

TLHR

THAI
LAWYERS
FOR
HUMAN
RIGHTS

From Classroom to Courtroom



The Criminalization of
Children's Speeches
and Peaceful Assemblies
in Thailand

December 2023

Thai Lawyers for Human Rights (TLHR) was founded by a group of human rights lawyers two days after the 2014 military coup took over the democratically elected government of Thailand. Initially an ad hoc organization that aimed to provide legal and litigation assistance to individuals summoned, arrested, and detained by the military, the work of TLHR has evolved to cultivating a healthy democracy in Thailand, restoring the rule of law, and ensuring the protection and promotion of human rights for all.

Since the youth-led pro-democracy movement swept Thailand in 2020, our human rights work has expanded to include the protection of children’s rights. We remain committed to providing free legal and litigation assistance to anyone whose fundamental rights have been violated, through all steps of the judicial process.

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1. Executive Summary

“There is no courage without fear. But if we adhere to the principles of righteousness to change the world for others, I am willing to be one of the people to make sacrifices. No one knows whether we will win or lose in the future. I might have to go to jail, but at least I did something. This is what I want to say.”¹

– Petch, former child human rights defender

In Thailand, the criminalization of speeches and peaceful assemblies by human rights defenders and pro-democracy activists has not spared children. Between 18 July 2020 and 30 November 2023, at least 286 children in 217 cases have been charged and/or prosecuted for activities in connection with the exercise of their rights to freedom of expression and peaceful assembly. A number of these child human rights defenders face

¹ Thai Lawyers for Human Rights (TLHR), รัฐต้องฟังเสียงของเยาวชน: บทสนทนา กับ ‘ธนกร’ เยาวชนรายแรกที่ถูกลงข้อหา ม.116, 7 December 2020, <https://tlhr2014.com/archives/23805>.

serious criminal offenses, including violations of Section 112 (lèse-majesté) of the Thai Criminal Code² punishable by three to 15 years of imprisonment.

Abuses against children exercising their rights to freedom of expression and peaceful assembly in Thailand occur even before any charges are filed. Child human rights defenders who attended the widespread pro-democracy demonstrations that swept the nation beginning in 2020 were often subjected to excessive force by authorities attempting to disperse protesters, including the indiscriminate use of tear gas and rubber bullets. Despite the known fact that children were present in these demonstrations, authorities did not give special consideration to children when cracking down on public assemblies.

From Classroom to Courtroom (2023) explores two serious issues affecting Thai children who participated in the recent pro-democracy movement. First, it investigates the use of the lèse-majesté law — a serious offense with extremely severe penalty — against children who exercised their right to freedom of expression by criticizing or calling for reforms of the institution of

² Criminal Code, Section 112 (“Whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years”).

the monarchy. Since November 2020, no fewer than 20 children have been charged under this law. At least three children have been found guilty by children’s court. One child was violently arrested before being subjected to more than 50 days of pretrial detention. At the time of this writing, at least two children are detained at an observation center as part of the diversion program imposed on them by children’s court. This report argues that the use of the lèse-majesté law in this manner is in clear violation of both domestic and international law.

Second, this report puts Thailand’s child justice system under the microscope and questions whether the system has the best interests of children at heart. This report finds that, from the very first point of contact with the law, the rights of child human rights defenders and protesters are systematically violated. Excessive force was used to arrest child protesters, many of whom were visibly injured and restrained with cable ties. Yet, in all cases where violence was used during arrests, the children’s court found all arrests to have been conducted lawfully. After arrest, many children were subjected to detention despite the fact that detention should only be used as a measure of last resort. In the courtroom, children were often pressured to confess to crimes they did not commit in order for the court to impose “special measures” or diversion on them. This report argues that the

rights of child human rights defenders and protesters are violated throughout the whole child justice process.

Finally, to safeguard children's rights under both domestic and international law, this report discusses what can be done to improve the situation of children's rights in Thailand and urges the Thai government to adopt Thai Lawyers for Human Rights' (TLHR) recommendations

2. Methodology

Since the youth-led pro-democracy movement swept the nation in 2020, TLHR has been providing free-of-charge legal representation to children charged under various repressive laws for exercising their rights to freedom of expression and peaceful assembly. Accordingly, the statistics used in this report cover the period between 2020 and 2023. Among 286 children subjected to criminal charges, TLHR has provided legal assistance to at least 249 children — 195 males, 44 females, and 10 LGBTQ+. In addition to cases of children facing criminal charges, TLHR also provides assistance to and monitors cases of children facing non-judicial harassment. TLHR further utilizes international human rights mechanisms, such as UN Special Procedures, to advocate for the rights of children in Thailand.

Congruent with the UN Convention on the Rights of the Child, this report defines children as any “human being below the age of eighteen years.”³ Likewise, Thai law defines children as “person[s] whose age is less than 18 years but does not

³ Convention on the Rights of the Child, Article 1.

include those who attain majority through marriage.”⁴ Although Thailand’s Juvenile and Family Court and Procedure Act B.E. 2553 (2010) defines “children” as individuals between the age of 12 and 15 and “youths” as individuals between the age of 15 and 18,⁵ this distinction does not affect the fundamental rights of children under the Convention on the Rights of the Child to which the children are entitled. Rather, its effect is merely to subject “children” and “youths” to different criminal procedures.

This report draws from the firsthand experiences of TLHR lawyers and officers who have been working with children over the past three years. TLHR lawyers went to police stations with children to acknowledge charges against them. They represented children before children’s court. As part of child criminal procedures, TLHR lawyers also interacted with social workers, psychologists, and staff at observation centers. In some cases, a TLHR lawyer went as far as searching for children’s parents or legal guardians in and outside Bangkok. The experiences of TLHR lawyers and officers are reflected in this report.

4 Child Protection Act B.E. 2546 (2003), Section 4.

5 Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 4.

Furthermore, this report draws from the stories children shared with TLHR after experiencing judicial or non-judicial harassment. TLHR has routinely interviewed children and shared their stories with the public. TLHR also conducted two child consultations in November 2022 and October 2023. During these consultations, TLHR provided a safe space for children to share their experiences going through the child justice system and to participate in the formulation of policy recommendations. Our reporting on children’s cases is based on the voluntary, free, and informed consent of children. For children under the age of 18, our reporting uses children’s pseudonyms instead of their real names. In particular, this report refrains from using children’s real names unless the children have given their consent and the use of their names is crucial to the stories.

It is the aim of this report to contribute to the ongoing conversation about the rights of child human rights defenders and activists in Thailand.⁶ Unfortunately, many details and issues concerning children’s rights have been intentionally omitted from this report to keep it within the appropriate length. For example, while this report discusses the problems

⁶ See Amnesty International, *We Are Reclaiming Our Future*, 2023, <https://www.amnesty.org/en/documents/asa39/6336/2023/en/#:~:text=“We%20Are%20Reclaiming%20Our%20Future”%20examines%20key%20human%20rights%20issues,Thailand%20between%202020%20and%202022.>

with “special measures” or diversion programs for child human rights defenders or activists, it intentionally leaves out many details lest the report would be overly long. TLHR notes that an entire report could be dedicated to the single issue of “special measures,” and hopes that data and information we have been collecting in the past few years can be transformed into useful and accessible reports in the future.

3. Background

In July 2020, pro-democracy demonstrations organized primarily by students and young people spread nationwide across Thailand. Fueled by the widespread criticism against the government for failing to secure adequate Covid-19 vaccine supplies, the economic slump caused by public health measures, the dissolution of the opposition Future Forward Party, and the disappearance of a Thai political activist living in exile in Cambodia,⁷ these youth-led demonstrations proposed three core demands: (1) the resignation of then former Prime Minister General Prayut Chan-o-cha, who remained in office from 2014 when he seized power in the 2014 military coup until the recent election in May 2023; (2) an end to the harassment of activists and human rights defenders by the authorities; and (3) the drafting of a new Constitution, as the current one had been drafted and passed by the military junta.

⁷ Human Rights Watch, *Cambodia: Thai Activist Abducted in Phnom Penh*, 5 June 2020, <https://www.hrw.org/news/2020/06/05/cambodia-thai-activist-abducted-phnom-penh>.

For the first time in modern Thai political history, many students and young people who are part of the pro-democracy movement openly called for reforms of the institution of the monarchy, a topic which had hitherto been a taboo in the country. The significant spike in the number of activists charged under various repressive laws in Thailand since July 2020, which currently rests at 1,935 as of 1 December 2023,⁸ is largely a result of then-PM Prayut’s pledge to enforce “all laws and articles” against activists who participated in the youth-led pro-democracy demonstrations.⁹

Although the outcome of the general election in May 2023 provided the people of Thailand with optimism that fundamental changes were on the horizon, that hope was not long-lived. The progressive Move Forward Party, which promised to amend the *lèse-majesté* law,¹⁰ emerged as the victor of the election but was blocked by the military-appointed Senate from becoming

8 TLHR, ตุลาคม 2566: จำนวนผู้ถูกดำเนินคดีทางการเมืองยอดรวม 1,930 คน ใน 1,253 คดี, 3 November 2023, <https://tlhr2014.com/archives/61163>.

9 Al Jazeera, *PM Prayuth promises to use ‘all laws’ against Thai protesters*, 19 November 2020, <https://www.aljazeera.com/news/2020/11/19/pm-prayuth-promises-to-use-all-laws-against-thai-protesters>.

10 Bangkok Post, *Move Forward Party firm on changing lèse-majesté law*, 16 July 2023, <https://www.bangkokpost.com/thailand/politics/2612365/move-forward-party-firm-on-changing-lese-majeste-law>

2020 -2023

CHARGES AGAINST:

286 children

217 male children

56 female children

10 LGBTQ+ children



the government.¹¹ At the same time, the Constitutional Court accepted a petition against Move Forward accusing the party of treason because of its plan to reform the lèse-majesté law.¹² If the Court agrees with the petitioner, the party could be dissolved and its executive members banned from politics for up to 10 years, just like its predecessor Future Forward Party. The ruling coalition government is led by the Pheu Thai Party, which joined hands with pro-military parties that oversaw the mass prosecution

¹¹ Al Jazeera, *Party that won Thai elections blocked from forming coalition government*, 2 August 2023, <https://www.aljazeera.com/news/2023/8/2/party-that-won-thai-elections-blocked-from-forming-coalition-government>.

¹² Human Rights Watch, *Thailand: Bogus Charges Keep Candidate from Top Post*, 21 July 2023, <https://www.hrw.org/news/2023/07/21/thailand-bogus-charges-keep-candidate-top-post>.

of pro-democracy activists beginning in late 2020. Since the May 2023 election and since the new government officially came into power, new charges continue to be brought against pro-democracy activists every month.¹³

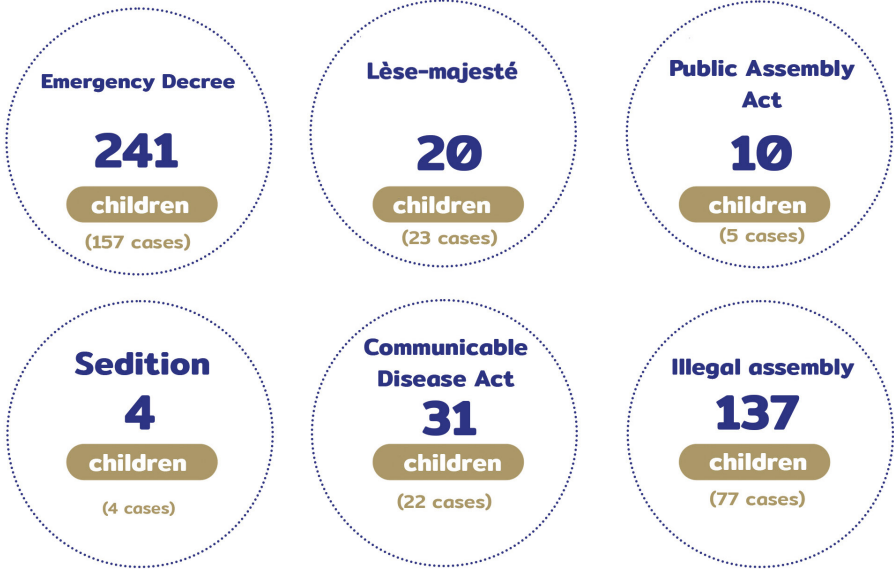
While young people have often organized demonstrations throughout Thailand’s political history, it is important to recognize that this new wave of pro-democracy protests was largely attended and driven by young people under the age of 18 who are legally considered children under both Thai law¹⁴ and international law.¹⁵ As children, the young activists participating in the pro-democracy demonstrations are uniquely protected by the Convention on the Rights of the Child (CRC), the most universally accepted human rights instrument centered on protecting the rights of children in all aspects of their lives, to which Thailand acceded in 1992.¹⁶ Additionally, children’s rights to freedom of

13 TLHR, *September 2023: A total of 1,928 people have been politically prosecuted in 1,249 cases*, 17 October 2023, <https://tlhr2014.com/en/archives/60610>.

14 Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 4 (“‘Child’ means a person who is over the age as prescribed in Section 73 of the Criminal Code but not over 15 years old. ‘Juvenile’ means a person who is over fifteen years old but has not attained the age of eighteen years old.”) This report uses the terms “child” and “children” to refer to all those under 18 covered under the Juvenile and Family Court and Procedure Act.

15 Convention on the Rights of the Child, Article 1.

16 UN Office of the High Commissioner for Human Rights (OHCHR), *Ratification Status for Thailand*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN.



expression and peaceful assembly are also guaranteed under the International Covenant on Civil and Political Rights (ICCPR) to which Thailand acceded in 1996.¹⁷

Between 18 July 2020 and 1 December 2023, at least 286 children in 217 cases have been charged and/or prosecuted for exercising their rights to freedom of expression or peaceful assembly. The main charges include, but are not limited to:

¹⁷ *Ibid.*

Despite the special protections granted to children under intentional law, many child human rights defenders in Thailand have been charged and/or prosecuted with serious criminal offenses for activities in connection with the exercise of their rights to freedom of expression and peaceful assembly.¹⁸ Under the pretense of preventing the spread of Covid-19, the majority of the charges and/or prosecutions fall under violations of the Emergency Decree (157 cases against 241 children). However, authorities have also charged and/or prosecuted a notable number of children with violations of the serious crimes of *lèse-majesté*¹⁹ (23 cases against 20 children) and sedition²⁰ (3 cases against 3 children). In response to these charges and/or prosecutions against children, former UN High Commissioner for Human Rights Michelle Bachelet addressed a letter to the Thai State dated 1 July 2022 expressing her concern for the “large numbers of individuals, including children, who have been involved in peaceful demonstrations since July 2020 ... facing charges, arrest and detention, including serious criminal charges of sedition, *lèse-majesté* and other for exercising their fundamental freedoms.”²¹

18 TLHR, *A statistical profile of minors charged for political expression and protest, 2020-2022*, 16 September 2022, <https://tlhr2014.com/en/archives/25302>.

19 Criminal Code, Section 112.

20 *Ibid.*, Section 116.

21 Letter from former UN High Commissioner for Human Rights Michelle Bachelet to Thailand’s Deputy Prime Minister and Minister of Foreign Affairs, 1 July 2022, <https://www.ohchr.org/sites/default/files/documents/hrbodies/upr/wgsessions/39th/2022-07-14/HC-Thailand.pdf>.

During Thailand’s 3rd Universal Periodic Review held in November 2021 in Geneva, Switzerland, Thailand received a total of 278 recommendations from other Member States at the Human Rights Council. Thailand demonstrated a clear commitment to children’s rights by supporting many recommendations concerning the protection of children, including Italy’s recommendation to implement measures to combat all forms of violence and discrimination against women and children, Sweden’s recommendation to legally prohibit any form of corporal punishment against children, and Japan’s recommendation to improve children’s access to social services such as education.²²

However, Thailand refused to support recommendations pertaining to the criminalization of children’s exercise of freedom of expression, including:

1. Recommendation 52.47, Mexico: “Decriminalize freedom of expression and peaceful assembly and avoid the detention of minors for exercising these rights;”

2. Recommendation 52.56, Finland: “Review the usage of lèse-majesté legislation in its entirety and especially against minors to comply with international human rights standards, including the Convention on the Rights of the Child;”

²² UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Thailand, A/HRC/49/17, Recommendations 52.75 (Italy), 51.160 (Sweden), and 51.102 (Japan), <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F49%2F17&Language=E&DeviceType=Desktop&LangRequested=False>.

3. Recommendation 52.63, Austria: “End arrests and prosecution of children under article 112 and other articles related to security and public order in the criminal code, and ensure the respect of Thailand’s obligations under articles 13, 15 and 37 of the Convention on the Rights of the Child;” and

4. Recommendation 52.66, Denmark: “Ensure that the most severe criminal sentences are not applied to children, including in the context of Article 112 of the criminal code, and in line with article 40 of the Convention on the Rights of the Child.”²³

These refusals to support recommendations pertaining to children’s rights to freedom of expression and peaceful assembly — especially in the context of lèse-majesté legislation — is consistent with the Thai government’s pattern of refusing to support 19 additional UPR recommendations pertaining to the fundamental rights to freedom of expression, peaceful assembly, and association, including recommendations put forth by Norway calling on Thailand to “protect individuals, including political opponents, from judicial harassment” and by Austria calling on

²³ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Thailand – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/49/17/Add.1, 17 February 2022, para. 9, <https://undocs.org/Home/Mobile?Final-Symbol=A%2FHRC%2F49%2F17%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=False>.

Thailand to “[g]uarantee the rights to freedom of expression and assembly and stop targeting civilians engaging in peaceful protests under criminal charges entailing punishment with exorbitant prison terms.”²⁴

Thailand also refused to support any recommendations calling on the review or revision of Section 112 of the Criminal Code,²⁵ and noted to the UN Human Rights Council during its closing statement that the exercise of the rights to freedom of expression and peaceful assembly “must be within the boundary of law and not infringe upon the rights of others or instigate hatred and undermine national security and public order.”²⁶ While Thailand continues to justify the use of serious criminal offenses to crack

²⁴ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Thailand*, A/HRC/49/17, Recommendations 52.50 (Norway) and 52.52 (Austria), <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F49%2F17&Language=E&DeviceType=Desktop&LangRequested=False>; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Thailand – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/49/17/Add.1, 17 February 2022, para. 9, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F49%2F17%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=False>.

²⁵ TLHR, *National Youth Day: Revisiting Recommendations about Child Protection from International Community to Thailand on the World Stage*, 21 September 2022, <https://tlhr2014.com/en/archives/48641>.

²⁶ Closing Statement by H.E. Mr. Rongvudhi Virabutr, Ambassador and Deputy Permanent Representative of Thailand at the adoption of the 3rd Universal Periodic Review cycle outcome of Thailand, 49th session of the UN Human Rights Council, 24 March 2022, <https://humanrights.mfa.go.th/upload/pdf/HRC49UPR.pdf>.

down on pro-democracy activists, including child human rights defenders, at least 286 children have endured unnecessary involvement with the criminal justice system simply for exercising their rights to freedom of expression and peaceful assembly.

Statistical overview of cases before children’s courts:

Children’s cases (as of 30 November 2023)	No. of children	No. of cases
All children’s cases	286	217
Court of First Instance	6	6
Court of Appeals	16	15
Supreme Court	2	2
Concluded*	84	76

*A case can be concluded in several ways. For example, a child in conflict with the law may enter a guilty plea in order to enter “special measures” in lieu of prosecution or judgment.²⁷ A child may also be sentenced to a fine or a prison term. In cases

²⁷ Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Sections 86, 90, and 132.

where the court sentences a child to prison, Thai courts have customarily chosen to suspend the prison sentence of the child or replace it with an order requiring the child to attend a Juvenile Vocational and Training Center, though these are discretionary measures and are not guaranteed.²⁸ Alarming, recent cases of courts exercising their discretion to hold children in detention as part of diversion programs have been documented.

28 Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 142.

4. Use of Lèse-Majesté Law Against Children

“Whoever, defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years.”

**Thai Criminal Code, Section 112.
Insulting or Defaming Royal Family**

In response to growing criticism of the monarchy and calls for institutional reform by the youth-led pro-democracy movement, the number of Section 112 cases spiked starting in late 2020 after a two-year hiatus.²⁹ Authorities have targeted pro-democracy activists, artists, musicians, influencers, and journalists, in addition to children human rights defenders under the age of 18, with

²⁹ BBC, สนง.อัยการสูงสุด ออกแนวปฏิบัติใหม่ รวบทติ 112 ให้ อสส.พิจารณา, 27 February 2018, <https://www.bbc.com/thai/thailand-43209449> (from 2018 to 2020, an Attorney General’s directive dated 21 February 2023 removed the power to order prosecution of Section 112 cases from rank-and-file prosecutors. As a result, only the Attorney General possessed the exclusive power to decide whether to file Section 112 cases in court); and Regulations of the Office of the Attorney General: concerning the ordering of criminal cases that will not benefit the public, or will have an impact on the safety or security of the nation or to the important interests of the country (No. 2) B.E. 2561, <https://www.ratchakitcha.soc.go.th/DATA/PDF/2561/A/044/11.PDF> (the Attorney General issued an additional directive dated 15 June 2018 concerning criminal prosecutions which do not serve the public interest or which may affect national safety, security or other important interests of the country).

charges and/or prosecutions under the lèse-majesté law, the violation of which is punishable by three to 15 years of imprisonment.

As of 30 November 2023, no fewer than 262 people in 285 cases have been charged under Section 112. Among these individuals, 20 are children. Two children are in detention in an observation center as part of diversion programs on this offense.

Section 112	No. of children	No. of cases
Section 112 cases	20	23
Case status	No. of people	No. of cases
Court of First Instance	4	3
Court of Appeals	5	6
Supreme Court	1	1
Cases concluded ³⁰	10	10

³⁰ A case can be concluded in several ways. For example, a child in conflict with the law may enter a guilty plea in order to enter “special measures” in lieu of prosecution or judgment. A child may also be sentenced to a fine or a prison term. In cases where the court sentences a child to prison, the court would usually suspend the prison sentence or replace it with an order requiring the child to attend a Juvenile Vocational and Training Center.

4.1 International Human Rights Law

4.1.1 Freedoms of expression and peaceful assembly

The use of Section 112 against children is particularly concerning given the law’s clear violation of international human rights standards. According to the CRC, freedoms of expression and peaceful assembly are fundamental human rights of children that Thailand is legally obligated to respect, protect, and fulfil.³¹ Restrictions of these rights are justified if and only if they are (1) provided by law and (2) are necessary for respect of the rights or reputations of others, or for the protection of national security or of public order, or of public health or morals.³² These principles are similarly enshrined under Article 19 of the ICCPR.

In General Comment No. 34, the UN Human Rights Committee clarified that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of [the ICCPR].”³³ The Committee further explained that “all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and

31 Convention on the Rights of the Child, Article 13(1), 15(1).

32 Convention on the Rights of the Child, Articles 13(2), 15(2).

33 UN Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011, para. 38.

political opposition” and that “laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.”³⁴ As such, “lese majesty” and “defamation of the head of state” are laws about which the Committee is especially concerned.³⁵

In response, the Thai government has usually cited “reputation of others,” “public order,” and/or “national security” as the justification for prosecuting dissidents under Section 112.³⁶ Most recently, on 25 August 2023, the Thai government justified the filing of Section 112 charge against and pretrial detention of Yok³⁷ for something she did when she was 14 years old by, *inter alia*, explaining the purpose of the lèse-majesté law to the UN Special Procedures in the following manner:

“The purpose of the lèse-majesté law, enshrined in Section 112 of the Thai Criminal Code, is not solely to protect the Monarch, Queen or Heir apparent as an individual in the same way defamation law does for all

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ National report submitted in accordance with paragraph 5 of the annex to UN Human Rights Council resolution 16/21: Thailand, A/HRC/WG.6/39/THA/1, 17 August 2021, para. 117.

³⁷ While Yok is not legally represented by TLHR, we closely monitor her case.

citizens. As Thailand is a constitutional monarchy, *the Section also protects the institution of the monarchy as one of the main pillars of the nation for the Thai people*. Therefore, the law is also intended to uphold *public order* and *national security*, which warrants severe penalties, once thoroughly considered.”³⁸ (emphasis added)

Absent from most (if not all) court judgments or indictment orders on Section 112 is the demonstration, “in specific and individualized fashion”, of “the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”³⁹ For example, it remains unclear how Yok’s participation in a peaceful public assembly constituted a threat to national security or public order. Similarly, it is unclear how the wearing of a crop top by a 16-year-old child⁴⁰ or peaceful criticisms of the monarchy by a 17-year-old child⁴¹ threatened national security or public order.

38 Thailand’s Response to the Joint Communication Ref. AL THA 2/20233 dated 5 May 2023, No. 52101/206, 25 August 2023.

39 UN Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011, para. 35.

40 See Part 4.2.2.

41 See Part 4.2.1.

“[C]oncerning the content of political discourse, the Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.”

**Human Rights Committee,
General Comment No. 34 on Article 19:
Freedoms of Opinion and Expression, para. 38**

Moreover, the penalty under Section 112 - that is, mandatory three to 15 years' imprisonment - is disproportionately severe.⁴² If the Thai government wishes to protect the rights or reputation of specific individuals, it could resort to less restrictive measures like civil defamation law, which does not have a mandatory prison sentence, to achieve the same protective function.⁴³

⁴² UN Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011, para. 47 (“States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty”).

⁴³ *Id.* paras. 33-34. See also UN Working Group on Arbitrary Detention, Opinion No. 44/2016, para. 29 (“If Mr. Pongsak’s postings defamed any individuals, the remedy would lie in a civil libel claim rather than in criminal sanctions (see A/HRC/4/27, para. 81).”

4.1.2 Principle of legality

In addition to its interference with the rights to freedom of expression and peaceful assembly under Articles 13(1) and 15(1) of the CRC, Section 112 also violates the principle of legality under international law, which requires that an offense be clearly defined, accessible, and foreseeable to members of the public.⁴⁴ This is to allow individuals to “access and understand the law, and regulate his or her conduct accordingly.”⁴⁵

Section 112, however, “does not define what kinds of expression constitute defamation, insult or threat to the monarchy, and leaves the determination of whether an offence has been committed entirely to the discretion of the authorities.”⁴⁶

44 See, for example, European Court of Human Rights, *SW v. The United Kingdom*, Application No. 20166/92, 22 November 1995, para. 35 (“an offence must be clearly defined in the law”), and European Court of Human Rights, *Guide on Article 7 of the European Convention on Human Rights – No punishment without law: the principle that only the law can define a crime and prescribe a penalty*, last updated on 31 August 2022, pp. 12-17. The principles enshrined under Article 40(2)(a) of the Convention on the Rights of the Child can also be found under Article 7 of the European Convention on Human Rights.

45 UN Working Group on Arbitrary Detention, Opinion No. 64/2021, 27 January 2022, para. 56.

46 *Id.* para. 55.

In 2017, a Thai activist was sentenced to five years' imprisonment for sharing a BBC article about King Rama X on Facebook.⁴⁷ In September 2022, a Thai lady was sentenced to three years' imprisonment for allegedly mocking the Queen by wearing a Thai traditional costume at a mock fashion show organized by members of the pro-democracy movement.⁴⁸ In March 2023, a man was sentenced to three years' imprisonment for allegedly selling “yellow duck” calendars with images that, according to the Court's interpretation, insulted King Rama X.⁴⁹ These cases illustrate the difficulty, especially for children as young as 14 years of age, in determining the boundaries of Section 112.

This problem is further exemplified by the judgment of the Central Juvenile and Family Court against Petch in connection with monarchy-related speeches they delivered when they were

47 TLHR, 'ไผ่ ดาวดิน' รับสารภาพคดีม.112เหตุแชร์ข่าว BBC ไทย ศาลพิพากษาคคุก 5 ปี สารภาพเหลือ 2 ปี 6เดือน, 15 August 2017, <https://tlhr2014.com/archives/4906> (a man was sentenced to five years of imprisonment for sharing a BBC article about King Rama X on his Facebook private account).

48 TLHR, เปิดคำพิพากษาลบชั้น คดี 112 “นิว จดพร”: เมื่อการล้อเลียนเสียดสีกลายเป็นความผิด, 13 October 2022, <https://tlhr2014.com/archives/49521> (a Thai lady was sentenced to three years imprisonment for wearing a Thai traditional dress and allegedly mocking the Queen)

49 TLHR, ศาลอาญาดลิ่งชั้นลงโทษจำคุกคดีจำหน่ายปฏิทินเบ็ด 3 ปี ไม่รอลงอาญา ชี้หมิ่น ร.10 ผิด ม.112 เนื่องจากคำเบิกความโจทก์รับฟังได้ แต่พยานจำเลยเป็นเพียงความเห็นส่วนตัวเท่านั้น, 7 March 2023, <https://tlhr2014.com/archives/54080>.



Pai Jatupat

27 mins · 🌐



ตอนนี้ผมกำลังจะโดนจับ
ข้อหา 112 จากตำรวจขอนแก่น
เนื่องจากแชร์ข่าว BBC Thai



16 Comments 37 Shares



Figure 1 Screenshot of a Facebook post by a Thai activist, stating that he was about to be arrested under Section 112 for sharing article from BBC. Credit: Prachatai.

17 years old.⁵⁰ Although the Court found that Petch’s speeches referred only to late King Rama IX, not King Rama X, the Court nevertheless found Petch guilty of defaming or insulting King Rama X. Because King Rama IX was the father of King Rama X, the Court reasoned, insults directed at the former were necessarily directed at the latter. Moreover, the Court expanded the scope

⁵⁰ TLHR, “Petch” Thanakorn sentenced to 2 years jail term for violating Section 112 but the Central Juvenile and Family court replaced imprisonment with an order to enter a Juvenile Practice and Training Center., 23 November 2023, <https://tlhr2014.com/en/archives/50869>.



Figure 2 “Commoners’ Runway”, a mock fashion show, organized by members of the pro-democracy event in October 2020. Credit: WorkpointTODAY.



Figure 3 “Yellow Duck” calendar from “Ratsadon” Facebook page.



Figure 4 The Central Juvenile and Family Court. Credit: TLHR.

“A royal command is considered as a law enacted by His Majesty and has the status equivalent to that of an Act of Parliament.”

– Judgment by the Central and Juvenile Court, Black Case No. Yor. Chor. Aor. 109/2564, 22 November 2022

of Section 112 to include not just the present King, but also all past Kings, members of the royal family, as well as the institution of the monarchy.⁵¹

To arrive at this overbroad interpretation, the Court adopted King Rama X's interpretation of Section 6 of Thailand's 2017 Constitution⁵² in a royal command (พระบรมราชโองการ) issued in February 2019.⁵³ In so doing, the Court explicitly equated the

King's royal command, which was not countersigned by any minister, to an Act of Parliament passed by elected Members of Parliament.⁵⁴ On the basis of this royal command, the Court held that Section 6 of the 2017 Constitution, which ensures the

sacred and inviolable position of the King and no other persons,

51 Central and Juvenile Court, Black Case No. Yor. Chor. Aor. 109/2564, Red ase No. Yor. Chor. Aor. 345/2565, Judgment, 22 November 2022, pp. 18-20.

52 Constitution of the Kingdom of Thailand B.E. 2560 (2017 Constitution), Section 6: "The King shall be enthroned in a position of sacred worship and inviolability. No one shall expose the King to any sort of accusation or action".

53 Announcement by the Institution of the Monarchy under the Thai Constitution, Royal Gazette, 8 February 2019, https://dl.parliament.go.th/bitstream/handle/20.500.13072/541599/620208_1_37%E0%B8%87%E0%B8%9E%E0%B8%B4%E0%B9%80%E0%B8%A8%E0%B8%A9.pdf?sequence=1.

54 Central and Juvenile Court, Black Case No. Yor. Chor. Aor. 109/2564, Red Case No. Yor. Chor. Aor. 345/2565, Judgment, 22 November 2022, pp. 17-18.

also applies to both the present King and the institution of the monarchy.⁵⁵ The Court then explained that, because Section 6 of the 2017 Constitution is the “source” (ต้นธาร) of Section 112 of the Criminal Code, Section 112 must be interpreted to also cover the institution of the monarchy, which includes late Kings.⁵⁶ And because Section 112 also protects late Kings, Petch’s criticisms of late King Rama IX fall within the ambit of *lèse-majesté*.⁵⁷

The expansive interpretation of Section 112 to significantly broaden its scope violates both the principle of legality and the principle according to which doubts should benefit the accused.⁵⁸ The judgment also falls foul of the rule of strict construction which dictates that criminal statutes must be interpreted strictly and narrowly.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ See further TLHR, อ่านคำพิพากษาคดี ม.112 ของ “เพชร ธนกร” ในฐานะคำพิพากษาองศาลในระบอบสมบูรณาญาสิทธิราชย์, 9 February 2023, <https://tlhr2014.com/archives/53320>.

⁵⁸ UN Human Rights Committee, *General Comment No. 32 on Article 14: Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, 13 August 2007, ara. 30.

4.1.3 Non-discrimination principle

Lastly, Section 112 violates the principle of non-discrimination under Article 2 of CRC.⁵⁹ According to Article 2, Thailand is obligated to respect and ensure the rights in the Convention to each child without discrimination of any kind, irrespective of the child's political opinion or other status.⁶⁰ By charging at least 20 children under Section 112, the Thai government is depriving them of their rights under the Convention because of their political opinions.

Section 112 is viewpoint discriminatory. It only seeks to punish children (and adults) who express negative views towards the King, Queen, Heir-apparent, or Regent. In other words, the offense penalizes only anti-monarchy views or political opinions. In contrast, children who express pro-monarchy views do not fall within the ambit of Section 112. The upshot of this differential treatment is that the Thai government is ensuring the right to freedom of expression only of children who speak positively about the monarchy, thereby violating the non-discrimination principle under Article 2(1) of CRC.

⁵⁹ The non-discrimination principle is also enshrined under Thailand's Child Protection Act B.E. 2546 (2003), Section 22.

⁶⁰ Convention on the Rights of the Child, Article 2(1).

4.2 Conviction of Children under the Lèse-Majesté Law

Since November 2020, children’s courts have delivered verdicts in five lèse-majesté cases. In four cases, the courts found the children guilty of Section 112, putting the conviction rate at 80%.

	No. of children	No. of cases
Judgments delivered	3	5
Convicted under Section 112	3	4
Pleaded guilty and entered “special measures” under Section 132 of Juvenile and Family Court and Procedure Act B.E. 2553 (2010)	11	10

The convictions of Petch and Sainam are particularly problematic given their clear interference with the children’s right to freedom of expression.

4.2.1 “Petch”

“Petch”

17 years old at the time of the alleged offense

First child convicted under Section 112

Petch has been charged under Section 112 in three separate cases and has been convicted twice, first in November 2022⁶¹ and second in December 2022.⁶² In both cases, Petch was accused of giving speeches deemed to be critical of the monarchy.

Case 1: The “Wongwian Yai” speech

In the first case, Petch was charged under Section 112 for giving a speech at a public assembly at Wongwian Yai in Bangkok on 6 December 2020. Petch was accused of opining that:

- the system of governance in Thailand is absolute monarchy, not constitutional monarchy; and

⁶¹ TLHR, “Petch” Thanakorn sentenced to 2 years jail term for violating Section 112 but the Central Juvenile and Family court replaced imprisonment with an order to enter a Juvenile Practice and Training Center, 23 November 2022, <https://tlhr2014.com/en/archives/50869>.

⁶² TLHR, “Petch” Thanakorn sentenced to 3 years in prison for violating the *lèse-majesté* law but court suspended the sentence and required “Petch” to enter a probation plan, 23 December 2022, <https://tlhr2014.com/en/archives/51777>.



Figure 5 Protest at Wongwian Yai, Bangkok, on 6 December 2020. Credit: The Standard.

- the King is above all laws and that Thailand is governed by an authoritarian regime where the King approved military coups.

In the indictment order, the prosecutor averred that Petch’s speech or opinion was not given in good faith, for it allegedly caused its listeners to understand that the King was not a good person, did not respect the law, did not need to abide by the law, and could violate the law without any legal consequences. It also allegedly caused its audience to understand that King

Rama X supported or permitted the military coup in 2014. The indictment order stated that the speech damaged the King's honor and may cause its listeners to despise the King.

On 22 November 2022, the Central Juvenile and Family Court convicted Petch and sentenced them to four years' imprisonment before halving it to two years because they were still a child at the time of the alleged offense. The Court then substituted the prison sentence with an order requiring them to enter a Juvenile Vocational and Training Center.⁶³ This marked the first case in Thailand in which a child who refused to plead guilty to *lèse-majesté* was convicted under Section 112.

On 6 November 2023, the Court of Appeals affirmed the Central Juvenile and Family Court's sentence but suspended the punishment for a period of two years, during which Petch would be required to report to the counseling center once every two months.⁶⁴

⁶³ TLHR, "*Petch*" Thanakorn sentenced to 2 years jail term for violating Section 112 but the Central Juvenile and Family court replaced imprisonment with an order to enter a Juvenile Practice and Training Center, 23 November 2022, <https://tlhr2014.com/en/archives/50869>. See also Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 142(1) (children's courts have discretion to substitute criminal punishment with an order requiring the child to be kept in custody for training at a vocational and training center).

⁶⁴ The judgment by the Court of Appeals is problematic for reasons explained in Part 4.1.2.



Figure 6 Protest at Nonthaburi Pier in Nonthaburi Province on 10 September 2020.
Credit: Mob Data Thailand.

Case 2: The “Nonthaburi Pier” speech

In the second case, Petch was charged under, *inter alia*, Section 112 for giving a speech at a public assembly on 10 September 2020 at Nonthaburi Pier in Nonthaburi Province. Petch was accused of stating, among other things:

“I am one human being. I believe that royal vocabulary should not be used as it divides the society into different classes. Kings in other countries use pronouns ‘you’ and

‘I’, so why can’t the Thai people use the pronouns khun (คุณ) and chun (ฉัน) with children of Sakdina?” (unofficial translation)

“In this era, can we believe that the King is an institution that is our spiritual anchor? The King is not in Thailand. He is in Germany having a good time at the expense of people’s taxes. How can we believe that the King is the spiritual anchor of Thai people?” (unofficial translation)

On 22 December 2022, the Nonthaburi Juvenile and Family Court found Petch guilty of lèse-majesté and sentenced them to three years’ imprisonment. The Court later reduced the sentence to one year and six months before replacing the prison sentence with an order requiring Petch to enter a two-year probation plan.⁶⁵ The case is currently on appeal.

⁶⁵ TLHR, “*Petch*” *Thanakorn sentenced to 3 years in prison for violating the lèse-majesté law but court suspended the sentence and required “Petch” to enter a probation plan*, 23 December 2022, <https://tlhr2014.com/en/archives/51777>.



Figure 7 Protest at at Siam Paragon, Bangkok, on 20 December 2020.
Credit: Banrasdr Photo page on Facebook.

Case 3: The “Siam Paragon” protest

In the third case, Petch was charged under, *inter alia*, Section 112 for participating in a symbolic protest at Siam Paragon on 20 December 2020 where certain protesters were wearing crop tops, doing the three-finger salute, and holding posters with messages stating “Reform the Monarchy” and “Abolish s.116, s.112.” Unlike other protesters in this case, Petch was not accused of wearing a crop top, but was accused of doing a three-finger salute, taking

photos together with other activists in front of the media, and holding posters with messages allegedly critical of the monarchy.

Trial is still ongoing in this case.

4.2.2 “Sainam”

“Sainam”

16 years old at the time of the alleged offense

First child to be charged under Section 112

Sainam has been charged under Section 112 in two separate cases. In one case, he was found guilty of lèse-majesté by the Central Juvenile and Family Court. In another case, the Court acquitted him of lèse-majesté due to lack of evidence linking him to the crime.

Case 1: The “Crop Top” Case

In the first case, Sainam was charged under, *inter alia*, Section 112 for allegedly mocking King Rama X by donning a black crop top with the phrase “My father’s name is Mana, not Vajiralongkorn” scrawled on his body at an event organized by members of the pro-democracy movement in October 2020. The prosecutor



Figure 8 Photo of Sainam at “Commoners’ Runway” event organized by pro-democracy movement in October 2020. Credit: Prachatai.

argued that Sainam’s conduct caused the King to become a subject of laughter and mockery in violation of the Thai custom, according to which Thais should pay respect to the King who occupies the most sacred position.

On 20 July 2023, the Central Juvenile and Family Court handed down a guilty verdict and sentenced Sainam to three years’ imprisonment. Because Sainam was 16 years old (a child) at the time of the offense, the Court halved the sentence to one year and six months. Furthermore, in light of Sainam’s valuable

testimony at trial, the Court reduced the sentence by one-third to one year. The Court then suspended the sentence for a period of two years, during which Sainam must report himself to the authorities once every three months.⁶⁶

Sainam is currently appealing this conviction.

Case 2: The “King’s Portrait” Case

In the second case, Sainam was charged under, *inter alia*, Section 112 for allegedly vandalizing and setting fire to King Rama X’s portrait at a pro-democracy protest in July 2021. In the indictment order, the prosecutor averred that, based on his alleged conduct, Sainam intended to “destroy” the institution of the monarchy.

On 3 March 2023, the Central Juvenile and Family Court acquitted Sainam of *lèse-majesté* because the evidence presented by the prosecution could not establish that Sainam did what he was accused of doing.⁶⁷ He was, however, convicted of violating

66 TLHR, จำคุก 3 ปี ลดเหลือ 12 เดือน โดยให้รอลงอาญา คดี ม.112 “สายน้ำ” แต่งค
รูปที่อปเดินแพ้นัซโซร์สีลม ศาลชี้มีเจตนาล้อเลียนเสียดสีในหลวง ร.10, 20 July 2023, <https://tlhr2014.com/archives/57662>.

67 TLHR, ศาลเยาวชนฯ ยกฟ้อง ม.112 “สายน้ำ” กรณีถูกฟ้องแปะกระดาษ-พ่นสีส
เปรย์บนรูป ร.10 ชี้หลักฐานไม่ชัดเจนว่าจำเลยเป็นผู้กระทำ, 30 March 2023, <https://tlhr2014.com/>



Figure 9 Protest in central Bangkok in July 2021. Credit: The Standard.

the Emergency Decree⁶⁸ by participating in the protest without adhering to Covid-19 measures (e.g., failing to wear a face mask). Consequently, the Court initially imposed a THB 6,000 fine before reducing it to THB 4,000 because Sainam was still a child at the time of the offense.

⁶⁸ Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005).

4.3 Detention of Children

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as *a measure of last resort* and for *the shortest appropriate period of time.*”

– Convention on the Rights of the Child, Article 37(b)⁶⁹
(emphasis added)

“In considering issuing [a detention order], the Court shall take into account the protection of *rights and best interests of the child or juvenile*. Keeping in custody or detaining the child or juvenile shall be applied as the *last resort.*”

– Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 74, para. 2 (emphasis added)

Another problem with the use of Section 112 against children is the fact that, unlike other criminal charges, children charged with lèse-majesté are more likely to be detained at a pretrial stage

⁶⁹ For Thai law, see Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 74, para. 2.

or as part of the diversion program. In other cases, children’s courts usually suspended prison sentences or imposed diversion programs that did not entail detention.

4.3.1 Pretrial detention

On 28 March 2023, authorities used excessive force⁷⁰ to arrest Yok before charging her with lèse-majesté for participating in a pro-democracy event in October 2022. The following morning, the Central Juvenile and Family Court ordered that she be detained at the Baan Pranee Juvenile Vocational Training Center for Girls for 30 days on the grounds that her conduct constituted a “serious danger” to others or that she may flee.⁷¹ Like other lèse-majesté cases, it is unclear how a 15-year-old girl could endanger the safety of others if she were to be released on bail. After the first detention order, the Court extended her detention two more times - on 27 April 2023 and 12 May 2023.

It is questionable whether, in issuing these orders, the Court took into account the rights and best interests of the child or considered whether detention was truly a measure of last resort in this case.⁷²

⁷⁰ See Part 5.1.2.

⁷¹ In this case, because Yok believed the charge brought against her was unjust, she refused to participate in the legal proceedings against her.

⁷² Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 74, para. 2.



Figure 10 Vocational and Training Center for Girls, Baan Pranee. Credit: ไข่แมวสีส.



Figure 11 Inside Baan Pranee Juvenile Vocational Training Center for Girls. Credit: Department of Juvenile Observation and Protection.

On 5 May 2023, the UN Special Procedures issued a joint allegation letter to the Thai government to “safeguard the rights of [Yok] from irreparable harm.”⁷³ In the letter, the Special Procedures explained that “[n]obody should be held criminally liable for their peaceful participation in an assembly, nor for the expression of their opinion in defense of human rights.”⁷⁴

On 18 May 2023, Yok was released from Baan Pranee after 51 days of detention. It was discovered that she developed acute skin rash during her time at the Baan Pranee Juvenile Vocational Training Center for Girls. She was therefore immediately brought to a hospital for treatment. Her condition was reportedly caused by heat, unhygienic conditions inside the observation center, and the misadministration of medication by the center’s staff. Although Yok is no longer held in detention, the police have not dropped the *lèse-majesté* charge against her.

⁷³ Joint Allegation Letter from the Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention and the Special Rapporteur on the rights to freedom of peaceful assembly and of association to the Thai Government, AL THA 2/2023, 5 May 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28064>.

⁷⁴ *Ibid.*



Figure 12 Rash on Yok's back after her release. Credit: ไซแมวซิส.

4.3.2 Detention as part of diversion program

In addition to pretrial detention, at least two children - “Poom” and “Phattarachai” - charged with *lèse-majesté* have been subjected to detention as part of the diversion program imposed on them by the Juvenile and Family Court. Poom was charged with *lèse-majesté* for allegedly engaging in a symbolic demonstration by throwing dog food at the King’s portrait.⁷⁵ Phattarachai was

⁷⁵ TLHR, ศาลเยาวชนฯ สั่งส่งตัวเข้าสถานพินิจฯ 1 ปี คดี ม.112 “ภูมิ หัวลำโพง” เหตุป่วนอาหารสุนัข หน้า สก.คลองหลวง เรียกร้องปล่อยตัว “นิว สิริชัย”, 18 October 2023, <https://tlhr2014.com/archives/60688>.

charged with the same offense for allegedly setting fire to the King’s portrait.⁷⁶ In both cases, Poom and Phattarachai entered a guilty plea in order to be eligible for the diversion program under the law.⁷⁷

In October 2023, the Juvenile and Family Court imposed “special measures in lieu of judgment,” aka diversion programs, in the two cases.⁷⁸ However, unlike the usual diversion programs imposed on children in conflict with the law in the past, the Court ordered that Poom and Phattarachai be detained at an observation center.⁷⁹ This is the first time since November 2020 that the Court used its power under Section 132, para. 2, of the Juvenile and Family Court and Procedure Act B.E. 2553 (2010) to order that children who pleaded guilty to *lèse-majesté* be detained at an observation center.

76 TLHR, เด็กชายอายุ 14 ปี ถูกจับกุมแจ้ง ม.112 เหตุกล่าวหาเผาซุ้มเฉลิมพระเกียรติ ดินแดง, 18 September 2021, <https://tlhr2014.com/archives/35254>.

77 For more information on the eligibility criteria for the diversion program, see Part 5.4.1.

78 Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 132, para. 2.

79 TLHR, ตุลาคม 2566: จำนวนผู้ถูกดำเนินคดีทางการเมืองยอดรวม 1,930 คน ใน 1,253 คดี, 3 November 2023, <https://tlhr2014.com/archives/61163>. The Court ordered that Poom be detained for one year while Phattarachai was ordered to be detained for six months.



Figure 13 People calling for the release of a Thammasat University student who was arrested in the middle of the night on 14 January 2021. Credit:



Figure 14 Photo of the King's portrait burning. Credit: Prachatai.

In Poom's case, the Court decided against granting provisional release with bail conditions because, *inter alia*, Poom's conduct towards the King's portrait was *inappropriate*, for the King is the head of state and is respected by the Thai people. As such, the Court believed that Poom's legal guardian could not take care of him. When the lawyer tried to appeal the Court's order, the Court stated that its order is not subject to appeal pursuant to Section 180 of the 2010 Act. The lawyer also submitted a total of two motions requesting the Court to modify its order. Both motions were denied.

5. Thailand's Child Justice System

“Children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach. Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.”

– Committee on the Rights of the Child in General comment No. 24 on children’s rights in the child justice system, para. 2

Like many other jurisdictions, Thailand has a child justice system for children in conflict with the law. Under the Juvenile and Family Court and Procedure Act B.E. 2553 (2010), the Juvenile and Family Court has jurisdiction over children’s criminal cases.⁸⁰ Unlike adult offenders, children in conflict with the law are afforded greater protection from the very beginning to the end of their interaction with the child justice system and their best interests must be given primary consideration.⁸¹

80 Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 10(1).

81 Child Protection Act B.E. 2546 (2003), Section 22.

Despite the special protection afforded to children, this report finds that domestic law governing the treatment of children - especially child human rights defenders and pro-democracy activists - has been *systematically* violated. In many instances, laws designed to protect children have become the very instruments used by authorities to violate children's rights.

5.1 Arrest of children

5.1.1 Thai law

Under the Juvenile and Family Court and Procedure Act B.E. 2553 (2010), a child cannot be arrested unless the child has committed a flagrant offense or unless there is an arrest warrant or court order against the child.⁸² When considering issuing an arrest warrant against a child, the children's court shall pay special attention to the rights of the child, his age, sex, and future. If the arrest warrant would have an unnecessary serious impact on the child's mental well-being, the issuance of an arrest warrant should be avoided.⁸³

When authorities arrest a child, they must inform the child that they are being arrested, the charge for which they are being

⁸² Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 66.

⁸³ *Id.* Section 67.

arrested, and their rights under the law.⁸⁴ If their legal guardian is not present at the scene of the arrest, the authorities shall notify the legal guardian “at the first opportunity that the notification can be made.”⁸⁵ Furthermore, the arrest must be carried out in a “gentle” manner while taking into consideration the “human dignity” of the child.⁸⁶ The custodial method must not be more restrictive than that which is necessary to prevent the child from fleeing or for the safety of the child or other persons.⁸⁷ Instruments of restraint shall not be used on the child unless they are “strictly necessary” to prevent the child from fleeing or for the safety of the child or others.⁸⁸

After the child is arrested, the inquiry officer must bring the child to the children’s court immediately or within 24 hours after the child arrives at the office of said officer in order to allow the court to determine whether the arrest is lawful.⁸⁹ If the court finds the arrest to be unlawful, the child must be released immediately.⁹⁰ However, if it appears before the court that the child may cause serious harm to others or if there are other “appropriate reasons,” the court may order that the child be detained.⁹¹

84 *Id.* Section 69, para 1.

85 *Id.* Section 69, para. 2.

86 *Id.* Section 69, para. 3.

87 *Ibid.*

88 *Ibid.*

89 *Id.*, Section 72, para. 1.

90 *Id.*, Section 73, para 1.

91 *Id.*, section 73, para. 2.

5.1.2 The unlawful arrest of Yok

On 28 March 2023, while 15-year-old Yok was in front of a police station to peacefully observe and monitor the arrest of another pro-democracy artist,⁹² a police officer called for “backup” before several other police officers suddenly arrested Yok and dragged her into an investigation room. Inside the room, a police officer told her that she was arrested because she “joined” in the illegal activity allegedly committed by the artist. At this stage, Yok was never informed of her rights under the law and the police did not produce any arrest warrant. She also did not commit any “flagrant” offense for which a warrantless arrest could be carried out.

Inside the investigation room, police officers restrained Yok on the floor by holding on to her arms and legs and having one officer sit on top of her.⁹³ The police searched her body for an iPad which she was using to livestream the scene at the police station on Facebook prior to her arrest. The arrest was clearly not carried out in a gentle manner as required by the law. Another child, who was in the investigation room at the time of the incident,

92 TLHR, ดร.จับ ‘บั้งเอิญ’ ฟันสีกำแพงวัง ถูกแจ้ง ‘พ.ร.บ.โบราณสถานฯ – พ.ร.บ.ความสะอาดฯ’ ก่อนได้ประกันตัว ด้านด.ญ. วัย 15 ถูกจับอ้างหมายคดี 112 หลังตามไป สน. ก่อนถูกส่งคุมขังบ้านปรานี, 29 March 2023, <https://tlhr2014.com/archives/54896>.

93 The fact that the search occurred in the investigation room in the presence of persons unrelated to the case violates Section 75, para. 1, of the Juvenile and Family Court and Procedure Act B.E. 2553 (2010).



Overview of the judicial process in children's cases

Increased legal burdens compared to adult's cases

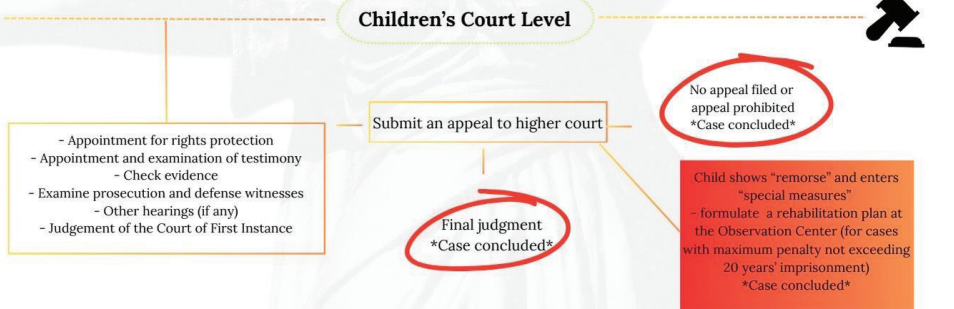
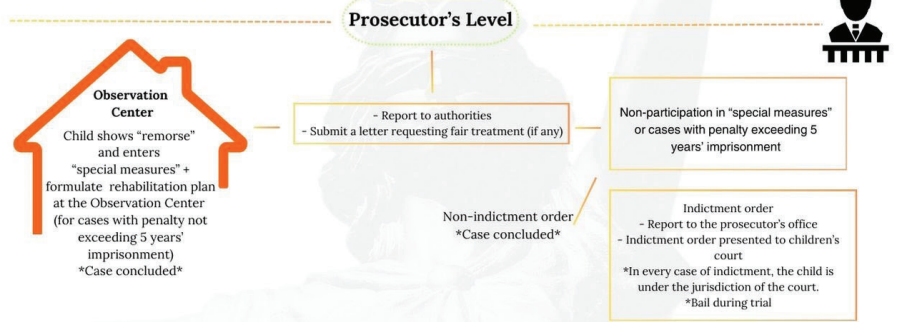
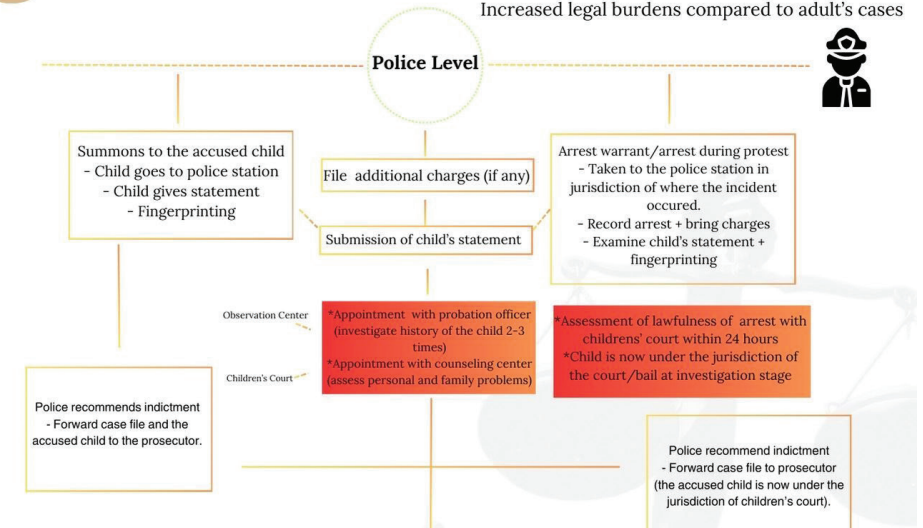




Figure 15 Visual illustration of Yok being carried away by authorities while at the police station.

asked the police to wait for a lawyer before conducting the search. After the police continued to search Yok, the child tried to record a video of the incident on her phone. A police officer quickly snatched the phone away from the child, breaking her nail in the process.

More than one hour after the arrest, the police finally produced an arrest warrant for Yok. However, contrary to what the police officer told Yok when she was arrested, the arrest warrant had nothing to do with Yok’s alleged connection to the conduct of the artist. Rather, according to the arrest warrant issued by the Central Juvenile and Family Court on 28 February 2023, the warrant was issued because of Yok’s alleged participation in a public assembly in October 2022. In other words, the charge which formed the basis of Yok’s arrest at the time the arrest was carried out mysteriously changed without any explanation.

Furthermore, when Yok was brought to the Central and Juvenile Court to assess the lawfulness of her arrest, Yok refused to participate in the legal proceeding because she believed the charge against her was unjust. Without conducting proper investigation into what actually happened to Yok, the Court found that the arrest was carried out lawfully. The official report by the Court on the proceeding stated that “the accused announced that ... she consented to the arrest and that the arresting officers did not harm her.”⁹⁴ It should be noted that Yok refused to sign this report.

94 Hearing Report, 29 March 2023, Black Case Number. Tor. Jor. 70/2566.

Another problem with this case is the question of whether the arrest warrant was issued lawfully by the Central Juvenile and Family Court. Before the issuance of the arrest warrant, the police issued two summonses to Yok, instructing her to travel to Samran Rat Police Station to acknowledge the lèse-majesté charge in connection with her participation in a public assembly in October 2022 on 2 February 2023 and 15 February 2023, respectively. After receiving these summonses, on 15 February 2023, Yok submitted a letter to the police at Samran Rat Police Station to request that her acknowledgement of the lèse-majesté charge be postponed to 9 April 2023. In the letter, Yok explained that she was in the middle of her Secondary 3 school examinations and she needed to report herself to the school in order to move on to Secondary 4. Nevertheless, at the police's request, on 28 February 2023, the Central and Juvenile Court issued an arrest warrant against Yok after she failed to show up at the police station pursuant to the summonses.

Although Thailand's Criminal Procedure Code technically permits the issuance of an arrest warrant against Yok,⁹⁵ the Central

⁹⁵ Criminal Procedure Code, Section 66(1) (an arrest warrant may be issued when there is reasonable evidence that any person is likely to have committed a criminal offense for which the maximum term of imprisonment exceeds three years). The maximum prison term for lèse-majesté is 15 years.

Juvenile and Family Court was legally required to “pay special attention” to Yok’s rights, age, sex, and future before deciding whether to issue a warrant. It must also assess whether the issuance of an arrest warrant would have an unnecessary serious impact on Yok’s mental well-being.⁹⁶ Taking into consideration Yok’s reasons (i.e., Secondary 3 examinations and having to physically report to the school to move on to Secondary 4) for not being able to appear before the police pursuant to the summonses, it is unclear why the Court still went ahead with issuing the arrest warrant.

(After Yok’s arrest, she was held in pretrial detention at Baan Pranee Juvenile Vocational Training Center for Girls for 51 days. See Part 4.3.1.)

5.1.3 The arrest of “Thalu Gas” protesters

The failure of Thai authorities to follow proper legal procedures when arresting children is further evidenced by the arrest of children from the Thalu Gas group. According to a report by Assistant Professor Kanokrat Lertchoosakul and Thanapong Kengpaiboon, “Thalu Gas” children are children from the “lower

⁹⁶ Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 67.

class” of the society (“bottom of the pie”).⁹⁷ They are at the lowest rung in all measures of inequality, be it socioeconomic background, educational background, or family background. Most of them have directly experienced oppression and violations at the hands of the government, especially the police. Most of them are part of the informal economy where wages are low and workers cannot access social welfare.⁹⁸

During the protests at Din Daeng Intersection between August and October 2021, some protesters engaged in non-peaceful tactics, such as the use of ping-pong bombs, the use of slingshots to shoot glass marbles, and the use of fireworks.⁹⁹ In response, the police resorted to the use of force to crack down on the protests and to arrest the protesters, many of whom were children under the age of 18. Consequently, many children suffered injuries as a result of the use of excessive and disproportionate force by the police. The examples below illustrate the unlawfulness of the arrests carried out by the Crowd Control Police in relation to the Din Daeng protests.

97 Asst. Prof. Kanokrat Lertchoosakul and Thanapong Kengpaiboon, รายงานเบื้องต้นโครงการวิจัย “การก่อตัว พัฒนาการ และพลวัตการชุมนุมบริเวณแยกดินแดง ช่วงเดือนสิงหาคม-ตุลาคม 2564,” 2021, p.6, <https://www.the101.world/wp-content/uploads/2021/10/Preliminary-report-Kanokrat-25102021.pdf>.

98 *Ibid.*

99 TLHR, มือบทะลุแก๊ส: ภาพสะท้อน *New Low* สิทธิเด็กและเยาวชนในชั้นจับกุม, 13 September 2021, <https://tlhr2014.com/archives/34891>.



Figure 16 Visual representation of child protesters being arrested by Crowd Control Police.

On 20 August 2021, a total of 24 people - 17 of whom were children and 5 of whom were younger than 15 - were arrested by the Crowd Control Police in connection with the protests around Din Daeng Intersection. Four adults and four children were reportedly injured by the methods used by the Crowd Control Police to carry out the arrest. Some were struck in the head. Others were forcefully pinned to the ground. Some were shot with rubber bullets, including two children (13 and 14 years old)

who were sent to the hospital. One was shot in the cheek while the other was shot in the leg. The latter underwent a surgery in order to remove the bullet from his leg.¹⁰⁰

The children's lawyers explained to the Central and Juvenile Court that the children were not informed of the charges for which they were arrested at the time of the arrest, their rights under the law, nor the place where they were being held in detention. Further, the children were not allowed to notify their family members or relatives of their arrests. Nevertheless, the Court held that the arrests were carried out lawfully.¹⁰¹

Similarly, on 6 September 2021, nine out of 18 individuals arrested at Din Daeng Intersection were children. Seven children were injured as a result of their arrest. Two were shot with rubber bullets. One was pushed against a steel barrier before being stomped on by Crowd Control Police. One reported being stepped on the head by the Crowd Control Police while lying on the ground. Two of the injured children were only 14 years old. The Central and Juvenile Court held that the arrests of children were carried out lawfully.¹⁰²

100 TLHR, *จับแล้วจับอีก! #มีอบ20สิงหา* จับเด็กและเยาวชน 19 ราย ผู้ใหญ่อีก 7 จากหลายจุด เด็ก 2 คน ถูกยิงด้วยกระสุนยาง ยังรักษาตัวอยู่ รพ., 21 August 2021, <https://tlhr2014.com/archives/33812>.

101 *Ibid.*

102 TLHR, *#มีอบ6กันยา* จับ 18 ราย เป็นเยาวชนครึ่งหนึ่ง! กล่าวหาต่อผู้ขีดขวางเจ้าหน้าที่ ขณะผู้ถูกจับกุมบาดเจ็บถึง 12 ราย, 7 September 2021, <https://tlhr2014.com/archives/34705>.



Figure 17 Visual illustration of a child protester being carried away by medical personnel to receive treatment.

On 13 September 2021, five children - one of whom was only 12 years old - were among the 11 individuals arrested around Din Daeng Intersection. Four out of six individuals injured as a result of the arrest were children. In this case, the police used a cable tie to restrain the 12-year-old boy's wrists.¹⁰³ Under Thai law, an instrument of restraint shall not be used on the child unless its use is strictly necessary and unavoidable to prevent the child from fleeing or for the safety of the child or others.¹⁰⁴

103 TLHR, #มีอบ13กันยา จับกุม 11 ราย เป็นสื่ออิสระ-แพทย์อาสารวม 3 ราย ทั้งยังจับเด็ก 12 ปี หลังปั่นจักรยานมาตุ้มอบ, 14 September 2021, <https://tlhr2014.com/archives/34986>.

104 Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 69, para. 3.



Figure 18 Visual representation of a child protester being restrained by a cable tie.

These are merely some of the many cases in which the arrests of children appear to have been carried out in violation of domestic law. The Crowd Control Police used excessive and disproportionate force - e.g., rubber bullets, batons, stomping, pushing down moving motorcycles, etc. - to arrest children involved in the Din Daeng protests. Many times, children were

restrained with cable ties. When these children were brought to the children’s court to have the lawfulness of their arrests assessed, **there was not a single case in which the court found the arrests to have been carried out unlawfully.**

In addition to the use of excessive force during arrests, lawyers also reported that the manner in which “Thalu Gas” child protesters were treated by authorities was different from how child protesters from middle-class backgrounds were treated. For example, Ms. Khumklao Songsomboon, a lawyer at TLHR who specialized in children’s rights, recounted how Thalu Gas child protesters were not separated from adult offenders at the police station during their preliminary inquiry after their arrest.¹⁰⁵ In contrast, the preliminary inquiry of child protesters from middle-class backgrounds usually took place in rooms delineated for such purposes, with social workers and psychologists ready to assist.

While many may disagree with some of the tactics used by the protesters from the Thalu Gas group, it is imperative to remember that many of the protesters are children with rights under both domestic and international law. That some child protesters

¹⁰⁵ *Id.* Section 70, para. 2 (preliminary inquiry must be conducted in an appropriate place without individuals who are not related to the children).

engaged in non-peaceful tactics did not give the Crowd Control Police a license to overlook the legal safeguards that have been put in place to ensure that the best interests of *all* children and their human dignity are respected.

5.2 Detention of children

As explained in Part 4.3, Thai law allows detention of children only as a measure of last resort. In the context of the youth-led pro-democracy movement, many children have been charged and arrested as a result of their legitimate human rights activities. However, in most cases, children are not subjected to detention at the pretrial stage or after having been convicted of a crime. After being arrested and charged with an offense, a child is usually granted provisional release with bail conditions and security. If the child is convicted, the punishment documented by TLHR thus far is normally a fine or a suspended prison sentence.

Notwithstanding the positive trend of the use of non-custodial measures by the children's court, there have been instances where children have been detained as a result of their political activities. The first group of children who have been subjected to detention are those charged with the serious crime of *lèse-majesté* and has already been covered in Part 4.3. The perceived

seriousness of *lèse-majesté* in the eyes of the Court makes it more likely for it to impose a diversion program which requires children to be detained at an observation center rather than imposing non-custodial measures.

Another group of children who have experienced a long period of detention due to their political activities is children without parents or legal guardians. According to Ms. Khumklao Songsomboon, a lawyer at TLHR who handles children's cases, several children from the Thalu Gas group who were arrested and charged in connection with the Din Daeng protests in 2021 were not granted bail as in other children's cases. Rather, the children's court found it necessary to order that they be detained at an observation center because the parents or legal guardians of the child could not be found.¹⁰⁶ Ms. Khumklao therefore had to search for the children's parents or legal guardians by her own volition. In one case, Ms. Khumklao found the child's parents, but they refused to help the child given their disagreement with the child's political activities. Ms. Khumklao approached the child's former employer and asked him to act as the child's surety for his bail application. With the former employer agreeing to act as the child's surety, the child was granted provisional release.

106 *Id.* Section 73, para. 2.

5.3 Observation of trials in children's court

One serious problem with the proceedings before children's court is the absence of independent observers and individuals whom children trust in the courtroom during trials. Originally designed to protect children's right to privacy in the courtroom, the law governing who may attend hearings in children's court has been used in a manner inconsistent with children's best interests and their clear wishes.

Section 108 of the Juvenile and Family Court and Procedure Act B.E. 2553 (2010) requires that trials of children are conducted behind closed doors and that only relevant parties, including the child's parents/guardians, legal advisor, and certain state authorities, may be present.¹⁰⁷ Though the list of individuals allowed to attend the trial is extremely limited, the law nevertheless allows the court to use its discretion to permit trial observation by "other persons whom the court sees to be appropriate."¹⁰⁸ This discretion must be exercised in light of the court's obligation to give "primary importance" to the "best interests of the child."¹⁰⁹ Unfortunately, despite multiple requests

107 *Id.* Section 108.

108 *Id.* Section 108(7).

109 Child Protection Act B.E. 2546 (2003), Section 22.



Figure 19 Under Thai law, judges can grant permission to third parties to observe children's trials provided doing so would be in the best interest of the children.

by many children to have third parties, such as representatives from human rights organizations or embassies, observe their trials, the children's court has, in almost all cases, disregarded the children's clear wishes.¹¹⁰ This leaves many children feeling "alone" as they face criminal lawsuits behind closed doors.

Although international law similarly states that judicial proceedings

¹¹⁰ Amnesty International Thailand, "We are reclaiming our future": Children's right to peaceful assembly in Thailand, 8 February 2023, pp. 24-25, <https://www.amnesty.org/en/documents/asa39/6336/2023/en/>.

in children’s court should be conducted behind closed doors for the protection of the child,¹¹¹ it further notes that exceptions to this rule can be made insofar as they are limited and clearly stated in the law.¹¹² The protection of the child should not come at the expense of that child’s right to be heard, which guarantees that a child must be heard in any judicial and administrative proceedings affecting the child.¹¹³ If Thai courts are to truly act in the “best interests” of children during judicial proceedings as they are required to do so under domestic¹¹⁴ and international law,¹¹⁵ they must seriously consider the wishes of children to be heard regarding trial observation by third parties.

5.4 “Special measures” or diversion

The preferred method of the UN Committee on the Rights of the Child for dealing with children in conflict with the law is “diversion,” defined as “measures for referring children away from the judicial system, at any time prior to or during the relevant proceedings.”¹¹⁶ According to the Committee, diversion

111 UN Committee on the Rights of the Child, *General comment No. 24 (2019) children’s rights in the child justice system*, CRC/C/GC/24, para. 67, 18 September 2019.

112 UN Committee on the Rights of the Child, *General Comment No. 14 (2019) children’s rights in the child justice system*, CRC/C/GC/24, para. 67, 18 September 2019.

113 Convention on the Rights of the Child, Article 12(2).

114 Child Protection Act B.E. 2546 (2003), Section 22.

115 Convention on the Rights of the Child, Article 3(1).

116 UN Committee on the Rights of the Child, *General comment No. 24 (2019)*

“[avoids] stigmatization and criminal records, ... yields good results for children, is congruent with public safety and has proved to be cost-effective.”¹¹⁷ Given that the Juvenile and Family Court and Procedure Act B.E. 2553 (2010) allows children in conflict with the law to enter “special measures” in lieu of prosecution or judgment,¹¹⁸ Thailand’s child justice system does provide diversion opportunities for children.

Upon closer examination, however, the diversion programs for children in conflict with the law are not without problems. The first problem pertains to the eligibility criteria for “special measures.” The second problem is concerned with the measures imposed on children in conflict with the law as part of the diversion program.

on children’s rights in the child justice system, CRC/C/GC/24, 18 September 2019, para. 8.

117 *Id.* para. 15.

118 This is an example of diversionary measures for children in the Thai child justice system. Under Sections 86 and 90 of the Juvenile and Family Court and Procedure Act B.E. 2553, children who confess to the crime(s) are eligible to enter “special measures” in lieu of prosecution. Additionally, Section 132 empowers the Juvenile and Family Court to impose special measures in lieu of judgment in cases where the court believes issuing a judgment is not appropriate.

5.4.1 “Confession” as part of the eligibility criteria

“Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he or she freely and voluntarily admits responsibility, without intimidation or pressure, and that the admission will not be used against the child in any subsequent legal proceeding.”

– UN Committee on the Rights of the Child,
General Comment 24 on children’s rights in the
child justice system, para. 18(a)

Under the Juvenile and Family Court and Procedure Act B.E. 2553 (2010), only children who show “remorse” (สำนึกในกรรกระทำความผิด) for their conduct are eligible for “special measures” in lieu of prosecution.¹¹⁹ According to the guidelines issued by the president of the Central Juvenile and Family Court in March 2021, failure to plead guilty is evidence of the child’s lack of remorse towards their conduct, making them ineligible for special measures in lieu of prosecution under Section 90 of the 2010 Act.¹²⁰ Although children who refuse to plead guilty are still technically eligible for special measures in lieu of judgment under

¹¹⁹ Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Sections 86, 90.

¹²⁰ Guidelines by the President of the Central Juvenile and Family Court on the Use of Special Measures in lieu of Prosecution under Section 90 and Special Measures in lieu of Judgment under Section 132 of the Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Clause 2.11.

Section 132 of the 2010 Act at the discretion of the judge, the president of the Central Juvenile and Family Court has cautioned judges against exercising discretion to use Section 132 special measures on such children.¹²¹ In practice, judges will not use special measures in lieu of prosecution or judgment on children who refuse to enter a guilty plea. “Remorse” and “confession,” in the eyes of the court, are one and the same.

The “confession” requirement gives rise to several problems under the child justice system. First, it bars many children from benefiting from diversion. For example, many children accused of violating the laws by exercising their rights to freedom of expression or peaceful assembly insist on not pleading guilty because they believe they have not done anything wrong.¹²² Several children charged with *lèse-majesté* decided to plead not guilty because they genuinely believe that, in a democratic country, they should be able to raise difficult questions about the institution of the monarchy. The “confession” requirement, therefore, is inappropriate and was not designed for cases whereby children are prosecuted for holding political opinions of which the state does not approve.

121 *Ibid.*

122 TLHR, การต่อสู้เพื่อบอกว่าเราไม่ได้โหดเหี้ยม:คุยกับ “มีมี” ณิชกานต์ เขาวชนผู้ร่วมเสียดา ลุยไฟ สู่การก่อตั้งเฟมฟุ, 30 June 2022, <https://tlhr2014.com/archives/45426>; TLHR; รัฐต้องฟังเสียงของเยาวชน: บทสนทนากับ ‘ธนกร’ เขาวชนรายแรกที่ถูกต้องข้อหา ม.116, 7 December 2020, <https://tlhr2014.com/archives/23805>.

Second, the “confession” requirement presents a serious problem for children because their confession can be used against them in subsequent legal proceedings. In General Comment No. 24 on children’s rights in the child justice system, the UN Committee on the Rights of the Child clearly explains that diversion should only be used when “admission [of responsibility] will not be used against the child in subsequent legal proceedings.”¹²³ However, in Thailand, if a child is unable to comply with the rehabilitation plan as part of the diversion program, prosecution against the child would re-commence and the child’s confession could be used against them in the court of law.¹²⁴ Worse, the law does not prohibit prosecutors from using facts revealed during the preparation of rehabilitation plans in a court of law, provided that such plans were successfully formulated.¹²⁵

Third, many lawyers and children reported that judges and prosecutors tried to pressure children to plead guilty. In one case, a judge told the child that “if you decide to fight this case, there is no guarantee that you will win.”¹²⁶ One morning during Petch’s *lèse-majesté* trial, the prosecutor attempted to persuade

123 UN Committee on the Rights of the Child, *General comment No. 24 (2019) on children’s rights in the child justice system*, CRC/C/GC/24, 18 September 2019, para. 18(a).

124 Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 92.

125 *Id.* Section 93. The law only prohibits the use of facts revealed during the preparation of a rehabilitation plan in the event that the plan was never successfully formulated.

126 Interview with a lawyer who represented a child in conflict with the law before a children’s court.

Petch to plead guilty so that they could enter special measures in lieu of judgment by explaining to Petch the benefits of such measures. Throughout the day, judges asked to speak to Petch three more times in order to persuade them to plead guilty. In one conversation, the judge warned Petch of the impact Petch's failure to plead guilty would have on their family. Despite all these attempts by the prosecutor and the judges, Petch insisted on pleading not guilty.

Further, TLHR lawyers have observed differences in the treatment of children in conflict with the law based upon the political nature of their cases. One lawyer who represented a child before a children's court observed that judges' demeanors and tones would sometimes change after children plead not guilty. In one case, the judge asked the child whether he pleaded not guilty because he was "instructed" to do so by his lawyer. One lawyer who represented a child protester explained, in her experience representing children in political cases, judges usually asked questions directly to children and did not allow her to answer on their behalf. She further noted that, in other non-political cases, judges in children's court would speak to her, not her clients. The pressure faced by children to plead guilty raises the question of whether, in cases where children pleaded guilty, such confessions from the children were "free and voluntary." According to the UN Committee on the Rights of the Child,

diversion should only be used when there is compelling evidence that children “*freely and voluntarily admit[] responsibility, without intimidation or pressure.*”¹²⁷ It is important for the Thai government to take cognizance of the fact that cases of children entering special measures cannot be counted as “success” if those children were intimidated or pressured into confessing to crimes they did not commit.

5.4.2 Formulation of rehabilitation plan

5.4.2.1 The law

Regarding special measures in lieu of prosecution under Sections 86 and 90 of the Juvenile and Family Court and Procedure Act B.E. 2553 (2010), the Director of the Observation Center shall invite the children’s party, the injured party, and psychologists or social workers to attend a meeting to discuss the formulation of a rehabilitation plan.¹²⁸ Additionally, the Director may, where appropriate, exercise their discretion to invite community representatives or representatives from organizations affected by the child’s alleged wrongdoing to attend this meeting.¹²⁹

127 UN Committee on the Rights of the Child, *General comment No. 24 (2019) on children’s rights in the child justice system*, CRC/C/GC/24, 18 September 2019, para. 18(a). (emphasis added)

128 Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 87, para. 1.

129 *Ibid.*

In contrast, if the court believes that a rehabilitation plan is necessary for special measures in lieu of judgment under Section 132 of the 2010 Act, the court shall instruct only psychologists, social workers, or other “persons whom the court sees to be appropriate” to prepare a rehabilitation plan for the child.¹³⁰ Although the court may exercise its discretion to ensure that children and their lawyers are part of the preparation of a rehabilitation plan, it is concerning that their involvement entirely depends on the court’s discretion as the law fails to explicitly mention them.

5.4.2.2 Presence of lawyers in the preparation of a rehabilitation plan

Based on TLHR lawyers’ experiences representing children in children’s courts, this report finds that observation centers and/or counseling centers fail to adequately consider the interests and opinions of children when preparing their rehabilitation plan. One reason why this problem occurs is the lack of understanding of officers at the counseling center as to whether the law requires that children’s lawyers be invited to attend the meeting on the formulation of rehabilitation plans. Several TLHR lawyers reported that they never received an invitation to attend such meetings.

¹³⁰ Regulation by the President of the Supreme Court on the Criteria, Methods, and Conditions for using Measures in lieu of Judgment B.E. 2556, Clause 10.

In one case, a lawyer traveled to the counseling center with her child client and was allowed to enter the meeting even though the lawyer never received any formal invitation from the center. In another case, a lawyer told TLHR that the counseling center did not allow her to attend the meeting with her client. There is a lack of clarity on the policy regarding the lawyers' involvement in the formulation of a rehabilitation plan.

This report emphasizes that the phrase “children’s party” (ฝ่ายเด็กและเยาวชน) under Section 87 of the Juvenile and Family Court and Procedure Act B.E. 2553 (2010) must be interpreted to also include children’s lawyers. The participation of lawyers in these meetings is particularly important because information revealed to the authorities as part of the preparation for a rehabilitation plan can be used against children in subsequent legal proceedings in the event that relevant parties, for whatever reason, fail to come up with a rehabilitation plan.¹³¹

Ms. Khumklao Songsomboon, a lawyer at TLHR who handles children’s cases, has affirmed that lawyers can help negotiate with the counseling center and ensure that a rehabilitation plan respects the rights and interests of children. For example, Ms. Pawinee Chumsri, a lawyer at TLHR, recounted challenging

131 Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 93.

a condition which would have required her client to undergo a urine test every time she reports herself to the counseling center even though her client was never charged with any drug-related offenses. The condition was eventually removed from the plan.

In another case, three children were charged with destruction of property during a protest at the Ministry of Public Health and two were charged with defamation of the Ministry's spokesperson. During a meeting to discuss the rehabilitation plan, the counseling center proposed that all children, including the child who was not charged with defamation, write a letter of apology for "defaming" the Ministry's spokesperson. Because this diversion condition did not match with the charge brought against the child who was not charged with defamation, the lawyer asked the counseling center to remove it from the rehabilitation plan. The condition was later removed.

Any rehabilitation plans to be imposed on children must give primary consideration to the best interests of those children. To do so, authorities must allow children, their family, as well as their lawyers to play a role in shaping those plans.

5.4.2.3 Risk of re-traumatization during the formulation of a rehabilitation plan

TLHR has documented several instances where observation centers have subjected children to re-traumatization through its questioning of children as part of its investigation into the children’s cases. It is particularly worrisome that questions regarding the children’s gender identity or issues within the child’s family may inadvertently reopen pre-existing emotional scars.

Petch, a child charged with *lèse-majesté*, recounted that one of the questions on the questionnaire given to them by the psychologist and social worker asked whether they had previously engaged in sexual intercourse with people of the same sex. “I asked them why they must ask this question, and whether it was possible to not give an answer because the question didn’t feel right. I would understand if the case had something to do with sex-related issues. But to ask this question in a political case, I’m not sure what they are trying to say. I chose to not answer the question,” explained Petch. This question made Petch wonder whether, in the eyes of the authority, there was something wrong with being LGBTQ+.¹³²

132 TLHR, เมื่อกระบวนการยุติธรรมไม่ใช่พื้นที่ปลอดภัย: หลากเรื่องราวการคุกคาม/เลือกปฏิบัติด้วยเหตุแห่ง “เพศ”, 21 September 2021, <https://tlhr2014.com/archives/35411>.

Some children also reported feeling pressured to show psychologists at observation centers that they have a “happy” family environment. For instance, a child was required to send photos of family activities to a psychologist to demonstrate that the family members loved each other. One child told TLHR that she was asked to complete a form with questions about her family. However, she felt that the psychologist would judge her and think that she is a “troubled child” if she did not have a “perfect” family. Another child informed TLHR that she was asked to send photos of her “happy” family to a psychologist. This request “saddened” her because she did not come from a “happy” family. Thus, she felt pressured to create an “appearance” of a happy family to fulfil the psychologist’s request.

In some cases, observation centers have asked children questions to which there is no right answer. An example of such questions is “have you ever lied to your parents?” If a child were to answer no, the interviewer would most likely think that the child is lying. However, if the child were to answer yes, the observation center might conclude in its report to the children’s court that the child has behavioral problems. In effect, these children are put in a catch-22 situation.

Observation centers have also sometimes asked questions with answers already in mind. A child revealed to TLHR that the observation center continued to ask him the same question in different ways even though he already gave them an answer. Some children therefore chose to give the observation center answers they thought the center wanted to hear in order to quickly conclude the procedure.

5.4.3 Inappropriate diversion conditions inconsistent with children's best interests

Another serious issue with special measures under the Juvenile and Family Court and Procedure Act B.E. 2553 (2010) is that some of the measures are clearly not in the best interests of the children. In one case, a child was required to repeatedly handwrite a career they wish to pursue when they grow up onto a piece of paper. Another child was required to meet a lay judge who played songs glorifying the King and lectured the child on the contributions of the King to Thailand. A common measure imposed upon children who enter special measures is the requirement that children be subjected to urine testing every time they report themselves to the authorities even though they were never charged with any drug-related offenses.

One child recounted that his diversion condition required him to attend a family bonding activity in which children were required to prostrate themselves at the feet of their parents with sad music playing in the background. Around 20 children were present at this activity. The child felt uncomfortable and left the room, and his failure to participate in this activity was noted in his behavioral report.

According to the UN Committee on the Rights of the Child, “children’s human rights and legal safeguards are to be fully respected and protected in all diversion processes and programmes.”¹³³ Requiring a child to listen to a lay judge glorify and praise the King risked interfering with his right to hold opinions without interference, as the diversion condition necessarily implied that the child’s opinions of the King must be corrected.¹³⁴ Making children prostrate themselves before their parents in a relatively public space and subjecting them to unnecessary urine testing - a condition usually imposed on those accused with drug-related offenses - potentially exposed them to (public) humiliation and a sense of indignity. Special measures under Thai law must be imposed in accordance with the protection of the rights of children.

133 UN Committee on the Rights of the Child, *General comment No. 24 (2019) on children’s rights in the child justice system*, CRC/C/GC/24, 18 September 2019, para. 16; Convention on the Rights of the Child, Article 40(3)(b).

134 International Covenant on Civil and Political Rights, Article 19(1).

Furthermore, Thailand's child justice system must rethink what diversion conditions should be imposed on children who simply exercised their rights to freedom of expression and peaceful assembly. The purpose of a diversion program is to reshape a child's moral compass and guard against re-offending in the future. This report argues that this purpose is not directly applicable to cases where children are prosecuted for holding political opinions of which the government does not approve.

6. Recommendations

Since 2020, the Thai government has repeatedly used various repressive laws to punish child human rights defenders and activists for expressing their political opinions or participating in public assemblies. One of the most serious charges levied against children is lèse-majesté, punishable by three to 15 years' imprisonment. This report argues the use of the lèse-majesté law against children is a violation of their rights under both domestic and international law. In particular, this report stresses that the detention of children charged with lèse-majesté in observation centers constitutes a deprivation of their liberty and is a serious violation of their rights. At the time of the release of this report, two children continue to be subjected to detention under the lèse-majesté law.

Furthermore, having put Thailand's child justice system under the microscope, this report demonstrates how the system regularly violates children's rights from the very beginning until the very end of the judicial process. A significant number of children were not arrested in a "gentle" manner. To the contrary,

excessive force was used to arrest Yok and many Thalu Gas child protesters. Yet, in all of these cases, the children’s court never once found these arrests to be unlawful. When children were brought before judges, many of them felt “pressured” by judges and prosecutors to plead guilty so that they would be eligible for “special measures” or diversion. In cases where children decided to plead guilty in order to qualify for diversion, many diversion conditions imposed on them appear to not be in the children’s best interests.

To address the issues presented in this report, TLHR makes the following conditions to the Thai government:

Use of Lèse-Majesté Law Against Children

- Drop all charges -especially the lèse-majesté charge -against children who exercised their rights to freedom of expression and peaceful assembly;¹
- Cease all forms of harassment, judicial or otherwise, targeting child activists for exercising their human rights to freedom of expression and peaceful assembly;

1 Public Prosecutor Organization and Public Prosecutor Act B.E. 2553 (2010), Section 21 (the attorney general has the power to drop charges and withdraw prosecutions which are not in the public interest).

- Amend Section 112 of the Criminal Code and bring it in line with international standards;
- End the use of Section 112 against children and refrain from criminalizing children’s speeches and expressions which are protected by the right to freedom of opinion and expression under international human rights law; and
- Grant amnesty to more than 280 children charged and/or convicted under various repressive laws for exercising their right to freedom of expression and peaceful assembly.

Child Justice System

Arrest and Detention

- Refrain from arresting or detaining children unless absolutely necessary and only as a measure of last resort;
- If arrest or detention must be carried out, ensure compliance with both domestic and international law, according to which the child’s best interests and

dignity must be taken into consideration at all times and instruments of restraint shall not be used unless their use is necessary to prevent the child from fleeing or for the safety of the child or other persons;

- Immediately release all children currently held in detention for allegedly violating the lèse-majesté law; and
- Ensure that law enforcement officials receive adequate training for managing and policing public assemblies where children are present in a manner consistent with international standards.

Observation of Trials

- Guarantee the right to be heard of children in judicial or administrative proceedings affecting them, including their wish to have people whom they trust be present with them in the courtroom.

“Special measures” or diversion

- Ensure that children’s admission of responsibility for

their alleged wrongdoing is free and voluntary and that children are not “pressured” into pleading guilty to crimes they did not commit;

- Remove the “confession” requirement for entering special measures and ensure that children’s remorse for their conduct can be assessed in ways that would not jeopardize their case in the future;
- Adequately consult children, their family, and their lawyers in the formulation of children’s rehabilitation plans to ensure that the diversion conditions are in the best interests of children;
- Ensure that psychologists, social workers, probation officers, and other relevant stakeholders receive adequate training for dealing with child human rights defenders and activists;
- Ensure that diversion conditions do not deprive children of their fundamental rights under international human rights law; and

- Reform the “special measures” or diversion program under the child justice system in order to create a new system that is tailored to the specific needs and interests of child human rights defenders and activists.

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