that child marriage is a form of violation of human rights and a form of violence against children. It violates constitutional fundamental rights which guarantees every Indian citizen to life and personal liberty, non-discrimination and equality, free education between ages 6 to 14 years, and freedom from forced labor.

It has been recognized that an early marriage takes away the right to live with dignity under Article 21 of the Constitution of India³. An early marriage takes away the self-esteem and confidence of a girl child and subjects her to sexual abuse. Further, it violates the right to bodily integrity and reproductive choice. A child marriage also leads to early childbirth adversely affecting the health of the child. Child marriage

results in deprivation of physical, mental, and economic development of the girl child including deprivation of the right to education.

Further, India has ratified, the United Nations Convention on the Rights of the Child in 1992, which obligates the country to follow a set of standards prescribed by this Convention for securing the best interests of the child. Although this Convention does not expressly prohibit the child marriage⁴, a child marriage, particularly of a girl child violates several rights guaranteed by this Convention. Article 34 provides a right to protection against sexual exploitation and sexual abuse, and Article 24 guarantees a right to health and protection from harmful traditional practices. Child marriage may also violate Article 28(1) of the Convention, which provides a right to education.

5. What is the national minimum age of marriage? Is it legal to marry a person below 18 years of age?

The national minimum age of marriage is currently twenty-one years for a male and eighteen years for female under Section 3 of the PCMA.

Section 9, 10 and 11 of the PCMA make contracting of child marriage, performing, conducting, directing, or abetting child marriage and

promoting or solemnizing child marriage as an offence and therefore all such activities are illegal. However, there is no specific law that states that a child marriage per se is illegal. The legislations and personal laws in India merely declare a child marriage as either “void” or “voidable” with certain necessary conditions. Under Section

² Independent Thought v Union of India, (2017) 10 SCC 800

³ *Ibid*

⁴ Gaffney-Rhys, Ruth. (2011). International law as an instrument to combat child marriage. *The International Journal of Human Rights*. 15. 359-373. 10.1080/13642980903315398.

3(1) of the PCMA a child marriage is voidable at the option of any contracting party who was a child at the time of the marriage. Moreover, in India, the essential condition for the validity of any marriage is solemnization of the religious ceremonies prescribed by the religion to which the parties belong.

However, punishment is prescribed when a male adult marries a girl child.⁵ Further, whoever performs, conducts, directs or abets any child marriage⁶, or promotes or permits solemnization of a child marriage is also punished under the PCMA⁷. Therefore, a male adult marrying a girl child is illegal and conducting or abetting a child marriage is also illegal.

Under Section 3 of the PCMA, child marriages are voidable at the option of the contracting party being a child. The Parsi Marriage and Divorce Act, 1936 renders that a marriage between a male who has not completed twenty-one years of age, and a female who has not completed eighteen years of age as invalid.

However, the Hindu Marriage Act, 1955 considers child marriage as neither void nor voidable. But different views have been taken on the legality of child marriage by the judiciary. The High Court of Madras, way back in 1891, in Venkatacharyulu v. Rangacharyulu⁸, upheld the validity of child marriage. The position was further clarified by the court in Sivanandy v. Bhagwathyamm,⁹ where it was pointed out that a child marriage though prohibited by the Child Marriage Restraint Act, 1929¹⁰ is not rendered invalid by any provision therein and the contravention of the provisions of the Act does not render the marriage invalid as the validity of the marriage is a subject beyond the scope of the Act.

However, in Jitender Kumar Sharma v. State¹¹ and Association for Social Justice & Research v. U.O.I.,¹² the court noted that PCMA is of secular character and has an overriding effect on the Hindu Marriage Act, 1955. But even after passing of PCMA, certain loopholes still remain as the legislation is still weak as it does not actually prohibit child marriage. It can be said that though the practice of child marriage has been discouraged by the legislation, it has not been declared illegal.

The Muslim Personal Laws and the Indian Christian Marriage Act do not consider a marriage between two individuals below the age of eighteen invalid and no punishment is prescribed under the laws. However, the Muslim Personal laws establish puberty, which is presumed to be 15 years of age, as the minimum age of marriage.¹³ Since marriage is considered a contract under Muslim law, the marriage of a girl above this age without her consent is legally void.¹⁴ The Indian Christian Marriage Act requires that a preliminary notice for all marriages involving girls below the age of 18 years and boys below the age of 21 years be published at least 14 days prior to the marriage.¹⁵ Minors (i.e., a girl below the age of 18 and a boy below the age of 21) are not allowed to marry before the preliminary notice period has expired, unless there is consent from a parent or a guardian.¹⁶

It is pertinent to mention that the Supreme Court has observed that the PCMA is a secular Act applicable to all and being a special Act will prevail over the provisions of the personal laws.¹⁷

5 Section 9 of the PCMA Act, 2006

6 Section 10 of the PCMA Act, 2006

7 Section 11 of the PCMA Act, 2006

8 (1891) IRL 14 Mad. 316.

9 AIR 1962 Mad. 400.

10 Repealed as of 2006.

11 (2010) 95 AIC 428 (Del.)

12 (2010) SCC Online Del. 1964.

13 Jaya Sagade, Child Marriage in India: Socio-Legal and Human Rights Dimensions 79 (2005); Sir Dinshah Fardunji Mulla, Principles of Mohamedan Law 114 (1907).

14 See Jaya Sagade, Child Marriage in India, supra note 13, at 80 (citing F.B. Tyabji, MUSLIM LAW 52 (1968)).

15 The Indian Christian Marriage Act, No. 15 of 1872, (India)

16 *Ibid*

17 *Supra* note 2

6. What penalties or sanctions exist within the national laws if anyone violates the law? (for the husband, parents, guardian of the child)

The penalties and sanctions that exist under different national laws are:

PCMA¹⁸

Under Section 9 of the PCMA a male adult who contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or rigorous imprisonment with fine which may extend to one lakh rupees or with both.

Under Section 10 of the PCMA, whoever performs or directs the child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees.

Under Section 11 of the PCMA, the parent or any person having charge of the child, who permits or attends the child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees. However, no woman shall be punishable with imprisonment.

Indian Penal Code, 1860 ("IPC")

Child marriages are not specifically penalized under the IPC, but Section 366 on forced marriage establishes the kidnapping or abduction of a woman to compel her to marry and the use of any method of compulsion as a punishable offence.¹⁹ The IPC also contains other provisions that may be applicable to child marriage in certain cases, such as Section 496 which establishes that going through a marriage ceremony with fraudulent intent as a punishable offence and Section 370 which was amended in 2013 to address human trafficking for the purposes of sexual exploitation, slavery, and servitude.²⁰

It is pertinent to mention that sexual intercourse or sexual acts by a man with his wife above 15

years of age, was an exception to rape under the IPC.²¹ As a result, sexual intercourse with a wife above 15 years of age and below 18 years of age did not amount to rape under the IPC. However, the Supreme Court in its judgment in 2017²² held that such exception to rape is violative of the fundamental rights enshrined in the Constitution of India. Therefore, sexual intercourse or sexual acts by a man with his wife below eighteen years of age constitutes rape and is punishable with rigorous imprisonment of not less than 10 years extending upto life imprisonment under Section 375 and Section 376 of the IPC.

POCSO Act

Under POCSO Act, an act of sexual intercourse from a spouse of a person below 18 years is an offense irrespective of the gender or age of the victim. If a person commits penetrative sexual assault with a child and is related to the child through marriage, it is called aggravated penetrative assault and is punishable with a fine and a minimum term of 10 years imprisonment and may extend to life imprisonment.²³

Juvenile Justice (Care and Protection of Children) Act, 2015 ("JJ Act")

JJ Act also establishes procedural mechanisms that provide legal protection and remedies in the case of child marriage. The JJ Act recognizes children who are at "imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage" as children in need of care and protection.²⁴ The JJ Act does not specifically mention married girls, although children at risk of abuse, neglect, or exploitation are considered in need of care and protection under the law.²⁵

¹⁸ In 2017, the Supreme Court of India indicated that the Prohibition of Child Marriage Act 2006 has priority over personal laws, *Independent Thought vs Union of India* on 11 October 2017.

The State of Karnataka amendment of PCMA was lauded by the Supreme Court in the 2017 judgement of *Independent Thought v. Union of India*. Recognizing the possible and prevalent health risks associated with early marriage and sexual intercourse, the Court remarked that other State Legislatures should follow the route taken by Karnataka and declare child marriage to be void.

¹⁹ Section 366 of the Indian Penal Code, 1860

²⁰ Section 496 & Section 370, Indian Penal Code, 1860

²¹ Exception 2 of Section 375 of the Indian Penal Code, 1860

²² *Supra* note 2

²³ Section 5(n) read with Section 6 of the POCSO Act, 2012

²⁴ Section 2 (14) (xii) of the JJ Act, 2015

²⁵ *Ibid*

7. What exceptions are being used for child marriage? *E.g.* parental consent, judicial consent/ authorization, religious practice, religious laws or when the child becomes pregnant.

Generally, child marriages are not void ab initio in India. Such marriages are rather voidable at the option of contracting parties. It means child marriage is still a valid marriage in India until the parties involved choose to ask for it to be

annulled.²⁶ According to the PCMA, such marriages shall be null and void only if they resulted from kidnapping, use of force, fraud, trafficking, or for immoral purposes²⁷ or in violation of a court injunction order to prevent the marriage²⁸.

8. What legal protection or remedies are available to a victim of child marriage or marriage that takes place below the national minimum age of marriage?

Both statutory and personal laws provide for certain remedies and protection to a victim of child marriage or in a marriage that takes place below the national minimum age of marriage.

The following are the remedies available to a victim of child marriage under various national legislations:

Under the PCMA, every child marriage, whether solemnized before or after the commencement of the PCMA, shall be voidable at the option of the contracting party who was a child at the time of the marriage.²⁹ The petition for annulling a child marriage by a decree of nullity may be filed by a petitioner at any time but before the child filing the petition completes two years of attaining majority, i.e., before attaining the age of 20 years in case of a girl and before attaining the age of 23 years in case of a boy.³⁰ Further, while granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money.³¹ PCMA also allows for maintenance and residence for the girl till her

remarriage from the male contracting party or his parents.³² PCMA also lays down provisions for custody, maintenance and legitimacy of children born of child marriages.³³ Section 13 of the PCMA lays down powers to the court to issue injunction prohibiting child marriages upon an application or a complaint. Such complaint can be made by any person having personal knowledge or reason to believe, and a non-governmental organization having reasonable information, relating to the likelihood of taking place of solemnization of a child marriage or child marriages. It also states that any child marriage solemnized in contravention of an injunction order as void. PCMA also declares child marriage in circumstances involving kidnapping, abduction or trafficking of a minor, null and void.³⁴

Under the Hindu Marriage Act, 1955, child marriage is neither void nor voidable as it is not covered by the requirements of a valid marriage.³⁵ However, this Act contains a provision of a special ground of divorce for a girl, who gets married before attaining 15 years of age and who repudiates the marriage between 15-18 years. It is immaterial whether the marriage is consummated or not.³⁶

Under the Muslim Personal laws, the couple in child marriages have the 'option of puberty' where they can repudiate the marriage after attaining puberty.

26 Child Marriages in India: Achievements, Gaps, and Challenges: Response to Questions for OHCHR Report on Preventing Child, Early and Forced Marriage for 26th Session of the Human Rights Council, Submission by HAQ Centre For Child Rights. See: <http://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/HAQCentreForChildRights1.pdf>

27 Section 12 of the Prohibition of Child Marriage Act (PCMA), 2006

28 Section 14 of the Prohibition of Child Marriage Act (PCMA), 2006

29 Section 3 of the PCMA Act, 2006

30 Section 3 (3) of the PCMA Act, 2006

31 Section 3(4) of the PCMA Act, 2006

32 Section 4 of the PCMA Act, 2006

33 Section 5 & 6 of the PCMA Act, 2006

34 Section 12 of the PCMA Act, 2006

35 Section 5 of the Hindu Marriage Act, 1955

36 Section 13(2)(iv) of the Hindu Marriage Act, 1955

But no specific age has been prescribed. Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939 entitles a woman married under Muslim law to obtain a decree of dissolution of marriage if she is given in marriage by her father or other guardian before she attained the age of 15 years and she repudiates the marriage before attaining the age of 18 years provided that the marriage has not been consummated.

Under the Dowry Prohibition Act, 1961, the dowry of a minor wife shall be held in trust for her benefits by any person who receives it and it shall be transferred to her within one year after she attains 18 years of age.³⁷ The Criminal Procedure Code, 1973, makes it obligatory for the father of the minor bride to provide maintenance to her in case her husband lacks the sufficient means to maintain her.³⁸

9. Are such protection or remedies available to a victim of child marriage, who is a foreign bride?

No direct protection or remedies are available to a victim of child marriage, who is a foreign bride in India. The PCMA is applicable to the whole of India and also applies to all citizens of India beyond India.³⁹ Therefore, a male Indian adult marrying a girl child outside India will be punishable under the PCMA.

However, some protection may be sought under the following provisions:

National Laws

The Foreign Marriage Act, 1969

The Foreign Marriage Act, 1969 covers within its ambit, a marriage between an Indian and a Foreign National. At the time of solemnization of marriage, the bride must have completed 18 years of age and the groom must have completed 21 years of age.⁴⁰ Further, reliefs under Chapter IV, V, VI, VII of the Special Marriage Act, 1954 apply in relation to marriages under the Foreign Marriage Act or to any other marriage solemnized in a foreign country between parties of whom at least one is an Indian citizen.⁴¹ Therefore, a foreign marriage procured in violation to this would be termed as null and void.⁴² A petition may be presented by either party to the district Court seeking a decree of nullity of marriage.⁴³ Further, any citizen of India who procures a marriage in violation of the age limit prescribed is punishable

with 15 days of simple imprisonment or fine of Rs. 1000 or both.⁴⁴

The POCSO Act and IPC

The POCSO Act applies to the whole of India. In cases of child marriage where the bride or groom is below 18 years of age, a charge of aggravated penetrative sexual assault can lie against them under the POCSO Act if penetrative sexual assault has taken place in India. In case of conflict between the provisions of the POCSO Act and any other law, the former will override. Owing to Section 42A of the POCSO Act, the exception under the IPC will not apply.⁴⁵ This has also been affirmed by the Supreme Court. Similarly, the IPC will be applicable in case where any offence takes place in India. Further, the IPC is also applicable to extra-territorial offences when the offence is committed by any citizen of India.⁴⁶

International Provisions

The Convention on the Rights of the Child, 1989 ("CRC")

India is a signatory to the CRC, and child marriage violates a range of CRC provisions, including the right of children not to be separated from their parents against their will and the right of children to freely express their views on matters that affect them. Further, under the CRC, the state is

37 Section 6(1)(c) of The Dowry Prohibition Act, 1961

38 Proviso to Section 125(1)(d) of the Code of Criminal Procedure, 1973

39 Section 1(2) of the PCMA Act, 2006

40 Section 4(c) of Foreign Marriage Act, 1969

41 Section 18(1) of the Foreign Marriage Act, 1969

42 Section 18(1) of Foreign Marriage Act, 1969 read with Section 24 of the Special Marriage Act, 1954

43 Section 18(2) of the Foreign Marriage Act, 1969

44 Section 20 of Foreign Marriage Act, 1969

45 S. 42A of the POCSO Act, 2012 not in derogation of any other law, – The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of its inconsistency.

46 Section 4 of the Indian Penal Code 1860

obligated to take measures to abolish traditional practices prejudicial to the health of children, including marriage.

Universal Declaration of Human Rights, 1948 ("UDHR")

Child marriage violates Article 16 of UDHR which prescribes that men and women of full age may enter into marriage with "full and free consent".

The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 ("CEDAW")

Child marriage violates Article 16 of CEDAW, which requires women and girls to have the "right freely to choose a spouse" and to "enter into marriage only with their free and full consent." CEDAW also states that the "betrothal and the marriage of a child shall have no legal effect."⁴⁷

10. What are the gaps in the national laws compare to international standard practices on laws related to child marriage, such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

National laws in India has several gaps when compared to the International standard practices. There are two international conventions that address the issue of child marriage: (i) Convention on consent to marriage, minimum age for marriage and registration of marriages, 1962; and (ii) Convention on all forms of discrimination against women, 1979 ("CEDAW"). India has neither signed nor ratified Convention on consent to marriage, minimum age for marriage and registration of marriages, 1962 but has ratified CEDAW in 1993. CEDAW is the only international agreement which directly addresses child marriage by recognizing that such union shall have no legal effect.

There are different parameters to identify and understand the gaps between the national laws and international standards related to consent to marriage, minimum age to marriage and registration of marriage.

1. Consent to Marriage:

International Standards:

Convention on consent to marriage, minimum age for marriage and registration of marriages: Article 1(1) of Convention reaffirms the consensual

nature of marriages and calls for full and free consent of the parties by requiring such consent to be expressed by both parties in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.

National laws: The PCMA is silent on the free consent of the parties. However, in the India Christian Marriage Act, 1872, under Section 19, the law prescribes that if the party to the marriage is a minor, the consent to the minor's marriage may be given by (i) father; or (ii) in case where the father is dead, guardian; or (iii) mother.

2. Minimum Age:

International Standards:

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages: Article 2 calls upon establishing a minimum age for marriage and consider the marriage an illegal if not complied with minimum age.

CEDAW: Article 16 (2) of CEDAW prescribes that the marriage of a child shall have no legal effect and the national legislations should prescribe the minimum age for the marriage.

⁴⁷ Similar such provisions are stated in the following conventions

- The Universal Declaration of Human Rights in the Preamble, Article 16, and Article 25(2).
- Convention Against Discrimination in Education (1960) in Article 1.
- The International Covenant on Economic, Social and Cultural Rights (1966) in Article 3 and Article 13.
- International Covenant on Civil and Political Rights (1966).
- Convention on the Elimination of all Forms of Discrimination Against Women (1979).
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
- The Declaration on the Elimination of Discrimination Against Women (1993).
- Beijing Declaration (1995).
- United Nations Security Council Resolution 1325 (2000).
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000).
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa or the "Maputo Protocol" (2003).
- Council of Europe Convention on preventing and combating violence against women and domestic violence or the Istanbul Convention (2011) Article 38 and Article 39.

National laws: PCMA has prescribed minimum age for marriage as 18 years for female and 21 years for male. PCMA offers protection to a minor girl in the form of granting a degree of nullity that can be obtained against the marriage anytime but until 2 years of attaining age of 18 years⁴⁸. The marriage is not 'void ab initio' as per the PCMA. However, the PCMA provides for punishment to a male adult for marrying a girl child and punishes whoever performs, conducts, directs or abets any child marriage⁴⁹, or promotes or permits solemnization of a child marriage.

3. Registration of Marriage:

Convention on consent to marriage, minimum age for marriage and registration of marriages: Article 3 of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages imposes upon state parties an

obligation to ensure that marriage is registered in an official register by the competent authority.

CEDAW: Article 16(2) of CEDAW makes the registration of child marriage in an official registry compulsory.⁵⁰

National laws:

In 2006, the Supreme Court⁵¹ observed that marriages of all persons who are citizens of India belonging to various religions should be registered compulsorily in their respective States, where the marriage is solemnized. It was observed that such a law would be of critical importance for prevention of child marriages. Pursuant to the directions of the Supreme Court, many states have passed law or framed rules for compulsory registration of marriages.⁵² However, no such Central law for compulsory registration of marriage has come into force yet.

11. In a criminal case in connection with the marriage of a child or minor: 11.1 Which agency or agencies have the authority to file a case with the prosecutor?

Under the PCMA the State Government shall appoint a Child Marriage Prohibition Officer⁵³ who shall, among other things, prevent solemnisation of child marriages by filing a complaint to the police.

A complaint may also be made to the police by any person having personal knowledge or reason to believe, or a non-governmental organization having reasonable information, about the child marriage.⁵⁴ This list also includes a parent/guardian of the child, NGO, school teachers, doctors, ANMs, anganwadi workers, village level workers, SHG members, village elders, neighbours etc. having reasonable information.

An offence punishable under the PCMA is cognizable and non-bailable.⁵⁵ Cognizable

offences are those offences where the police can arrest without warrant. Therefore, a complaint can be made by any person in the nearest police station. The police must register a FIR on the basis of such complaint. A complaint can also be filed with a Judicial Magistrate of First Class or a Metropolitan Magistrate. Since the child marriage is declared as an offence under the PCMA, it does not require a formal complaint with the police to register a case and to investigate. On any information received, police has a legal duty to register a case and prosecute the offenders.⁵⁶

Under the Commission for Protection of Child Rights Act 2005, National and State Commissions for the Protection of Child rights and Children's Courts have been constituted.⁵⁷ These commissions can look into complaints and

48 *Supra* note 25

49 *Supra* note 6

50 Art 16(2) of CEDAW

51 *Seema v. Ashwani Kumar & Ors.*, (2006) 2 SCC 578

52 States of Punjab, Delhi, Haryana, Meghalaya, Uttarakhand, Tamil Nadu, Rajasthan, Mizoram, Karnataka, Himachal Pradesh, Andhra Pradesh, Odisha, Goa, Jammu & Kashmir, Tripura, Bihar, Madhya Pradesh, Kerala, Chhattisgarh brought in laws making registration of marriage compulsory

53 Section 16(1) of the PCMA Act, 2006

54 Section 13(2) of the PCMA Act, 2006

55 Section 15 of the PCMA Act, 2006

56 *T Siva Kumar vs Inspector of Police* {2012} 1 MWN Cri 481 (Mad) (FB)

57 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.

take discretionary notice of matters relating to the deprivation of child rights.⁵⁸ These commissions have the power to forward any case to a Magistrate.⁵⁹ After looking into complaints, commissions may recommend government authorities to launch prosecution proceedings against the accused.

The JJ Act is applicable to children in need of care and protection. Under Section 2(14) of the JJ Act “child in need of care and protection means a child who reside with a person and such person who has violated any law for the time being in force meant for the protection of child and who is at imminent risk of marriage.⁶⁰ Under the JJ Act⁶¹ Child Welfare Committees (“Committees”) have been created for every District by the concerned State Government.

In every police station, at least one officer may be designated as the Child Welfare Police Officer to exclusively deal with children as victims in co-ordination with the police, voluntary and non-governmental organizations. In every State, Special Juvenile Police Units shall be created in each district to co-ordinate all functions of police related to children.⁶²

Rule 54(1), (2) (3) and (4) of the Juvenile Justice (Care and Protection) Model Rules, 2016 (the “JJ Rules”) provide that (a) a complaint can be made to a Child Welfare Officer regarding commission of an offence against a child by the child, family, guardian, friend

or teacher of the childline services or any other individual or institutions or organizations concerned (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.

If after the child marriage has taken place, the child has been subject to sexual assault, sexual harassment and pornography, the POCSO Act shall also apply.

Under the POCSO Act, the various State Governments in consultation with the Chief Justice of the respective High Court have created a Special Court⁶³ to try offences⁶⁴.

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 police⁶⁵

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.⁶⁶

11.2 In general, what evidences are required to build the case against the alleged perpetrators of a child marriage case?

Evidence 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)⁶⁷.

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

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

60 Section 2(14) (iii) and (xii) of JJ Act, 2015

61 Section 27 of the JJ Act, 2015

62 Section 107 of the JJ Act, 2015

63 Section 28 of the POCSO Act, 2012 – Designation of Special Courts

64 (i) Section 3 of the POCSO Act, 2012 – Penetrative sexual assault

(ii) Section 4 of the POCSO Act, 2012 – Punishment for penetrative sexual assault

(iii) Chapter II of the POCSO Act, 2012 – Sexual offences against children

(iv) Chapter III of the POCSO Act, 2012 – Using children for pornographic purposes and punishment therefor

(v) Chapter IV of the POCSO Act, 2012 – 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.

65 Section 19 of the POCSO Act, 2012 – Reporting of offences

66 Section 19(5) and 19(6) of the POCSO Act, 2012

67 Section 3 of the Indian Evidence Act, 1872. As per the interpretation clause, Section 3 of the Indian Evidence Act, 1872 “Proved” is defined

To prosecute under the PCMA firstly, the prosecution must prove that the age of the victim child is below the legal age of marriage, i.e., 18 years of age for females and 21 for males. To establish the age of the minors, the following documents may be produced:

- (i) the school leaving certificate⁶⁸, the matriculation or equivalent certificates, if available
- (ii) the birth certificate;
- (iii) the date of birth recorded in school records at the first instance⁶⁹ or the admission form of the school which is the primary evidence of parents' version of the age of the child⁷⁰
- (iii) statements of the children⁷¹, their parents or guardians and other witnesses

Secondly, it must be proved that the marriage has taken place. For example, in Hindus it is essential that Saptapadi takes place unless customs allow for marriage to be performed in any other way⁷². Therefore, there must be evidence of religious ceremony. This evidence can be produced in terms of photographs, invitations, receipts of payments made for marriage purposes, statements of eye-witnesses and statements of the children describing the rituals performed, gifts given if any, whether the girl was residing in the boy's house after the ritual was performed.⁷³

Thirdly, evidence must be produced to prove that the accused were responsible for arranging, performing, supporting, encouraging, and helping in the marriage or attending it. Any documentary proof showing involvement of the accused and oral statements of the child victim, statements of persons present during the relevant time and statements of parents/guardians may be taken.

To prove sexual violence under the POCSO Act, required evidence includes:

- (a) Statement of the child victim relating to the fact in issue and connected facts⁷⁴;

- (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 committed⁷⁵;
- (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 is relevant
- (j) Section 53 of Code of Criminal Procedure, 1973 ("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 JJ Rules, 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

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.

68 Judgment dated 29.04.2015 passed by the Bombay High Court in Vilas Arjun Patil v State of Maharashtra, CrI Appeal No. 401 of 1996

69 Judgment dated 08.06.2010 passed by the High Court of Bombay in Shrikisan v. State of Maharashtra, CrI Appeal No. 780 of 2008

70 Sunil v. State of Haryana, AIR 2010 SC 392

71 *Supra* note 64

72 Emperor vs. Phulabhai Bhulabhai Joshi, AIR 1940 BOM 363

73 *Supra* note 64

74 (i) Section 24 of the POCSO Act, 2012 – Recording the statements of children

(ii) Section 35 of the POCSO Act, 2012 – Statement of child to be recorded within 30 days of Special Court starting an inquiry

75 (i) Section 27 of the POCSO Act, 2012 – Medical examination of a child

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

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 state⁷⁶. Further, a fact has to be proved 'beyond reasonable doubt'.⁷⁷ The Special Court shall not believe a fact to exist merely because it is probable.

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

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 kind⁷⁸.

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 thereon⁷⁹.

The Supreme Court of India held in the case of Gagan Kanojia v. State of Punjab⁸⁰ 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 fully⁸¹.

Where a complaint is filed under Section 494⁸² of the IPC, the following evidence may be produced to prove previous marriage:

- (i) witness statements including statement of the first wife/husband
- (ii) Marriage certificate
- (iii) Photographs, wedding invitation card and other documentary evidence to show marriage ceremony

**11.3 If the prosecutor requires the child marriage victim to testify against the alleged perpetrators, e.g. in many cases it will be parents or close relatives,
(a) does such victim have the right to refuse;**

Under Section 161(2) of the Code of Criminal Procedure, 1973, 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.

⁷⁶ Section 30 of the POCSO Act, 2012 – Presumption of culpable mental state

⁷⁷ Section 30(2) of the POCSO Act, 2012

⁷⁸ Section 118 of the Indian Evidence Act, 1872

⁷⁹ Golla Yelugu Govindu v. State of Andhra Pradesh (2008) 16 SCC 769

⁸⁰ 2006(13)SCC 516

⁸¹ State of Madhya Pradesh v. Ramesh and Another (2011) 4 SCC 786

⁸² Marrying again during lifetime of husband or wife – Section 494 of the IPC

(b) can such victim testify via video link from another room;

Yes.

As per Rule 54 (18) (xi) of the JJ 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, when there is a charge under the POCSO Act, 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.

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 JJ 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 conditions⁸³:

- (i) The Magistrate shall record the statement of the child under Section 164 of the Code of Criminal Procedure, 1973 ("Cr.P.C") 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 Cr.P.C.
- (iv) Children may be accompanied by parents, guardians, or social workers.

The Supreme Court of India⁸⁴ established certain guidelines when holding child sex abuse or rape trials.

The Delhi High Court has also come up with guidelines for recording of evidence of vulnerable witnesses⁸⁵ in criminal matters. A vulnerable witness is defined as anyone who has not completed 18 years of age. The Guidelines provide for a live link through which the child may testify. The child may testify behind a screen, using image or voice altering devices, or through examination in another place transmitted simultaneously to the Court room by means of a video link or through a qualified and suitable intermediary.⁸⁶ Further, if the child refuses to give testimony in the presence of the accused or if circumstances show that the child may be inhibited from speaking the truth in that person's presence, the court may direct the accused to go to an adjacent room with a video link or a one way mirror visibility into the court room.⁸⁷ However, the Guidelines are only applicable for courts in Delhi.

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

(c) can such victim provide testimony separately without a court appearance and return to the country of origin; and

Yes.

Where the charge is under the POCSO Act, as per Section 37 of the 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 Code of

⁸³ (i) *Supra* note 70

(ii) Section 25 of the POCSO Act, 2012 – Recording of statement of a child by Magistrate

(iii) Section 26 of the POCSO Act, 2012 – Additional provisions regarding statement to be recorded

⁸⁴ *Sakshi v. Union of India and Others* (2004) 5 SCC 518; *State of Maharashtra v. Dr. P.B. Desai* (2003) 4 SCC 601

⁸⁵ Guidelines for recording of evidence of vulnerable witnesses in criminal matters, Delhi High Court available at http://delhihighcourt.nic.in/writereaddata/upload/notification/notificationfile_lcwcd2x4.pdf

⁸⁶ Clause 27(e) of the Guidelines

⁸⁷ Clause 27(g) of the Guidelines

Criminal Procedure, 1973 (Cr.P.C) for examination of the child where he or she resides.

Under Section 24 of the 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 the 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.

It is clarified that even when there is no charge under the POCSO Act, the JJ Act and JJ Rules will continue to apply.⁸⁸

Section 91 of the JJ Act provides that if at any stage of the inquiry, the Committee is satisfied that the attendance of the child is not essential for the purposes of inquiry, the attendance of the child is not required.

As per Rule 54(15) of the JJ 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) of the JJ Rules provides that separate rooms for vulnerable witnesses may be designated in every court complex to record the evidence of child witnesses.

Further, the law does not bar the child victim from going to his or her country of origin at any point during the trial.

(d) what other means of protection are available to a child or minor testifying in court.

The POCSO Act 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 child⁸⁹. Further, the POCSO Act does not permit aggressive questioning or character assassination of the child.⁹⁰ It further obligates the Special Court to ensure that the child is not called repeatedly to Court.⁹¹

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.

As per Rule 54(18)(ii) of the JJ Rules, Psychological counselling may also be provided to the child wherever necessary. Further, the JJ Rules provide that the language(s) used should be familiar to the child and if needed translators and special educators should be made available.⁹² The length and questions asked at the interview should not be taxing and should be suitable to the attention span of the child.⁹³

88 Section 2(14) of the JJ Act provides that "child in need of care and protection" means a child who reside with a person and such person who has violated any law for the time being in force meant for the protection of child and who is at imminent risk of marriage

89 Section 33(4) of the POCSO Act, 2012

90 Section 33(6) of the POCSO Act, 2012

91 Section 33(5) of the POCSO Act, 2012

92 Rule 54(18)(v) of the Juvenile Justice Rules

93 Rule 54(18)(ix) of the Juvenile Justice Rules

11.4 How is a child marriage victim thoroughly prepared for his/her testimony before the appointed court date?

The Indian law recognizes that 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.⁹⁴

However, it is pertinent to note that the child witness should not be tutored in any manner. 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.

The Supreme Court of India⁹⁵ while dealing with the evidence of a child witness observed that the Court must determine as to whether the child has been tutored or not. It can be ascertained by examining the evidence and from the contents thereof as to whether there are any traces of tutoring. The Court may rely on the evidence of a child only if there is no embellishment, improvement or tutoring therein.⁹⁶

The Supreme Court of India held in the case of Gagan Kanojia v. State of Punjab⁹⁷ 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.

11.5 Can a child marriage victim be required to testify more than once and if so, how many times on average does such victim need to appear in court?

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.

11.6 How does the law protect the best interests of a child marriage victim, who is a child or minor as a witness in a criminal proceeding?

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.⁹⁸

Under the JJ Act⁹⁹ and POCSO Act¹⁰⁰, children are protected from disclosing their identities.

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.¹⁰¹

The Government has framed model Guidelines¹⁰² under Section 39 of the POCSO Act for use of non-government organizations, professionals and experts¹⁰³ who can assist children with pre-trial and post-trial procedures.

94 *Supra* note 74

95 *Mangoo versus State of Madhya Pradesh*, AIR 1995 SC 959

96 *Supra* note 92

97 *Supra* note 76

98 Section 23 of the POCSO Act, 2012 – Procedure for media – Media is not defined under the POCSO Act. It is also not defined under the IT 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.

99 Section 74 of the JJ Act, 2015

100 Section 23 (7) of the POCSO Act, 2012

101 Section 38(2) of the POCSO Act, 2012 – Assistance of an interpreter or expert while recording evidence of child

102 Guidelines for use of professional and experts under the POCSO Act, 2012 dated September 2013

103 Expert in psychology, social work, physical health, mental health and child development

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.¹⁰⁴

No aggressive questioning

The POCSO Act does not permit aggressive questioning or character assassination of the

child.¹⁰⁵ It further obligates the Special Court to ensure that the child is not called repeatedly to Court.¹⁰⁶ Further, the JJ Rules provide that the length and questions asked at the interview should not be taxing and should be suitable to the attention span of the child.¹⁰⁷

12. In a civil case:

12.1 Whether the local World Vision organisation, which provides shelter to a victim of child marriage may be regarded as the guardian of such child or minor, and whether it can appoint a lawyer to represent the victim to pursue compensation in a civil case?

Yes. As per the Guardians and Wards Act, 1890, Guardian¹⁰⁸ is defined as a "person" having the care of the person of a minor or of his property or of both his person and property¹⁰⁹.

In the Comments of Section 4A of the Guardians and Wards Act 1890, it is clarified that the term 'guardian' does not necessarily imply that it has to be a natural person. Even registered societies too can act as guardians in case of orphans¹¹⁰. Therefore, World vision can apply to be the guardian of the child.

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.¹¹¹

The JJ Act also provides provisions with respect to the registration of child-care institution¹¹². 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 JJ 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 provisions of JJ Act¹¹³.

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.¹¹⁴

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.¹¹⁵

Under the POCSO Act, the family or guardian of the child shall be entitled to the assistance of a legal counsel of their choice.¹¹⁶

Medical examinations must be conducted in the presence of a parent or any other person, which includes guardians.¹¹⁷

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

104 Section 40 of the POCSO Act, 2012 – Right of children to accept the assistance of a legal practitioner

105 *Supra* note 86

106 *Supra* note 87

107 *Supra* note 89

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

109 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.

110 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 .

111 Section 2 (31) of the JJ Act, 2015

112 Section 41 of the JJ Act, 2015

113 Section 42 of the JJ Act, 2015

114 *Supra* note 61

115 Section 26 of the POCSO Act, 2012 – Additional provisions regarding statements to be recorded

116 Section 49 of the POCSO Act, 2012 – Right of children to accept the assistance of legal practitioner

117 Section 27(3) of the POCSO Act, 2012 – Medical examination of a child

12.2 Can a civil case be lodged in court at the same time as a criminal case?

Yes.

Under the PCMA, a petition for annulling a child marriage may be filed in the district court by the child through his or her guardian or next friend along with the Child Marriage Prohibition Officer.¹¹⁸ If the child becomes a major at the time of filing the petition, the petition may be filed in their own name at any time before the persons complete two years of attaining majority, i.e., 20 years for a woman and 23 years for a man.¹¹⁹

When the child marriage is annulled, the district court also orders both sides to return money, valuables, ornaments and other gifts received on the occasion of the marriage from the other side.¹²⁰

The PCMA also provides for maintenance and residence of the female contracting party until her remarriage. The quantum of maintenance payable shall be determined by the district court having regard to the needs of the child, the lifestyle enjoyed by such child during her marriage and the means of income of the paying party.¹²¹

The PCMA also protects children born out of child marriage. Any child born in a child marriage is given the status of a legitimate child even if the marriage is annulled by the District Court.¹²² The custody of the child is decided keeping the welfare and best interests of the child.¹²³

Under the PCMA, if a child marriage is about to happen or is about to be solemnized, a Judicial Magistrate of the first class or a Metropolitan Magistrate has the power to issue an injunction against any person prohibiting such marriage.¹²⁴ A complaint may be made by any person having personal knowledge or reason to believe, or a non-governmental organization having reasonable information, about the child marriage.¹²⁵ Pertinently, the Judicial Magistrate of the first class or a Metropolitan Magistrate may also take suo-moto cognizance on any reliable information of a child marriage. The Child Marriage Prohibition Officer can also approach the Court for such an order.¹²⁶

Generally, the Magistrate is required to give notice to all the persons before issuing an injunction however, such injunction may be issued without giving any notice in case of urgency.¹²⁷ If such an injunction is knowingly disobeyed, it is punishable with imprisonment of two years or with fine.¹²⁸

Further, the District Magistrate is also empowered to stop or prevent solemnisation of child marriages.¹²⁹

There is no provision of law which excludes the jurisdiction of a civil court to proceed with a civil case 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.

12.3 How will the court determine the compensation amount for a child marriage victim in a civil case?

The PCMA provides for payment of maintenance by the male contracting party. In case the male contracting party is a minor, the maintenance is to

be paid by his parent or guardian. The quantum of maintenance payable is determined by the district court having regard to the needs of the child, the

¹¹⁸ Section 3(2) of the PCMA Act, 2006

¹¹⁹ Section 3(1) and Section 3(3) of the PCMA Act, 2006

¹²⁰ Section 3(4) of the PCMA Act, 2006

¹²¹ *Supra* note 28

¹²² Section 6 of the PCMA Act, 2006

¹²³ Section 5(2) of the PCMA Act, 2006

¹²⁴ Section 13(1) of the PCMA Act, 2006

¹²⁵ *Supra* note 50

¹²⁶ Section 16(5) of the PCMA Act, 2006

¹²⁷ Section 13(6) of the PCMA Act, 2006

¹²⁸ Section 13(10) of the PCMA Act, 2006

¹²⁹ Section 13(5) of the PCMA Act, 2006

lifestyle enjoyed by such child during her marriage and the means of income of the paying party.¹³⁰ The amount of maintenance may be monthly or lump sum.¹³¹

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 fine¹³².

Under Section 33(8) of the POCSO Act read with Rule 7 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Rules"), the Special Court may direct payment of compensation to the child. The compensation shall be awarded based on relevant factors relating to the loss and injury caused.¹³³

Under the Code of Criminal Procedure, 1973 ("Cr.P.C), 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.¹³⁴

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. As per the Central Victim Compensation Scheme Fund (the "CVCF") Guidelines, the minimum amount of compensation for rape is Rs.3 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.

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 factors¹³⁵. Though no limit has been prescribed to the compensation under the law, the Court has to consider what would be reasonable compensation in the case¹³⁶.

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.

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.

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 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.¹³⁷

130 *Supra* note 28

131 Section 4(3) of the PCMA Act, 2006

132 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.

133 Rule 7(3) of the POCSO Rules, 2012 – Compensation

134 Section 357A of the CrPC – VCS

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

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

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

13. Where can World Vision look for pro bono legal services to help a victim of child marriage?

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 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 organizations provide services to victims of child marriage:

1. **Saarthi Trust:** This organization's main focus is working on the establishment of rights for women and children, child marriage annulment and protection for women and children.
Address: Saarthi Trust, Ratanada, Jodhpur, Rajasthan
Phone: +91 78910-22224
2. **Aangan Trust:** It works to ensure protection from trafficking, hazardous work, child marriages and violence.
Address: 101, Arun Chambers, 1st floor, Tardeo Rd, Tardeo, Mumbai, Maharashtra 400034
3. **Multiple Action Research Group:** The NGO provides legal assistance in cases ranging from domestic violence, crimes against women, child marriages, denial of food entitlements, etc.
Address: 2nd floor, 205, 206, Peacock Court, Shahpur Jat New Delhi Delhi IN 110049, Shahpur Jat, Siri Fort, New Delhi, Delhi 110049
Phone: 011 2649 7483
4. **Centre for Social Justice:** provides pro bono legal services for cases of child sexual abuse
Address: C-106, Royal Chinmay, Opposite IOC Pump, Off Judges Bungalow Road, Bodakdev, Ahmedabad, Gujarat 380054
Phone: + 91-79-26854248

INDONESIA

1. What is the legal definition of child and what is the legal definition of a minor?

Indonesian law does not differentiate between the definition of child and definition of minor.

Indonesian law has various definitions of 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. Article 330 of the Indonesian Civil Code ("**ICC**"), the legal age of a person (where he/she is able to do legal acts) is 21 years old, or if he/she has been married. In the event of a marriage ended before he/she reaches 21 years old, he/she is still considered as an adult. If a person is not yet 21 years old or not married, he/she is not considered as an adult. Fetuses are also considered children when it is in their interest.
3. Article 1 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 18 years old, including unborn babies. 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 21 years old 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 18 years old.
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 old or that has never been married remains under the custody of its parents.
7. Article 6 paragraph 2 of the Marriage Law states that person under 21 years old must have permission from both parents to marry. Further, Article 7 paragraph 1 of the Marriage Law allows marriage if both the man and woman are at least 19 years old
8. Article 1 point 5 of Law No. 39 of 1999 on Human Rights ("**Human Rights Law**") defines a child as anyone under 18 years old who has not married. Fetuses are also considered children when it is in their interest.
9. Article 1 of the Convention on the Rights of a Child, which was ratified by Presidential Decree No. 36 of 1990 states that a child means every human being below eighteen years old unless under the law applicable to the child, the age of majority is attained earlier.

2. Is there any specific legislation that deals with child marriage of children or minors?

There is no specific regulation that deals with child marriage. However, as mentioned above, eligible age of marriage under Indonesian law is governed under Law No. 1 of 1974 as amended by Law No. 16 of 2019 on Marriage.

3. Is there a legal definition of child marriage and/or illegal child marriage?

No, but a marriage under the Marriage Law is subject to certain age restrictions (subject to certain conditions/qualifications).

4. Is child marriage a violation of human rights and a form of violence against children?

There is no specific provision that stipulates that "child marriage" *per se* is a violation of human rights or a form of violence against children. However, Article 10 of the Human Rights Law provides that *"a valid marriage can only be conducted with the free will of the relevant prospective husband and wife and should be carried out with the provisions of the statutory regulations."*

The 1945 Constitution lays out the constitutional rights of children in general. Every child has the

right to live, grow, develop and to be protected from violence and discrimination.

Further, Article 26 paragraph 1 (c) of the Child Protection Law provides that one of parents' obligations and responsibilities is to prevent child marriage.

However, there is no specific sanction provided under the Child Protection Law for parents who allow and support child marriage.

5. What is the national minimum age of marriage?

Is it legal to marry a person below 18 years of age? The Marriage Law stipulates that the minimum age for both man and woman to enter into a marriage is 19 years old. In the event of any deviation from the above provision, one of parents of the underage person should ask for a dispensation from the court, and provide the court with the following:

1. Relevant evidence showing that the man and/or the woman is still under 19 years old.

2. A reference letter from a health expert explaining the urgent reasons for the marriage. The Marriage Law's elucidation describes "urgent reasons" as *"the situation where there is no other choice and it is very urgent to conduct the marriage."*

6. What penalties or sanctions exist within the national laws if anyone violates the law? (for the husband, parents, guardian of the child)

As mentioned above, although Article 26 paragraph 1 (c) of the Child Protection Law provides that parents are responsible for preventing child marriage, there is no specific sanction for parents who support or allow child marriage.

However, Law No. 23 of 2004, as amended by Law No. 35 of 2014, on Elimination of Domestic Violence ("**Domestic Violence Law**") forbids certain forms of violence taking place in a household. The prohibited acts of violence include physical violence, physiological violence and sexual violence.

7. What exceptions are being used for child marriage? *E.g.* parental consent, judicial consent/ authorization, religious practice, religious laws or when the child becomes pregnant.

The Marriage Law stipulates that the minimum age for both men and women to enter into a marriage is 19 years old. In the event of any deviation from the above provision, one of parents of the underage person should ask for a dispensation from the court, and provide the court with the following:

1. Relevant evidence showing that the man and/or the woman is still under 19 years old.

2. A reference letter from a health expert explaining the urgent reasons for the marriage. The Marriage Law's elucidation describes "urgent reasons" as *"the situation where there is no other choice and it is very urgent to conduct the marriage."*

8. What legal protection or remedies are available to a victim of child marriage or marriage that takes place below the national minimum age of marriage?

If child marriage occurs because of coercion and is followed by sexual violence, the Child Protection Law provides “special protection” to a child victim of sexual violence.

Article 1 paragraph 15 of the Child Protection Law defines “Special protection” as a form of protection received by children in certain situations and conditions in order to guarantee a sense of security against threats that endanger themselves and their lives in their development.

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

1. immediate handling, including physical and psychological treatment and/or rehabilitation, and prevention of diseases and other health issues.
2. psychosocial assistance during treatment until recovery.
3. social assistance for children from poor families.
4. protection and assistance in every judicial process.

9. Are such protection or remedies available to a victim of child marriage, who is a foreign bride?

As the definition of a “child” under the relevant laws and regulations is not limited to Indonesian national children, in our view a foreign bride can also be protected by the relevant laws and regulations.

10. What are the gaps in the national laws compare to international standard practices on laws related to child marriage, such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

Indonesia is not a state party to the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (“**1964 Convention**”). However, Indonesia ratified the Convention on the Rights of the Child in 1990 (“**1990 Convention**”), which sets a minimum age of marriage, and the Convention on the Elimination of All Forms of Discrimination Against Women (“**CEDAW**”) in 1984, which obligates states to ensure free and full consent to marriage.

We think that in principle Indonesian laws are in line with the above conventions, considering that the minimum age for a marriage is even above the minimum age of marriage set out under the 1900 Convention.

However, it would be beneficial for the existing laws to be more specific and nuanced in child marriage matters, as the current existing laws do not specifically provide sanction for people who allow (or support) child marriage.

11. In a criminal case in connection with the marriage of a child or minor:
11.1 Which agency or agencies have the authority to file a case with 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 criminal conduct. 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.

11.2 In general, what evidences are required to build the case against the alleged perpetrators of a child marriage case?

There is no clear definition of preliminary evidence. However, it is generally accepted that preliminary evidence should consist of a minimum of two items of evidence. Please note that the law does not conclusively criminalize child marriage.

However, any sexual harassment/coercion that occurs in a child marriage can be subject to a criminal offense. In physical and sexual violence cases, *Visum et Repertum* (VeR) is considered as strong evidence.

11.3 If the prosecutor requires the child marriage victim to testify against the alleged perpetrators, e.g. in many cases it will be parents or close relatives, (a) does such victim have the right to refuse;

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

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

Further, Article 19 of the Juvenile Court Law also governed that the identity of child victims/

witnesses shall be kept confidentially from printed or electronic media coverage.

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

(b) can such victim testify via video link from another room;

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

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

(c) can such victim provide testimony separately without a court appearance and return to the country of origin; and

Please see our answers in point 11.3 (b)

(d) what other means of protection are available to a child or minor testifying in court.

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

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

Further, Article 90 of the Juvenile Court Law governs that child victims and child witnesses are entitled to medical and social rehabilitation

efforts, to have their safety guaranteed and to easy acquisition of information on the development of the case.

11.4 How is a child marriage victim thoroughly prepared for his/her testimony before the appointed court date?

There is no specific provision under Indonesian laws that govern the preparation of child marriage victims' testimony.

In general, Article 23 and Article 58 of the Juvenile Court Law mention that child victims are entitled to accompaniment from parents/guardians/ attorneys/social workers or other persons that are trusted by the relevant child victims.

11.5 Can a child marriage victim be required to testify more than once and if so, how many times on average does such victim need to appear in court?

A child marriage victim 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.

11.6 How does the law protect the best interests of a child marriage victim, who is a child or minor as a witness in a criminal proceeding?

In addition to the arrangements stated above, Article 59 of the Child Protection Law stipulates that the Government, Regional Governments 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. Please note that as mentioned above, Indonesian laws do not conclusively criminalize child marriage. However, any sexual harassment/coercion that occurs in a child marriage can be subject to a criminal offense.

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

1. immediate handling, including physical and psychological treatment and/or rehabilitation, and prevention of diseases and other health issues.
2. psychosocial assistance during treatment until recovery.
3. social assistance for children from poor families.
4. protection and assistance in every judicial process.

**12. In a civil case:
12.1 Whether the local World Vision organisation, which provides shelter to a victim of child marriage may be regarded as the guardian of such child or minor, and whether it can appoint a lawyer to represent the victim to pursue compensation in a civil case?**

Government Regulation No. 29 of 2019 on Requirements and Procedures for Appointment of Guardian ("**Guardian GR**") provides that a "social welfare institution" can apply to be a guardian.

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

1. incorporated as a foundation [under Indonesian laws] and accredited;

2. willing to become a guardian as stated in a statement letter from the appointed caretaker in the relevant child social welfare institution
3. accept recommendations from the agency that administers government affairs in the social sector

make a written statement that states that it never discriminated and will not discriminate in protecting children's rights

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

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

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

12.2 Can a civil case be lodged in court at the same time as a criminal case?

Yes.

12.3 How will the court determine the compensation amount for a child marriage victim in a civil case?

Indonesian law does not conclusively criminalize child marriage. However, any sexual harassment/coercion that occurs in a child marriage can be subject to restitution.

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

of requested restitution. The result of LPSK's checking of the application will be determined in a LPSK decree and accompanied with its consideration. Thereafter, LPSK will submit the application to the court to be:

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

13. Where can World Vision look for pro bono legal services to help a victim of child marriage?

1. Witness and Victim Protection Agency (*Lembaga Perlindungan Saksi dan Korban* or LPSK)
2. Indonesian Commission for the Protection of Children (*Komisi Perlindungan Anak Indonesia*)

MALAYSIA

1. What is the legal definition of child and what is the legal definition of a minor?

A child or minor¹ is any person below the age of 18 years old.

2. Is there any specific legislation that deals with child marriage of children or minors?

Yes. Under Malaysia laws, the minimum age of marriage is determined by either civil law, Sharia (Islamic) law or native customary law:

- a. **Sharia (Islamic) law:** For Muslims, the minimum age of marriage is 16 years for girls and 18 for boys. For individuals below such minimum age, a Syariah Court must grant permission, as provided for under the Islamic Family Law (Federal Territories) Act 1984.
- b. **Civil law:** For non-Muslims (bound by civil law) the minimum age of marriage is 18. Boys and girls between the ages of 18 and 20 require parental consent to be married. In addition, girls aged 16 can be married in various states provided that they or their parents have the permission of the State Chief Minister, as per the Law Reform (Marriage and Divorce) Act 1976.
- c. **Native Customary Law:** The statutory minimum age of 18 years old 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 18.

Note however that in 2018, the new Malaysian government indicated that they were in the process of drafting a bill that would ban child marriages in the country. The former Prime Minister Mahathir Mohammad also issued a directive in 2018 to all state authorities that the legal minimum marriage age was set at 18 for Muslims and non-Muslims.²

As of January 2020, Selangor has raised the minimum age of marriage from 16 to 18 and other four states have stated that they will do so as well (Penang, Sabah, Johor, Melaka and Perak). However, the Federal Government cannot enforce a ban on child marriages nationwide as seven states are not agreeable to the proposal.

3. Is there a legal definition of child marriage and/or illegal child marriage?

No.

4. Is child marriage a violation of human rights and a form of violence against children?

Yes. Under international human rights conventions, early marriage is a violation of fundamental human rights.

a. Universal Declaration of Human Rights ("UDHR")

Malaysia has affirmed the UDHR as a member state of the United Nations. Under the UDHR,

¹ In Malaysia, a minor is defined as anyone who has not attained the age of majority. The age of majority is 18 years old. This is provided for under Section 2 of the Child Act 2001

² Available at: <https://www.eurasiareview.com/23102018-malaysia-pm-mahathir-mohamad-bans-child-marriage/>

marriage shall be entered into only with full and free consent. Full and free consent is absent where one of the parties involved is not sufficiently mature to make an informed decision about a life partner.

b. Convention on the Rights of the Child ("CRC")

Malaysia is a signatory to the CRC. While the CRC does not expressly deal with the issue of child marriage, the CRC does oblige state actors to guarantee various rights of a child, e.g., the right of a child to express their views freely and that the best interests of the child be the primary consideration in any action by the authorities.

Such rights and obligations are not respected or met where child marriage is permitted under law.

c. Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW")

Malaysia had ratified CEDAW in 1995, though with several reservations. Although the Malaysian government had removed its reservations on Article 16(2) which provided that the betrothal and the marriage of a child shall have no legal effect and that all necessary action, including legislation, shall be taken to specify a minimum age of marriage; the legislative provisions on the age of marriage has remained unchanged.

5. What is the national minimum age of marriage? Is it legal to marry a person below 18 years of age?

Please refer to our responses to Question 1 and Question 2.

6. What penalties or sanctions exist within the national laws if anyone violates the law? (for the husband, parents, guardian of the child)

There are no specific penalties or sanctions directly applicable to the husband, parents, guardian of the child for permitting or forcing a child into marriage.

There are other ancillary offences which may be applicable as a result of the child marriage as set out in the table below. We would highlight that rape within the confines of marriage is not an offence.

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: <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> (a) for sexual purposes: <ol style="list-style-type: none"> (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; (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 10 years and/or fine not exceeding RM 20,000

- (iii) repeatedly or constantly follows or watches or contacts a child by any means; or
 (b) 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
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 14 years 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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7. What exceptions are being used for child marriage? *E.g.* parental consent, judicial consent/ authorization, religious practice, religious laws or when the child becomes pregnant.

According to case law, common reasons that Syariah court judges have given for approving child marriage applications included the children's ability to support a family and manage a household, their memorization of basic Islamic teachings and the availability of family support after marriage.

Reasons judges gave for rejecting marriage applications included any evidence of coercion, lack of consent from a guardian, a lack of knowledge of basic Islamic teachings, unemployment (for male applicants) and a criminal record.

8. What legal protection or remedies are available to a victim of child marriage or marriage that takes place below the national minimum age of marriage?

For non-Muslims, if the marriage takes place below the national minimum age of marriage and without a licence from the State Chief Minister, such marriage shall be void.

For Muslims, the legal protection and remedies differ according to the Syariah laws of each state in Malaysia.

9. Are such protection or remedies available to a victim of child marriage, who is a foreign bride?

Yes, provided that the husband is domiciled in Malaysia as a wife acquires her husband's domicile on marriage.

10. What are the gaps in the national laws compare to international standard practices on laws related to child marriage, such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

As discussed in Question 4, both CRC and CEDAW have been ratified by Malaysia. The Malaysian government accepted the UDHR 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 Human Rights Commission

of Malaysia Act 1999, to the extent that it is not inconsistent with the Federal Constitution.

As discussed in our responses to Question 2, whilst the statutory minimum age for marriage in Malaysia is 18 years' old, it does not apply to (i) 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 with very few

rejections; and (ii) native of Sabah or Sarawak or any aborigine of West Malaysia whose marriage is governed by native customary law or aboriginal custom. These particular communities may marry according to custom at an age younger than 18.

**11. In a criminal case in connection with the marriage of a child or minor:
11.1 Which agency or agencies have the authority to file a case with the prosecutor?**

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.

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.

11.2 In general, what evidences are required to build the case against the alleged perpetrators of a child marriage case?

Oral and/or documentary evidence are required to establish the elements of the offence. In general, such evidence may include testimony from the victim that their parents, “spouse” or legal guardian had forced, permitted or threatened the victim into marriage.

**11.3 If the prosecutor requires the child marriage victim to testify against the alleged perpetrators, e.g. in many cases it will be parents or close relatives,
(a) does such victim have the right to refuse;**

As a child witness, including below the age of 16 years old, the child does not have the right to refuse if the child has been deemed to be a competent person by the Court. If a child is compelled (by way of sub poena) but refuses to testify, without valid reason, 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.

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.

(b) can such victim testify via video link from another room;

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 accused³.

³ Section 3, 4 and 5 of the Evidence of Child Witness Act 2007. Section 272B of the Criminal Procedure Code

(c) can such victim provide testimony separately without a court appearance and return to the country of origin; and

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.

(d) what other means of protection are available to a child or minor testifying in court.

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.

11.4 How is a child marriage victim thoroughly prepared for his/her testimony before the appointed court date?

Preparatory work in advance of a court hearing is not mandated under statute. Note also that coaching a witness is strictly prohibited under Malaysian laws of evidence.

11.5 Can a child marriage victim be required to testify more than once and if so, how many times on average does such victim need to appear in court?

Yes, provided that the court exercises its discretion to allow the child to be recalled to testify.

There is no publicly available information on the average number of times a child marriage victim appears in court.

11.6 How does the law protect the best interests of a child marriage victim, who is a child or minor as a witness in a criminal proceeding?

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 Malaysia⁴.

⁴ Section 3 of Sexual Offences against Children Act 2017, Section 4 of the Malaysian Penal Code and the Extra-Territorial Offences Act 1976

12. In a civil case:

12.1 Whether the local World Vision organisation, which provides shelter to a victim of child marriage may be regarded as the guardian of such child or minor, and whether it can appoint a lawyer to represent the victim to pursue compensation in a civil case?

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 victim

of child marriage 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.

12.2 Can a civil case be lodged in court at the same time as a criminal case?

Yes. A civil claim can be brought for civil remedies whereby the cause of action would, amongst others, 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.

12.3 How will the court determine the compensation amount for a child marriage victim in a civil case?

Civil Proceedings

The determination of compensation amount for a child marriage 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 child marriage victim in the event that a civil suit can successfully be established against the guilty party:

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.)

13. Where can World Vision look for pro bono legal services to help a victim of child marriage?

The following organisations generally provide pro bono services to help a victim of child marriage;:

a. Girls Not Brides (link [here](#));

b. Sisters in Islam (link [here](#));

c. Protect and Save the Children (link [here](#));

d. SUKA Society (link [here](#));

e. Suriana Welfare Society Malaysia (link [here](#));

f. Women's Centre for Change (WCC) (link [here](#)); and

g. Women's Aid Organisation (link [here](#)).

PHILIPPINES

1. What is the legal definition of child and what is the legal definition of a minor?

Under Philippine laws, a minor is a person below eighteen (18) years of age.

2. Is there any specific legislation that deals with child marriage of children or minors?

Under Executive Order No. 209, or the "Family Code of the Philippines" ("**E.O. 209**") a marriage contracted where one or both parties is/are below eighteen (18) years old is null and void, therefore without legal effect.

However, notwithstanding the national minimum age for marriage as stated in E.O. 209, Presidential Decree No. 1083 or the "Code of Muslim Personal Laws of the Philippines" ("**P.D. 1083**") provides that children who are at least fifteen (15) years old may contract marriage.¹ The special courts tasked with enforcing P.D. 1083 may order the

solemnization of marriage of a girl not below twelve (12) years old upon petition of a guardian.² This provision only applies to marriages where both parties are Muslim or when the male child-spouse is Muslim and the marriage is solemnized in accordance with Muslim law.³

However, there is a *fatwa* or legal opinion issued by Muslim religious leaders in the Bangsamoro Autonomous Region in Muslim Mindanao stating that they recommend the age for marriage to be eighteen (18) years old.⁴

3. Is there a legal definition of child marriage and/or illegal child marriage?

No, there is no definition of child marriage or illegal child marriage under Philippine law.

4. Is child marriage a violation of human rights and a form of violence against children?

Child marriage is not expressly declared as a violation of human rights or a form of violence against children, but it may be considered as exploitation of children under Republic Act No. 10364 or the "Expanded Anti-Trafficking in Persons Act of 2012" ("**R.A. 10364**").

It may also be considered as child abuse under Republic Act No. 7610 or the "Special Protection of Children against Abuse, Exploitation and Discrimination Act" ("**R.A. 7610**"), particularly if

there is physical, psychological, sexual abuse or emotional maltreatment involved.⁵

It may also be considered as violence against women and their children under Republic Act No. 9262 or the "Anti-Violence Against Women and Their Children Act" ("**R.A. 9262**") if the child-spouse is female.

1 Article 16(1).

2 Article 16(2).

3 Article 13(2).

4 <https://newsinfo.inquirer.net/1390222/bangsamoro-body-tackles-child-marriage-legal-yes-but-moral>.

5 Section 3(b)(1).

5. What is the national minimum age of marriage?

Is it legal to marry a person below 18 years of age? According to E.O. 209, the national minimum age is eighteen (18) years old.⁶

It is not illegal (i.e., punishable) to marry a person below eighteen (18) years of age, unless said act is

classified as a violation of R.A. 7610, Presidential Decree No. 603 or the "Child and Youth Welfare Code" ("**P.D. 603**"), R.A. 10364, or R.A. 9262. However, if a party to the marriage is below 18 years old, the marriage is considered null and void under E.O. 209.⁷

6. What penalties or sanctions exist within the national laws if anyone violates the law? (for the husband, parents, guardian of the child)

With regard to E.O. 209, there are no sanctions aside from the declaration of the marriage as null and void.

However, child trafficking under R.A. 7610 will subject any person who engages in it to a penalty of imprisonment from 12 to 40 years. The penalty shall be imposed in its maximum period if the child is under twelve (12) years of age.⁸

An offender under R.A. 7610 who engages in or promotes child prostitution or commit sexual intercourse or lascivious conduct with a child exploited in prostitution / other sexual abuse shall be subject to 14 to 40 years of imprisonment.⁹

If the marriage occurs as a result of R.A. 10364, the person procuring the child-spouse for sexual exploitation shall suffer 20 years of imprisonment and a fine ranging from Php 1,000,000 to 2,000,000 (approx. USD 20,000 to 40,000).¹⁰

When the offender in a human trafficking case is a spouse, ascendant, parent, sibling, guardian, person who exercises authority over the

trafficked person or a public officer or employee, the crime is qualified trafficking in persons and the offender is subject to life imprisonment and a fine ranging from Php 2,000,000 to 5,000,000 (approx. USD 40,000 to 100,000).¹¹

If the person who procures the child-spouse under R.A. 10364 has sexual intercourse or commits lascivious conduct with the child-spouse, the offender will suffer 17 to 40 years of imprisonment and a fine ranging from Php 500,000 to 1,000,000 (approx. USD 10,000 to 20,000).¹²

Specifically for the husband of a child bride, if he commits acts of violence under R.A. 9262, he may be subject to imprisonment (the duration of which depends on the act of violence committed) and a fine ranging from Php 100,000 to 300,000 (approx. USD 2,000 to 6,000). He shall also undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.¹³

7. What exceptions are being used for child marriage? *E.g.* parental consent, judicial consent/ authorization, religious practice, religious laws or when the child becomes pregnant.

There are no valid excuses for child marriages except if such marriage was made pursuant to PD 1083, i.e., marriages where both parties are Muslim or when the male child-spouse is Muslim and the marriage is solemnized in accordance with Muslim law.¹⁴

6 Article 5.
 7 Article 35.
 8 Section 7.
 9 Section 5.
 10 Section 10(a).
 11 Sections 9 and 12.
 12 Section 11(a)(1).
 13 Section 6.
 14 Article 13(2).

8. What legal protection or remedies are available to a victim of child marriage or marriage that takes place below the national minimum age of marriage?

There are no specific legal protections or remedies pertaining to a victim of child marriage, but the remedies below may apply to a victim of child marriage.

Under the Family Code, the marriage can be declared null and void by the courts. This is notwithstanding any consent given by the parents of the children involved.¹⁵ However, under the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages ("**A.M. No. 02-11-10-SC**"), such remedy may only be sought by the husband or the wife.¹⁶

A child-spouse who was married under P.D. 1083 may opt for divorce.¹⁷ It is not clearly indicated under P.D. 1083 whether marriage below the age of legal capacity is null and void, unlike under E.O. 209.

If the child-spouse is a victim of human trafficking, he or she will not be penalized for unlawful acts committed as a direct result of, or as an incident or in relation to, being trafficked

based or in obedience to the order made by the trafficker in relation thereto. Further, the consent of a trafficked child-spouse to the intended exploitation (e.g. an offer or contract of marriage so as to subject the child-spouse sexual exploitation) shall be irrelevant.¹⁸

This may also be considered "child abuse" under R.A. 7610 if the child-spouse is subject to physical, psychological, sexual or emotional abuse.¹⁹

In the last two cases, criminal complaints may be filed against the offenders and the child shall immediately be placed under the protective custody of the for the child-spouse under R.A. 7610²⁰ or an accredited non-government organization which assists trafficking victims under R.A. 10364.²¹

There are also protection orders that can be issued by the courts under R.A. 9262 to prevent further acts of violence against a woman or her child and granting other necessary relief.²²

9. Are such protection or remedies available to a victim of child marriage, who is a foreign bride?

While these laws do not explicitly state the same, these remedies may be available to foreign brides.

If the spouse of the child-bride is a Filipino, then E.O. 209 may apply and the child-bride may seek dissolution of the marriage.

If the trafficking or abuse occurs in the Philippines, then the foreign bride may seek such remedies or protections since criminal acts occurring within Philippine territory are subject to the jurisdiction of Philippine courts. Further, the laws do not make a distinction between Filipino and foreign victims of child marriage.

10. What are the gaps in the national laws compare to international standard practices on laws related to child marriage, such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

While the text itself of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages does not require that States abolish child marriages and penalize the

same, its prefatory statement recalls that certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in the Charter of the

¹⁵ Article 35(1).

¹⁶ Section 2(a).

¹⁷ Section 45.

¹⁸ Section 17.

¹⁹ Section 3(b)(1).

²⁰ Sections 27 and 28.

²¹ Section 17-A.

²² Section 8.

United Nations and in the Universal Declaration of Human Rights.

It also reaffirms that States should take all appropriate measures with a view to abolishing such customs by ensuring the complete elimination of child marriages and establishing appropriate penalties where necessary.

Philippine law still creates an exception for certain customs, such as those under P.D. 1083. Further, there is no penalty for child marriages *per se*. It would have to be proven that such child marriages were due to child abuse or human trafficking or if there are instances of violence against women.

**11. In a criminal case in connection with the marriage of a child or minor:
11.1 Which agency or agencies have the authority to file a case with the prosecutor?**

In general, the authority to file a case with the prosecutor is not specifically vested with any agency. The offended party may file a complaint directly with the prosecutor.

Under Section 25 of R.A. 9262, violence against women and their children shall be considered a public offense which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.

However, if the offended party requests for advice and/or assistance in relation to filing a criminal case for violence or abuse against children, the incident(s) may be reported to the following government agencies:

- a. Department of Social Welfare & Development**
Child Health and Intervention and Protective Service ("CHIPS")
Tel. No. 734-4216;
- b. National Bureau of Investigation**
Anti-Child Abuse, Discrimination, Exploitation Division ("ACADED")
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**
PNP Hotline (Tel No. 177);
Aleng Pulis (Mobile No. 09197777377);
PNP Women and Children Protection Center - 24/7 AWAACD Office (Tel No. (02) 8532-6690);
- e. Department of Justice**
Committee for the Special Protection of Children - Task Force on Child Protection (Tel. Nos. 523-8481 to 89);
Contact the nearest Provincial, City or Regional Prosecutor;
- f. Inter-Agency Council on Violence Against Women and their Children**
(Mobile Nos. 09178671907 and 09178748961)
(Email: iacvawc@pcw.gov.ph); and
- g. Local Barangay Council for the Protection of Children** (Masterlist of Barangay Officials is available through <https://www.dilg.gov.ph/barangay-officials-directory/masterlist>)

11.2 In general, what evidences are required to build the case against the alleged perpetrators of a child marriage case?

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;
- c. Medical examination results; and
- d. Evidence of the offended party's minority.

With regard to the evidence of the offended party's minority, the Supreme Court in the case

of *People v. Sariago* (G.R. No. 203322, 24 February 2016) outlined the guidelines in appreciating age, either as an element of a crime or as a qualifying circumstance:

- i. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
- ii. In the absence of a certificate of live birth, similar authentic documents, such as baptismal

certificate and school records which show the date of birth of the victim, would suffice to prove age.

iii. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

iv. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

The Court further held that it is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

11.3 If the prosecutor requires the child marriage victim to testify against the alleged perpetrators, e.g. in many cases it will be parents or close relatives,

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

(a) does such victim have the right to refuse;

A.M. No. 004-07-SC does not compel a child to be a witness or to testify.

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

2017) and *Ricalde v. People* (GR No. 211002, 31 January 2015), the Supreme Court ruled that the testimony of the child is given full weight and credibility. To protect the best interests of the child, full confidentiality is observed, even up to the Supreme Court.

(b) can such victim testify via video link 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.²³

(c) can such victim provide testimony separately without a court appearance and return to the country of origin; and

Yes, under A.M. No. 004-07-SC, the child may give a videotaped deposition without having to make a court appearance. The Court may admit the videotaped deposition into evidence if the

child is substantially likely to suffer trauma from testifying in open court.²⁴

The Court may also admit as evidence videotaped and audiotaped in-depth investigative or

²³ Section 25(f).

²⁴ Sections 25(f) and 27.

disclosure interviews in child abuse cases if the child witness is unable to testify, under certain

other conditions including the availability at trial of the person who interviewed the child.

(d) what other means of protection are available to a child or minor testifying in court.

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

Court-issued protective orders, including but not limited to confidentiality and privacy orders.

11.4 How is a child marriage victim thoroughly prepared for his/her testimony before the appointed court date?

While there are no laws or rules specifically regulating the witness preparation of minors and other preparatory steps prior to their appearance in court, the principle of “Best interests of the child” used in A.M. No. 004-07-SC applies by analogy.

“Best interests of the child” is defined under A.M. No. 004-07-SC as the totality of the circumstances and conditions as are most congenial to the survival,

protection, and feelings of security of the child and most encouraging to his physical, psychological, and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.

Accordingly, witness preparation of minors should be conducted in line with this principle. Counsels should remain vigilant of this principle at all times.

11.5 Can a child marriage victim be required to testify more than once and if so, how many times on average does such victim need to appear in court?

Yes, however, A.M. No. 004-07-SC provides that the child may be allowed recesses or periods of relief as often as necessary.²⁵ The Court may also order that the testimony of the child should be taken during a time when the child is well-rested.²⁶

11.6 How does the law protect the best interests of a child marriage victim, who is a child or minor as a witness in a criminal proceeding?

The Supreme Court, in promulgating A.M. No. 004-07-SC, provides that the Rules must be liberally construed to uphold the best interests of the child and to promote maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.

In addition to the measures outlined in 11.3(d) above, the best interests of a child is promoted

through the appointment of a guardian ad litem for a child who is a victim of, accused of, or a witness to a crime.

A.M. No. 004-07-SC grants the court a wide latitude to set other conditions and limitations on the taking of the testimony or deposition of the child victim as it finds just and appropriate under the circumstances.

²⁵ Section 15.
²⁶ Section 14.

12. In a civil case:

- 12.1 Whether the local World Vision organisation, which provides shelter to a victim of child marriage may be regarded as the guardian of such child or minor, and whether it can appoint a lawyer to represent the victim to pursue compensation in a civil case?

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. However, World Vision may assist the victims and their parents in locating a capable representative to file the Petition for Protection Order.

12.2 Can a civil case be lodged in court at the same time as a criminal case?

It would depend on the underlying cause of action of the civil case, *i.e.*, whether the civil action is to recover civil liability arising from a crime, or if it is based on provisions of law independent of the criminal aspect, such as those under the Civil Code on quasi-delict or human relations. The civil liability in the former is referred to as civil liability *ex delicto*, while the latter is civil liability arising from an independent civil action.

When a criminal action is instituted, the civil action *ex delicto* shall be deemed instituted with the criminal action, unless the offended party:

- i. Waives the civil action;
- ii. Reserves the right to institute it separately; or

- iii. Institutes the civil action prior to the criminal action.

If the offended party institutes the civil action prior to the criminal action, the civil action shall be suspended until final judgment is rendered in the criminal case, unless the offended party moves for the consolidation of both actions in the court trying the criminal action.

On the other hand, a civil action based on the Civil Code provisions on quasi-delict or human relations is distinct and independent from any criminal proceedings and may proceed simultaneously with the criminal action, and regardless of the result of the latter.

12.3 How will the court determine the compensation amount for a child marriage victim in a civil case?

Restitution of actual damage caused by the violence inflicted may be provided under a Protection Order, including but not limited to property damage, medical expenses, childcare expenses, and loss of income.

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

13. Where can World Vision look for pro bono legal services to help a victim of child marriage?

There are a number of government and private organizations who are able to provide pro bono legal services for child victims of sexual violence. Some of these are:

- a. Integrated Bar of the Philippines
- b. Ateneo Law School Legal Services Center
- c. University of the Philippines Office of Legal Aid

- d. San Beda Legal Aid Bureau
- e. Free Legal Assistance Group ("**FLAG**")
- f. Public Attorney's Office
- g. Department of Social Welfare and Development

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

SINGAPORE

1. What is the legal definition of child and what is the legal definition of a minor?

The age of majority in Singapore is generally 21 years old.¹ However, different laws in Singapore do provide for specific definitions where applicable:

(i) Children and Young Persons Act: where a

“child” means a person who is below 14 years old;² and

(ii) Women’s Charter: where a “minor” means a person below 21 years old and who is not married, a widower, or a widow.³

2. Is there any specific legislation that deals with child marriage of children or minors?

In Singapore, marriages under Muslim law are governed by the Administration of Muslim Law Act (“**AMLA**”), and non-Muslim marriages are governed by the Women’s Charter.⁴ There is no specific legislation which deals with child marriages. However, the minimum age for marriage is specified in both the AMLA and the Women’s Charter.

3. Is there a legal definition of child marriage and/or illegal child marriage?

There is no legal definition for “child marriage” and/or “illegal child marriage” under Singapore law.

There are however special provisions governing the marriage of a minor.⁵

4. Is child marriage a violation of human rights and a form of violence against children?

Singapore law does not elaborate further on whether child marriage constitutes a violation of human rights or if it is a form of violence against children.

However, the United Nations Internal Children’s Emergency Fund (UNICEF) classifies child marriage as a human rights violation. Child marriages are often also associated with violence against children.

5. What is the national minimum age of marriage? Is it legal to marry a person below 18 years of age?

Under Singapore law, marriages involving a person below the age of 18 years old are generally invalid.⁶ This is subject to the exceptions set out in the response to question 7.

1 *Rai Bahadur Singh v Bank of India* [1992] 3 SLR(R) 127 at [43].

2 See s. 2(1) of the Children and Young Persons Act.

3 See s. 2(1) of the Women’s Charter.

4 See s. 89 of the AMLA and s. 3 of the Women’s Charter.

5 Set out in the response to question 7 below.

6 See s. 96(4) of the AMLA and s. 9 of the Women’s Charter.

6. What penalties or sanctions exist within the national laws if anyone violates the law? (for the husband, parents, guardian of the child)

We are not aware of any local legislation which specifically penalizes or sanctions child marriage.

However, it is an offence under the Penal Code for a person to kidnap or abduct a woman, with the intention to compel her, or knowing that she will be compelled to marry against her will ("**Penal Code Offence**").⁷ Such an offence shall be punishable with imprisonment for a term which may extend to 10 years, and the offender shall also be liable to caning or to a fine.⁸

Under the Women's Charter (which governs non-Muslim marriages),⁹ any person who uses any force or threat to compel a person to marry against his/her will shall be guilty of an offence ("**Women's Charter Offence**"), and shall be liable on conviction:¹⁰

- (i) to a fine not exceeding \$3,000; or
- (ii) to imprisonment for a term not exceeding 3 years; or
- (iii) both.

7. What exceptions are being used for child marriage? E.g. parental consent, judicial consent/ authorization, religious practice, religious laws or when the child becomes pregnant.

Women's Charter

The Minister for Social and Family Development may, in his discretion, authorise the marriage of minors who lack the capacity to marry by the granting of a special marriage licence.¹¹

Persons under the age of 18 may apply to the Minister for a special marriage licence. As part of the application procedure, the couple must:¹²

- (i) attend a marriage preparation programme;¹³ and
- (ii) the parent(s) or guardian(s) of the minor must provide their written consent.¹⁴

Administration of Muslim Law Act

A Kadi¹⁵ may in special circumstances solemnize the marriage of a girl who is below 18 years old but has attained the age of puberty.¹⁶

For marriages involving minors, in-person parental or guardian consent is required, and the minor must be accompanied by both parents/guardians for an interview with the Kadi.¹⁷

Similarly, the couple will be required to complete a mandatory marriage preparation programme.¹⁸

8. What legal protection or remedies are available to a victim of child marriage or marriage that takes place below the national minimum age of marriage?

Subject to the exceptions set out in the response to question 7, marriages involving a person below the age of 18 years old are invalid.

On this note, a victim of child marriage can apply to the court for a decree of nullity in respect of

the marriage.¹⁹ However, an application to court is not strictly necessary for the marriage to be regarded as invalid.

⁷ See s. 366 of the Penal Code.

⁸ See s. 366 of the Penal Code.

⁹ See s. 3(1) and 3(2) of the Women's Charter.

¹⁰ See s. 36(a) of the Women's Charter.

¹¹ Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis: 2018, 3rd ed) at [1.186] to [1.187]; s. 21(1) of the Women's Charter.

¹² Registry of Marriages Singapore, https://www.rom.gov.sg/reg_info/rom_minors.asp (accessed 1 April 2021).

¹³ See s. 17A(2) of the Women's Charter.

¹⁴ See s. 13(1) of the Women's Charter.

¹⁵ Male Muslims of good character, position, and of suitable attainments that have been appointed by the President of Singapore pursuant to s. 91 of the AMLA.

¹⁶ See s. 96(5) of the AMLA. Unfortunately, the term 'special circumstances' has not been defined, and no further information is provided as to the events which may constitute 'special circumstances'.

¹⁷ Registry of Muslim Marriages, https://www.romm.gov.sg/about_marriage/romm_documents.asp (accessed 1 April 2021); s. 94B of the AMLA.

¹⁸ Registry of Muslim Marriages, <https://www.romm.gov.sg/resources/pdf/Guideline-Minor%20Marriage.pdf> (accessed 1 April 2021); s. 94A of the AMLA; s. 3A(1) of the Muslim Marriage and Divorce Rules.

¹⁹ *Geetha d/o Mundri v Arivananthan s/o Retnam* [1992] 1 SLR(R) 326 at [17].

9. Are such protection or remedies available to a victim of child marriage, who is a foreign bride?

Women's Charter

The relevant provisions of the Women's Charter applies to all persons in Singapore, and also to all persons domiciled in Singapore, with the exception of Muslims whose marriages are governed by Muslim law, or by any written

law in Singapore or Malaysia providing for the registration of Muslim marriages.²⁰

Administration of Muslim Law Act

The relevant provisions of the AMLA applies where both of the parties profess the Muslim religion, and where the marriage is solemnized in accordance with Muslim law.²¹

10. What are the gaps in the national laws compared to international standard practices on laws related to child marriage, such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

Core elements of child marriage legislation

UNICEF has suggested that the core elements of child marriage legislation are:²²

- (i) a minimum age for marriage which should be specified at 18 years old;²³
- (ii) the avoidance of marriages involving children; and
- (iii) the requirement of free and fully informed consent of both parties.

Singapore does not differ from the international standard in that:

- (i) the minimum age for marriage is 18 years old,²⁴ subject to certain exceptions;²⁵
- (ii) the Women's Charter provides for the avoidance of marriages where either party is under the minimum age;²⁶ and
- (iii) the Women's Charter provides that no marriage shall be solemnized unless the person

solemnizing the marriage is satisfied that both parties to the marriage have freely consented to the marriage.²⁷

However, the AMLA differs slightly in that:

- (i) it does not explicitly provide for the avoidance of child marriages, although it does specify that no marriage shall be solemnized under the Act unless all the conditions necessary for validity thereof, in accordance with Muslim law and the provisions of the AMLA, are satisfied;²⁸ and
- (ii) there is no provision which explicitly stipulates that the parties to the marriage must give their free and fully informed consent.

Lastly, it bears highlighting that Singapore has only criminalized forced marriages, and not child marriages. Nonetheless, this is not exactly a gap in the law as there is no international consensus on the effects of criminalizing child marriages, and the issue remains controversial.²⁹

²⁰ See s. 3(1) and 3(2) of the Women's Charter.

²¹ See s. 89 of the AMLA.

²² UNICEF, "Child Marriage and the Law: Technical Note for the Global Programme to End Child Marriage", <https://www.unicef.org/media/86311/file/Child-marriage-the-law-2020.pdf> (accessed 5 April 2021).

²³ The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages does not specify a minimum age for marriage, and the signatories of the Convention have the discretion to specify the minimum age for marriage (see Article 2 of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages). Nonetheless, UNICEF has suggested that the international standard on the minimum age of marriage is 18 years old (see <https://www.unicef.org/media/86311/file/Child-marriage-the-law-2020.pdf>, and <https://www.unicef.org/lac/media/2801/file/PDF%20Minimum%20age%20for%20marriage.pdf> (both accessed on 5 April 2021).

²⁴ See s. 9 of the Women's Charter; s. 96(4) of the AMLA.

²⁵ Set out in the response to question 7 above.

²⁶ See s. 9 of the Women's Charter.

²⁷ See s. 22(3) of the Women's Charter.

²⁸ See s. 96(1) of the AMLA.

²⁹ UNICEF, "Child Marriage and the Law: Technical Note for the Global Programme to End Child Marriage", <https://www.unicef.org/media/86311/file/Child-marriage-the-law-2020.pdf> (accessed 5 April 2021).

11. In a criminal case in connection with the marriage of a child or minor:

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

Under Singapore law, police reports may be lodged by persons other than the victim. In fact, Singapore's Criminal Procedure Code ("**CPC**") imposes a legal duty on every person who is aware of the commission of the Penal Code Offence³⁰ to file a report at the nearest police station.³¹

However, it bears highlighting that the power and discretion to institute proceedings for any offence lies with the Attorney-General.³²

Likewise, prosecution for the Women's Charter Offence³³ may only be instituted with the consent of the Public Prosecutor.³⁴

11.2 In general, what evidences are required to build the case against the alleged perpetrators of a child marriage case?

A key element of both the Penal Code Offence and the Women's Charter Offence³⁵ is the fact that the person was compelled to marry against his/her will. Accordingly, it would be useful to

have evidence that illustrates coercion of the victim's will,³⁶ be it through the use of threats or force.

11.3 If the prosecutor requires the child marriage victim to testify against the alleged perpetrators, e.g. in many cases it will be parents or close relatives, (a) does such victim have the right to refuse;

Singapore's Evidence Act provides that all persons shall be competent to 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, extreme old age, disease, whether of body or mind, or any other cause of the same kind.³⁷

From the above, it is clear that there is no age restriction on children giving testimony, and the criteria is whether the child is able to understand

the questions asked, and to provide rational answers in response.

As such, it is possible that a child or minor may be subpoenaed as a witness. Unless a subpoena is set aside by the Court, it is compulsory for a person / witness who receives a subpoena to attend Court on the stipulated day and every other day of the hearing until the case is completed. If a witness that has received a subpoena fails to attend in Court, the witness will be guilty of contempt of Court.

(b) can such victim testify via video link from another room;

The Court may allow the evidence of a person in Singapore (except the accused) to be given through a live video or live television link if, amongst other things, the witness is below 18 years old or the offence charged is, amongst others, a child abuse or sexual offence.³⁸

³⁰ As defined in the response to question 6.

³¹ See s. 424 of the CPC.

³² See Article 35(8) of the Constitution of the Republic of Singapore.

³³ As defined in the response to question 6.

³⁴ See s. 42 of the Women's Charter.

³⁵ Both defined in the response to question 6.

³⁶ *Geetha d/o Mundri v Arivanathan s/o Retnam* [1992] 1 SLR(R) 326 at [32], [34] to [35].

³⁷ See s. 120 of the Evidence Act.

³⁸ See s. 281(1)(a) of the CPC.

(c) can such victim provide testimony separately without a court appearance and return to the country of origin; and

The Criminal Procedure Code allows for the taking of evidence before trial, i.e. for the witness to provide testimony separately and prior to trial. However, an application to do so can only be made if it is shown with respect to the witness that it is not reasonably practicable to secure his attendance at the time fixed for trial.

Evidence obtained via this process must be conducted in the presence of the accused and co-accused (if any). In the course of giving evidence, the witness may also be cross-examined and re-examined. The evidence obtained via this process may then be given in a criminal trial in Singapore although the person is not called as a witness at the trial.³⁹

(d) what other means of protection are available to a child or minor testifying in court.

The Criminal Procedure Code also provides for measures to prevent the witness from seeing the accused (i.e. a shielding measure). A 'shielding measure' refers to a screen or any other arrangement in a courtroom that prevents a witness from seeing the accused.⁴⁰ The shielding

measure however does not prevent the witness from being able to see, and to be seen by, the court, the prosecutor, any advocate representing the accused and any interpreter or other person appointed to assist the witness.⁴¹

11.4 How is a child marriage victim thoroughly prepared for his/her testimony before the appointed court date?

The option of employing the shielding measure and giving testimony in camera should be raised.

Further, given a child's unfamiliarity with the court room and the process, it may be useful to explain to the child his/her role in the entire evidence taking process. Moreover, it will be useful to remind the child that he/she:⁴²

- (i) does not have to agree with the suggestions made, unless they are true; and

- (ii) that it is perfectly alright to respond by saying that he/she does not understand the question or cannot remember.

Nonetheless, it bears emphasizing that while witness preparation is allowed, the witness's evidence must remain his/her own independent testimony, and other persons are not allowed to supplant or supplement the witness's own evidence.⁴³

11.5 Can a child marriage victim be required to testify more than once and if so, how many times on average does such victim need to appear in court?

The Criminal Procedure Code provides for various instances where a witness may be recalled and re-examined.

We are unable to provide any statistics on the second part of the question due to the paucity of child marriage cases in Singapore.

³⁹ See s. 295 of the CPC

⁴⁰ See s. 281A(5) of the CPC.

⁴¹ See s. 281A(2) of the CPC.

⁴² Ideas adapted from https://www.lawsociety.org.sg/wp-content/uploads/2020/03/Best_Practices_Toolkit_on_Cross-Examination_of_Vulnerable_Witnesses.pdf (accessed 1 April 2021).

⁴³ *Ernest Ferdinand Perez De La Sala v Compania De Navegacion Palomar, SA and others* [2018] 1 SLR 894 at [136] to [137].

11.6 How does the law protect the best interests of a child marriage victim, who is a child or minor as a witness in a criminal proceeding?

The use of the 'shielding measure' or evidence given in camera ensures that the child does not have to face the perpetrator, thereby minimising any discomfort or trauma that may be experienced by the child.

12. In a civil case:

12.1 Whether the local World Vision organisation, which provides shelter to a victim of child marriage may be regarded as the guardian of such child or minor, and whether it can appoint a lawyer to represent the victim to pursue compensation in a civil case?

World Vision will not be regarded as the child's guardian because:

- (i) a non-parent needs to be formally appointed as a guardian; and
- (ii) a guardian must be a natural person rather than an entity or an organisation.⁴⁴

12.2 Can a civil case be lodged in court at the same time as a criminal case?

Yes. A victim may commence a civil action to obtain a decree of nullity on the ground that he/she did not consent to the marriage,⁴⁵ and this is distinct from the Penal Code Offence⁴⁶ which may only be instituted by the Attorney-General or the Public Prosecutor.⁴⁷

Moreover, the possibility of concurrent civil and criminal proceedings was implicitly recognised by the Singapore High Court through its observation that a stay of proceedings would not be granted lightly even if there is an overlap in issues.⁴⁸

12.3 How will the court determine the compensation amount for a child marriage victim in a civil case?

We are not aware of any civil remedies which would enable a child marriage victim to obtain monetary compensation.

13. Where can World Vision look for pro bono legal services to help a victim of child marriage?

There are a number of organisations providing pro bono legal services. Where the victim is a female, the more applicable organisations are the:

- (i) Association of Women for Action and Research; and
- (ii) Singapore Council of Women's Organisations – Singapore Association of Women Lawyers (SCWO – SAWL) Legal Clinic.

Where the child involved is a Muslim or the marriage is a muslim marriage, the pro bono legal services of Jamiyah Legal Clinic by the Muslim Missionary Society Singapore (Jamiyah Singapore) will be relevant.

⁴⁴ See s. 7 of the Guardianship of Infants Act. However, an institution can be designated as a place for temporary care and protection under the Children and Young Persons Act. A licence is otherwise required for an institution to operate as a home for children and young persons (i.e. under 18 years old). In addition, a person may be appointed as a protector by the Director-General of Social Services, and may obtain orders relating to the care and wellbeing of children and young persons from the Youth Court.

⁴⁵ *Geetha d/o Mundri v Arivananthan s/o Retnam* [1992] 1 SLR(R) 326 at [17].

⁴⁶ As defined in the response to question 6.

⁴⁷ See the response to question 11.1.

⁴⁸ *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR(R) 674 at [86].

TAIWAN

1. What is the legal definition of child and what is the legal definition of a minor?

According to Article 2 of “The Protection of Children and Youths Welfare and Rights Act”, children and minors refer to persons below the age of 18. Children are aged below 12, and youth are persons between 12 and 18 years old.

2. Is there any specific legislation that deals with child marriage of children or minors?

Yes. Please see Articles 980, 981, 989, and 990 of the Civil Code, elaborated as follows:

- Article 980 stipulates that a male under the age of 18 or a female under the age of 16 is not allowed to conclude a marriage.
- Article 981 stipulates that if a person under the age of 20 wishes to conclude a marriage, he/she shall seek consent of his/her guardian.
- Article 989 stipulates that if Article 980 is not complied with, the parties in marriage and their guardian may request the court to revoke the marriage. However, if the parties has reached the statutory age (i.e., 18 for male and 16 for female) or the female has already been pregnant, the request shall not be made.
- Article 990 stipulates that if Article 981 is not complied with, the guardians of the married parties may request the court to revoke the marriage. However, such request shall be made within 6 months after the requestor knows the

fact of the marriage and shall not be made if the female has already been pregnant.

Nevertheless, please note that the Taiwan Legislature Yuan (i.e., Taiwan Congress) has amended the foregoing articles and announced that the amendment will become effective on 1 Jan 2023. We elaborate on the amendments below:

- The amended version of Article 980 stipulates that a male or a female under the age of 18 is not allowed to conclude a marriage.
- Articles 981 and 990 are deleted in the amendment.

Finally, though not expressly specified in the Civil Code, the relevant Taiwan laws generally acknowledge that, concluding a marriage requires at least certain maturity of mind to understand what it means. Therefore, if either party is too young to understand what marriage means, the marriage will be considered invalid.

3. Is there a legal definition of child marriage and/or illegal child marriage?

While there is no specific definition for child marriage and/or illegal child marriage, concluding a marriage in violation of the aforementioned Articles of the Civil Code is considered illegal and revocable.

4. Is child marriage a violation of human rights and a form of violence against children?

Although whether child marriage is a violation of human rights is not expressly provided under Taiwan laws, it is generally construed to be so.

To elaborate, according to Article 49 of “The Protection of Children and Youths Welfare and

Rights Act”, it is prohibited to force a child or minor to enter into a marriage. Based on the interpretation of the Constitution of Taiwan and Taiwan laws, such Article may be construed in a way that forcing a child or minor to enter into marriage is a violation of human right.

5. What is the national minimum age of marriage? Is it legal to marry a person below 18 years of age?

Please refer to the response to Question 2.

6. What penalties or sanctions exist within the national laws if anyone violates the law? (for the husband, parents, guardian of the child)

Violating the Civil Code such as the Articles regarding the national minimum age of marriage, as mentioned in the response to Question 2, does not trigger any penalties.

However, violating other laws might trigger administrative fine or even criminal penalties. For instance:

- Violating the aforementioned Article 49 of the "The Protection of Children and Youths Welfare and Rights Act" (see the response to Question 4) will trigger an administrative fine of no less than 60,000 New Taiwan Dollars and no more than 600,000 New Taiwan Dollars. The violator's name shall be publicly disclosed. If the violator is the child / minor's parent, guardian, or actual care taker, the competent government authority shall demand that the violator take parent education courses for no less than 4 hours and no more than 50 hours.
- Taiwan laws do not specifically criminalize child marriage. That said, certain behaviors that might arise from child marriage are criminalized.

For instance, according to Article 240 of the Criminal Code, inducing a minor to leave his/her guardian is a crime. The violator will be subject to an imprisonment of no more than 3 years. Anyone who attempts to do so is also regarded as committing crime and is subject to the same criminal penalty, though the court

can decide whether to render a less severe penalty than that it would render to violators who commit the same crime.

According to Article 227 of the Criminal Code, having intercourse or engaging in any behavior that might arouse the sense of sexuality with a person under the age of 16 is considered a crime. The Article stipulates layers of penalties below:

- Having intercourse with a person under the age of 14 will be subject to imprisonment of no less than 3 years and no more than 10 years.
- engaging in any behavior that might arouse the sense of sexuality with a person under the age of 14 will be subject to imprisonment of no less than 6 months and no more than 5 years.
- Having intercourse with a person who has reached the age of 14 but is under the age of 16 will be subject to imprisonment of no more than 10 years.

Anyone who attempts to do the foregoing is also regarded as committing crime and is subject to the same criminal penalty, though the court can decide whether to render a less severe penalty than that it would render to violators who commit the same crime.

7. What exceptions are being used for child marriage? *E.g.* parental consent, judicial consent/ authorization, religious practice, religious laws or when the child becomes pregnant.

- According to Article 980 of the Civil Code, a male under the age of 18 or a female under the age of 16 is not allowed to conclude a marriage. That said, if this article is not complied with, the marriage is not considered invalid. Instead, according to Article 989, the legal effect is that the parties in marriage and their guardian may request the court to revoke the marriage, meaning that before the revocation becomes effective, the marriage is

still valid. Moreover, if the parties has reached the statutory age (i.e., 18 for male and 16 for female) or the female has already been pregnant, the request shall not be made.

- According to Article 981 of the Civil Code, if a person under the age of 20 wishes to conclude a marriage, he/she shall seek consent of his/her guardian. That said, if this article is not complied with, the marriage is not considered invalid. Instead, according to Article 990,

the legal effect is that the guardians of the married parties may request the court to revoke the marriage, meaning that before the revocation becomes effective, the marriage is still valid. However, such request shall be made within 6 months after the requestor knows the fact of the marriage and shall not be made if the female has already been pregnant.

As mentioned, please note that the Taiwan Legislature Yuan (i.e., Taiwan Congress) has

amended the foregoing articles and announced that the amendment will become effective on 1 Jan 2023. We elaborate on the amendments below:

- The amended version of Article 980 stipulates that a male or a female under the age of 18 is not allowed to conclude a marriage.
- Articles 981 and 990 are deleted in the amendment.

8. What legal protection or remedies are available to a victim of child marriage or marriage that takes place below the national minimum age of marriage?

Depending on what laws are violated, there are different remedies.

▪ Civil remedies/protection

According to Article 980 of the Civil Code, a male under the age of 18 or a female under the age of 16 is not allowed to conclude a marriage. According to Article 989 of the Civil Code, the parties in marriage and their guardian may request the court to revoke the marriage. The rights to request for revocation can be considered a type of remedy.

▪ Administration related protection

For instance:

Violating Article 49 of the "The Protection of Children and Youths Welfare and Rights Act" (see the response to Question 4) will trigger an administrative fine of no less than 60,000 New Taiwan Dollars and no more than 600,000 New Taiwan Dollars. The violator's name shall be publicly disclosed. If the violator is the child / minor's parent, guardian, or actual care taker, the competent government authority shall demand that the violator take parent education courses for no less than 4 hours and no more than 50 hours.

▪ Crime related protection

As mentioned, Taiwan laws do not specifically criminalize child marriage. That said, certain behaviors that might arise from child marriage are criminalized.

For instance, according to Article 240 of the Criminal Code, inducing a minor to leave his/her guardian is a crime. The violator will be subject to an imprisonment of no more than

3 years. Anyone who attempts to do so is also regarded as committing crime and is subject to the same criminal penalty, though the court can decide whether to render a less severe penalty than that it would render to violators who commit the same crime.

According to Article 227 of the Criminal Code, having intercourse or engaging in any behavior that might arouse the sense of sexuality with a person under the age of 16 is considered a crime. The Article stipulates layers of penalties below:

- Having intercourse with a person under the age of 14 will be subject to imprisonment of no less than 3 years and no more than 10 years.
- engaging in any behavior that might arouse the sense of sexuality with a person under the age of 14 will be subject to imprisonment of no less than 6 months and no more than 5 years.
- Having intercourse with a person who has reached the age of 14 but is under the age of 16 will be subject to imprisonment of no more than 10 years.

Anyone who attempts to do the foregoing is also regarded as committing crime and is subject to the same criminal penalty, though the court can decide whether to render a less severe penalty than that it would render to violators who commit the same crime.

9. Are such protection or remedies available to a victim of child marriage, who is a foreign bride?

The remedies stipulated in the Civil Code are applicable to foreign brides if the applicable law of the marriage is Taiwan law.

The administrative and criminal punishment, if considered a type of protection, are applicable

to foreign bribes if the behavior that violates the relevant Taiwan laws or its results takes place within the territory of Taiwan (Article 6 of the Administrative Penalty Law; Article 3 and 4 of the Criminal Code).

10. What are the gaps in the national laws compare to international standard practices on laws related to child marriage, such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

The national laws used to deviate from the international standard practices as to consent to marriage and minimum age for marriage.

On 25 December 2020, the Taiwan Legislature Yuan promulgated amendments to the Civil Code

to align the national laws and the international standard practices. Therefore, the gaps in the national laws compared to international standard practices on laws related to child marriage therefore had been eliminated.

11. In a criminal case in connection with the marriage of a child or minor:

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

As mentioned, Taiwan laws do not specifically criminalize child marriage. That said, certain behaviors that might follow child marriage are criminalized, such as inducing a minor to leave his/her guardian and having intercourse or engaging

in any behavior that might arouse the sense of sexuality with a person under the age of 16.

Generally speaking, anyone who discovers a crime, including the foregoing crimes, can file a report with the prosecutor¹.

11.2 In general, what evidences are required to build the case against the alleged perpetrators of a child marriage case?

It depends on which exact crime.

For instance, to build a case in the crime of inducing a minor to leave his/her guardian, the prosecutor will generally need to prove that: (1) the child was brought away without the consent of one of the guardians (evidence e.g., witness testimony or the suspect's own statement); (2) the period of time is long enough (e.g., a few days) to be deemed that at least one of the guardians can no longer supervise the child (evidence e.g., witness testimony).

To build a case in the crime of having intercourse with a person under the age of 16, the prosecutor will generally need to prove that: (1) an

intercourse happened (evidence e.g., medical record); (2) the exact perpetrator (e.g., the victim's statement with necessary psychology professional to help verify the credibility of the statement; the suspect's own statement).

To build a case in the crime of engaging in any behavior that might arouse the sense of sexuality with a person under the age of 16, the prosecutor can only rely on the victim's statement with necessary psychology professional to help verify the credibility of the statement and on the suspect's own statement. Therefore, if the suspect refuses to confess, it is harder to build this type of case.

¹ Article 240 of the Code of Criminal Procedure.

**11.3 If the prosecutor requires the child marriage victim to testify against the alleged perpetrators, e.g. in many cases it will be parents or close relatives,
(a) does such victim have the right to refuse;**

Yes, when the specific case of child marriage involves litigation proceedings, the victim could refuse to testify against the alleged perpetrators if the victim is/was the relative to the alleged perpetrators.²

(b) can such victim testify via video link from another room;

Yes, after taking into account the circumstances of the case and the physical and mental conditions of the victim, the prosecutor office or the court may, upon the petition of the victim or on its own initiative, apply appropriate isolation facilities such as screens, to prevent the victim from being seen by the accused or a third party.³

Besides, upon application by victims or duties of judicial officers, the inquiries or questioning of the victim may be carried out outside the court via technology equipment such as audio, video conference or any other suitable means so that

the victim could be separated from the defendant or judge⁴.

Additionally, when the specific case of child marriage involves domestic violence, the victim may file a petition with the court for a protection order. In this scenario, the court may conduct segregated interrogations if they are required. Further, if required, the segregated interrogations may be conducted outside the court pursuant to petition or on its own initiative. Any technical equipment allowing two-way transmission of voice and image and other proper segregation measures may also be used.⁵

(c) can such victim provide testimony separately without a court appearance and return to the country of origin; and

Yes, such testimony can be provided and admitted without a court appearance if certain conditions are satisfied.

In general, any person's evidence, including that of a child, will not be admitted into evidence if he/she does not make a court appearance.⁶

However, if the child's evidence falls under one of the following situations, it can be admitted

into evidence even if he/she does not appear at the court:

- The child's evidence is given to a judge outside of the trial⁷, or it is given to a prosecutor during the criminal investigation and the evidence is not obviously unaccountable.⁸
- The child's evidence is given to a public prosecuting affairs official, judicial police officer, or judicial policeman, and it is proved to be highly accountable and necessary to

² Article 180 and 181 of Code of Criminal Procedure. As a side information, for civil cases, Article 307 of Taiwan Code of Civil Procedure provides the same mechanism.

³ Article 248-3 and Article 271-2 of Code of Criminal Procedure.

⁴ Paragraph 1 of Article 16 of Sexual Assault Crime Prevention Act.

⁵ Article 10 and Paragraph 2 of Article 13 of Domestic Violence Prevention Act.

⁶ Article 159 I of Code of Criminal Procedure: Unless otherwise provided by law, oral or written statements made out of trial by a person other than the accused, shall not be admitted as evidence.

⁷ Article 159-1 I of Code of Criminal Procedure: Statements made out of trial by a person other than the accused to the judge shall be admitted as evidence.

⁸ Article 159-1 II of Code of Criminal Procedure: Statements made in the investigation stage by a person other than the accused to the public prosecutor, shall be admitted as evidence unless it appears to be obviously unreliable.

prove the facts of a crime, when the child is in the following circumstances:⁹

- death
- lost his/her memory or is unable to give evidence for a trial due to disability¹⁰
- failure to appear or to be summoned on a trial because he/she is currently in a foreign country or his/her location is unknown
- refusal to give evidence in a trial without justifiable reasons
- The child's evidence is in the form of a written document and it is proved accountable.¹¹
- The parties to a trial agree to admit the

child's evidence and the judge considers this appropriate¹². Such consent will also be considered granted if the parties of a trial has knowledge that the testimony is provided without a court appearance but does not object to the admissibility of such evidence.¹³

Additionally, if any violation of the Child and Youth Sexual Exploitation Prevention Act is concerned, the child marriage victim may provide the testimony without a court appearance¹⁴.

Last, unless explicitly demanded by the relevant competent authority, a foreign national can return to his/her country¹⁵. This rule applies to child marriage victims as well.

(d) what other means of protection are available to a child or minor testifying in court.

When the child/minor testifies in court, a social worker shall be appointed to accompany him/her, and the child/minor's privacy should be protected.¹⁶

There are also soft guidelines setting forth the key points for taking the testimony of children. The key points include:

- Social workers should accompany the child in the proceeding;

9 Article 159-3 of Code of Criminal Procedure: Statements made in the investigation stage by a person other than the accused to the public prosecuting affairs official, judicial police officer, or judicial policeman may be admitted as evidence, if one of the following circumstances exists in trial and after proving the existence of special circumstances indicating its reliability and its necessity in proving the facts of criminal offense: (1) The person died; (2) The person has lost his memory or has been unable to make a statement due to physical or emotional impairment; (3) The person cannot be summoned or has failed to respond to the summons due to the fact that he is staying in a foreign country or his whereabouts are unknown; (4) The person has refused to testify in court without justified reason.

10 Article 13 of Child and Youth Sexual Exploitation Prevention Act: The statement made by a child or youth during an investigation by administrative prosecutors, judicial police officers, or judicial police, which has been especially proven credible and is essential to prove the facts of the criminal offense, may serve as evidence despite any of the following conditions occurring to the child or youth during a trial: 1. The victim is unable to make a statement due to physical and psychological trauma; 2. The victim is unable to make a complete statement or refusal to make a statement during questioning or cross-examination when appearing before the court due to physical and mental stress; 3. The victim cannot be summoned or fails to appear being summoned because he/she is not in the Taiwan area or his/her whereabouts is unknown.

11 Item 3, Article 159-4 of Code of Criminal Procedure: In addition to the circumstances specified in the preceding three articles, the following documents may also be admitted as evidence: (3) Documents made in other reliable circumstances in addition to the special circumstances specified in the preceding two Items.

12 Article 159-5 I of Code of Criminal Procedure: Statements made out of trial by a person other than the accused, although not consistent with the provisions of the preceding four articles, may be admitted as evidence, if the party consents to its admissibility as evidence in the trial stage and the court believes its admissibility is proper after considering the circumstances under which the oral or written statement was made.

13 Article 159-5 II of Code of Criminal Procedure: The party, agent, or defense attorney shall be deemed to have granted his consent specified in the preceding section, if during the investigation of evidence in the court he has knowledge of the existence of the circumstances specified in section I of Article 159 as to the inadmissibility of the evidence and fails to object to its admission before the conclusion of oral argument.

14 Article 12 I of Child and Youth Sexual Exploitation Prevention Act: In the event that a child or youth is questioned during an investigation or a trial, attention shall be paid to the personal safety of the child or youth, and an environment and measures that ensure his/her safety shall be provided. Such safety shall be achieved by proper isolation procedures if necessary. Alternatively, such safety may be achieved outside the court upon request or *virtute officii*.

15 Article 21I of the Immigration Act: National Immigration Agency shall ban an alien from exiting the State if he or she meets one of the following circumstances: 1. Has been banned from exiting the State at the request of a judicial authority. 2. Has been banned from exiting the State at the request of a tax authority.

Article 21II of the same Act: National Immigration Agency shall ban an alien who is under investigation for other cases in accordance with laws from exiting the State after the concerned authorities have requested the imposition of such a ban.

16 Article 61 II of The Protection of Children and Youths Welfare and Rights Act: Social workers shall accompany children and youth who receive interviews, investigations, examinations, or physical checkups and protect their privacy.

- The child should be separated with the accused;
- The time for the proceeding should be short;
- Avoid repetitive questions, and
- The language should be comprehensible for the child, etc.

If the crime relates to sexual assault, a professional judicial interviewer may assist the child in the proceeding.

Additionally, if any violation of the Child and Youth Sexual Exploitation Prevention Act¹⁷ or Human Trafficking Prevention Act¹⁸ is concerned

in child marriage, the child/minor victim may also request a family member, physician, psychiatrist, counselor to accompany him/her. The person who accompanies the child/minor can state his/her opinions during the trial.

In general, in child marriage where any criminal offense is concerned, the child/minor victim's name or any information that could reveal his/her identity is prohibited from being publicized in any publication, radio, TV, Internet, other media¹⁹, or disclosable government document²⁰. Any approach that might be sufficient to identify the child/minor is forbidden, either.²¹

11.4 How is a child marriage victim thoroughly prepared for his/her testimony before the appointed court date?

As mentioned, Taiwan laws do not specifically criminalize child marriage. That said, certain behaviors that might follow child marriage are criminalized, such as inducing a minor to leave his/her guardian and having intercourse or engaging in any behavior that might arouse the sense of sexuality with a person under the age of 16.

In the proceedings in related crimes:

- Generally speaking, before a court proceeding commences, the prosecutor would have commences relevant interview with the victim. This can be considered a type of preparation for court hearings.
- In addition, the victim's guardian can further seek help from lawyers to help prepare the victim's testimony.

11.5 Can a child marriage victim be required to testify more than once and if so, how many times on average does such victim need to appear in court?

- Although the laws do not prohibit requesting the child to testify more than once, relevant soft guidelines suggest against such practice.
- There is no data on how many times a child victim may need to appear in court. The judges would determine the need for the child to appear in court on a case-by-case basis.

17 Article 10 I of Child and Youth Sexual Exploitation Prevention Act: When a victim is being questioned or cross-examined during an investigation or a trial, the victim's legal representative, lineal relatives by blood or collateral relatives by blood within the third degree of kinship, spouse, parents, family members, physicians, psychologists, counsellors, or social workers may accompany the victim at the site and state their opinions. The same rule shall apply to the investigations by judicial police officers or judicial police.

18 Article 24 I of Human Trafficking Prevention Act: Any human trafficking victim's legal agent, spouse, lineal relative by blood or collateral relative by blood within 3rd degree of kinship, parent, family member, doctor, psychiatrist, counselor, or social worker, may accompany him/her and may make observations when he/she is questioned or cross-examined during an investigation or trial; it is the same when the victim is under investigation by the judicial police.

19 Item 4 of Article 69 I of The Protection of Children and Youths Welfare and Rights Act: Promotional material, publications, broadcast, TV, Internet or other media shall not report, or record the names, or other information that is sufficient to identify the following children and youth: 4. Victims of juvenile delinquency and those parties under protection and those involved in criminal cases.

20 Article 69 II of The Protection of Children and Youths Welfare and Rights Act: Documents made public by administrative and judicial agencies shall not contain information that can lead to the identification of the children and youth referred to in the preceding paragraph unless otherwise stipulated in the regulations of Subparagraph 3 of the preceding paragraph or other laws.

21 Article 69 III of The Protection of Children and Youths Welfare and Rights Act: Anyone in addition to those specified in the preceding two paragraphs shall not reveal to the media, or in publically available information, the names or other details that are sufficient to identify the children and youth referred to in Paragraph 1.

11.6 How does the law protect the best interests of a child marriage victim, who is a child or minor as a witness in a criminal proceeding?

Please refer to the responses to question 11.3

12. In a civil case:

12.1 Whether the local World Vision organisation, which provides shelter to a victim of child marriage may be regarded as the guardian of such child or minor, and whether it can appoint a lawyer to represent the victim to pursue compensation in a civil case?

Yes. The court may appoint a social welfare organization, such as local World Vision Organization, as the guardian for the victim of child marriage as provided in Article 1111 Paragraph 1 of the Civil Code.

Therefore, if local World Vision Organization is appointed by the court as the guardian, it can appoint a lawyer to represent the victim to pursue compensation in a civil case.

12.2 Can a civil case be lodged in court at the same time as a criminal case?

Yes. No laws prohibit the situation where both civil case and criminal case are lodged at the same time.

12.3 How will the court determine the compensation amount for a child marriage victim in a civil case?

We have not come across any civil judgement regarding child marriage victim.

That said, as a rule of thumb, the court will consider the wealth, social status, and the family

situation of both the perpetrator and the victim. It will also consider the seriousness of the offence consequence, the intent or negligence of the perpetrator, and the sufferings of the victim.

13. Where can World Vision look for pro bono legal services to help a victim of child marriage?

For violations of laws prohibiting child marriage, the most effective approach is to file a complaint through CRC Official Website (https://crc.sfaa.gov.tw/crc_front/index.php) to the competent authority, i.e. Social and Family Affairs Administration, Ministry of Health and Welfare.

If further pro bono legal services are needed, World Vision can reach out to Legal Aid Foundation for engaging a pro bono counsel to represent the victim.

THAILAND

1. What is the legal definition of child and what is the legal definition of a minor?

▪ Definition of "Child"

Child Protection Act B.E. 2546 (2003)

Section 4: "Child" means a person under eighteen years of age, but does not include a person who becomes sui juris through marriage

Juvenile and Family Court and Procedure Act B.E. 2553 (2010), amended by the Juvenile and Family Court and Procedure Act (No.5) B.E.2559 (2016)

Section 4: "Child" means a person who is over the age prescribed in Section 73 of the Criminal Code, but has not reached the age of 15 years

Criminal Code (Section 73): A Child not yet over 10 years of age shall not be punished for committing what is provided by the law to be an offence

▪ Definition of "Minor"

Civil and Commercial Code

Section 19: A person, on completion of 20 years of age ceases to be a minor and becomes sui juris.

Section 20: A minor becomes sui juris upon marriage, provided that the marriage is made in accordance with the provisions of Section 1448

Section 1448: A marriage can take place only when the man and woman have completed their 17th year of age. But the court, in case of having appropriate reason, allow them to marry before attaining such age.

Juvenile and Family Court and Procedure Act B.E. 2553 (2010)

Section 4: "Minor" means a person who has reached the age of 15 but has not reached the age of 18.

2. Is there any specific legislation that deals with child marriage of children or minors?

In Thai tradition, there are 2 steps of marriage which are (1) betrothal or engagement and then (2) marriage. The laws concerning the marriage of a child and minors are prescribed in Civil and Commercial Code as follows:

▪ Betrothal (Engagement)

Section 1436

If a minor will conclude a betrothal, the consent of the following persons is required:

1. His or her parents, in case both of his/her father and mother are still alive;
2. His or her parent, in case his or her father or mother died, or is in condition of state of being unable to give consent, or is under the circumstance that make the minor unable to ask for such consent;
3. His or her adopter, in case the minor is an adopted child

4. His or her guardian, in case there is no person giving consent under (1), (2), and (3), or such person is deprived of paternal power.

A betrothal concluded by the minor without the said consent is voidable.

▪ Marriage

Section 1448

A marriage can take place only when the man and woman have completed their 17th year of age. But the court, in case of having appropriate reason, allow them to marry before attaining such age.

Section 1450

A marriage cannot take place if the man and woman are blood relations in the direct ascendant or descendant line, or brother or sister of full or half blood. The said relationship shall be in accordance with blood relation without regard to its legitimacy.

Section 1451

An adopter cannot marry the adopted.

Section 1454

In case of marriage of a minor, the provisions of Section 1436 shall apply mutatis mutandis.

Section 1455

Giving consent to the marriage may be made by:

1. Affixing signature of the person giving consent in the Registrar at the time of registration of the marriage;
2. A consent document stating the names of the parties to the marriage and signed by the person giving consent;

2. Verbal declaration before at least 2 witnesses in case of necessity

The consent having given cannot be revoked.

Section 1456

In case where there is no person having the power to give consent under Section 1454, or if the person refuses to give consent or is in the position of being unable to give consent, or the minor cannot, in such circumstance, ask for the consent, the minor may file an application with the Court for giving consent to the marriage.

3. Is there a legal definition of child marriage and/or illegal child marriage?

There is no specific legal definition of child marriage but there are several conditions by law concerning child marriage in which non-compliance shall be subject to violation of the law (Please see Civil and Commercial Code Section 1436, 1448, 1450, 1451, and 1454 as shared in Q2).

4. Is child marriage a violation of human rights and a form of violence against children?

In Thailand, child marriage is considered a violation of human rights. As a member state of the UN's Human Rights Council, Thailand has co-sponsored the 2013 resolution on child, early and forced marriage, the 2015 resolution to strengthen efforts to prevent and eliminate child, early and forced marriage, and the 2019 resolution which focused on the consequences of child marriage.

The 2015 resolution adopted by the Human Rights Council recognizes that child marriage is a violation of human rights, as it "prevents individuals from living their lives free from all forms of violence" and has "wide ranging and adverse consequences on the enjoyment of human rights, such as the right to education, the right to the highest attainable standard of health, including sexual and reproductive health". The resolution also recognizes child marriage as a "barrier to sustainable development" that "helps perpetuate the cycle of poverty".

Child marriage is considered a form of violence against children. Specifically, section 277 of the Thai Criminal Code provides that whoever has sexual intercourse with a girl that is not yet over 15 years old, whether with or without the girl's

consent, constitutes statutory rape and offenders shall be punished with imprisonment of 4 to 20 years and a fine of Baht 8,000 to Baht 14,000. In addition, section 279 of the Criminal Code also provides that committing "indecent" acts on a child younger than fifteen, whether with the child's consent or not, carries a prison sentence of not more than 10 years or a fine of not more than Baht 20,000, or both.

Furthermore, Thailand is a party to the Convention on the Rights of Children (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The permanent committee under the CRC and CEDAW has determined that marriage to a child under a reasonable age is considered an act of violence against children and has suggested that States who are parties to such treaties enact laws to prohibit child marriages. For Thailand, both the CRC Committee and the CEDAW Committee has urged the country to ensure that the minimum age of marriage to be 18 years for both girls and boys, take measures to end child marriage, and conduct research on the extent of the practice of abduction of girls for the purposes of forced marriage.

5. What is the national minimum age of marriage? Is it legal to marry a person below 18 years of age?

Under section 1448 of the Thai Civil and Commercial Code, the minimum legal age for marriage is 17.

It should also be noted that while Islamic law is permitted to apply to the Thai Muslim community residing in the provinces of Pattani, Narathiwat, Yala and Satun, and such legislation (the Act on Application of Islamic Law B.E. 2489) does not stipulate a minimum age for marriage but leaves the matter to the discretion of Islamic courts, in

2018 the Central Islamic Council of Thailand issued a regulation effectively banning children under the age of 17 from marriage, thereby ensuring that local mosques cannot grant permission for anyone under the age of 17 to get married unless permission is granted by an Islamic court or the parents sign a written consent approving the marriage at the provincial office of the local Islamic committee or at a local police station. However, the regulation is silent on any penalties or sanctions in the case of violation.

6. What penalties or sanctions exist within the national laws if anyone violates the law? (for the husband, parents, guardian of the child)

In Thailand, laws governing sexual activity are covered in the Criminal Code while marriage and family matters are covered in the Civil and Commercial Code.

Under the Civil and Commercial Code, a marriage that has taken place in violation of the minimum legal age for marital consent or in the case of under aged persons, without parental consent, can be voided.

In the absence of specific legislation prohibiting child marriages in Thailand, penalties and sanctions against offenders and parents/guardians of the child can be pursued under the Criminal Code and the Child Protection Act B.E. 2546.

Section 277 of the Thai Criminal Code provides that whoever has sexual intercourse with a girl that is not yet over 15 years old (15 years old being the age for sexual consent) and who is not the person's own wife, whether with or without the girl's consent, constitutes statutory rape and offenders shall be punished with imprisonment of 4 to 20 years and a fine of Baht 8,000 to Baht 14,000. In addition, section 279 of the Criminal Code also provides that committing "indecent" acts on a child younger not older than fifteen, whether with the child's consent or not, carries a prison sentence of not more than 10 years or a fine of not more than Baht 20,000, or both.

Section 279 further provides that whoever commits an indecent act on a child not yet over 15 years of age, regardless of whether the child has consented to such act or not, shall be punished with a prison term of not more than 10 years or fined in an amount of not more than exceeding

Baht 20,000 or both. If the offender commits the indecent act by threatening by any means whatever, such as by doing any act of violence, by taking advantage of such child being in the condition of inability to resist or by causing the child to mistake the offender for another person, the offender shall be punished with a prison term of not more than 15 years or fined an amount of not more than Baht 30,000 or both.

Section 283 bis provides that whoever takes away a person over fifteen years of age but not yet over 18 years of age for indecent acts with consent of such person, shall be punished with imprisonment of not exceeding 5 years or fined a sum not exceeding Baht 10,000, or both. If the act is committed against a child not yet over 15 years of age, the offender shall be punished with imprisonment not exceeding 7 years or fined a sum not exceeding Baht 14,000, or both. Whoever conceals a person who is taken away according to this section shall be liable for the same punishment as the offender. As such, parents who conceal indecent acts against underaged minors can also be held criminally liable.

Section 26 of the of the Child Protection Act B.E. 2546 also forbids persons from, among other things, committing or omitting to commit acts which result in torturing a child's body or mind (with "torture" being defined under the Act as any act which causes deprivation of freedom of, or mental or physical harm to, a child; sexual abuses committed against a child...regardless of the child's consent) and force, threaten, induce, encourage, consent to, or act in any other way that results in the exploitation of a child. If parents received any dowry or endowment from

the husband, then they would have violated the anti-human trafficking act as they would have handed over the child to wed the man for monetary benefit.

Section 32 of the Child Protection Act B.E. 2546 provides that children warranting welfare

assistance includes children who have been unlawfully brought up, exploited, abused or subjected to any other conditions which are likely to cause them to behave in an immoral manner or suffer physical or mental harm.

7. What exceptions are being used for child marriage? *E.g.* parental consent, judicial consent/ authorization, religious practice, religious laws or when the child becomes pregnant.

A few legal loopholes exist which essentially permits child marriages to take place in Thailand.

Though the Civil and Commercial Code provides that the legal age of consent for marriage is 17, marriage for persons under the age of 17 can be permitted with the consent of a family court in the case there is "appropriate reason" (section 1448). In the past, this exclusion has permitted courts to approve marriages of girls under the age of 17 to their rapists so that the offender would avoid being charged with statutory rape.

Additionally, since the age of majority in Thailand is 20 years old, the Civil and Commercial Code further provides that persons between the ages of 17 to 19 can legally get married with parental consent. It should be noted that under Thai law, a minor that is legally married will be deemed to be legally emancipated and thereby attain majority.

Also, while the Criminal Code provides that sex with minors under the age of 17 is statutory rape, the law excludes cases where the underaged person is legally married to the perpetrator; moreover, parents can still give their consent to permit sexual encounters with children aged 15 to 18 to take place outside of the home. Further, there appears to be a legal presumption that if the sexual activity takes place in the minor's home, the minor's parents are deemed to have given their consent.

The Act on Application of Islamic Law B.E. 2489 does not stipulate a minimum age for marriage but leaves the matter to the discretion of Islamic courts. For years, this legal loophole allowed child marriages to take place by merely obtaining the

consent of local mosques. Even then, if any action was taken to invalidate such marriage, Islamic courts had sole discretion in the matter.

However, in 2018 the Central Islamic Council of Thailand issued a regulation effectively banning children under the age of 17 from marriage, thereby ensuring that local mosques cannot grant permission for anyone under the age of 17 to get married unless permission is granted by an Islamic court or the parents sign a written consent approving the marriage at the provincial office of the local Islamic committee or at a local police station.

A special sub-committee was also set up to consider marriages involving children younger than 17 and only allows it if the marriage benefits the spouses. One of the three committee members must be a woman with knowledge of Islamic laws and she must be in charge of questioning and interviewing the girl. Therefore, even under the new regulation, there is still room for the Islamic court to grant approval to a child marriage. Further, the new regulation still affords parental consent as a means of permitting underaged children to legally marry under Islamic law.

Section 4 of the Child Protection Act B.E. 2546 also defines a "child" as a person below the age of 18 years old, but expressly excludes persons under 18 who have attained their majority through marriage. Therefore, minors who have attained majority through marriage are excluded from the protections afforded to persons under 18 years of age by the Child Protection Act.

8. What legal protection or remedies are available to a victim of child marriage or marriage that takes place below the national minimum age of marriage?

For children that are below 15 years old, they could seek legal remedies under:

- Section 279 of the Criminal Code of Thailand, whereby whoever, commits an indecent act on a child not yet over fifteen years of age, whether such child shall consent or not, shall be punished with imprisonment not exceeding ten years or fined not exceeding twenty thousand Baht, or both.
- Section 1496 of the Civil and Commercial Code of Thailand, whereby only a judgment of the Court (applied by the spouses, parents or descendants of the spouse or any interest person) can affect the void of a marriage that has not been consented to by both parties (pursuant to section 1458).
- Section 1503 of the Civil and Commercial Code of Thailand, whereby an application to the Court for cancellation of a marriage on the ground of its voidability shall be made in the case where the spouses have not complied with Section 1448 (i.e. a marriage can take place only when the man and woman are seventeen years of age. Unless the Court, in case of having appropriate reason, allowed them to marry before attaining such age.).

For children that are below 18 years old, and has not attained maturity through marriage, they could seek legal remedies under the following provisions of the Child Protection Act B.E. 2546:

- Section 26(1), which forbids persons from, among other things, committing or omitting to commit acts which result in torturing a child's body or mind (regardless of the child's consent), a breach of which will result

in penalties pursuant to Section 78 of the Act (i.e. any person who violates section 26 shall be liable to imprisonment for a term of not exceeding three months or to a fine not exceeding thirty thousand baht or to both).

- Section 32, which provides that children who shall receive welfare are children who have been unlawfully brought up, exploited, abused or subjected to any other conditions which are likely to cause them to behave in an immoral manner or suffer physical or mental harm.

For children that are between 15 - 20 years old, they could seek legal remedies under:

- Section 1496 of the Civil and Commercial Code of Thailand, whereby only a judgment of the Court (applied by the spouses, parents or descendants of the spouse or any interest person) can affect the void of a marriage that has not been consented to by both parties (pursuant to Section 1458).
- Section 1503 of the Civil and Commercial Code of Thailand, whereby an application to the Court for cancellation of a marriage on the ground of its voidability shall be made in the case where the spouses have not complied with Section 1448 (i.e. a marriage can take place only when the man and woman are seventeen years of age. Unless the Court, in case of having appropriate reason, allowed them to marry before attaining such age).

However, such application will not be possible if the spouses have reached the national age of marriage or are with child by the date of such application pursuant to section 1504.

9. Are such protection or remedies available to a victim of child marriage, who is a foreign bride?

Yes:

- in terms of remedies under criminal law, if the crime has been committed in the Kingdom of Thailand according to Section 5 of the Criminal Code of Thailand; and
- in terms of remedies under civil law, if the marriage has taken in Thailand in accordance with Thai law.

According to Section 28 of the Conflict of Laws Act, B.E. 2481, the cancellation of marriage shall be governed by the law, which governs the conditions of marriage.

However, mistake, fraud or duress as causes for cancellation of marriage shall be governed by the law of the place where the marriage has taken place.

10. What are the gaps in the national laws compare to international standard practices on laws related to child marriage, such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

Similar to Art 1 and Art 3 of the Convention, Section 1458 of the Civil and Commercial Code of Thailand requires that a marriage can take place only if the man and woman agree to take each other as husband and wife, and such agreement must be declared publicly before the Registrar in order to have it recorded by the Registrar.

In accordance with Art 2 of the Convention, under Section 1448 the Civil and Commercial Code of Thailand, a marriage can take place only when the man and woman are seventeen years of age. Unless the Court, in case of having appropriate reason, allowed them to marry before attaining such age.

11. In a criminal case in connection with the marriage of a child or minor:

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

Under Sections 120 and 121 of the Criminal Procedure Code, the prosecutor is allowed to file a case in court with an inquisition previously being made. The inquiry official is empowered to hold an inquiry of all criminal cases, unless it is a compoundable offense, for which there needs to be a regular complaint.

The criminal offenses regarding child marriage may range from statutory rape (if there is any sexual intercourse before marriage, with the child not yet over 15 years of age), rape (in the case of no sexual consent during the marriage), and an indecent act on a child not yet over 15. Statutory rape is the only crime that is a non-compoundable offense, whereby any agency can denunciate to the inquiry official claiming that the crime has been committed.

Other offenses will require a regular complaint from the injured person to the inquiring officer and for the prosecutor to file a case to the court.

Under Section 5 of the Criminal Procedure Code, where the injured person is a minor or incompetent person, his or her legal representative or custodian may act on behalf of the injured person in respect of the crime committed against him or her.

In a case where, the minor having no legal representative, or a person of unsound mind or an incompetent person having no custodian, or where such person is present but unable to discharge his or her duty for any reason, including having a conflict of interest with the minor or incompetent person, a relative of such person or an interested person may apply to the court requesting for an appointment of such relative or interested person as a representative. As the last resort, the court may appoint an administrative official as representative.

11.2 In general, what evidences are required to build the case against the alleged perpetrators of a child marriage case?

Any material, documentary, or verbal evidence likely to prove the guilt or innocence of the accused, is admissible, provided that the party having the burden of proof submits the evidence according to the laws regarding the admissibility and production of evidence, and the evidence is relevant to the subject matter of the case. This is under Section 226 of the Criminal Procedure Code, and sections 85, 86, and 15 of the Civil Procedure Code. For example, the evidence could be eyewitness, physical evidence, DNA evidence, or expert testimony.

**11.3 If the prosecutor requires the child marriage victim to testify against the alleged perpetrators, e.g. in many cases it will be parents or close relatives,
(a) does such victim have the right to refuse;**

There is no specific Thai law regarding the right of the victim to refuse to testify in court. However, under the Criminal Procedure Code Section 172 ter. and based on past court rulings, in circumstance

where it is unable to bring the child witness to give testimony due to extremely necessary cause, the court may admit the preserved image and voice of the victim's testimony during the inquiry stage

or the preliminary examination, as if it is his or her testimony at trial, provided that the court admits the testimony complementary with other evidence.

One court precedent established that a video recording of the victim testifying during the

inquiry stage was enough to be admitted as evidence (complementary with other evidence) in a sexual assault case, based on the reason that the prosecutor could not locate the witness and bring to trial.

(b) can such victim testify via video link from another room;

Under Section 172 ter. of the Criminal Procedure Code, if a child not yet over 18 years old of age is to testify, the court must arrange a suitable room for the testimony (i.e. a separate room with appropriate surroundings), and must make available in the main courtroom a reproduction of the image and voice. In this regard, a social welfare worker or a psychologist must accompany the child at all times during the court proceedings.

If the court deems it appropriate, or if either party requests with reasonable cause (which is considered to be detrimental if not granted) the court may instead admit the child’s testimony recorded during the inquiry stage or the preliminary examination, as if the testimony is provided during the trial in court. The parties are still entitled to proceed with additional witness examination, cross-examination, or re-examination, all of which must be within the scope of necessity and to the extent the court deems appropriate.

(c) can such victim provide testimony separately without a court appearance and return to the country of origin; and

By virtue of Section 230/1 of the Criminal Procedure Code, the Regulation of the President of the Supreme Court on Examination of Witness in Criminal Case via Video Conference B.E. 2556 (2019) was issued to prescribe the method and criteria for the examination of a witness using video conference. Under such regulation, a court may exercise its discretion to examine a witness using video conference only in the case of necessity. Examples of necessity as provided in the regulation are (i) illness of the witness; (ii) residence of witness is far from the adjudicating

court or outside of Thailand; and (iii) any other unavoidable necessity.

In addition, under Section 230/2 of the Criminal Procedure Code, if a witness is unable to testify in court, and a party requests it or the court deems it appropriate, the court may allow for a written testimony of the witness to be admitted instead of oral testimony in court, provided that the witness must have a residence outside of Thailand.

(d) what other means of protection are available to a child or minor testifying in court.

The judge may order the following during the testimony:

- (i) to examine the witness in person (provided that the judge states the issues and facts of each point) or through a social welfare worker or psychologist; or

- (ii) to arrange for the parties to examine, cross-examine, or re-examine through a social welfare worker or psychologist.

Under Thai laws, consent does not have to be obtained in order for a child to testify.

11.4 How is a child marriage victim thoroughly prepared for his/her testimony before the appointed court date?

There is no specific guideline on how to prepare a victim of child marriage before his or her testimony.

In general, the following methods, among others, are applied, so as to help a child be thoroughly prepared to testify in court:

- (i) careful explanation of the situation, along with pictures and illustrations (as necessary);
- (ii) arrangement to visit the place where the testimony will take place; and
- (iii) arrangement to meet those involved in the process of testifying.

11.5 Can a child marriage victim be required to testify more than once and if so, how many times on average does such victim need to appear in court?

There is no restriction on having a child victim testify more than once. However, during the inquiry stage of an offence relating to sexuality, the inquiring officer may not directly ask question that may have a strong mental effect on a child and the questioning should be done through a psychologist or social welfare worker. Also,

repeated questions are not allowed to ask a child if there is no reasonable cause.

Further, a victim is not required to appear in court during the trial, the prosecutor or the victim's counsel can be presented on his or her behalf.

11.6 How does the law protect the best interests of a child marriage victim, who is a child or minor as a witness in a criminal proceeding?

There is no specific Thai law that protects the best interests of a child marriage victim. However, regarding a sexual offense, the accused person may not adduce evidence or cross-examine with a question concerning the injured person's sexual behavior with other person other than the accused, unless permitted to do so by the court pursuant to Section 226/4 of the Criminal Procedure Code.

In addition, under Section 172 of the Criminal Procedure Code, when considering the sexuality, age, status, health and mental state of the witness or his or her fear of the accused person, a procedure may be made without direct confronting of a witness and the accused person (i.e. via close circuit television, electronic media or other means).

The Children Protection Act generally does not specifically cover the protection of a child's interest in a legal proceeding. It however covers the protection of a child from torture. Under article 43 of the Child Protection Act, the court may impose probation measure to a guardian or relatives of a child (i.e. restraining order), if (i) a criminal proceeding has been instituted

against them from torturing a child, and there is reasonable ground to believe that such person may torture a child again; or (ii) a criminal proceeding has not been instituted or there is no such criminal proceeding, but there is a reasonable ground to believe that a child may be tortured again. Ultimately, if a court deems that there is an urgent necessity to protect a child from repeated torture, it is entitled to order for police arrest and detain such person who is believed that he or she may torture the child.

Under Article 4, "Torture" is defined as any act or omission to act which cause a child to be deprived of liberty or to be in danger, physically or mentally, any sexual abuse to a child or any use of a child to act or behave which is likely to harm the physical or mental condition of a child or illegal or contrary to good morals, irrespective of the consent of a child.

Further, the Juvenile and Family Court and Procedure Act B.E. 2533(2010) only applies in a criminal case where a child or juvenile is an accused and not a victim. Therefore, in our case, the Criminal Procedure shall apply.

12. In a civil case:

12.1 Whether the local World Vision organisation, which provides shelter to a victim of child marriage may be regarded as the guardian of such child or minor, and whether it can appoint a lawyer to represent the victim to pursue compensation in a civil case?

Under Section 1587 of the CCC, a person who has reached legal age can be appointed as a guardian of a minor unless such person is adjudged incompetent or quasi-incompetent, bankrupt, unfit to take care of the minor or property of the minor, a person having or having had a lawsuit against the minor or its ascendants, full siblings or half siblings, or a person prohibited in writing by the minor's deceased parent. However, according to a strict interpretation of such provision, only a natural person can be appointed as a guardian of a minor and an organization such as World Vision may not be appointed as a guardian of a minor.

In addition to the CCC, the Child Protection Act B.E. 2546 (2003) also provides the definition of a "guardian" which is broader than the CCC. Under section 4 of the Child Protection Act, a "guardian" means a parent, custodian, adopter, guardian under the CCC, step parent, welfare guardian, employer, as well as any other person providing child support or shelter to the child.

Therefore, in circumstances where the Child Protection Act is applicable, World Vision may be regarded as a guardian of the child.

The World Vision organization may appoint a lawyer to represent the victim to pursue compensation in a civil case.

12.2 Can a civil case be lodged in court at the same time as a criminal case?

Yes, a civil case be lodged in court at the same time as a criminal case.

Further, Section 45 of the Thai Criminal Procedure Code also expressly states that any case that

has been initiated as a criminal case does not prejudice the right of the injured person to initiate a civil case.

12.3 How will the court determine the compensation amount for a child marriage victim in a civil case?

There are no specific regulations or guidelines which the court will follow in determining the compensation. The court will determine the compensation on a case-by-case basis, depending on the facts and severity of each case. In addition, as Thailand is a civil law country, court precedents regarding the amount or range of compensations are not legally binding.

In addition, in case of a wrongful act case under the CCC, Section 446 of the CCC expressly states that the injured may also claim for non-monetary

compensations if the injured as suffered injury to body, health or deprivation of liberty. According to past Supreme Court decisions, the injured person suffering from shock, distress and deterioration of mental health are some of the examples where non-monetary compensations have been granted by the court.

A female who is injured as a result from a person violating criminal laws in an immoral manner (e.g. rape, indecent act) is also entitled to the right to claim for non-monetary compensations.

13. Where can World Vision look for pro bono legal services to help a victim of child marriage?

The Ministry of Social Development and Human Security (MSDHS) is the government authority overseeing social development and human security which comprises of various departments including the Department of Children and Youth (DCY).

The DCY's responsibilities include developing policies and measures with respect to children and youth and undertaking duties with a focus on the capability enhancement and development for children and youth, right protection for children

and youth, and welfare promotion for children, youth, and families.¹

The DCY comprises of various divisions and groups including the legal group and the children and youth projection division. Therefore, although it does not have the express role to provide pro bono legal services, it will be able to provide information on laws and regulations to help a victim of child marriage and also provide guidance on further source of legal services.

In addition, TrustLaw which is Thomson Reuters Foundation's global pro bono legal programme provides free legal assistance and has a team in Thailand.² According to their official website, *"TrustLaw is a completely free service. Once they*

become members, NGOs and social enterprises can request free legal support, and lawyers can volunteer to work on projects that interest them." Please see more details at <http://www.trust.org/trustlaw/>. One of TrustLaw's areas of impact is women's rights and it has also previously partnered with advocacy group "Unchained At Last" to support its fight to pass legislation that would ban child marriage in the US³.

Lastly, there are many international (and potentially regional and local) law firms in Thailand which provide pro bono legal services. Therefore, NGOs and social enterprises may consider seeking pro bono legal services to help child marriage victims.

1 <https://www.dcy.go.th/webnew/main/history.php>

2 <http://www.trust.org/trustlaw/>

3 <http://www.trust.org/i/?id=c6584e43-188c-4bdd-a90c-6d86215aa643&source=trustlaw&show=1>

VIETNAM

1. What is the legal definition of child and what is the legal definition of a minor?

Article 1 of the Law on Children¹ defines a child as a person below the age of 16.

In addition, Article 20.1 and 21.1 of the Civil Code² stipulate that “adults are persons who are 18

years of age or older,” and “minors are persons who are under 18 years of age.” As a result, under Vietnamese law, those between the ages of full 16-under 18 would be legally considered as minors.

2. Is there any specific legislation that deals with child marriage of children or minors?

Yes, the following regulations address child marriage of children or minors:

- Law on Children;
- Penal Code;³
- Law on Marriage and Family;⁴ and

Their guiding regulations, including notably:

- Decree No. 82;⁵
- Decree No. 167;⁶
- Circular No. 01.⁷

3. Is there a legal definition of child marriage and/or illegal child marriage?

Yes.

Though there is no specific legal definition for “child marriage” per se, the Law on Marriage and Family does provide the legal definition for “underage marriage” which covers “child

marriage” in its scope. Underage marriage is defined as a marriage where one or both partners has/have not reached the required age under the law, i.e., full 20 years or older for men, and full 18 years or older for women.⁸

4. Is child marriage a violation of human rights and a form of violence against children?

Yes.

In Vietnam, there are a number of provisions in certain laws, such as the Law on Children,⁹ Law on Marriage and Family, and the Penal Code that

acknowledge that child marriage is an illegal and harmful action that is a violation of human rights and children’s rights. Further details on these provisions can be found in the other questions in this FAQ.

1 Law No. 102/2016/QH13 on Children adopted on 5 April 2016 of the National Assembly (“**Law on Children**”).

2 Law No. 91/2015/QH13 on the Civil Code adopted on 24 November 2015 of the National Assembly (“**Civil Code**”).

3 Law No. 100/2015/QH13 on the Penal Code, adopted on 27 November 2015 of the National Assembly amended and supplemented by Law No. 12/2017/QH14 adopted on 20 June 2017 (“**Penal Code**”).

4 Law No. 52/2014/QH13 on Marriage and Family adopted on 26 June 2014 of the National Assembly (“**Law on Marriage and Family**”).

5 Decree No. 82/2020/ND-CP on regulations on sanction of administrative violation in the field of judicial assistance, judicial administration, marriage and family, civil judgment enforcement, enterprise and cooperative bankruptcy (“**Decree No. 82**”).

6 Decree No. 167/2013/ND-CP on regulations on sanctions of administrative violations in social security, order and safety, prevention and fighting of social evils, fire and domestic violence (“**Decree No. 167**”).

7 Joint Circular No. 01/2016/TTLT-TANDTC-VKSNDTC-BTP on guiding the implementation of some provisions of the Law on Marriage and Family (“**Joint Circular No. 01**”).

8 Articles 3.8 and 8.1(a), Law on Marriage and Family

9 Article 6.4 of the Law on Children provides that the acts of organizing, supporting, inciting or forcing the child to engage in child marriage are prohibited.

5. What is the national minimum age of marriage? Is it legal to marry a person below 18 years of age?

Pursuant to Article 8.1(a) of the Law on Marriage and Family, the national minimum age of marriage is 20 years or older for men, and 18 years or older for women. Thus, it is illegal to marry any person below 18 years of age.

6. What penalties or sanctions exist within the national laws if anyone violates the law? (for the husband, parents, guardian of the child)

With respect to underage marriage, Vietnamese law provides for criminal penalties/sanctions under the Penal Code and administrative sanctions under Decree No. 82 and Decree No. 167. Please see below the specific details of these provisions.

Decree No. 82

Under Article 58, the acts of underage marriage or organization of underage marriage are subject to the following administrative sanctions:

- A fine from VND1,000,000 to VND3,000,000 shall be imposed for organizing a marriage for persons who are under marriageable age; or
- A fine from VND3,000,000 to VND5,000,000 shall be imposed for the acts of deliberately and illegally maintaining a conjugal relationship despite a legally effective judgment or decision by the Court.

Decree No. 167

Article 55, acts of forced child marriage by torture, abuse or mental intimidation or by other practices are subject to a warning or an administrative fine between VND 100,000 and 300,000.

Penal Code

Article 183 of the Penal Code provides that "any person who organizes a marriage entered into by a person under the marriageable age despite the fact that he/she has incurred an administrative penalty for the same offence shall be liable to (i) a fine of from VND10,000,000 to VND30,000,000 or (ii) face criminal sanctions (non-custodial sentences) of up to 02 years' community service."

Moreover, Article 181 of the Penal Code provides that "any person who forces another person to marry against his/her will.....by means of abuse, mental intimidation, demand for property or

other methods despite the fact that he/she has incurred an administrative penalty for the same offence shall receive a warning or face a penalty (non-custody sentence) of up to 3 years of community service or 3 - 36 months of imprisonment."

The partner of the child (commonly the husband in practice), depending on the nature and extent of the violation, can be criminally prosecuted for: (i) rape of a person under 16 years old, (ii) sexual abuse of a person aged from 13 to under 16, and/or (iii) engaging in sexual intercourse or other sexual activities with a person aged from 13 to under 16. Particularly:

- The act of engaging in sexual intercourse or other sexual activities with a person under 13 years old constitutes rape of a person under 16 years old. The lowest sanction for this offense is 7 years of imprisonment and the highest sanction is a death penalty.¹⁰
- Any person who employs trickery to make a child aged from 13 to under 16 who is in his/her care or a child in extreme need to engage in sexual intercourse or other sexual activities shall face sanctions ranging from a minimum of five years imprisonment to life imprisonment. A person who commits similar violation against a minor aged from 16 to under 18 shall face sanctions ranging from two to 18 years imprisonment.¹¹
- Any person aged 18 or over, who engages in sexual intercourse or other sexual activities with a child aged from 13 to under 16 in circumstances other than those specified in the two paragraphs above, shall be subject to prison sentences ranging from 1 year to 15 years depending on the nature of each violation.¹²

¹⁰ Article 142, the Penal Code.

¹¹ Article 144, Penal Code.

¹² Article 145, Penal Code

7. What exceptions are being used for child marriage? *E.g.* parental consent, judicial consent/ authorization, religious practice, religious laws or when the child becomes pregnant.

Under Vietnamese law, there are no legal exceptions for child marriage. The case of pregnancy is even considered as an aggravating circumstance.¹³

Vietnamese law requires marriages to be registered with the competent authorities to regulate against early marriage or child marriage. However, in practice, the enforcement of such laws may still be limited, especially in rural areas and areas with predominantly ethnic minority populations, and may differ depending on location.

However, the law does provide that in the case where at the time of a court's settlement of a request to annul an illegal marriage, if both partners now fully satisfy the marriage conditions as prescribed by the law and request recognition of their marital status, the court shall recognize the marriage. In such case, the marriage will be recognized as legally starting from the time where both partners fully satisfy the marriage conditions as prescribed by the applicable law.¹⁴

8. What legal protection or remedies are available to a victim of child marriage or marriage that takes place below the national minimum age of marriage?

As a general principle, the following persons and organizations can request the Court to nullify an illegitimate underage marriage:¹⁵

- Father, mother, children, custodian or other legal representative of the participant of the underage marriage;
- State authorities in relation to family and the child (e.g. the local People's Committees, Ministry of Labor, Invalids and Social Affairs);
- The local Women's Union.
- Other individuals and organizations can request State authorities and the Women's Union to commence proceedings at the Court.

At the time of the marriage, if the husband is below 20 years of age and/or the wife is below 18, then strictly speaking the marriage cannot be registered with the State and is not recognized as legitimate. As such, where the couple is living

together as if they are validly married, then the Court can make an official declaration that this co-habitation is illegal.¹⁶

Where the marriage was registered but either the husband or the wife was underage at the time of registration, the Court may still be requested to invalidate this marriage in accordance with the law. This can be done even if the husband or the wife later reaches marriageable age.¹⁷

During any court proceeding, one or multiple "temporary emergency measures" listed under the Civil Procedure Code¹⁸ can be requested. In particular, minors (i.e., under 18 years old) can be handled over to a suitable person or organization to care for them in case there is no guardian.¹⁹ Moreover, Article 129 of the Code allows the Court to make order to prohibit contact with victims of family violence "if it is necessary to protect the lives, health and honor of the victim".

¹³ Articles 142.2.dd, 144.2.b and 145.2.d, Penal Code.

¹⁴ Article 11.2, Law on Marriage and Family.

¹⁵ Article 10, Law on Marriage and Family.

¹⁶ Article 3, Joint Circular No. 01.

¹⁷ Articles 3.2 and 4.2 of Joint Circular No. 01.

¹⁸ Law No. 92/2015/QH13 dated 25 November 2015 on Civil Procedure Code ("**Civil Procedure Code**").

¹⁹ Article 115, Civil Procedure Code.

9. Are such protection or remedies available to a victim of child marriage, who is a foreign bride?

In relation to a marital relationship with a Vietnamese citizen, a foreigner in Vietnam shall be granted the same rights as a Vietnamese citizen.²⁰

According to current regulations, provincial-level People's Courts have jurisdiction to settle disputes over marriage and family relations with foreign elements.²¹ In addition, Article 123 of the Law on Marriage and Family stipulates that district-level

People's Courts of localities where Vietnamese citizens reside are also competent to cancel illegal marriages, settle divorce cases, disputes over rights and obligations of husband and wife or parent and child, recognition of parents or children, child adoption and guardianship between Vietnamese citizens residing in border areas and citizens of neighboring countries living in areas bordering on Vietnam.

10. What are the gaps in the national laws compare to international standard practices on laws related to child marriage, such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

Vietnam has not yet ratified Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.²² Nonetheless, Vietnam has incorporated the key provisions in this Convention into its legal framework, including:

- (1) the requirement of "full and free consent of both parties";
- (2) taking "legislative action to specify a minimum age for marriage";
- (3) registering valid marriages in an "appropriate official register by the competent authority".

Vietnam was the first country in Asia to ratify the Convention on the Rights of the Child (**CRC**). In principle, Vietnamese law generally reflects the rights of children provided in international laws and conventions related to child marriage.

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, Youth Law²³ states that the CRC shall be applied

for teenagers from the age of 16 to 18, having regard to the current conditions of Vietnam.²⁴ The Law on Children does not have this provision, but it requires the authorities to prepare periodic national reports on implementation of the CRC.

In addition, the rights and principles of the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) was reflected in Law No. 73/2006/QH11 on Gender Equality, dated 29 November. This law recognizes and gives precedent to international conventions. However, compared to international laws and standards, Vietnamese law still demonstrates a gender bias in the minimum age of marriage (i.e., 18 for women as opposed to 20 for men).

Furthermore, in Vietnam, a "child" is defined as someone under 16 years of age,²⁵ which is not consistent with international conventions such as the CRC. This means that victims of marriage below the minimum age may not receive the special protections available under the Law on Children just by virtue of being 16 or older. Of note, persons under 18 may still enjoy certain special treatments, regimes and protections under Vietnamese law.

²⁰ Article 121, Law on Marriage and Family.

²¹ Article 37, Civil Procedure Code.

²² https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-3&chapter=16&clang=en

²³ Law No. 53/2005/QH11 on Youth, issued by the National Assembly on 29 November 2005 ("**Youth Law**").

²⁴ Article 31, Youth Law.

²⁵ Article 1, Law on Children.

11. In a criminal case in connection with the marriage of a child or minor:

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

Any individual/organization/agency has the right to report a criminal offence to: (i) the investigation authority (e.g., the police); (ii) the authority assigned to carry out investigation activities; (iii) the procuracy at all levels; and (iv) other authorities such as the commune-level police departments, police stations or units, courts at all levels, press agencies and other organizations as permitted by law.²⁶ Besides, competent state authorities may file a written proposal on initiating a criminal case to the investigation authority or procuracy.²⁷

The above agencies would then transfer the denunciation and/or reports to the competent police investigation agency for officially investigating the case. The decision to prosecute the case can be issued by the competent authorities, mentioned in items (i) to (iii) above, and the court, depending on the circumstance.²⁸ The competent police agency in the area would be the one to file a criminal case to the prosecutor of the same jurisdiction for prosecution of the criminal after its investigation and collection of sufficient evidence for prosecution and issuance of an official investigation conclusion on committing the crime.

11.2 In general, what evidences are required to build the case against the alleged perpetrators of a child marriage case?

The law does not specifically cite the specific evidences of offences. In criminal cases involving victim being child or minor, there should be evidence to determine the age of the child or minor (e.g., birth certificate, identity card, passport, residence's book, or the result of expert examinations).

In the case of organization of child marriage, there should be evidence of the actual marriage having happened, evidence that the child is under lawful age to get marriage, and evidence of the alleged perpetrator's involvement in organizing the child marriage or forcing the minors to get married. Further, to be criminalized, the perpetrator must

have been administratively sanctioned for the same offence.

Evidence of crimes related to the (i) rape of a person under 16 years old, (ii) sexual abuse of a person aged from 13 to under 16 (engaging in sexual intercourse or other sexual activities with a person under 13 years old), and/or (iii) engaging in sexual intercourse or other sexual activities with a person aged from 13 to under 16, could be anything demonstrating that the child has suffered from the activities. The competent investigators, where necessary, may also physically examine the victim and record the findings in writing to serve as concrete evidence against the offender.

11.3 If the prosecutor requires the child marriage victim to testify against the alleged perpetrators, e.g. in many cases it will be parents or close relatives,

As a general requirement, the Criminal Procedure Code provides that representatives of persons less than 18 years of age can attend the session of deposition and interrogation of such persons under 18. Such representatives can submit

evidence, documents, items, requests, complaints and charges. They can read, transcribe and photocopy documents related to charges against persons aged below 18 from the case file after the investigative activities have ended.²⁹

²⁶ Article 144.1, Law No. 101/2015/QH13 on the Criminal Procedure Code ("**Criminal Procedure Code**"); and Article 5.1, Joint Circular No. 01/2017/TTLT-BCA-BQP-BTC-BNN&PTNT-VKSNDTC on cooperation between various authorities in implementation of the Criminal Procedure Code regarding receipt and handling of crime reports and petitions for prosecution.

²⁷ Article 144.3, Criminal Procedure Code.

²⁸ Article 153, Criminal Procedure Code.

²⁹ Article 420.2, Criminal Procedure Code.

(a) does such victim have the right to refuse;

Vietnamese law does not provide clear regulations on this matter. A child's refusal to testify does not constitute the corresponding crime under the Penal Code, nor does it constitute any direct violation of the Criminal Procedure Code. This may imply that the child has the right to refuse. However, the fact that the child refuses to testify may hinder the prosecution of the case.

On a related note, there are various requirements concerning testimony, which takes the child into consideration. For example, the questions must be suitable with the child's age, and the defense counsel or representatives of the child must accompany the child during the session of taking testimony. Furthermore, 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.³⁰

(b) can such victim testify via video link from another room;

Vietnamese law has not mentioned this matter.

During the investigation, the victim may testify to the authorities at their residence or where they study, work, or are a member. Otherwise, the testimony may be taken at the place of investigation; and in this case, this place must be arranged in a manner that is friendly and psychologically appropriate for persons under 18.³¹ The interrogation will can be recorded in audios or videos.³²

During the trial, the trial panel can isolate the child and the perpetrator in the case of a child being abused or sexually abused, a child being

less than 10 years of age, at the request of the child or his/her representative, or in other cases that the trial panel seem suitable to protect the best benefits of the child. The child shall be placed in an isolated room. Information about the hearing's developments shall be broadcasted via a video live streaming platform or otherwise communicated to ensure that the child can follow all developments of the hearing and exercise the child's rights and perform the child obligations.³³

In some certain circumstances where the child cannot be present at the court for providing evidence, it is practically permissible for them to provide evidence via video link.

(c) can such victim provide testimony separately without a court appearance and return to the country of origin; and

All participants of criminal proceedings must attend the trial if subpoenaed, and child victims are also not exempted from this obligation.³⁴ However, in practice, the court may, at its discretion or at the victim's proposal, decide not to summon victims to trial for their best interests and try to obtain their testimonies in other forms

that are deemed convenient. In such circumstance, the testimony given by the child is entitled to be admitted as evidence without a court appearance, provided that such testimony are presented in a factual and objective manner, in accordance with the procedures provided by law, and are admitted into evidence by the presiding judge.

30 Article 7.3(a), Resolution No. 06.

31 Article 14.1, Joint Circular No. 06/2018/TTLT-VKSNDTC-TANDTC-BCA-BTP-BLDTBXH dated 21 December 2018 on the coordination of implementing a number of provisions of the criminal procedural code on procedural procedures for people under 18 years old ("**Joint Circular No. 06**").

32 Article 14.2, Joint Circular No. 06, and Article 9, Joint Circular No. 03/2018/TTLT-BCA-VKSNDTC-TANDTC-BQP dated 1 February 2018 on guiding the order and procedures for making audio recordings or audio-visual recordings during investigation, prosecution or trial; and the use, preservation and archive of these audio recordings and audio-visual recordings.

33 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").

34 Article 62.4(a), Criminal Procedure Code.

(d) what other means of protection are available to a child or minor testifying in court.

Under Article 420 and 423 of Criminal Procedure Code Article 5 of Joint Circular No. 06 and Article 7 of Circular No. 02, there are some further means of protection to children as follows:

- A representative of a person aged under 18, a teacher or a representative of the school, Youth Union and other organizations, where such person studies, works and participates in common activities, has the right and obligation to participate in proceedings under a decision of the investigation body, procuracy or court to help the minor exercise his/her rights.³⁵
- Officers who conduct the criminal proceedings involving persons under 18 years old must satisfy one of the following statutory requirements:
 - ✓ They must be experienced with criminal proceedings involving persons under 18 years old;
 - ✓ They must be trained or educated on skills necessary for criminal proceedings involving persons under 18 years old; or
 - ✓ They must be trained or educated in psychology or in the education sciences for dealing with persons under 18 years old.³⁶
- The composition of the first-instance trial panel of a criminal case must include an assessor who is a teacher or Youth Union cadre or has experience and knowledge about the psychology of persons aged under 18.
 - The court may decide to conduct in-camera trial to protect the child or minor.
 - The inquiry of, and exchange of arguments with the victim aged under 18 at a hearing shall be conducted in a way suitable to their age and development level.
 - The trial panel shall restrict the contact between the child/minor victim and the defendant.
 - The courtroom shall be arranged in a friendly way to ensure the best interest of persons under 18 years old; the judge wears the administrative office attire of the people's court staff (without overcoat).³⁷
 - The trial shall be carried out in closed session, though the judgments must be announce publicly.³⁸
 - The hearing panel must limit interaction between the minor victim and defendant(s) when the victim testifies in court.³⁹ 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.⁴⁰

11.4 How is a child marriage victim thoroughly prepared for his/her testimony before the appointed court date?

The law does not specifically address how the victim is to be prepared before giving their testimony before the appointed court date. As a general principle, the victim may receive assistance for giving testimony from lawyers, legal aid assistants (for cases requiring participation of a legal aid center), the victim's representative or protector of their legitimate rights and interests, or other individuals or organizations, given that the testimony is presented honestly and truthfully before the court.

Further, under the Law on Legal Aid,⁴¹ children have the right to receive legal aid services without paying service fees.⁴² 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, including represent the child at court, providing legal consultancy, or performing extrajudicial representation.

³⁵ Article 420, Criminal Procedure Code.

³⁶ Article 5, Joint Circular No. 06.

³⁷ Article 7, Circular No. 02.

³⁸ Article 25, Criminal Procedure Code; Article 7.1(d), Circular No. 02.

³⁹ Article 423.5, Criminal Procedure Code.

⁴⁰ Article 421.6, Criminal Procedure Code.

⁴¹ Law No. 11/2017/QH14 on Legal Aid, issued by the National Assembly on 20 June 2017 ("Law on Legal Aid").

⁴² Article 8.1, Law on Legal Aid.

11.5 Can a child marriage victim be required to testify more than once and if so, how many times on average does such victim need to appear in court?

Yes, the victim may be required to testify at court more than once, if needed.

Pursuant to the Criminal Procedure Code, normally, the victim will appear in the first instance trial. If the case is appealed, the victim

may have to appear in court again. Only when later there is a re-trial of the case after the case being reviewed according to cassation or reopening procedures, the victim will have to re-appear if so required.

11.6 How does the law protect the best interests of a child marriage victim, who is a child or minor as a witness in a criminal proceeding?

The Criminal Procedure Code provides general principles for criminal proceedings applicable to a minor, including that the proceedings must be conducted in a manner congenial and appropriate for the minor's mentality, age, maturity and awareness. In addition, if the victim is a minor and is serving as a witness, their deposition must satisfy the following specific conditions:⁴³

- Time and location must be communicated to the minor's counsel, representative and protector of such person's legitimate rights and benefits in advance;
- Attendance of the child witness's representative or protector of legitimate rights and interests is compulsory;
- The duration shall not exceed two sessions per day and each session shall not exceed 2 hours, except for complicated cases; and
- Testimony of witnesses under 18 can be done at their places of study, work and living, or where the investigation is conducted.

In addition, according to the Law on Children:

- A juvenile victim or witness suffering from physical and spiritual harms shall be applied protective measures at the assistance level - which is assisting the disadvantaged children and their family in terms of living conditions and other perspectives - and protective measures at the intervention level.⁴⁴
- A juvenile witness shall have his/her life, health, dignity, honor and privacy protected; the forced escort of and placement of psychological pressure on the child shall be minimized.⁴⁵

While this is not specifically applied to child marriage victims, Article 10 of Circular No. 02⁴⁶ regulates that during trial, under-18 victims will be separated from defendants in cases involving sexual assault if requested by the victim or their representative, or as deemed necessary by the trial panel to ensure the best interest of the under-18 victim.

12. In a civil case:

12.1 Whether the local World Vision organisation, which provides shelter to a victim of child marriage may be regarded as the guardian of such child or minor, and whether it can appoint a lawyer to represent the victim to pursue compensation in a civil case?

Under Article 47 of the Civil Code, children need guardianship when:

- (1) they lost capacity of civil acts or have difficulties in awareness or control of their acts;
- (2) they lost their parents or their parents cannot be identified;

- (3) both of their parents lack capacity for civil acts; have difficulties in awareness or control of their acts or have restricted capacity for civil acts;
- (4) competent court decides to restrict the rights of their parents towards them;⁴⁷ or

⁴³ Article 421, Criminal Procedure Code and Joint Circular No. 06.

⁴⁴ Article 71.2 Law on Children 2016

⁴⁵ Article 71.3 Law on Children 2016

⁴⁶ Circular No. 02.

⁴⁷ Under Article 85 of the Law on Marriage and Family, competent courts may restrict the rights of parents towards their child if (amongst other) they incite or force their child to act against the laws or social ethics (which include underage marriage), or they are convicted of one of the crimes of intentionally infringing upon the life, health, dignity or honour of this child or commits acts

(5) their parents do not have the means to care for and educate them.

There are two forms of guardianships: natural and appointed. When a child is in need of guardianship, natural guardians - which are relatives of the child⁴⁸ - will be prioritized to act as the guardian. If the child has no natural guardians, the Commune-level People's Committee where the child resides will appoint a guardian. If the child in need of guardianship is 6 years old or above, the People's Committee will take the child's opinion and consent into account for guardian appointment.⁴⁹

In order for an organization/legal entity to be appointed as a guardian, it must meet the following requirements:⁵⁰

- having full civil capacity to act as a guardian; and

- having necessary means to exercise and fulfill the rights and obligations of a guardian.

Accordingly, World Vision may become a child's guardian if:

- the child is in need of guardianship;
- the child has no natural guardian;
- World Vision meets all requirements under the Civil Code to become a guardian; and
- World Vision is appointed as the child's guardian by the Commune-level People's Committee where the child resides.

If World Vision is appointed as the guardian, it would act as the legal representative of the child and can directly appoint a lawyer to protect such child's legitimate rights and interests in court procedures.⁵¹

12.2 Can a civil case be lodged in court at the same time as a criminal case?

Civil issues (i.e., compensation for the victim of child marriage) can be resolved during the settlement of a criminal case and not required to be lodged as a separated civil case.

In the event that the damage claims in the criminal case are not backed by sufficient evidence but does not affect the settlement of such criminal case, the civil issues can be separated to be resolved through civil procedures.⁵²

12.3 How will the court determine the compensation amount for a child marriage victim in a civil case?

Under the Civil Code, compensation amount is decided based on the damage caused. In cases of child marriage, potential claims for compensation may arise from damage to the child's physical, mental health as well as honor, dignity and reputation.

The Civil Code provide provisions for compensation calculation for the above damage as follows:

For damage to physical and mental health; compensation amount includes:⁵³

- Reasonable amount for medical attention, nursing and rehabilitation, functional losses and impairments of the child;
- Reasonable costs and actual income losses of the caretaker(s) of the child during treatment period. If the child loses the ability to work and requires a permanent caretaker, the compensation amount shall also include reasonable costs for taking care of such child;
- Other loss and damage as provided by the laws;

of seriously breaching the obligations to look after, care for, raise and educate children. A third-party such as World Vision may request authorized persons / agencies (which are the child's relatives, state management agency on family, state management agency on children and the women's union) to apply to competent court for issuance such restriction.

48 Natural guardians is regulated under Article 52 of the Civil Code and determined in the order of: Eldest biological siblings - paternal or maternal grandparents - biological uncle or aunt.

49 Article 54, Civil Code.

50 Article 50, Civil Code.

51 Article 69.4, 69.5 and 69.6, the Civil Procedure Code.

52 Article 30, Criminal Procedural Code.

53 Article 590, Civil Code.

- Compensation for mental suffering. This amount is to be agreed between the parties in a civil case. If no agreement is reached, the maximum amount payable for physical and mental damage is 50 times of the general minimum wage provided by the State.⁵⁴

For damage to honor, dignity and reputation; compensation amount includes:⁵⁵

- Reasonable amount for mitigation and remedy of such damage;

- Other loss and damage as provided by the laws;

Compensation for mental suffering. This amount is to be agreed between the parties in a civil case. If no agreement is reached, the maximum amount payable for damage to the child's honor, dignity and reputation is 10 times of the general minimum wage provided by the State.

13. Where can World Vision look for pro bono legal services to help a victim of child marriage?

Victims of child marriage can seek pro bono legal services from any legal aid-providing organization which has been published by the Ministry of Justice or the local Department of Justice.⁵⁶ Several notable pro bono legal service providers for children include:

- **National Legal Aid Agency (Ministry of Justice)**
58-60 Tran Phu, Ba Dinh District, Hanoi, Vietnam
Tel: (+84) 24 373395386
<http://legalaid.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/>

Vietnam's national child protection hotline is 111. This hotline is tasked with, amongst others, providing child protection services; receiving information, reports and denunciations about children and send them to the competent authorities; assist commune-level child protection officers in making and implementing assistance and intervention plans; and providing psychological and legal counseling for children and parents, family members and caregivers of children.

⁵⁴ The general minimum wage may vary on a yearly basis. For 2021, the general minimum wage is VND1,490,000 (approx. USD 65). Accordingly, maximum compensation for this case is VND74,500,000 (approx. USD 3,250).

⁵⁵ Article 592, Civil Code.

⁵⁶ Article 10, Law on Legal Aid.

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