

OPEN LETTER - THE OBSERVATORY

Open Letter to Mr. Y.B Dato' Seri Najib Tun Razak, Prime Minister of Malaysia

Geneva-Paris, March 30, 2011

Re: Judicial harassment of 52 HINDRAF and HRP members and obstacles to freedom of peaceful assembly

Your Excellency,

The Observatory for the Protection of Human Rights Defenders, a joint programme of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), strongly condemns the judicial harassment of 54 members of Hindu Rights Action Force (HINDRAF) and its sister organisation, the Human Rights Party (HRP), two organisations aiming at defending the rights of Hindu and other marginalised minorities in Malaysia, following their organisation of and participation in a peaceful march against racism on February 27, 2011.

Between March 1 and 3, 2011, the 54 human rights defenders were charged by courts of different cities with “*acting as members of an unlawful society*” or “*participating in assemblies of an unlawful society*”, under Section 43 of the Societies Act of 1966¹, which states that “*any person who is or acts as a member of an unlawful society or attends a meeting of an unlawful society (...) shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding five thousand ringgit or to both*”.

On February 13, 2011, HINDRAF and HRP had announced their intention to lead a Solidarity March Against Racism, scheduled for February 27, 2011, but for which Kuala Lumpur police denied a permit. At least 54 HINDRAF and HRP members were arrested in several locations across Malaysia between February 13 and 27 for participating in various promotional activities in the run up to the march. They were subsequently all released on bail but they all continue to face charges. The hearings of their cases will reportedly happen during the first week of April in the different courts.

On March 1, 2011, five members of HINDRAF and HRP, namely Messrs. **K. Tamil Selvam**, HRP Vice-President and HINDRAF Coordinator in Selangor State, **S. Jayathas**, Information Chief of HRP, **K. Navakrishna**, **T. Periasamy** and **S. Loshna Rau**, were charged by the Court of Selayang under Section 43 of the Societies Act of 1966 for “*acting as members of an unlawful society*” on February 13, 2011 at 12.15 p.m., at Km 13 Bukit Kanching, Jalan Ipoh, Rawang, State of Selangor. Mr. Loshna Rau faces an additional charge of “*obstructing a civil servant on duty*”, under Section 186 of the Criminal Code.

On March 2, 2011, six members of HINDRAF and HRP, namely Messrs. **Periasamy Ramesh**, National Secretary of HINDRAF, **Jagadeesan Vijayalingam**, **Subramaniam Jayakumar**, **Rengasamy Mogan**, **Nagooran Subramanyam** and **R. Supiah Sivagumar**, were also charged under Section 43 by the Court of Ipoh for “*participating to the assembly of an unlawful society*” on February 13, 2011 between 9.30 a.m. to 11.03 a.m. at the Jelapang Road, State of Perak.

¹ The Societies Act of 1966 governs the registration of Non-Governmental Organisations (NGOs) and political parties in Malaysia. Any organisation that wishes to register itself as an NGO has to submit an application to the Registrar of Societies, a department of the Home Ministry.

On March 3, 2011, 20 members of HINDRAF and HRP, including five women, namely **S. Sivakumar**, HINDRAF Coordinator in N. Sembilan State, **K. Nadarajah**, **A. Sarawana Kumar**, **V. Prabakaran**, **M. Ramesh**, **S. Krishnan**, **K. Murugiah**, **V. Mathavan**, **R. Muniswaran**, **A. William George**, **A. Radakrishnan**, **Vatumalai B. Kalithas Karanamurthy**, **Uthaya Kumar Subramaniam**, **Ravichdiran Kuppusamy**, **Tilegavathy B.**, **Maheswary Manoo**, **Pushpalatha Gunasekaran**, **P. Waytha Nayagi** and **Madonna Selvarayar**, were charged by the Court of Seremban under Section 43 for “*acting as members of an unlawful society*” on February 13, 2011 at 2.35 p.m. in Jaland Za’aba, Seremban, State of Negeri Sembilan. Two other human rights defenders from HINDRAF could not attend the hearing of March 3, 2011 as they were ill. However, they were also charged under Section 43.

On March 3, 2011, 21 members of HINDRAF and HRP, including five women, namely Ms. **Lourdmary N. Vasu Pillai**, Ms. **Devika Ravee Chandran**, Ms. **Gethaa Ravee Chandran**, Ms. **Saraspaty Subramaniam**, Ms. **Kokilarani Nallan** and Messrs. **Lingeswaran Kuppusamy**, **K. Chandramohan R. Kanesan**, **Sundaram Periannai**, **Harikrishnan Arumugam**, **Maniam A. Palaniyandee**, **V. Thandavuthabani Keveloo**, **Kalaichelvan A. Paliappan**, **Paramasivam N. Muthiah**, **Mahendran Subramaniam**, **Sugumaran S. Muniandy**, **V. Tamil Selvan Veeriah**, **Thiagarajan Sasayapilai**, **Balakrishnan Kunjoo Nair**, **Nathan Alagasundaram**, **S. Thinagaraja** and **Manimaran Sinnapan**, were charged by the Court of Kuala Lumpur under Section 43 of the Societies Act for “*taking part to the assembly of an unlawful society*” on February 13, 2011 in Little India, Brickfields, Kuala Lumpur. The Court of Kuala Lumpur also charged Mr. Periasamy Ramesh under Section 47 of the Societies Act², as he was in possession of banners and documents that promote HINDRAF activities.

The Observatory recalls that HINDRAF submitted in January 2006 its first application for registration although this reportedly went unacknowledged by the Registrar of Societies. They submitted a second application in October 2007, which also went unacknowledged until October 2008, when the Home Minister announced that HINDRAF was banned. However, no court order followed or accompanied this announcement and, thus, HINDRAF continued its activities. In order to protect its volunteers, HINDRAF renamed itself “Hindraf Makkal Sakthi” in 2008. On October 2, 2009, its legal representatives sent a letter of intent to register the organisation under this name, however, the Registrar of Societies has reportedly not responded to this request.

On November 25, 2010, Mr. P. Uthayakumar, HINDRAF Legal Adviser, founded the Human Rights Party, and submitted the formal application for registration, which remains pending.

Your Excellency,

The Observatory expresses its deepest concern about the judicial harassment against HINDRAF and HRP members on the ground that they belong or participate to assemblies of unlawful societies, and further denounce the continuous refusal of the Malaysian authorities to register these two organisations.

The Observatory therefore calls on the Malaysian authorities to put an end to any act of judicial harassment against HINDRAF and HRP members as well as against all human rights defenders in Malaysia, and to comply in all circumstances with the provisions of the

² The Section 47 of the Societies Act states that: “*Any person who prints, publishes, displays, sells or exposes for sale, or transmits through the post or who, without lawful authority or excuse, has in his possession any placard, newspaper, book, circular, pictorial representation or any other document or writing whatsoever or which is issued or appears to be issued by or on behalf of or in the interests of an unlawful society shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand ringgit or to both, and any books, periodicals, pamphlet, poster, proclamation, newspaper, letter or any other document or writing in respect of which such person shall have been convicted shall be forfeited*”.



The Observatory
for the Protection
of Human Rights Defenders

Declaration on Human Rights Defenders, adopted by the United Nations General Assembly on December 9, 1998, especially its Article 5 which states that “*for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully; (b) To form, join and participate in non-governmental organizations, associations or groups*”.

We express our sincere hope that you will take these considerations and requests into account.

Yours sincerely,

Eric Sottas
OMCT Secretary General

Souhayr Belhassen
FIDH President