

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 10/2019

8 April 2019

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 degrading situation of human rights defender Dr. **G.N. Saibaba** with respect to his detention, lack of reasonable accommodation and lack of access to appropriate healthcare while in custody. Two joint communications on the situation of Dr. G. N. Saibaba dated 27 June 2018 (ref. UA IND 15/2018) and 21 December 2018 (UA IND 30/2018) have already been sent and we regret that, to date, we have not received a response from your Excellency's Government regarding this situation.

Dr. Saibaba, a wheelchair user with severe disabilities, has defended the rights of adivasis (tribals), dalits (formerly called untouchables), and religious minorities. He continues to be imprisoned in Nagpur Central Jail, in Maharashtra state, India.

According to new information received:

On 25 March 2019, Dr. Saibaba's application for bail and suspension of sentence on medical grounds was rejected by the Nagpur bench of the Bombay High Court.

Dr. Saibaba's reportedly continues to be held in solitary confinement in an "anda cell" in Nagpur Central Jail. Allegedly, his health condition continues to severely deteriorate, including as a result of lack of reasonable accommodation in prison and in the inadequately resourced health facilities to which he is taken from time to time. It has been reported that Dr. Saibaba's health problems require immediate and sustained medical attention and are reaching a point of being life-threatening.

In light of Dr. Saibaba's severe disability and deteriorating medical condition, the Chief Medical Officer, in consultation with the doctors from the government hospital, advised treatment at the Cardiology, Neurology and Neurosurgery departments in the government hospital. However, according to information received, the Government Medical College Hospital and Super Speciality Hospital in Nagpur do not have the necessary facilities. The specialised care that Dr. Saibaba requires at this stage is only available in the cities of Delhi and Hyderabad.

Dr. Saibaba is reportedly in extreme pain due to the damaged muscles in his left hand which have been seriously injured for the mishandling of a wheelchair user by police officers at the time of arrest and for the lack of both reasonable accommodation in prison and appropriate healthcare. According to the information received, he is unable to sleep due to the pain, and he has stopped responding to drugs and sedatives. He is also reported to suffer from [REDACTED] problems along with [REDACTED]. His syncope ([REDACTED]) has allegedly worsened and he is increasingly unable to move. The rise in temperature in Nagpur is also adversely affecting and aggravating Dr. Saibaba's existing medical conditions. In early March 2019, the temperature in the city of Nagpur has already risen to 40 degrees Celsius.

Moreover, it has been alleged that often police personnel are not available to escort Dr. Saibaba to the hospital. When police personnel are available, they are not trained to assist persons with disabilities. This situation has led to further deterioration of Dr. Saibaba's physical integrity and to more damage in his left hand. He is reportedly unable to carry out routine activities, including taking a bath and using the toilet, and the two inmates who currently provide this support within his prison cell, voluntarily, are increasingly reluctant to assist him due to his worsening medical condition.

Without prejudging the accuracy of these allegations, we wish to express serious concern regarding the deterioration of the physical integrity of human rights defender Dr. Saibaba, due to the inadequate conditions of detention in Nagpur Central Jail, which lacks accessibility as well as reasonable accommodation for Dr. Saibaba. We are further concerned for Dr. Saibaba's lack of appropriate healthcare, including continuous and appropriate medical treatment and rehabilitation for issues that require immediate and sustained medical attention and that are reaching a point of being life-threatening.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of article 7 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by India in April 1979, which provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific

experimentation.” Paragraph 6 of General Comment No. 20 (1992) of the Human Rights Committee states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 of the ICCPR.

We further recall General Assembly resolution 68/156 (2014) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty, and calls upon States to address and prevent detention conditions that amount to torture or other cruel, inhuman or degrading treatment or punishment, while noting concerns about solitary confinement (para. 28). The use of prolonged solitary confinement in itself runs afoul of the absolute prohibition of torture and other ill-treatment; and 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 additionally refer to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by India in April 1979, which establishes the right to physical and mental health. The Committee on Economic, Social and Cultural Rights observed in General Comment No. 14 (2000) that States must refrain from denying or limiting equal access for prisoners or detainees to preventive, curative and palliative health services (para. 34).

In this connection, the revised Standard Minimum Rules for the Treatment of Prisoners (the so-called “Mandela Rules,” adopted by the UN General Assembly in by resolution 70/175 of November 2015) provide for appropriate accommodation for all prisoners (rules 12 to 17) and for reasonable accommodation in the case of prisoners with physical, mental or other disabilities (rule 5.2). The State has the responsibility to provide healthcare for prisoners. Accordingly, 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 (rule 27). In addition, 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 also like to refer to the Convention on the Rights of Persons with Disabilities (CRPD), ratified by India in October 2007, and in particular its articles 5 (equality and non-discrimination), 9 (accessibility), 14.2 (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 international human rights law, including by providing reasonable accommodation and ensuring conditions of accessibility (articles 14.2 and 5). In its General Comment No. 1 (2014), the Committee on the Rights of Persons with Disabilities affirmed that States

must ensure that treatment and conditions during arrest and detention do not discriminate directly or indirectly against persons with disabilities, and that 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.

Moreover, 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. According to article 26, States shall further extend comprehensive habilitation and rehabilitation services and programmes to persons with disabilities.

Finally, we refer to articles 1 and 2 of the UN Declaration on Human Rights Defenders which state everyone's right to promote and to strive for the protection and realization of human rights, indicating 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 information and any comment you may have on the above-mentioned allegations.
2. Please indicate how the rejection of Dr. Saibaba's application for bail and suspension of sentence on medical grounds is compatible with international human rights standards.
3. Please provide information about the measures taken to provide Dr. Saibaba with reasonable accommodation in detention in accordance with the CRPD and the "Mandela Rules", including accessible healthcare, continuous and appropriate medical treatment and rehabilitation, and health issues that require immediate and sustained medical attention that are reaching a point of being life-threatening.

4. Please provide information about whether your Excellency's Government has considered releasing Dr. Saibaba on medical grounds or transferring him to a prison in Delhi and Hyderabad where health facilities have the specialised care that Dr. Saibaba requires.
5. Please provide information regarding the measures taken to ensure the general accessibility of Nagpur Central Jail and to improve the accessibility of health facilities to which prisoners are transferred in case of medical necessity.
6. Please indicate any steps your Excellency's Government plans to take to fulfil its obligation to promote and protect the human rights of persons with 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.

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.

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

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