

December 07, 2012

Mr. Juan E. Mendez
Special Rapporteur on Torture
c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10
Switzerland

Re: Torture and Cruel, Inhuman and Degrading Treatment of Captain Saurabh Kalia by the Pakistan Army.

Dear Mr. Mendez,

We write to you on behalf of the Flags of Honor Foundation¹ and Mr. Rajeev Chandrasekhar², who along with Dr. Narinder Kumar Kalia³ seek to represent Late Captain Saurabh Kalia, of the Indian Army, in this complaint.

Captain Kalia was a Lieutenant⁴ in the 4 JAT Regiment of Indian Army, bearing Service No. IC-58522. During the Kargil war between India and Pakistan, Captain Kalia was deputed to patrol from the Bajrang post in the Kargil area. In an ambush attack by the Pakistan army inside Indian Territory, Captain Kalia and his men Sepoy Arjun Ram (*deceased*), Sepoy Bhanwar Lal Bhagaria (*deceased*), Sepoy Bhikaram (*deceased*), Sepoy Moola Ram (*deceased*) and Sepoy Naresh Singh (*deceased*) were abducted by the Pakistan Army which had reportedly infiltrated into the Indian territory, *viz.*

¹ The Flags of Honour Foundation represents the interests of brave soldiers who have sacrificed their lives for the country and the families of such martyrs. See <http://www.flagsofhonour.org/>

² Member of Parliament, India. See <http://www.rajeev.in/>

³ Dr. Narinder Kumar Kalia is the father of Late Captain Saurabh Kalia.

⁴ Posthumously promoted 'Captain'.

members of either the Elite Special Services Group (SSG) or Northern Light Infantry⁵. Pakistan did not officially report the capture of Captain Kalia and his men at that point of time as they were denying any official role in the infiltration. However, Skardu Radio in Pakistan Occupied Kashmir reported the capture. As their status as 'Prisoners of War' was not disclosed to the Indian Army or Indian Authorities officially, their whereabouts remained unknown and the Indian Authorities declared Captain Kalia and the other men to be 'missing'.

Twenty five (25) days after his capture, i.e. on June 09, 1999, Captain Kalia's disfigured body was handed over to the Indian Authorities by the Pakistan Army. The body was mutilated, bore multiple wounds and evidenced cruel, inhuman and degrading treatment, if not torture, which Captain Kalia was subjected to.

CIRCUMSTANCES OF CAPTURE

Captain Kalia was posted in the Kargil Sector during the Kargil War of 1999. On May 15, 1999, Captain Kalia and his men were on patrol duty from Bajrang post, which is at a height of 13,000-14,000 feet above Mean Sea Level and located in the Kaksar area of Kargil, in the State of Jammu and Kashmir, India.⁶ Captain Kalia and his men were captured/abducted⁷ in the Indian Territory and reportedly, when they were about to reach the Bajrang post, by uniformed troops under the control of the Pakistan Army (reportedly the Northern Light Infantry). It is reported that Captain Kalia and the other men ran out of ammunition and their communication equipment was also

⁵ Pervez Musharraf (2006). *In the Line of Fire: A Memoir*. Free Press. ISBN 0-7432-8344-9; "The Northern Light Infantry in the Kargil Operations". Retrieved 2009-05-20. by Ravi Rikhye 1999 August 25, 2002 – ORBAT

⁶ A map depicting the location of Kaksar area (where Bajrang post was located) is annexed hereto as **Annexure 1**.

⁷ As reported by Skardu Radio in Pakistan Occupied Kashmir.

rendered out of order. They lost contact with the base and were captured alive⁸ by soldiers of the Pakistan Army before reinforcements from the Indian Army could reach the height at which they were located.⁹ Captain Kalia and the other men were wearing the uniforms and the insignia of the Indian Army as per the terrain, weather and altitude.

Whilst Skardu Radio in Pakistan Occupied Kashmir broke the news of the capture of Captain Kalia and his men,^{10,11} the Director General-Military Operations of the Pakistan Army denied such capture when repeatedly contacted by his Indian counterparts.

Despite extensive searches undertaken by the Indian army, the men were not found, and no information was forthcoming from the Pakistan Army regarding the whereabouts of the men. Therefore, the party was declared missing in action by the Government of India.

CAPTIVITY; TORTURE; AND HANDOVER OF BODIES OF THE DECEASED MEN

The bodies of Captain Kalia and the other men were handed over by the Pakistan Army to their Indian counterparts on June 09, 1999.¹²

⁸ As is evident from the ante-mortem wounds on the body.

⁹ See <http://www.tribuneindia.com/2007/20070610/himachal.htm> annexed hereto as **Annexure 2**; Also see Navpreet Milton, Justice delayed...denied, Spectrum by The Tribune, July 31, 2011

(<http://www.tribuneindia.com/2011/20110731/spectrum/main3.htm>) annexed hereto as **Annexure 3**.

¹⁰ See P.K. Vasudeva, 'It's a long haul in Kargil', The Tribune, May 31, 1999 annexed hereto as **Annexure 4**; See also 'War in Kargil', Frontline, Volume 16 – Issue 12, June 05-18, 1999 annexed hereto as **Annexure 5**.

¹¹ <http://www.frontlineonnet.com/fl1612/16120040.htm>

¹² See Peter Popham, Pakistan 'tortures Indians to death', The Independent, June 12, 1999

(<http://www.independent.co.uk/news/world/pakistan-tortured-indians-to-death-1099605.html>) annexed hereto as **Annexure 6**; Also 'Bodies returned bear evidence of torture', The Times of India, June 12, 1999 annexed hereto as **Annexure 7**; Indian Minister says Pakistan tortured, killed soldiers, CNN World, 11th June 1999 annexed hereto as **Annexure 8**; and Anand Bodh, Capt. Saurabh Ka [lia's torture by Pak army still not 'war crime', Times of India, June 09, 2010 annexed hereto as **Annexure 9**.

The Indian army requested the International Committee of the Red Cross and the Indian Red Cross to carry out the post mortem of the bodies. As these requests were refused for unspecified reasons, the post mortem was finally carried out by doctors in the Army Hospital, Delhi Cantonment.¹³

Continuous efforts were taken by Dr. N. K. Kalia to obtain a copy of the report of the post-mortem carried out on Captain Kalia. Dr. N.K. Kalia was twice denied access to the detailed post-mortem report by the Director General, Medical Services of the Armed Forces, before he was provided access to the same.¹⁴ A copy of the post mortem report and death certificate is annexed hereto as **Annexure 12**.

The post-mortem report indicates shock, brain injuries, ante-mortem injuries caused by firearm and other associated injuries caused by blunt force as the cause of death. The report also indicates damage of the eyeballs, gunshot wounds multiple fractures, burns all over the chest and multiple wounds in the mouth, shoulder, forearm, hand and leg areas.

REMEDIES PURSUED

I. Efforts taken by Dr. N.K. Kalia to obtain justice and closure:

(i) On taking up the matter with International organizations

- Dr. N.K. Kalia addressed a facsimile communication dated July 02, 1999 to the Prime Minister of India, appealing that the matter regarding Captain Kalia's capture and brutal death be taken up with the assistance of

¹³ See excerpt from General Malik's book annexed hereto as **Annexure 10**.

¹⁴ Correspondence with regard to requests made by Dr. Kalia for a copy of the post-mortem report, are annexed hereto as **Annexure 11**.

organizations such as the Amnesty International, the International Red Cross, the National Human Rights Commission etc. Dr. N.K. Kalia sent a reminder to this facsimile communication, by way of another facsimile communication dated August 08, 1999 seeking intervention and action by the Prime Minister of India, and seeking assistance of international organizations or taking up the matter before International Human Rights *fora*. A copy of the facsimile communication dated July 02, 1999 and the reminder dated August 08, 1999 are annexed hereto as **Annexure 13** and **Annexure 14**.

- Dr. N.K. Kalia also addressed a facsimile communication to the President of India, with copies to the Minister of Defence of the Government of India and to the Chief of Army staff, seeking that the matter regarding Captain Kalia's capture and brutal death be taken up with the assistance of Organizations such as Amnesty International, International Red Cross, National Human Rights Commission, etc. A copy of the facsimile communication is annexed hereto as **Annexure 15**.
- The Ministry of Defence of the Government of India addressed a letter dated December 04, 1999 and bearing reference no: 3774/99-D(AG)/12481-F/RM to Dr. N. K. Kalia, stating that the avowed policy of the Government of India was to resolve all matters with Pakistan on a bilateral basis without mediation by any third parties such as Amnesty International. A copy of the letter dated December 04, 1999 is annexed hereto as **Annexure 16**. This

position was accepted by Dr. Kalia but, unfortunately, there has been no real action on the part of the Government of India.

- The Ministry of External Affairs, India, addressed a letter dated March 03, 2001, and bearing reference no. 754/EAM/2001, to Dr. N.K. Kalia, in reply to letter from Dr. Kalia dated January 23, 2001. The letter states that the matter regarding Captain Kalia's capture and brutal death was raised at the 56th Session of the Commission on Human Rights on April 06, 2000. The letter states that as there was no satisfactory response from Pakistan, as a follow up, the matter would be taken up again at the next session of the Commission of Human Rights in March-April, 2001. The letter also states that the issue will be taken up with Pakistan bilaterally and that Pakistan shall be asked to identify and punish those responsible for the torture. Copies of the letter dated January 23, 2001 and the letter in reply dated March 03, 2001 are annexed hereto as **Annexure 17** and **Annexure 18**.
- On November 27, 2012, Dr. Kalia also filed a Writ Petition numbered WP No. 528/2012 and titled *N.K.Kalia v. Union of India and Others* before the Supreme Court of India, praying that directions be given to the Government of India to refer the matter to international organizations and/or bodies. The petition is currently pending before the Supreme Court.

(ii) *On taking up the matter with Pakistan bilaterally*

- The Ministry of Foreign Affairs of India did not raise the issue with Pakistan during the visit of the Pakistan Foreign Minister to India in June 1999 and later, at the United Nations Commission on Human Rights in April 2000
- Dr. N.K. Kalia addressed a facsimile communication dated August 09, 1999 to the Foreign Minister, Government of India noting that the Army Authorities have stated that the matter has been handed over to the Ministry of External Affairs and seeking expedited action in relation to the matter. A copy of the facsimile communication dated August 09, 1999 is annexed hereto as **Annexure 19**.
- Press Release issued by the Ministry of External Affairs, Government of India states that the Deputy High Commissioner of Pakistan was summoned by the Ministry and that the Ministry had made a demand for the perpetrators to be identified and brought to justice without delay. Further, a request was made to communicate to Government of India, a full account of the date, place and circumstance of capture, period of detention and particulars concerning the wounds and cause of death of the captured persons. A copy of the press release is annexed hereto as **Annexure 20**.
- Dr. N.K. Kalia addressed a facsimile communication dated July 05, 2001 to the Foreign Minister, Government of India, referring to letters dated August 20, 1999 and March 03, 2001 from the Ministry of External Affairs, Government of India and the letter dated December 04, 1999 from the

Ministry of Defence, Government of India stating that the issue would be raised with Pakistan bilaterally, and sought an intimation on whether the issue has been incorporated in the agenda for the impending visit of the President of Pakistan. A copy of the facsimile communication dated July 05, 2001, August 20, 1999 March 03, 2001 is annexed hereto as **Annexure 21**. See also letter dated March 03, 2001, which has been annexed hereto as Annexure 18.

II. **Efforts taken by Dr. N.K. Kalia to approach the authorities of the Indian army**

- (i) Dr. N.K. Kalia addressed a letter dated January 24, 2001 to the then Chief of army staff requesting that he initiate some action. The reply from the Chief of Army Staff stated that the matter in question being a sensitive matter involving two Nations, it would be handled by the Ministry of Foreign Affairs, Government of India. A copy of the document depicting Dr. N.K. Kalia's request to the Army Chief is annexed hereto as **Annexure 22**.

- (ii) The Discipline and Vigilance wing of the Indian Army addressed letters dated August 17, 1999 (bearing reference no. C/6215/AG/OP VIJAY/HRC) and August 25, 1999 (bearing reference no. C/10075/Inf-1) to Dr. N.K. Kalia, conveying that the case has been taken up with the Government of India to lodge a formal protest with the International Committee of Red Cross and the United Nations Commissioner for Human Rights through the Human Rights Cell at the Army Headquarters. The Headquarters of the Northern Command of the Indian Army also addressed a letter dated September 29, 1999 (bearing reference no.

23209/18/A1) to Dr. N.K. Kalia, reiterating that the issue of ill treatment of 'Prisoners of War' is being taken up by the Army headquarters through International Agencies. The Army Headquarters also addressed a letter dated March 25, 2000 and bearing reference no. 12181/OPV/BCBMC, noting that the Service Headquarters of the Army operate through the Ministry of Defence, Government of India and that therefore, it cannot approach any other agency directly. Copies of the letters dated August 17, 1999, August 25, 1999, September 29, 1999 and March 25, 2000 are annexed hereto as **Annexures 23 to 26**.

- (iii) Dr. N.K. Kalia approached the Armed Forces Tribunal, New Delhi and filed a case numbered O.A. No. 154/2010 against the Union of India and others before the Tribunal, praying that the Respondents may be directed to take up the matter with the International Court of Justice or International Human Rights Organizations and the Government of Pakistan so that the perpetrators may be brought to justice. An Order dated March 22, 2010 was passed by the Armed Forces Tribunal, New Delhi, wherein the Tribunal found that they could not entertain the application, as it was not within their jurisdiction. However, the Order states that the Government of India may take proper steps in accordance with law to bring such serious violations of Human Rights to the attention of International Organizations. Copy of the Order dated March 22, 2010, in O.A. No. 154/2010 is annexed hereto as **Annexure 27**.

III. Efforts taken by Dr. N.K. Kalia to approach the President of Pakistan and other Pakistani authorities

- (i) Dr. N.K. Kalia addressed a letter dated June 17, 1999 to the Prime Minister of Pakistan, with a copy to the High Commissioner of Pakistan in New Delhi, appealing that appropriate action be taken against the perpetrators of the torture. A copy of the letter dated June 17, 1999 is annexed hereto as **Annexure 28**.

- (ii) During the visit of the President of Pakistan to India for the Agra Summit in July 2001, Dr. N.K. Kalia, vide his letter dated July 05, 2001, sought an audience with the President of Pakistan. The Ministry of External Affairs vide its letter dated July 11, 2001, bearing reference No. 754/EAM/2001 stated that the Indian Delegation raised the matter at the UN Commission on Human Rights and that it intends to pursue the issue at the forthcoming summit meeting. A copy of the letter dated July 11, 2001 is annexed hereto as **Annexure 29**.

IV. Efforts taken by Dr. N.K. Kalia under the Indian Right to Information Act, 2005

- (i) Dr. N.K. Kalia filed a Right To Information (“RTI”) application dated September 08, 2009 before the Ministry of Defence, Government of India seeking information on the actions taken by the Government of India since the incident, in the intervening period, and actions proposed to be taken up by the Ministry with the Government of Pakistan and international bodies, as may be. The Ministry of Defence, Government of India, vide a letter dated November 17, 2009, bearing reference no. 23(73)/2009-D(AG) transferred the application to the Army Headquarters, stating that the information sought was not available with the Ministry. This application was further transferred, vide letter dated November 24, 2009, bearing reference no: A/810027/RTI/4263(Tfr) to the Office of the Prime

Minister and the Ministry of External Affairs, Government of India as the application sought information with respect to the Hon'ble Prime Minister, External Affairs Minister and Defence Minister, and there was no further information available on the subject. Copies of the RTI application dated September 08, 2012, letter dated November 17, 2009 and the letter dated November 24, 2009 are annexed hereto as **Annexures 30 to 32**.

(ii) The Ministry of External Affairs, *vide* its letter dated November 16, 2009, replied to the above mentioned RTI application and conveyed that the following measures had been undertaken by it:

- That the Government of India had conveyed the anguish of the people to the Foreign Minister of Pakistan during his visit to Delhi on June 12, 1999, and that the acts constitute a gross violation of the Geneva Convention and demanded of Pakistan that the guilty be identified and punished;
- That the Government of India handed over an Aide Memoire to the Pakistan High Commission on June 15, 1999. However, Pakistan denied all claims made by the Government of India;
- That a Press Release was issued on June 15, 1999 summoning the Deputy High Commissioner of Pakistan to the Ministry of External Affairs and an Aide Memoire was handed over to him; and

- That the Minister of External Affairs, in his address to the 54th Session of the United Nations General Assembly at New York, on September 22, 1999, pointed out in general, the gross violation of the Geneva Convention.

A copy of the reply dated November 16, 2009 is annexed hereto as **Annexure 33**.

- (iii) The Office of the Prime Minister, *vide* its letter dated December 18, 2009 bearing reference no. RTI/1265/2009-PMR stated that a reference dated April 17, 2000 had been made to the Ministry of External Affairs; Government of India regarding the matter and that there is no other relevant document on record. The reference was made by way of a letter dated April 17, 2000, bearing reference no: 855/40/C/1/2000-2001, seeking information regarding follow up actions *vis-à-vis* the various international conventions dealing with the treatment of prisoners of war, with respect to the matter and whether any action is being contemplated. Copies of the letter dated December 18, 2009 and April 17, 2000 are annexed hereto as **Annexure 34** and **Annexure 35**.

V. **Efforts by Mr. Rajeev Chandrasekhar, Member of Parliament of India**

- (i) Mr. Rajeev Chandrasekhar, Member of Parliament, addressed a letter dated December 06, 2011 to the Minister of External Affairs Government of India, with copies to the Prime Minister of India and to the Defence Minister, Government of India, to urgently take up the matter with the United Nations Human Rights Council towards persuading Pakistan to conduct an investigation, identify and punish the

perpetrators of the torture. The letter also requested that an investigation to be ordered to look into the delay in taking up the matter by the Indian Government for over twelve (12) years. The Defence Minister, Government of India, addressed a letter dated December 09, 2011, bearing reference number D.O.No. 5507/VIP/RM/2011, in reply to the letter dated December 06, 2011, saying the matter was being looked into by the Ministry. Copies of the letter dated December 06, 2011 and the reply dated December 09, 2011 are annexed hereto as **Annexure 36** and **Annexure 37**.

- (ii) On August 16, 2012, Mr. Rajeev Chandrasekhar, Member of Parliament, raised a question (unstarred question No. 649) to the Minister of External Affairs, Government of India in the Rajya Sabha i.e. the Upper House of the Indian Parliament, on whether the Government has taken up the issue with the United Nations Human Rights Council and the details thereof. The Ministry of External Affairs, Government of India replied that the attention of the international community was drawn to these brutal acts of Pakistan including through India's statement at the United Nations General Assembly in New York on September 22, 1999 and in India's statement under Agenda Item 11 during the 56th session of the Commission on Human Rights on April 6, 2000. Mr. Rajeev Chandrasekhar addressed a letter dated August 23, 2012 to the Foreign Minister of India, stating that the response received from the Ministry of External Affairs, Government of India to the unstarred question no. 649 raised on August 16, 2012 was wholly unsatisfactory and displays the fact that the Government of India had failed to initiate any action

for over twelve (12) years. The letter urges the Ministry to take up the matter on an urgent basis, before the United Nations Human Rights Council and the International Court of Justice, to declare the acts of torture inflicted upon Captain Kalia and his men as a war crime. The Minister of External Affairs addressed a letter dated September 24, 2012, bearing reference DO No. 7497/EAM/2012, in reply to the letter dated August 23, 2012, stating that the matter has been raised with Pakistan Authorities and appropriate international fora, but the efforts have not borne fruit. Copies of the abovementioned unstarred question No. 649 and reply of the Ministry of External Affairs, letter dated August 23, 2012 and reply dated September 24, 2012 thereof, have been annexed hereto as **Annexures 38 to 40**.

CONCLUSION

The facts detailed above engage your mandate, as described. There has been a failure to carry out a full, effective and impartial investigation into the torture in captivity, of Captain Kalia, which are capable of leading to the truth of what occurred and as appropriate, the prosecution of those responsible.

We respectfully request that your office enquires into this matter and takes appropriate steps to urge the Government of Pakistan to conduct an enquiry into the matter and ascertain those responsible for the torture and death of Captain Kalia. We also request your office to ensure that a full and independent investigation is opened immediately and that justice is achieved.

We would welcome the opportunity to provide your offices with further information or to clarify any issues in relation to this matter.

All communication with respect to this complaint may be addressed to the undersigned.

Yours truly,

Ms. Anjali Menon,
Poovayya & Co., Advocates and Solicitors,
The Estate, Level One,
121 Dickenson Road,
Bangalore – 560 042,
Karnataka, India.

T: + 91 80 4115 6777

E: anjali@poovayya.net