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### Open Letter No.4

10 September 2012

**Subject:** Review of the extension of the enforcement of Emergency Decree the Southern Border Provinces (SBPs)

**Attention:** Her Excellency the Prime Minister of Thailand

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

Dear Prime Minister,

Pursuant to the enforcement of the Emergency Decree in the provinces of Pattani, Yala and Narathiwat since 20 July 2005 and its successive extensions until now – save Mae Lan District, Pattani where the Decree was revoked in 2011 altogether – the enforcement of the Emergency Decree has been extended 30 times, the latest of which was made so on 19 June 2012. A claim has been made that imposing the Emergency Decree is necessary as a measure to prevent and address emergency situations and to restore order, peace and safety of the public. The current enforcement shall be subjected to another extension on 20 September 2012.

The Cross Cultural Foundation (CrCF) and the Muslim Attorney Centre Foundation (MAC) have been implementing a program to promote access to justice among people in the Southern Border Provinces (SBPs) for more than five years. Legal aid has been provided to people affected by the abuse of special laws including the 1914 Martial Law Act and the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005). Throughout the years, we have encountered many problems stemming from the declaration of emergency situations in the SBPs and deem it necessary that the government reviews its position on the extension of the enforcement of such Emergency Decree, which may better help to bring about effective and efficient solutions to the unrest. The call for a review of the Emergency Decree's extension also mirrors a recommendation by the Independent National Rule of Law Commission (NRLC) with regard to solutions to problems in the SBPs. In terms of a strategy on the enforcement of law and justice process, it was recommended that the enforcement of security laws should be revoked, including the repeal of emergency

situation in the SBPs.. In addition, in February 2012, in its recommendation to the Royal Thai Government, the UN Working Group on the Rights of the Child proposed that special laws on security shall not be used with children or youth and that juvenile legal procedures must be applied in every circumstances.

Lately, on 31 August 2012, in its concluding observations in consideration of reports submitted by states parties during its eighty-first session from 6-31 August 2012 in Geneva, the Committee on the Elimination of Racial Discrimination states that “notwithstanding the measures taken by the State party such as the dissemination of human rights cards and the lifting of the emergency decree in some districts, the Committee remains seriously concerned at the discriminatory impact of the application of the special laws in force in the Southern Border Provinces, including reports of identity checks and arrests carried out on the basis of racial profiling, as well as reports of torture and enforced disappearance of Malayu Thais. The Committee is further concerned at the risk of serious human rights violations in the enforcement of these laws as well as at the absence of a mechanism of oversight of their application. In addition to providing compensation to persons affected by incidents in the Southern Border Provinces, the State party should:

- (a) Assess the need for the special laws and establish a continuously independent mechanism to monitor their enforcement;
- (b) Review the special laws with a view to meeting international human rights standards, particularly those in regard to the prevention of torture; and
- (c) Thoroughly investigate all allegations of human rights violations and prosecute those found responsible.”

Though the compensation scheme for any damage stemming from the enforcement of special laws since 2004 may to some extent be able to increase trust in the genuine intention of the government to solve the problems, and the visit by the Prime Minister to the province of Narathiwat on 5 September to listen to input from various operating units in the area is commendable, should keep her informed of information needed for the review of the extension of the enforcement of the Emergency Decree until next September.

The Cross Cultural Foundation (CrCF) and the Foundation of Muslim Attorney Centre (MAC) deem that the government should altogether repeal the enforcement of the Emergency Decree in the SBPs or at least in certain districts where violence does seem to have decreased, based on the following reasons;

**1. The enforcement of the Emergency Decree should be conducted strictly to serve the purpose of the law. In other words, it should be declared simply as a measure to bring an end to the unrest effectively and promptly and its enforcement should be temporary.**

Though the Prime Minister is authorized to extend the use of the decree every three months and there is no limit to the extension, but such enforcement should be made only necessarily, otherwise, the Emergency Decree shall become a permanent law. Since the law contains provisions that place restrictions on many rights and liberties enjoyed by people in a normal situation, and given the 30 extensions of the enforcement of the decree, it is necessary that to review its efficiency and efficacy of the law to appraise if it is still necessary to impose the decree. Such a review is particularly necessary in areas where the special law has not led to a decrease of the unrest. In addition, people should be given an opportunity to participate in the review and appraisal of the necessity of the legal enforcement and to be continually informed and to monitor the use of the law in local area.

## **2. A criterion for the extension of Emergency Decree should be in line with the principle of proportionality.**

In other words, the measure should be put in place only if it proves to bring an end to the problems effectively and timely. But insofar, the law has been invoked to arrest and hold in custody suspects after some incidence and they can be subjected to being held in custody for interrogation for up to 30 days. Records from the interrogations have also been used as incriminating evidence against them. As a result, a number of cases filed with the Court of Lower Instances have been dismissed due to the use of such interrogation records which contained hearsay and were inadmissible. It shows how the enforcement of the Emergency Decree to hold a person in custody has failed to hold liable a perpetrator and to prevent the unrest from taking place. On the contrary, the use of the law has led to many innocent people being held in custody and being subjected to other abuses during their being held in custody such as torture and enforced disappearance, etc.

In addition, several special laws have been enforced in the SBPs concurrently including the 1914 Martial Law Act and Criminal Procedure Code, which is normally applicable to any criminal offence. As a result, a person can be vulnerable to being held in custody by at least three different laws and for the duration of up to 121 days prior to having their cases filed with the court. The duration of custody is unnecessarily long and improperly infringes on rights and liberties of a person's physicality. Comparatively, the Criminal Procedure Code (CPC) provides for many safeguards against the abuse of the rights and liberties of a person and it can be invoked to hold a perpetrator accountable to his/her crime. Under the CPC, credible evidence has to be established to seek a court warrant prior to any arrest and detention, and the court can use its discretion to review the reliability of the evidence based on factual information. Apart from ensuring that a perpetrator can be brought to justice effectively and efficiently, such a normal legal procedure also prevents the arrest and detention of a person who is innocent and has not committed any criminal offence. Therefore, the enforcement of the Emergency Decree has affected and rendered negative impact on people more than what they can gain from the law.

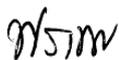
## **3. Provisions in the Emergency Decree authorize the Prime Minister to declare an emergency situation. Such authorization flouts a fundamental principle of a democracy and the rule of law whereby the division of power and safeguards of people's rights and liberties is upheld.**

The division of power is one of the most important principles of the rule of law and in a democracy, power is therefore divided among the legislative, the administration and the judiciary based on checks and balances, in order to ensure safeguards of people's rights and liberties. None of the three powers shall prevail. It also prevents arbitrary use of power. That the Emergency Decree entrusts the ultimate power to the Prime Minister as the head of government to declare and enforce the law, and her power to extend the use of the law indefinitely without being subject to the review of either the legislative power or the judiciary power is therefore a breach to the division of power principle. Since the enforcement of the Emergency Decree can lead to extraordinary restrictions of people's rights and liberties and may affect their fundamental rights such as their right to travel, right to public assembly, right to freedom of expression, right and freedom of body and life, etc., its enforcement has to be conducted strictly and only necessarily to serve the purpose of the law.

CrCF and MAC therefore urge that the Prime Minister reviews the extension of the enforcement of the Emergency Decree to ensure that effective and timely solutions are brought about to bring an end to unrest in the SBPs. It will certainly ensure protection of people's rights and liberties, an effort of which shall lead to sustainable peace building.

Please be acknowledged so.

Yours sincerely,



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Director, Cross Cultural Foundation



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