



THAI  
LAWYERS  
FOR  
HUMAN  
RIGHTS

## **Input on Draft General Comment No. 27 on Children’s Rights to Access to Justice and Effective Remedies**

*Thai Lawyers for Human Rights (TLHR) is a coalition of human rights lawyers and defenders that was established immediately after the May 2014 coup d'état in Thailand. The coalition's objective has been to raise awareness about human rights violations stemming from the imposition of martial law and military rule in the country. TLHR also provides legal and litigation assistance to individuals who are charged and/or prosecuted as a result of their political expressions.*



**1. Introduction**

Thailand was swept by a pro-democracy movement beginning in July 2020, following a prolonged period of deteriorating human rights and political conditions. Primarily led by children and youths, the movement advocated for, *inter alia*, the resignation of then-PM Prayut Chan-o-cha, reforms of the institution of the monarchy, and the drafting of a new constitution.

Since July 2020, as a response to the protests, the government has charged no fewer than 1,955 individuals, including 286 children, under various repressive laws for exercising their rights to freedom of expression and peaceful assembly. The charges against children since 18 July 2020 include, but are not limited to: (as of 23 August 2024)

Charges	No. of children	No. of cases
Emergency Decree	241	157
Lèse-Majesté	20	24
Sedition	3	3
Public Assembly Act	10	5
Computer Crimes Act	9	9
Unlawful Assembly	137	77

**2. Definitions and understandings of access to justice and effective remedies for children**

The Thai Criminal Code distinguishes criminal liability for children as follows:

- (1) Children under the age of 12: A child below the age of 12 shall not be punished for committing an offense.<sup>1</sup>
- (2) Children between the ages of 12 and 15: Although a child between the age of 12 and 15 shall not be punished, the Court shall have the authority to: (a) admonish and discharge the child; (b)

<sup>1</sup> Criminal Code, Section 73.





impose regulation on the parent(s) or guardian(s) to prevent reoffending; or (c) send the child to an educational institution or a practice and training institute.<sup>2</sup>

- (3) Children between the ages of 15 and 18: Children’s courts shall consider a child’s sense of responsibility and other relevant factors about the child before deciding whether to convict. If the court chooses not to convict, it shall follow Section 74. If it chooses to convict, the punishment shall be reduced by one-half.<sup>3</sup>

### 3. Barriers to access to justice for children

#### 3.1 *Use of political charges against children*

Many child human rights defenders face serious criminal offenses, including Section 112 (lèse-majesté) of the Thai Criminal Code,<sup>4</sup> punishable by three to 15 years of imprisonment.

Petch,<sup>5</sup> a youth activist and a member of the LGBTQ+ community, was 17 years old at the time of the alleged offense. They later became the first child to be convicted under the lèse-majesté law on 22 November 2022. Their first two convictions on 22 November 2022 and 22 December 2022 stemmed from speeches that they allegedly gave at pro-democracy rallies that courts deemed to be critical of the monarchy. Among other things, Petch allegedly called into question the use of royal vocabulary and pronouns to divide society into classes.<sup>6</sup> At present, Petch has been convicted under the lèse-majesté law in a total of three cases.

Sainam<sup>7</sup>, who was 16 at the time of the alleged offense, has been charged under the lèse-majesté law twice and convicted once for conduct allegedly committed when he was still a child. On 20 July 2023, the children’s court convicted Sainam under the lèse-majesté law for wearing a crop top with the phrase “My father’s name is Mana, not Vajiralongkorn” scrawled on his body at a pro-democracy event in October 2020. The court sentenced Sainam to three years in prison but the court halved the sentence to one year

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<sup>2</sup> *Id.* Section 74.

<sup>3</sup> *Id.* Section 75.

<sup>4</sup> *Id.* 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”).

<sup>5</sup> Full name withheld.

<sup>6</sup> TLHR, *From Classroom to Courtroom: Report Release on Children’s Rights to Freedom of Expression and Assembly in Thailand*, 1 December 2023, <https://tlhr2014.com/en/archives/63105>.

<sup>7</sup> Full name withheld.





and six months because of his age. The court then suspended the sentence for two years, in light of Sainam’s valuable testimony.<sup>8</sup>

Purportedly to manage the spread of COVID-19, the government enforced the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005) in 2020. Multiple children have been arrested and prosecuted under this law. In its press conference published on 24 December 2021, the National Human Rights Commission of Thailand (NHRCT) regarded the law’s enforcement against protesters, including child protesters, as a human rights violation since the prohibition on freedom of assembly was not proportionate to the reason for public health safety.<sup>9</sup> Eia<sup>10</sup> is the youngest child to ever be charged under the Emergency Decree, being only 12 years old at the time of the alleged incident. On 18 May 2023, he was convicted under the Emergency Decree by the children’s court for riding his bicycle to pick up food near a protest area.<sup>11</sup>

### 3.2 *Access to effective judicial review of lawfulness of arrests*

Another issue concerns child protesters’ access to effective judicial review when they are arrested unlawfully. According to Thai law, a child arrestee must be brought to a children’s court immediately or within 24 hours in order for the court to assess the lawfulness of the arrest.<sup>12</sup> The law also requires that arrests of children be carried out in a “gentle” manner while taking into consideration the “human dignity” of the child.<sup>13</sup> Authorities must inform the child that they are being arrested, the charge, and their rights under the law, and notify their legal guardian if they are not present at the scene of the arrest.<sup>14</sup> If the court finds the arrest to be unlawful, the child must be released immediately.<sup>15</sup>

In practice, these legal safeguards were not implemented. Children who attended pro-democracy demonstrations were often subjected to excessive force by authorities attempting to disperse and arrest protesters, including the indiscriminate use of tear gas, rubber bullets, and cable ties. For instance, during a series of protests organized by the “Thalu Gas” group between August and October 2021, police

<sup>8</sup> TLHR, *จำกัด 3 ปีลดเหลือ 12 เดือน โดยให้รอลงอาญา คดี ม.112 “สายน้ำ” แห่งครอบครัวปเดินเนฟซันโซว์ลีลิม ศาลที่มีเจตนาล้อเลียนเสียดสีในหลวง ร.10*, 20 July 2023, <https://tlhr2014.com/archives/57662>.

<sup>9</sup> NHRCT, “NHRCT Weekly Press Conference, No. 13/2564 The NHRCT reports the investigation of human rights violations during political demonstrations: the disproportional acts by police officers and the use of artificial weapons by some protesters found,” 24 December 2021 <https://www.nhrc.or.th/en/NHRC-News-and-Important-Events/1591>.

<sup>10</sup> Full name withheld.

<sup>11</sup> TLHR, *ศาลเยาวชนฯ พิพากษา “เอีย” มีความผิดตาม พ.ร.ก.ฉุกเฉินฯ เหตุเป็นจ็กรยานไปรับข้าวจากใน #มีอบ13กันยา64 แต่อายุ 12 ปีเศษ จึงไม่ต้องรับโทษ ให้ว่ากล่าว ตักเตือน-ปล่อยตัว*, 18 July 2023, <https://tlhr2014.com/archives/57524>.

<sup>12</sup> Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 72, para. 1.

<sup>13</sup> *Id.* Section 69, para. 3.

<sup>14</sup> *Id.* Section 69, para. 2.

<sup>15</sup> *Id.* Section 73, para. 1.





arrested more than a dozen children and reportedly used methods that left many of them injured.<sup>16</sup> At least one child was shot with a rubber bullet, which required surgery to be removed. The children’s lawyers explained to the children’s court that the authorities failed to inform the children of their charges and their rights under the law. The children were also not allowed to notify their family members of their arrests. Nevertheless, in all these cases, the court held that the arrests were carried out lawfully.<sup>17</sup> In fact, children’s courts have yet to find a case of unlawful arrest in protest cases since July 2020.

### 3.3 Access to judicial review of courts’ orders depriving children of liberty

Some children whose liberty is deprived pursuant to court’s orders faced obstacles accessing judicial reviews of those orders. In October 2023, two children — Poom<sup>18</sup> and Phattarachai<sup>19</sup> — charged with *lèse-majesté* were ordered by a children’s court to be detained at an observation center as part of a diversion program.. Poom was charged with *lèse-majesté* for allegedly throwing dog food at the King’s portrait as a symbolic demonstration. Phattarachai was similarly charged with *lèse-majesté* for allegedly setting fire to the King’s portrait.

In Poom’s case, the Central Juvenile and Family Court did not grant bail because, *inter alia*, his conduct towards the King’s portrait was “inappropriate.” for the King is the head of state and is respected by the Thai people. Consequently, the Court believed that Poom’s legal guardian could not take care of him.

On 18 October 2023, the lawyer submitted an appeal to the Court’s order, though the Court stated that its order was not subject to appeal pursuant to Section 180(2) of the Juvenile and Family Court and Procedure Act B.E. 2553 (2010). On 19 December 2023, the lawyer subsequently submitted another appeal to the chief judge of the Court, who accepted the appeal on 20 December 2023 on an ad hoc basis.<sup>20</sup> On 9 July 2024, the Appeal Court affirmed the order of the Central Juvenile and Family Court, reasoning that there were no reasons to modify the order. This decision came 203 days after the appeal was lodged, and 102 days before Poom’s 1-year detention period was set to complete on 19 October 2024.

<sup>16</sup> See also NHRCT, “NHRCT Weekly Press Conference, No. 13/2564 The NHRCT reports the investigation of human rights violations during political demonstrations: the disproportional acts by police officers and the use of artificial weapons by some protesters found,” 24 December 2021 <https://www.nhrc.or.th/en/NHRC-News-and-Important-Events/1591>.

<sup>17</sup> TLHR, *From Classroom to Courtroom: Report Release on Children’s Rights to Freedom of Expression and Assembly in Thailand*, 1 December 2023, <https://tlhr2014.com/en/archives/63105>, p.9.

<sup>18</sup> Full name withheld.

<sup>19</sup> Full name withheld.

<sup>20</sup> TLHR, *อธิบดีศาลเยาวชนฯ อนุญาตให้รับอุทธรณ์ขอให้เปลี่ยนแปลงคำสั่งการควบคุมตัว “ภูมิ หัวลำโพง” คดี ม.112 ในสถานพินิจฯ*, 20 December 2023, <https://tlhr2014.com/archives/62463>.





### 3.4 *Access to effective legal counsel*

Another barrier to children’s access to justice is the cumbersome licensing requirement for lawyers before they are allowed to represent children. In order for lawyers to represent children, they must undergo a training and examination, which is known for their infrequency and low acceptance rate. In 2024, the exam was held twice in March and July, and only accepted 250 and 500 applicants respectively.<sup>21</sup> Among them, the number of lawyers who are experienced with political cases are slim. The nature of political cases also means that children want to be represented by lawyers whom they trust, which narrows the pool of legal counsel even further.

One TLHR lawyer who attended a mandatory training organized by a children’s court reported that an instructor informed the lawyers that they should “help the [children’s] court” bring children into the diversion program, citing Clause 22 of the Regulations of the President of the Supreme Court on Training, Code of Conduct for Legal Advisors, Registration, and Removal from the List B.E. 2556 (2013) as a basis for their instruction. As explained below, this instruction raises serious concerns about the ability of children, who believe they are innocent, to plead not guilty and fight their cases in court.

### 3.5 *Barriers to trial observation*

The absence of independent observers and trusted individuals in the courtroom during trials poses issues to children’s court proceedings. Section 108 of the Juvenile and Family Court and Procedure Act B.E. 2553 (2010) requires that trials of children be conducted behind closed doors and that only relevant parties, including the child’s parents/guardians, legal advisors, and certain state authorities, may be present. Originally designed to protect children’s right to privacy in the courtroom, the law fails to be used in a manner that is consistent with children’s best interests and their right to be heard. Although the law empowers courts to use its discretion in permitting trial observation by “other persons whom the court sees to be appropriate,”<sup>22</sup> courts rarely grant children’s requests to have trusted third parties, such as representatives from human rights organizations and embassies, be present in the courtroom. This leaves many children feeling “alone” and “worried” as they face political trials behind closed doors.<sup>23</sup>

<sup>21</sup> Central Juvenile and Family Court, *ประกาศศาลเยาวชนและครอบครัวกลาง เรื่องการรับสมัครผู้เข้ารับการอบรมและทดสอบความรู้แก่ผู้ที่จะเป็นที่ปรึกษากฎหมาย ในศาลที่มีอำนาจพิจารณาคดีเยาวชนและครอบครัว*, 19 March 2024, <https://jvnc.coj.go.th/th/content/category/detail/id/24/iid/404944>.

<sup>22</sup> Juvenile and Family Court and Procedure Act B.E. 2553 (2010), Section 108.

<sup>23</sup> TLHR, *From Classroom to Courtroom: Report Release on Children’s Rights to Freedom of Expression and Assembly in Thailand*, 1 December 2023, <https://tlhr2014.com/en/archives/63105>, p.83.





#### 4. Diversionary measures

Thailand's child justice system allows children in conflict with the law to enter "special measures" in lieu of prosecution or judgment<sup>24</sup>. However, the act requires that only children who show "remorse" for their conduct are eligible for special measures and failure to plead guilty is explicitly stated in the guidelines issued by the president of the Central Juvenile and Family Court as evidence of the child's lack of remorse.<sup>25</sup>

##### 4.1 *Pressuring children to plead guilty*

The confession requirement creates difficulty for children who wish to see justice through to the end. Requiring children to confess bars children from accessing diversion. Children accused of violating the law by exercising their rights to freedom of expression and peaceful assembly tend to insist on not pleading guilty because they believe they have not done anything wrong. Several children charged with *lèse-majesté* decided against pleading guilty because they genuinely believed that they should be allowed to peacefully raise questions about the monarchy in a democratic country.

Many children and lawyers have reported that some judges tried to pressure children to plead guilty. For instance, Petch was approached by a judge several times throughout the day during their *lèse-majesté* trial, attempting to persuade them to plead guilty so that they could enter special measures in lieu of judgment. The judge repeatedly explained the benefits of a guilty plea and warned them of the impact their failure to plead guilty would have on their family. Reports from children charged in political cases also suggest that they have been treated differently by judges, with many adopting the view that the children may be influenced in some way by their lawyers. In many cases, children have reported judges using strong language implying that they were already guilty before their trial. For instance, a senior children's lawyer from TLHR testified that during the hearings, child defendants often argued that they were merely exercising their right to freedom of expression and peaceful assembly, which are enshrined in the 2017 Constitution.<sup>26</sup> However, most judges refused to listen to these arguments and seemed to operate under the assumption that children's expressions in protests are illegal.

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<sup>24</sup> *Id.* Sections 86, 90, and 132.

<sup>25</sup> 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.

<sup>26</sup> Constitution of the Kingdom of Thailand B.E 2560 (2017), Sections 34 and 44.





In the event that children plead guilty, their confessions can be used against them in subsequent legal proceedings especially since 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. 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.

#### 4.2 *Limitations on children's participation in formulating their rehabilitation plans*

The law fails to *explicitly* list children and their lawyers as one of the parties to be consulted in the formulation of their rehabilitation plans. Sections 86 and 90 of the Juvenile and Family Court and Procedure Act B.E. 2553 (2010) empower the Director of the Observation Center to invite the children's party, the injured party, and psychologists or social workers to attend a meeting to discuss formulating a rehabilitation plan. There is ambiguity in whether the children's lawyers are considered a member of the "children's party." Section 132 stipulates that the court shall instruct only psychologists, social workers, or other "appropriate persons" to prepare a rehabilitation plan for the child if it believes that a plan is necessary for special measures. In other words, the involvement of children and their lawyers in the rehabilitation plan entirely hinges on the court's discretion.

As a result, some "special measures" are clearly not in the best interests of the children involved. For instance, a common measure 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. In another case, one child recounted that his diversion condition required him to participate in an activity where he and around 20 other children were required to prostrate themselves at the feet of their parents while sad music played in the background. The child felt uncomfortable and proceeded to leave the room, and his failure to participate in this activity was noted in his behavioral report.

### 5. **Recommendations**

- 1) Urge the government to drop all charges – especially lèse-majesté charges – against children who exercised their rights to freedom of expression and peaceful assembly.
- 2) Guarantee the right to be heard of children in judicial or administrative proceedings affecting them, including their wish to have trusted individuals be present with them in the courtroom.





- 3) 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.
- 4) Reform the “special measures” or diversion program under the child justice system 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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