

Fact sheet: Forced DNA Collection in the Southern Border Provinces of Thailand

- In the conflict-ridden southern border provinces (SBPs) of Thailand, the government has enforced ‘special’ counterinsurgency legislations including the 1914 Martial Law, the 2005 Emergency Decree, and the 2008 Internal Security Act. These legislations grant security officers a sweeping power to conduct search operations randomly or arrest and detain any person without charge or warrant. Since 2012, the Cross-Cultural Foundation (CrCF) has received numerous reports that the security officers consistently and systematically used this power to raid houses and collect DNA samples of Malay Muslims in the SBPs. According to the information received, the authorities frequently claim that the collected DNA samples will be used as evidence to prosecute alleged insurgents.
- In 2019, CrCF has conducted desk research from news reports and official documents, as well as interviewed more than 20 individuals whose DNA samples have been collected by the security forces. The findings indicate that forced DNA collection is often carried out at checkpoints or during search operations in houses, villages, dormitories, private religious schools (*Pondok* and *Tadika*), and residences of migrants from the SBPs living in Bangkok. The officials often follow the following collection procedures:
 1. Use the cotton swabs (in some cases, coated with chemical liquid) to rub on the inside of each cheek to extract DNA samples.
 2. Place the DNA samples in a non-transparent brown box that resembles a toothpaste box.
 3. Instruct the DNA owners to sign their names on the boxes.
- From January to September 2019, Cross-Cultural Foundation has received at least 139 reports of forced DNA collection in the SBPs. Key cases include the collection of DNA samples from 30 Cambodian students of Madrasah Al-Falah Islamic School in Pattani’s Mayo district¹, and that of 60 villagers from Baan Hae, Yala’s Than To District.² In all cases, the authorities target suspected insurgents, especially Malay Muslim residents of Red Zones which are the areas in which the government believes non-state militants are most active. In some cases, the officials allegedly instructed the DNA owners to sign a consent form after the collection is completed whereas in other cases, the owners were not allowed to decide if they would consent to the collection at all.
- During the annual military conscription between 4 and 11 April 2019, the military integrated the practice of DNA collection as part of the conscription process in residing in three districts of the southern border provinces and four districts of Songkla. According to the information received, at least 20,250 men who underwent the conscription allowed the officers to take their DNA samples.³ Many men contacted and reported to CrCF that the officers demanded them to sign a letter of consent before collecting their DNA samples; none of them were provided with the information about what the DNA samples would be used for, where they would be stored, who has access to them and whether there is a timeframe in which the DNA samples will be destroyed. Furthermore, most of them were not aware that it was legal to refuse to give consent.
- The practice of forced DNA collection illuminates the core of Thailand’s counterinsurgency tactics- that is, state surveillance on the local population. It emerges alongside many other policies in the SBP, such as mandatory facial scans through SIM card registration, setting up

¹ https://www.khaosod.co.th/around-thailand/news_2151750

² <https://mgronline.com/south/detail/9620000070750>

³ <https://prachatai.com/journal/2019/04/81983>

checkpoints on the road and randomly stopping those perceived as Malay Muslims to take photos of their ID cards and car number plates.

Forced DNA collection according to Thai laws

- **Section 28 of the Constitution of Thailand** stipulates:

“A person shall enjoy the right and liberty in his or her life and person.

Arrest and detention of person shall not be permitted, except by an order or a warrant issued by the Court or on other grounds as provided by law.

The search of person or any act affecting the right or liberty in life or person shall not be permitted except on the grounds as provided by law.

Torture, ill-treatment or punishment by cruel or inhumane means shall not be permitted.”

- The collection of DNA samples can be lawful under conditions of **Sections 131 and 131/1 of the Criminal Procedure Code**:
 1. The collectors shall be inquiry officials (commissioned police officers) or doctors and experts in relevant areas.
 2. The DNA collection shall be useful for criminal offenses with over 3-year imprisonment.
 3. The DNA samples can only be collected from alleged offenders who have been informed about allegations, injured persons, and concerned persons.
 4. The officials shall obtain consent before collecting the DNA-samples. However, the alleged offenders can refuse or do not give consent if there is a reasonable ground. If no reason is valid, the inquiry officials shall assume the DNA examination could negatively affect the alleged offenders.
- There is no legal ground under the Criminal Procedure Code which authorizes the security force to collect DNA samples from innocent citizens in the southern border provinces because they are not alleged offenders in criminal cases despite the government’s suspicion about their involvement in the insurgent movements.
- Furthermore, the ‘special’ counterinsurgency laws such as **the Martial Law Act B.E. 2457, the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 and the Internal Security Act B.E. 2551** do not contain any provisions that authorize the officials to collect the DNA samples in such a manner either.
- Apart from the illegality of the forced DNA collection itself, instructing the DNA owners to sign their names on the boxes violates the Chain of Custody Principle. It invades the owners’ right to privacy and stigmatizes them despite their legal status as innocent. Such a practice can negatively impact the transparency of evidence examination and facilitates corruption. Hence, the DNA samples collected in this manner shall be deemed as inadmissible in court because it is not properly obtained and can lead to a violation of the right to a fair trial.

Forced DNA collection according to international human rights principles

The forced DNA collection violates the following human rights principles laid out in international human rights conventions to which Thailand is a State Party:

❖ Civil and Political Rights

- On 30 April 2015, the National Human Rights Commission of Thailand (NHRCT) issued the Investigatory Report No. 158/2558 which examines a complaint launched by the Muslim Attorney Center and the Cross-Cultural Foundation regarding forced DNA collection in the southern border province of Pattani. The report indicates that such a practice violates Article 4(1) and Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR).⁴

“Article 4 (1): In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. ”

“Article 9 (1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. ”

The NHRCT considers the forced DNA collection as an unnecessary and disproportionate violation of the rights and liberties of the body. Despite the state of public emergency in the SBPs, the officials shall not abuse their power in this manner.

❖ Freedom from Racial Discrimination in All Forms

- In 2012, Thailand’s obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) were reviewed and the Committee on the Elimination of Racial Discrimination subsequently published its Concluding Observation about the situation on racial discrimination in Thailand. Excerpt from Paragraph 21 provides:

- *“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 of Malayu Thais.”*⁵

⁴ Read more: https://voicefromthais.files.wordpress.com/2015/07/ccf11052558_00002-nhrc-dna.pdf

⁵ Paragraph 21, CERD/C/THA/CO/1-3, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/THA/CO/1-3&Lang=En

- In 2015, the same Committee accepted a complaint regarding the Thai security forces' use of 'special' counterinsurgency laws to raid and search the dormitories of Malay Muslim student activists from BUMI and PERWANI groups in Yala and forcibly collecting their DNA samples. According to their information, the officers also forced students to sign consent forms. The Committee sent a letter expressing concerns that these allegations, if verified, could amount to racial discrimination. Such concerns resonate with those raised in Paragraph 21 of the 2018 Concluding Observation. Therefore, to meet its obligations under the ICERD, Thailand must end this practice altogether.⁶

- Should it be necessary to collect DNA samples of a person to facilitate a criminal procedure, state officials must comply with the fundamental principle of "Free, Prior, and Informed Consent (FPIC)". To elaborate, the DNA owners must have the right to decide whether or not they would consent to give their DNA samples to the authorities. Moreover, they should be able to make the decision without coercion or harassment ("Free") and receive sufficient time before making the decision ("Prior") as well as adequate information about what, where, and how the DNA samples would be used ("Informed").⁷ However, the CrCF observes from the received complaints that the procedures of DNA collection in the SBPs never comply with the above-mentioned principles. According to most reports,
 - ✦ The security officers allegedly intimidate people by using threats and/or weapons to force consent. Individuals are not free to make a decision about giving their DNA samples to the authorities; those who refuse will be subject to more suspicion and, hence, more targeted surveillance.
 - ✦ The security officers rarely inform any individuals in advance that their DNA samples will be collected or give them enough time to decide about giving consent. Usually, the collection will take place immediately after the security forces raid and search a house.
 - ✦ The officials allegedly fail to inform the purpose of the DNA collection or explain who will store, access, or use the DNA samples.

Civil society's role in monitoring forced DNA collection

- Civil society groups can take an active role in monitoring forced DNA collection and documenting detailed of each violation as guided by the following questions:
 1. Who collects the DNA samples (Name, Unit, Rank)? Who is subject to forced DNA collection (Name, Age, Gender, Criminal status, and Other relevant information)?
 2. What is a motive behind a particular instance of DNA collection, i.e., is there any specific event that makes the officials suspect the DNA owners?
 3. Which legal basis is claimed by the officials in collecting the DNA samples?
 4. Considering the DNA collection, the FPIC Principle shall be particularly taken into consideration. Civil society groups could use this principle to guide their questions, such as:
 - ✦ Did the officials instruct to sign the consent form? If so, before or after the DNA collection? Was adequate time allowed for reading? Did the officials coerce or threaten the DNA owner while signing?

⁶ CERD/GH/mja/ks. Available from <https://voicefromthais.files.wordpress.com/2015/06/cerd-ewuap-letter-thailand-may-2015.pdf>

⁷ Read more about the Free, Prior, and Informed Consent (FPIC) Principle at: <https://www.ohchr.org/Documents/Issues/ipeoples/freepriorandinformedconsent.pdf>

- ✚ If the individuals do not speak Thai, did they provide an interpreter or a document in the DNA owner's native language? Has adequate information been provided to the owner?
- ✚ Did the officials inform where they will store the DNA sample and for what they will use it?