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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-ninth session, 21-25 August 2017

Opinion No. 50/2017 concerning Maria Chin Abdullah (Malaysia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 19 January 2017, the Working Group transmitted to the Government of Malaysia a communication concerning Maria Chin Abdullah. The Government replied to the communication on 18 April 2017. Malaysia is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Maria Chin Abdullah is a 60-year-old Malaysian citizen. She is the Chair of a coalition of civil society organizations known as BERSIH 2.0. According to the source, BERSIH was formed in July 2005 with the objective of seeking electoral reform in Malaysia. In 2011, BERSIH was relaunched as BERSIH 2.0, with a broader objective of monitoring all sides of politics in Malaysia.

5. According to the source, since the launch of BERSIH 2.0, its leaders have faced arrests, charges, travel bans, harassment, threats and intimidation in relation to their work. The source states that the Government has not responded adequately to the threats and attacks against Ms. Abdullah and other members of BERSIH 2.0. Instead of offering protection, ruling party politicians have consistently portrayed BERSIH 2.0 supporters in a negative light and blamed them for any incidents of violence. For example, on 8 September 2015, Ms. Abdullah and other BERSIH 2.0 activists were arrested and charged under section 4 (2) (c) of the Peaceful Assembly Act 2012, for what it described as organizing and taking part in an unlawful assembly in Kuala Lumpur on 28 March 2015. The case was awaiting trial at the Sessions Court.

6. In addition, the source claims that travel bans imposed on Ms. Abdullah and other BERSIH 2.0 activists in the past five years have further curtailed peaceful BERSIH rallies and related activities. For example, on 23 July 2015, Ms. Abdullah was told that, if she wished to travel, she would need to inform the nearest office of the Department of Immigration. On 15 May 2016, she was not permitted to board a flight to the Republic of Korea and was told that the Department of Immigration and the Ministry of Home Affairs had issued a travel ban against her. As a result, she was unable to participate in a human rights conference that she had been invited to attend, and was unable to receive a human rights award for BERSIH 2.0.

7. The source reports that threats and attacks against BERSIH 2.0 escalated in the lead-up to a rally planned for 19 November 2016. The intention of the rally had been to call for accountability and democracy in Malaysia and more specifically for the resignation of the Prime Minister in the wake of an embezzlement scandal. On 18 October 2016, Ms. Abdullah received a death threat with disturbing images, purportedly from members of a terrorist organization. The sender of the message threatened to kill her and her children if she and BERSIH 2.0 continued with plans to hold the rally. The source argues that the threats to kill her children were gender-specific and targeted her role as a mother. On 29 October 2016, the police arrested Ms. Abdullah on suspicion of violating section 11 (2) of the Printing Presses and Publications Act 1984, for distributing flyers on the rally. The police questioned her for two hours before releasing her on bail.

8. Against that background, the source submits that the police raided the BERSIH 2.0 office at 3.15 p.m. on 18 November 2016. The raid was carried out under section 124 (C) of the Penal Code in relation to alleged “attempts to commit an activity detrimental to parliamentary democracy”. In total, 10 laptops were seized along with documents, bank statements and office payrolls. BERSIH 2.0 lawyers arrived soon after the start of the raid and asked for a warrant. The source alleges that the police did not produce a warrant and forced the lawyers to leave the office while they carried out the raid.

9. During the raid, Ms. Abdullah her other colleagues were detained inside the office and separated from their lawyers. She and another member of the organization were then arrested. She was held under section 124 (C) of the Penal Code and under the Security Offences (Special Measures) Act 2012. According to the source, the Inspector General of Police later stated that she was also being investigated under the Peaceful Assembly Act 2012. Furthermore, he told the press that Ms. Abdullah had been arrested after documents “detrimental to parliamentary democracy” were found in her office and that she had confessed to receiving funds from the Open Society Foundation.

10. The source alleges that, in the evening of 18 November 2016 and during the early hours of 19 November 2016, 13 individuals, including BERSIH 2.0 members, student

activists and opposition politicians, were subsequently arrested, held on remand for 48 hours and released after the rally was concluded.

11. The source provided a copy of the Security Offences Act to the Working Group. The source submits that, although the Act purports to combat terrorism, it actually hinders due process and the fair trial of civil society members. The source argues that several of the provisions of the Act, including the arrest of suspects without warrant (section 4 (1)); denial of access to legal counsel and communication to next of kin for 48 hours (section 5 (2)); detention for a further 28 days in addition to the initial detention (section 4 (5)); and the denial of bail pending hearings and completion of trial and appeals (section 13 (1)), are in violation of articles 9 and 10 of the Universal Declaration of Human Rights. The source notes that a person who is formally charged and convicted under the Act may be imprisoned for up to 15 years for organizing a peaceful rally.

12. According to the source, after confirming Ms. Abdullah's arrest on 18 November 2016, the police denied her access to lawyers and family members for the first 48 hours of detention. Her lawyers were told that she was being held at Mukim Batu police detention centre, the location of which was unknown.

13. The source alleges that Ms. Abdullah was blindfolded when she was brought in or out of her cell. She was kept in solitary confinement in a small windowless cell with no mattress, bedding or pillow and with the lights on 24 hours a day. She was forced to sleep on a hard, wooden floor on a raised concrete platform and to dress in prison clothing. She was denied reading materials. Although her cell was air-conditioned, she was not provided with a blanket. She was not given an opportunity to exercise outside her cell, where she was confined 24 hours a day unless brought out by the investigating authorities. The source submits that those conditions, as reported by her lawyers and independently confirmed by the National Human Rights Commission, violate the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

14. Ms. Abdullah was released on 28 November 2016, the day before the High Court hearing of a habeas corpus application filed on her behalf. The next day, she attended the hearing with her lawyers, and the Court dismissed the application. The Court's judicial commissioner said that he had received a letter from a Ministry of Home Affairs legal adviser stating that Ms. Abdullah had been released and that the Government would not be filing an affidavit or court documents to respond to the case. Ms. Abdullah has not been able to challenge the Government or claim a remedy for her detention.

15. The source emphasizes that, although Ms. Abdullah has been released, the police have warned that they can re-arrest her at any time. They continue their investigations into Ms. Abdullah, her BERSIH 2.0 and the organization EMPOWER, where she previously worked. They have raided the offices and seized financial documents of those two civil society organizations and others, and summoned civil society members for questioning. Furthermore, the Kuala Lumpur City Hall demanded that BERSIH 2.0 pay for damages caused to trees and plants in the city during the rally held in November 2016.

16. The source submits that Ms. Abdullah's deprivation of liberty was arbitrary according to categories II, III and V of the categories applied by the Working Group.

17. In relation to categories II and V, the source submits that Ms. Abdullah's arrest and detention is a symptom of government crackdowns on freedom of opinion, expression and assembly, as protected by articles 19 and 20 of the Universal Declaration of Human Rights. Attacks and threats against Ms. Abdullah also constitute discrimination based on her political beliefs and opinion.

18. In relation to category III, the source submits that the Security Offences Act significantly undermines the right to a fair trial enshrined in article 10 of the Universal Declaration of Human Rights and other international norms and principles relating to the rule of law. The Act renders ultimate power to government authorities to deny access to a lawyer and prolong detention periods without judicial review. Ms. Abdullah was detained pursuant to the provisions of the Act, and her deprivation of liberty was therefore arbitrary.

19. The Working Group notes that Ms. Abdullah and other BERSIH 2.0 members have been the subject of several urgent appeals and communications sent to the Government by the Working Group and other special procedures mandate holders, including:

(a) An urgent appeal by the Working Group dated 7 July 2011,[1] including allegations relating to the June 2011 raid of the BERSIH 2.0 secretariat without a warrant, and to court orders obtained by the police to prevent certain people from entering Kuala Lumpur for a planned rally and to arrest them on sight, including Ms. Abdullah. In its reply, the Government stated that planned marches by other opposing groups on the same day had posed a threat to public order and that BERSIH had not complied with applicable laws and was an unlawful organization. The response did not specifically mention Ms. Abdullah;

(b) A joint communication from mandate holders dated 23 January 2012, relating to the alleged banning of a lesbian, gay, bisexual and transgender festival in Kuala Lumpur, including the questioning by police of Ms. Abdullah; and the alleged harassment of and threats of violence to festival organizers. In its reply, the Government stated that investigations had been conducted in relation to Ms. Abdullah and others following numerous complaints about the festival that had been submitted to police by members of the public and non-governmental organizations;

(c) A joint communication from mandate holders dated 16 December 2015,[2] relating to the alleged ongoing targeting of BERSIH 2.0 members, including charges brought against Ms. Abdullah in November 2015 under the Peaceful Assembly Act for failing to give notice of a rally, despite two previous meetings held by BERSIH 2.0 with the police to discuss the rally. The Government did not respond to the communication;

(d) A joint communication from mandate holders dated 1 December 2016,[3] relating to allegations of violence, death threats and harassment of BERSIH 2.0 members and supporters, including Ms. Abdullah, in the lead-up to the 19 November 2016 rally. The communication referred to the travel ban imposed on Ms. Abdullah in July 2015 and her arrest on 29 October 2016 for distributing flyers relating to the rally without the name and address of the publisher. The communication also related to the alleged detention of Ms. Abdullah on 4 November 2016 in relation to allegations that BERSIH 2.0 had received foreign funding; and to the raid of the BERSIH 2.0 office on 18 November 2016, and the preventive detention of Ms. Abdullah under the Security Offences Act. The mandate holders expressed serious concern over the alleged arbitrary detention of Ms. Abdullah. To date, the Government has not responded to the communication.

Response from the Government

20. On 19 January 2017, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 19 March 2017 regarding the current situation of legal proceedings against Ms. Abdullah and any comment that the Government may have on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds invoked by the authorities to justify her detention, and to provide details regarding the conformity of her deprivation of liberty and apparent lack of fair judicial proceedings with international human rights norms.

21. On 17 March 2017, the Government sought an extension of one month to provide its response. The Working Group granted the request and set a new deadline of 19 April 2017. The Government submitted its response on 18 April 2017.

22. In its response, the Government states that the information contained in the communication was not entirely accurate and was based on allegations made by a single source. The Government notes that its comments on the allegations were based on official records and were the result of consultation with relevant Malaysian authorities.

[1] See A/HRC/19/44, case No. JUA MYS 6/2011.
[2] See A/HRC/20/30, case No. JAL MYS 11/2011; and A/HRC/32/53, case No. JAL MYS 4/2015.
[3] Available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22875.

23. The Government states that Ms. Abdullah was detained by the police on 18 November 2016 to facilitate investigations into a police report alleging the intervention of foreign powers in general elections in Malaysia. The investigations were conducted pursuant to section 124 (C) of the Penal Code regarding activities detrimental to parliamentary democracy, which falls under Chapter VI of the Penal Code (offences against the State), providing that "[w]hoever attempts to commit activity detrimental to parliamentary democracy or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to 15 years".

24. Section 130 (A) (a) of the Penal Code further defines "activity detrimental to parliamentary democracy" as "an activity carried out by a person or a group of persons designed to overthrow or undermine parliamentary democracy by violent or unconstitutional means".

25. The Government notes that the offence is also classified as a security offence under the Security Offences Act. Investigations into offences under section 124 (C) require the enforcement agency to follow a special procedure of investigations provided under the Act since the offence is listed under Chapter VI of the Penal Code. Ms. Abdullah was detained based on evidence in the form of documents "detrimental to parliamentary democracy" the were found during a search of the BERSIH 2.0 office by the police in the course of their investigation into the offence.

26. According to the Government, Ms. Abdullah was held at the police remand centre in the Batu subdistrict of Kuala Lumpur, where there was a medical officer on standby 24 hours a day, and where she was given weekly check-ups by a medical officer from Kuala Lumpur Hospital. In addition, she was allowed to meet with her lawyers and family members on 20 November 2016. She also filed a habeas corpus application before the High Court on 22 November 2016.

27. The Government states that representatives of the National Human Rights Commission visited Ms. Abdullah at her detention facility on 22 November 2016. The request for their visit had been given at short notice and was promptly agreed to by the police. The representatives conducted an unimpeded interview with Ms. Abdullah and reported that she appeared to be in good health. They also inspected her place of detention and described its state of cleanliness as acceptable.

28. The Government notes that the Security Offences Act provides for special measures relating to security offences for the purposes of maintaining public order and security. It was enacted in 2012 by Parliament pursuant to article 149 of the Federal Constitution. Section 3 of the Act defines "security offences" as including offences under chapters VI (offences against the State), VIA (terrorism) and VIB (organized crime) of the Penal Code and offences under other anti-trafficking and anti-terrorism legislation.

29. Given that the Security Offences Act was enacted pursuant to the Federal Constitution, any of its provisions designed to stop or prevent security offences are valid, notwithstanding that they may be inconsistent with other provisions of the Federal Constitution regarding liberty of the person, prohibition of banishment and freedom of movement, freedom of speech, assembly and association or rights to property, or outside the legislative power of Parliament. In the present case, the offence was deemed a security offence and there was therefore a legal basis for applying the Act against Ms. Abdullah.

30. In relation to the source's allegations under category II, the Government refers to domestic court decisions finding that the Universal Declaration of Human Rights is not a legally binding instrument, that some of its provisions depart from generally accepted rules, and that it is not part of municipal law. The Universal Declaration of Human Rights is only part of Malaysian jurisprudence to the extent that it is not inconsistent with the Federal Constitution and national legislation. The Government states that it has incorporated the principles of the Universal Declaration of Human Rights into the Federal Constitution, particularly in Part II on Fundamental Freedoms, and in other national legislation. However, the right to freedom of expression is not absolute and cannot infringe on the rights of others or threaten the peace, security and stability of the country. This is consistent with article 29 (2) of the Universal Declaration of Human Rights, 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.

31. The Government notes that the Federal Constitution guarantees the freedom of speech, peaceful assembly and association under article 10, which is subject to any restrictions that Parliament may by law impose under article 10 (2) as it deems necessary or expedient in the interest of the security of the Federation, friendly relations with other countries, public order or morality, and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence. A similar restriction on the right to peaceful assembly is found in the Peaceful Assembly Act 2012. In the present case, Ms. Abdullah's detention was not the result of her exercise of the rights to freedom of association, peaceful assembly and expression, but due to investigations into activities detrimental to parliamentary democracy. Therefore, category II does not apply in this case.

32. In relation to the source's allegations under category III, the Government refers to article 5 of the Federal Constitution, which provides that:

> (3) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult with and be defended by a legal practitioner of his choice.
>
> (4) Where a person is arrested and not released he shall without unreasonable delay, and in any case within 24 hours (excluding the time of any necessary journey), be produced before a magistrate and shall not be further detained in custody without the magistrate's authority.

33. The Government submits that the right to a fair and public hearing is not absolute and may be restricted if it infringes upon the rights of others or threatens the peace and stability of the country, in line with article 29 (2) of the Universal Declaration of Human Rights. In the present case, the police were permitted to postpone Ms. Abdullah's consultations with a lawyer for up to 48 hours, according to section 5 (2) of the Security Offences Act.

34. Furthermore, section 4 (5) of the Security Offences Act provides for the extension of the period of detention for not more than 28 days, and such extension does not require a court order. In this case, Ms. Abdullah was released on 28 November 2016 after 10 days of detention, well before the expiry of the 28-day detention period provided under section 4 (5). She was also allowed to consult with her lawyers on 20 November 2016, which was within 48 hours of her detention, as permitted under section 5 (2). Accordingly, category III does not apply in this case.

35. In relation to the source's allegations under category V, the Government refers to section 4 (3) of the Security Offences Act which provides that: "[n]o person shall be arrested and detained under this section solely for his political belief or political activity". In this case, BERSIH 2.0 is a civil society coalition that campaigns for electoral reform in Malaysia. Ms. Abdullah was arrested under section 124 (C) of the Penal Code in relation to documents "detrimental to parliamentary democracy" found during a search of the organization's office. Section 124 (C) does not provide that political belief or political activity is an ingredient of the offence, and there is no correlation between section 124 (C) and section 4 (3) of the Act. Ms. Abdullah was arrested and detained because of documents indicating a threat to parliamentary democracy, not because of her political activity or political belief. As such, category V does not apply in this case.

36. Finally, the Government notes the availability of the remedy of habeas corpus. On 22 November 2016, Ms. Abdullah filed a habeas corpus application to challenge the validity of her arrest. The application was filed against the investigating officer from the Classified Crimes Unit, the Inspector-General of Police, the Minister for Home Affairs, and the Government of Malaysia. On 24 November 2016, the hearing date for the case was set for 29 November 2016. However, Ms. Abdullah was released on 28 November 2016 and her habeas corpus application was dismissed by the High Court on 29 November 2016 since she was no longer in detention. Ms. Abdullah subsequently filed an appeal to the Federal Court on 1 December 2016 against the decision of the High Court. On 3 April

2017, a panel of five Federal Court judges, led by the Chief Justice of Malaya, dismissed her appeal on the grounds that the appeal had no merit.

Communication from the source

37. On 11 July 2017, the response from the Government was sent to the source for further comment. The Working Group requested the source to respond by 1 August 2017. The source responded on 1 August 2017.

38. The source submits that, in its response, the Government has omitted key details on the conditions of Ms. Abdullah's detention, and has not demonstrated the following: (a) that her arrest and detention were proportional responses to the situation; (b) that "peace and stability" of the country were under threat; (c) that there is evidence the documents seized by police were "detrimental to parliamentary democracy"; and (d) what alleged activity was perceived as a threat to peace or parliamentary democracy.

39. The source notes that the Government has explained that the Security Offences Act is applicable to specific sections of the Penal Code, including offenses relating to terrorism and organized crime and offences against the State, the latter of which includes any "attempt to commit activity detrimental to parliamentary democracy", which is further defined as an activity "designed to overthrow or undermine parliamentary democracy by violent or unconstitutional means".

40. The source further notes that Ms. Abdullah was arrested and detained after the raid on the BERSIH 2.0 office on the eve of a planned rally, then held in solitary confinement for nearly two weeks. Her release soon after her habeas corpus application and the absence of legal proceedings based on evidence from the seized documents indicate that there was no legitimate basis found in the content of the documents that would justify charges under the Security Offences Act or section 124 (C) of the Penal Code. The Government has not explained what violent or unconstitutional activity Ms. Abdullah attempted to undertake, nor how the contents of the seized documents were "detrimental to parliamentary democracy". Moreover, it has not demonstrated that she had any intent to overthrow or undermine the State. Despite its claims, no affidavit was filed by the Government in reply during the habeas corpus hearing, and it remains unknown what documents it was referring to in its allegations against Ms. Abdullah.

41. Moreover, the source recalls that Ms. Abdullah was arrested and detained the day before a planned rally, and submits that the Government has not provided any explanation for the timing of the arrest. According to the source, the timing of the raid and arrest cannot be dissociated from an intention by the police to curb the rally. International observers affirmed the peaceful nature of the rally and its previous iterations, and this was reported by multiple news outlets. The actions taken against Ms. Abdullah therefore infringed on her rights to freedom of expression, peaceful assembly and association.

42. The source also refers to the claim by the Government that the raid and arrest were not based on the organization's political activities or beliefs. However, BERSIH 2.0 has demanded that the Government be held to account for embezzled State funds and has called for elections to be held, in reaction to allegations of large-scale embezzlement by ruling party members, including persons close to the Prime Minister. Those allegations are being investigated by various Governments around the world and have already led to the conviction of banking executives.

43. The source refers to the argument by the Government that delaying Ms. Abdullah's meeting with her lawyers by 48 hours was authorized under section 5 of the Security Offences Act, and that her arrest without warrant and period of detention were authorized under section 4 of the Act. The source cites a statement from May 2017 by the Malaysian Bar Council that pretrial detention under the Act, coupled with the absence of any judicial supervision or oversight of that detention, and the frequent delay or denial of immediate access to legal representation, is a gross violation of the fundamental liberties protected under article 5 of the Federal Constitution. The source emphasizes that the provisions of the Act cannot override international obligations allowing arrests without a warrant, detentions without access to counsel or extended detentions without judicial review. The provisions of the Act, as the Government submits, are inconsistent with international human rights

standards, and with the Constitution, article 5 (4) of which requires detainees to be produced before a magistrate within 24 hours. It is therefore not feasible to suggest that provisions of the Act can override the protections due to every Malaysian citizen.

44. The source notes the submission by Government that the lack of arrest warrant is in compliance with the Security Offences Act. However, the source claims that, on the day of her arrest, the police had told lawyers and BERSIH 2.0 secretariat members (in the presence of international observers) that Ms. Abdullah was being charged under section 124 (C) of the Penal Code, following normal criminal procedure. The day after the arrest, when her lawyers went to attend the remand proceeding, they found that she had not been brought for remand and only later learned that she would be detained under the Act. This is contrary to article 5 (3) of the Federal Constitution, which requires that detainees be informed of the grounds of arrest as soon as possible.

45. Given that Ms. Abdullah has at no point carried out or attempted a violent overthrow of parliamentary democracy, the source claims that the explanation that her arrest was made under the Security Offences Act for "offences against the State" was grossly disproportionate and unnecessary. The Government has not indicated whether alternative measures were considered in the lead-up to her arrest and detention, or why any alternative measures were considered unsuitable.

46. Furthermore, the source claims that the response from the Government omits the details and nature of Ms. Abdullah's detention, including that she was kept in solitary confinement with no window, no bedding, and with two lights kept on at all hours. Instead, it has chosen to focus on the comment made by the National Human Rights Commission in its report regarding an acceptable level of cleanliness of the cell and the availability of medical attention. The source quotes the relevant paragraph in the Commission's press statement as follows: "[t]he state of cleanliness in Maria Chin Abdullah's cell can be considered as acceptable but there is no escaping from the fact that it is a solitary confinement. The so-called bed has no mattress and she has to wash with cold water. She indicated that she would like a mattress at the very least to cushion the discomfort of the wooden bed".

47. The source adds that the statement by the Commission also raised the unjustified nature of Ms. Abdullah's detention, commenting that she was being held in the company of and under the same standard operating procedure as alleged terrorist suspects. According to the source, the Commission stated that she had been "unjustifiably incarcerated" and that it "would like to reiterate that, in accordance with article 9 of the Universal Declaration of Human Rights, no one shall be subjected to arbitrary arrest, detention or exile".[4]

48. According to the source, the police remand centre in the Batu subdistrict of Kuala Lumpur, which the Government acknowledged as the site of Ms. Abdullah's detention, is used for high-security prisoners and is notorious for its harsh conditions, using handcuffs and opaque goggles when moving detainees and applying other procedures of sensory deprivation, isolation and intimidation tactics during interrogations. Ms. Abdullah's detention at that centre is alarming given that she is not a high-risk prisoner and has not been accused of violent actions. Such measures are disproportionate to the unproved charges against her.

49. In conclusion, the source refers to the argument by the Government that the existence and applicability of the Security Offences Act and the nature of the charges as defined by the Penal Code override any claim that Ms. Abdullah's detention falls under the categories applied by the Working Group. The Government also insists that her political beliefs and opinion were not factors in the decision to arrest her on the evening before a nationwide demonstration orchestrated by her organization, calling for accountability, transparency and free and fair elections.

50. The source further notes that the Government has argued that the Universal Declaration of Human Rights is not binding and is not applicable when it does not agree

[4] See Media Release, Human Rights Commission of Malaysia (SUHAKAM), 23 November 2016, available from http://www.suhakam.org.my/press-statement-2016/.

with Malaysian law. Although the Government claims that the freedoms defined by the Universal Declaration of Human Rights are subject to restrictions, this is counter to the nature and spirit in which those rights are defined. Acceptance of its argument would signal permission for States Members of the United Nations to construct legislation that permits arbitrary detention for broadly defined activities, such as the promotion of democratic reforms.

51. According to the source, the Government has not demonstrated or provided credible evidence that Ms. Abdullah posed a threat to parliamentary democracy or attempted to overthrow the State, and has avoided explaining why she was kept in solitary confinement in a detention centre that normally deals with high-security risk prisoners. Ms. Abdullah's detention falls under category II and V. Her detention was not the result of a threat to State security, but was a reaction to her political beliefs and opinion and her role as a human rights defender and remains a symptom of State crackdowns on the freedom of opinion, expression and peaceful assembly.

Discussion

52. The Working Group thanks the source and the Government for their timely and comprehensive submissions.

53. The Working Group welcomes the release of Ms. Abdullah on 28 November 2016 after she had been detained for 10 days. According to paragraph 17 (a) of its methods of work, the Working Group reserves the right to render an opinion on a case-by-case basis on whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the present case, the Working Group considers that it is important to render an opinion, having taken into account the following factors:

(a) Information provided by the source, which was not contested by the Government, that Ms. Abdullah remains at risk of being re-arrested at any time in relation to the case, and that there is an ongoing police investigation into BERSIH 2.0 and EMPOWER;

(b) The habeas corpus application filed by Ms. Abdullah's lawyers did not proceed, as the application was dismissed by the High Court after she was released from detention. The Government did not file an affidavit in reply to the habeas corpus application. Ms. Abdullah's appeal against the dismissal of her habeas corpus application was also rejected by the Federal Court. The Government has not been required to explain the basis for Ms. Abdullah's detention and she has not been able to challenge its lawfulness. No information was put before the Working Group to suggest that the proceedings before either the High Court or the Federal Court included consideration of the circumstances in which Ms. Abdullah was detained, and a determination of whether she had been arbitrarily deprived of her liberty and therefore entitled to a remedy;

(c) Despite the short period of Ms. Abdullah's detention, the circumstances in which she was detained are serious and warrant further attention. Ms. Abdullah was arrested under section 124 (C) of the Penal Code, which falls within the definition of a "security offence" under the Security Offences Act, and the special measures provided for under the Act were applicable to the investigation of her case. According to sections 4 and 5 of the Act, those special measures include the ability of police to make an arrest without a warrant, to extend detention for up to 28 days without a court order and to deny access to legal counsel for 48 hours in certain circumstances. In order to arrest and detain a person under section 4 without a warrant, a police officer need only have reason to believe that the person is involved in a security offence. Given the potentially wide scope of application of the Act to anyone believed to be involved in public order and national security offences under the Penal Code and other legislation, the Working Group wishes to consider whether the Act and its application in the present case are consistent with international human rights law.

54. In determining whether Ms. Abdullah's deprivation of liberty was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be

understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (see A/HRC/19/57, para. 68).

55. The Working Group considers that the source has established a credible prima facie case that Ms. Abdullah's detention resulted from the exercise of her rights to freedom of expression, peaceful assembly and association in organizing and seeking to participate in the rally on 19 November 2016, rather than because she posed a threat to parliamentary democracy. Several facts presented by the source — and not disputed by the Government — support this conclusion, including:

(a) Ms. Abdullah was arrested on 29 October 2016, just three weeks before the planned rally on 19 November 2016. The police questioned her for two hours on a relatively minor allegation of having distributed flyers relating to the 19 November 2016 rally without the name and address of the publisher, in violation of section 11 (2) of the Printing Presses and Publications Act 1984. This suggests that the police were attempting to disrupt the organization of the rally, for reasons unrelated to a threat to parliamentary democracy;

(b) The search of the BERSIH 2.0 office and the arrest of Ms. Abdullah took place on the eve of a nationwide rally that Ms. Abdullah and BERSIH 2.0 had organized for 19 November 2016. The purpose of the rally was to call for government accountability, transparency and free and fair elections, and the resignation of the Prime Minister following allegations of large scale embezzlement by ruling party members. In total, 13 other BERSIH 2.0 supporters and activists were also arrested on the eve of the rally, but were released after the rally had concluded. The Government offered no explanation of the timing of the search or the arrests;

(c) Ms. Abdullah was released from detention on 28 November 2016 without explanation of the reasons for her release, and the day before her habeas corpus application was to be heard by the High Court. The habeas corpus application was dismissed on 29 November 2016. The Government had not filed any affidavits in response to the application. The absence of explanation for the release and its timing, and the absence of charges and further legal proceedings against Ms. Abdullah based on the documents seized during the search of the BERSIH 2.0 office, suggest that there was no evidence that Ms. Abdullah posed a threat to parliamentary democracy to justify charges under section 124 (C) of the Penal Code.

56. There is also a substantial body of reliable information that supports the source's claims and strongly suggests that the motivation behind the arrest and detention of Ms. Abdullah was to restrict the peaceful exercise of her freedom of expression, assembly and association. For example, the urgent appeals and communications (referred to above) sent to the Government in relation to Ms. Abdullah from July 2011 onwards, indicate that she has been repeatedly targeted through questioning, arrest, charges and detention. On each occasion, this occurred in the lead-up to BERSIH rallies and public events that sought to uphold human rights and called for accountability and democracy in Malaysia.

57. This pattern has become so troubling that four special procedures mandate holders issued a press release in December 2016 calling on the Government to stop targeting human rights defenders under national security legislation. The experts stated that:

> We are particularly concerned at the arrest of Maria Chin Abdullah, the Chairperson of BERSIH 2.0, on 18 November 2016 and her subsequent detention under the Security Offences Special Measures Act 2012. Although Ms. Chin Abdullah has now been released, the detention of a prominent woman human rights defender under the Act sets a troubling precedent, by suggesting that democratic participation can be a threat to national security. Her arrest will clearly have a chilling effect on civil society participation.[5]

[5] See Office of the High Commissioner for Human Rights, News Release, Geneva, 9 December 2016, issued by the Special Rapporteurs on the rights to freedom of peaceful assembly and of association;

58. Similarly, in the most recent universal periodic review of Malaysia, in October 2013, several delegations expressed concern about violation of the rights to freedom of opinion and expression, and peaceful assembly and association. In total, 12 recommendations were made to safeguard those rights, including through the review and repeal of legislation such as the Printing Presses and Publication Act 1984 and the Peaceful Assembly Act 2012.[6]

59. In its response, the Government asserts that Ms. Abdullah was detained to facilitate investigations under section 124 (C) of the Penal Code in relation to a police report alleging the intervention of foreign powers in general elections in Malaysia. The Government provided no detail as to when the report was lodged, who lodged it and the nature of the alleged intervention by foreign powers. The Government submits that Ms. Abdullah's detention was not the result of her exercise of the rights to freedom of expression, peaceful assembly and association, but was based on documents "detrimental to parliamentary democracy" that were found during the search of the BERSIH 2.0 office during the investigation. However, the Government has not provided any information on the content of the documents seized from the office and, in particular, what information was found in those documents that led the authorities to detain Ms. Abdullah for investigation in relation to section 124 (C). The Government did not assert that the content of the seized documents was classified or needed to be kept confidential owing to security concerns.

60. As noted above, in order to arrest and detain Ms. Abdullah without a warrant pursuant to section 4 of the Security Offences Act, the police needed to have reason to believe that she was involved in a security offence. In the present case, the alleged security offence was an attempt to commit activity "detrimental to parliamentary democracy" under section 124 (C) of the Penal Code. This offence is further defined in section 130 (A) (a) of the Penal Code as an activity "designed to overthrow or undermine parliamentary democracy by violent or unconstitutional means". The Government has put no information before the Working Group to suggest that there was reason to believe that Ms. Abdullah was planning to engage, or had ever engaged, in any activity of a violent or unconstitutional nature. For those reasons, the Working Group considers that the Government has not met its burden of providing information and documentary evidence needed to rebut the source's prima facie case.[7]

61. Accordingly, the Working Group concludes that Ms. Abdullah was arrested and detained as the direct consequence of the exercise of her rights to freedom of expression, peaceful assembly and association under articles 19 and 20 of the Universal Declaration of Human Rights. Her deprivation of liberty therefore falls within category II of the categories applied by the Working Group.

62. The source also alleges that the Security Offences Act violates the right to a fair trial enshrined in international human rights law because it allows the Government to deny access to a lawyer and to prolong detention periods without judicial review. The source states that Ms. Abdullah was detained pursuant to the provisions of the Act, and her deprivation of liberty was therefore arbitrary.

63. In its response, the Government argues that the police were permitted under section 5 (2) of the Security Offences Act to postpone Ms. Abdullah's consultations with a lawyer

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the situation of human rights defenders; the promotion and protection of the right to freedom of opinion and expression, and the Chair of the Working Group on the issue of discrimination against women in law and in practice. Available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21005&LangID=E.

[6] See A/HRC/25/10, paras. 146.157-146.169.

[7] In its opinion No. 41/2013, the Working Group noted that the source of a communication and the Government do not always have equal access to the evidence and, frequently, the Government alone has the relevant information. In that case, the Working Group recalled that, where it is alleged that a person has not been afforded by a public authority certain procedural guarantees to which he was entitled, the burden to prove the negative fact asserted by the applicant is on the public authority, because the latter is "generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law ... by producing documentary evidence of the actions that were carried out": *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, ICJ, Judgment, 30 November 2010, para. 55.

for up to 48 hours. Furthermore, section 4 (5) provides for the extension of the period of detention for not more than 28 days, and such extension does not require a court order. In the present case, Ms. Abdullah was allowed to consult with her lawyers on 20 November 2016, within 48 hours of her detention. She was released on 28 November 2016, after 10 days of detention, and well before the expiry of the 28-day detention period provided under section 4 (5).

64. As the Working Group has repeatedly stated in its jurisprudence, even when the arrest and detention of a person is carried out in conformity with national legislation, in compliance with its mandate, it is required to ensure that the detention is also consistent with international law.[8] In the present case, even though Ms. Abdullah was arrested and detained pursuant to the Security Offences Act, the Working Group will consider whether her detention met the requirements of international human rights law.

65. The Working Group finds that the delay in affording Ms. Abdullah her right to consult with her lawyers was in violation of international standards, including articles 9 and 10 of the Universal Declaration of Human Rights. As the Working Group stated in principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, all persons deprived of their liberty shall have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. In addition, rule 61 (1) of the Nelson Mandela Rules requires prisoners to be provided with "adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay".

66. The Working Group considers that any delay in affording a person the right to consult with legal counsel places that person in a vulnerable position of potentially being required to participate in interrogations without having an opportunity to obtain legal advice, contrary to fair trial standards. The Working Group also notes that there is a broad discretion under section 5 (2) of the Security Offences Act to delay consultations with a lawyer if the police officer is "of the view that" one of the conditions under that subsection is met, for example, that the consultation with a lawyer will "lead to harm to another". This is a very wide power to deny a person their right to consult with a lawyer and has great potential for abuse.

67. The Working Group finds that Ms. Abdullah was also denied her right to contact with the outside world, particularly with her family members, during the first 48 hours of her detention until 20 November 2016. This amounts to a violation of applicable standards, such as rule 58 of the Nelson Mandela Rules. As the Working Group clarified in the United Nations Basic Principles and Guidelines, contact with family members can be essential to the ability of a detained person to challenge the lawfulness of his or her deprivation of liberty, and no restrictions may be imposed on the detainee's ability to contact lawyers, family members or other interested parties (principle 10, paras. 16 and 17). Moreover, postponed access to family members does not appear to be authorized by section 5 of the Security Offences Act, which only gives police the power to delay consultations with a legal practitioner for not more than 48 hours.

68. Furthermore, the Working Group recalls that a detained person has the right to be brought promptly before a judicial authority to determine the lawfulness of his or her detention and, if it is not lawful, to be released. This is embodied in principles 11 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Principle 37 also states that no person may be kept under detention pending investigation or trial except upon the written order of a judicial or other authority provided by law. There is no requirement in section 4 (5) of the Security Offences Act for the police to obtain a court order when extending a person's detention. The police can therefore detain a person for up to 28 days without bringing that person before a judicial authority to determine the legality of the detention. The Act appears to acknowledge the gravity of this provision, as section 4 (11) states that section 4 (5) shall be reviewed every five years and

[8] See, for example, opinions No. 27/2017, No. 45/2016, No. 43/2015 and No. 7/2012.

shall cease to have effect unless both houses of parliament pass a resolution to extend its operation.

69. In the present case, Ms. Abdullah was only detained for 10 days, but there is no evidence that she was afforded her right to be brought promptly before a judicial authority. The fact that Ms. Abdullah initiated habeas corpus proceedings through her lawyers on 22 November 2016 did not absolve the Government from its obligation to ensure that she was brought promptly before a judicial authority and that her detention received judicial oversight. Even when Ms. Abdullah brought a habeas corpus application, it was dismissed after she was released and she was not able to challenge or seek a remedy for the 10 days of her detention. Ms. Abdullah was denied her right to an effective remedy under article 8 of the Universal Declaration of Human Rights.

70. The Working Group concludes that the above violations of the right to a fair trial constitute a violation of articles 9 and 10 of the Universal Declaration of Human Rights and are of such gravity as to give the deprivation of liberty of Ms. Abdullah an arbitrary character according to category III of the categories applied by the Working Group.

71. During its most recent visit to Malaysia, in June 2010, the Working Group cautioned against the use of previous preventive detention regimes that allowed the police to arrest people without a warrant and to hold them for extended periods without judicial review and without the right to legal counsel. The Working Group recommended the repeal of such detention regimes because of the restrictions they imposed upon the enjoyment of the right to a fair trial (see A/HRC/16/47/Add.2, paras. 27-41 and 109). In view of the Working Group's finding in the present case that Ms. Abdullah was arbitrarily deprived of her liberty under category III, there is an urgent need for revision and, where necessary, repeal of the provisions of the Security Offences Act that are not compatible with international human rights standards.

72. The source submits that Ms. Abdullah was detained on a discriminatory ground, namely, on the basis of her political beliefs and opinion, and that this falls within category V. In its response, the Government refers to section 4 (3) of the Security Offences Act, which provides that: "[n]o person shall be arrested and detained under this section solely for his political belief or political activity". According to the Government, Ms. Abdullah was arrested under section 124 (C) of the Penal Code because of documents found during the search of the BERSIH 2.0 office that indicated a threat to parliamentary democracy, and not because of her political activity or political belief. Therefore, section 4 (3) does not apply.

73. The Working Group finds that Ms. Abdullah was deprived of her liberty on discriminatory grounds, that is, because of her "political or other opinion". As noted above, the Government submitted no information or evidence to suggest that there had been reason to believe that Ms. Abdullah had been planning to engage, or had ever engaged, in any activity detrimental to parliamentary democracy. She was arrested on the eve of a nationwide demonstration convened by her organization to call for accountability, transparency and free and fair elections in reaction to allegations of large scale embezzlement by ruling party members. Ms. Abdullah has been subject to questioning, arrest, charges and detention over several years, often in the lead-up to major demonstrations, and is believed to be the first peaceful activist detained pursuant to the Security Offences Act.[9] Her activities clearly fall within the definition of "political belief or political activity" under section 4 (12) of the Act, that is, by "engaging in a lawful activity through the expression of an opinion directed towards any Government in the Federation". She should have been, but was not, given the benefit of the exemption in section 4 (3).

74. Furthermore, the Working Group has determined that discrimination on the grounds of "political or other opinion" and "other status" in article 26 of the Covenant includes discrimination against a person because of their status as a human rights defender.[10] The

[9] See the joint communication from special procedure mandate holders, available from https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22875.

[10] See opinions No. 16/2017 and No. 45/2016.

reasoning is equally applicable to this case, even though Malaysia is not party to the Covenant. Ms. Abdullah was detained as a direct result of her human rights work in calling for greater accountability and democracy, and would not likely have been detained had she not been a human rights defender. The Working Group finds that Ms. Abdullah was deprived of her liberty on discriminatory grounds in violation of articles 2 and 7 of the Universal Declaration of Human Rights, and that her case falls within category V of the categories applied by the Working Group.

75. The Working Group wishes to consider two further arguments put forward by the Government. First, that the freedom of expression, peaceful assembly and association and the right to a fair and public hearing are not absolute and may be restricted if they infringe upon the rights of others or threaten the peace and stability of the country. The Government refers to article 29 (2) of the Universal Declaration of Human Rights, noting that all rights and freedoms are subject to limitations to meet the just requirements of national security and public order.

76. The Working Group has consistently held in its jurisprudence that, when a State invokes a restriction on the freedoms provided under international human rights law, it must demonstrate the precise nature of the threat and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the exercise of a right and the threat.[11] In the present case, the Government has not demonstrated a direct link between Ms. Abdullah's work as a human rights defender and any security concern or threat to parliamentary democracy under section 124 (C) of the Penal Code, and has not demonstrated that the arrest and detention of Ms. Abdullah was a necessary and proportionate response to such a threat. Indeed, if there had been a security concern prior to the 19 November 2016 rally, it was the violent and gender-specific threats and intimidation made by unknown persons to Ms. Abdullah and her children, which appear to have been intended to impair the exercise of her rights under the Universal Declaration of Human Rights.[12] Moreover, as the source points out, the Government has also not indicated whether alternative measures were considered prior to Ms. Abdullah's arrest and detention, nor why any such alternative measures were unsuitable.

77. Second, the Government notes that the courts have determined that the Universal Declaration of Human Rights is not a legally binding instrument and only forms part of the municipal law of Malaysia to the extent that it is not inconsistent with the Federal Constitution and national legislation. The Working Group respectfully disagrees with that position. As the source points out, acceptance of this argument would allow States to override their international obligations simply by developing inconsistent national laws. Moreover, the prohibition of the arbitrary deprivation of liberty is of a universally binding nature under customary international law.[13] When the Working Group has determined the deprivation of liberty to be arbitrary in its opinions adopted in relation to Malaysia, it has consistently found a violation of the Universal Declaration of Human Rights and requested the Government to bring the situation of the detained person into conformity.[14] In its resolution 5/1, Human Rights Council established that the Universal Declaration is one of the instruments that forms the basis of the universal periodic review of States, including Malaysia.

78. The Working Group wishes to record its concern about the treatment of Ms. Abdullah during her 10 days of detention. In particular, the Working Group is deeply troubled by the allegations that Ms. Abdullah, a 60-year-old woman, was: (a) kept in solitary confinement, which increased her risk of ill-treatment; (b) confined to a small, windowless and constantly lit cell 24 hours a day and without basic necessities, such as a bed or bedding; (c) blindfolded whenever she was brought in and out of her cell by the

[11] See, for example, opinion No. 44/2014, para. 24; No. 29/2012, para. 28, and No. 25/2012, para. 57.

[12] The Working Group notes that it was the responsibility of the Government to protect Ms. Abdullah and her children from the threats and intimidation that occurred in the lead-up to the rally on 19 November 2016, and to investigate the alleged conduct and punish the offenders.

[13] See A/HRC/22/44, paras. 37-75.

[14] See opinions No. 22/2015, No. 32/2008, No. 10/2004, No. 4/1997 and 39/1992.

investigating authorities; (d) denied access to her lawyers and family for the first 48 hours; and (e) held in a detention centre and under conditions normally reserved for high-security-risk prisoners. While the Government emphasized that Ms. Abdullah had received appropriate medical attention and had been reported by the National Human Rights Commission to have been in good health and detained in a place of detention of acceptable cleanliness, it did not deny the remaining allegations relating to her conditions of detention. Indeed, the conditions of Ms. Abdullah's detention, including her solitary confinement, were independently verified by the Commission. This treatment falls significantly short of the standards set out in rules 13, 14, 21, 23 (1), 42, 43 (1) (c), 45, 58, 61 and 119 (2) of the Nelson Mandela Rules.

79. Finally, the Working Group would welcome the opportunity to work constructively with the Government in addressing its serious concerns in relation to the arbitrary deprivation of liberty in Malaysia. In April 2015, the Working Group sent a request to the Government to undertake a country visit, as a follow-up to its earlier visit to Malaysia in 2010, and awaits a positive response. Given that Malaysia is presenting its candidacy for membership of the Human Rights Council in forthcoming elections, and its human rights record will be subject to review during the third universal periodic review cycle, in November 2018, an opportunity exists for the Government to enhance its cooperation with the special procedures and to bring laws such as the Security Offences Act into conformity with international human rights law.

Disposition

80. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Maria Chin Abdullah, being in contravention of articles 2, 7, 8, 9, 10, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories II, III and V.

81. The Working Group requests the Government of Malaysia to take the steps necessary to remedy the situation of Ms. Abdullah without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights. The Working Group also urges the Government to accede to the Covenant.

82. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Ms. Abdullah an enforceable right to compensation and other reparations for the 10 days she spent in detention between 18 and 28 November 2016, in accordance with international law. The Working Group also urges the Government to put an end to the investigations against Ms. Abdullah, BERSIH 2.0 and EMPOWER in relation to the 19 November 2016 rally.

83. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Abdullah, and to take appropriate measures against those responsible for the violation of her rights.

84. The Working Group urges the Government to bring its legislation, particularly relevant sections in the Printing Presses and Publications Act 1984, the Peaceful Assembly Act 2012, the Penal Code and the Security Offences Act, which can be used to restrict the rights to freedom of expression, peaceful assembly and association, into conformity with the recommendations made in the present opinion and with the obligations of Malaysia under international human rights law.

Follow-up procedure

85. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether compensation or other reparations have been made to Ms. Abdullah;

(b) Whether an investigation has been conducted into the violation of Ms. Abdullah's rights and, if so, the outcome of the investigation;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Malaysia with its international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

86. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

87. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations and any failure to take action.

88. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken. [15]

[*Adopted on 23 August 2017*]

[15] See Human Rights Council resolution 33/30, paras. 3 and 7.