



PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of 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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9)
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16 February 2011

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 7/36 and 7/8.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the case of **Mr. Julfikar Ali**, a District Human Rights Monitor (DHRM) of the human rights non-governmental organization MASUM in the Murshidabad District of West Bengal. On behalf of MASUM, Mr. Julfikar Ali investigates alleged torture cases perpetrated by State agents, and accompanies victims of torture in seeking legal redress.

Mr. Julfikar Ali was the subject of an allegation letter sent by the then Special Representative of the Secretary-General on the situation of human rights defenders on 11 March 2008. Your Excellency's Government responded to this letter on 6 April 2009.

According to the new information received:

On 2 January 2011, an unidentified police officer, in plain clothes, from the Raninagar Police Station, came to the house of Mr. Julfikar Ali, who was away at the time. The police officer informed Mr. Julfikar Ali's family that the arrest warrant related to criminal case Raninagar Police Station no.8/2008, which was the subject of the aforementioned letter, was still pending and that he should immediately surrender himself before the court of law. As previously stated, the complaint relates to an incident which reportedly took place on the night of 11 January 2008, at the Kaharpara Border Security Force (BSF) outpost, whereas Mr. Julfikar Ali was reportedly not in the vicinity of the outpost that night. In addition, the three other persons mentioned in the complaint are not reportedly known to Mr. Julfikar Ali.

On 13 January 2011, Mr. Julfikar Ali made a statement on his case to the Special Rapporteur on the situation of human rights defenders, in Kolkata, West Bengal, during her country mission to India.

A few days after Mr. Julfikar Ali delivered his testimony, police visits to his home reportedly became more frequent, during which his family has been asked for his whereabouts.

On 11 February 2011, Mr. Julfikar Ali, accompanied by Mr. Kurity Roy, Secretary of MASUM, went to the District Court to surrender. His decision was motivated by the need to settle the issue, and to be able to continue his human rights activities. Mr. Julfikar Ali filed a petition before the District Court for anticipatory bail, which was granted with a bond of 3,000 Indian Rupees.

On 14 February 2011, the District Court granted another anticipatory bail to Mr. Julfikar Ali in relation to another complaint filed by the BSF (case Raninagar PS no. 33 dated 16 February 2008), with a bond of 5,000 Indian Rupees. In this case, Mr. Julfikar Ali's name reportedly did not appear in the complaint filed by the BSF.

Serious concern is expressed that the aforementioned acts of judicial harassment against Mr. Julfikar Ali may be related to his human rights activities, i.e. his reporting of alleged violations committed by BSF officials, and might have increased due to interaction with the Special Rapporteur on the situation of human rights defenders during her recent visit to India. Further concern is expressed for the physical and psychological integrity of Mr. Julfikar Ali and his family.

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 International Covenant on Civil and Political Rights, which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would also 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".

Furthermore, 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; and

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Furthermore, we also wish to recall the provisions of resolution 12/2 of the Human Rights Council (A/HRC/RES/12/2), which, inter alia, “condemns all acts of intimidation on reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (OP 2) and “calls upon all States to ensure adequate protection from intimidation or reprisals for individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (...)” (OP 3).

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Julfikar Ali are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible for the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Julfikar Ali in compliance with the above international instruments.

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, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate how the aforementioned charges brought against Mr. Julfikar Ali are compatible with international human rights law as contained, inter

alia, in the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders