

A representation for 'Indo-Gulf Reparation Mechanisms'.

Submitted by:
Panikkaveetil K. Jabir



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DESCRIPTION OF DOCUMENTS ACCOMPANYING THE (POWER POINT) PRESENTATION

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P R E F A C E

The comity of nations assumes that every nation will respect the human rights of the citizens of other nations. Since in a world where members of the United Nations out of regard for universal respect for foreign citizens will not allow violation of the decencies and dignity every citizen is entitled to. In India where a large number of citizen travel to seek employment elsewhere should not be left helpless when they seek employment in other countries but are subject to torture hard conditions of labour and do not have easy remedy against outrageous violation of decencies and dignity by local employers. When such indignity is inflicted on Indians where they seek employment in alien countries there should be a rule of law which binds the employer nations to obey provisions of law on the basis of comity and conformity with decency. From India a large number of people mostly of the weaker economic sections go to the Gulf countries and get employment. The conditions of work in many such countries are deplorable and there is no law to enforce what is universally just and humane. In cases of denial of humanity and compassion to Indian labour law shall they seek redress and justice from their harsh employers through wholesome conventions such as exist currently between African, Inter-American, European Mechanisms to protect the interests of the NRI victims of those countries who are helplessly running around

V. R. Krishna Iyer
(Former Judge, Supreme Court of India)

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for the due support and remedies ensured under the rules and regulations upheld and approved of by the United Nations.

The integrity and fraternity of Indian Nation is of great value for the survival of swaraj. The political substantiation of this thesis is found on excellent grounds well presented in the great book compiled by Sri. P.K. Jabir who is a public activist and writer of unitive conviction. The contents of this book I am sure would serve the purpose of strongly persuading the Government of India to frame necessary laws empowering Indian citizens living in gulf countries to invoke various remedies for the loses and sufferings caused on account of various unforeseen reasons as provided by the United Nations under the rules and regulations framed by it as detailed in the various chapters of the book.

V R Krishna Iyer

October 29, 2012

V.R. KRISHNA IYER

JUSTICE K.SUKUMARAN
Former Judge, Kerala-Bombay High Courts

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January 30, 2013

Shri Salman Khurshid,
Hon'ble Minister for External Affairs,
Ministry of External Affairs,
Government of India,
NEW DELHI.

Dear Minister Salman Khurshid,

I have carefully gone through the attached representation of Mr. Jabir, on a very sensitive issue concerning the migrants of India, particularly the poor segment from Kerala and working in Gulf countries.

Mr. Jabir is a founder member of NIYAMA SAMEEKSHA, a popular Law Journal which had contributed significantly to legal education for the common man. He continues to be an effective social activist, even while efficiently operating in his professional operations.

Mr. Jabir had passed through fire, after his most atrocious deportation from U.A.E., in 1995.

As Counsel for Jabir, I had endeavoured much in the Supreme Court and Delhi High Court to secure justice for him. It is sad but true that justice has eluded him so far.

I may be pardoned if I am candid in saying that the Governmental machinery was primarily responsible for the agonizing situation. Political masters did not find time to apply their minds to this procession of sorrows of a honest and enlightened citizen belonging to the minority segment of our great country.

The representation contains relevant details, updated and even with the aspects covered by the U.A.E. Minister in his speech delivered in the UN Human Rights Council, as recently as on 28th January 2013.

Your imaginative and sympathetic action is a prime requirement for ensuring justice to the suffering Indian citizens.

I have, therefore, no hesitation in making this personal appeal to you, though I am, ordinarily disinclined to make such appeals as a matter of general policy, regard being had to my link with judiciary, although in the past.

With warm regards,

Yours sincerely,


(JUSTICE K. SUKUMARAN)

Encls: as above

January 30, 2013

Panikkaveetil K. Jabir
5th Floor, Metro Plaza Building
Market Road, Kochi, Kerala – 682 014.

To

The Secretary to Government,
Ministry of External Affairs,
Government of India,
South Block,
NEW DELHI.

Sub: Representation for 'Indo-Gulf Reparation Mechanisms' -- [Strategy Formulation and Implementation of a Mutual Human Rights Law and Reparation Mechanisms Between the Government of India and the GCC (Gulf Cooperation Council) countries, mandating our elected representatives and officials to eliminate discrimination and imbalances of Non-resident Indians (NRIs) working in different countries. This also involves the recognition and protection of the dignity and respect of individuals].

Dear Sir,

The petitioner is a citizen of India, and now resident in the State of Kerala.

As one connected with General Contracting & Refrigeration Engineering, he had good connection with the developments in Abu Dhabi, UAE. A substantial fortune was built up by the hard and dedicated work in that country.

The petitioner was subjected to a most inhuman treatment by the authorities of U.A.E. They are detailed separately. Though as a disciplined citizen he attempted to pursue legal remedies for the redress of his grievances and the restoration of his assets, they turned out to be futile exercises.

There have been momentous developments in relation to relations between people working in areas outside their own motherland. These include important international developments like UN General Assembly Resolution. The petitioner was hoping that the Government of India would be taking effective and meaningful steps in the wake of

such international developments. Sad to say, no meaningful action has been taken by the Government in that regard so far.

This has resulted in great resentment among the Overseas Indians and their family members remaining in India, suffering many deprivations of the advantages of a cultured life.

The petitioner was hoping that some meaningful and specific decisions will be taken to implement the mandates of the UN Resolutions and their requirements over the overseas population. Here again, there had been dismal failure of the Government machinery to rise to the expectations of the toiling masses outside India. In particular, the experiences of those who work in the Gulf countries have been extremely agonizing.

There had been severe criticism about the conduct of the 11th Pravasi Bhartiya Divas held between 7 and 9 January, 2013 at Kochi. A vehement criticism appeared in one of India's most prominent newspapers, The Times of India. The report of 8th January 2013 reflected the cynicism and disappointment of the people.

The caption was: "And again, same old promises". The following is a passage which should engage the serious attention of the Government of India:

"There were large protests from sections Gulf migrants. They said the conference had been discussing almost the same issues for the eleven years and delegates have been listening to the same old promises".

A forceful assertion was made by the newspaper:

"Unless the Governments at the Center and the State are able to execute these promises, there is no point in continuing with this event".

The situation cannot be allowed to pass unnoticed by a responsible and civilized Government.

The Government of India also has been emphasizing the need to punctiliously conform to the expectations of Human Rights. The petitioner is advised and it is submitted that the Supreme Court of India has illumined many of the murky areas of the working of Human Rights. Many of the member states work in collaboration with the UN Human Rights Mechanisms

and treaties detailed by the United Nations. A brief resume of such measures adopted in different countries are contained in Annexure 1.

The Charter of the Organization of American State signed in 1948, the Charter of Council of Europe adopted in 1950, and the similar Charter in Africa adopted in 1987, are prominent illustrations of the expanding vistas of Human Rights. It would have been in the fitness of things that India had evolved a systematic formulation of protection of Human Rights of those working outside India.

This is a pressing and prominent necessity considering the fact that about 25 million Indians work as Overseas Indians. The segment of working population in the Gulf countries (Above 5.5 million Indian workers, among in the GCC countries), with lesser emoluments and more difficult working condition merit special and separate treatment, with a more compassionate approach to their working conditions and the difficulties experienced by the members of their families. They cannot be compared with other fortunate Overseas Indians who work in other areas of the world.

In this background, a clear-cut inter-Governmental working arrangement was an absolute necessity between India and the Gulf Cooperation Council (GCC) countries.

It is sad but true that such an arrangement is not even conceived of even at this late hour. Consequently, no regional inter-Governmental Human Rights Mechanisms or any procedure incorporating those precious liberties of citizens had been framed.

It has to be remembered in this connection that the remittances of these poorer sections buildup \$70 billion (World Bank, the top recipient of officially recorded remittances for 2012 is India) of US Dollars of the precious foreign exchange to India.

These wage earners, and hardworking citizens of India, should be insulated against any violations of Human Rights. The absence of an effective Reparation Mechanism assumes greatest importance in that background.

It has to be remembered that stories of torture and deprivation continue to flow steadily in the working conditions of the Gulf migrants. A most naked and cruel violation of Human Rights (torture included) is illustrated with reference to the personal experiences of the petitioner

It is inconceivable that when anti-social elements hatch a conspiracy and attempt virtual destruction of a continued life, the violators of law are protected by the state.

When the facts and files establish such wanton violations of Human Rights, a clear duty is implied on the part of the country wherein the Indian citizens had worked and added to the assets of that country, to give him effective reparation.

The following is the tragic story of the petitioner:

The petitioner was a businessman and investor engaged in the business of 'Trading and General Contracting' in Abu Dhabi, UAE for over 18 years. He was attacked by a posse of policemen at his office; robbed of cash and valuables to force him to withdraw a lawsuit against a property owner. He sought intervention from the police. The police did come, but instead of helping him, he was shackled and literally dragged out of the office and on through the street in the presence of known friends and other members of the community. He was confined to a detention center and brutally tortured and later taken to central prison. It took six months thereafter, for the petitioner to have his first appearance in Court

He was implicated in a false case by the Police. The charge was about "Using force against Government employee and assault".

The Judges of both the Trial Court and the final Appellate Court of Abu Dhabi found that the petitioner innocent; 'a martyr'.

The Hon'ble Judges instructed the authorities to release the victim immediately.

The Judges declared that the case was wholly false, baseless and that it was fabricated by the police for personal gain.

The Court, therefore, while pronouncing its judgment ordered to restoration of the victim's dignity, and to compensate him for all his losses.

Any civilized Government, more so a Member of United Nations, should have hastened to implement the judicial directive. Sad to state, the offending officials of the state ignored the judicial verdict and deported the victim, totally deprived of all his assets, papers and records.

This superstition of a judicial decision by executive fiat is rank subversion of the rule of law.

Attempt to obtain judicial remedies in the Indian Court turned out to be futile on the technical pleas of the cause of action not arising in India, and the purported justification was that violations of law took place outside Indian territory.

It is in this context that the convention becomes absolutely relevant.

The Government should not delay any longer the follow up steps to ensure that the Indian citizens justice long overdue. (Annexure 2)

When in so many other countries the Charters have been established in pursuance to Articles 55 and 56 of the UN Charter, India SHOULD NOT HAVE lagged behind.

When this grievance was placed before Justice V.R. Krishna Iyer, he was, despite his many critical disabilities, generous enough to give useful directions. This representation is prepared in the light of the guidelines suggested by him.

The grievances of the petitioner are intimately known to K. Sukumaran, Senior Advocate of the Supreme Court of India, who pleaded for the petitioner in the Hon'ble Supreme Court and in the High Court of Delhi. He was a former Judge, High Court of Kerala and Bombay. Additionally, he was the Chairman of a Commission appointed by the Government of Kerala to suggest to the Government, the desirable amendments to the Emigration Act which could be placed before the Government of India. The report had been subject matter of discussion of the Pravasi Seminar in Bombay.

The petitioner earnestly appeals to the Government of India to evolve an Indo-Gulf Reparation Mechanism, to wipe off the tears from the eyes of many thousand overseas Indians toiling in the desert land, and their family members.

The subject was mentioned to the Hon'ble Minister of State for External Affairs Smt. Preneet Kaur and Hon'ble Minister for Social Welfare, Mr. Muneer, during the Pravasi Bharat Divas of 2013.

It is highly appropriate in this connection to refer to the latest development on the theme – the second national report of the U.A.E for Universal Periodic Review (UPR) to the U.N. Human Rights Council. Government on promoting and protecting Human Rights, at the United Nations in Geneva, as published in Gulf News, January 29, 2013.

In the formal presentation, Dr. Anwar Gargash, Minister of State for Foreign Affairs, United Arab Emirates, informed the Human Rights Council about the steps taken, which comprise two aspects:

- 1) Level of protection of Human Rights as claimed to have been already achieved.
- 2) Proposed legislation guaranteeing the protection to domestic workers against mistreatment or abuse.
- 3) The Government determination "to bolster law enforcement agencies to tackle the crime at various levels".

The Minister's speech brings out two important aspects:

- a) A frank admission about large areas of omissions in relation to observance of Human Rights.
- b) The anxiety expressed by the 90 UN Member Nations during the interactive session, to know more about the protection of Human Rights and a "series of recommendations on possible further action" to enhance Human Rights Protection.

This is the second such review to the U.N. Human Rights Council for the UAE since the process known as the Universal Periodic Review (UPR) was instituted in 2006. UAE

Government will be helpful to the Government of India to concentrate on the core issues.

The great Republic of India has a solemn and onerous responsibility to focus its attention on the deficiencies pointed out and the challenges posed to the actual implementation of reparation mechanisms, and a clear pronouncement on the further steps to be undertaken expeditiously and implemented as a time-bound programme.

It is for consideration by the Government of India whether a competent official with deep involvement and considerable compassion to the migrant cause should not be associated with the further investigation on deficiencies noticed and remedial measures required.

The petitioner submits hereunder the major recommendations that could be considered by the Government expeditiously and meaningfully:

- a) Establishment of an 'Indian Migrant Cell'. It should have the required high status and power. Technical experts and involvement of a UN Special Rapporteur on Human Rights of Migrants, the UNHCR, the International Labour Organization (ILO) and the International Organization for Migration (IOM) included.
- b) Establishment of the MOA (Memorandum of Agreement) and MOU (Memorandum of Understanding) with regards to the Strategy Formulation and Implementation of a Mutual Reparation Mechanism Between India and the GCC countries for safeguarding the rights and dignity of NRIs and ensuring quick relief to the suffering migrants, as regards working condition, assurance for continued contacts with family and safe return to the home, without any tension, suspense or torment.
- c) Ensuring periodic visits by representatives of the Indian Government and of the Kerala and other State Governments about the living conditions of persons confined to prisons. That too is an incident of Human Right.

d) Educational arrangements to inform officials and non-officials concerned of the rights and interests of the migrants including the scope of UN Human Rights Special Procedures Mechanisms.

e) To ensure effective and meaningful participation of the representatives of the Government of India in the meetings of Inter-American Charter Session, European Union Charter Session and the African Union Charter Session.

f) Creation of a Reparation Fund on lines similar to the UN Trust Fund for Victims, for affording quickest relief as regards reparation to the victims of Human Rights Violation.

The petitioner prays that he may be afforded the facility to call on the Secretary and the Hon'ble Minister to explain the various aspects of the sufferings of the Indian migrants, with a view to make available to them the full protection of Human Rights in letter and spirit.

(Panikkaveetil K. Jabir)
Petitioner.

Inter-American Human Rights Mechanisms

The American States reaffirm the principles of International law is the standard of conduct of States in their reciprocal relations; proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex; The powers referred to in this article shall be exercised in accordance with this Charter.

The Charter of the Organization of American States was signed in Bogotá in 1948 and amended by the "Protocol of Buenos Aires" in 1967, by the "Protocol of Cartagena de Indias" in 1985, by the "Protocol of Washington" in 1992, and by the "Protocol of Managua" in 1993.

Read excerpts from the chapters:-

Chapter IV FUNDAMENTAL RIGHTS AND DUTIES OF STATES

Article 10

States are juridically equal, enjoy equal rights and equal capacity to exercise these rights, and have equal duties. The rights of each State depend not upon its power to ensure the exercise thereof, but upon the mere fact of its existence as a person under international law.

Article 11

Every American State has the duty to respect the rights enjoyed by every other State in accordance with international law.

Individuals and organizations may petition the Commission to examine complaints regarding the violation of rights under the Charter and American Convention on Human Rights. A form for petitioning the Commission is available on the Commission's website.

Article 45

The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms:

a) All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security;

(Source: <http://www.reparationlaw.com/resources/inter-american-mechanisms/>)

European Human Rights Mechanism

Council of Europe and European Union

The Council of Europe and the European Union share the same values – human rights, democracy and the rule of law. Focusing on those core values, the Council of Europe brings together governments from across Europe – and beyond – to agree legal standards in a wide range of areas.

The European Convention of Human Rights is the first Council of Europe's convention and it aims at protecting human rights. It was adopted in 1950 and entered into force in 1953.

Its ratification is a prerequisite for joining the Council of Europe. The member governments of the 'Council of Europe' work towards peace and greater unity, based on human rights and fundamental freedoms. With this Convention they decide to take the first steps to enforce many of the rights contained in the Universal Declaration of Human Rights.

Any Contracting State or individual claiming to be a victim of a violation of the Convention may lodge a claim alleging a breach of any of the Convention rights. Individual applicants may submit applications themselves, but legal representation is recommended and even required for hearings or once an application has been declared admissible. The Council of Europe has set up a legal aid scheme for applicants who do not have sufficient means.

The EU refers to those same European values as a key element of its deeper political and economic integration processes. The Lisbon Treaty increased the scope for its action in many areas where the Council of Europe already has significant experience and expertise. The European Social Charter is a Council of Europe treaty which guarantees social and economic human rights. It was adopted in 1961 and revised in 1996.

The European Convention of Human Rights is the first Council of Europe's convention and it aims at protecting human rights. Its ratification is a prerequisite for joining the Council of Europe. It was adopted in 1950 and entered into force in 1953. The member governments of the Council of Europe work towards peace and greater unity based on human rights and fundamental freedoms. With this Convention they decide to take the first steps to enforce many of the rights contained in the Universal Declaration of Human Rights.

The Commissioner of Human Rights, Council of Europe

The Commissioner for Human Rights is an independent institution within the Council of Europe, mandated to promote the awareness of and respect for human rights in 47 Council of Europe member states.

(Source: <http://www.reparationlaw.com/resources/european-mechanism/>)

African Mechanisms

African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. The Charter, the African Commission on Human and Peoples' Rights, which was set up in 1987 and is now headquartered in Banjul, Gambia. A protocol to the Charter was subsequently adopted in 1998 whereby an African Court on Human and Peoples' Rights was to be created. The protocol came into effect on 25 January 2005.

African Charter on Human and Peoples' Rights, Organization of African Unity ("Banjul Charter")(Adopted by the eighteenth Assembly of Heads of State and Government 27 June, 1981 – Nairobi, Kenya)

Key Excerpts

Part I: Rights and Duties

Chapter I: Human and Peoples' Rights

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

(Source: <http://www.reparationlaw.com/resources/african-mechanisms/>)

About the Petitioner:

[In sharp contrast with countries abiding by the Rule of Law, those who live and work in United Arab Emirates (UAE) do not have the protection of Law. Those who have access to the corridors of power can violate even the Court Judgments with impunity. Due to various considerations, economic and political, the 'Union government of India' from where a majority of people migrate, does not protect their citizens. It happened in the case of the petitioner. The Police officials of Abu Dhabi colluded with the accused of his civil suit, making a forcible entry into the plaintiff's place (herein mentioned the petitioner), robbed of cash and valuables, and was threatened to withdraw the civil suit.

The petitioner was subjected to the greatest ordeals by being taken to the detention center, mercilessly tortured, beaten to near death thereafter hospitalized on an emergency, and kept in central prison illegally for over a year in total violation of all Human Rights. Untold sufferings were inflicted on the petitioner as an under-trial prisoner. The facts are evident and born-out by the records attached herein].

1. The petitioner was a businessman and investor engaged in the business of 'Trading and General Contracting' in Abu Dhabi, UAE for over 18 years. In 1995, there he had a business contract with a property owner, covering a building proposed to be leased out for a sum of 5,40,000.00 UAE Dirhams for semiannually. When a dispute arose with the said landlord, the petitioner was advised to institute a civil suit in Abu Dhabi Court for settling the issue. The Honorable judge of the civil court consented the related payments to the court's treasury.
2. Though the petitioner had acted only as a law abiding citizen, and in accordance with legal advice secured in that behalf, and had only sought relief from a court of justice, the landlord took it as a personal affront and planned and executed illegal and violent activities against the petitioner defying all legal provisions and principles of fair-play. Taking advantage of the situation prevailing in that country and securing the assistance of Police even by resort to all unfair means, the landlord and his men, ransacked the entire office and robbed of cash and valuables.
3. The petitioner was handcuffed behind his back and literally dragged out of the office and on through the street in the presence of known friends and bystanders. He was confined to a detention center where he was brutally tortured. As a result of torture, the petitioner became unconscious and soon thereafter he was taken to hospital-

emergency. The next day he was taken back to the detention center there he was again subjected to torture, incommunicado detention and other cruel, inhuman treatment. After being held for 21 days with all sorts of malpractices resulting in injury, bodily damage and injury to reputation, the petitioner was taken to Abu Dhabi central prison. It took six months thereafter, for the petitioner to have his first appearance in the Court.

4. The petitioner (the complainant of the civil suit) was framed in a fabricated police case quote "Using force against Government employee and assault" unquote. The mere fact that the court has found the whole case was fabricated and the police was the master brain behind all the manipulations. The Trial Court acquitted the petitioner of all the charges leveled against him and even ordered an enquiry about the conduct of the police officials. The prosecution took up the matter in appeal. The Appellate Court also upheld the finding of the Trial Court and commended adversely and strongly against the illegal and high-handed acts of the officials.

5. The Court observed that all the evidences indicate to the properness of the behavior of petitioner and these findings of fact are conclusive proof of his innocence. The Court's observation of the policeman's disclaim from the complaint only magnified the policeman's notoriety. The Appellate review further reiterated the condemnation of prosecutor, who recklessly and repeatedly broke the rule of law. Ultimately, the Apex Court of Abu Dhabi declared the petitioner was innocent; 'a martyr'. In addition, the Abu Dhabi authorities were directed to restore the victim's dignity, and compensate him for all his losses while pronouncing the final Judgment. An excerpt from the appellate judgment is as follows:-

"Verily the Islamic law and the entire positive laws have honoured man and protected his freedom, his honour, his property and his soul. Hence, if man was killed while protecting these, he is considered to be a martyr. And limitation of his freedom without any right is an unforgiving crime and the same is mentioned in the provisions of article 2 and 3 of the penal procedure code. And it is proved in this case that the policemen along with the local went to arrest the accused, without any right and curtailed his freedom".

6. In the wake of the concurrent judicial findings of the Court, he should have been restored to his former status and position and adequately compensated for the mental agony and suffering and pecuniary losses suffered by him. Unfortunately, the Abu Dhabi officials acted in total defiance of the findings and sentiments expressed by the judicial establishments of the country. The victim was detained at further extent without the due respect of the law of the land,

re-victimized over and over again in Abu Dhabi, United Arab Emirates. On 28-9-1996, they resorted to the high handed action of deporting the petitioner to India, who had self-sponsorship and own business establishments in the UAE, in total negation of the law, virtually denying all the constitutional rights of non-citizens of that country and all the principles of the international law.

7. After reaching India, the petitioner has made representations to the Union Government of India asking them to grant him leave to institute legal proceedings against the state of UAE. In October 1996 a writ petition was filed by the petitioner before the Hon'ble Supreme Court of India. The Supreme Court of India took cognizance of the case and suggested the Delhi High Court deal with it. The petitioner has thereafter moved the Hon'ble High Court of New Delhi under Article 226 of the Constitution.

8. The Hon'ble High Court of Delhi was pleased to issue a mandamus, vide judgment dated 20-11-1997 to the Government, the Ministry of External Affairs (MEA) to settle the matters within two months of the date of the Judgment. In total negation of such a specific order of the Delhi High Court, the External Affairs Ministry of India, despite the lapse of 16 years of date of the judgment, demonstrated a blatant disrespect to the law of the country. (Copies of Delhi High Court Judgment and letters from the Ministry of External Affairs, the Ministry of Overseas Indians' Affairs, UAE ambassador, the NHRC, the Union Government of India and the RTI authority of Ministry of External Affairs (RTI) & CPIO, including the office of United Nations' High Commissioner for Human Rights, Geneva, are enclosed herewith marked as 'Exhibit series')

Regards

Panikkaveetil K. Jabir
5th Floor, Metro Plaza Building
Market Road, Kochi, Kerala – 682 014.

(Source: <http://www.lawyersindia.com/outsourcing/index.html>)

OFFICE DES NATIONS UNIES À GENÈVE
HAUT COMMISSAIRE AUX DROITS DE L'HOMME
CENTRE POUR LES DROITS DE L'HOMME



UNITED NATIONS OFFICE AT GENEVA
HIGH COMMISSIONER FOR HUMAN RIGHTS
CENTRE FOR HUMAN RIGHTS



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Palais des Nations
CH 1211 Geneva 10

Reference : G/SO 215/1 UAE 707

28 February 1997

Your communication
dated 26 December 1996

Dear Mr. Jabir,

This is to acknowledge the receipt of your
communication referred to above.

... In accordance with a procedure set out in the
enclosed resolutions, a copy of your communication will
be sent to the authorities of the country concerned and
a summary of it will be confidentially submitted to the
Commission on Human Rights and the Sub-Commission on
Prevention of Discrimination and Protection of
Minorities.

Yours sincerely,

for 

Helga Klein
Chief a.i., Support Services Branch

Mr. Panikkaveetil K. Jabir
Ovungal Alumpadi
P.O. Chavakkad
Trichur, Kerala
Pin 680 506
Inde

प्रधान मंत्री कार्यालय
PRIME MINISTER'S OFFICE

No. 9/3/98-PMR-Y/751736

नई दिल्ली - 110 011
NEW DELHI - 110 011

Dear Sir,

15 JUN 1998

I am desired to acknowledge the receipt of your letter dated 1.6.1998 to the Prime Minister and to say that it is being forwarded for action as appropriate to the Secretary, Ministry of External Affairs, New Delhi.

Yours faithfully,

H.S. Dhoria
(H.S. DHOORIA)
SECTION OFFICER

Panikkaveetil K. Jabir,
Ovungal, Chavakkad,
Trichur, Kerala-680 506.

September 13, 2012
Shri .Sandeep Sood,
Under Secretary (RTI) & CPIO,
Ministry of External Affairs,
NEW DELHI.

Ref: Letter No.RTI/551/763/2012 dated July 11, 2012 from Ministry of External Affairs.

Dear Sir,

Sub: Information under the RTI Act, in the matter of the representation of ShriPanikkaveettil K. Jabir, Kerala, as per the judgment of the Delhi High Court Dated 20-11-1997 directing the Ministry of External Affairs to dispose of his Representation dated 26th December 1996, within two months from 20-11-1997.

My application dated 04 July, 2012 (copy attached) was filed before the Ministry of External Affairs, Government of India, New Delhi to get information on the action taken by the External Affairs Ministry as per the directives to the Ministry of External Affairs, contained in the judgment dated 20-11-1997 of Justice Arun Kumar of the Hon'ble High Court of New Delhi (Appellate Civil Jurisdiction), C.W.No.4972/97 (C.M.9144/97).

We are in receipt of your letter for more details referred to above. Please find the true copy of representation along with some other documents that are related with the above said representation. Unfortunately, the Ministry of External Affairs has failed to take any effective and timely action in the representation of a torture survivor, as directed by the High Court of Delhi.

Shri Jabir was unsuccessful in getting a sanction to pursue remedies in India against the offending State of UAE which is responsible vicariously for the crimes, torts and other illegal actions of its officials. This minimal justice stands denied to Sri Jabir who was the victim of a case of gross violation of natural justice that emerged in Abu Dhabi, United Arab Emirates, where he was having a vast business empire.

A brief sketch of the case and plight of Sri P.K. Jabir is given below to give you a quick appraisal:-

Shri Jabir is a qualified Mechanical Engineer, who obtained his higher Diploma in Electro-Mechanical Engineering (M.E), from Victoria College of Engineering, Bombay. He had valuable experience in the said field by working in projects of International Repute like Voltas and Lufthansa in India.

On 01.06.1979 Sri Jabir went to the UAE. He could successfully begin and develop three business establishments in Abu Dhabi, i.e., (1) Premier General Contracts & Maintenance Establishment, (2) Ramla Electro-Mechanic Est., and (3) Summer-Pool Building Material Trading Est. The value estimated including work contracts, human resources and procurement in projects of worth US Dollar \$100 million.

In 1995, there was a business deal with a Hassan Saeed, a UAE landlord, covering a building proposed to be leased out for a sum of 5,40,000 UAE Dirhams. When a dispute arose with the said UAE business associate, the petitioner instituted a civil suit in Abu Dhabi Court. The conspiracy on the part of the landlord to avoid paying debts was one of the important and thrusting points in the civil suit.

Though the petitioner had acted only as a law abiding citizen, and in accordance with legal advice secured in that behalf, and had only sought relief from a court of justice, Hassan Saeed took it as a personal affront and planned and executed illegal and violent activities against the petitioner defying all legal provisions and principles of fair-play. Making a forcible entry into the complainant's place, the petitioner was threatened to withdraw the Civil Suit by abusing the force of the Police Officials. The petitioner could not yield to such illegal and unjust demands which amounted to extortion.

The petitioner was arrested soon thereafter in a fabricated criminal case, put in jail and tortured brutally. The mere fact that the court has found the whole case was fabricated and the police was the master brain behind all the manipulations. And ultimately, the lower Court and the Apex Court of Abu Dhabi had declared the petitioner innocent of the charges leveled against him. In addition, the UAE authorities were directed to compensate the petitioner for all the sufferings, prestige, dignity and other damages.

An excerpt from the appellate judgment is as follows:-

"Verily the Islamic law and the entire positive laws have honoured man and protected his freedom, his honour, his property and his soul. Hence, if man was killed while protecting these, he is considered to be a martyr. And limitation of his freedom without any right is an unforgiving crime and the same is mentioned in the provisions of article 2 and 3 of the penal procedure code. And it is proved in this case that the policemen along with the local went to arrest the accused, without any right and curtailed his freedom".

In the wake of the concurrent judicial findings of the Court, he should have been restored to his former status and position and adequately compensated for the mental agony and suffering and pecuniary losses suffered by him. Unfortunately, the UAE Officials acted in total defiance of the findings and sentiments expressed by the judicial establishments of the country. On 28-9-1996, they resorted to the high handed action of deporting the petitioner to India in total negation of Human Rights and principles of law. A "No Entry Seal" has also been affixed illegally in the Passport of the victim. The petitioner was not given an opportunity to make any representation against making such an endorsement which would deprive him of his life and liberty as safeguarded under the domestic law, the international law and other humanitarian laws.

I hope now you could make a picture of the turmoil of Shri Jabir has hitherto been put to at the hands of the authorities in Abu Dhabi, UAE. The anguish resultant from the deprivation of his establishments, assets and reputation earned exclusively through the untiring personal efforts of the petitioner causes mental depression which will virtually make his life only a vegetable existence.

On reaching India, Shri Jabir moved from pillar to Post. He filed a Writ Petition in the Hon'ble High Court of Delhi. The Court was convinced of the inhuman and unjust actions of the UAE, on the basis of the documental evidences submitted in the case and the further facts put forth during the hearing of the case. Accordingly, the High Court of Delhi had directed the Ministry of External Affairs; vide its judgment dated 20-11-1997, to dispose of the representation within two months from 26th December, 1996.

From the records it will be appreciated that, Shri Jabir is well aware of his rights and he was waiting all the while for justice. The both State parties, the UAE Government and the Government of India have the responsibility to fulfill his rights'. It has to be noted that, the UAE Courts had already ordered the authorities to pay compensation to Shri Jabir for all the inhuman tortures inflicted up on him and for his business losses, fame and dignity he suffered by the case fabricated against him and found to be so by the Judges. Instead of this, Shri Jabir was aggressively and repeatedly victimized by the UAE officials with impunity.

It is rather a disgrace that the Ministry of External Affairs, Government of India, despite a specific Court directive of High Court of Delhi, did not take any effective action in the matter. 'A situation, that appears to have been eroded the faith of the general public in the ability of the legal system to redress harms that result from serious crimes'.

It should be kept in mind that, the doctrine of "International responsibility" under the rules protecting individuals from official abuses has undergone a significant evolution. When the authorities of a State, irrespective of whether they are acting pursuant to an official policy, fail to protect individuals from human rights abuses, they are also in violation of international law and therefore incur State responsibility. In honouring the victims' right to benefit from remedies and reparation, the general public keeps faith with the plight of victims, survivors and reaffirms the national and international law in the field. (Reparation Law)

The officials of the Ministry of External Affairs should feel themselves ashamed of their inaction in protecting the innocent Indians trapped in false cases in the UAE, if they closely rewind and recollect the anxiety, sincerity and promptness of the Ministers of Italy who came to India to help and rescue two of their citizens, the marines of the ship EnricaLexi, who were actually 'proven killers of two fishermen, near Quilon, Kerala.

Shri Jabir has to be redressed for his persistent miseries, at the earliest possible. Copies of letters from the Ministry of External Affairs, Government of India, National Human Rights Commission (N.H.R.C), Prime Minister's Office, The Ambassador of India, United Arab Emirates, other institutions and personalities are attached hereto for reference.

1. Reply dated 11 July, 2012 No.RTI/551/763/2012 from the Ministry of External Affairs, Government of India, New Delhi
2. Application dated 04 July, 2012 before the Ministry of External Affairs, Government of India, New Delhi
3. Letter No.V-1600/EAM/2000 dated September 7, 2000 from Smt. NarinderChauhan, Director/PS, Private Secretary to the Minister of State, Ministry of External Affairs, New Delhi-110011, addressed to Shri P.C. Thomas, Member of Parliament (LS), B-702, M.S. Flats, Baba Kharag Singh Marg, New Delhi.
4. Letter No.4796/A1/99/NORKA, dated 18-12-1999 from Amitabh Kant, Secretary to Government, NORKA, Non Resident Keralites' Affairs (A) Department, Thiruvananthapuram, addressed to The Secretary to Government, Ministry of External Affairs, Government of India, New Delhi-110 011.
5. Letter No.T-413/3/96 dated January 29, 1998 from N.U. Avirachan, Under Secretary, Ministry of External Affairs, Government of India, New Delhi, addressed to ShriBala Subramanian, Second Sef India (Cons), Embassy of Abu Dhabi.
6. Letter No.11/272/96-LD dated 2nd February, 1997 from I.C. Punetha, Jt. Registrar (Law), National Human Rights Commission (Law Division), Sardar Patel Bhavan, New Delhi-110 001, addressed to The Secretary, Ministry of External Affairs, South Block, New Delhi-110 001.
7. Letter No.9/3/98-PMRY/751736 dated 15 June 1998 from Shri H.S. Dhooria, Section Officer, Prime Minister's Office, New Delhi-110 011, addressed to Shri P.K. Jabir, intimating that his letter of 1-6-1998 to the Prime Minister is being forwarded for action as appropriate to the Secretary, Ministry of External Affairs, New Delhi.
8. Letter dated June 16, 1998 from Smt. VasundharaRaje, Minister of State for External Affairs, India, addressed to Shri O.Rajagopal, Member of Parliament, Chairman on petitions, RajyaSabha, 126-B, Parliament House, New Delhi-110 001.

9. Letter dated June 19, 1998 from Shri O. Rajagopal, Member of Parliament, Chairman, Committee on Petitions, RajyaSabha, 126-B, Parliament House, New Delhi-110 001, addressed to the petitioner, acknowledging his representation and the same being forwarded to Smt. VasundharaRaje, Minister of State for External Affairs, India.
10. Letter No.ABU/AMB/411/1/98 dated 21st September 1998, from Shri M.P.M. Menon, Ambassador of India, Abu Dhabi, United Arab Emirates, addressed to the petitioner, directing him to send a representation on his grievance to His High ShaikhZayed Bin Sultan Al Nahyan, President of the United Arab Emirates.
11. Letter dated 23rd June 1998 from Shri I.K. Gujaral, Member Parliament (LokSabha), G-13, Maharani Bagh, New Delhi-110 065, addressed to the petitioner intimating that his representation is being taken up with the Ministry of External Affairs for appropriate action.
12. The Judgment copy of the Delhi High Court Dated 20-11-1997 directing the Ministry of External Affairs to dispose of Shri Jabir's Representation dated 26th December 1996.
13. Shri Jabir's Representation dated 26th December 1996 to the Ministry of External Affairs, Government of India, New Delhi.

In view of the background information furnished as above, the Hon'ble External Affairs Ministry could have an updated picture of the entire incidents that led to his illegal arrest, brutal torture and harassment in Abu Dhabi as well as the helpless attitude of the officials in India as well as abroad in abating his agonies.

Under the provisions of the Right to Information Act, I would now earnestly request the External Affairs Ministry to furnish the information sought for at the earliest."

Yours faithfully,

Overseas Indians' Legal Cell, Kochi

On behalf of Shri. Panikkaveetil K. Jabir

5th Floor, Metro Plaza Building

Market Road, Kochi, Kerala – 682 014.

[Letter drafted to the Under Secretary, Ministry of External Affairs (RTI) & CPIO]



COMPLIMENTS PBD 2013

Overseas Indians' Legal Cell proposes to submit a Representation to Govt. of India to formulate an Indo-Gulf Reparation Mechanism.

NRIs may please send their specific grievances/suggestions for inclusion in the representation



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WWW.JUDGMENTFORSALE.COM

The enforcement of Court Judgment is a fundamental element of the rule of law. When this legal principle is ignored, a Judgment Creditor has the right to offer his or her Judgment for sale or to make efforts to legally enforce and recover his assets and the inherent rights of individuals to dignity.



The mandate of UN General Assembly adoption of resolution reads the "States shall, with respect to claims by victims, enforce domestic judgments for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgments for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgments" (Resolution adopted by the United Nations General Assembly - A/RES/60/147)

How to buy a Judgment?

Outright sale of the judgment is not envisioned. Funds are proposed to be raised by distribution of shares.

[An innovative project by Overseas Indians' Legal Cell, aimed at giving effect to Court Judgments that remains unexecuted or unsatisfied]

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Recipients:

- 1) Shri Salman Khurshid,
Hon'ble Minister for External Affairs,
Ministry of External Affairs,
Government of India,
South Block,
New Delhi – 110 011.

- 2) Shri Vayalar Ravi,
Hon'ble Minister for Overseas Indian Affairs,
Ministry of Overseas Indian Affairs,
Government of India,
Akbar Bhavan, Chanakyapuri,
New Delhi – 110 011.

- 3) The Secretary to Government,
Ministry of External Affairs,
Government of India,
South Block,
New Delhi – 110 011.

- 4) The Secretary to Government,
Ministry of Overseas Indian Affairs,
Government of India,
Akbar Bhavan, Chanakyapuri,
New Delhi – 110 011.

- 5) The Hon'ble Ambassador of the U.A.E.,
Embassy of the United Arab Emirates,
12, Chandragupta Marg, Chanakyapuri,
New Delhi – 110 021 (INDIA),
Telephone: 011-26111111.