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Mandates of the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Independent Expert on minority issues

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Excellency,

We have the honour to address you in our capacities as Independent Expert on minority issues, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/6, 16/4, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the situation of a number of human rights defenders working on the promotion and protection of human rights for the Hindu community in Malaysia.

Mr. **W. Sambulingam**, Mr. **K. Selvam**, Mr. **S. Ramesh** and Mr. **S. Sivakumar** are members of the Hindu Rights Action Force (HINDRAF). HINDRAF is a grassroots organisation which advocates for the promotion and protection of human rights, in particular, the rights of the Hindu community as well as other marginalised communities throughout Malaysia. Mr. Sambulingam is the national coordinator of HINDRAF, while Mr. Selvam, Mr. Ramesh, and Mr. Sivakumar are regional coordinators in Selangor State, Perak State, and N. Sembilan State respectively.

Mr. **Gobalakrishnan Manickam** is a member of the Malaysian Human Rights Party, a political party working to promote and protect human rights, focusing in particular on human rights violations perpetrated against Malaysian Indians.

According to the information received:

Since 10 February 2011, a number of human rights defenders have allegedly been harassed, threatened with violence, arbitrarily arrested and detained during the lead up to, and in the aftermath of, an organised anti-discrimination demonstration which was scheduled to take place on 27 February 2011.

It is alleged that between 13 and 21 February 2011, up to 80 members of, and individuals associated with HINDRAF were arrested and detained throughout Malaysia before being released shortly afterwards without charge. The wave of arrests was reportedly related to the organization of an anti-discrimination demonstration, which was due to be held in Kuala Lumpur on 27 February 2011.

On 21 February 2011, at noon approximately, Mr. Manickam was reportedly arrested at his home in Batang Kali by policemen who did not present a valid Court Order to conduct such an arrest. It is alleged that Mr. Manickam was not allowed access to a lawyer or family members until he was released. It is alleged that, on the day of his arrest, Mr. Maickam was scheduled to participate in a preparatory forum in which he was due to discuss arrangements for the aforementioned anti-discrimination demonstration.

Following the arrest of Mr. Manickam, the police allegedly used loudspeakers to warn those living in residential areas around Batang Kali not to attend the preparatory forum. Five road blocks were allegedly put in place in order to prevent people from travelling to the event. It is reported that individuals wearing orange t-shirts, a colour associated with HINDRAF, were instructed by police to remove their t-shirts, or their entry to the forum would be denied. It was also reported that female activists were ordered to remove their campaign-related t-shirts in public. It is alleged that as a result of the aforementioned measures carried out by police, the preparatory forum was only attended by a small number of people.

It is further reported that Mr. Sambulingam, Mr. Selvam, Mr. Ramesh, and Mr. Sivakumar were arrested and harassed in relation to meetings and campaigns which they allegedly organised in order to raise awareness of the alleged discriminatory attitude of the Government. Mr. Sivakumar was allegedly held for 19 hours in a dark room, with no toilet facilities, while his children, who were present at the time of his arrest, were also arrested, photographed, fingerprinted, and forced to give statements without the presence of an adult. It is alleged that Mr. Ramesh was charged with possession of banners and documents related to HINDRAF, which is reportedly considered by the State to be an illegal organisation because it is not registered.

According to the information received, HINDRAF, which was founded in 2005, submitted an application for registration in January 2006. This application, along with another application submitted in October 2007, were reportedly unacknowledged by the Registrar of Societies. Various media sources allegedly informed the public that HINDRAF had been banned because it was a threat to national security. However, it is reported that to date, the organisation has not been formally contacted by the Registrar of Societies regarding its registration request.

On 11 February, various individuals reportedly applied to the Dang Wangi police station for an authorization to hold the peaceful demonstration in Batang Kali on 27 February 2011. On 24 February, the application was reportedly rejected on the grounds of protecting public order. The individuals then appealed this decision to the Kuala Lumpur police chief, but on 25 February, the appeal was also rejected.

On 27 February, the day the protest was due to take place, 100 Malaysian Indian protesters, including several leaders of the HINDRAF, were arrested as they tried to assemble for the demonstration.

Since 1 March 2011, the Malaysian authorities have allegedly arrested up to 54 members of HINDRAF and the Malaysian Human Rights Party. All of those arrested were reportedly provided access to a lawyer and brought before a judge before being released on bail. It is reported that 52 members of HINDRAF were allegedly charged with forming part of an illegal organisation. It is alleged that the arrests and charges are related to attempts made by various members to hold the aforementioned anti-discrimination demonstration.

According to the information received, the recent wave of arrests and harassment of human rights defenders comes in the wake of a decision taken by the Government to approve the use of the novel entitled "Interlok" as part of compulsory curriculum for high-school in Malaysia. Allegations indicate that this novel contained references of a discriminatory nature against Malaysian Indians and ethnic Chinese. It is reported that HINDRAF has called for a total ban of the novel but the Government has allegedly decided to put the novel into circulation once amendments to the material are made.

Serious concern is expressed regarding allegations of arrests and harassment of the above-mentioned human rights defenders as well as about allegations received indicating that the protest may have not been authorized solely because it aimed to highlight the situation of Hindi Malaysian community in Malaysia.

Furthermore, concern is expressed that, to date, the Registrar of Societies has failed to acknowledge registration requests submitted by HINDRAF. In this connection, concern is expressed about the physical and psychological integrity of the aforementioned human rights defenders, as well that of individuals associated with HINDRAF, who currently face criminal charges for their role in the organisation of the above-mentioned protest, as well as their membership of HINDRAF.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights (UDHR), which provides that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

In addition, we would like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Regarding the concern expressed on the non-authorization of the above-mentioned protest, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Also in connection to the right to protest, I would like to recall the remarks made by the previous mandate-holder, Ms. Hina Jilani, in her report to the General Assembly (A/62/225), which I fully subscribe.

In that report, the then Special Representative of the Secretary-General on the situation of human rights defenders stated that "protecting the right to protest in the context of freedom of assembly entails both negative and positive obligations. The negative obligation on the part of the State not to interfere with peaceful protests is to be combined with the positive obligation to protect rights holders in the exercise of this right, particularly when persons protesting hold unpopular or controversial views, or belong to minorities or other groups exposed to higher risks of victimization, attacks and other forms of intolerance."

The Special Rapporteur on the situation of human rights defenders also stated that “in addition to the legal obligations related to freedom of peaceful assembly, freedom of expression, freedom of association and trade union rights, including the right to strike, the Special Representative argues that respecting and fulfilling the right to protest entails the obligation on the part of States to take deliberate, concrete and targeted steps to build, maintain and strengthen pluralism, tolerance and an open attitude to the expression of dissent in society.”

Furthermore, regarding the concern expressed about the registration request made by HINDRAF, we would like to bring to the attention of your Excellency's Government the article 5 points b) and c) of the Declaration which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

In connection with the above, we would like to highlight some of the recommendations I made in my report to the General Assembly (A/64/226, paras. 103-127) as follows:

- (...) it should be permissible for individuals to join together to engage in lawful activities without having to register as legal entities, in accordance with the provisions of article 22 of the International Covenant on Civil and Political Rights and article 5 of the Declaration of human rights defenders, if they so wish.
- States should not criminalize or impose criminal penalties for activities in defence of human rights and for participating in unregistered entities.
- The registration process should be prompt and expeditious, easily accessible and inexpensive.
- Clear procedures and timelines for government review of applications should be established. Lengthy, burdensome and overly bureaucratic registration processes affecting effective functioning should be avoided
- Registering bodies should be independent from the Government and should include representatives of civil society.

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of assembly, as recognized in article 20 of the UDHR, which provides that “Everyone has the right to freedom of peaceful assembly and association”.

Finally, we would like to draw the attention of your Excellency's Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1, para. 1, requires that “States shall protect the existence and the national or ethnic, cultural,

religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity”. Article 2, para. 4 states that “Persons belonging to minorities have the right to establish and maintain their own associations”. Equally, Article 2, para. 5 states that “Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group”. In addition, Article 4, para. 1 of the Declaration requires that: “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”.

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopts effective measures to prevent the recurrence of these acts.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate the legal basis of:
 - a) the arrests and harassment of the above-mentioned human rights defenders;
 - b) the prohibition of the above-mentioned protest; and
 - c) the refusal by the Registrar of Societies to acknowledge registration requests submitted by HINDRAF.
3. Please indicate how these measures (2. a), b) and c)) are compatible with international norms and standards as contained, in the abovementioned human rights instruments.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on the situation of human rights defenders

Frank La Rue
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Gay J. McDougall
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