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Iraq

IQ/59 - Mohammed Al-Dainy

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 152nd session (Geneva, 23 January to 3 February 2017)

The Committee,

Referring to the case of Mr. Mohammed Al-Dainy, a member of the Council of Representatives of Iraq at the time of the complaint's submission, and to the decision adopted by the Governing Council at its 197th session (October 2015),

Referring to the letters dated 24 January 2017 and 15 December 2016 from the Permanent Mission of the Republic of Iraq to the United Nations Office and other International Organizations at Geneva (thereafter designated as "the Permanent Mission") and of the General Prosecutor of Iraq, as well as to the information provided by the complainants,

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;

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- 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 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 Mr. Al-Dainy's case 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;
- In March 2014, the authorities stated 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, he was not able to return;
- On 27 April 2015, Mr. Al-Dainy voluntarily returned to Iraq to face justice; he was arrested upon arrival and kept in detention at the former Al-Muthanna military airport in Baghdad, a military intelligence detention centre; Mr. Al-Dainy's retrial was completed over three months and the court concluded that he was not guilty of any of the charges brought against him and ordered his release;
- Mr. Al-Dainy was, however, not released after the court verdict was issued; according to two members of the Iraqi delegation at the 133rd IPU Assembly (Geneva, October 2015), the reasons for his continued detention pertained 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 had, according to them, become entrenched within the legislative, executive and judicial branches of power in Iraq and had hampered progress;
- The Council of Representatives was not granted authorization to visit Mr. Al-Dainy in detention,

Considering that the General Prosecutor of Iraq stated in his letter of 15 December 2016 that Mr. Al-Dainy was included in a special pardon under a presidential decree and was therefore released; the Permanent Mission shared a copy of the special pardon and the complainants provided confirmation of Mr. Al-Dainy's release and stated that there were no further proceedings pending against him in Iraq,

Bearing in mind 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 a 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 in 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,

1. *Thanks* the Permanent Mission and the General Prosecutor of Iraq for the information provided; *regrets*, however, the lack of response from the Council of Representatives;
2. *Notes with satisfaction* that Mr. Al Dainy was released after being granted a presidential pardon and that there are no more proceedings pending against him; therefore *decides* to close the case pursuant to article 25 of its Procedure for the examination and treatment of complaints, given its satisfactory settlement;
3. *Regrets* nevertheless that it took almost seven years since Mr. Al-Dainy's conviction to reach this outcome; *further notes with consternation* that, despite a court decision in 2015 acquitting him and ordering his release, Mr. Al Dainy was kept in detention until he was granted a presidential pardon;
4. *Recalls* that Mr. Al-Dainy was deprived of his parliamentary mandate and convicted to death following a travesty of justice, apparently for having exercised his oversight function as a parliamentarian by combating the use of torture and of secret detention centres in Iraq; that, as a consequence, he was forced into exile and that some of his family members and staff were arbitrarily detained and tortured;
5. *Urges* the Iraqi authorities to take all appropriate measures to prevent similar incidents from recurring in the future, and *invites* them to undertake comprehensive criminal justice reforms to ensure full compliance with the Constitution of Iraq and with international human rights standards – particularly as regards due process and fair-trial guarantees – and to take all appropriate measures to ensure that all fundamental rights of parliamentarians are fully respected by all relevant authorities;
6. *Wishes to acknowledge* the pivotal role played by the Council of Representatives in promoting a satisfactory settlement by establishing a parliamentary committee of inquiry to shed light, through an independent investigation, on the case of Mr. Al-Dainy; *encourages* the Council of Representatives to pursue similar action in the future whenever necessary, and *recalls* that the protection of the rights of parliamentarians is a prerequisite to enabling them to protect and promote human rights and fundamental freedoms in their country;
7. *Requests* the Secretary General to convey this decision to the competent authorities, the complainants and any relevant third parties.