

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/9, 31/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of torture and ill-treatment of Mr. **Jagtar Singh Hawara**, in Tihar Jail, Delhi, India.

According to the information received:

Mr. Jagtar Singh Hawara has been a Sikh political activist in India since 1984, advocating for Sikhs to freely practice their faith without fear of denial, persecution and discrimination. In November 2015, the global congregation of Sikhs (Sarbat Khalsa) held in Amritsar appointed Jagtar Singh Hawara as the Jathedar of Sri Akal Takhat Sahib: the supreme religious leader of the 30 million Sikhs.

In 1995, due to his activism, Mr. Hawara was arrested allegedly on fabricated charges of assassination and was later convicted and sentenced to "Life to Death Imprisonment". At the time of his arrest, Mr Hawara was shot on point blank in the right leg by the Indian Police and was denied medical treatment for the bullet wound.

Since his incarceration, Mr. Hawara has been subjected to various acts of torture and has been continuously denied medical treatment. As a consequence, he suffers from various serious medical conditions including dislocation of spinal disk, severe pain in the knee joints and numbness in his legs.

In 2014, Mr. Hawara filed a "writ petition" to Delhi High Court asking for adequate medical treatment. The Court approved his request, and the Jail authorities took him to All India Institute of Medical Sciences (AIIMS) Delhi for a physical examination. Even though Mr. Hawara was diagnosed dislocation of

spinal disks L4-5 and recommended physiotherapy, the Government continues to deny him the recommended medical treatment.

Furthermore, since his appointment as the supreme spiritual leader of the Sikhs in 2015, acts of torture and ill-treatment directed against him have allegedly escalated. Such treatment includes, deprivation of sleep for various nights in a row, deprivation of food, water, medicines, healthcare in detention or specialized treatment at the hospital; forced stress positions and prolonged solitary confinement. He is also chained with shackles at all time.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our grave concern regarding the alleged treatment that Mr. Hawara has been subjected to since his arrest, which if confirmed, would constitute violations of his human rights to personal security and integrity in contravention to articles 3 and 5 of the Universal Declaration of Human Rights (UDHR), articles 7 (prohibition of torture), 9 (right to liberty and security of person) and 10 (treatment in detention) of the International Covenant on Civil and Political Rights (ICCPR), to which India acceded on 10 April 1979. The prohibition of torture is a universally-recognized, non-derogable preceptory norm of behaviour, which has become accepted as a matter of customary international law¹. In addition, paragraph 6 of General Comment No. 20 of the Human Rights Committee, states that prolonged solitary confinement of the detained or imprisoned person, may amount to acts prohibited by abovementioned article 7 of the ICCPR.

Besides, we would like to bring your Excellency's attention to the right of enjoyment of the highest attainable standard of physical and mental health as reflected in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which India acceded to on 10 April 1979. This includes the obligation on the State to refrain from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (General Comment CESCR 14, para. 34). In addition, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rules 24 to 35, further establish the State's responsibility to provide healthcare for prisoners. Inter alia, prisoners should have access to necessary healthcare free of charge without discrimination (Rule 24) and those who require specialized treatment shall be transferred to specialized institutions or to civil hospitals; where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners with appropriate treatment and care (Rule 27).

The continued detention of Mr. Hawara would also contravene article 18 of ICCPR, which guarantees the right to freedom of thought, conscience and religion, and article 19 of the same, which protects the right to hold opinions and express them without interference. Article 27 of ICCPR also stresses that "in those States in which ethnic,

¹ See United Nations Human Rights Committee, General Comment No. 2, Implementation by States parties of article 2 of the ICCPR, paragraph 1.

religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” The Sikhs, like any other religious or belief community, should enjoy their right to maintain their beliefs, identity and religious practices, as long as these do not infringe upon the rights of other communities. The State has a positive obligation to respect their religious identity and create the conditions fostering and protecting the expression of their beliefs and cultural values.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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. Jagtar Singh Hawara in compliance with international norms, including those committed to by India.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal grounds of the arrest and continued detention of Mr. Hawara, and how these measures against him are consistent with the ICCPR, which India has ratified.
3. Please provide the details, and where available the results, of any additional investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with India’s domestic and international human rights obligations.
4. In the event that the perpetrators of the alleged acts of torture have been identified, please provide the full details of any penal, disciplinary, or administrative sanction that has been taken against them.
5. Please provide the information about Mr. Hawara’s current physical status, the evaluation on the necessity of physiotherapy, and what, if any, medical treatment he has received.
6. Please provide information on the measures taken to protect the rights of religious minorities in the country, including the Sikh community, and their right to freedom of thought, conscience and religion or belief without fear of discrimination and persecution.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Given the seriousness of the case, we reserve the right to publicly express our concerns in the near future as we are of the view that the information on which our expression of concern, if confirmed, would indicate a matter warranting the most serious attention.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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standard of physical and mental health

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