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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 Working Group on Arbitrary Detention; 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 torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 218/2 Health (2002-7) G/SO 214/62-11 G/SO 214 (53-24)
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Myanmar; Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 19/21, 15/18, 15/22, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding four Rohingya men from Rakhine State, Myanmar: **Zafawr Ahmed**, aged 40, **Nawbi Hussein**, aged 50, **Mohammed Shawrif**, aged 35, and **Rahametullah**, aged 25.

According to information received:

Mr. Zafawr Ahmed, Mr. Nawbi Hussein, and Mr. Mohammed Shawrif were reportedly shot by the border security forces (Nasaka) in Ohn Daw Gyi village, Sittwe, on 28 February 2013. They are currently in police custody in no. 1 police station in Sittwe, having been discharged from Sittwe General Hospital on 2 March 2013.

It is reported that the three men have wounds which are infected and are in need of urgent medical treatment.

The men were involved in the construction of a camp for internally displaced persons (IDPs) in Ohn Daw Gyi village. The village is in an area in Sittwe where Muslim IDPs are sheltered. Around 1,000 Nasaka troops have reportedly been sent to this area.

On 28 February 2013, at 1 pm, around 10-12 Nasaka personnel, based near the construction site, arrived at the site. A number of witness accounts revealed that a Nasaka commander reportedly pulled the collar of Zafawr Ahmed and told him to follow. Mr. Ahmed resisted and tried to free himself from the grip of the commander, who took out his pistol and fired, with the bullet scraping Mr. Ahmed's head and wounding him. Another Nasaka officer allegedly dragged Mohammed Shawrif along the ground, who also resisted. The officer then allegedly fired an automatic gun directly at Mr. Sharif's back, seriously injuring him with the bullet coming out of his chest. Meanwhile, another Nasaka officer reportedly tried to drag Nawbi Hussein along the ground, and Mr. Hussein attempted to run away. The Nasaka officer is reported to have fired a bullet which entered Mr. Hussein's left foot. All three men ran, and fell a few feet away and were assisted by local villagers working at the construction site.

When the three victims reached their homes, the village administrator informed the township police officer, Aung Tha Win, about the incident. Mr. Aung Tha Win arrived at the site of the incident with no. 1 police station commander Moe Kyaw, at around 4 pm. They went to the scene of the incident and took statements from witnesses and the village administrator. The police did not speak to the Nasaka. The three injured men were taken to Sittwe General Hospital.

The owner of the land where the shelters were being constructed and his son, Rahametullah, objected to the construction as it was allegedly contrary to the initial agreement and would be detrimental to their livelihood as it encroached on paddy/pasture land. They informed the developers of their objections but the construction continued. On 28 February 2013, Rahametullah reportedly went to the construction site and told the workers to stop construction, and he destroyed a latrine which had been constructed for the workers' use.

Rahametullah was also arrested and taken to No. 1 police station in Sittwe.

Rahametullah, Zafawr Ahmed, Nawbi Hussein and Mohammed Shawrif have reportedly been charged with 'attacking Nasaka'- under article 333 of the Myanmar penal code "Whoever voluntarily causes grievous harm to any person being a public servant in the discharge of this duty as public servant or with intent to prevent or deter that person or any other public servant from discharging his duty as public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as public servant shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

All four men were reportedly presented before a judge on 1 March 2013, one day after their arrest, and on 15 March 2013, and are due to appear for a hearing on 27 March 2013.

The four men have reportedly been verbally abused, denied medication, and are not being given enough food in detention. Moreover, none of the men has any access to legal counsel. Concerns remain on the legality of their arrest and detention, fair trial guarantees as well as access to urgent medical assistance.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their 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 would like to draw your Excellency's Government's attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment." (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. With respect to Mr. Zafawr Ahmed, Mr. Nawbi Hussein Mr. Rahametullah and Mr. Mohammed Shawrif's deteriorating health conditions, and the alleged denial of medical treatment, we would like to stress that each Government has the obligation to protect the right to health of all persons as reflected in international legal instruments. The right to health is set forth inter alia in Article 25 (I) of the Universal Declaration of Human Rights, which states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

We would also like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "Sick 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, "The 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.)

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 the above-mentioned persons 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 the alleged victims?
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 enjoyment of the right to the highest attainable standard of health, including access to specialized medical care, by the alleged victims.
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. Please provide information concerning the legal grounds for the arrest and detention of Mr. Zafawr Ahmed, Mr. Nawbi Hussein, Mr. Rahametullah and Mr. Mohammed Shawrif and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR.

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 the above mentioned persons 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.

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Special Rapporteur on the situation of human rights in Myanmar

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

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