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

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

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the situation of human rights in Myanmar; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (56-23) Health (2002-7) G/SO 214/62-11 G/SO 214 (53-24)  
MMR 4/2011

28 November 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the situation of human rights in Myanmar; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, 15/22, 16/5, 16/24 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 current conditions of detention for **Mr. Shin Gambira**, a Buddhist monk and human rights activist.

Mr. Shin Gambira has been the subject of previous communications sent on 21 November 2007 (A/HRC/7/10/Add.1, paras. 186-189), and 28 February 2008 (A/HRC/10/8/Add.1, paras. 150-157), which raised concerns that the arrest and detention of Mr. Gambira are directly related to his activities in defense of human rights and his work to defend the right to freedom of expression in Myanmar. We received a response to these communications transmitted by your Excellency's Government dated 22 April 2008.

According to information we have received:

It is reported that Mr. Shin Gambira has been transferred to several prisons during his detention and that he is currently detained in Insein Prison in Rangoon, Myanmar.

It is further reported that Mr. Shin Gambira was previously detained in solitary confinement for a period of 17 months in Kalay Prison, Kalay District, Myanmar. According to the information received, during his transfer to this prison, Mr. Shin Gambira was reportedly assaulted by prison guards. He was also repeatedly assaulted by prison guards during his detention in Khandi Prison.

It has been furthermore reported that these assaults have left Mr. Shin Gambira suffering from head and back injuries, reportedly resulting in frequent pain. Mr. Shin Gambira is reportedly suffering from brain damage because he is unable to speak properly and has ongoing unbearable headaches that prevent him from sleeping and meditating. He has allegedly been medicated by force with a sedative which renders him unconscious for five hours. It is reported that when he wakes up, he feels dizzy and is unable to speak or think clearly.

According to the source, Mr. Shin Gambira was not allowed to be visited during his solitary confinement in Kalay Prison. Afterwards, he was allowed to receive one visit per month during his detention, which has exacerbated his suffering. Moreover, he is not allowed to wear his monk's robe and has to wear white prison clothes.

It is finally reported that Mr. Shin Gambira was imprisoned and sentenced to 63-years in prison for his participation in street demonstrations during 2007. It is alleged that he has also been targeted for his role as co-founder of the Al Burma Monk's Alliance.

In the light of the allegations, we remain concerned that the ongoing detention of Mr. Shin Gambira may be related to his work as a human rights defender and the legitimate exercise of his right to freedom of expression. Further concerns are expressed about his physical and psychological security given the allegations that he is suffering head and back injuries as a consequence of several assaults by prison guards. Finally, concerns are expressed about the lack of adequate access by his family during his detention.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Shin Gambira is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his 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.

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

With regard to the allegations concerning Mr. Gambira's health condition and suffering from severe and frequent pain, we would like to draw your Excellency's Government attention to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "(s)ick 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 sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, rule 25(1) provides that, "(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed" (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977).

We would also like to draw to your Excellency's Government to the article 25 of the Universal Declaration of Human Rights, as well as article 12 of the International Covenant on Economic, Social and Cultural Rights, which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. General Comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights on the right to health specifies obligations of States Parties to respect the right to health by, inter alia, refraining from interfering directly or indirectly with the enjoyment of the right to health and to refrain from denying or limiting equal access for all persons, including prisoners or detainees.

With regard to the allegations concerning the question of family access, we would like to draw your Excellency's Government 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 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."

Regarding the allegation that the detention of Mr. Gambira is in relation to his work to defend the right to freedom of expression, we would 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, 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 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 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 Mr. Shin 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.

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. Shin Gambira in compliance with the above international norms and standards.

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, where relevant to the case under consideration:

1. Are the facts alleged in the summary of the case of Mr. Shin Gambira accurate?
2. Has a complaint been lodged by or on behalf of Mr. Shin Gambira?
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 the full details of the condition of detention of Mr. Shin Gambira, including where he is currently being held. Similarly, we would like to know what actions your Excellency's Government has taken to address grievances raised in this letter, including if he has had access to a physician and proper medical care.

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

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

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

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

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

Margaret Sekaggya  
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Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment