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HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214/62-11 G/SO 214 (53-24)
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13 December 2012

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 promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 19/21, 16/4, 15/21, 16/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the arrest, detention and upcoming trial of prominent human rights defender **Ashin Gambira (aka) Nyi Nyi Lwin**. Mr. Ashin Gambira was the subject of a joint urgent appeal sent by the Special Rapporteur on the situation of human rights in Myanmar; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 28 November 2011. As of today, we regret not to have received a reply from your Excellency's Government.

According to the information received:

Gambira, 33 years old, was arrested by police on 1 December 2012 and remanded in custody in Insein Prison before being freed on bail on 10 December by a court in Thanlyin for health reasons. He is scheduled to stand trial on 14 December.

On 30 November, he arrived in Yangon to purchase medication and meet with foreign diplomats. He was at the house of Nyi Nyi Zaw, his brother-in-law, at Thingangyun Township at 5:40 pm on 1 December 2012 when police officials from Thangangyun and Bahan Townships came to arrest him. He was told by police that police stations from three townships, Thingangyun, Bahan and Thanlyin, had filed the cases against him under sections 448, 427 and 454 of the Myanmar Penal Code, which cover crimes relating to trespassing and “damaging the dignity of the nation”.

He is alleged to have gone to three monasteries in the above townships in February, which were shut down and locked by the authorities after the resident monks were arrested and imprisoned, broken the padlocks on the gates and led the returning monks to re-occupy these monasteries without permission from the authorities.

However, human rights advocates have alleged that Gambira was detained to prevent him from participating in a campaign to support the alleged victims of a police crackdown on protesters against the Mt. Letpadaung copper mine in northwestern Myanmar, in which clashes with the police allegedly left 60 protestors injured.

Gambira has been arrested three times since he was released in the January 2012 amnesty. He has continued to be an outspoken human rights advocate since his release. Authorities have refused to grant him with a national identity card or passport.

While we do not wish to prejudge the accuracy of these allegations, this case raises a number of human rights concerns, particularly in light of the fact that Gambira was an organiser and leader of the September 2007 protests, for which he was jailed and released as part of the January 2012 amnesty. He reportedly left the monkhood temporarily a few months after his release from prison as his physical and psychological situation were unfit for the monkhood due to the alleged torture sustained while in prison. Since then, he has lived in his hometown, Meikhtila in Mandalay Region. The Special Rapporteur on the situation of human rights in Myanmar met with Gambira in Insein prison in 2008 and has also previously highlighted particular concerns regarding the release of prisoners of conscience. In the Special Rapporteur’s press release of 20 September 2012, the following concerns were highlighted:

- Conditions attached to the release of prisoners, such as the imposition of the remaining sentence if a crime is committed in the future. The release of prisoners of conscience must be without any conditions.
- Steps should be taken to ensure the reintegration of released prisoners of conscience into society, including the provision of adequate medical and psycho-social services, particularly to those who suffered ill-treatment or were subject to prolonged periods of solitary confinement.

- The Government should also take further positive steps, such as providing reparations, the removal of restrictions on applications for passports, and the removal of obstacles to continuing education or regaining professional licenses.

In this connection, 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 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- 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.
- 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 would also 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 Universal Declaration of Human Rights (UDHR) which provides that "[e]veryone 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."

We would further like to call on your Excellency's Government to take all necessary steps to secure the rights to freedom of peaceful assembly and of association in accordance with fundamental principles as set forth in article 20 of the UDHR which provides that "[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association."

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

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 Gambira 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 summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Gambira?
3. Were conditions attached to the release of Gambira following the January amnesty, such as the imposition of the remaining sentence if a crime is committed in the future?

4. 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.

5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

6. Have steps been taken to support the reintegration of Gambira into society following his release in January, including the provision of adequate medical and psycho-social services, particularly in view of the alleged torture and ill-treatment he was subjected to while in detention?

7. Have steps been taken to provide compensation to Gambira, and remove restrictions such as acquiring a passport?

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.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Gambira 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.

Tomás Ojea Quintana
Special Rapporteur on the situation of human rights in Myanmar

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

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
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Margaret Sekaggya

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Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment