

Mandates of the Special Rapporteur on the rights of persons with disabilities; 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 the situation of human rights defenders 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 rights of persons with disabilities; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/6, 33/9, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention and conditions of detention of, as well as the lack of access to healthcare by, **Dr. G. N. Saibaba**.

Dr. Saibaba is a former Delhi University English professor. He is a wheelchair user with severe disabilities, who has a spinal disorder and polio since the age of five. Dr. Saibaba has been a leading voice defending the rights of adivasis (tribals), dalits (formerly called untouchables), and religious minorities and led the launching of nationwide opposition to the corporate pillage of adivasi water, forest and land resources by mining and industrial corporations. He is currently imprisoned in Nagpur Central Jail, in Maharashtra state, India.

According to the information received:

On 9 May 2014, Dr. G. N. Saibaba was reportedly heading back home from Delhi University, when plain-clothed members of the Maharashtra Police stopped the car, pulled the driver out, forced Dr. Saibaba into a vehicle and drove him out of the university campus. He was arrested on charges of being a member of the banned Communist Party of India (Maoist). The following day, Dr. G. N. Saibaba was allegedly flown to Nagpur, where the District Magistrate ordered his imprisonment in Nagpur Central Jail on charges under the Unlawful Activities Prevention Act (UAPA), pending trial.

Dr. Saibaba was reportedly held in "anda cells", an egg-shaped barracks comprising several solitary-confinement units 10 feet in length and width. Anda

cells have no windows, but their gates consist of iron bars, with no protection from the sun or the severe winter, in a city with extreme temperatures.

In July 2015, the Bombay High Court granted Dr. Saibaba a temporary bail for three months by considering his deteriorating health condition. The initial bail was later extended by another three months until 31 December 2105, for him to continue medical treatment at the Indian Spinal Injuries Centre in New Delhi.

On 28 December 2015, Dr. Saibaba's bail on health grounds was cancelled by the Nagpur bench of Bombay High Court.

On 7 March 2017, together with four activists, Dr. Saibaba's was sentenced by the Gadchiroli Sessions Court in Maharashtra to life imprisonment. They were charged with: being members of the banned Communist Party of India; opposing industrial development in Gadchiroli, Maharashtra, and "waging war against the state" under the UAPA.

Regarding the last charge, the 827-page judgment allegedly failed to point out a single instance in which Dr. Saibaba and the other activists were conspirators to commit violence or provide logistical support to violent acts. Allegedly, the single evidence for the charge of "waging war against the state" came from 22 coached police officers, and is reported to be in retaliation of Dr. Saibaba's critics and organization of legal mass organizations as the Deputy Secretary of the Revolutionary Democratic Front (RDF) and for his long-standing activism defending the rights of different minorities against corporate interest.

The judge who handed down the sentence in 2017 allegedly refused to order Saibaba's jailers to provide him with adequate healthcare in the future.

Reports indicate that Dr. Saibaba is currently kept in a highly unsanitary, solitary cell, in darkness and with inadequate and inaccessible facilities in Nagpur Jail, including an Indian-style toilet in his cell which is impossible for him to access and use, due to his disability. Prison staff are allegedly not trained at handling persons with severe disabilities and have further been reported at having mishandled Dr. Saibaba, risking him breaking his polio-affected bones.

The health condition of Dr. Saibaba continues to severely deteriorate due to mishandling by staff who are unable to assist him appropriately in Nagpur Jail when he has to be lifted from his wheelchair for different reasons, including to access the toilet. This has further caused the rapid deterioration of Dr. Saibaba's muscles and nerves and a consequent unavailability to use his left-hand. In this connection, Dr. Saibaba is reported to require continuous medical care such as

physiotherapy, occupational therapy and hydrotherapy which are not available in Nagpur Jail.

In January 2018, Dr. Saibaba's wife officially requested emergency medical investigation and treatment of Dr. Saibaba's more than 15 reported health problems. In addition to his spinal disorder, he has multiple stones in his gallbladder which require immediate surgery; stones are causing frequent attacks on his pancreas and may further cause fatal form of jaundice. It is reported that with every day that passes, his rib cage is slowly collapsing on his lungs. Dr. Saibaba also suffers from heart problems, an acute gastric condition, and high blood pressure.

On 21 March 2018, the urology department in the local hospital found a mild infection in his urine test but did not take action when his pain later increased to unbearable levels.

According to the information received, an application for bail on health grounds will come up for hearing on 29 June 2018.

Without prejudging the accuracy of these allegations, we wish to express serious concern regarding the arrest and detention of Dr. N.G. Saibaba which appears to be related to his legitimate work as a defender of the rights of different minorities against mining and industrial corporations. We are deeply concerned at Dr. Saibaba's physical and mental integrity which is deteriorating due to the inadequate conditions of detention in Nagpur Central Jail, whose facilities are not accessible and provide no reasonable accommodation, and his continued lack of access to adequate healthcare, including continuous and adequate treatment and rehabilitation.

In this connection, we would like to bring to the attention of your Excellency's Government article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) acceded to by India on 10 April 1979 which establishes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as well as relevant States' obligations. Inter alia, State's must refrain from denying or limiting equal access for prisoners or detainees to preventive, curative and palliative health services (Committee on Economic, Social and Cultural Rights, General Comment 14, para.34).

In this connection, the "Mandela Rules" (A/RES/70/175) further establish that the provision of health care for prisoners is a State responsibility and further elaborates on this. All prisoners, including persons with disabilities, shall have prompt access to medical attention in urgent cases and be transferred to specialized institutions or to civil hospitals when specialized treatment or surgery is required (Rules 5.2. and 27). Furthermore, the imposition of solitary confinement should be prohibited in the case of

prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures (Rule 45).

We would like to further refer to the Convention on the Rights of Persons with Disabilities (CRPD), ratified by India on 1 October 2007, particularly articles 5 (equality and non-discrimination), 9 (accessibility), 14 (liberty and security of the person), 15 (freedom from torture or cruel, inhuman or degrading treatment), 17 (protecting the integrity of the person), 25 (health) and 26 (habilitation and rehabilitation). Accordingly, States must ensure that persons with disabilities deprived of their liberty are entitled, on an equal basis with others, to the guarantees established by with international human rights law, including by providing reasonable accommodation and ensuring conditions of accessibility (art 14 and 5). States are obligated to ensure that treatment and conditions during arrest and detention do not discriminate directly or indirectly against persons with disabilities; the denial of reasonable accommodation in detention can be considered a form of discrimination and, in some instances, as a form of torture or ill treatment (Committee on the Rights of Persons with Disabilities, General Comment No. 1).

In addition, article 25 of the CRPD requires States, inter alia, to provide those health services needed by persons with disabilities specifically because of their disabilities and to prevent discriminatory denial of healthcare or health services on the basis of disability. States shall further extend comprehensive habilitation and rehabilitation services and programmes to persons with disabilities (article 26).

We would like to additionally refer to articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by India on 10 April 1979, which guarantee the rights to freedom of opinion and expression and that “everyone shall have the right to freedom of association with others,” respectively.

Moreover, articles 1 and 2 of the UN Declaration on Human Rights Defenders state everyone’s right to promote and to strive for the protection and realization of human rights, and indicates State’s prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 12 further details the States’s obligation to ensure that no one is subject to violence, threats, or retaliation as a consequence of their legitimate exercise of their rights as human rights defenders.

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 the above-mentioned person in compliance with international instruments.

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 about the measures taken to provide Dr. Saibaba with the required healthcare, including adequate treatment and rehabilitation, as well as with reasonable accommodation while in detention.
3. Please provide information about the measures taken to consider: i) the release of Dr. Saibaba on parole on medical grounds, or ii) to transfer him to a prison that is closer to his family and where better medical facilities are available, such as Cherlapalli Central Prison in Hyderabad State.
4. Please provide information regarding the measures taken to ensure the general accessibility of Nagpur Central Jail.
5. Please indicate any steps your Excellency's Government plans to take to fulfil its obligation to respect the human rights of persons of disabilities, notably those imprisoned, in a way that complies with international human rights obligations related to the right to the highest attainable standard of physical and mental health.
6. Please indicate what measures have been adopted by the Government to ensure that human rights defenders in India are able to conduct their legitimate functions without fear of threats or exposure to acts of intimidation and reprisals.

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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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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