



Inter-Parliamentary Union
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Iraq

IQ/62 - Ahmed Jamil Salman Al-Alwani

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

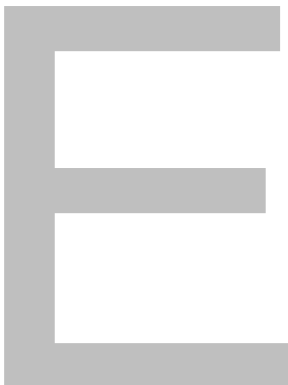
The Governing Council of the Inter-Parliamentary Union,

Referring to the case of Mr. Ahmed Jamil Salman Al-Alwani, a former member of the Council of Representatives of Iraq, and to the decision adopted by the Governing Council at its 194th session (March 2014),

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

Recalling the following information on file:

- Mr. Al-Alwani was arrested on 28 December 2013 in Ramadi, in Al-Anbar Governorate, during a raid on his home carried out by Iraqi forces in the middle of the night; the gunfight resulted in casualties, including deaths, among the security forces; Mr. Al-Alwani's brother and members of his entourage were also killed; the circumstances of the raid, including the reasons why the Iraqi forces conducted it, remain unclear;
- Mr. Al-Alwani was detained, charged for terrorist-related crimes under the Iraqi Anti-Terrorism Law, and tried before the Central Criminal Court of Baghdad; he was sentenced to death on 23 November 2014;
- The complainant has stated that Mr. Al-Alwani was arrested in retaliation for his outspoken support for the grievances of the Sunni population; Mr. Al-Alwani was a member of the Al-Iraqiya political block and was serving his second parliamentary mandate; he was known to be a prominent critic of the Iraqi Prime Minister at the time, Nouri Al-Maliki, and a supporter of the demonstrations that started in Ramadi in December 2013 in protest against the perceived marginalization and persecution of Iraqi Sunnis by the central Government; the Prime Minister at the time was said to have publicly announced on 22 December 2013 that these protests had become a "headquarters for the leadership of Al-Qaida" and to have warned that the security forces would intervene; Mr. Al-Alwani had held meetings with the provincial authorities on 27 December 2013, the day before his arrest, in an effort to defuse the tension between the governorate and the central Government;
- The complainant alleges that, at the time of the raid, Mr. Al-Alwani and his entourage had no way of knowing whether they were engaged in a confrontation with Iraqi security forces, a terrorist group, or an armed militia, considering the precarious security situation at the time, and that the raid was conducted in the middle of the night; the complainant alleged that Mr. Al-Alwani's entourage only responded to the gunfire in self-defence;
- According to a member of the delegation of Iraq who appeared before the Committee at the 130th Assembly (Geneva, March 2014), the Council of Representatives had not received any information on the exact circumstances of, and grounds for Mr. Al-Alwani's arrest, which had been the subject of much



speculation; there were, however, two opposing points of view in that respect within parliament: (i) one was that he was a terrorist and was caught in flagrante delicto by the Iraqi forces; and (ii) the other was that he was attacked by the Iraqi forces because he had supported the demonstrations, and was accused of terrorism because he and his bodyguards opened fire to defend themselves when the house was broken into by unknown armed forces in the middle of the night;

- During the same hearing held at the 130th Assembly, the same member of the delegation of Iraq indicated that the Council of Representatives had, at that time, not been able to obtain any information on the charges and proceedings against Mr. Al-Alwani, or on his conditions of detention or his health, and did not know whether he had been subjected to torture; the member, however, stated that torture in detention was a long-standing problem in Iraq, which had been documented, including in reports of the Parliamentary Human Rights Committee; the member also noted that there were special procedures to respect under the Constitution and the laws of Iraq to arrest and prosecute members of parliament and that, regardless of the circumstances and grounds for his arrest, Mr. Al-Alwani was entitled to protection from torture and to a fair trial; he was then detained in Baghdad and had not been allowed to receive visits from family members, lawyers or from the parliamentary authorities pursuant to the terrorism law; a hearing had taken place in the main courtroom of Baghdad and the trial had been suspended after Mr. Al-Alwani requested the transfer of the proceedings to Al-Anbar Governorate according to the normal criminal procedure that provided him with the right to be tried in his province of origin; however, the member observed that this did not usually apply in terrorism cases and the current instability in Al-Anbar did not allow for such a transfer;
- According to the complainant, in the months following his arrest, neither Mr. Al-Alwani's relatives, nor his lawyers knew where he was being detained and were prevented from visiting him in detention; the complainant also stated that Mr. Al-Alwani was subjected to severe torture and forced to make false confessions that were used against him and led to his conviction;
- Mr. Al-Alwani was sentenced to death for murder and attempted murder as a result of the deaths of, and injuries sustained by, security forces during the gunfight; according to the complainant, he denied all charges and firmly denied opening fire on the security forces during the trial;
- According to the complainant, Mr. Al-Alwani was denied the right to a fair trial and the right to mount an adequate defence; he was denied the right to defend himself, the right to choose his lawyer and, on three occasions, the lawyers assigned to him were allegedly forced to resign by the judges for attempting to present their defence arguments effectively; one of his lawyers was harassed and arbitrarily arrested by Iraqi security forces, allegedly in reprisal for agreeing to represent Mr. Al-Alwani; Mr. Al-Alwani was also denied the right to meet with his lawyer during his detention, and was therefore unable to prepare his defence; several international human rights non-governmental organizations have corroborated that Mr. Al-Alwani was denied the right to a fair trial and, in particular, the right to a defence, and they have pressed for a stay of execution on these grounds;
- According to a letter dated 31 December 2013 from the Speaker of the Council of Representatives at the time: (i) the Council of Representatives and its parliamentary investigative committee had been unable to visit Mr. Al-Alwani in detention or obtain any information on his place or conditions of detention, or even on his health; (ii) the Council of Representatives had not been apprised of the progress made in the investigation; (iii) Mr. Al-Alwani's parliamentary immunity had been violated and there were concerns with regard to respect for constitutional and legal safeguards; and (iv) Mr. Al-Alwani was protected by parliamentary immunity and should therefore be released,

Considering that no further information has been forthcoming from the Speaker of the Council of Representatives, despite repeated requests,

Considering that Mr. Al-Alwani has appealed the ruling, but the complainant does not expect the appeal process to be conducted in compliance with international standards of due process because of the lack of independence and impartiality of the judiciary,

Considering that, according to a source, he is also facing additional charges, including incitement to violence, also punishable by death; the status of these judicial proceedings is unknown; Mr. Al-Alwani's release had been discussed in the context of political negotiations between Prime Minister Al-Abadi and Sunni parliamentary blocs; however, these commitments have not been fulfilled; Mr. Al-Alwani has been held in solitary confinement and mistreated, and is in very poor health,

Bearing in mind that the case comes against a political backdrop of violent internal conflict and sectarian tensions; elections took place in 2014, resulting in the appointment of new parliamentary and executive authorities and bringing about what may be a new stage of political compromise and enhanced national dialogue, according to the United Nations; a draft amnesty law appears to currently be under consideration,

Bearing in mind that the 2005 Constitution guarantees the right to life, security and liberty (article 15), provides that homes may not be entered, searched or put in danger except by a judicial decision and in accordance with the law (article 17.2), guarantees the right to a defence in all phases of the investigation and the trial (article 19.4), and prohibits unlawful detention and detention in places not designed for that purpose (article 19.12); that article 60 of the Constitution guarantees parliamentary immunity and prohibits the arrest of a member during the legislative term of the Council of Representatives, unless the member is accused of a crime and the Council decides by an absolute majority to lift the immunity, or if caught in flagrante delicto committing a crime,

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 United Nations 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; the United Nations Committee against Torture (CAT) also expressed concern at the lack of a clear provision prohibiting torture in Iraqi legislation and at reports of routine and widespread use of torture and ill-treatment of suspects in police custody, primarily to extract confessions or information to be used in criminal proceedings; the CAT called for the Iraqi authorities to ensure that all allegations of torture be investigated promptly, effectively and impartially and the perpetrators be held personally accountable; the CAT also expressed concern about the failure to fully respect and protect international and constitutional guarantees of due process and fair trial standards in death penalty cases and over both a consistent pattern of alleged terrorists being arrested and detained incommunicado in secret detention centres, as well as over the conditions of detention,

Considering that, according to the two members of parliament from the delegation of Iraq who appeared before the Committee at the 133rd IPU Assembly (Geneva, October 2015), the reasons behind Mr. Al-Alwani's arrest and the subsequent conviction 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-Alwani; this divide has become entrenched within the legislative, executive and judicial branches of power in Iraq and has not been conducive to progress; Mr. Al-Alwani's house was raided by Iraqi forces on baseless grounds; his parliamentary immunity was violated; an appeal was lodged against Mr. Al-Alwani's conviction, but it has stalled due to political pressure; the lack of judicial independence and the political instrumentalization of Iraqi courts require urgent judicial reform, but the reforms initiated to date have not been conducive to any tangible progress; while in detention Mr. Al-Alwani was severely tortured; authorization for parliamentarians to visit him was denied, despite a request by the Speaker of the Council of Representatives; the authorities obfuscated the location of Mr. Al-Alwani's detention, but it was eventually established that he is currently being held in solitary confinement in a prison in Baghdad; he is in very poor physical and psychological health and is being denied access to medical treatment; the Council of Representatives remains concerned about his situation and 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 on this matter with the Speaker upon their return to Iraq,

1. *Thanks* the members of the Iraqi delegation for the information provided;
2. *Continues to be appalled* that Mr. Al-Alwani was sentenced to death, given serious doubts that the case complied with basic fair trial and due process guarantees; *again urges* the judicial authorities to lift the death sentence passed against Mr. Al-Alwani, and *expects* appeal proceedings to take place promptly and in a manner which fully respects Mr. Al-Alwani's right to a fair trial;
3. *Is deeply concerned* by allegations that Mr. Al-Alwani was tortured, continues to be held in solitary confinement, and is in very poor physical and psychological health and denied access to medical treatment; *calls on* the authorities to investigate these allegations without further delay and ensure that he be urgently provided with medical care, permitted visitors, and can enjoy conditions of detention that comply with international standards; *wishes* to be kept informed of actions taken in this regard and their outcomes;
4. *Is further concerned* that Mr. Al-Alwani's parliamentary immunity may have been violated, given the circumstances of his arrest; *reiterates* its prior request to receive further information of the grounds and circumstances of the raid conducted against his home and of his arrest; *also requests* the parliamentary authorities to provide a copy of the court decision, as well as further information on legal avenues of redress still available to Mr. Al-Alwani and on other charges that may still be pending against him;
5. *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 Mr. Al-Alwani's situation; therefore *expresses its perplexity* at the lack of official response; *calls on* the Council of Representatives to take urgent action to ensure respect for Mr. Al-Alwani's rights and to monitor the situation closely; 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;
6. *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;
7. *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;
8. *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;
9. *Requests* the Committee to continue examining this case and to report back to it in due course.