



JAGTAR SINGH JOHAL
Update on Developments for the Special Rapporteur on Torture
13 November 2018

I INTRODUCTION

1. REDRESS makes this submission to the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SRT) to provide an update on developments in the case of the alleged torture of British national Jagtar Singh Johal in India. REDRESS last provided an update on 25 April 2018.
2. It has now been one year since Mr Johal was first arrested. The developments over the past six months reiterate our serious concerns about the lack of an independent medical examination, the absence of a full investigation or redress for the treatment suffered, the use of evidence obtained through torture, and the lack of legitimacy of Mr Johal's detention. We urge your office, along with any other relevant special procedures mandate holders, to reiterate these concerns with the governments of India and the United Kingdom, and issue further recommendations as outlined in paras. 26 and 27 below.

II PROCEDURAL BACKGROUND

3. On 20 December 2017 REDRESS submitted an Urgent Appeal to the SRT requesting intervention in the alleged torture and ill-treatment of Mr Johal by police officials in the State of Punjab, India.
4. On 25 January 2018 REDRESS provided an update to the SRT on developments in Mr Johal's case at the request of the office of the SRT.
5. On 29 January 2018, the SRT, alongside the Vice-Chair of the Working Group on Arbitrary Detention and the Special Rapporteur on Freedom of Religion or Belief made a joint urgent appeal (UA IND 3/2018) to the Indian Government regarding the allegations of torture and ill-treatment. The joint urgent appeal requested, *inter alia* (1) additional information or comment on the allegations of torture and ill-treatment of Mr Johal, (2) information about the factual and legal basis for the arrest and detention of Mr Johal, (3) information about measures taken to protect Mr Johal against any form of torture and ill-treatment while in detention, (4) details of any additional investigation, medical examination, and judicial or other inquiries carried out in relation to the case, (5) details of any prosecutions that have been undertaken in the event that perpetrators of the alleged acts of torture are identified.
6. To our knowledge, and according to the latest special procedures communications report, the Government of India has not responded to the joint urgent appeal.¹
7. On 25 April 2018, REDRESS provided a further update to the SRT. The update included a handwritten statement by Mr Johal, which provided details of his alleged torture and ill-treatment, and [redacted].

¹ Communications report of Special Procedures, Communications sent, 1 March to 31 May 2018; Replies received, 1 May to 31 July 2018, 30 August 2018, A/HRC/39/27.

III UPDATE²

Lack of independent medical examination

8. Mr Johal continues to be denied an independent medical examination or treatment. You will recall that Mr Johal's lawyers filed an urgent application for an independent medical examination on 29 November 2017. On 23 July 2018 the Punjab and Haryana High Court adjourned a hearing on this application for a third time until 11 October 2018. On 11 October the judge again adjourned the hearing for a fourth time until 14 January 2019, over fourteen months since the allegations of torture and ill-treatment.
9. As it has been twelve months since the alleged torture took place we remain particularly concerned that there has been no documentation of the physical or psychological effects of Mr Johal's alleged torture.

Lack of independent investigation into the allegations of torture

10. On 10 June 2018 a complaint was submitted to the Indian National Human Rights Commission (NHRC)³ requesting a detailed inquiry or investigation into the allegations of torture. The complaint was written following the public release of the handwritten note provided by Mr Johal, which we previously provided to your office.⁴ It is not clear if the NHRC has started an investigation as a result of this complaint.
11. According to information received by Mr Johal's brother from the UK Foreign and Commonwealth Office (UK FCO), the India Ministry of External Affairs (MEA) has offered an NHRC investigation on several occasions via diplomatic channels. The UK FCO has stated that it has followed up on this offer with the MEA but has not received any confirmation that the investigation is taking place, although it is not clear how often the UK FCO has raised the issue. The UK FCO has additionally advised Mr Johal during a consular visit that he would need to instruct his lawyer to file an individual complaint to the NHRC in addition to the follow-up on the MEA's offer of an investigation.
12. As far as REDRESS is aware, to date there has been no investigation into the allegations of torture by Mr Johal.

Criminal proceedings against Mr Johal

13. Since 25 April 2018, Mr Johal has remained in judicial custody in Nabha jail in Punjab.
14. Mr Johal is currently standing trial in a total of eight cases as a co-accused, six of them filed by the National Investigation Agency (NIA)⁵ in Mohali and two filed by the Punjab police in Moga and Faridkot.⁶ Since his abduction on 4 November 2017 Mr Johal has been presented at court for preliminary pre-trial hearings in these eight cases 61 times, either in person or via video link.
15. On 4 May 2018, six months after Mr Johal's arrest, the NIA formally presented a charge sheet (indictment) against Mr Johal and his co-accused in court. The charge sheet is over

² As before, the factual information on which this update is based has been obtained from Mr Johal's brother, Gurpreet Singh Johal, and Mr Johal's lawyers.

³ The NHRC is the National Human Rights Institution for India and has an "A" accreditation from the Global Alliance of National Human Rights Institutions.

⁴ [redacted]

⁵ Case numbers SC.70.2018 (Mohali); SC.71.2018 (Mohali); SC.76.2018 (Mohali); SC.77.2018 (Mohali); SC.78.2018 (Mohali); SC.79.2018 (Mohali); SC.88.2018 (Mohali).

⁶ Case numbers CHA-188-2018 (Faridkot); SC.71.2018 (Moga).

2100 pages long, of which only two paragraphs mention Mr Johal. In total, the NIA has filed one charge sheet in each of the six cases against Mr Johal and fourteen co-accused.⁷ Each charge sheet is identical in terms of Mr Johal's alleged involvement. The NIA has stated that the allegations against Mr Johal relate to "funding of the conspiracy" for offences under the Indian Arms Act, the Unlawful Activities Prevention Act and the Indian Penal Code arising from several alleged political killings.

16. [redacted]
17. In the Punjab police cases in Moga and Faridkot (see para 14), on 12 July 2018 a Moga district court confirmed that Mr Johal will be tried with seven others for offences under the Indian Arms Act and Unlawful Activities Prevention Act. This is the only case where the charges have been "framed" or confirmed by the court. In total, Mr Johal has been presented at court for seven trial hearings in this case. The judge granted adjournments for the hearings on 26 July, 9 August, 23 August, 6 September and 20 September as the prosecution failed to bring witnesses to court. On the hearing of 4 October, twelve weeks after the charges were framed and eleven months after Mr Johal's arrest, the prosecution put forward its first witness. During the cross-examination the witness, a police officer, stated that there was no mention of Mr Johal during his investigations. During the next hearing on 20 October the prosecution failed to bring witnesses to court and the judge granted an adjournment until 3 November 2018. This was similarly the case on 3 November, and the judge granted a further adjournment until 17 November.
18. On 14 September police in Faridkot, Punjab filed a further case against Mr Johal relating to the illegal sale of scrap metal.⁸ The prosecution has not provided a charge sheet to the defence. The prosecution failed to produce Mr Johal on the hearings of 23 October and 5 November. On 5 November the judge granted an adjournment until 16 November 2018.
19. We remain concerned about the continued delays and lack of progress in the criminal proceedings against Mr Johal.

Potential use of evidence obtained through torture

20. We have significant concerns about the possibility of evidence obtained through torture being used against Mr Johal. It is difficult to provide more information about this risk at this stage, given the failures of the Indian authorities to disclose any of the evidence against Mr Johal (to the extent that any exists at all). However, as you will recall, Mr Johal has stated that the Punjab police forced him to sign a number of blank documents following his alleged torture in November 2017. Further, taking into account Mr Johal's allegations of torture, there is a high likelihood that similar treatment was inflicted on other suspects or witnesses.
21. It is therefore crucial that the courts do not use any evidence that has been obtained by torture in the trial proceedings.

Consular protection

22. According to information received from the UK FCO to the family, the UK FCO has not received a response to Note Verbales submitted to the MEA relating to Mr Johal's case

⁷ See http://www.nia.gov.in/writereaddata/Portal/News/288_1_Pr.pdf;
http://www.nia.gov.in/writereaddata/Portal/News/284_1_Pr.pdf;
http://www.nia.gov.in/writereaddata/Portal/News/280_1_Pr.pdf ;

⁸ First Information Report No.63/2017, Case number CHA-188-2018 (Faridkot).

and raising concerns about fair trial rights and the allegations of torture and ill-treatment on 16 December, 8 June and 13 August.

23. It is not clear whether the UK FCO has taken specific action following the joint urgent appeal sent by your office on 29 January. [redacted]
24. The UK FCO is currently able to visit Mr Johal infrequently, around every 6 weeks. These visits are conducted in the presence of a prison officer. The UK FCO has not had private access to Mr Johal to date. The last visit was on 5 November, and the previous visits before this were on 20 September, 10 August and 21 June.
25. Since his arrest and detention Mr Johal has only been able to speak with his brother and family in the UK on one occasion in February this year. [redacted]

IV RECOMMENDATIONS

26. We urge your office to undertake further enquiries into this matter with the Government of India to ensure that:
 - Mr Johal is treated in compliance with international standards;
 - Mr Johal is provided immediately with an independent medical examination that will assess the physical and psychological impact of his alleged torture, sufficient to:
 - determine what further physical and psychological medical treatment is necessary; and
 - document the physical and psychological effects of Mr Johal's alleged torture for future evidentiary use;
 - Mr Johal is provided immediately with any physical and psychological medical care that is deemed necessary during the independent medical examination;
 - Mr Johal is permitted regular private and unsupervised visits by the British High Commission, more frequently than every six weeks;
 - An independent investigation is commenced immediately by an appropriate authority into Mr Johal's alleged torture while in police custody which is consistent with the Istanbul Protocol.
27. We additionally urge your office to undertake further enquiries into this matter with the Government of the United Kingdom, to ensure that:
 - The Government of the United Kingdom is actively pursuing an independent medical examination for Mr Johal, and that he is subsequently provided with any physical and psychological medical treatment that is necessary;
 - The Government of the United Kingdom is actively pursuing an independent investigation into Mr Johal's alleged torture while in police custody;
 - Mr Johal is receiving frequent consular assistance through private, unsupervised visits.
 - The Government of the United Kingdom is actively engaging with the special procedures and other UN mechanisms regarding Mr Johal's case.

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Vice-Chair of the Working Group on Arbitrary Detention
Special Rapporteur on freedom of religion or belief