



No. 52101/364

PERMANENT MISSION OF THAILAND
5, Rue Gustave-Moynier
1202 GENEVA

18 June B.E. 2556 (2013)

Dear Ms. Shaheed and Mr. La Rue,

With reference to your communication Ref: AL Cultural Rights (2009) G/SO 214 (67-17) THA 2/2013, dated 15 March 2013, expressing concern regarding the banning of the film *Shakespeare Must Die*, I wish to take this opportunity to provide you with information as transmitted by authorities concerned to address the issues raised in the communication.

1. General context

1.1 As a liberal democracy, Thailand attaches great importance to the enjoyment of the constitutional rights by the Thai people, including the right to freedom of opinion and expression. All three branches of the government—the executive, the legislative, and the judiciary, are committed to advancing and protecting these rights.

1.2 The Film and Video Act B.E. 2551 (2008) restricts the exercise of certain rights to freedom of opinion and expression only in those cases where it threatens national security and public order. It by no means undermines the right to freedom and expression of the general Thai public. The Thai press enjoys a high degree of freedom. Differing views are aired widely and there is vibrant debate on all aspects of life. Most recently, the 65th World Newspaper Congress, the 20th World Editors Forum and the 23rd World Newspaper Advertising Forum were held in Bangkok on 2-5 June 2013, at which the Thai Prime Minister delivered a keynote address reaffirming the important role of the press and the media, and the need for the public to be informed.

Ms. Farida Shaheed,

Special Rapporteur in the field of cultural rights;

Mr. Frank La Rue,

Special Rapporteur on the promotion and protection of the right to freedom of expression,

Office of the United Nations High Commissioner for Human Rights

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1.3 The Royal Thai Government has always guaranteed, as its policy, the right to take part in cultural life and the freedom indispensable for creative activity as prescribed in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Government identified creativity as one of the key factors that would enhance competitiveness of the Thai economy. The development of creative economy, including the media industry, has thus been recognized in the current National Economic and Social Development Plan as one of the tools to bring the Thai economy towards an inclusive-growth path. The Royal Thai Government has fully encouraged creative activities so long as such activities are lawful.

2. The banning order and the Film and Video Act B.E. 2551 /2008

2.1 Thailand adheres strictly to its obligations under the International Covenant on Civil and Political Rights (ICCPR). The Royal Thai Government strives to ensure that the Thai people fully enjoy all their rights, as stipulated in the ICCPR and reflected in the Constitution of the Kingdom of Thailand. At the same time, Thailand has been promoting the rights prescribed in the ICCPR hand in hand with those in the ICESCR. However, as stated in Article 19 (3) of the ICCPR¹, the exercise of the right to freedom of expression carries with it special duties and responsibilities, and is therefore subject to certain restrictions. The protection of national security or of public order constitutes a valid ground for such restrictions. This provision forms the basis for Article 26(7) of the Film and Video Act B.E. 2551 (2008) and the 2009 Ministerial Regulations stipulating types of films.

2.2 In this regard, the banning order was necessary because the movie's content could potentially cause disunity in the society and therefore pose a threat to national security. The order was issued by the Film and Video Consideration Committee in accordance with the Film and Video Act B.E. 2551 (2008) and Article 7(3) of the 2009 Ministerial Regulations stipulating types of films. The Committee comprises experts from both the public and private sectors in the fields of film, video, arts and culture, and consumer protection.

2.3 As such, both the banning order and the Film and Video Act B.E. 2551 (2008) fully comply with the international norms and standards on the right to freedom of opinion and expression, in particular the ICCPR, and the right to take part in cultural life and the freedom indispensable for creative activity.

3. Decision of the Administrative Court of Thailand on the petition filed by the filmmakers on 9 August 2012.

- The case is currently being considered by the Administrative Court of Thailand, whose decision is pending.

¹Article 9 (3) of the ICCPR states that :

"The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals."

4. Decision of the Senate Committee on Human Rights Freedoms and Consumer Protection

4.1 The Senate Committee concluded that the authority to issue the banning order for *Shakespeare Must Die* belongs to the executive branch, under the responsibility of the Ministry of Culture. The Senate Committee – the legislative branch – does not have the authority in this regard.

4.2 The Senate Committee has nonetheless put forward recommendations on ways to bring about positive developments in the laws and practices with regards to freedom of opinion and expression in the sphere of films and media in Thailand. The Committee is of the view that certain amendments can be made to the Film and Video Act B.E. 2551 (2008) in order for it to better comply with the rights and liberties of individuals as stipulated in the Thai Constitution.

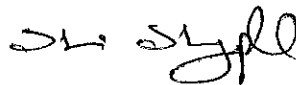
4.3 Among others, the Committee also suggests better intra-agency coordination within the government. Certain rules and regulations issued by the government should be revised for clarification purposes. It also encourages the government to take into account public opinion in its decision making process through such means as public hearings and focus groups.

5. Decision of the National Human Rights Commission of Thailand

- The petition filed with the National Human Rights Commission of Thailand is being considered by its Civil and Political Rights Sub-committee. The Sub-committee has already forwarded its findings back to the National Human Rights Commission for its further consideration. When a final decision is taken, such information will be communicated to the Special Rapporteurs in due course.

I hope that the above information will allay some of the concern you may have. Should you require additional information on the matter, please do not hesitate to contact the Mission. I wish to reassure both of you of the Royal Thai Government's commitment to working with all relevant mechanism of the Human Rights Council to promote and protect the rights to freedom of expression and the rights to take part in cultural life and to enjoy the freedom indispensable for creative activity under our international obligation.

Yours sincerely,



(Thani Thongphakdi)

Ambassador and Permanent Representative