

**Mandates of the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of persons with disabilities**

Ref.: AL IND 5/2023  
(Please use this reference in your reply)

3 August 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the rights of persons with disabilities, pursuant to Human Rights Council resolutions 52/4 and 44/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention and state of health of human rights defender **G.N. Saibaba**.

Dr. **G.N. Saibaba** is a former Delhi University English professor and human rights defender. He has suffered from a spinal disorder and polio since the age of five and uses a wheelchair. He has been a leading voice defending the rights of Adivasis, Dalits and religious minorities in India, and led the launching of nationwide opposition to the corporate pillage of Adivasi water, forest and land resources by mining and industrial corporations. He was arrested in May 2014 and sentenced in March 2017 to life imprisonment for multiple offences under the Unlawful Activities Prevention Act (UAPA).

Dr. Saibaba has been the subject of three previous communications addressed to your Excellency's Government by Special Procedures mandate holders, respectively sent on 27 June 2018 (IND 15/2018), 21 December 2018 (IND 30/2018) and 8 April 2019 (IND 10/2019), wherein serious concerns were raised as to Dr. Saibaba's arrest in 2014 and his subsequent sentencing and detention, including the incompatibility of his prison conditions with his disabilities. We acknowledge and appreciate the response of your Excellency's Government to these communications, received on the 27 December 2019. However, our concerns remain and we wish to renew them in light of the allegations detailed below.

According to the information received:

Dr. Saibaba has been detained for over nine years in Central Jail in Maharashtra. His health has continued to deteriorate in detention, with the human rights defender currently suffering from a brain cyst, a lump in his abdomen, breathing difficulties and a heart condition, cumulatively requiring specialised care only available in New Delhi. He remains detained in an egg-shaped 'Anda Cell' incompatible with his status as a wheelchair user and is granted only a few hours in the common barracks of the prison per day.

On 14 October 2022, the Bombay High Court discharged the case against Dr. Saibaba and ordered his release alongside that of the co-accused in the case against him, ruling that the procedural requirements included in the UAPA had not been adhered to during the process against them. On the same day, the Maharashtra Government applied to the Supreme Court for a stay on

the releases. The Supreme Court subsequently held a special sitting on the 15 October 2022 and suspended the order of the High Court. The Supreme Court also rejected a request for the transfer of Dr. Saibaba from prison to house arrest on medical grounds.

On 19 April 2023, the Supreme Court overturned the decision of the Bombay High Court and ordered a new bench to be constituted at the lower court to consider the merits of the case afresh, with a decision recommended within four months.

Without wishing to prejudge the accuracy of the information received, we express our serious concern at the continuing detention of Dr. Saibaba. We reiterate the grave concern, expressed in previous communications addressed to your Excellency's Government on the case, as to the inadequacy of the detention facilities at the Nagpur Central Jail considering Dr. Saibaba's status as a person with disabilities and his need for specialised medical care, and renew the concern previously expressed for his state of health in detention. We are further concerned about the justification for and necessity of the enhanced security measures put in place, including his detention in a so-called 'Anda Cell', in light of Dr. Saibaba's significantly limited mobility.

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 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to Dr. Saibaba's conditions of detention in Nagpur Central Prison, including concerning measures adopted to assess the alleged inappropriate nature of the facilities to address the needs resulting from the human rights defender's disability.
3. Please provide information as to the justification for the enhanced security measures in place regarding the detention of Dr. Saibaba, and the necessity of such measures in light of his significantly limited mobility due to his disability.
4. Please provide information as to Dr. Saibaba's current state of health, including measures taken to evaluate and monitor whether appropriate medical care and treatment can be provided under his current conditions of detention. If no such evaluation or monitoring has been carried out, we urge your Excellency's Government to initiate such assessments.

We would appreciate receiving a response within 60 days. Past 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.

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Gerard Quinn  
Special Rapporteur on the rights of persons with disabilities

## Annex

### Reference to international human rights law

In relation to the above-mentioned allegations, we would like to refer your Excellency's Government to the international human rights law and standards recalled in the previous communications addressed to your Excellency's Government on Dr. Saibaba's detention, and to re-emphasise the following among them.

Firstly, we would like to recall article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by India in 1979, which protects the right to liberty and security of person, including freedom from arbitrary detention. In this connection, we would like to refer to the interpretation of article 9 provided by the Human Rights Committee in its General Comment No. 35, wherein the Committee held that an arrest or detention may be arbitrary irrespective of its being authorized by domestic law. In the same General Comment, the Human Rights Committee stated that the notion of "arbitrariness" introduced in article 9 should be broadly interpreted to include elements of "inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality."<sup>1</sup> The Committee also held any arrest or detention carried out as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR to be arbitrary.

We also recall 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. As emphasised by the Committee on Economic, Social and Cultural Rights in its General Comment No. 14, States must refrain from denying or limiting equal access for prisoners or detainees to preventive, curative and palliative health services.<sup>2</sup> In the same General Comment, the Committee underlines the principle of non-discrimination in relation to persons with disabilities in the context of the right to health.<sup>3</sup>

We call the attention of your Excellency's Government to articles 5, 14.2, 25 and 26 of the Convention on the Rights of Persons with Disabilities (CRPD), ratified by India in October 2007, which guarantee the rights of persons with disabilities to equality and non-discrimination, liberty and security of person, health and habilitation and rehabilitation.

We also recall that States have a duty to protect the health of prisoners and detainees, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules. We would like to refer your Excellency's Government to Rules 24 to 35, on the responsibility of States to provide health-care services for prisoners, and in particular Rule 27, on access to prompt medical attention in urgent cases. We would also like to strongly underline Rule 5, which states: "1) The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings. 2) Prison administrations shall make all reasonable

<sup>1</sup> Human Rights Committee, *General Comment No. 35 – Article 9 (Liberty and security of person)*, CCPR/C/GC/35, para 12.

<sup>2</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14 – The Right to the Highest Attainable Standard of Health*, para 34

<sup>3</sup> *Ibid.*, para 26

accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis”. In addition, we wish to restate Rule 45(2), which holds that: “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.”

We would like to refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2, which state that everyone has the right to promote and to strive for the protection and realization of human rights and that each State has a prime responsibility and duty to protect, promote and implement all human rights.

We would further like to refer to articles 6(b), which states that everyone has the right, individually or in association with others, to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; 6(c), which states that everyone has the right, individually or in association with others, to study, discuss, form and hold opinions on the observance in law and in practice of all human rights and fundamental freedoms and to draw public attention to these matters; and 9(3)(a), which states that everyone has the right individually and in association with others, *inter alia*, to complain about the policies and actions of individual officials or governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means.

In this connection, we would also like to refer to the report of the Special Rapporteur on the situation of human rights defenders on the long-term detention of human rights defenders, presented at the 76<sup>th</sup> session of the UN General Assembly (A/HRC/76/143), and in particular her conclusions and recommendations (paras 155-162), where she states: “Targeting human rights defenders with long jail terms destroys lives, families and communities. States should end this unjustifiable, indefensible and contemptible practice immediately and forever.”