

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: UA
MMR 1/2016:

2 February 2016

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Myanmar; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 28/23, 24/6, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention of **Mr. Shin Gambira (also known as) Nyi Nyi Lwin**.

Mr. Shin Gambira was a founding member of the All Burma Monks Alliance, which organised anti-government demonstrations that began in August 2007. He was previously arrested on 4 November 2007 and sentenced in 2008 to 68 years in prison on multiple charges. He was reportedly subject to torture whilst in prison. Having been released on 13 January 2012 following a presidential amnesty, Mr. Gambira was detained again for short periods on 10 February 2012, 6 March 2012 and 1 December 2012. In April 2012, he disrobed and returned to civilian status. He later moved to Thailand.

Mr. Shin Gambira has been the subject of previous communications sent on 21 November 2007 (A/HRC/7/10/Add.1, paras. 186-189), 28 February 2008 (A/HRC/10/8/Add.1, paras. 150-157), 28 November 2011 (A/HRC/19/44, page 146) and 12 December 2012 (A/HRC/23/51, page 21). A response to the first two communications was received on 22 April 2008.

According to information received:

On 15 January 2016, Mr. Shin Gambira, also known as Nyi Nyi Lwin, entered Myanmar with the intention of applying for a passport. He crossed the border at an official crossing between Thailand and Myanmar without difficulty. He was reportedly followed by security services from the time he had entered the country. On 19 January 2016 at 11 p.m., he was arrested by police without warrant at his hotel in Mandalay. Around 20 officers were in attendance, with three reportedly filming the arrest.

On 20 January 2016, he appeared before Maha Aung Myay Township Court and was charged with entering the country illegally in violation of Section 13(1) of Myanmar's 1947 Immigration (Emergency Provisions) Act. If found guilty, Mr Gambira may be sentenced to up to five years detention.

Mr. Gambira was treated in 2014 for post-traumatic stress disorder following his period of detention. He has also been diagnosed with [REDACTED] and is required to take medication regularly. Medical professionals have expressed concern that detention may re-traumatize him and cause overwhelming physiological and physical distress such as [REDACTED]

Mr. Gambira was transferred to Oh-Bo prison in Mandalay. His spouse has reportedly been unable to visit him in prison on four occasions. On the first occasion, she was informed that as a foreign citizen she was unable to visit the prison without permission from her embassy. She received permission from the Australian embassy but has since continued to be denied entry.

Mr. Gambira's next court hearing will take place on 3 February 2016.

Serious concern is expressed at the detention of Mr. Gambira which may be linked to his past human rights activities and which, given his mental health condition and previous traumatic experience in detention, could have a serious detrimental effect on his health.

Without expressing at this stage an opinion on the facts of the case, the above allegations appear to be in contravention of various international human rights instruments and standards.

Regarding the mental condition of Mr. Gambira, we would like to refer your Excellency's Government to article 12 of the Covenant on Economic, Social and Cultural Rights, signed by Myanmar on 16 July 2015, which establishes that States have an obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. (General Comment 14, Para.34)

We would also like to refer your Excellency's Government to The Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution

45/111, according to which prisoners should have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9). Moreover, the Standard Minimum Rules for the Treatment of Prisoners establish that those prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of those prisoners who need it, and there shall be a staff of suitable trained officers (Rule 22(2)).

In addition, we would like to draw your Excellency Government's attention to article 37 of the Standard Minimum Rules for the Treatment of Prisoners which states 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."

In addition, 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1 and 2, which state that everyone has the right 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.

The above alleged facts also indicate a prima facie violation of the right to return to one's own country as set forth in article 13(2) of the UDHR.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 Mr. Gambira in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information or comment you may have on the above-mentioned allegations.

2. Please provide information concerning the legal grounds for the arrest and detention of Mr. Gambira.

3. Please provide information on the health condition of Mr. Gambira, whether he has access to the medicines he requires on a regular basis, and how his detention is compatible with the right to health.

4. Please explain the compatibility of the 1947 Immigration (Emergency Provisions) Act with the right to return to one's own country and the steps taken to guarantee this right.

5. Please provide information on the reported refusal to allow Mr. Gambira's wife to visit him in prison and the compatibility of this decision with the Standard Minimum Rules for the Treatment of Prisoners.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Yanghee Lee

Special Rapporteur on the situation of human rights in Myanmar

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Michel Forst

~~Special Rapporteur on the situation of human rights defenders~~