

A complaint

15 April 2022

Subject: An act in breach or incompatible with the Child Protection Act, B.E. 2546

Dear Minister of Social Development and Human Security,

CC: Representatives of UNICEF, representatives of the UN Office of the United Nations High Commissioner for Human Rights (OHCHR) in Thailand, the UN Committee on the Rights of the Child (UNCRC Committee), The National Human Rights Commission of Thailand (NHRCT), and Department of Children and Youth (CDY)

On behalf of the Civil Society Network for the Protection of Children and Youth, we would like to file a complaint with the Minister of Social Development and Human Security regarding how officials from MSDHS have facilitated the forcible apprehension of three children under 18 years old on 15 April 2022. In so doing, the Department of Children and Youth, MSDHS, has allegedly breached or failed to act in compliance with the Child Protection Act, B.E. 2546 with the following detail.

1) The competent officials of the Department of Children and Youth has misinterpreted the Child Protection Act B.E. 2546's Section 44 without heeding to the key intent of the Act. The officials who negotiated with the children have failed to take into account the essence of the protection of the rights of the child which basically encompasses an attempt to find the facts about the child, including relationships within the family, living conditions, the manner in which the child has been brought up, the character, and behavior of the child in order to mete out preventive measures against any possible causes of either the physical or mental abuse of the child. During the incidence, the officials appeared to use gesture, verbal action, expression and physical action to threaten, intimidate and harass causing fear among the children. **The children were eventually forced to vacate their places even though it did not appear they had committed any offence or misdemeanor.** The officials' act was therefore a gross violation of Section 44 since no effort was made to harbor positive communication or communication which is sensitive to their vulnerabilities or to take into account the impacts on the children's mental and emotional condition. No psychological knowledge was employed to communicate heeding to any impacts which may be inflicted on the children. There was no attention paid to the child development principle and the planning of child protection together with their families and to ensure genuine participation of both the families and the children.

The officials used force to remove the children claiming the need to protect their welfare and invoking the Child Protection Act.

What the officials of the Department of Children and Youth have done was not based on best interest of the child pursuant to Section 22 which prescribes that treatment of the child, in any case, shall give primary importance to the best interests of the child and there shall not be unfair discrimination. And in their capacity as welfare protection officials pursuant to Section 24 and their execution of duties pursuant to Section 44, should it be determined that a child is imminently exposed to violence or may likely be subject to rights violation, the officials who are “child protection officials” under the Child Protection Act shall proceed to remove the child and offer timely protection of their welfare. In this case, the officials of the Department of Children and Youth, as “competent officials”, have to uphold their supreme power to protect the child and to persevere to defend the best interest of the child and to communicate and ensure the child is aware of the imminent risks and that they will be placed in a safe environment. Section 44 clearly stipulates that the Department of Children and Youth has to send the child to the Welfare Protection Centre. But according to audiovisual evidence, the officials have committed an opposite act by facilitating the police to use force to detain and transfer the children to MSDHS and the Royal Thai Police Sports Club, both of which were not friendly to the children. They even allowed the police to have the sole charge over the interviews of the children without the presence of the persons they trusted, and without the presence of even social workers or child psychologists as required by law. Such acts have absolutely failed to comply with the intent of the Child Protection Act and amounted to a gross violation of the rights of the child.

The acts of the officials from the Department of Children and Youth constitute an act of violence against the children, physically, verbally, and mentally. According to evidence, force was used against the children physically and mentally. They were coerced to do something without heeding to their reasons. The threat was made against them physically and verbally without realizing the fear inflicted on the children as a result of being encircled and apprehended by a number of adults. Instead of defending the children, the officials of the Department of Children and Youth have used violence against the children by themselves. Direct impact on the children’s mental condition asides, such acts shall elicit long-term consequences on the children’s mental state.

2) The officials of the Department of Children and Youth have violated the UN Convention on the Rights of the Child’s Article 12 regarding the right to participate and express their views peacefully as well as their opportunity to be heard and Article 15 regarding the rights of the child to freedom of association and to freedom of peaceful assembly. As a state party to the Convention, Thailand has an obligation to respect, act in its compliance or facilitate the safe exercise of the rights. Such obligation subjects Thailand to a review by a monitoring and complaint mechanism according to international law. By violating such rights according to the initial evidence, it may prompt the UN Special Rapporteur of the Committee on the Rights of the Child and the

Office of the United Nations High Commissioner for Human Rights (OHCHR) and international community to invoke their power to carry out an investigation and inquiry into the acts committed by public officials and to condemn any indecent use of power. This will tarnish Thailand's reputation and undermine any act or decision made by Thailand in international forums.

The Network calls on the Department of Children and Youth, MSDHS, to comprehensively and prudently review its roles and uphold the rights and the best interest of the child as much as possible. Competent officials are obliged to act in compliance with the Child Protection Act by disseminating, interpreting, and applying the intent of the Act to genuinely protect the child rather than to invoke it as a shield to camouflage their abuse of the rights of the child.

The MSDHS's Department of Children and Youth must be a hope and act as a shield to protect children and youth in a society amidst conflicting and diverse views. The competent officials cannot expect other people to act on their behalf and have to set an example in terms of child protection for other agencies to follow. The Network has the following recommendations.

- The MSDHS's Permanent Secretary must encourage their competent officials to be aware of the benefits of promoting the rights of the child, High ranking officials in MSDHS must show their courage by making change to its current policy, concept, and practice toward promoting the culture of respect of rights to transparent exchange and debate, toward the eradication of practice incompatible with the rights of the child. MSDHS must overhaul its underlying concept on the treatment of the child. Public officials should not view children as troublemakers, rather as a person who is entitled to their individual rights and freedoms. If they are exposed to risks, public officials must adhere to the guidelines for the protection of rights of their clients. When encountering with conflicts, the officials should receive training on positive communication with children and promote access to comprehensive information among children including any potential risks, how to access help, etc. Children must also be involved in any decision making together with public officials on matters concerning the child's interest and welfare.

- The MSDHS's Department of Children and Youth must convene a meeting on initial risk analysis, have a drill on response to risks, clearly determine roles and duties of MSDHS's officials, competent officials, social workers regarding the negotiation with security forces, police officials and how they should perform their duties to defend the rights of the child as far as the Child Protection Act B.E. 2546 is concerned. This can help to prevent any use of violence against children by creating a safe environment for the children and by improving the communication and nonviolent conflict resolution. Services must be provided taking into

account background, development and family environment of the child to refrain from making them fear or feel submissive or inhumanly treated.

● The MSDHS's Department of Children and Youth must seek cooperation from civil society organizations, experts on conflict resolution, multidisciplinary sectors, international organizations, or UN agencies in order to improve its capacity, attitude and approach to work toward the best interest of the child in a sensitive environment. An effort must be collectively made to rectify any improper treatment of other public officials including from security agencies and the police, who still lack an understanding of the rights of the child. They should be made to understand the importance of working primarily based on the physical and mental safety and the best interest of the child and refraining from an unjust discrimination, particularly during a situation of conflict including their right to express their political views and the long-term impact of using force to restrict such space for the participation of children and how to communicate in a friendly manner with children. Such methods are the only solution leading to a sustainable and effective solution to conflicts based on child development.

● The MSDHS's Department of Children and Youth and concerned security agencies must show their responsibility to genuinely and timely address the need of affected children and their families. This can help to prevent and mitigate mental impact in a long run for the children and any risk from any resulting mental trauma such as worry and depression. The children and their families should receive care and counseling from the child experts they trust who should ensure them their access to services and decent environment as well as rehabilitation.

The Civil Society Network for the Protection of Children and Youth will continue to closely monitor the inquiry into the actions of the Department of Children and Youth in this case via formal and informal channels including media coverage and allied organizations that help to demand the rights during the next three months after submitting this letter. We express our determination to respect the rights of the child and to stand by our children and youth according to our missions. The Network is willing to cooperate and support the Department of Children and Youth in expressing their views to improve the standards and practice based on the best interest of the child amidst this fragile situation of conflict.

Signed the Civil Society Network for the Protection of Children and Youth

- Isaan Gender Diversity Network (IGDN)

- Coalition of Innovation for Thai Youth (CITY)

- Thai teachers for child rights association (TTCR)

- Sikhoraphum Youth
- NGO Coordinating Committee on Development (NGO-COD) of the Northeast
- why i why Foundation
- Bad student
- Thai Lawyers for Human Rights (TLHR)