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Date: 28 May 2018

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Dear Madam/Sir,

I refer to the Joint Communication, reference AL MYS 7/2016 dated 1 December 2016 concerning the human rights situation of Ms. Maria Chin Abdullah, Ms. Ambiga Sreenevasan and Mr. Mandeep Singh.

2. I hereby transmit in the ANNEX the response of the Government of Malaysia to the issues stipulated in the Joint Communication.

3. In thanking you for the understanding and cooperation, I express my sincere hope for this response to be fully taken into consideration.

Please accept, Madam/Sir, the assurances of my highest consideration.

Dato' AMRAN Mohamed Zin
Ambassador/Permanent Representative

ANNEX

**RESPONSE TO THE JOINT COMMUNICATION REGARDING THE SITUATIONS
OF MS. MARIA CHIN ABDULLAH, MS. AMBIGA SRENEVASAN AND
MR. MANDEEP SINGH**

INTRODUCTION

The Government of Malaysia refers to the Joint Communication dated 1 December 2016 and note that it was mainly premised on information received regarding, among others, situations of Ms. Maria Chin Abdullah, Ms. Ambiga Sreenevasan and Mr. Mandeep Singh, in relation to violence and threats to their lives and that of their relatives; harassment; and the violation of their rights to freedoms of expression, peaceful assembly and association, as well as the arbitrary detention of Ms. Maria Chin Abdullah. The Government of Malaysia's response to the issues elucidated in the subsequent paragraphs are based on available facts, details and official record of the Government.

ISSUE 1:**Additional information on the allegations in the Joint Communication****RESPONSE:**

2. Ms. Maria Chin Abdullah was detained on 18 November 2016 to facilitate an investigation conducted by the Royal Malaysia Police (RMP) for an offence under section 124C of the Penal Code. Any investigation for an offence under section 124C of the Penal Code requires the enforcement agency to follow a special procedure of investigations provided under SOSMA since the said offence is listed under Chapter VI of the Penal Code.

3. Offences under Chapter VI of the Penal Code are listed in the First Schedule of SOSMA 2012 as 'Security Offences'. Hence, the RMP is duty-bound to follow that special procedure. Ms. Maria Chin Abdullah's detention was done based on evidence found by the RMP in the course of their investigation relating to the offence. The conduct of investigation was done professionally and she was neither detained for her political belief nor political activities.

4. For the purpose of facilitating that investigation, Ms. Maria Chin Abdullah was detained under section 4(1) and 4(4) of SOSMA and in furtherance of the investigation, the RMP through a Superintendent of Police had extended her detention under section 4(5). Throughout the detention period, Maria Chin Abdullah was placed at the Police Remand Centre, Batu, Sentul, Kuala Lumpur. She was released from detention on 28 November 2016, well before the expiry of 28 days detention period as provided under section 4(5) of SOSMA.

5. With regard to the duration of arrest and detention under SOSMA, section 4 provides that the police may, without warrant, arrest and detain any person whom he has reason to believe to be involved in security offences and may extend the period

of detention for a period of not more than twenty-eight days, for the purpose of investigation.

6. The detention is still within the ambit of 'save in accordance with law' provided for under Article 5 of the Federal Constitution. This can be seen by the provision in section 4(10) of SOSMA which provides that *'This section shall have effect notwithstanding anything inconsistent with Articles 5 and 9 of the Federal constitution and section 117 of the criminal procedure code [Act 593]*.

7. The period for the detention of a person under SOSMA is clearly spelled out. Furthermore, subsection 4(2) of the Act provides that a person arrested shall be informed as soon as may be on the grounds of his arrest. Besides that section 5(1) provides that when a person is arrested and detained, a police officer conducting the investigation shall immediately notify the next-of-kin of such person of his arrest and detention and allow such person to consult a legal practitioner of his choice.

ISSUE 2:

Information on the steps taken to investigate the violence and death threats against Ms. Maria Chin Abdullah, her sons, Ms. Ambiga Sreenevasan and Mr. Mandeep Singh.

RESPONSE:

8. The Royal Malaysia Police (RMP) is currently conducting a formal investigation under section 507 of the Penal Code and the investigation process is still ongoing.

ISSUE 3:

Information concerning the legal grounds for the raids that took place in the office of BERSIH 2.0 on 18 November 2016 and in the office of EMPOWER on 28 November 2016 and whether any of the confiscated items have been returned.

RESPONSE:

9. RMP received a police report lodged regarding the foreign interference in the general election of Malaysia. Investigation is conducted under section 124C of the Penal Code which is an attempt to commit an activity detrimental to parliamentary democracy which is subject to maximum 15 years of prison. Section 124C specified the offences under Chapter VI in the First Schedule of Security Offences (Special Measures) Act 2012 or also known as SOSMA, are defined as security offences. Any investigation for an offence under section 124C of the Penal Code, which is the offences against the State, requires the enforcement agency to follow a special procedure provided under SOSMA since the said offence is listed under Chapter VI of the Penal Code.

10. Every single measure taken by the RMP while conducting investigation was in accordance with the provisions under SOSMA and the human rights of Ms. Maria Chin Abdullah as a detainee under SOSMA was preserve duly according to the

provisions of the laws being enforced in Malaysia. The family of Ms. Maria Chin Abdullah which included her father, elder sister and her three sons were allowed to visit her during the period of her detention. Furthermore, she was also granted the permission to meet up with the legal practitioner of her choice during the detention.

ISSUE 4:

Information concerning the legal grounds for the arrest and detention of Ms. Maria Chin Abdullah and Mr. Singh, as well as the charges brought against them, and explain how these are compatible with Malaysia's obligations under international human rights law.

RESPONSE:

11. RMP had received information which reported that there were individuals attempting to cause riot, disrupt peace and pose threat to the public security as well as planning to topple by force, the Government which elected and appointed through democratic process. The arrest of Ms. Maria Chin Abdullah was based on section 124C of the Penal Code and Mr. Mandeep Singh was arrested based on the provisions under section 103 and 105 of the Criminal Procedure Code. The arrest was an effort by the RMP to prevent the act of riot, which is an offense under section 147 of the Penal Code.

12. The actions taken by the RMP is in accordance with Malaysia's international human rights obligations as enshrined in the Federal Constitution and international human rights instruments which Malaysia has ratified. Although fundamental freedoms in Malaysia are guaranteed in Article 5 to Article 13 of the Federal Constitution, these rights are not absolute and will be maintained according to the situation and needs of Malaysia. As Article 149 of the Constitution empowers the Parliament to enact laws in order to stop or prevent subversion, organized violence and acts and crimes prejudicial to the public and emergency power, under which SOSMA was enacted. The Government of Malaysia has always trying to reach a balance between fulfilling its international human rights obligations and safeguarding the security and public order in the country.

ISSUE 5:

Information on the legal basis for applying SOSMA against the peaceful human rights activities of Ms. Maria Chin Abdullah. In particular, the justification for why the clear exception provided in section 4 of SOSMA has not been applied in this case.

RESPONSE:

Legal basis for applying SOSMA against the peaceful human rights activities of Ms. Maria Chin Abdullah

13. The Security Offences (Special Measures) Act 2012 [Act 747] ("SOSMA") is an Act to provide for special measures relating to security offences for the purpose of maintaining public order and security and for connected matters. It was enacted in

2012 by the Parliament of Malaysia pursuant to Article 149 of the Federal Constitution.

14. Section 3 of SOSMA defines "security offences" as the offences specified in the First Schedule. Based on the First Schedule, security offences include offences under Chapter VI, Chapter VIA and Chapter VIB of the Penal Code [Act 574]; offences under Part IIIA of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670]; and the Special Measures Against Terrorism in Foreign Countries Act 2015 [Act 770].

15. In relation to the Penal Code, SOSMA is only applicable to offences listed under Chapter VI (Offences against the State) which include the provisions under section 121 until 130A, Chapter VIA (Offences relating to terrorism) and Chapter VIB (Organized crime).

16. With regard to the issue raised in the Joint Communication, Ms. Maria Chin Abdullah was detained and investigated under section 124C of the Penal Code for an offence of attempting to commit an activity detrimental to parliamentary democracy. Such offence falls under Chapter VI which reads as follows:

"Whoever attempts to commit an activity detrimental to parliamentary democracy or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years."

17. Subsection 130A(a) of the Penal Code further defines 'activity detrimental to parliamentary democracy' as follows:

"'activity detrimental to parliamentary democracy' means an activity carried out by a person or a group of persons designed to overthrow or undermine parliamentary democracy by violent or unconstitutional means;"

18. According to the First Schedule of SOSMA, the offence is deemed a security offence and thus the procedure under SOSMA is applicable. Therefore, there is legal basis for applying SOSMA against her.

Justification for why the clear exception provided under section 4 of SOSMA has not been applied in this case

19. With regard to the second limb of the issue, reference is made to subsection 4(3) of SOSMA which states as follows:

"(3) No person shall be arrested and detained under this section solely for his political belief or political activity."

20. The above provision clearly states that no person shall be arrested and detained merely for his political belief or political activity. Based on the Joint Communication, it is noted that Ms. Maria Chin Abdullah is the Chairperson of BERSIH 2.0 and one of the organisers of Bersih 5 rally. In this regard, reference shall be made to the purpose of the establishment of BERSIH. Paragraph 5, page 2 of the Joint Communication states as follows:

"BERSIH was officially launched in 2006 by five political parties and 25 NGOs, who came together to form "Coalition for Clean and Fair Elections". In 2011, BERSIH was relaunched as BERSIH 2.0 a coalition of like-minded civil society organisations without affiliation to any political party with the objective of campaigning for clean and fair elections in Malaysia. BERSIH 2.0 held major rallies in 2011 (Bersih 2), 2012 (Bersih 3), 2015 (Bersih 4). The last rally (Bersih 5) was held on 19 November 2016."

21. The above paragraph clearly states that BERSIH 2.0 is a coalition without affiliation to any political party with the objective of campaigning for clean and fair elections in Malaysia. Ms. Maria Chin Abdullah was arrested under section 124C of the Penal Code because of her attempts to commit an activity detrimental to parliamentary democracy. Nowhere in section 124C of the Penal Code it is stated that political belief or political activity is an ingredient of the offence. There is no correlation between Section 124C of the Penal Code and subsection 4(3) of SOSMA.

22. Therefore, section 4 is clearly not applicable in this case. She was arrested not because of her political activity or political belief but rather, linked to documents indicating 'a threat to parliamentary democracy' found during the raid in the office of BERSIH 2.0.

23. In addition, it is highlighted that as of to date, no charge has been brought against Ms. Maria Chin Abdullah under SOSMA in Court. Ms. Maria Chin Abdullah was arrested and detained under SOSMA for an offence under section 124C of the Penal Code and was subsequently released.

24. In light of the above, there was legal basis for applying SOSMA to Ms. Maria Chin Abdullah as she was being investigated for an offence that is a security offence under SOSMA. Further, the arrest and detention of Ms. Maria Chin Abdullah was linked to documents indicating 'a threat to parliamentary democracy' which is an offence under section 124C and not because of her political activity or political belief. Thus, subsection 4(3) of SOSMA is not applicable in this case.

ISSUE 6:

Information about measures taken to bring SOSMA and the Sedition Act 1948 as well as their implementation into line with Malaysia's obligations under international human rights law.

RESPONSE:

25. The Government notes the references made to international human rights law in the Annex of the Joint Communication, particularly articles 9, 10, 19 and 20 of the Universal Declaration on Human Rights ("UDHR") which guarantee the right not to be deprived arbitrarily of liberty, the right to a fair hearing, the right to freedom of expression and the right to freedom of peaceful assembly and association.

26. The Government further notes reference to articles 1, 2, 5, 6 and 12 of 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 ("UN Declaration on Human Rights Defenders") which provide among others, right of individual to promote and strive for the protection and realization of human rights, responsibility of state to protect, promote and implement human rights and fundamental freedoms, right of individual to meet or assemble peacefully and to participate in peaceful activities against violations of human rights and fundamental freedoms.

27. It is pertinent to note that the Malaysian courts had the opportunity to reflect on the legal status of the UDHR. In *Merdeka University Bhd. v. Government Of Malaysia* [1981] CLJ 175; [1981] CLJ (Rep) 191, the court held the status of UDHR to be as follows:

"The Universal Declaration of Human Rights was proclaimed and adopted on 10 December 1948, by the General Assembly of the United Nations. It is not a legally binding instrument as such and some of its provisions depart from existing and generally accepted rules. It is merely a statement of principles devoid of any obligatory character and is not part of our municipal law."

28. In deciding the legal status of the UDHR, this position was referred in other decided cases such as [REDACTED] Appeals [2002] 4 CLJ 309 and [REDACTED] Another Appeal [2011] 8 CLJ 766.

29. Further, [REDACTED] [2011] 1 CLJ 226, the court held as follows:

"The Universal Declaration of Human Rights 1948 ('UDHR') is part of Malaysian jurisprudence to the extent it is not inconsistent with the Federal Constitution..."

30. Nevertheless, it is emphasized that the Government has constantly adhered to the underlying philosophy and norms as set forth in the UDHR as well as relevant articles of the UN Declaration on Human Rights Defenders to the extent they are not inconsistent with the Federal Constitution and national legislation. In this regard, the Government has incorporated the abovementioned principles into our Federal Constitution particularly under Part II on Fundamental Liberties and other national legislation i.e. the Peaceful Assembly Act 2012 [Act 736].

Security Offences (Special Measures) Act 2012

31. With regard to SOSMA, the Government reiterates its response under issue 5 above.

Sedition Act 1948

32. In relation to the Sedition Act 1948 [Act 15], the Government contends that Act 15 is not intended to curb the exercise of the right to freedom of speech in Malaysia.

33. Freedom of speech and expression is one of the fundamental liberties in Malaysia as provided under Article 10(1)(a) of the Federal Constitution. This right to freedom of speech and expression is subject to restrictions provided under Article 10(2)(a), where Parliament may by law impose restrictions to the rights provided in Article 10(1)(a) as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality, and also restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence. Act 15 falls within the "law made by Parliament" as stated under Article 10(2) of the Federal Constitution.

34. In addition, based on Article 10(4) of the Federal Constitution, Parliament may when imposing restrictions in the interest of the security of the Federation or any part thereof or public order, pass laws prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, Article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law. The Government contends that Act 15 represents the restrictions and preventions as clearly permitted by Articles 10(2) and 10(4) of the Federal Constitution.

35. Based on the above provisions, it is established that the Malaysian Government through Parliament may, by virtue of Article 10(2) impose restrictions to the freedom of speech and expression and Act 15 represents such a restriction. This restriction is not without safeguard as under section 5 of Act 15, no person shall be prosecuted for an offence under section 4 without the written consent of the Public Prosecutor.

Malaysia's Obligations under International Human Rights Law

36. It is pertinent to underline that the Government of Malaysia is consistent in meeting its international commitment to ensure freedom of expression for its people. While Malaysia is not a state party to the International Covenant on Civil and Political Rights (ICCPR), freedom of expression, as provided in both the ICCPR and the UDHR, is protected under the Federal Constitution of Malaysia. However, as with any other right, the right to freedom of expression is not absolute and restricted only insofar as it infringes upon the rights of others or threatens the peace and harmony of the country. This is also in line with article 19, ICCPR and article 29, UDHR which provides that the enjoyment of all rights and freedoms is subject to restrictions and limitations as may be determined by law to meet the just requirements of national security and public order.

37. In relation to Malaysia's obligations under international human rights law, the Government contends that the existence of SOSMA and Act 15 is justifiable in the context of Malaysia's sovereignty in the promulgation of domestic laws for the purpose of maintaining order, peace and security in the country, as recognized at international law. The Government is committed to ensuring freedom of speech and expression, freedom of association as well as freedom of peaceful assembly for its people which are protected and guaranteed under the Federal Constitution.

38. In relation to Human Rights Council resolution 24/5 which 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 - the Government would emphasise that the Human Rights Council had also recognised permissible limitations to freedom of peaceful assembly and of association insofar "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."

39. The Government appreciates Articles 1, 2, 5, 6 and 12 of the UN Declaration on Human Rights Defenders. Nevertheless, the Government notes that Article 17 of the UN Declaration on Human Rights Defenders acknowledges that everyone, acting individually and in association with others, shall be subject to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

ISSUE 7:

Detailed information concerning measures to ensure that human rights defenders, including women human rights defenders, can exercise their rights to freedom of association, peaceful assembly and expression in Malaysia, including the ability to peacefully express views critical of the human rights situation and of the conduct of the government or government officials.

RESPONSE:

40. The Government has taken continuous efforts to ensure that freedom of association, peaceful assembly and expression are protected in Malaysia. In implementing such efforts, the Government is guided by the legal provisions and principles that have been enshrined in the Federal Constitution and national legislation.

41. The Federal Constitution guarantees freedom of speech, assembly and association under Article 10 which provides that every citizen has the right to freedom of speech and expression; right to assemble peaceably and without arms; and right to form associations subject to clause (2). Clause (2) provides among others that Parliament may by law impose such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and also restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence.

42. The right to assemble peaceably and without arms is further emphasized by section 2, Act 736. Section 2 provides that the ultimate objects of the Act are to ensure:

- (a) so far as it is appropriate to do so, that all citizens have the right to organize assemblies or to participate in assemblies, peaceably, and without arms; and

- (b) that the exercise of the right to organize assemblies or to participate in assemblies, peaceably and without arms, is subject only to restrictions deemed necessary or expedient in a democratic society in the interest of the security of the Federation or any part thereof or public order, including the protection of the rights and freedoms of other persons.

43. Besides, it has never been the intent of the Government to put restrictions in place to prevent human rights defenders including women human rights defenders and political activists to peacefully express dissenting views and exercise their legitimate rights. The objectives of the Act 736 are –

- a) in so far, as it is appropriate to do so, to ensure that all citizens have the right to organize assemblies or to participate in assemblies, peaceably and without arms;
- b) to ensure that the right to assemble is subject only to such restrictions and conditions deemed necessary or expedient in a democratic society in the interest of security, public order and protection of the rights and freedoms of other persons;
- c) to dispense with the requirement of license/permit; and
- d) to provide for requirement of notification by the organizer of an assembly to the Officer in Charge of Police District.

44. In relation to core human rights instruments, Malaysia is a State Party to the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

45. Having acceded to the CRC on 17 February 1995, the Government takes its obligations thereunder seriously having recently withdrawn its reservation to Article 15 of the CRC governing the right of the child to assemble.

46. The Government notes that in relation to the organization of an assembly, Act 736 provides that persons below the age of twenty-one are prohibited from organizing an assembly. This prohibition is imposed due to the important responsibilities and duties of the organizer of an assembly. In this regard, States may set a minimum age for organizers having due regard to the evolving capacity of the child. This principle is evident in the laws of a number of other jurisdictions.

47. As regards participation in an assembly Act 736 provides that a child below the age of fifteen years of age cannot participate in an assembly. However it should also be highlighted that the prohibition is not an absolute prohibition as the Second Schedule to Act 736 provides for a list of assemblies wherein a child below the age of fifteen may participate.

48. The Government has always acted in a manner consistent with the best interests of the child. The aforementioned provisions which relate to children were included in Act 736 to reflect the evolving capacity of the child and the ability of the

child to understand and comprehend the purpose and object of an assembly. This is in line with the Government's obligation under Article 3(2) of the CRC which mandates States Parties to take all appropriate legislative and administrative measures to ensure such protection and care as is necessary for a child's well-being.

49. In relation to CEDAW and CRPD, there is nothing in Act 736 which derogates from the Government's obligations under both Conventions. The provisions of Article 8(2) of the Federal Constitution and the Persons with Disabilities Act 2008 [Act 685] which conferred both Conventions the force of law in Malaysia remain applicable.

50. Act 736 was drafted to facilitate the exercise of the right to assemble peacefully and without arms by ensuring that there is no arbitrary interference from the authorities. The said Act also clearly outlines, among others, the procedures to be followed and the rights to be enjoyed by the participants and organizers and the responsibilities imposed not only on the participants and organizers but also on the police.

51. Furthermore, religious assemblies, funeral processions, wedding receptions, open houses during festivities, family gatherings, family days held by an employer for the benefit of his employees and their families and general meetings of societies or associations are exempted from the requirement of submitting notification to the OCPD. Act 736 also allows for assemblies to be held at designated places without prior notification to the Police. This enables the holding of spontaneous assemblies at such designated places.

52. It is the Government's intention, through the enactment of the foregoing provisions to enable activists and members of civil society organizations, who are citizens to exercise their right to peaceful assembly with minimal interference from the authorities.

53. In light of the above, rights to freedom of association, peaceful assembly and expression in Malaysia are guaranteed to all citizens including human rights defenders as termed under this issue. However, it is highlighted that by virtue of the abovementioned provisions, such rights are subject to restrictions stated therein.

CONCLUSION

54. The Government of Malaysia reaffirms its commitment that all necessary measures will be taken to guarantee that the rights and freedoms of all citizens are respected. The Government also reassures that the rights which are presently available to all citizens shall be continuously afforded in accordance with the prevailing domestic laws of Malaysia and its national policies which are in full consonance with the norms and standards of international law.

55. The Government of Malaysia requests the foregoing responses and observations be submitted to the kind attention of the Human Rights Council.

28 May 2018