CHILDREN’S ACCESS TO JUSTICE FOR ENVIRONMENTAL RIGHTS | THAILAND
Acknowledgements

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Introduction

This report is one of 43 country reports which look at whether the laws and policies in countries around the world make it possible for children to access their environmental rights.

We are looking at:

• How the law protects - or fails to protect - children’s environmental rights.
• How children can currently access the courts in environmental cases.
• What courts can do when children’s rights are violated
• How these countries protect - or fail to protect - children’s civil and political rights so that they are able to protest and campaign on environmental issues.

These research reports are just the start to CRIN’s work on this issue. We think it’s important to start with a solid foundation and understanding of what the law says, but we want to build on this in collaboration with others.
We want to turn the research into practical tools and resources that organisers and activists (both young and old) from around the world can use.

For more information about the project and what’s to come, please visit: https://home.crin.org/access-to-environmental-justice.

Methodology

Identifying 43 countries

The country reports look at 43 countries which we chose in consultation with our partners. We aimed to achieve a broadly representative sample that reflected a regional balance as well as the different types of legal systems and legal traditions. We included countries that are established regional or global leaders on children’s rights and environmental law. We also chose some countries that are often excluded from comparative studies in this area.

Developing the questions

The first draft of the research questionnaire was developed based on gaps in our knowledge that we had identified during our previous work on this issue. We then consulted a number of individual experts and organisations working in the field of children’s rights and the environment. Based on their feedback, we amended the questions.

The questions were then passed on to a team of pro-bono lawyers who used these to guide their research and write the reports.

The review process

The country reports were then reviewed and edited by CRIN. The reports were then sent to at least one official state representative and one national expert for the opportunity to provide feedback and comments. The experts included relevant government ministries, State permanent missions to the United Nations, non-governmental organisations, children’s rights lawyers and advocates, environmental rights lawyers and advocates and individual lawyers specialising in the issues covered by the reports. The contributors to the country reports have been credited in the individual country reports, except where the reviewer asked to remain anonymous. To note, for some countries CRIN was unable to find an official state representative or national expert able to give feedback.
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I. NATIONAL LEGAL PROTECTIONS
A. Are environmental rights protected within the national constitution?

Thailand’s constitutional protections for environmental rights are generally divided between the rights of a person and community, the duties of a person and the duties of the State.¹

The Constitution protects citizens’ rights to the sustainable management of the environment. According to Section 43(2) of the Constitution: “A person and community shall have the right to manage, maintain and utilise natural resources, environment and biodiversity in a balanced and sustainable manner, in accordance with the procedures as provided by law”. In setting out the duties of the Thai people, Section 50(8) of the Constitution provides that a person has the duty “to cooperate and support the conservation and protection of the environment, natural resources, biodiversity, and cultural heritage”. Section 57(2) requires the State to conserve, protect, maintain, restore, manage and use or arrange for the utilisation of natural resources, environment and biodiversity in a balanced and sustainable manner, provided that the relevant local people and local community shall be allowed to participate in and obtain the benefit from such undertaking as provided by law. The State should also take actions relating to land, water resources and energy² and undertake reform regarding water resource management and waste disposal.³

The State also has a Constitutional duty to carry out impact studies on any activity it carries out, or it allows others to carry out, that may severely affect natural resources, environmental quality, health, sanitation, quality of life or any other essential interest of the people, community or environment.⁴ This process requires public hearings and individuals and communities have the right to receive information, explanations and reasons from the State prior to permission being granted for activities covered by this provision.⁵ The State also has a duty to take precautions to minimise the impact on people, community, the environment and biodiversity and to remedy any grievance or damage for affected people or community in a fair manner without delay.⁶

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² According to Sections 72(1), (5). The State should take actions relating to land, water resources and energy as follows: to plan the country’s land use to be appropriate to the area conditions and potentials of the land in accordance with the principles of sustainable development; to promote energy conservation and cost-effective use of energy, as well as to develop and support the production and use of alternative energy to enhance sustainable energy security.
³ According to Sections 258(g)(1), (3). National reform in various areas shall be carried out to at least achieve the following results: having a water resource management system which is efficient, fair and sustainable, with due regard given to every dimension of water demand in combination with environmental and climate change; establishing a system for managing and disposing solid waste in an efficient and environment-friendly manner, and for recovering such waste for use for other purposes.
⁴ Constitution of Thailand, Section 58.
⁵ Ibid.
⁶ Ibid.
The Constitution specifically protects children and youth, requiring that “[t]he State should provide assistance to children, youth, women, the elderly, persons with disabilities, indigent persons and underprivileged persons to be able to have a quality living, and shall protect such persons from violence or unfair treatment, as well as provide treatment, rehabilitation and remedies to such injured persons”. However, it does not contain any specific environmental protections to children or youth.

The government has ratified the Convention on the Rights of the Child (CRC), which came into effect in Thailand on 26 April 1992. However, the CRC does not take precedence over national law. The Thai Government implements the provisions of the CRC through legislation relating to children and youth in compliance with the Convention. The Child Protection Act reinforces the protection of children and creates a National Child Protection Committee.

Thailand has ratified the Paris Agreement under the UN Framework Convention on Climate Change on 21 September 2016.

B. Have constitutional rights protections been applied by national courts with regards to environmental issues?

A number of decisions and orders by the Supreme Administrative Court have been published applying environmental protections provided in the Constitution, including those noted below.

Anti-Global Warming Association v. National Environment Board: The Supreme Administrative Court ordered the National Environment Board to temporarily suspend 76 projects held in violation of Section 67 of the now repealed 2007 Constitution, which provided a general protection against activity which may seriously affect the quality of the environment, natural resources, and health. The court found that the constitutional provision’s failure to prescribe specific criteria or method of exercising these rights was not cause for a State agency to reject the protections of these rights altogether.

Foundation for Anti Air Pollution and Environmental Protection (P1) and al. v. Bangkok Mass

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7 Section 71 of the Constitution.
11 We have not found a court decision or order, at least available in English, under the current Constitution that became effective in 2017.
Transit Authority (D1) and Pollution Control Department (D2): The suit, brought by a non-governmental organisation (NGO), claimed that both defendants, the Bangkok Mass Transit Authority and the Pollution Control Department, failed to operate the public bus system in accordance with environmental protections provided under the 2007 Constitution and the Enhancement and Conservation of National Environmental Quality Act (“NEQA”). The Supreme Administrative Court ordered the Transit Authority to control vehicle emissions in all public buses and to submit a report of vehicle emissions inspection to the court every three months for one year after the date of the final judgment. As to the Pollution Control Department, the court ordered the agency to make an action plan to supervise, inspect and control vehicle emissions from public buses and submit a similar report to the court.  

The Klity Creek litigation is also an important case to highlight. In the early 2000s, the Karen people, with the assistance of a NGO, filed administrative and civil lawsuits. These suits arose out of a Thai factory’s history of dumping waste into the Klity Creek, resulting in lead poisoning among the Karen people. Children suffered severe intellectual and developmental disabilities, and children were born with birth defects. In the administrative suit, the NGO lawyers advanced the argument that the broad language of the NEQA allowed and required the Pollution Control Department to order the polluting company to undertake rehabilitation efforts. The Karen people alleged that the Pollution Control Department failed to demand damages for the expenses incurred by the clean-up process, as provided by Section 96 of the NEQA, nor did it demand compensation for damage caused to the environment, as provided by Section 97. Essentially, the Pollution Control Department—the governmental body in charge of the prevention and resolution of pollution problems—was negligent in cleaning up the creek. The goal of bringing suit under these NEQA provisions was to “create norms in State administration for the restoration of environmental quality from toxic contamination.”

C. Has the concept of intergenerational equity been applied within national courts? If yes, in what circumstances?

We have not found any court case discussing the concept of intergenerational equity in Thailand. The Constitution does not contain explicit provisions related to intergenerational equity.

D. What legislation is in place to regulate environmental protection? Are there any proposals for legal reforms currently under review in the national legislature?

Thailand’s basic environmental protection law is the Enhancement and Conservation of National Environmental Quality Act (“NEQA”). It provides a framework for protecting the environment by apportioning environmental responsibilities among various government agencies, and establishing committees to deal with environmental issues. Among the requirements imposed under the NEQA are environmental impact assessments. It describes the powers and duties of administrative agencies and state officials in the realm of environmental protection and contains several provisions on water, noise and emission standards, quality of air, pollution control, fines and penalties.\(^{16}\) It is considered as the fundamental environmental law in Thailand.\(^{17}\) While a number of acts regulate the environment and health, like the Hazardous Substance Act in 1999,\(^{18}\) the NEQA was the first law to directly and generally address the environment.\(^{19}\)

Environmental regulatory provisions can also be found in several other laws:

- Navigation in Thai Waters Act, B.E. 2456 (1913)
- Thai Vessel Act, B.E. 2481 (1938)
- Forests Act, B.E. 2484 (1941)
- Fisheries Act, B.E. 2490 (1947)
- Act Controlling Advertising by Using Amplifiers, B.E. 2493 (1950)


\(^{18}\) A study by a Bangkok law firm showed that Thailand had ”‘no less than seventy environment-related laws,’ but none were essentially aimed towards environmental protection” until the NEQA. See Douglas L. Tookey, “Southeast Asian Environmentalism at its Crossroads: Learning Lessons from Thailand’s Eclectic Approach to Environmental Law and Policy”, 11 Geo. International Environmental Review, p. 313-14 [Winter 1999].

• Atomic Energy for Peace Act, B.E. 2504 (1961)
• National Parks Act, B.E. 2504 (1961)
• National Reserved Forests Act, B.E. 2507 (1964)
• Minerals Act, B.E. 2510 (1967)
• Industrial Product Standards Act B.E. 2511 (1968)
• Petroleum Act, B.E. 2514 (1971)
• Plant Varieties Act, B.E. 2518 (1975)
• Investment Promotion Act, B.E. 2520 (1977)
• Building Control Act, B.E. 2522 (1979)
• Industrial Estate Authority of Thailand Act, B.E. 2522 (1979)
• Land Transport Act, B.E. 2522 (1979)
• Road Traffic Act, B.E. 2522 (1979)
• Factory Act, B.E. 2535 (1992)
• Act on the Maintenance of the Cleanliness and Orderliness of the Country, B.E. 2535 (1992)
• Hazardous Substances Act, B.E. 2535 (1992)
• Highway Act, B.E. 2535 (1992)
• Energy Development and Promotion Act, B.E. 2535 (1992)
• Energy Conservation Promotion Act, B.E. 2535 (1992)
• Wildlife Conservation and Protection Act, B.E. 2535 (1992)
• Non-Smokers’ Health Protection Act, B.E. 2535 (1992)
• Public Health Act, B.E. 2535 (1992)
• Control of Animal Slaughter for the Distribution of Meat Act, B.E. 2559 (2016)
• Town Planning Act, B.E. 2562 (2019).20

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20 See Tilleke & Gibbins, Thailand Legal Basics, op. cit.
E. Is there any specific national policy addressing childhood exposure to toxic substances? If so, what is considered a safe level of exposure and what is the process for determining safe levels of exposure?

A national policy addressing childhood exposure to toxic substances could not be identified. However, this issue was raised by UNICEF in 2019 in a statement on the unhealthy level of air pollution and its impact on children.

F. Is the country equipped with pollutant release and transfer registers? If yes, do these registers take into account child specific factors regarding the substances for which data is gathered and the type of data generated?

Legislation to establish a pollutant release and transfer register (PRTR) has been considered in recent years, but Thailand has yet to adopt these laws.

G. Does the State assert extra-territorial jurisdiction for any environmental issues?

Section 7 of the Criminal Code allows for extra-territorial jurisdiction offences relating to the security of the Kingdom, to counterfeiting and alteration, and to robbery. The Criminal Code does not specifically assert extra-territorial jurisdiction for environmental issues.


II. ACCESSING COURTS
A. How can environmental cases be brought before national courts?

There is not a specialist environmental court or tribunal in Thailand, but it is possible to bring cases related to environmental rights through civil, criminal and administrative avenues.

There are four courts in Thailand: the Constitutional Court, the Administrative Court, the Court of Justice, and the Military Court. Both the Administrative Court and the Court of Justice have jurisdiction over environmental suits. While there is no standalone environmental court, over time, environmental divisions have been woven into each of these courts to facilitate the administration of environmental cases.\(^\text{24}\) There are environmental law divisions at the supreme, appellate and trial court level. \(^\text{25}\) Thailand’s first environmental court is set to open in 2022, and a draft “Environmental Procedure Act” was recently submitted to the government. \(^\text{26}\)

**Administrative Courts**

The Act on Establishment of Administrative Courts grants the Administrative Court jurisdiction to try cases against administrative agencies and State officials for neglect of their official duties or in relation to a wrongful act. The Administrative Court has jurisdiction over:

- The case involving a dispute in relation to an unlawful act by an administrative agency or State official;
- The case involving a dispute in relation to an administrative agency or State official neglecting official duties required by the law to be performed or performing such duties with unreasonable delay;
- The case involving a dispute in relation to a wrongful act or other liability of an administrative agency or State official;
- The case involving a dispute in relation to an administrative contract;

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24 Kiettikunwong, Narong, “The Green Bench: Can an environmental court protect natural resources in Thailand?”, Environment development and Sustainability, 2019, available at: https://link.springer.com/article/10.1007/s10668-017-0044-4. Thailand’s Constitutional Court has limited jurisdiction to review cases involving the constitutionality of Parliamentary acts, Royal decrees, and draft legislation, as well as the authority of constitutional mechanisms, the appointment and removal of public officials, and political party issues. See also Tilleke & Gibbins, Thailand Legal Basics, op. cit., p. 189 and the Report presented by the Administrative Court at the 11th Congress of IASAJ, 2013, op. cit.


• The case prescribed by law to be submitted to the Court by an administrative agency or State official for mandating a person to do a particular act or refraining therefrom; and
• The case involving a dispute in relation to the matters prescribed by the law to be under the jurisdiction of Administrative Courts.

Essentially, the Administrative Court oversees environmental disputes arising between administrative agencies or State officials and a private individual, or between administrative agencies or state officials themselves.\(^{27}\)

### The Court of Justice

The Court of Justice has jurisdiction over disputes not specifically within the jurisdiction of another court.\(^{28}\) Provided that the Administrative Court oversees disputes involving administrative agencies or state officials in some capacity, environmental disputes arising exclusively within the private sector fall to the Court of Justice. This jurisdiction traditionally covers civil cases involving a plaintiff’s request for damages resulting from environmental impact or damage to life, physical health, or other rights arising from pollution, or a plaintiff’s request that the defendant either act or refrain from acting in order to protect the environment.\(^{29}\) Where a case arguably falls within the jurisdiction of both courts, the Committee on the Determination of the Powers and Duties among Courts may resolve the conflict.\(^{30}\)

### Civil Complaints

The NEQA provides for civil and criminal liability. In Chapter 6 on civil liability, Section 96 provides a cause of action for “leakage or contamination caused by or originated from any point source of pollution” that results in death, bodily harm, or health injury to any person, or causes damage in any manner to the property of any private person or of the state. Section 97 provides a cause of action for unlawful acts or omissions resulting in “the destruction, loss or damage to natural resources owned by the State or belonging to the public domain.” Chapter 7 contains a number of penal provisions. Section 104 provides a cause of action against the owner of a point source of pollution who fails to observe the requirements of certain related provisions, and Section 101 criminalises the dissemination of false information about danger from any point source of pollution with the intention to “destroy its reputation or to undermine

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\(^{27}\) Section 9, Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). See also the Report presented by the Administrative Court at the 11th Congress of IASAJ, 2013, op. cit., p. 42.

\(^{28}\) Section 194 of the Constitution (2017): The Court of Justice shall “have the powers to try and adjudicate all cases except those specified, by the Constitution or the law, to be within the jurisdiction of other Courts.”


\(^{30}\) Act on the Determination of the Powers and Duties Among Courts, B.E. 2542 (1999), Section 10.
public trust [in] the lawful operation of its business or activity.”

Thailand’s Civil and Commercial Code outlines liability for “wrongful acts.” Section 420 provides that a person who “willfully or negligently” unlawfully injures the “life, body, health, liberty, property or any right of another person” commits a wrongful act. This provision may serve as a means of redress for victims of environmental pollution. Sections 1335-1337 and 1339-1355 concern the exercise of property rights, and these provisions have collectively served “as a basis for adjudicating local nuisance or unreasonable annoyance, such as odours or noise or vibration from neighbours or adjacent property.”

**Criminal Offences**

Finally, Thailand’s Criminal Code outlines offences causing public danger. For example, Section 228 provides that a person who, by any means, causes inundation or obstruction to a supply of water functioning as a public utility, where such act is likely to endanger another or that person’s property, may be subject to fine and imprisonment. Section 237 provides that a person who introduces a poisonous substance or any other substance likely to cause injury to health into a food or water source intended for public consumption may be subject to fine and imprisonment. Under Section 238, the punishment for either of these offences is more severe where the conduct causes death to another.

Under the Public health act, there could also be criminal liability for acts which endanger public health, such as acts causing infection for the community.

The Klity Creek litigation provides a useful example for understanding access to the courts (see Section I.A.).

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32 See Winai Ruangsri, Senior Research Justice, Supreme Court of Thai., 2011, op. cit.
33 Book II, Title VI, Criminal Code, B.E. 2499 (1956).
B. What rules of standing apply in environmental cases?

In the Administrative Court, Section 42 of the Act on Establishment provides that “[a]ny person who is aggrieved or injured or who may be inevitably aggrieved or injured in consequence of an act or omission by an administrative agency or a State official or who has a dispute in connection with an administrative contract or any other case falling within the jurisdiction of an Administrative Court under section 9” has standing to sue. A Recommendation on Administrative Procedure provides guidance for interpreting this section. Clause 3 instructs that standing under Section 42 be interpreted broadly, specifically directing courts to account for “community rights, traditional local community rights, rights of indigenous people, private organisations, associations, juristic persons, or interested groups.”

This guidance is in keeping with the NEQA, which extends standing to NGOs. Those registered with the Ministry of Natural Resources and Environment may serve as legal representatives to those affected by pollution damage caused by leakage of pollutants or contamination, with the ability to bring lawsuits and litigate claims on their behalf. To register with the Ministry, NGOs must have the status of juristic person under Thai or foreign law which are directly engaged in activities concerning environmental protection or conservation of natural resources without any objective to be involved in politics or to make profits from engagement in such activities.

The highest authority, Thailand’s Constitution, provides that “the people and the community” have the right to bring suit against a State agency to enforce the execution of duties intended for direct benefit to the people. Included among these State duties is the conservation and protection of natural resources, environment, and biodiversity, provided for in Section 57. Section 58 further mandates that the state take precautions to minimise the impact of actions that may “severely affect the natural resources, environmental quality, health, sanitation, quality of life or any other essential interests of the people or community or environment” and remedy any grievances by or damages to the affected people or community without delay.

The NEQA does not permit citizens to sue polluters directly and instead must seek redress against the relevant state agency or official instead. Citizens must wait for the relevant State agency or official to neglect its duties in this capacity and then sue under the Act on Establishment. The Clean Air Regulatory Bill, submitted to the House Speaker in September

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35 See the Report presented by the Administrative Court at the 11th Congress of IASAJ, 2013, op. cit., p. 49, 55.
37 See the Report presented by the Administrative Court at the 11th Congress of IASAJ, 2013, op. cit., p. 52 (explaining that, in Central Administrative Court Judgement No. 1763/2549, the Anti-Air Pollution and Environmental Protection Foundation, was a proper plaintiff, a “juristic person” working with public and private agencies to improve the quality of the environment).
38 Constitution of the Kingdom of Thailand, B.E. 2560 (2017), Section 51.
Accessing Courts

2020, would change the legal landscape by making access to clean air a basic right and permitting citizens to sue air polluters. It seeks to address the shortcomings of existing environmental laws and mechanisms and better facilitate the management of air pollution in Thailand. This change would provide more direct access to the courts, as litigants would no longer have to wait for a period of inaction from the relevant state agency or official when pursuing claims against air polluters.\(^{39}\)

In the Court of Justice, Title III of the Civil Procedure Code sets forth the general rules for standing. Section 55 provides that “[a]ny person, whose rights or duties under the civil law are involved in a dispute,” may submit his case to a civil court with territorial jurisdiction and competency over the matter. In practice, Thai courts narrowly interpret the injured party as one who has a present injury or injury in fact, which excludes indirectly injured parties.\(^ {40}\) Section 66 provides that, “[w]here a person alleges that he is the legal representative of a party or the representative of a juristic person, the Court may, when it thinks fit or upon the application by motion of any party concerned ... inquire into his power and, if satisfied that the said person has no power or that his power is defective, (...) dismiss the case or make any other judgement or order as it thinks fit in the interest of justice.” Thus, to the extent that an NGO serves as legal representative in a private sector suit before the Court of Justice—rather than in an Administrative Court suit against an agency or state official—application of the standing requirement appears less certain.

In April 2015, the Act Amending the Civil Procedure Code (No. 26), B.E. 2558 (2015) introduced class action proceedings into Thailand’s legal system.\(^ {41}\) This amendment permits cases involving a group of persons who have the same interests and rights related to tort, breach of contract, and other laws, including environmental law, to be commenced by a representative claimant, who must themselves be a member of the class.\(^ {42}\) The inability to pursue class action lawsuits was historically a significant financial disincentive for environmental protection litigation.\(^ {43}\) Section 222/3 provides for class actions in civil cases brought before the Court of Justice, and Section 222/8 extends the availability of the class action specifically to environmental suits. Section 222/1 of the amended Code defines a “class of persons” as “many persons” who have the same rights arising from the same facts and legal principle and share the unique characteristics of the class, even though the

39 See https://enlawfoundation.org/newweb/?p=4577 or https://www.bangkokpost.com/opinion/opinion/1991799/the-right-to-clean-air#:~:text=Making%20clean%20air%20a%20basic,never%20come%20from%20central%20government
40 See also Prachoom Chomchai, “Environmental Governance: A Thai Perspective”, Workshop on Mekong Reg’l Envtl. Governance, 2001, available at: http://pdf.wri.org/mekong_governance_mreg_chomchai.pdf: “In civil cases, however, only directly-injured parties or owners of property directly affected have the right to sue. Unfortunately, the civil code does not provide a leeway for unaffected communities or individuals to file a case in court.”
42 See https://www.lexology.com/library/detail.aspx?g=6a460151-3113-4240-ade6-f6dd3474d84a
43 Winai Ruangsri, Senior Research Justice, Supreme Court of Thai., 2011, op. cit., p. 7.
characteristics of the damage may differ.

The National Human Rights Commission can bring a case to the court on behalf of an injured person on the person’s request for the resolution of a human rights violation. This Commission or the Ombudsman can also submit petitions for a decision as to the constitutionality of any legal provision, or the constitutionality and legality of any rule, order or administrative act. Thailand has also ratified the Optional Protocol to the CRC on a communications procedure.44

C. Do these rules of standing differ when children are the complainants and if so in what way?

The Administrative Procedure Act, B.E. 2539 (1996) and a Rule issued by the General Assembly of Judges of the Supreme Administrative Court, B.E. 2543 (2000) provide additional guidance for filing administrative cases and directly address standing for minors. Section 22 of the Administrative Procedure Act provides that “a person empowered by a specific law to act in such matter although he or she has not yet become sui juris (of age or capable of acting independently) or whose capacity is limited under the Civil and Commercial Code” may participate in the administrative process.

Children through their representatives may also bring cases to the Constitutional Court to challenge provisions of any law, rule or regulation which are contrary to or inconsistent with the Constitution.45

Section 21 of the Civil and Commercial Code provides that, “[f]or the doing of a juristic act, a minor must obtain the consent of his legal representative.” For purposes of this provision, a person under the age of 20 is a minor and a person becomes sui juris under Thai law at the age of 20.46 Clause 27 of the General Assembly Rule provides that “where a minor who is not below fifteen years of age wishes to file an administrative case on his or her own motion, the Court may, if it thinks fit, permit the minor” to do so. In this case, the Court shall notify the minor’s legal representative and the Court may issue an order instructing that representative to provide statements of fact to the Court to supplement its consideration.

Sections 55 and 56 of the Civil Procedure Code provides a general rule for standing: “[a] claim may be submitted to a Court or any other proceeding may be carried out by or on behalf of an incapacitated person only in accordance with the provisions of the Civil and Commercial Code governing capacity and of this Code.”47 Section 149 defines a “juristic act” as a voluntary,

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45 Ibid.
46 Book I, Title II, Section 19, Civil and Commercial Code, B.E. 2468 (1925).
47 “Incapacity” may arise from a person’s minority. See Book II, Title V, Section 429, Civil and Commercial Code, B.E. 2468 (1925).
lawful act, “the immediate purpose of which is to establish between persons relations, [or] to create, modify, transfer, preserve or extinguish rights.” Thus, consent is likely required to bring suit or enforce a judgment under the Civil Procedure Code.

Children through their representatives may also file criminal lawsuits to challenge violations of children’s rights. Under the Criminal Procedure Code, victims as well as the public prosecutor are entitled to institute criminal proceedings in court. Children and their representatives can also petition the National Human Rights Commission or Ombudsman in writing.⁴⁸

**D. What is the burden and standard of proof for allegations of personal injury as a result of toxic exposure?**

The burden of proof in civil cases is by a preponderance of the evidence. On the date of the settlement of the issues, the court will assign the burden of proof on each of the disputed issues to one of the parties based on the issues raised in the complaint and the answer. In a criminal proceeding, the prosecuting body must prove the allegations beyond a reasonable doubt.⁴⁹

According to the Environmental Division of the Supreme Court, the adversarial nature of judicial proceedings, as opposed to inquisitorial proceedings, puts environmental litigation at a disadvantage, considering that most environmental cases involve a question of causation. Ultimately, the duty to present evidence rests on the plaintiff, which can be difficult in pollution cases. However, in a recent decision, the Supreme Court relaxed the plaintiff’s standard of proof on a water pollution claim, resolving that a “high probability” was sufficient to establish causation; causation need not be “a perfect scientific certainty” as to how the damage resulted. The Court then shifted the burden of proof to the defendant and found that it had failed to prove by a preponderance of the evidence that the water released from its factory sewage and discharged into public sewage was not contaminated by the chemical harmful to the plaintiff’s fish farm. As a result, the defendant was liable for its “wrongful act.” This decision is cited as one example of how, in recent years, the courts have interpreted legislation in a way that promotes environmental protection.⁵⁰

The Hazardous Substance Act provides that “the seller or the person who delivers hazardous substance to any other person shall be liable to all damages of that person caused by such hazardous substance, except where he can prove that such damage [was] caused by force majeure or by fault of the injured person.”⁵¹

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⁴⁹ Tilleke&Gibbins, Thailand Legal Basics, October 2019, op. cit., at 170.
⁵⁰ Winai Ruangsri, Senior Research Justice, Supreme Court of Thai., 2011, op. cit., at 7-9 (referencing Supreme Court Decision No. 3621/2551).
E. What limitation periods apply in environmental cases?

The applicable limitation period depends on the type of case filed.

**Administrative law**

The Act on Establishment of Administrative Courts provides the prescription period for cases before the Administrative Court. An administrative case must generally be filed within 90 days from the date the cause of action is known or should have been known, or within 90 days from the date on which the plaintiff made a written request to the administrative agency or a state official requesting the performance of its duties under the law and since that time has not received a written explanation or the plaintiff considers such explanation unreasonable.  

Where the dispute to wrongful acts or liability of an administrative agency or State official under Section 9(3) of the Establishment Act, the suit shall be filed within 1 year from the date the cause of action is known or should have been known, but no later than 10 years from the date of occurrence. Where the dispute relates to an administrative contract, under Section 9(4), the suit shall be filed within 5 years from the date the cause of action is known or should have been known, but no later than 10 years from the date of occurrence. Significantly, where the dispute filed in the Administrative Court concerns the protection of the public interest or the status of an individual person, the suit may be filed at any time. The underlying rationale here is that environmental suits are not always tethered to the harm brought upon the filing individual; they may also concern affected communities more generally.

For suits falling within the jurisdiction of the Court of Justice, the Civil and Commercial Code and the Criminal Code provide prescription periods:

**Civil causes of action**

The default prescription period—where no other period is provided by law—is 10 years. The Civil and Commercial Code provisions on the exercise of property rights do not provide their own prescription periods. Nonetheless, other regulations creating civil causes of action do. For example, under the Hazardous Substance Act, the right to compensation for damage caused by a hazardous substance shall end upon the lapse of 3 years as from the date the damage, the state of being a hazardous substance, and the person liable for the

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53 Ibid.

54 Book I, Title VI, Section 193/30 Civil and Commercial Code, B.E. 2468 (1925).
compensation became known to the injured person.\textsuperscript{55} Where the suit arises under Section 420 of the Civil and Commercial Code for a “wrongful act,” Section 448 provides a prescription period of 1 year from the date when the wrongful act and the person bound to make compensation for that act became known to the injured person, or 10 years from the date when the wrongful act was committed.

**Criminal causes of action**

Prescription periods in the Criminal Code are determined by the amount of time for which the offender may be imprisoned.\textsuperscript{56} The prescription periods for the Criminal Code’s relevant provisions are as follow:

- Section 228 provides for a period of imprisonment of no more than 5 years, which means that the prescription period is 10 years. Note that where the offence does result in danger to another person or that person’s property, the period of potential imprisonment may increase to 7 years, for which the prescription period is also 10 years.
- Section 237 provides for a period of imprisonment of up to 10 years, which means that the prescription period is 15 years.
- Pursuant to Section 238, the period of imprisonment for the offences in Sections 228 and 237 are more severe where the conduct causes grievous bodily harm or death. Where the conduct causes death, the offending party may be imprisoned for life, which makes the period of prescription 20 years. Where the conduct causes grievous bodily injury, the period of imprisonment may be for up to 10 years, which makes the prescription period 15 years.
- Pursuant to Section 239, the period of imprisonment for the offences in Sections 228 and 237 are less severe where the imminent threat posed to another’s life results from the offending party’s negligence. The period of imprisonment shall be no more than 1 year, making the period of prescription 5 years.

\textsuperscript{55} Section 67, Hazardous Substance Act, B.E. 2535 (1992).

\textsuperscript{56} Book I, Title I, Section 95, Criminal Code, B.E. 2499 (1956).
F. Is legal aid available in environmental cases? If so, under what circumstances?

Section 68 of the Constitution provides that: “The State should provide necessary and appropriate legal aid to indigent persons or underprivileged persons to access justice process, including providing a lawyer thereto.” However, there are no specific requirements to qualify for legal aid in civil or administrative cases, and authorised agencies assign aid at their discretion. Under certain circumstances, a person seeking legal aid could be required to meet a financial threshold of U.S. $430/month, though there is no such threshold for advice unrelated to prosecution.57

The NEQA established the Environmental Fund to acquire and channel financial sources from the Government, international organisations and other funding sources for the protection and improvement of the environment. The Environmental Fund Committee allocates and distributes funds. The initial capital endowment was U.S. $19.231 million, later boosted to $192.31 million by $173.08 million transferred from the Oil Fund to facilitate environmental regulation. Funds generally come from the Oil Fund and the Revolving Fund for Environmental Development and Quality of Life, from penalties collected, or from periodic governmental grants.58

Section 8(5) of the NEQA permits NGOs registered with the Ministry of Science, Technology, and Environment pursuant to Section 7 to provide “legal aid to people who are in jeopardy or afflicted by pollution damage caused by leakage of pollutants or contamination.” NGOs registered as environmental or natural resource conservation organisations may qualify for a grant from the Fund.59 Section 23(4) of the NEQA provides for fund disbursements as “aids or grants to support any activity concerning the promotion and conservation of environmental quality as the Fund Committee sees fit and with the approval of the National Environmental Board.” In 2001, the Attorney-General’s Office recommended a regulation making money from the Environmental Fund directly available to low-income plaintiffs in pursuing legal complaints against polluters, though it does not appear that this regulation was actually enacted.60

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58 Krisana Choeypun, Office of Environmental policy and planning, Thailand Environmental Fund, available at: https://www.cbd.int/financial/trustfunds/Thailand-ef.pdf
59 Ibid.
60 Prachoom Chomchai, “Environmental Governance: A Thai Perspective”, Workshop on Mekong Reg’l Envtl. Governance, 2001, op. cit. See also “Proper enforcement lacking, not the law involvement of too many agencies cited”, Bangkok Post, 2001 and “Surachai Tongngam, the public lawyer and the path to fight environmental cases”, ThaiPublica, 2013, available at: https://thaipublica.org/2013/07/enlaw-surachai-thongngarm (acknowledging that legal aid from the organisation or the lawyer is insufficient and criticising that there is currently no support from the state).
The proposed Clean Air Regulatory Bill established a “Clean Air Fund” to cover expenditures to file court cases, among other things.\textsuperscript{61}

Free legal assistance in Thailand often comes from private non-profit groups and NGOs, such as the Lawyers’ Council of Thailand or the Women Lawyers’ Association of Thailand.\textsuperscript{62}

\textsuperscript{61} See “The right to clean air”, Bangkok Post, Sept. 2020, https://www.bangkokpost.com/opinion/opinion/1991799/the-right-to-clean-air#:~:text=Making%20clean%20air%20a%20basic,never%20come%20from%20central%20government

III. REMEDIES
A. What remedies are courts empowered to impose in environmental cases?

The Constitution explicitly addresses environmental rights. Section 58 provides that any project or activity which may severely affect the quality of the environment, natural resources and biological diversity shall not be permitted, unless its impact on the quality of the environment and on the health of the people in the communities have been studied and evaluated. Section 58 also mandates consultation with the public and interested parties prior to permitting the operation of such a project or activity, all of whom have the right to receive information, explanation and reasons from a state agency. It goes on to guarantee that the State shall undertake to remedy the grievance or damage for the affected people or community in a fair manner without delay.

Depending on the legislation that governs the complaint in question, civil and/or criminal liabilities may be imposed. For example, both civil and criminal liabilities may arise for breach of environmental laws under the Enhancement and Conservation of National Environment Quality Act. Under Sections 96 and 97 of the NEQA, if leakage or contamination originating from a polluting source is the cause of death, bodily harm, property damage or destruction, loss or damage to natural resources, the owner or possessor of the polluting source is liable to pay compensation or damages.

This is known as the “polluter pays” principle. Such compensation or damages include actual costs for government officials to remedy the harm. Criminal liabilities are found in Sections 98-111 of the NEQA and may include fines and/or imprisonment.

Recent legislation that has been implemented in Thailand to update existing environmental laws have increased existing penalties for certain violations and introduced new penalties. For example, the National Park Act, B.E. 2562 (2019) prohibits holding, building on, clearing, burning, degrading, or changing land in a protected area. Such an offence is now punishable by imprisonment of a term between 4 to 20 years, a fine between THB 400,000 to THB 2 million or both.

Under the Public health act, acts which endanger public health, such as acts causing infection for the community may be subject to fines and/or imprisonment.

In class action, the court has power to grant the usual remedies sought in civil proceedings.

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63 Get serious on environment, Bangkok Post (June 5, 2020), https://www.bangkokpost.com/opinion/opinion/1929688/get-serious-on-environment
64 See https://www.lexology.com/library/detail.aspx?g=053590cc-e44e-4f02-b3e0-84d681f485c5
such as damages, specific performance and injunctions.\textsuperscript{66}

\textbf{B. What remedies have courts ordered in environmental cases to date?}

English translations of environmental court judgements could not be located on official online databases.

A Supreme Court Opinion Summary of Public Prosecutor of Prachuab Kirikhan vs. Mr. Sumrit Chanthamanee (2007), provides an example of what the Supreme Court ordered for an violation of Section 77 of the Building Control Act, B.E. 2522 (1979) (“BCA”), which includes environmental concerns. Section 77(1) of the BCA states that once the Royal Decree requires that improvement be made to buildings in an area unsafe for residence, situated on public land and built prior to this Act taking effect, the building owner must make a contract for rental of land with the local officer according to the rules, the methods, conditions, and rental rate as required by the Ministry of Interior. The land rental contract must require a rental period as agreed but not to exceed 10 years. Extension of rental time is not permitted once the land rental period expires. The owner or possessor of the building who does not dismantle his building or construction from the specified area based on the Royal Decree may be imprisoned for a term not exceeding 3 years or receive a fine not exceeding THB 30,000 or both, and punished by a fine of THB 1,000 per day during the entire period of violation or until the person allows the local officer to dismantle the building. In such an instance, the local officer shall have the power to order the owner or possessor of the building to demolish the building. The Royal Decree applies to numerous buildings with a condition or potential inappropriate condition, or condition unsafe for residence, lacking fire safety safeguards, public health safeguards, environmental quality control, a city plan, and efficient traffic control. In this case, the 10-year rental period had expired and the defendant had not dismantled the building or his own construction from the area in question. The Supreme Court confirmed that the defendant had committed a wrongful act according to Section 77(4) of the BCA and held that the local officer did not need to notify the defendant of the order to dismantle the building beforehand, as the defendant so claimed in his Supreme Court appeal.\textsuperscript{67}

In the Klity Creek case (see Section I.A.), the Administrative Court agreed, holding that the Pollution Control Department had a responsibility to remedy the pollution by ordering the polluting company to rehabilitate Klity Creek. Notably, for the first time in Thailand’s history, the Court ordered the government to clean up a toxic site. Despite these claims of a “historic


\textbf{Remedies}
judgment," “few of the rights won in cases like Klity Creek have had immediate benefits or resulted in immediate policy change.”

In the civil suit, the Karen people directly sued the company that operated the factory and a nearby lead mine, Lead Concentrate (Thailand) Co. Ltd. This suit was brought under Section 420 of the Civil and Commercial Code, alleging a “wrongful act,” through which the Karen people sought compensation for injuries, future medical costs, and other related expenses. These plaintiffs collectively received 36 million baht, about $8,000 per plaintiff. The Karen people initially filed this suit in 2003 and rejected a modest judgment in their favour in 2006. The appellate process did not conclude until 2016, highlighting some of the impediments to pursuing claims of this nature.

C. Are there any administrative authorities empowered to act on environmental complaints and if so, how are they empowered to respond to complaints?

The Thailand’s National Environmental Board (“NEB”) supervises the environmental policy of Thailand and has various powers and duties in governing related authorities. For example, under Section 19 of the Enhancement and Conservation of National Environment Quality Act, the NEB has the power to require government agencies, state enterprises and other persons to deliver documents or data concerning the projects or work-plans of such persons. For this purpose, the NEB may summon any involved person to give further explanation. If the NEB is of the opinion that any project or work-plan may seriously affect environmental quality, it shall recommend remedial measures to the Cabinet.

The requirement under the NEQA for environmental impact assessment (“EIA”) reports to be prepared in certain cases provides an example of the powers vested in Ministries and State agencies, namely the Ministry of Natural Resources and the Environment (“MONRE”), and the Office of Natural Resources and Environmental Policy Planning (“ONEP”).

The MONRE is the government department that is responsible for the protection of the environment. The powers and duties given to MONRE under Section 22 of the Reorganisation of Ministry, Sub-ministry, and Department Act, B.E. 2545 (2002). “AMSD”) are concerned with the following: forestry; the preservation, conservation and rehabilitation of natural resources and environment; management and sustainable use of resources; and implementation of other government services, according to the law that prescribes the powers and duties of MONRE and other government agencies affiliated with it.


70 See the official website of MONRE, available at: http://www.mnre.go.th/en/about/content/1066
Under Section 23 of the AMSD, government agencies affiliated with the MONRE include the National Park, Wildlife and Plant Conservation Department, the Royal Forest Department, the Department of Environmental Quality Promotion and the Pollution Control Department.

Under Section 6(3), the NEQA stipulates the right of any individual to file a petition or lodge a complaint to government officials against any party for any act committed in violation of the laws relating to pollution control or conservation of natural resources. As a result, the MONRE operates a Public Service Center with several channels for receiving complaints from the public.71

There is also a National Committee on Climate Change Policy chaired by the Prime Minister which has the mandate to define national climate policies. In addition, there are many Government agencies at different levels (community, local and regional). According to the Factories Act, Government officials of the Ministry of Industry can enforce and suspend permits and operation of factories, where a breach occurs, including breaches in environmental permits.72

Further, the Office of the Ombudsman deals with environmental complaints.73 On its website, it includes various news items describing its efforts to resolve environmental issues, from issues of pollution to wastewater causing the deterioration of lakes. The Office of the Ombudsman holds meetings with relevant agencies and interested parties to reach a solution and later to follow-up on the progress of resolving the issue. For example, in July 2020 the Ombudsman visited Udon Thani Province to follow up on the progress of solving the problem of two rubber factories causing pollution.74 The Ombudsman held a meeting with Udon Thani Provincial Industry Office, the Pollution Control Department, the Rubber Authority of Thailand and representatives of the two rubber factories. The meeting resulted in the Chief Ombudsman requesting Udon Thani to campaign and educate rubber farmers for using formic acid instead of sulfuric acid.

71 See the MONRE complaints portal at: http://petition.mnre.go.th/MNRE_PETITION_59/
IV. CIVIL AND POLITICAL RIGHTS
Freedom of peaceful assembly

A. How is children’s right to engage in peaceful assembly, including protests, protected in national law?

Section 44 of the Constitution of the Kingdom of Thailand provides that “a person shall enjoy the liberty to assemble peacefully and without arms.” Section 44 goes on to provide that this right shall not be abrogated “except by virtue of a provision of law enacted for the purpose of maintaining security of the State, public safety, public order or good morals, or for protecting the rights or liberties of other persons.”

The 2015 Public Assembly Act, B.E. 2558 (2015) is the primary legislation governing assemblies in Thailand. The Public Assembly Act was enacted during military rule in 2015, and human rights and civil society organisations have raised concerns about its operation.

The Public Assembly Act requires that protest organisers provide authorities 24 hours’ notice prior to planned assemblies and provide various information about the planned assembly, including its objective, date, time, and place. Failure to comply with the notification requirement renders the gathering an “unlawful public assembly,” and the authorities can demand its cancellation within a specified period of time. The Act prohibits assemblies within specified distances of certain places (e.g., Parliament, Government House, royal residences and other public buildings), and duties on protest organisers and participants, including that they not impose “unreasonable inconvenience” on others. It also imposes an obligation on protesters to comply with the orders of an official “surveillance officer” under the law. In practice, Thai authorities have often exercised powers granted by the Public Assembly Act or other laws to prohibit, or place restrictions on, assemblies. Although the Act requires notification of a protest and not permission, in practice, authorities at times have denied permission to hold events. Penalties for violating these obligations under the Act range from fines of up to 10,000 baht (US$328) to six months’ imprisonment, with more severe offences (including disrupting telecommunications systems or public transportation) carrying penalties of up to ten years imprisonment.

77 Public Assembly Act, B.E. 2558 (2015), Section 10.
78 Id. § 14.
80 Public Assembly Act, B.E. 2558 (2015), Section 27.
Although the Public Assembly Act expressly provides that it does not apply to assemblies within education institutions, it does not contain any specific provisions relating to the right of children to engage in assemblies or protests.

Children’s right to peaceful assembly is enshrined in the Convention on the Rights of the Child (CRC). Although Thailand ratified the CRC in 1992, specific protections in the national laws of Thailand of the rights of children to engage in peaceful assembly could not be located.

B. Are there any legal limitations on the right of children to engage in peaceful assemblies?

As noted above, the Public Assembly Act appears to apply generally to Thai citizens, irrespective of age. It was not possible to locate any judicial interpretation of the Public Assembly Act to confirm whether children would be exempted from its provisions or any applicable limitations on the right of children to engage in peaceful assemblies.

In 2020, UNICEF, raised concerns about the potential harm that children may be facing amidst the ongoing protests in Thailand and called on all parties to uphold children and young people’s right to freedom of expression, and to protect them from all forms of violence and intimidation. During the youth democracy manifestations of 2020, for example, children protested over the content of lessons, schools’ strict rules on uniforms and haircuts, and an authoritarian pedagogical culture.

Thailand has one of the strictest lèse-majesté provisions in the world. Section 112 of Thailand’s Criminal Code states, ‘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’. There is no definition of what constitutes an insult to the monarchy, which gives the authorities discretion in interpreting the law very broadly. In 2020, as the youth-led, pro-democracy movement gained momentum, protesters started to question the monarchy and the Thai police opened investigations under Section 112. Between 24 November 2020 and 31 August 2021, 124 individuals were charged under the lèse-majesté provision, including at least eight children under the age of 18.

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81 Convention on the Rights of the Child, Article 15.
83 Financial Times, Why ‘Bad Students’ give bad marks to Thailand’s schools, 11 June 2021. Available at:https://www.ft.com/content/f9c33f1e-ad07-4b10-9291-b1bce3331e94
85 See https://www.bbc.co.uk/news/world-asia-29628191
86 See https://www.article19.org/resources/thailand-lese-majeste/
C. What penalties can be imposed on children for engaging in school strikes?

Some children and youth were actively engaged in climate strikes in Thailand.\(^88\) Pursuant to Article 3 of the Public Assembly Act, enforcement of the Act is exempted within educational establishments and academic assemblies, meetings or seminars of educational institutions or agencies with academic purposes. Accordingly, it is not clear whether the penalty regime contained in the Public Assembly Act would apply to school strikes. As noted above, penalties for breaches of the Public Assembly Act range from fines to imprisonment for more serious offences.

**Freedom of expression**

A. How is children’s right to freedom of expression protected in national law? Are there any protections within the national constitution, legislation or developed through case law?

The rights to freedom of expression and peaceful assembly are enshrined in the Constitution of Thailand as well as international human rights treaties to which Thailand is a party, including the International Covenant on Civil and Political Rights and the CRC.

Section 34 of the Constitution of the Kingdom of Thailand provides that “a person shall enjoy the liberty to express opinions, speech, writing, printing, publication, and expressions by other means.” Section 34 goes on to provide that any restrictions on the liberty under this section “shall not be imposed except by virtue of law specifically enacted for the purpose of maintaining the security and safety of the State, protecting the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing or halting the deterioration of the mind or health of the public.”

Notwithstanding these protections in the Constitution, international observers have been critical of the Thai government’s record in protecting free speech, accusing the nominally civilian government, elected in March 2019, of retaining both the authority and the will to continue to carry out arbitrary arrests and politically motivated prosecutions against people deemed to be a threat to the government because of their public statements or other peaceful criticism of those in power.\(^89\)

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88 See https://www.bangkokpost.com/thailand/general/1754589/young-climate-strikers-drop-dead-at-environment-ministry

The Child Protection Act encourages children to participate in activities which can enhance his or her mental, ethical development and volunteering for the society.  

**B. Are there any legal limits or restrictions on the right to freedom of expression that specifically apply to children?**

It was not possible to locate further applicable laws or any judicial interpretation of the right to free expression contained in Section 45 of the Thailand Constitution to confirm whether there are any legal limits or restrictions on the right to freedom of expression that specifically apply to children.

In its most recent Concluding Observations regarding Thailand in 2012, the Committee on the Rights of the Child recommended to reinforce the right to participation of children: “In light of article 12 of the Convention and the Committee’s general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party strengthen its efforts to ensure the active participation and involvement of all children up to the age of 18 years in decisions that affect them in the family, school and community. It also recommends that the State party undertake a regular review of the extent to which children’s views are taken into consideration and of their impact on policy-making, court decisions, and programme implementation. Furthermore, the Committee recommends that the State party adopt measures to increase support to the Child and Youth Councils.”

**Freedom of association**

**A. How is children’s right to freedom of association protected in national law? Are there any protections within the national constitution, legislation or developed through case law?**

Article 22 of the International Covenant on Civil and Political Rights, to which Thailand is a party, guarantees freedom of association. Freedom of association is also protected under Section 44 of the Constitution of the Kingdom of Thailand, which provides that “a person shall enjoy the liberty to assemble peacefully and without arms.” The right of association is further enshrined in the following Sections of the Constitution:

- Section 42, which provides that a person shall enjoy the liberty to unite and form an association, co-operative, union, organisation, community, or any other group; and
- Section 45, which provides that a person shall enjoy the liberty to unite and form a political party under the democratic regime of government with the King as Head of State, as provided by law.

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90 Child Protection Act 2003, Section 44.
As noted above in the context of the rights to assembly and freedom of expression in the Constitution, the rights to assembly in the Constitution are expressly subject to restriction in certain prescribed circumstances, including in the case of the rights provided by Section 63, by virtue of law specifically enacted for the purpose of public assembling and for securing public convenience in the use of public places or for the maintenance of public order during the time when the country is in a state of war, or when a state of emergency or martial law is declared.

Although not specifically applicable to children, the following pieces of national legislation have also been identified as commonly being used to regulate the registration, governance and operation of formal associations, including foundations, associations and trade unions:

- The Civil and Commercial Code and relevant ministerial regulations under the Ministry of Interior (MOI) and the Ministry of Labour (MOL);
- The Labour Relations Act, B.E. 2518 (1975) and relevant ministerial regulations; and
- The State Enterprise Labour Relations Act, B.E. 2543 (2000) and relevant ministerial regulations.

Observers have commented that these national laws contain several legal provisions that are problematic or pose challenges to the formation and operation of civil society groups. The selective and discriminatory enforcement of these laws increase procedural, financial and public perception challenges to the operations of civil society.92

Although these national laws provide critical protection measures, observers have commented that they are limited and rarely enforced or interpreted in the interest of civil society. Thailand is rated as “repressed” on the CIVICUS Monitor, a research tool that provides quantitative and qualitative data on the state of civic freedoms in 196 countries.

Aside from the aforementioned laws which apply to Thai citizens generally, we have not found any other laws of Thailand which specifically provide for the children’s right to freedom of association.


Civil and Political Rights
B. Are there any legal limits or restrictions on the right to association that specifically apply to children?

It was not possible to find any judicial interpretation of the rights to association contained in the Thailand Constitution or the other above-mentioned laws to confirm whether there are any legal limits or restrictions on the right to association that specifically apply to children.

Access to information

A. How is children’s right to access information protected in national law? Are there any protections within the national constitution, legislation or developed through case law?

According to Section 58 of the Constitution, a person and/or community shall have the rights to receive information, an explanation and reasons from a State agency prior to the implementation or granting permission which has an impact on the environment. See https://iclg.com/practice-areas/environment-and-climate-change-laws-and-regulations/thailand#:~:text=Environmental%20regulations%20are%20issued%20under,1992%2C%20the%20Hazardous%20Substance%20Act

Based on research using publicly available sources in the English, no specific provisions or case law pertaining to children’s right to access information were found. However, there are some general provisions relating to access to information within the Constitution of the Kingdom of Thailand. In particular:

- Section 41(1) states that a person and a community shall have the right to be informed and have access to public data or information in possession of a State agency as provided by law; and

- Section 59 states that the State shall disclose any public data or information in the possession of a State agency, which is not related to the security of the State or government confidentiality as provided by law, and shall ensure that the public can conveniently access such data or information.

In addition, the Official Information Act, B.E. 2540 ("OIA"), which came into effect in 1997, provides a statutory framework for information access in Thailand. The OIA requires state agencies to publish or make available various types of information and allows citizens to demand official information that is not published or publicly available. It further stipulates that the state agency must respond within a “reasonable time” to such information requests by citizens, who have the right to appeal to the Information Disclosure Tribunal should their request be rejected. Finally, the Official Information Board has the competence to issue recommendations and opinions on the implementation of the OIA, receives complaints on
failure to publish information, and submits reports. With respect to environmental information, Section 6 of the Enhancement and Conservation of National Environmental Quality Act of Thailand stipulates that individuals have the right to obtain information and data “concerning the enhancement and conservation of environmental quality,” except where the information is classified. The Information Commission Decree on Environmental and Health Information Required to prepare for public accessing requires all relevant bodies to make environmental information available to the public.  

B. Are there any legal limits or restrictions on the right to access information that apply specifically to children?

There appear to be no restrictions specifically applicable to children in terms of accessing information. However, Thailand has routinely blocked certain websites to regulate online content. For example, the government recently ordered all internet service providers and mobile carriers to block access to online gambling websites, which are easy for children and youth to reach through advertisements made specifically to target them.

The number of children online is particularly high, especially on social networks. Several projects are currently implemented to protect children and the government created an Internet Crimes against Children unit.

C. Does the national curriculum for schools include environmental education?

In Thailand, environmental education is not a stand-alone subject in the national curriculum but delivered as part of the science curriculum. For instance, one of the eight learning areas covered by the science curriculum is “Life and the Environment” which aims to foster and develop the following among students:

- Understanding of the local environment, the relationship between the environment and living things, and the relationship among living things in the ecosystem; learning the investigative process for acquiring knowledge; developing scientific reasoning; and communicating acquired knowledge that might have useful applications; and
- Appreciation of the importance of natural resources; understanding of the utilisation of natural resources at the local, national, and global levels; and application of scientific

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94 See https://www.article19.org/resources/the-right-to-information-in-thailand#edn4
95 See https://www.thailand-business-news.com/national/80981-thailand-blocks-online-gambling-websites.html
97 The Basic Education Core Curriculum, B.E. 2551 (2008), is available at http://www.act.ac.th/document/1741.pdf. The curriculum is currently in the process of being updated, which is to be completed by 2022.
knowledge to the management of natural resources and local environments on a sustainable basis.

Other strands of the science curriculum also touch upon environmental aspects – for example, the learning standards for “Astronomy and Space” include “communicating acquired knowledge [with respect to astronomy and space] that might be applied ethically in real life and to environmental protection, in particular.”

In 2019, teachers from some of Bangkok’s international schools have created a group to connect children with grassroots groups and green businesses to tackle environmental issues. Related initiatives were also spearheaded by students.⁹⁸

⁹⁸ See https://www.bangkokpost.com/thailand/general/1618546/uniting-to-inspire-child-led-environmental-change
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