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## Iraq

IQ/62 - Ahmed Jamil Salman Al-Alwani

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

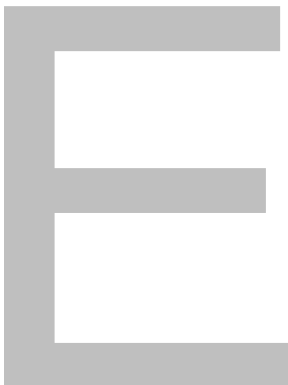
The Committee,

*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 IPU Governing Council at its 197<sup>th</sup> session (October 2015),

*Referring* to the letter of 15 December 2016 from the General Prosecutor of Iraq, as well as to the information provided by the complainants and other reliable sources of information,

*Recalling* the following information on file:

- Mr. Al-Alwani was arrested on 28 December 2013 in Ramadi, in the 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 and charged for terrorist-related crimes under the Iraqi Anti-Terrorism Law; according to the complainants, 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 complainants also stated that Mr. Al-Alwani was held in solitary confinement, subjected to severe torture without access to medical care for several months and forced to make false confessions that were used against him and led to his conviction;
- Mr. Al-Alwani was sentenced to death on 23 November 2014 by the Central Criminal Court of Baghdad for murder and attempted murder, as a result of the deaths of, and injuries sustained by, security forces during the gunfight;
- According to the complainants, Mr. Al-Alwani denied all charges and firmly denied opening fire on the security forces during the trial; he was denied the right to a fair trial and the right to mount an adequate defence, according to the complainants, who alleged that he was denied the right to defend himself, the right to choose his lawyer and that, on three occasions, the lawyers assigned to him were 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;



- Mr. Al-Alwani immediately appealed the first instance verdict, according to the complainants; the appeal remains pending and no further information has been provided about its status; Mr. Al-Alwani is also facing additional charges, including incitement to violence, also punishable by death according to the complainants; the status of these judicial proceedings is, however, unknown;
- The complainants have 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 complainants alleged 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 complainants alleged that Mr. Al-Alwani’s entourage only responded to the gunfire in self-defence;
- 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 location 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;
- According to a member of the delegation of Iraq who appeared before the Committee at the 130<sup>th</sup> 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 130<sup>th</sup> Assembly, the same member of the delegation of Iraq indicated that the Council of Representatives had, at that time, been unable 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;
- According to the two members of parliament from the delegation of Iraq who appeared before the Committee at the 133<sup>rd</sup> IPU Assembly (Geneva, October 2015), the reasons behind Mr. Al-Alwani’s arrest and the subsequent conviction 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-Alwani; this divide had 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 had been stalled due to political pressure; the lack of judicial independence and the political instrumentalization of Iraqi courts required urgent judicial reform, but the reforms initiated to date had not been conducive to any tangible progress; while in detention, Mr. Al-Alwani was severely tortured; authorization for parliamentarians to visit him had been denied, despite a request by the Speaker of the Council of Representatives,

*Considering* that, according to the complainants, Mr. Al-Alwani has been authorized to receive regular monthly visits from his family and lawyers since April 2016; that the Human Rights Committee of the Council of Representatives referred the case to the High Judicial Council in late 2016, requesting the conduct of a retrial; that the High Judicial Council requested Mr. Al-Alwani or his lawyer to file an application in order to initiate new proceedings,

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

*Bearing in mind* that the 2005 Constitution of Iraq 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 a 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 over 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,

1. *Notes with interest* that Mr. Al-Alwani has been authorized to receive regular visits from his family and lawyers since April 2016 and that the Human Rights Committee of the Council of Representatives has submitted a request to the High Judicial Council for a retrial; *wishes* to receive official confirmation of these developments and to be kept informed of the response of the High Judicial Council;
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, or a retrial, to take place promptly and in a manner which fully respects Mr. Al-Alwani's right to a fair trial;

3. *Remains deeply concerned* by allegations that Mr. Al-Alwani was tortured, held in solitary confinement and denied access to medical treatment; *wishes to know* whether these serious allegations have been investigated and to receive detailed information on the actions taken to that end and their outcomes;
4. *Reiterates its prior concerns* about the alleged violation of Mr. Al-Alwani's parliamentary immunity, 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; *again 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. *Is encouraged* to learn from the complainants that the Human Rights Committee of the Council of Representatives has actively engaged in promoting solutions to the case, but *regrets* the lack of response of the Council of Representatives; *encourages* the Council of Representatives and its Human Rights Committee to continue promoting respect for Mr. Al-Alwani's rights and to monitor the situation closely; *reiterates its wish* to receive official information from the Council of Representatives and its Human Rights Committee at the earliest convenience;
6. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainants and any third party likely to be in a position to provide relevant information;
7. *Decides* to continue examining this case.