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Iraq

IQ/59 - Mohammed Al-Dainy

Decision adopted unanimously by the IPU Governing Council at its 197th session (Geneva, 21 October 2015)

The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Mohammed Al-Dainy, a member of the Council of Representatives of Iraq at the time of the communication's submission, and to the resolution adopted by the Governing Council at its 192nd session (March 2013),

Referring to the hearing conducted with two members of the delegation of Iraq to the 133rd IPU Assembly (Geneva, October 2015), and to information provided by one of the complainants and other sources of information,

Recalling the following information on file:

- Mr. Al-Dainy, a member of the Council of Representatives of Iraq for the legislative period 2006-2010, is known to have investigated conditions of detention in Iraq and the existence of secret detention facilities; on 25 February 2009, parliament lifted his immunity on account of an accusation that he had masterminded the 12 April 2007 suicide bombing of parliament; Mr. Al-Dainy fled abroad for fear of his life;
- Ten members of Mr. Al-Dainy's family and nine members of his staff (mainly escorts) were arrested in 2009; detailed information was provided by the complainant about the circumstances of their arrest without warrants, their ill-treatment and the ransacking of their homes; when some of them were released later in 2009 and 2010, ample evidence came to light that they had been tortured in secret detention centres to implicate Mr. Al-Dainy in the commission of crimes, in particular: (i) the bombing of the Council of Representatives in April 2007; (ii) the launch of mortar shells into the Green Zone during the visit of the Iranian President in 2008, and the murder of one of the inhabitants of the neighbourhood from which the shells were launched; (iii) the killing of 155 people from Al-Tahweela village, who were allegedly buried alive; and (iv) the murder of Captain Ismail Haqi Al-Shamary;
- On 24 January 2010, Mr. Al-Dainy was sentenced to death in absentia; the verdict runs to a little more than one page (French translation), contains two paragraphs dealing with the suicide bombing of parliament and one paragraph on the shelling of the Green Zone, six lines on the storing of weapons and the founding of a terrorist organization linked to the Ba'ath party, and, to prove that Mr. Al-Dainy committed these crimes, relies heavily on the testimony of three members of his security staff (Mr. Riyadh Ibrahim, Mr. Alaa Kherallah, Mr. Haydar Abdallah) and a secret informant; it does not refer to any of the other accusations;
- In December 2010, the Court of Cassation quashed the judgement handed down regarding two of Mr. Al-Dainy's escorts who had testified against him;
- On 24 July 2011, the Speaker of the Council of Representatives set up an ad hoc committee of inquiry of five parliamentarians to examine Mr. Al-Dainy's case; following in-depth inquiries, that committee concluded on 15 March 2012

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that: (i) the lifting of Mr. Al-Dainy's parliamentary immunity had violated the applicable rules, as it had been decided in the absence of a quorum and was therefore unlawful; (ii) as regards the allegation that Mr. Al-Dainy had killed more than 100 villagers in Al-Tahweela village, the on-site investigation revealed that no crime had taken place; (iii) Mr. Al-Dainy was in Amman at the time of the firing of mortar shells into the Green Zone during the visit to Baghdad of the Iranian President, a fact borne out by stamps in his passport; (iv) as to the allegation concerning Captain Haqi Al-Shamary's murder, the committee found that the Captain was still alive; the committee issued its final report, recommending inter alia: (a) that the case of Mr. Al-Dainy be promptly reviewed in the interests of truth and justice; and (b) that the perpetrators of the acts of torture committed against Mr. Al-Dainy's family members and escorts during their detention in Al-Sharaf prison be held accountable;

- The Speaker of the Council of Representatives submitted the final report of the ad hoc parliamentary committee on Mr. Al-Dainy's case to the Higher Judicial Council on 17 July 2012 and requested it to take all necessary measures in view of the Committee's findings and recommendations; the conclusions of the parliamentary committee, including its official request for Mr. Al-Dainy's retrial, were broached, including in direct meetings, with the Higher Judicial Council, the Prime Minister and other competent authorities,

Considering that, during a hearing held during the 130th IPU Assembly (March 2014), a member of the Iraqi delegation affirmed that there had been an agreement for a retrial, but that, according to Iraqi law, it could only take place if Mr. Al-Dainy was physically present in Iraq; however, given the high likelihood that Mr. Al-Dainy would be arrested upon arrival, should he decide to return to Iraq, the retrial could not proceed,

Considering that, according to the information recently conveyed by one of the complainants and by other sources, Mr. Al-Dainy voluntarily returned to Iraq in April 2015 and surrendered himself to the Iraqi authorities for a retrial in the hope of being proven innocent; he has been held in detention in Al Muthana prison since that date; the retrial has taken place and was completed about three months ago,

Considering the following information shared by the two members of the Iraqi delegation during the hearing held during the 133rd IPU Assembly (October 2015):

- Mr. Al-Dainy voluntarily returned to Iraq on 27 April 2015 to face justice and confront the false accusations that had been made against him; the judicial proceedings have been fully completed after a three-month retrial, and the court concluded that Mr. Al-Dainy was not guilty of any of the charges brought against him and ordered his release;
- Mr. Al-Dainy has nevertheless not been released and remains in detention, in violation of the Iraqi Constitution and laws; the competent authorities have failed to execute the court order to date and have put his release on indefinite hold; Mr. Al-Dainy is indeed detained at the former Al-Muthanna military airport in Baghdad, a military intelligence detention centre;
- The reasons for Mr. Al-Dainy's continued detention pertain to persistent political divergences between the majority and the opposition parties along sectarian lines and the wish of certain political parties to sideline or eliminate political opponents such as Mr. Al-Dainy; this divide has become entrenched within the legislative, executive and judicial branches of power in Iraq and has hampered progress;
- Lack of judicial independence and the political instrumentalizing of Iraqi courts require urgent judicial reform, but the reforms initiated to date have not been conducive to any tangible progress;
- The Council of Representatives is concerned about the situation of Mr. Al-Dainy; members of parliament have called on the competent authorities to expedite his release and to restore his rights; they have also requested the authorization to visit Mr. Al-Dainy in detention, which has not been granted to date; the members of the Iraqi delegation expressed surprise and regret that no responses had been forthcoming from the Council of Representatives on this matter, despite repeated requests of the Committee on the Human Rights of Parliamentarians; they pledged to follow up with the Speaker on this matter upon their return to Iraq,

Bearing in mind as well that Iraq is a party to the International Covenant on Civil and Political Rights and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; that the international community - through the reports of the United Nations Secretary-General, the United Nations Assistance Mission for Iraq, the Office of the High Commissioner for Human Rights, the United Nations Special Rapporteur on the independence of judges and lawyers and the Human Rights Council universal periodic review mechanism - has repeatedly voiced serious concerns regarding the lack of fair trial, the use of torture, the level of independence of the judicial system, and the use of the death penalty; particular concerns have been expressed in relation to the serious flaws of the Iraqi judicial system, including persistent serious violations of due process and fair trial rights in cases involving capital punishment and terrorism cases, together with the routine use of torture and coerced confessions, as recently reaffirmed in the concluding observations adopted in September 2015 by the United Nations Committee against Torture (CAT) on the initial report of Iraq; the CAT further made reference to the detention facility at the former Al-Muthanna military airport in West Baghdad, as one of the irregular detention centres used to detain alleged terrorists or other high-security suspects, which continues to operate secretly under military control, and urged the authorities of Iraq to close such detention facilities, which are per se, a breach of the Convention against Torture,

1. *Thanks* the members of the Iraqi delegation for the information provided;
2. *Notes with satisfaction* that, upon Mr. Al-Dainy's voluntary return to Iraq, a retrial took place and he was finally proven innocent more than five years after being sentenced to death following a trial that had been a clear travesty of justice; *requests* the parliamentary authorities to convey a copy of the latest court decision at their earliest convenience;
3. *Is nevertheless dismayed* that Mr. Al-Dainy continues to be kept in detention, despite his acquittal, *and calls for* his immediate release;
4. *Deeply regrets* that the Council of Representatives has not responded to the Committee's requests for updated information or shared any official information on the latest developments; *notes* that the members of the delegation have stated that the Council of Representatives is concerned about the situation of Mr. Al-Dainy; therefore *expresses its perplexity* at the lack of official response; *calls on* the Council of Representatives to take urgent action to obtain Mr. Al-Dainy's release and ensure that his fundamental rights are fully respected by all relevant authorities; *and reiterates its wish* to be kept informed of the action taken to that end and its outcome; *stresses* that the Committee strives to foster dialogue and cooperation with the authorities of Iraq, first and foremost with the Council of Representatives, its primary interlocutor pursuant to its procedure;
5. *Recalls* that the protection of the rights of parliamentarians is the prerequisite to enable them to protect and promote human rights and fundamental freedoms in their respective countries; and *urges* the Council of Representatives of Iraq as a whole, including all of its individual members and their respective political parties, to overcome their existing divergences and stand united for the protection of the rights of all Iraqi parliamentarians in order to strengthen the parliamentary institution and its ability to protect the fundamental rights and freedoms of the Iraqi people;
6. *Considers* that, in light of the seriousness of the concerns at hand and the urgent need for increased dialogue with the Iraqi authorities, a mission to Iraq by a delegation of the Committee on the Human Rights of Parliamentarians would offer a timely opportunity to meet with senior officials of the legislative, executive and judicial branches, particularly the Speaker of the Council of Representatives, the Prime Minister, the Minister of Justice and the President of the Higher Judicial Council, so as to obtain first-hand information on the above-mentioned concerns and responses of the relevant Iraqi authorities;
7. *Requests* the Secretary General to seek the authorities' agreement for such a mission, and to convey this decision to the relevant authorities, the complainants and any third party likely to be in a position to supply relevant information;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.