

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur in the field of cultural rights and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

REFERENCE: AL Cultural rights (2009) G/SO 214 (67-17)
THA 2/2013

15 March 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolution 19/6 and 16/4.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the alleged prohibited distribution in Thailand of the film *Shakespeare Must Die* produced by Mr. Manit Sriwanichpoom and written and directed by Ms. Smanrat Kanjanavanit.**

According to the information received:

On 3 April 2012, the Third Committee of Film and Video Censorship Board of the Ministry of Culture issued a banning order prohibiting the distribution of the film *Shakespeare Must Die* in Thailand. The film, produced by Mr. Manit Sriwanichpoom and written and directed by Ms. Smanrat Kanjanavanit, is an adaptation in Thai-language of William Shakespeare's *Macbeth*.

The ban was pronounced despite the agreement of the filmmakers to have the film rated at Level 6 (forbidden for people below 20), as a compromise with the censors and in accordance with article 26(7) of the 2008 Royal Edict on Film and Video, and article 7(3) of the 2009 Ministerial Regulations stipulating types of films. The banning order issued by the Third Committee stated that the Censorship Board deemed that the movie "has content that causes disunity among the people of the nation". According to information received, article 23 of the Royal Edict on Film and Video states that "film producers must proceed in their filmmaking in a way that does not sabotage or contradict peace and order and

good morality of the people or may adversely affect the security and the patriotic dignity of the Thai nation.” Furthermore, under article 29, “the Film and Video Censorship Board has the power to order the applicant to correct or cut before permission may be given; they may also refuse permission”.

The filmmakers did not agree to re-shoot the scenes that were the subject of the Third Committee’s various objections. It is alleged that the banning of the film is politically motivated as it is feared that the film's portrayal of the dictator may offend former Prime Minister Thaksin Shinawatra, the brother of the current Prime Minister, Yingluck Shinawatra. It is also alleged that one concern related to a scene referring to the events of 6 October 1976, during which students of the Thammasart University in Bangkok had been violently attacked by State security forces.

On 17 April 2012, the filmmakers submitted an appeal to Chair of the National Board of Film and Video of the Ministry of Culture as well as to the National Board itself. On 11 May, the National Board of Film and Video has decided to uphold the decision of the Censorship Board to ban the film. The Board found that the film, “despite having been adapted to a fictitious country, has many signifying characteristics that imply Thai society. Further, some scenes have contents that are in conflict with public peace and order and good morality among the people, or may adversely affect the security of the state and the patriotic dignity of the nation.”

On 30 May 2012, Mr. Manit Sriwanichpoom and Ms. Smanrat Kanjanavanit filed a petition with the Civil, Political and Media Rights Subcommittee of the National Human Rights Commission of Thailand. On 31 May 2012, they also filed a petition with the Senate Committee on Human Rights Freedoms and Consumer Protection. On 9 August 2012, the filmmakers filed an appeal to the Administrative Court of Thailand to reverse both the Film and Video Censorship Board and the National Board of Film and Video decisions to ban the film *Shakespeare Must Die*, arguing that both decisions are a violation of their right to freedom of expression protected by article 45 of the 2007 Constitution of Thailand.

Concern is expressed that the banning of the film *Shakespeare Must Die* might constitute a violation of Mr. Manit Sriwanichpoom and Ms. Smanrat Kanjanavanit’s rights to freedom of expression, including in the form of art, as well as their rights to take part in cultural life and to enjoy the freedom indispensable for creative activity.

Without expressing at this stage an opinion on the facts of the case, we would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which your Excellency’s Government has ratified on 29 October 1996. It states: “everyone shall have the right to

freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Furthermore, we would like to refer your Excellency’s Government to article 15 of International Covenant on Economic, Social and Cultural Rights which has been ratified by your Excellency’s Government on 5 September 1999, and which “recognize the right of everyone to take part in cultural life”. As stressed by the Committee on Economic, Social and Cultural Rights, the right to take part in cultural life entails rights of participation in, access to, and contribution to cultural life, and encompasses the right of everyone “to seek and develop cultural knowledge and expressions and to share them with others, as well as to act creatively and take part in creative activity” (E/C.12/GC/21, paragraph 15-a). Under article 15, States Parties have also undertaken “to respect the freedom indispensable for scientific research and creative activity”.

We would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Manit Sriwanichpoom and Ms. Smanrat Kanjanavanit in compliance with the above-mentioned international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the alleged facts of the case accurate?
2. Please explain how both the banning order issued by the Third Committee of Film and Video Censorship Board of 3 April 2012, as well as the decision upholding the banning order issued by the National Board of Film and Video on 11 May 2012 comply with the international norms and standards on the right to freedom of opinion and expression, including in the form of art, the right to take part in cultural life and the freedom indispensable for creative activity.
3. Please explain how the Royal Edict on Film and Video of 2008, in particular in its articles 23 and 29, comply with the international norms and standards on the right to freedom of opinion and expression, including in the form of art, the right to take part in cultural life and the freedom indispensable for creative activity.
4. Please indicate whether the Administrative Court of Thailand, petitioned on 9 August 2012 by Mr. Manit Sriwanichpoom and Ms. Smanrat Kanjanavanit, has adopted a decision. In the affirmative, please provide information on the content of that decision.

5. Please indicate whether the Civil, Political and Media Rights Subcommittee of the National Human Rights Commission of Thailand, and the Senate Committee on Human Rights Freedoms and Consumer Protection, have adopted a decision following the petitions filed by the filmmakers on 30 and 31 May 2012 respectively. In the affirmative, please provide information on the content of these decisions.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Manit Sriwanichpoom and Ms. Smanrat Kanjanavanit are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Farida Shaheed
Special Rapporteur in the field of cultural rights

Frank La Rue
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression