

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

REFERENCE:
AL IND 19/2019

7 November 2019

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Working Group on Arbitrary Detention and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/19, 33/9, 42/22 and 40/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the denied access to an independent medical examination and lack of investigation into allegations of torture and ill-treatment of Mr. **Jagtar Singh Johal**, as a result of his detention since November 2017.

Mr. Jagtar Singh Johal is a British citizen of Sikh origin involved in documenting Sikh persecution in the State of Punjab, India and was the subject of a Special Procedures communication on 29 January 2018 (IND 3/2018). Regretably, no reply from your Excellency's Government has been received.

On 4 November 2017, Mr. Johal was arrested by plain clothes police officials, in Jalandhar, State of Punjab and over the next two months he was transferred to numerous police stations in which he was reportedly subjected to interrogations and tortured (by means of electric shock, forcing of limbs in painful positions and depriving him of sleep). On 26 December 2017 he was remanded into judicial custody and transferred to Nabha Maximum Security Jail and remained there until June 2019.

According to the new information received:

In June 2019, Mr. Johal was transferred to Tihar Jail in New Delhi where there are real concerns for his safety due to the nature of the allegations against him. There was a finding by a Committee set up by the New Delhi High Court in 2017 that concluded that there had been some cases of prison officers beating up detainees, some of whom were alleged to be religious minorities, in Tihar Jail.

To date, still no formal charges have been filed against Mr. Johal although he was reportedly forced during his alleged torture to sign blank sheets of paper, which

reportedly served to forge confessions to the killing of a number of religious leaders and political activists, as well as of collaboration with Pakistani intelligence operatives.

For nearly two years Mr. Johal has been detained and subjected to continuous delays and lack of progress in the criminal proceedings pending against him. He continues to suffer physically and psychologically from his alleged torture and has repeatedly requested and been denied access to an independent medical examination.

On 26 December 2018 the Punjab State Human Rights Commission (part of the Indian National Human Rights Commission) dismissed a complaint submitted on Mr Johal's behalf on 10 June 2018, on the grounds that there are ongoing proceedings at the High Court to request a medical examination.

In August 2019 the court hearing for a request for an independent medical examination was adjourned for the sixth time until 31 January 2020.

While we do not wish to prejudge the accuracy of these allegations, grave concern is expressed at the alleged torture and ill-treatment of Mr. Jagtar Singh Johal and the lack of an investigation thereof and at the fact that Mr. Johal may be deprived of his liberty arbitrarily and subject to torture for his legitimate and peaceful work in documenting human rights violations against members of the Sikh community in Punjab. Moreover, we are concerned to learn that some prison officers maltreated some detainees who may belong to religious minorities in Tihar Jail.

We respectfully recommend that an immediate investigation be conducted into the allegations of torture by ensuring that, as an initial step, Mr. Johal receives urgent access to an independent medical examination (including psychological evaluation) to address the physical and psychological injuries that he may suffer as a result of the alleged torture. Thereafter appropriate health care and medical treatment shall be provided whenever necessary.

We are concerned that the ongoing delay in ensuring Mr Johal's access to an independent medical examination may be compromising the possibility of securing evidence that may be relevant in order to initiate an investigation into the allegations of torture.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide further information and details about the factual and legal basis for the arrest and detention of Mr. Johal, including whether any charges have been brought against him and the nature of those charges. If no charges have been brought, please explain why not and the reason for the delay.
3. Please provide information concerning the measures taken to protect Mr. Johal against any form of torture and ill-treatment while in detention, and to ensure the respect of his physical and psychological integrity.
4. 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 the case, and particularly the allegations of torture and ill-treatment and the fact that confessions extracted under torture may be used against Mr. Johal in court.
5. In the event that perpetrators of the alleged acts of torture are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators? What were the results?
6. Please provide any information on the measures taken by the Government to prevent prison officers from maltreating detainees and possibly discriminating against religious minorities following the finding by the Committee set up by the New Delhi High Court in 2017.
7. Please provide information on the measures taken to protect the freedom of thought, conscience and religion of the Sikhs and to ensure the free practice and manifestation of their religion without fear of harassment or persecution.
8. Please advise whether Mr. Johal has had access to Consular services since he is a British national, and if not, please ensure the immediate facilitation of these services.

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

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(s) responsible for the alleged violations.

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

Nils Melzer

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

Dainius Puras

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

Leigh Toomey

Vice-Chair of the Working Group on Arbitrary Detention

Ahmed Shaheed

Special Rapporteur on freedom of religion or belief

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In particular, we refer to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in article 7 of the International Covenant on Civil and Political Rights, to which India acceded on 10 April 1979. This article provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is a peremptory international norm of jus cogens, as reflected, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. In this context, the principle that States may not use any information obtained by torture as evidence in any proceedings (the "exclusionary rule") is an integral part of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

Paragraph 7b of Human Rights Council Resolution 16/23, urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed.

In line with the principles laid out in the Convention against torture, signed by India in 1997, the guidelines provided for in the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) and the updated set of principles for the protection of human rights, the investigation into the allegations that Mr. Johal was tortured ought to be carried out in an impartial and independent manner. We also call for the provision of the appropriate health care and medical treatment thereafter.

In addition and without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Johal is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and

impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the ICCPR.

We would also like to appeal your Excellency's Government to protect the right to freedom of religion or belief of Mr. Johal and of the other detainees belonging to religious minorities, in accordance with the principles set forth in article 18 of the UDHR, as well as articles 2 (1), 18 and 27 of the ICCPR ratified by India in 1979.