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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214/62-11 G/SO 214 (53-24) G/SO 214 (89-15)
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26 July 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, 16/5, 16/24, 16/23, and 16/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **Ms. Hnin May Aung**, also known as Noble Aye, member of All Burma Student Federation Union (ABFSU) and 88 Generation Students, who is serving an 11-year sentence in the remote Monywa prison in Sagaing Region, 832 kilometers from Yangon where her family lives.

According to the information received:

She is currently being held incommunicado in a punishment cell, in solitary confinement, with a ban on family visits, for writing an open letter criticizing recent statements by State authorities denying the existence of political prisoners. On 6 June 2011, Ms. Hnin May Aung wrote an open letter, addressed to Thein Sein, strongly denouncing statements made on 2 June 2011 by Vice President U Tin Aung Myint Oo to US Senator John McCain that there are no political prisoners in Myanmar. In the letter, she explains her imprisonment and arrest

history to contest this statement and show that she is a genuine political prisoner. Ms. Hnin May Aung's father attempted to visit her on 7 July 2011, but was told by the warden of the jail and an intelligence officer that her family visits have been banned as per instructions from prison supervisors, because Ms. Hnin May Aung had violated the prison's regulation.

While Ms. Hnin May Aung's father was waiting at Monywa jail to receive further clarification, he heard his daughter screaming "Mother! Mother!" causing him extreme distress. When he asked the warden why she was screaming, the warden responded maybe it was because her family visits have been banned. According to her mother, Aye Myint Than, the warden did not explain which rule she broke. Her father was also unable to deliver a package of supplementary food and medication.

Ms. Hnin May Aung was initially arrested in September 1998 for distributing booklets explaining the military regime's crackdown on the 1996 student movement. In January 1999, she received a 42 year sentence, under section 5/j of the Emergency Provision Act and section 17/20 of the Printers and Publishers Act. Ms. Hnin May Aung was released under a general prisoner amnesty on 6 July 2005. Upon her release, she was told she could participate in political activities. She was re-arrested in a midnight raid on her home on 23 August 2007. Although authorities were originally looking for a woman named "Noe Noe," once they learnt of Ms. Hnin May Aung's political background, they refused to release her. She was charged under section 5/96 (4) of the law protecting the peaceful and systematic transfer of state responsibility, section 505/b of the penal code, and section 6 of the law relating to the forming of organizations. Ms. Hnin May Aung suffers from jaundice since before her sentence at Monywa prison.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the Ms. Hnin May Aung is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee her right not to be deprived arbitrarily of her liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

We should also like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Ms. Hnin May Aung. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth in the UDHR.

In this context, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be

justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We would also like to draw your Excellency's Government's attention to principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, “A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [...]”. We would also like to draw your Excellency's Government's attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”

Furthermore, we would like to recall article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women. The Declaration also notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 22 July 1997), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that “under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”

Given our concern that Ms. Hnin May Aung was initially arrested in September 1998, rearrested in August 2007, and is currently being held incommunicado in solitary confinement for exercising her legitimate right to freedom of opinion and expression, which includes expression of opinions that are critical of the Government, we would also

to like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the UDHR, which provides that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

In addition, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Hnin May Aung 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.

In this regard, we would also like to draw your Excellency's Government's attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged". (adopted by the General Assembly by resolution 45/111 of 14 December 1990).

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Hnin May Aung in compliance with the above 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, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Ms. Hnin May Aung?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information on the measures taken to ensure the safety of Ms. Hnin May Aung.
5. Please provide detailed information on how the arrest of Ms. Hnin May Aung is compatible with international norms and standards on the right to freedom of opinion and expression.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

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

Margaret Sekaggya
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Tomas Ojea Quintana
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Rashida Manjoo
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