



# General Assembly

Distr.: General  
4 May 2022

Original: English

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021

#### Opinion No. 80/2021 concerning Jagtar Singh Johal (India)\*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,<sup>1</sup> on 18 March 2021, the Working Group transmitted to the Government of India a communication concerning Jagtar Singh Johal. The Government replied to the communication on 14 June 2021. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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\* In accordance with paragraph 5 of the Working Group's methods of work, Elina Steinerte and Priya Gopalan did not participate in the discussion of the case.

<sup>1</sup> [A/HRC/36/38](#).



## Submissions

### *Communication from the source*

4. Jagtar Singh Johal is a citizen of the United Kingdom of Great Britain and Northern Ireland, born on 9 February 1987 in Scotland. Mr. Johal usually resides in the United Kingdom.
5. Mr. Johal is a follower of the Sikh faith. He is an online activist and contributed to a magazine and website documenting the persecution of the Sikh religious minority in India. Mr. Johal's activities consisted in translating into English the stories of Sikhs who had allegedly faced persecution in India. Freedom of expression is a fundamental right protected in the United Kingdom and India.<sup>2</sup>
6. On 4 November 2017, after his wedding in Jalandhar, Punjab, Mr. Johal was abducted by 15 unidentified men in Rama Mandi, Jalandhar. A hood was placed on his head and he was pulled into an unmarked police van in front of various witnesses, including members of his family. The men did not identify themselves as law enforcement officers. They did not present a warrant for Mr. Johal's arrest and did not state the reasons why he was being taken.
7. Mr. Johal's family immediately complained to the police in Jalandhar. They were told that Mr. Johal was being held in Bagha Purana, three hours away by car. Mr. Johal's family members travelled to Bagha Purana, but on arrival were told that he was not there. His precise location was not disclosed. Police officers told Mr. Johal's family to come to court in the morning.
8. On 5 November 2017, Mr. Johal appeared before a duty magistrate in Bagha Purana. He was placed under police remand for five days. No formal charges were brought against him at that hearing. Two days later, the Chief Minister of Punjab and the Director General of Police issued a press statement naming Mr. Johal among four suspects accused of being involved in a series of killings carried out in collaboration with Pakistani intelligence operatives as part of a conspiracy to fan communal disturbances and destabilize the State.
9. Between 4 and 7 November 2017, the police interrogated and tortured Mr. Johal, including using electric shocks, forcing his limbs into painful positions and depriving him of sleep. He was also forced to sign blank papers.
10. On 10 November 2017, a hearing took place in closed court before a duty magistrate in the city of Moga, where the police sought and were granted a further extension of Mr. Johal's remand for another four days. Neither representatives of the British High Commission nor Mr. Johal's counsel were allowed access to the courtroom. Witnesses who saw Mr. Johal being taken in and out of court later informed his legal counsel that he had had great difficulty standing or walking and had to be assisted by the police. Mr. Johal's lawyer filed an application for permission to meet his client.
11. Between 5 and 14 November 2017, Mr. Johal was held incommunicado at an undisclosed location in Moga District, with no access to representatives of the British High Commission, his family, lawyers or an independent medical professional. It was not until 14 November, when the remand was extended for three more days, that the application for permission for legal counsel to see Mr. Johal was granted.
12. At the hearing and while in the courtroom, Mr. Johal was allowed to have a non-private discussion with his family and legal counsel. It thus became known that he had been tortured and forced to sign a number of blank documents by the police. Mr. Johal's lawyer immediately filed a request with the court for an independent medical examination. The lawyer recorded his client's assertions about his ill-treatment and being made to sign blank documents in a signed affidavit the following day.
13. On 17 November 2017, Mr. Johal appeared in court before a subdivisional judicial magistrate, who ordered him to be judicially detained at Faridkot prison in Punjab. On the

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<sup>2</sup> For the United Kingdom, see the Human Rights Act 1998, art. 10. For India, see the Constitution of India, art. 19 (1) (a). Although article 19 of the Constitution of India refers to citizens only, under article 14 all persons are entitled to equal protection of the laws within the territory of India.

evening of 17 November, however, and while Mr. Johal was being transferred to Faridkot prison, the police from the city of Ludhiana intercepted the convoy and took over his custody de facto.

14. Once in Ludhiana, the police presented Mr. Johal to a duty magistrate, who refused to handle the case. The police then went to the residence of an area magistrate, requesting that Mr. Johal be placed back under police remand. No lawyer was present during Mr. Johal's attendance at the magistrate's residence. Remand was granted for two days and, on 19 November 2017, it was further extended for five days.

15. On 24 November 2017, the police were granted a further extension of Mr. Johal's remand for another five days. Representatives of the British High Commission attended the hearing. That time Mr. Johal was allowed to speak briefly. He maintained his innocence and requested a private visit with a representative of the British High Commission, which had already classed Mr. Johal as vulnerable. The meeting was granted by the court and ordered for later that evening. However, the police subsequently cancelled the meeting citing technical reasons. The meeting was rearranged for the following day, but it was not held in private and instead took place in the presence of two senior police officers.

16. On 28 November 2017, an area magistrate in Ludhiana extended Mr. Johal's police remand for two additional days, which was extended by two days on 30 November. On 2 December, the police requested Mr. Johal's remand concerning a different crime, alleging the firing of a weapon at a local branch of a Hindu nationalist organization.

17. Mr. Johal's police remand was then extended for two additional days, extended on 4 December 2017 for one more day and again extended on 5 December one day further. On 6 December, a judicial magistrate ordered that Mr. Johal be placed under judicial remand. On the same day, Ludhiana police arrested Mr. Johal in connection with another case regarding the killing of a member of a far-right Hindu political party in January 2017. They were granted five days' police remand.

18. On 7 December 2017, local news organizations aired video footage of Mr. Johal's alleged confession, albeit no reference was made in the video to any of the crimes he was charged with. News organizations also aired footage of another detainee, who asserted that Mr. Johal had provided him with funds to purchase weapons. The source notes that it is unclear how the testimony was obtained, whether lawfully or by other means. The detainee and only alleged witness to Mr. Johal's involvement died in custody on 18 April 2018.

19. On 11 December 2017, a judicial magistrate granted judicial custody of Mr. Johal until 25 December. Subsequently, Khanna Police arrested him in relation to a case involving the killing of a Hindu leader in April 2016. The judicial magistrate granted police remand in that case for an additional four days. On 15 December 2017, a magistrate placed Mr. Johal under police remand for another two days. On 17 December, an extension of two more days was granted. On 19 December, an additional five days' extension was granted. The source submits that Mr. Johal was put under significant pressure to confess by the National Investigation Agency during that time.

20. On 26 December 2017, Mr. Johal was transferred to Nabha maximum security prison, where he remained until 25 May 2019. He was allowed some private visits by his legal team but not by representatives of the British High Commission. On 18 and 19 January 2018, he was taken into police custody by the National Investigation Agency without a judicial order. During this time, he was not allowed any contact with counsel, family or the British High Commission. The same happened during the second period of police custody between 20 February and 1 March 2018. He was later transferred to Tihar prison in Delhi, 300 km away.

21. Since 25 May 2019, Mr. Johal has been in custody in Tihar prison. The source notes that, since his detention at this facility, Mr. Johal has been cut off from the family support available to him in Punjab. Investigators have used this factor and its psychological impact as a means to force Mr. Johal to agree to cooperate with the prosecution.

22. The authorities have failed to investigate allegations of torture against Mr. Johal. In December 2017, Mr. Johal's family moved a writ petition seeking an independent medical examination of Mr. Johal to investigate possible torture and mistreatment claims during his incommunicado detention in November 2017. The High Court admitted the petition and

issued a notice to the State of Punjab ordering the authorities to respond, but later adjourned the matter. To date, there has been no independent medical examination.

23. The source notes that the trials are not advancing. Mr. Johal was arrested on suspicion of charges in 10 different cases for the same alleged crimes of conspiracy and funding and recruiting for terrorist activities related to attacks on members of right-wing Hindu nationalist political groups and religious leaders in Punjab allegedly by the Khalistan Liberation Force. In December 2017, eight cases against Mr. Johal were transferred from the Punjab Police to the National Investigation Agency.

24. In May 2019, the Punjab Police and the National Investigation Agency filed charge sheets against Mr. Johal in the 10 cases against him. Among the charges levelled, the following carry the death penalty: conspiracy to commit murder, murder, terrorism activities and use of arms (under the Indian Penal Code 1860, sect. 120B; the Indian Penal Code 1860, sect. 302; the Unlawful Activities (Prevention) Act 1967, sect. 16; and the Arms Act 1959, sect. 27, respectively).

25. In April 2019, in a case against Mr. Johal in Moga District, one of the two cases being led by the Punjab Police, commenced. During cross-examination, the investigating officer admitted under oath that there was no evidence apart from Mr. Johal's confession, which was made under the duress of torture. The investigating officer further admitted that the Punjab Police had done nothing to corroborate anything stated by Mr. Johal in his alleged confession. Since then, there has been no movement in this trial and, on three instances, the judge hearing the trial was changed, or the trial was delayed due to applications filed by the Punjab Police.

26. In July 2019, charges were dropped in the other case against Mr. Johal being led by Punjab Police, in Faridkot, on the grounds of double jeopardy. On 7 November, Mr. Johal was granted bail by the court in Moga in the sole remaining case pursued by the Punjab Police. This case is the only one where the charges do not carry the death penalty.

27. The bail order has no material effect on Mr. Johal's detention and he is still facing charges in eight cases being investigated by the National Investigation Agency, all of which carry the death penalty. Even though over three years have passed, charges have not been formalized in any of those cases, which is the first step for a criminal trial to commence in India, and bail has been refused. The authorities have not advanced these eight trials in over the three years since Mr. Johal's detention, nor have they produced any admissible evidence. The authorities have relied on his torture-induced confession and the statement of one of his co-accused.

28. On 7 January 2021, Mr. Johal was arrested in a new case by the Special Cell of the Delhi Police. The Special Cell alleged his involvement in the murder of another individual committed in October 2020 and that the main person accused in that case mentioned Mr. Johal's name and said he had met Mr. Johal five to six months before the murder. The crime and alleged meeting took place while Mr. Johal was in custody at Tihar prison, with restricted visit permissions, even for his family, made even more restricted due to the coronavirus disease (COVID-19) pandemic.

29. The police were granted a 14-day remand period to maintain custody over Mr. Johal. On 8 January 2021, officials from the British High Commission were given permission to have a non-private visit with Mr. Johal at the premises of the Special Cell in New Delhi. They were told they would be allowed to meet and visit Mr. Johal during his entire remand period. But a few days later, on 11 January, when they tried to visit again, they were denied access and told to obtain permission from the Ministry of External Affairs. Mr. Johal's counsel was not permitted to visit him either.

30. Mr. Johal was held incommunicado between 9 and 16 January 2021. During this period, the Special Cell of the Delhi Police permitted other agencies, including the National Investigation Agency and the Punjab Police, to interrogate Mr. Johal illegally. Mr. Johal was arrested under First Information Report No. 93/2020, which the Special Cell investigated. Any other investigating agency wishing to interrogate Mr. Johal would need to present formal notices to Mr. Johal informing him of the allegations against him that he was to be questioned about and the grounds for such questioning.

31. Mr. Johal was interrogated by officers who did not wear any identifying markers, and his interrogators included officers from the Punjab Police. The latter are alleged to have tortured him in November 2017.

32. On 16 January 2021, due to a petition filed by Mr. Johal's counsel seeking to revise his remand, he was produced before the magistrate again. However, at this hearing, the Special Cell of the Delhi Police stated that they did not require Mr. Johal's custody any longer, and he was sent back to Tihar prison.

33. Mr. Johal is currently the subject of nine cases being investigated by the National Investigation Agency and one by the Punjab Police. All nine cases being investigated by the Agency include charges that carry the death penalty. Despite Mr. Johal having been in detention for three years and three months, the Agency has not commenced trials in any of these nine cases and has not produced any admissible evidence. According to the source, the authorities relied on Mr. Johal's torture-induced confession and the statement of one of his co-accused in the case being investigated by Punjab Police as the basis for his detention – both would be inadmissible if that case ever proceeded to trial.

34. The source submits that Mr. Johal's arrest and detention are arbitrary, falling within category I of the Working Group, as there is a lack of legal basis or justification, and amount to unlawful abduction, incommunicado detention and unreasonable pretrial detention.

35. The source specifies that none of the domestic or international law requirements was complied with during Mr. Johal's arrest. Mr. Johal was bound, hooded and taken by unidentified police officers. During that time, Mr. Johal was never informed that he was being arrested, nor was a family member with him. Under article 21 of the Constitution of India, no person is to be deprived of life or personal liberty except according to procedure established by law.

36. Under section 43A of the Unlawful Activities (Prevention) Act 1967, designated authorities may arrest individuals who they have reason to believe have committed offences under the Act without a warrant. However, under section 43B of the Act, arresting officers must as soon as may be, inform the arrested person of the grounds for such arrest. This is consistent with the article 9 (2) of the Covenant, which also requires individuals arrested to be informed without delay of the reasons for their arrest. Arresting officers never told Mr. Johal the reasons for his arrest on 4 November 2017.

37. Under the Code of Criminal Procedure 1973, every police officer who carries out an arrest should wear visible identification and have a memorandum of arrest attested by at least one witness and the person being arrested. Where the witness is not a relative of the accused, the police must inform the person arrested that he or she has the right to have a relative or friend named by him or her informed of his or her arrest.<sup>3</sup>

38. Because Mr. Johal was not given the legal reasons for his arrest at the time of his arrest, the deprivation of his liberty was in violation of article 9 (2) of the Covenant,<sup>4</sup> as well as the Code of Criminal Procedure 1973, making his arrest devoid of any legal basis<sup>5</sup> and amounting to arbitrary detention, falling within category I.<sup>6</sup>

39. Mr. Johal was held in police custody for 10 days without access to his counsel or representatives of the British High Commission. He has thus been held incommunicado and placed outside the cloak of any legal protection.<sup>7</sup> While Mr. Johal was brought before a magistrate on 5 November 2017, he did not have any legal, consular or family assistance; owing to which the magistrate ordered his remand to police custody for five days, where he was tortured and forced to sign blank pieces of paper.

40. A similar appearance in which Mr. Johal was presented before a magistrate occurred again on 10 November 2017. Mr. Johal's legal counsel was prevented from attending these initial court appearances. Mr. Johal was thus unable to effectively challenge the lawfulness

<sup>3</sup> Code of Criminal Procedure 1973, sect. 41B.

<sup>4</sup> Opinion No. 38/2016, paras. 20–21.

<sup>5</sup> Opinion No. 34/2020, para. 47.

<sup>6</sup> Opinion No. 42/2016, paras. 25–28.

<sup>7</sup> A/HRC/22/44, para. 60.

of his detention. He was only permitted access to legal counsel on 14 November, during his following appearance in court. The British High Commission was only granted access to see him on 16 November. His family was also not informed of his location until 14 November.

41. As held by the Working Group, secret and/or incommunicado detention constitutes the most heinous violation of the norm protecting the right to liberty of human beings under customary international law.<sup>8</sup> Therefore, the incommunicado detention of Mr. Johal was *prima facie* arbitrary<sup>9</sup> and directly enabled subsequent violations of Mr. Johal's right to be free from torture and other forms of ill-treatment.

42. Moreover, Mr. Johal's lengthy pretrial detention, amounting to over three years, is excessive and unjustified, making his detention arbitrary.

43. The only evidence authorities have in all nine death penalty cases filed against Mr. Johal is a confession obtained through torture and the statement of a co-accused in the case being investigated by the Punjab Police. The source argues that both are inadmissible. There has been little to no progress in all 10 cases and, to date, charges have not even been formalized in the 9 cases being investigated by the National Investigation Agency.

44. The provisions in the Unlawful Activities (Prevention) Act 1967 on pretrial detention, particularly section 43D (5), authorize automatic and indefinite detention. Under this provision, no person accused of an offence punishable under chapters IV and VI of the Act, if in custody, is to be released on bail or bond unless the Public Prosecutor has been given an opportunity to be heard on the application for such release. The accused person is not to be released on bail or bond if the court, perusal of the case diary or the report made under section 173 of the Code of Criminal Procedure 1973, believes that there are reasonable grounds for believing that the accusation against such person is *prima facie* valid.

45. This provision shifts the presumption of innocence and requires accused persons to prove their innocence to be granted bail. The Supreme Court of India confirmed this when interpreting the provision in its decision in *National Investigation Agency v. Zahoor Ahmad Shah Watali*.<sup>10</sup>

46. As a result, courts can accept the torture-induced confession as sufficient grounds to meet the shallow threshold that a case against Mr. Johal is *prima facie* true. To obtain bail, Mr. Johal would have to prove his innocence, which he could do only by disproving the confession, which the courts will not dissect at this stage. It is argued that this is a closed loop, which results in automatic and indefinite detention.

47. This arbitrariness of the law under which Mr. Johal is detained is borne out by the length of Mr. Johal's pretrial detention, which cannot be justified. Pretrial detention should be an exceptional measure<sup>11</sup> and, even in cases of counter-terrorism, deprivations of liberty must remain consistent with the norms of international law.<sup>12</sup>

48. According to the Human Rights Committee, it should not be the general practice to subject defendants to pretrial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary considering all the circumstances for such purposes as to prevent flight, interference with evidence or the recurrence of a crime. The relevant factors should be specified in law and should not include vague and expansive standards such as public security.<sup>13</sup>

49. Furthermore, the Human Rights Committee made clear that the mere fact that the accused is a foreigner does not of itself imply that he may be held in detention pending trial,

<sup>8</sup> Ibid.

<sup>9</sup> Opinion No. 34/2020, para. 23.

<sup>10</sup> Criminal Appeal No. 578, Judgment, 2 April 2019.

<sup>11</sup> Rule 6.1 of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).

<sup>12</sup> E/CN.4/2004/3, para. 84; and E/CN.4/2005/6, para. 77.

<sup>13</sup> Human Rights Committee, general comment No. 35 (2014), para. 38.

and the mere conjecture of a State party that a foreigner might leave its jurisdiction if released on bail does not justify an exception to the rule laid down in article 9 (3).<sup>14</sup>

50. Therefore, the authorities have failed to explain why Mr. Johal's pretrial detention is reasonable and necessary, thus making it arbitrary. The Moga Court recognized the excessive length of Mr. Johal's detention in Punjab, which granted Mr. Johal bail in the only case presently against him being investigated by the Punjab Police, noting that his co-accused had been granted regular bail and nothing had been recovered from the petitioner and no overt act was attributed to him.<sup>15</sup>

51. It is therefore submitted that Mr. Johal's lengthy pretrial detention, under a law that in practice allows automatic and indefinite detention, is arbitrary, falling within category I, as a deprivation of liberty that has no basis.

52. The source further argues that the authorities have acted in breach of Mr. Johal's fair trial rights, rendering his detention arbitrary, falling within category III.

53. It is submitted that the use of torture to extract confessions from Mr. Johal was in breach of the right to be free from torture, the right to be free from self-incrimination and the presumption of innocence in international law<sup>16</sup> and the Constitution.<sup>17</sup>

54. The source argues that the extraction of a confession by torture and its subsequent use to justify Mr. Johal's detention are grave violations of his fair trial rights.<sup>18</sup>

55. Mr. Johal's right to be informed promptly and in detail of the charges against him and his right to be tried without undue delay have been violated.<sup>19</sup> As stressed by the Human Rights Committee, the accused must be effectively assisted by a lawyer at all stages of proceedings in all capital cases.<sup>20</sup> Yet Mr. Johal was not given access to counsel during his first and second appearances before a magistrate in November 2017, which would have enabled an effective challenge to remand and prevented the torture inflicted upon him.

56. During his most recent remand to the custody of the Special Cell of the Delhi Police, Mr. Johal had his right against self-incrimination further violated. He was interrogated illegally by specific officers of the Punjab Police. They were alleged to have tortured him in 2017 and threatened him with being moved back to the custody of the Punjab Police, with torture being implied if he did not cooperate. The pressure on Mr. Johal to cooperate is a concerning infringement of his constitutionally protected right against self-incrimination.

57. The source concludes that, given the serious deficiencies identified in the conduct of proceedings before the courts, the non-observance of Mr. Johal's right to a fair trial is so serious as to make the arrest arbitrary and thus contrary to articles 9 and 10 of the Universal Declaration of Human Rights, to articles 9 and 14 of the Covenant and to the terms of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

58. Lastly, concerning categories II and V, the source notes that Mr. Johal is a practising Sikh and activist who has written public posts calling for accountability for alleged actions committed against Sikhs by the authorities. Mr. Johal was an Internet marketer by profession, and, on the side, he researched and translated documents for a website that is dedicated to remembering the raid on the Golden Temple at Amritsar. The website also carried articles on individuals described as militants by the Government. Apart from that, Mr. Johal indirectly contributed to two articles on another website. Those articles commemorated the thirtieth

<sup>14</sup> Communication No. 526/1993, *M. and B. Hill v. Spain*, para. 12.3.

<sup>15</sup> High Court of Punjab and Haryana at Chandigarh, *Jagtar Singh Johal v. State of Punjab*, Case No. CRM-M-32730-2020, Decision, 6 November 2020.

<sup>16</sup> The prohibition of torture is a peremptory international norm of jus cogens. International Covenant on Civil and Political Rights, art. 14 (2) and (3) (g).

<sup>17</sup> Constitution of India, arts. 21 (on the right to life and liberty) and 20 (3) (on the right against self-incrimination).

<sup>18</sup> Human Rights Committee, general comment No. 32 (2007). See also opinion No. 1/2014, para. 18.

<sup>19</sup> International Covenant on Civil and Political Rights, art. 14 (3) (a) and (c).

<sup>20</sup> Human Rights Committee, general comment No. 32 (2007), para. 38.

anniversary of the raid on the Golden Temple by armed forces in 1984. Mr. Johal also attended peaceful protests in the United Kingdom, showing his support for the community.

59. The source submits that the Government has targeted Sikhs who express support for Sikh self-determination. While Mr. Johal has not been formally charged concerning his role as a human rights blogger, his detention may be arbitrary because it is a result of his legitimate exercise of the right to freedom of expression and a violation of the right not to be discriminated against based on religion.

60. The source concludes that the arrest is the direct result of Mr. Johal's legitimate exercise of his rights to freedom of speech and freedom of religion, making the detention arbitrary and discriminatory and therefore contrary to articles 18 and 19 of the Universal Declaration of Human Rights, articles 18 (1), 19 (1) and (2), and 27 of the Covenant and articles 1 (1), 2 (1), 3 and 4 (1) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

#### *Response from the Government*

61. On 18 March 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 17 May, detailed information about Mr. Johal and clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of India under international human rights law and in particular with regard to the treaties ratified by the State.

62. On 13 May 2021, the Government of India requested an extension in accordance with the Working Group's methods of work, which was granted with the new deadline of 18 June. On 14 June, the Government submitted its reply, in which it confirms that Mr. Johal was arrested for complicity in various cases in 2017 and 2018.

63. The Government informs the Working Group that Mr. Johal disclosed his role in the crime before 25 May 2019 in different cases. There is no question of the National Investigation Agency pressuring him to cooperate during the investigation of the cases. Mr. Johal was arrested after sufficient prosecutable evidence had been collected, which had already been submitted to the trial court.

64. The National Investigation Agency is currently investigating eight cases against Mr. Johal, who is a national of the United Kingdom and affiliated with the Khalistan Liberation Front. The Agency filed the charge sheet before the National Investigation Agency Special Courts in Delhi and Mohali in all eight cases against Mr. Johal because of his complicity in several murders and terror-funding cases. The charge sheets were filed under sections 120B, 302, 34, 379 and 416 of the Indian Penal Code, sections 25 and 27 of the Arms Act 1959, and sections 16, 17, 18, 18A, 18B, 20, 21 and 23 of the Unlawful Activities (Prevention) Act 1967.

65. The special courts have already taken cognizance of the charge sheets in all the cases based on thorough investigations carried out by the National Investigation Agency, and the procedure for the framing of charges is now under way.

66. The Government denies the allegations of physical and mental torture as baseless and false. Evidence collected against the accused to prosecute him has been submitted in court.

67. The reasons for the arrest were communicated to Mr. Johal before he signed the arrest memorandum. The accused was arrested based on evidence and according to the laws of India, and his detention cannot be described as arbitrary.

68. The Government claims that authorization to meet with the accused is given only if so ordered by the court. It denies the allegation of custodial torture during police remand with the National Investigation Agency as false. As mandated by law, a medical examination of the accused was conducted at regular intervals, and the court was apprised of the accused's condition.

69. According to the Government, sufficient evidence was collected legally during the investigation of the cases by the National Investigation Agency and submitted to the court.



The Government also maintains that the rights of Mr. Johal to a fair trial have not been denied, and all statements to the contrary are false.

70. The Government emphasizes that, under the laws of India and in accordance with the Constitution, no discrimination is made based on religion. The accused was arrested for his complicity in unlawful acts, including killings. His role in the conspiracy was established during the investigation of the case. There is sufficient prosecutable evidence against the accused to lay charges and bring him to trial.

71. The Government stresses that India has a fair system of judicial administration. The accused have the full opportunity to present their cases, and a violation of human rights, if alleged by any accused, is dealt with firmly by the entirely independent courts. There is no question of any arbitrary detention. Action by the National Investigation Agency against Mr. Johal, who is involved in crimes, has been substantiated by the judicially admissible evidence.

72. The Government notes that the matter is currently before the competent courts. The accused was not ill-treated and there were no human rights violations. All his human and legal rights were duly honoured.

*Further comments from the source*

73. The source reiterates its initial submissions and notes that the Government has not disputed the substantive allegations made concerning the detention and trial of Mr. Johal.

74. The source also added legal evidence supporting Mr. Johal's allegations that he was tortured and that his confession was induced by torture. The source insists that the Government has violated its international obligations by failing to investigate these allegations in a prompt, impartial and effective manner.

75. The source notes that all 10 cases against Mr. Johal have failed to progress, and some are not even at the stage of framing of charges. Mr. Johal has been charged in eight cases being investigated by the National Investigation Agency, one case by the Punjab Police and most recently, as of January 2021, one case by the Special Cell of the Delhi Police. All nine cases by the National Investigation Agency and the Punjab Police are based on the same set of facts, and primarily based on the torture-induced confession obtained in November 2017 while he was in the custody of the Punjab Police. The tenth case, being investigated by the Special Cell of the Delhi Police, relates to an incident that took place while Mr. Johal was in detention, almost three years after he was first arrested and detained.

76. The Government has just one case in which it has produced evidence. The source affirms that no new evidence has been submitted to the court in the remaining nine cases.

77. Furthermore, the eight cases being investigated by the National Investigation Agency rely on the same pieces of evidence submitted to the Moga Court to charge Mr. Johal. The same evidence will eventually be introduced before the National Investigation Agency Court. None of the evidence submitted before the Moga Court and relied on by the Agency to charge Mr. Johal is judicially admissible. The primary piece of evidence remains Mr. Johal's torture-induced confession.

78. This torture-induced confession is judicially inadmissible under the article 20 (3) of the Constitution, section 24 of the Indian Evidence Act 1872 and section 163 of the Code of Criminal Procedure 1973.

79. In the case being investigated by the Special Cell of the Delhi Police, no evidence has been submitted. The police have even failed to file a charge sheet, which led to the court granting Mr. Johal default bail in this case in May 2021.

## **Discussion**

80. The Working Group thanks the source and the Government for their submissions.

81. In determining whether the deprivation of liberty of Mr. Johal is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international

law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.<sup>21</sup>

82. The source has argued that the detention of Mr. Johal is arbitrary, falling within categories I, II, III and V. The Working Group examines the allegations in turn below.

#### *Category I*

83. The Working Group notes that, on 4 November 2017, Mr. Johal was abducted by unidentified men in front of various witnesses, including members of his family. The men did not present an arrest warrant nor did they state the reasons why Mr. Johal was being taken.

84. According to the source, Mr. Johal's family were later told by the police that Mr. Johal was being held in Bagha Purana. Once in Bagha Purana, however, the family were told that Mr. Johal was not there. His precise location was not disclosed.

85. The source has informed the Working Group that, from 4 to 7 November 2017, the police interrogated and tortured Mr. Johal. He was also forced to sign blank papers.

86. The Working Group notes that, according to the source, on 5 November 2017, Mr. Johal appeared before a duty magistrate in Bagha Purana. He was placed under police remand for five days, although no formal charges were lodged against him at that hearing. Two days later, the authorities issued a press statement naming Mr. Johal among four accused of being involved in killings as part of a conspiracy to destabilize the State.

87. The source submits that, on 10 November 2017, a hearing took place in closed court, where the police were granted a further extension of Mr. Johal's remand for another four days. Mr. Johal's counsel and representatives from the British High Commission were not allowed access to the courtroom. Witnesses who saw Mr. Johal later informed his legal counsel that he had had difficulty standing and had to be assisted.

88. Moreover, the Working Group observes that Mr. Johal is a national of the United Kingdom, who has been denied consular assistance. The Working Group notes that the Government had the opportunity but has failed to rebut these allegations.

89. The Working Group further notes that consular assistance constitutes an essential safeguard for individuals arrested and detained in a foreign State to ensure that international standards are being complied with. It provides such detainees and consular officials of the detainee's nationality with certain consular rights, including the right to communicate with and have access to their detained nationals freely and to be informed about the arrest without delay. These rights are embodied in rule 62 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principle 16 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

90. The source has asserted, and the Government has not denied, that, between 5 and 14 November 2017, Mr. Johal was held incommunicado at an undisclosed location, with no access to staff from the British High Commission, his family, his lawyers or an independent medical professional. It was not until 14 November 2017 that the application for legal counsel to see Mr. Johal was granted.

91. The Working Group recalls that to hold a person incommunicado at an undisclosed location (which in the case of Mr. Johal was on two different occasions) and outside the protection of the law is a *prima facie* form of arbitrary detention and constitutes a violation of article 6 of the Universal Declaration of Human Rights.<sup>22</sup> The Working Group also recalls that incommunicado detention breaches the right to challenge the lawfulness of detention before a judge and violates articles 8, 10 and 11 of the Universal Declaration of Human Rights<sup>23</sup> and principle 32 of the Body of Principles for the Protection of All Persons under

<sup>21</sup> A/HRC/19/57, para. 68

<sup>22</sup> Opinion No. 93/2017, para. 48.

<sup>23</sup> Opinions No. 46/2017, para. 22; and No. 10/2018, para. 48.

Any Form of Detention or Imprisonment. Moreover, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has consistently argued that the use of incommunicado detention is unlawful.<sup>24</sup> Furthermore, in its general comment No. 35 (2014), the Human Rights Committee argued that incommunicado detention that prevented prompt presentation before a judge inherently violated article 9 (3) of the Covenant.

92. On 17 November 2017, Mr. Johal appeared in court before a subdivisional judicial magistrate, who ordered him to be judicially detained at Faridkot prison in Punjab. On the evening of 17 November, however, and while Mr. Johal was being transferred to Faridkot prison, police from the city of Ludhiana intercepted the convoy and took him into their custody de facto. This situation also amounts to a breach of article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

93. In Ludhiana, the police presented Mr. Johal to a duty magistrate, who refused to handle the case. The police then went to the residence of an area magistrate, requesting that Mr. Johal be placed back under police remand. No lawyer was present during Mr. Johal's attendance at the magistrate's residence. Remand was granted for two days and, on 19 November 2017, it was further extended for five days.

94. Lastly, on 26 December 2017, Mr. Johal was transferred to Nabha maximum security prison, where he stayed until 25 May 2019. There, he was allowed some private visits with his legal team but not with representatives of the British High Commission. On 18 and 19 January 2018, he was taken into police custody by the National Investigation Agency without a judicial order. During this time, he was not allowed contact with counsel, family or the British High Commission. The same happened during the second period of police custody between 20 February and 1 March 2018. He was later transferred to Tihar prison in Delhi, where he has been in custody, cut off from family support, as a result of which he is practically in isolation.

95. The source has stated, and the Government has failed to prove the contrary, that Mr. Johal has been detained through repeated extension of the order of remand. This order has been decreed by several authorities from different jurisdictions, even though there is no judicially admissible evidence against Mr. Johal, despite intelligence agencies having over three years to investigate, during which time Mr. Johal has been detained without a lawful basis.

96. The Working Group notes a lack of an individualized determination of the reasonableness and the necessity to remand Mr. Johal in custody. It also observes that the Government has not disputed allegations made by the source that the continued extension of Mr. Johal's pretrial detention contravened provisions of the Code of Criminal Procedure 1973. Therefore, the Working Group observes a prima facie breach of article 14 (1) of the Covenant, recalling that the Human Rights Committee, in its general comment No. 32 (2007), established that the requirement of competence, independence and impartiality of a tribunal in the sense of article 14 (1) was an absolute right that was not subject to any exception.<sup>25</sup>

97. The Government has stated that Mr. Johal was detained in accordance with Indian law. However, the source has rebutted that statement by demonstrating that Mr. Johal was abducted off the street by several officers in civilian clothing. Neither he nor his family were given an explanation. During a cross-examination of a police officer, the officer acknowledged that the arrest had not been witnessed as mandated under Indian law, which stipulates that a witness – who is either a family member of the person being arrested or a respectable member of the locality – must be present during the arrest and sign the arrest memorandum, which sets out the reasons for detention.

98. The Working Group notes that the violations of international human rights norms and standards in the arrest and detention of Mr. Johal include those of the minimum standards of due process relating to fair trial and treatment of detainees. The source recalls that the different arrests suffered by Mr. Johal were without a warrant and, on all those occasions, he was not promptly informed of the reasons for his arrest. This is contrary to articles 9 (2) and

<sup>24</sup> A/54/426, para. 42; and A/HRC/13/39/Add.5, para. 156.

<sup>25</sup> Para. 19.

14 (3) (a) of the Covenant and principles 10 and 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In its response to the Working Group, the Government has limited itself to denying the allegations of the source, thereby failing to prove the contrary.

99. The Working Group therefore concludes that the continued pretrial detention of Mr. Johal lacks legal basis and is arbitrary, falling within category I.

#### *Category II*

100. The source has informed the Working Group that Mr. Johal was a practising Sikh faith activist. Furthermore, he was an online activist who contributed to documenting the alleged persecution of the Sikh religious minority in India. Mr. Johal's activities consisted in translating into English the stories of individual Sikhs who had alleged that they had faced persecution in India. When stating these facts, the source also underlined that freedom of expression was a fundamental right protected in the United Kingdom and India.

101. In addition, the source has informed the Working Group that Mr. Johal had publicly called for accountability for alleged actions committed against Sikhs. Mr. Johal was an Internet marketer by profession; he had used the Internet to remind readers of the raid on the Golden Temple at Amritsar by the armed forces in 1984, translating and publishing documents thereon. He had also published on the website that also carried articles on individuals described as militants by the Government, and he had contributed indirectly to two articles on another website with the same characteristics. In addition, Mr. Johal had also attended peaceful protests in the United Kingdom, showing his support for the Sikh community.

102. The source submits that the Government has targeted Sikhs who express support for Sikh self-determination. While Mr. Johal has not been formally charged concerning his role as a human rights blogger, it is submitted that his detention may be arbitrary for being a result of his legitimate exercise of the right to freedom of expression and a violation of the right not to be discriminated against based on religion.

103. The Working Group reiterates on this occasion that, under the article 6 (c) of 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, human rights defenders have the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through those and other appropriate means, to draw public attention to those matters.

104. The source further argues that Mr. Johal's legal situation is a retaliation for his contributions to disseminating knowledge worldwide of the persecution of the Sikh religious minority in India. Moreover, by translating into English the allegations of persecution against the Sikh religious minority, Mr. Johal is de facto criticizing the alleged abuses against the above-mentioned minority, providing an effective way of denouncing them, as well as defending members of the Sikh community. The source adds that the treatment of Mr. Johal is being used to deter others who may express critical views against the State online.

105. The Working Group also reiterates that it applies a heightened standard of review in cases where the freedom of expression and opinion is restricted or where human rights defenders are involved.<sup>26</sup> The Working Group believes that Mr. Johal's questioning of the treatment of the Sikh community by the authorities places him as a social activist and a human rights defender for religious minorities, requiring that the Working Group undertake this kind of strict scrutiny. Similarly, the Working Group wishes to refer to its earlier jurisprudence,

<sup>26</sup> Opinions No. 64/2011, para. 20; No. 54/2012, para. 29; No. 62/2012, para. 39; No. 41/2017, para. 95; and No. 57/2017, para. 46. Domestic authorities and international supervisory bodies should apply the heightened standard of review of government action, especially when there are claims of a pattern of harassment (see opinion No. 39/2012, para. 45). See also 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, art. 9 (3).

which highlighted that human rights defenders have the right to investigate, gather information regarding human rights violations and report on them.<sup>27</sup>

106. Moreover, the Working Group notes that, according to article 19 (3) of the Covenant, any restriction imposed on the right to freedom of expression must satisfy three requirements, namely, the restriction must be provided by law, designed to achieve a legitimate aim, and meet the requirements of necessity and proportionality. The Working Group is not convinced that the Government has satisfied these three requirements by merely denying the allegations of the source and stating that the detention of Mr. Johal has been carried out following the law.

107. The Working Group therefore concludes that the detention of Mr. Johal falls within category II, as his deprivation of liberty results from the exercise of his right to freedom of opinion and expression, protected by article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. The Working Group refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

### *Category III*

108. Given its finding that the detention of Mr. Johal is arbitrary, falling within category I, the Working Group agrees with the source that there have been multiple violations of Mr. Johal's right to a fair trial through total or partial non-observance of the international norms associated with that right as established and protected under various international human rights instruments, notably the Universal Declaration of Human Rights, the Covenant and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>28</sup>

109. The Working Group notes that Mr. Johal was subjected to numerous accusations by the various authorities, continuous arrests and subsequent judicial orders granting the police remand. The first such instance took place from 11 to 24 December 2017. The source has stated that Mr. Johal had been put under significant pressure to confess by the National Investigations Agency during that time. The source has also stated that Mr. Johal had been taken into police custody by the Agency without a judicial order. During this time, he was not allowed contact with his counsel, his family or the British High Commission. The same happened during the second period of police custody, between 20 February and 1 March 2018.

110. Moreover, the source has informed the Working Group that Mr. Johal had been transferred to Tihar prison in Delhi, where he is currently in custody. Mr. Johal has been cut off from the only family support available to him in Punjab, as a result of which he is practically isolated from his legal team and family. The source submits that investigators from the National Investigation Agency have used this factor and its psychological impact as a means to coerce Mr. Johal to cooperate with the prosecution.

111. In its response, the Government did not deny these circumstances. It stated that Mr. Johal had been arrested for his complicity in various cases in 2017 and 2018 and that Mr. Johal had disclosed his role in different cases. Therefore, the arrest had been made after collecting sufficient prosecutable evidence against him and that evidence had already been submitted to the trial court.

112. The Working Group recalls that article 14 of the Covenant provides the minimum guarantees to an accused, establishing that that person is entitled to the right to equality before courts and tribunals when facing criminal prosecution. Any distinctions should be based on law and justified on objective and reasonable grounds. Furthermore, it provides that trial proceedings should be before a competent, independent and impartial tribunal. This is an absolute right and is not subject to any exceptions. These guarantees are further provided for in article 11 of the Universal Declaration of Human Rights. Throughout the examination of this case, the Working Group has observed that guarantees were not recognized during the

<sup>27</sup> Opinion No. 8/2009, para. 18.

<sup>28</sup> The source also refers to opinion No. 48/2016, para. 41.

proceedings of this case. Therefore, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

113. Furthermore, the source has informed the Working Group that Mr. Johal's lawyer had had to file an application for permission to meet his client but he had not been granted a private meeting. Similarly, Mr. Johal had requested a private visit with the British High Commission, which had already classed Mr. Johal as vulnerable. Although the court had granted the meeting, it was subsequently cancelled, citing technical reasons. When it had finally taken place, it had not been held in private and had instead taken place in the presence of two senior police officers.

114. In this regard, as the Working Group has stated, principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court<sup>29</sup> entitles persons deprived of their liberty to have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after apprehension, and they must be promptly informed of this right upon apprehension. Access to legal counsel should not be unlawfully or unreasonably restricted. The Working Group observes that Mr. Johal's lack of legal assistance substantially undermined and compromised his capacity to defend himself from the various judicial proceedings against him. Furthermore, principle 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 61 (1) of the Nelson Mandela Rules stipulate that a defendant must have access to legal counsel without delay. Moreover, the Working Group finds that these factors constitute a denial of Mr. Johal's right to the presumption of innocence guaranteed under article 14 (2) of the Covenant and article 11 of the Universal Declaration of Human Rights.

115. In addition, the source has submitted that Mr. Johal had been put under significant pressure to confess by the National Investigations Agency. Furthermore, the source has established that, on 7 December 2017, local news organizations had aired video footage of Mr. Johal's alleged confession, albeit no reference had been made in the video to any of the crimes labelled against him. News organizations had also aired footage of another detainee, who had asserted that Mr. Johal had provided him with funds to purchase weapons. The source notes that it is unclear how this testimony was obtained, whether lawfully or by other means. The detainee, who was the only alleged witness to Mr. Johal's involvement, later died in custody, on 18 April 2018.

116. The Working Group considers that to issue a press statement naming Mr. Johal among a list of suspects accused of being involved in a series of high-profile targeted killings and later to broadcast on-air video footage of Mr. Johal's alleged confession disregard the presumption of innocence stipulated in article 14 (2) of the Covenant, article 11 (1) of the Universal Declaration of Human Rights and principle 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group recalls that the burden of proof to establish the accused's guilt lies with the prosecutor. Authorities should refrain from prejudging the outcome of the proceedings, making any official statements or using conclusive language that would portray an accused as guilty. In the present case, the Government has not proven otherwise but has limited itself only to denying the facts established by the source. The Working Group has made clear that this kind of publication is highly prejudicial to the ability of the detainee to receive a fair trial and, in effect, prejudices the outcome of the proceedings against him.<sup>30</sup>

117. In addition, the source asserts that, between 4 and 7 November 2017, the police interrogated and tortured Mr. Johal and forced him to sign blank papers. To support this statement, the source annexed an affidavit signed by Mr. Johal's lawyer stating that the police had physically and mentally tortured Mr. Johal during interrogation.

<sup>29</sup> A/HRC/30/37.

<sup>30</sup> Human Rights Committee, general comment No. 32 (2007), para. 30. See also opinion No. 45/2019, para. 68.

118. Despite these allegations, the Government has limited itself to state that the allegation of custodial torture during police remand with the National Investigation Agency was false and denied. Similarly, the Government has not investigated these allegations to date.

119. Upon examining this case, the Working Group has established that Mr. Johal has been interrogated repeatedly in the absence of legal counsel and in incommunicado detention. The Working Group has previously stated that confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>31</sup> Furthermore, the admission into evidence of a statement allegedly obtained through torture or other ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.<sup>32</sup> The burden of proof rests on the Government to prove that statements were given freely,<sup>33</sup> which it has not done in this case.

120. The Working Group wishes to underline that international human rights law requires that detainees be protected from any practices that violate their right to be free from any act that could cause severe pain or suffering, whether physical or mental, and inflicted intentionally on a person. This has been clearly stated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The right to freedom from torture is absolute. This applies in all circumstances and it may never be restricted. No exceptional circumstances whatsoever, including threats of terrorism or other violent crime, may be invoked to justify torture or other ill-treatment. Such prohibition applies irrespective of the offence allegedly committed by the accused person. In the light of the circumstances of the present case, the Working Group submits this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

121. The Working Group further notes that the authorities have also failed to provide an independent medical examination, requested by Mr. Johal's family in December 2017. The High Court admitted this petition and issued a notice to the State of Punjab ordering the authorities there to respond, and decided later to adjourn the matter.

122. The Working Group observes that Mr. Johal was not presented with a warrant at the time of his various arrests; was denied the right to counsel, and when he finally had legal counsel, he did not have the opportunity to talk to his lawyer privately; was denied the presumption of innocence; was subjected to torture and refused medical treatment; was not granted prompt consular assistance; was not brought promptly before a tribunal; and was judged behind closed doors without the presence of his lawyer and his diplomatic representative.

123. Therefore, the Working Group concludes that the arrest of Mr. Johal is arbitrary, falling within category III as a result of the gravity of the non-observance of his right to equality before courts and the right to a fair trial, in contravention of article 14 (1) of the Covenant and article 10 of the Universal Declaration of Human Rights.

#### *Category V*

124. The Working Group further considers that Mr. Johal was targeted because of his activities as a Sikh practitioner and supporter and because of his activism in writing public posts calling for accountability for alleged actions committed against Sikhs by the authorities.

125. For these reasons, the Working Group finds that Mr. Johal was deprived of his liberty on discriminatory grounds, owing to his status as a human rights defender and based on his political activism, religious faith and opinions. His detention violates articles 2 and 7 of the Universal Declaration of Human Rights, articles 7, 18 (1), 19 (1) and (2), and 20 of the Covenant, and articles 1 (1), 2 (1), 3 and 4 (1) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. It is therefore arbitrary, falling within category V.

<sup>31</sup> [A/HRC/45/16](#), para. 53. See also opinions No. 1/2014, para. 22; No. 14/2019, para. 71; No. 59/2019, para. 70; and No. 73/2019, para. 91; and [E/CN.4/2003/68](#), para. 26 (e).

<sup>32</sup> Opinions No. 43/2012, para. 51; No. 34/2015, para. 28; No. 52/2018, para. 79 (i); No. 32/2019, para. 43; No. 59/2019, para. 70; and No. 73/2019, para. 91.

<sup>33</sup> Human Rights Committee, general comment No. 32 (2007), para. 41.

126. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on minority issues.

### **Disposition**

127. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Jagtar Singh Johal, being in contravention of articles 2, 3, 5, 7, 8, 9, 10, 11 (1), 18 and 19 of the Universal Declaration of Human Rights and articles 9, 14, 18, 19, 21 and 28 of the Covenant, is arbitrary and falls within categories I, II, III and V.

128. The Working Group requests the Government of India to take the steps necessary to remedy the situation of Mr. Johal without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

129. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Johal immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Mr. Johal.

130. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Johal and to take appropriate measures against those responsible for the violation of his rights.

131. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to (a) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, (b) the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, (c) the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, (d) the Special Rapporteur on the situation of human rights defenders, (e) the Special Rapporteur on freedom of religion or belief, (f) the Special Rapporteur on minority issues and (g) the Special Rapporteur on the independence of judges and lawyers.

132. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

### **Follow-up procedure**

133. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Johal has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Johal;
- (c) Whether an investigation has been conducted into the violation of Mr. Johal's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of India with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

134. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.



135. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

136. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>34</sup>

*[Adopted on 19 November 2021]*

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<sup>34</sup> See Human Rights Council resolution 42/22, paras. 3 and 7.