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**Mandates of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on
torture and other cruel, inhuman or degrading treatment or punishment.**

REFERENCE: AL G/SO 214 (106-10) G/SO 214 (53-24)
MYS 9/2013

18 September 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolution 17/12 and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the alleged violent impact of security operations on the civilian population, including migrants in the region, by Malaysian law enforcement officials during "operation Daulat" in Sabah from 5 to 11 March 2013, and the alleged torture and other cruel, inhuman or degrading treatment of Filipino civilians, in particular Tausug migrants in Sabah before and after the incursion. As the allegations are about Filipino civilians, a copy of this letter is also sent to the Government of the Philippines.

According to the information received:

Background:

On 11 February 2013 an armed group of 235 militants, known as the "Royal Security Forces of the Sultanate of Sulu and North Borneo" (armed group) reached Lahad Dath, Sabah, Malaysia from Simunul Island, Tawi-Tawi in the southern Philippines, by boats. It is reported that the group was sent by Jamalul Kiram III, a claimant to the throne of the Sultanate of Sulu, with the objective of asserting a Filipino territorial claim over the disputed region of eastern Sabah (the former North Borneo). It is reported that on 11 November 2012, Jamalul Kiram III issued a decree calling for a civil and military contingent of his followers to assert

his territorial claims in North Borneo. It is alleged that Jamalul Kiram III told local media that he deployed his men to Lahad Dath in an attempt to receive additional land payment (money) from the Malaysian Government.

It is reported that around February 2013, the Filipino Government deployed naval forces to the seas of Sulu and Tawi Tawi to help stabilize the situation, and one ship to Malaysian waters off Lahad Dath to provide humanitarian assistance. Additionally, on 26 February 2013, Filipino President Aquino appealed to Jamalul Kiram III to recall his forces and to hold a dialogue with the Government to address his family's concerns, noting that the lives of thousands of Filipino migrants living and working in Sabah could be endangered.

On 6 March 2013, the spokesperson of the United Nations (UN) Secretary-General issued a statement on the situation in Sabha (Malaysia), urging an end to the violence and encouraging dialogue between the parties and a peaceful resolution to the situation. Additionally, the statement expressed the Secretary-General's concern about the potential impact of security operations on the civil populations, including migrants in the region, and urged all parties to facilitate humanitarian assistance and fully respect international human rights norms and standards. It is reported that the same day, Jamalul Kiram III issued a statement following the UN Secretary-General's comments on Sabah and called for a ceasefire to the violence in Sabah. The Malaysian Government reportedly rejected the call for a ceasefire, insisting on the unconditional surrender of the armed group.

It is alleged that several shoot-outs and gun battles occurred between Malaysian security forces and members of armed group in early March 2013, culminating in a 3 March 2013, stand-off that left dozens of members of the armed group and two members of the Malaysian security forces dead. It is also reported that on 5 March 2013, the Royal Malaysian Air Force bombed the camp of armed group in Tandou village, and that mortar strikes were used by the Government security forces as they advanced.

Furthermore, according to the information received, on 7 March 2013, the Malaysian Government issued a statement labelling the armed group as "terrorists," in view of the killing of several Malaysian security forces since their arrival. It is reported that several days after the statement was issued, Malaysian police encircled the armed group by setting up a "security cordon" around Lahad Dath, blocking access to the area by land and sea after negotiations between the Government of Malaysia and the armed group for a peaceful resolution of the standoff failed. On 11 March, 2013, the camp of the armed group in Tandou village was reportedly declared secured by Malaysian security forces after a whole week of bombardments and fire fights referred to as the Malaysian led "operation

Daulat”. Dozens of bodies of members of armed group were reportedly recovered by Malaysian security forces.

From 2 to 8 June 2013, the OHCHR Regional Office in Bangkok conducted a mission to the Philippines, including Manila, Zamboanga and Tawi Tawi to gather information on what happened in Sabah between February and May 2013 and to assess the situation of evacuees and deportees from Sabah.

Alleged violent impact of security operations on the civil population, including migrants in the region by Malaysian law enforcement officials during “operation Daulat” in Sabah from 5 to 11 March 2013

It is reported that dozens of casualties occurred in the Malaysian led “operation Daulat”, in Tandou village, which ended on 11 March. It is alleged that the total number of members of the armed group shot dead stands at 73, but according to the information received, only 59 bodies have been found by Malaysian security forces.

As of 3 May 2013, the Malaysian Government acknowledged the death of 73 members of the armed group. While it is not possible to verify the number, there have also been reports alleging that civilians have been among the casualties.

Torture and other cruel, inhuman or degrading treatment of Filipino civilians, in particular Tausug migrants in Sabah before and after the incursion

The information received indicates that there may be systematic torture and ill-treatment of Filipino civilians, in particular Tausug migrants in Sabah by the police for violations of immigration laws both before and after “operation Daulat”. Moreover, it is alleged that human rights violations against the Tausug migrants have escalated in both number and severity since the incursion and the launch of the operation.

It is reported that already prior to “operation Daulat”, and in particular in the end of 2012, there were widespread arrests and detention of documented and undocumented Tausug migrants, including practices of detaining migrants for several months and beatings. Tausug migrants are reportedly held in police stations, pre-trial detention centres, migration detention centres and prisons. It is reported that up to 200 persons have been held in 20 x 80 feet cells with insufficient food and restricted access to water, and were regularly beaten. It is also reported that many of the detained Tausug migrants became sick and do not have access to adequate medical treatment. It is reported that in one case, a migrant detainee in an immigration center was beaten on the soles of his feet with an iron pipe. It is also reported that Tausug migrants with regular status and

migration papers have been detained, tortured or ill-treated while in detention and subsequently deported to the Philippines.

It is reported that on 1 January 2013, a Tausug woman was arrested in Semporna for not having the legal documents to work in Sabah. It is reported that she was subsequently beaten by police officers. It is also reported that she was detained for seven days at the police station before being transferred to Panampangun detention quarters, where she was allegedly held in solitary confinement for four months without access to a lawyer.

According to the information received, in March 2013, another Tausug woman, whose husband escaped the police, was arrested and placed in Panampangun detention quarters along with her four children during “operation Daulat” in Tawau. It is reported that one child, who was nine years old, died in April 2013, one month after the police allegedly poured boiling water on him for asking for more food. It is also reported that the woman’s two month old infant died in detention from malnutrition.

In a separate case, it is also alleged that a Tausug child was taken to a police station in Kota Kinabalu, Western Sabah, for presenting a photocopy of his original birth certificate, where he was stripped and extensively searched, including in the anus, beaten, and kicked. Subsequently, he was allegedly detained in a 20 x 80 foot cell with 179 other male adult detainees, with only one functioning toilet, and supplied with only 300 grams of dried fish for food twice daily.

It is alleged that during and after the “operation Daulat” further forced evictions and deportations of Filipino civilians, in particular Tausug migrants, occurred, with homes and property being destroyed. It is reported that the Malaysian authorities are consequently planning to resettle 60,000 persons from the eastern coastal areas. According to the information received, evacuees and deportees who arrived in the Philippines reported that the raids and sweeps in Sabah are becoming more violent and that in particular Tausug migrants are targeted and fearful for their lives.

According to the information received, approximately five thousand Tausug migrants, including 1000 children are allegedly held in an evacuation camp in Embara Bude village, Lahad Datu. The five thousand persons have allegedly to rely on food brought by the approximately 100 documented migrants, who are allowed to leave the camp once a week. It is also reported that there is limited shelter available in this camp with just a few concrete houses. It is reported that some of these migrants had been there for one month and are extremely hungry.

Finally, it is alleged that the Malaysian Government has refused to provide UN officials with real-time and other information concerning the on-goings in Lahad Dath, Sabah. It is also reported that the Government denied access to the region to the Malaysian National Human Rights Commission (Suhakam), to the media, and to independent human rights monitors. It is further alleged that international journalists have been detained, interrogated, and banned from the area, and that accurate and truthful information about the situation in Sabah remains very limited.

Serious concern is expressed about the violent impact of security operations on the civilian population, including migrants, in the region by Malaysian law enforcement officials during “operation Daulat” in Sabah from 5 to 11 March 2013, allegedly resulting in the death of civilians. Serious concern is also expressed about the allegations of torture and ill-treatment of Filipino civilians, in particular Tausug migrants in detention facilities. Utmost concern is expressed about the death in custody of at least two children. Serious concern is furthermore expressed about the Government’s refusal to provide information about the human rights situation in Lahad Dath, Sabah and its denial to allow human rights monitoring mechanisms to access the region, including the Office of the High Commissioner for Human Rights (OHCHR).

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases mentioned. 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 *inter alia* in the Universal Declaration of Human Rights.

We would like to remind your Excellency’s Government that although Malaysia is not a party to either the International Covenant on Civil and Political Rights (ICCPR) nor the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), it is bound by its customary rules, including the non-derogable prohibition of torture and other cruel, inhuman and degrading treatment or punishment.

With regard to the allegations of torture and ill-treatment, 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.”

In this context, we would also like to draw your Excellency’s Government’s attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture

or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

With regard to the conditions of detention of Filipino civilians, in particular Tausug migrants in Sabah, Malaysia, we would like to draw the attention of your Excellency’s Government to the Standard Minimum Rules for the Treatment of Prisoners (adopted 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 your attention to 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 (Adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

With regard to the allegations of widespread detention of migrants, both those in a regular situation, and those in an irregular situation, we would like to refer to the Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live, adopted by General Assembly Resolution 40/144 of 13 December 1985. Its article 5(a) provides the right to life and security of person; “no alien shall be subjected to arbitrary arrest or detention; no alien shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law”.

With regard to the allegations that migrants in a regular situation have been deported, we would like to refer to the Declaration’s article 7, which provides that “An alien lawfully in the territory of a State may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons why he or she should not be expelled and to have the case reviewed by, and be represented for the purpose before, the competent authority or a person or persons specially designated by the competent authority. Individual or collective expulsion of such aliens on grounds of race, colour, religion, culture, descent or national or ethnic origin is prohibited.”

We would also like to recall General Assembly resolution 67/172 which reaffirms “the duty of States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their migration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party. The resolution further “Calls upon all States to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention and, where necessary, to review detention periods in order to avoid excessive detention of irregular migrants, and to adopt, where applicable, alternative measures to detention”.

In this context, we would like to refer to Human Rights Council resolution 23/20, which reaffirms that “when exercising their sovereign right to enact and implement migration and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of all migrants”. It further calls upon States to “comply fully with their international legal obligations with regard to the expulsion of migrants.

We would also like to refer to the report of the Special Rapporteur on the human rights of migrants on the detention of migrants in an irregular situation (A/HRC/20/24) and in particular the recommendation that States should adopt a human rights-based approach to migration and review their legislation and policies on detention of migrants, ensuring that national laws are harmonized with international human rights norms that prohibit arbitrary detention and inhumane treatment (para 71).

Concerning the two alleged deaths of children in detention, and the ill-treatment and detention of another child, we would like to refer to the Convention on the Rights of the Child, acceded to by Malaysia on 17 February 1995, which provides that the best interests of the child shall be a primary consideration in all actions concerning children (article 3). The Convention further provides for the right to life, survival and development of the child (article 6), the right to be protected from all forms of physical or mental violence (article 19), the right of the child to the enjoyment of the highest attainable standard of health, including through the provision of adequate nutritious foods (article 24), the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (article 27), the prohibition against torture or other cruel, inhuman or degrading treatment or punishment (article 37(a)), that arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time (article 37(b)), and that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and shall be separated from adults (article 37(c)).

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:

1. Are the facts alleged in the summary of the cases accurate?
2. Please provide the numbers of casualties among civilians during “operation Daulat”.
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the cases of alleged torture and ill-treatment of Filipino civilians, in particular Tausug migrants in detention facilities, before and after the incursion. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the victim or the family of the victim.
6. Please provide information regarding the allegations of widespread detention of migrants, both those in a regular situation, and those in an irregular situation, and how these measures are compatible with article 5 (a) of the Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live, adopted by General Assembly Resolution 40/144 of 13 December 1985.
7. Please provide information regarding the allegations that migrants in a regular situation have been deported and how these measures are compatible with article 7 of the Declaration on the Human Rights of Individuals who are not Nationals of the Country.
8. Please provide information on steps taken by your Excellency’s Government to provide access to human rights monitoring bodies, including the Office of the High Commissioner for Human Rights (OHCHR) mechanisms to the region.

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report 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.

François Crépeau
Special Rapporteur on the human rights of migrants

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