



มูลนิธิศูนย์ทนายความมุสลิม
MUSLIM ATTORNEY CENTRE FOUNDATION

Translation

Open Letter No.2

12 March 2012

Subject: Review of area in the Southern Border Provinces imposed with Emergency Decree on States of Emergency

Her Excellency the Prime Minister

- CC: 1. House Speaker
2. President of the Senate
3. General Secretary of National Security Council (NSC)

- Encls:** 1. Open letter dated 14 September 2011
2. “Scars on the Moon” book
3. “The Judgments” in Emergency situation book

In pursuant to the 26th renewal of the imposition of Emergency Decree in the three Southern Border Provinces (SBPs) including the provinces of Pattani, Yala and Narathiwat, for another three months approved by the cabinet covering the period of 20 December 2011 – 19 March 2012 citing the reason that unrest in the designated area has continued unabated and local people and state officials continue to be targets of attacks and ambushes by the insurgents. In over the past seven years, 26 extensions of the imposition of states of emergency invoking the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) in the SBPs have been endorsed. Under states of emergency, restrictions have been placed on the rights and liberties of people and a number of people have become victims of torture, enforced disappearance, and extrajudicial killings committed by the state officials or committed at acquiescence of the competent officials as per the Emergency Decree. The government has also failed to provide for concrete solutions to the unrest and failed to state as to when the states of emergency can be completely lifted. On the contrary, it is very likely that the states of emergency shall be extended for the 27th time.

The Cross-Cultural Foundation (CrCF) and the Foundation of Muslim Attorney Centre (MAC) would like to urge the government to review the extension of the imposition of the Emergency Decree in the SBPs with the following reasons and recommendations;

1. On one hand, the enforcement of states of emergency in the SBPs has become a legal tool used to suppress unrest in the area. On the other hand, the invoking of the Emergency Decree has compromised the roles of normal justice process as well as safeguards of people’s rights and liberties. The judiciary is supposed to provide for checks and balances with the administrative and legislative powers. And though the arrest and detention of suspects related to security cases can be done with court warrants, but according to the Emergency Decree, officials can arrest and hold in custody any suspects as long as 30 days without having to press charges and the detention can be extended every seven days. The officials are not required to bring the persons held in custody to appear in court and during the interrogation; the officials can refuse to let the lawyers be present.

Also, the agencies tasked to make the arrest, detention and interrogation of the suspects are not the Department of Corrections. It has given rise to problems of torture of suspects or the commission of other cruel treatment to force them to confess to charges. Thailand has signed the UN Convention against Torture and International Covenant on Civil and Political Rights (ICCPR), and the state should not commit torture themselves. Instead, they are supposed to protect individuals from being subjected to torture or from being vulnerable to torture act. Though security agencies including Internal Security Commands (ISOC) has changed its internal regulation in compliance with Section 11 regarding the facilities for holding a person in

custody as per the Emergency Decree to enhance the treatment during detention, but in reality, certain persons held in custody have still been tortured to make confession. And some of them died during the official custody, otherwise, some have been held in custody not in compliance with the intent of the domestic law and in breach of international standards including the ICCPR and CAT. Noted cases reported by the press include the alleged torture of Mr. Nisae Niha and Mr.Zulkipli Zika and the death during official custody of Mr. Sulaiman Naesae.

MAC has also received complaints from people affected by the enforcement of special law during January-February 2012 and they are involved with at least seven torture cases during detention. In addition, the Emergency Decree's provision prevents people affected by the exercise of administrative power to seek judicial review from the Administrative Court to challenge any orders, directives, notifications or any acts which may constitute an abuse of power and may have led to human rights abuse.

2. Regarding the arrest and detention invoking the Emergency Decree, according to information from the Office of the Chief Judge of Region IX concerning the number of security cases in the SBPs *in 2011, 214 cases have been tried and decided, of this number, 168 cases were dismissed or 78.50% and 40 cases were found guilty and convicted or 18.69% of all cases.* Based on the experience of lawyers and attorneys working on security cases in the area, the major reason contributing to the massive dismissal of cases is irregularities of the evidence. For example, the implicating evidence submitted to the Court has been derived from interrogation invoking the Emergency Decree including implicative statements or confessions made during the time the persons cannot be treated as a alleged offender as per the Criminal Procedure Code and the evidence can be at best treated as hearsay and carry no weight in the conviction of a person. It reflects ineffective enforcement of the law and a lack of compliance with the enforcement of the Emergency Decree to change the attitude of a person, instead of to compile any implicative evidence.

3. The Emergency Decree is derived exclusively from administrative power, not through normal legislative channel. Though endorsement from the Parliament has been obtained afterwards, but there have been no genuine efforts to study the impact and critique the use of the law with participation from public. This also makes it distinctive from laws passed by the Legislative. The law provides for the imposition of states of emergency in certain areas and the renewal of the imposition being subjected to the discretion of the Prime Minister and with endorsement of the cabinet.

No provisions are made to provide for review of the decision to renew the imposition of states of emergency. Any laws that bestow extra power on officials should be subjected to careful usage and only applied necessary to circumstances and proportionate to the situations. Review of the enforcement of the law should be made available to ensure effective implementation in terms of solving the problems. Therefore, the House of Legislative elected by the people should be part of the effort to review the reasons and the needs for imposing the states of emergency and their every renewal. Open debates in the Parliament concerning the justification to extend its usage would ensure participation of the enforcement of the law and public and academic sector should be encouraged to be part of the review effort, too.

4. Since 2011 until early 2012, Thailand has complied with its at least her two international obligations including the submission of the human rights situation report under the Universal Periodic Review (UPR) under the UN Human Rights Council whereby member countries have made recommendations to the Royal Thai Government regarding solutions for the Southern unrest and the review of the possibility to revoke the enforcement of special laws; and another obligation to submit a country report as per the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. The committee reviewing Thailand's report expressed their concern about the enforcement of security laws including the Emergency Decree which provides for detention of a child for as long as 30 days. Recommendations and concerns shared by committees at international level reflect well problems arising from the implementation of the Emergency Decree.

CrCF and MAC would like to urge the RTG to act genuinely in compliance with the UPR recommendations dated October 2011, particularly Recommendation no. 100 which urges Thailand to "take immediate steps to improve the situation in Southern Thailand so the special security laws can be lifted" and the Recommendation of the Committee on the Rights of the Child stating that "The Committee calls upon the State party to review its security-related laws with a view to prohibiting criminal or administrative proceeding

against children under the age of 18...” In addition, with regard to letters of notification which should have been made by the RTG to the UN Secretary General regarding the imposition of states of emergency as a state party to the International Covenant on Civil and Political Rights (ICCPR), but since the enforcement of the Emergency Decree in 2005 in Thailand’s Deep South, the RTG has failed to comply with notification procedure.

CrCF and MAC urge that the RTG review problems and issues raised above in the Government policy framework concerning the renewal of the enforcement of the Emergency Decree and that the government should make their effort to encourage all concerned parties, state sector and civil society, to share their opinion and information in order to identify comprehensive solutions to make possible lasting peace. This step is essential for the ASEAN community which aims to establish stabilities in each member country and Thailand has been urged to solve conflicts in the SBPs through the rule of law and nonviolence. The immediate revocation of the states of emergency shall assure ASEAN of lasting peace and development to prepare the country in response to threats to state stabilities and wellbeing of people.

Please be acknowledged so.

Yours sincerely,

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