

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

REFERENCE:
UA IND 30/2018

21 December 2018

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 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 situation of Dr. **G. N. Saibaba** with respect to his detention, lack of reasonable accommodation and lack of access to healthcare while in custody. A joint communication on the situation of Dr. G. N. Saibaba dated 27 June 2018 (ref. UA IND 15/2018) has already been sent and we regret that, to date, we have not received a response from your Excellency's Government regarding this communication.

As a reminder, Dr. Saibaba is a former University English professor and a human rights defender. He is a wheelchair user with severe disabilities. At the age of five he had polio which led to the deterioration of his spinal nerves. Dr. Saibaba has been a leading voice defending the rights of adivasis (tribals), dalits (formerly called untouchables), and religious minorities. In that capacity, he led the launching of nationwide opposition to the corporate pillage of adivasi water, forest and land resources by mining and industrial corporations. He continues to be imprisoned in Nagpur Central Jail, in Maharashtra state, India.

According to new information received:

Reports indicate that Dr. Saibaba remains in solitary confinement in the Nagpur Central Jail in a cell that is neither accessible nor suitable for a person with a severe disability. He is reportedly allowed out in a small space in front of the cell but not into any large common area and is not allowed to interact with other prisoners. His health condition continues to deteriorate.

Since July 2018, Dr. Saibaba has allegedly fallen unconscious three times during his detention, and his health condition has further deteriorated. On 16 August

2018, a doctor (all diagnoses and examinations were done by doctors from private hospitals; since the prison hospital does not have adequate facilities) examined Dr. Saibaba's left hand and found that five of his muscles were damaged and the unattended damaged nerve system had become stiff. The doctor prescribed an evaluation of the strength of his damaged nerve system and muscles. Regular physiotherapy and occupational therapies were prescribed and he was referred for examination and possible tendon transfer surgery.

On 28 August 2018, Dr. Saibaba reportedly experienced acute chest pain with heavy sweating. At that moment no doctor was allegedly present in the jail for immediate help. One of the nurses was reported to have checked his blood pressure which had shot up to 177/50 and gave him some medication. Two hours later, the jail doctor reportedly visited him and recorded his blood pressure as normal. The doctors prescribed medicines for his heart problem, but these medicines have reportedly not been administered so far, and the doctors have not disclosed the names of the medicines which has hindered any potential outside-prison assistant, including from family, in the provision of such medicines.

On 15 September 2018, Dr. Saibaba was taken to the Department of Orthopedics of the hospital, but his previous medical records, necessary for further treatment, were reportedly not found in the file sent by the prison hospital. The doctor recommended daily assisted physiotherapy and magnetic wave therapy starting on 17 September. The physiotherapy has reportedly not started till date. In a medical report submitted to the Bombay High Court by the state of Punjab it was wrongly mentioned that the professor's left hand is working. Dr. Saibaba is in constant physical pain and is facing a lot of trouble in his day to day routine (including taking a bath or using the toilet) due to pain in his left arm and the inaccessibility of the prison facilities.

According to the information received, medical investigations have not been completed. His complaint of syncope (blackouts, dizziness, spinning of the head) has not been reportedly addressed. He has undergone attacks of syncope 11 times. Several serious ailments being suffered by Dr. Saibaba have further complicated his treatment and recovery. A test conducted by the doctors found that he has a degenerated spine and vertebra due to prolonged usage of wheelchair. As a result, it is stated that he is not able to sit or even lie down for more than a few minutes continuously. He is reported to have also been experiencing blurred vision, frequent blackouts, dizziness and breathlessness. Additionally, there is reportedly a lump forming in the left side of Saibaba's stomach. Allegedly, no medical examination has been done even after repeatedly requesting the authorities in that regard.

Dr. Saibaba has challenged the order of his life imprisonment before the Nagpur Bench of the Bombay High Court. His application for bail on grounds of his

health condition was considered on 17 December 2018. Dr. Saibaba was reportedly denied bail by the Court. However, the Court allowed him to undergo a medical examination by doctors of his choice, and to have his wife and brother to accompany him during the entire procedure. The examination is reportedly scheduled to take place on 26 December at a state hospital, and will include doctors requested by Dr. Saibaba.

Without prejudging the accuracy of these allegations, we wish to express serious concern regarding the deterioration of Dr. Saibaba's physical and mental integrity, due to the inadequate conditions of detention in Nagpur Central Jail, which lacks accessibility as well as appropriate 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). Furthermore, all prisoners, and third parties appointed by them, should be granted access to their medical files (including prescribed medicines) upon request (Rule 26).

We would also like to refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasized that that conditions of detention must respect the dignity and human rights of persons deprived of their liberty, and called upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment, while noting in this regard concerns about solitary confinement, which may amount to torture or other cruel, inhuman or degrading treatment or punishment.

Moreover, the use of prolonged solitary confinement in itself runs afoul of the absolute prohibition of torture and other ill-treatment. Moreover, due to the prisoner's

lack of communication, and the lack of witnesses, solitary confinement enhances the risk of other acts of torture or ill-treatment (A/66/268).

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).

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 progress of the medical investigations into the case of Dr. Saibaba.
3. 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.
4. 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.
5. Please provide information regarding the measures taken to ensure the general accessibility of Nagpur Central Jail.
6. 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.
7. 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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Dainius Pûras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Michel Forst
Special Rapporteur on the situation of human rights defenders

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment