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Committee on the Human Rights of Parliamentarians

Report on the mission to Iraq 22–24 August 2023

IRQ62 – Ahmed Jamil Salman Al-Alwani

Executive Summary

The Committee on the Human Rights of Parliamentarians of the Inter-Parliamentary Union (IPU) visited Iraq from 22 to 24 August 2023 to discuss the case of former member of the Council of Representatives, Mr. Ahmed Jamil Salman Al-Alwani, who was arbitrarily arrested in the course of a large-scale raid on his home on 28 December 2013, during which several persons were killed and injured. The raid took place against the background of a highly volatile security situation in Iraq.

The Committee welcomes the authorities' openness and commitment to resolving the situation of Mr. Al-Alwani and the efforts made to improve his detention conditions. The Committee also welcomes the steps taken in this regard by the Council of Representatives, particularly its Human Rights Committee, including its efforts to advocate for his release. At the same time, the Committee notes that there are challenges in the practical resolution of the case of Mr. Al-Alwani, which, according to the authorities, requires the family of one of the soldiers who was killed in the raid to withdraw the charges against him and accept financial compensation to enable the implementation of the General Amnesty Law No. 27 of 2016 or the adoption of a special pardon from the President of the Republic. Mr. Al-Alwani has repeatedly denied any responsibility for the killing of the two soldiers, adding that the casualties of the raid on his residence, including the death of his brother, are imputable to the Iraqi security forces, which have used disproportionate force against him and his family, forcing his security detail to act in self-defence.

The Committee also notes that the authorities acknowledged that specific violations had been committed against Mr. Al-Alwani, including the attack against his residence and the killing of his brother, his arrest without a warrant, the breach of his parliamentary immunity, his incommunicado detention for a month and allegations of torture, which have never been investigated. However, despite the existence of these violations and Mr. Al-Alwani's repeated claims denying any responsibility for the killing of the two soldiers, the judicial authorities' concrete actions to resolve this case appear to be strictly limited to the possibility of a tribal settlement. The Committee also notes that the second criminal case against Mr. Al-Alwani, in which he was convicted of inciting sectarian violence under article 4(1) of the Anti-Terrorism Law No. 13 of 2005, lacks legal basis and evidence, as the court had reportedly not provided excerpts of his

speech and disregarded the report of the committee mandated by the Council of Representatives, which had reportedly exonerated Mr. Al-Alwani, considering that his speech did not amount to incitement.

Given the facts at hand, the Committee calls on the Iraqi authorities to release Mr. Al-Alwani promptly and grant him appropriate compensation in light of the flawed legal proceedings, including his confession made under torture and used by the criminal court as a primary source for his conviction and the impunity for the alleged acts of torture, solitary confinement and lack of medical treatment in the early stages of his detention.

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I. Introduction

1. At the request of the Committee on the Human Rights of Parliamentarians of the Inter-Parliamentary Union (IPU) (the Committee), the Council of Representatives of Iraq welcomed the Committee for an official visit to Iraq from 22 to 24 August 2023 to discuss the case of former member of Parliament, Mr. Ahmad Jamil Salman Al-Alwani. The Committee was represented by Mr. Samuel Cogolati (member of the Federal Parliament of Belgium, President of the Committee, and head of the delegation) and Mr. Mushahid Sayed Hussain (member of the Senate of Pakistan). Ms. Boutayna Lamharzi, Human Rights Associate Officer at the IPU, accompanied the Committee.

2. The Committee extends its gratitude to the Iraqi authorities, notably the Council of Representatives of Iraq and the Ambassador Extraordinary and Plenipotentiary Permanent Representative of Iraq to the United Nations Office in Geneva, for facilitating the Committee's first visit to the country and for its cooperation. The Committee met with His Excellency the President of the Republic, the Minister of Justice, the Human Rights Adviser to the Prime Minister, as well as the President of the High Judicial Council, representatives of the Prosecutor General's Office, members of the Council of Representatives and its Human Rights Committee, and the Director General of the Al-Khadimiya maximum-security prison north of Baghdad. The delegation also met with the Deputy Special Representative for Iraq of the United Nations (UN) Secretary-General in the United Nations Assistance Mission for Iraq (UNAMI), Resident and UN Humanitarian Coordinator, and the Head of the European Advisory Mission in Iraq.

3. The Committee visited Mr. Ahmed Jamil Salman Al-Alwani, a former member of the Council of Representatives of Iraq in the Al-Khadimiya maximum-security prison north of Baghdad. Despite the lack of privacy during its visit to Mr. Al-Alwani, the Committee was able to have an open discussion with him regarding his detention conditions and the reasons preventing his release.

4. The Committee also wishes to thank the Ambassador of Pakistan in Iraq for facilitating meetings with the United Nations country team and the Deputy Resident Coordinator, and their staff, as well as the European Advisory Mission in Iraq and thank all stakeholders for the valuable input and perspectives they provided.

II. Origin and conduct of the mission

5. The IPU, the world organization of national parliaments, set up a procedure in 1976 for the treatment of complaints regarding human rights violations of parliamentarians. It entrusted the Committee on the Human Rights of Parliamentarians with implementing that procedure. Since its creation, the Committee has examined cases in over 100 countries and, in many instances, helped to provide those at risk with protection or redress. The Committee comprises 10 members of IPU Member Parliaments, elected by the Governing Council in an individual capacity based on their competence, commitment to human rights and availability.

6. On 28 December 2013, the Committee on the Human Rights of Parliamentarians received a formal complaint concerning the case of Mr. Al-Alwani and initiated a preliminary investigation into the alleged human rights violations that he suffered, including his arbitrary arrest and detention. The Committee has since exchanged correspondence with the Iraqi authorities through the Council of Representatives. It has repeatedly expressed its solidarity with Mr. Al-Alwani by stating that the arrest violated his parliamentary immunity guaranteed under the Iraqi Constitution and that his human rights have been violated contrary to Iraq's international obligations.¹

7. Since the case was referred to the Committee, nine decisions have been adopted, including an emergency decision under Rule 12(4) of its Rules and Procedures.² In its decision of October 2015, the IPU Governing Council, based on the recommendation of the Committee, expressed its wish

¹ The State is a party to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

² Rules and Practices of the Committee on the Human Rights of Parliamentarians. Available at <https://www.ipu.org/about-ipu/structure-and-governance/governing-council/committee-human-rights-parliamentarians>.

to carry out a mission to Iraq to meet with senior officials of the legislative, executive and judicial branches to obtain first-hand information on the case and to discuss a possible satisfactory settlement. Owing to the volatility of the security situation in Iraq at the time of its request and the lack of response from the authorities, the Committee was unable to carry out its mission. At the 146th IPU Assembly (Manama, March 2023), the Committee held a hearing with the Iraqi parliamentary authorities in light of the recent visits carried out by the Human Rights Committee of the Council of Representatives to Mr. Al-Alwani and the steps undertaken to resolve his case. The Committee welcomed the Iraqi authorities' actions with respect to Mr. Al-Alwani's situation. It reiterated its wish for a delegation from the Committee to carry out a mission to Iraq to visit Mr. Al-Alwani and meet with the relevant authorities to promote a satisfactory resolution of his case. On 4 July 2023, the Iraqi authorities accepted the Committee's mission and undertook to facilitate its organization.

8. The Committee met with the following parliamentary, government and judicial authorities, members of the Council of Representatives, representatives of international organizations and complainants:

- **House of Representatives**
 - His Excellency, Mr. Mohammed Rican El-Halbousi, Speaker of the Iraqi Council of Representatives
 - Mr. Ershad Al-Salihi, Chair of the Parliamentary Human Rights Committee Human Rights, and Dr. Wihda Mahmood Fahad, Vice-Chair of the Committee
- **Executive authorities**
 - His Excellency, Mr. Abdul Latif Rashid, President of Iraq
 - Mr. Zaidan Khalaf, the Prime Minister's Adviser for Human Rights
 - Mr. Khalid Shawani, Minister of Justice
- **Judicial authorities**
 - Mr. Faiq Zaidan, President of the Supreme Judicial Council
 - Judge Mr. Najm Abdullah Ahmed, Chief prosecutor
- **Family members and legal counsel of Mr. Ahmed Jamil Salman Al-Alwani**
 - Mr. Al-Alwani's lawyers and family members
 - Mr. Ahmad Al-Alwani in detention
- **International community**
 - Mr. Anders Wiberg, Head of the European Union Advisory Mission in Iraq
 - Mr. Ghulam Mohammad Isaczai, Deputy Special Representative for Iraq of the UN Secretary-General in the UNAMI, Resident and UN Humanitarian Coordinator
 - H.E. Ahmed Amjad Ali, Ambassador of Pakistan in Iraq

III. Outline of the case and IPU follow-up action

9. Mr. Al-Alwani was arrested on 28 December 2013 at 3.45 a.m. in Ramadi, Anbar Province, during a raid on his home by an unknown force without an arrest warrant. The gunfight resulted in casualties, including the deaths of Iraqi security forces and Mr. Al-Alwani's brother, and injuries inflicted upon several members of Mr. Al-Alwani's entourage and security forces. At the time of the raid, the complainants allege that 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 the timing of the raid. It later appeared that the forces that stormed Mr. Al-Alwani's residence were allegedly under the direct orders of the then Prime Minister, Mr. Nouri Al-Maliki.

10. Following his arrest, Mr. Al-Alwani was allegedly exposed to ill-treatment and torture and taken to a secret place of detention until he appeared before the Public Prosecutor of the Central Criminal Court of Baghdad on 27 January 2014. The Council of Representatives officially requested the Government to disclose information about his whereabouts or the charges pending against him but to no avail. Mr. Al-Alwani was also allegedly forced to sign a confession under torture, which has later been used by the criminal court as a primary source for his conviction. In December 2015, Mr. Al-Alwani had reportedly been transferred from the detention centre controlled by the Counter Terrorism Forces located in the International Zone (formerly known as the “Green Zone”), where he had been held since March 2014, to the Al-Khadimiya maximum-security prison north of Baghdad.³

11. On 23 November 2014, the Central Criminal Court sentenced Mr. Al-Alwani, under section 406 of the Iraqi Penal Code No. 111 of 1969, to five life sentences for the attempted murder of Mr. Ihab Mohammad Matar, Mr. Mathna Shamkhi Jabbar, Mr. Ibrahim Mohsen Jasim, Mr. Muhammad Baqir Abbas and of Mr. Hussein Faleh Mashn. The criminal court also sentenced Mr. Al-Alwani, under section 406 of the Iraqi Penal Code No. 111 of 1969, to two death sentences for the murder of the two soldiers, Mr. Ali Obaid Alwan and Mr. Duraid Rahma Yassin. On 10 May 2016, the Central Criminal Court sentenced Mr. Al-Alwani, under article 4(1) of the Anti-Terrorism Law No. 13 of 2005, to death for inciting sectarian fighting between the Iraqi people and security forces during speeches he made at sit-ins in Ramadi, in Anbar Province. Under the General Amnesty Law No. 27 of 2016, Mr. Al-Alwani submitted requests for pardon in all cases, which were subsequently rejected. The appeals are still pending before the court of cassation.

12. The complainants believe that Mr. Al-Alwani's arrest and subsequent detention were in retaliation for his outspoken support of the grievances of the Sunni population and his vocal opposition to the former Iraqi Prime Minister, Mr. Nouri Al-Maliki. The information available suggests that Mr. Al-Alwani was a well-known supporter of the peaceful demonstrations that started in December 2013 in Ramadi to protest against the central government's perceived marginalization and persecution of Sunni Iraqis and the arbitrary use of several laws against Sunni politicians. The complainants stated that, before his detention, Mr. Al-Alwani met with officials from the Anbar Province to defuse tensions between the province and the central government.

13. On 28 April 2017, the UN Working Group on Arbitrary Detention issued an opinion on the case of Mr. Al-Alwani. The working group concluded that Mr. Al-Alwani's arrest and incommunicado detention between 28 December 2013 and 27 January 2014 lacked legal basis and was in violation of Article 9 of the Universal Declaration of Human Rights and Article 9(1) and 9(3) of the International Covenant on Civil and Political Rights, to which Iraq is a party. It also concluded that Mr. Al-Alwani's detention violated his right to freedom of opinion, expression and peaceful assembly guaranteed by Articles 19, 20, and 21 of the Universal Declaration of Human Rights. The working group called the death sentence against Mr. Al Alwani, based on a confession obtained under torture, a “grave miscarriage of justice,” and a violation of Article 6(2) of the international covenant. The working group further underlined that Mr. Al-Alwani did not receive legal assistance during the judicial proceedings, in breach of Article 14(3)(b) of the covenant, and was deprived of his parliamentary immunity, in violation of Article 63(2) of the Iraqi Constitution. The working group requested the Government of Iraq to take the necessary steps to resolve Mr. Al-Alwani's case, immediately release him and grant him all appropriate compensation.

14. Following Mr. Al-Alwani's efforts to resolve the murder cases through a tribal settlement by offering financial compensation to the family of the two soldiers killed during the raid conducted against his residence, the family of one of the soldiers waived its right to seek reparation and dropped the charges in 2018. Efforts were ongoing to persuade the family of the other soldier killed during the raid. Such a settlement could enable the court to review the death sentence against Mr. Al-Alwani.

15. The Committee on the Human Rights of Parliamentarians continued monitoring the case. It increased its dialogue with the Iraqi authorities, including the Council of Representatives, the Minister of Justice and the President of the High Judicial Council. In November 2020, a parliamentary

³ See UN Working Group on Arbitrary Detention Opinion No. 36 (2017) concerning Ahmad Suleiman Jami Muhanna Al-Alwani (Iraq), para. 20.

delegation visited Mr. Al-Alwani in detention to ensure that he was in good health, as he had not received any visits for four months due to the COVID-19 pandemic. The delegation also sought to convey letters of support from the Speaker of the Council of Representatives and several tribal leaders to Mr. Al-Alwani, informing him that his case was still on the agenda and that they were mobilizing efforts to resolve it. In June 2022, a team from the ministry's Human Rights Directorate visited Mr. Al-Alwani in detention to enquire about his physical and mental state.

IV. Information gathered during the mission

1. Meeting with the President of the Republic

- *Presidential pardon*

16. His Excellency Abdul Latif Rashid, President of the Republic, emphasized his commitment to promoting and protecting human rights in Iraq, particularly after a decade of conflict. He wishes Iraq to become a leading country in the region for human rights. As part of his commitments, the President had established a committee to examine and resolve the cases of 8,000 detainees, who were either not charged or had been accused of terrorism-related offences and had completed their sentences but remained in detention. After examining each case with the relevant authorities, they released 6,000 detainees. The committee established by the President of the Republic is reviewing the remaining 2,000 cases with the intention of resolving them. However, the case of Mr. Al-Alwani was not part of the cases examined. This initiative is part of the President's efforts to stop and prevent human rights violations that various parties have committed over the years in Iraq. The President highlighted that Iraq is developing towards an era of peace and stability and should be encouraged by the international community.

17. Regarding the case of Mr. Al-Alwani, the President stated that he required all the information related to the case before he could review it in consultation with the Ministry of Interior and the Ministry of Justice. The Committee provided a brief overview of the case and enlisted the President's support in resolving the case. The Committee was not in a position to discuss a presidential pardon as the President had requested detailed information about the situation of Mr. Al-Alwani.

2. Observations of the parliamentary authorities

- *Parliamentary immunity*

18. The Committee had a fruitful meeting with the Speaker of the Council of Representatives, Mr. Mohammed Rican El-Halbousi, regarding the case of Mr. Al-Alwani. He reiterated his commitment to resolving the issue of Mr. Al-Alwani and thanked the Committee for its continued interest in his case. Mr. El-Halbousi recalled that the Council of Representatives had not voted to lift Mr. Al-Alwani's parliamentary immunity, stating that his arrest and detention violated his parliamentary immunity under Article 63.2(b) of the Iraqi Constitution. He also added that, as a member of parliament, Mr. Al-Alwani's residence should not have been attacked by the Iraqi forces without a warrant.

19. Mr. El-Halbousi also recalled that the Council of Representatives has been monitoring the case of Mr. Al-Alwani since his arrest in December 2013 before the former became the Speaker of Parliament. In this regard, the Council addressed a letter to the IPU to raise its concern about the arrest of Mr. Al-Alwani as it violated his parliamentary immunity. In December 2013, the Council of Representatives requested official information from the executive authorities about Mr. Al-Alwani's location, as no information was available on his place of detention during the early weeks of his arrest.

20. Considering the political dimension of the case, the Speaker of the Council of Representatives is of the view that a political settlement is the best way forward. He recalled that the family of one of the soldiers killed during the raid had agreed to drop the charges. In contrast, the other family refused to do so, despite the generous financial compensation proposed by Mr. Al-Alwani's family. He suggested that all efforts should be directed at this family to understand the reasons preventing them from accepting a settlement in case, which he believes are political.

Mr. El-Halbousi added that, after Mr. Al-Alwani's arrest, Daesh entered the Al-Anbar Province, invading the cities of Ramadi and Fallujah. Mr. Al-Alwani's tribe had fought against Daesh for a year and a half. As a result, the city of Ramadi was the first one to be liberated.

21. Regarding the charges against Mr. Al-Alwani related to speeches he made during the protests in Ramadi, Mr. El-Halbousi recalled that the Council of Representatives had established a committee to investigate the incident. The said committee reportedly exonerated Mr. Al-Alwani and stated in its report that his speeches had not incited sectarian violence and had not insulted Shiite leaders or the Shia community. As such, the case of Mr. Al-Alwani is a miscarriage of justice that should be corrected.

- *Human Rights Committee*

22. The Committee also met with the Chair of the Council of Representatives' Human Rights Committee, Mr. Ershaad Salihi, and his Vice-Chair, Ms. Wihda Al-Jumaili. The Human Rights Committee comprises nine members from different blocs and political parties to reflect Iraq's diversity. According to its working methods, members of the Human Rights Committee alternate their presence between parliament and their constituencies.

23. The Human Rights Committee has been monitoring the case of Mr. Al-Alwani since his arrest in December 2013. Under the guidance of the then Speaker of the Council of Representatives, the Human Rights Committee pushed for the resolution of Mr. Al-Alwani's case. It has also consistently shared the IPU's decisions and communications with the relevant authorities, ensuring a continued monitoring of the case and sustained support from the various speakers of the Council of Representatives and political leaders. Mr. Al-Salihi and Ms. Al-Jumaili also regularly visited Mr. Al-Alwani in detention and met with his family to discuss strategies to release him.

24. The Committee also had the opportunity to further its knowledge about the mandate and the work of the Human Rights Committee. Its chair stated that the parliamentary committee attempts and succeeds in remaining a neutral body defending the interests of all Iraqi citizens regardless of their religious or ethnic background. The Human Rights Committee oversees all ministries' work and can summon ministers and the Prime Minister to appear before its members in the case of alleged human rights violations. The Human Rights Committee also has a broad mandate and focuses on several areas, including detention conditions, and the right to health and education. It also reviews several draft laws submitted by the Government, including those that touch on the right to freedom of expression and freedom of assembly, domestic abuse, children's rights, enforced disappearances and torture. The draft law against torture is a priority for the Council of Representatives as Iraq ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in 2011. The Human Rights Committee is also reviewing a draft anti-discrimination law aimed at protecting the human rights of all citizens and preserving Iraq's diversity. It also expressed its concern regarding climate change and is currently reviewing a draft law in this regard to support the Government's efforts in tackling climate change consequences, which translate into the desertification of several areas in Iraq and the increased scarcity of water supplies. However, the Committee learned that specific draft laws, particularly those related to human rights, were met with resistance from different political forces in parliament. The delay in legislating these laws is partly due to the lack of political will to progress on these issues.

25. The Committee also learned that the Ministry of Human Rights was turned into the National Institute for Human Rights, the work of which is monitored by the Human Rights Committee. The members of the National Institute for Human Rights are appointed by a parliamentary committee of experts from all political parties and chaired by Mr. Al-Salihi. The Human Rights Committee works closely with several international actors, including the United Nations Development Programme, the UNAMI, and the Institute for International Law and Human Rights based in Washington, to strengthen its role as the guardian of human rights.

26. During its visit, the Committee also attended a national dialogue forum on the legal framework for missing persons and victims of enforced disappearance organized by the Council of Representatives and Impunity Watch.

3. Observations of the executive and judicial authorities

- *Death sentences*

27. The Committee met with the Adviser to the Prime Minister on Human Rights, Mr. Zaidan Khalaf, to discuss the case of Mr. Al-Alwani and explore avenues of cooperation between the executive and judicial authorities to resolve his situation. Mr. Khalaf emphasized the Prime Minister's commitment to improving the state of human rights in Iraq by working with the relevant national stakeholders, including the Human Rights Committee of the Council of Representatives, which has been a reliable source of information regarding the case of Mr. Al-Alwani over the years.

28. Mr. Khalaf stated that he was familiar with the case of Mr. Al-Alwani and acknowledged its political dimension, given the circumstances in which it took place back in 2013. He added that the Prime Minister's Office took the necessary steps to ensure the legal safeguards to provide suitable detention conditions for Mr. Al-Alwani. Over the last three years, Mr. Al-Alwani received several visits from family members, members of parliament, members of the Government, and tribal leaders. Mr. Khalaf assured the Committee that the case of Mr. Al-Alwani was a priority for the Prime Minister, and its resolution was also a priority for all the authorities concerned. In this regard, Mr. Khalaf informed the Committee that the Prime Minister's Office had referred more than 1,000 complaints/cases to the human rights court in Karkh to take the appropriate measures after consulting with the Public Prosecutor's Office and that they had suggested including the case of Mr. Al-Alwani. However, the judicial authorities reportedly refused interference by the executive.

29. Mr. Khalaf expressed the Prime Minister's willingness to cooperate with the judicial authorities to ensure that the death sentence against Mr. Al-Alwani was not implemented. He explained that, according to Article 6(2) of the International Covenant on Civil and Political Rights, to which Iraq is a party, "sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime". The charges against Mr. Al-Alwani could be re-examined to ensure that the crimes he allegedly committed were not of grave concern. Mr. Khalaf pledged to set up a meeting with the President of the High Judicial Council to identify avenues of cooperation and the steps that the Prime Minister's Office could take to resolve the case, including a formal request from the Prime Minister to the President of the High Judicial Council to reduce Mr. Al-Alwani's sentence. Mr. Khalaf also pledged to meet with the Adviser to the Prime Minister on Tribal Affairs, Mr. Mohamad Al-Aribi, to discuss avenues of cooperation towards resolving the case.

30. During the meeting, the Committee also learned that the detention facility in which Mr. Al-Alwani is currently being held will be demolished in three months following the instructions of the President of the Republic, who also ordered the demolition of two other detention facilities in Baghdad. Mr. Al-Alwani will, therefore, be transferred to another detention facility. Further information on this point is provided in paragraph 38.

- *Trial proceedings*

31. The Committee also met with the Minister of Justice, Mr. Khalid Shawani, who is also familiar with the case of Mr. Al-Alwani, particularly the legal proceedings and the various death sentences issued against him. Mr. Shawani expressed his dismay concerning the situation. He acknowledged that Mr. Al-Alwani spent an unjustified number of years in detention as his charges were politically motivated, and he was a victim of a sectarian war in Iraq. He pledged to do everything in his power to resolve the case, reiterating the Iraqi authorities' commitment to resolving the case, given the improvement in the political landscape and overall situation in Iraq compared to 2013. He also confirmed that the authorities ensured that Mr. Al-Alwani received privileged treatment in detention, given his status.

32. The Committee learned that the Minister of Justice and the Prime Minister have met on several occasions to discuss the case of Mr. Al-Alwani. They both agreed that the issue was not terrorism-related but rather a criminal case, which could be resolved through two routes: the discovery and submission of new evidence, which would prompt the retrial of the case, or the implementation of

the General Amnesty Law No. 27 of 2016.⁴ However, for the amnesty law to be applicable, the family of the second soldier who was murdered during the raid against Mr. Al-Alwani's residence should drop the charges against him.⁵ Therefore, the authorities favour a tribal resolution of the case, and the Ministry of Justice has a role in promoting such a resolution. The Committee questioned whether the General Amnesty Law could be applicable in light of Mr. Al-Alwani's allegations of torture and mistreatment during the early years of his detention. The Minister of Justice explained that the allegations of torture would not be considered by the court because there is no evidence proving that Mr. Al-Alwani was tortured. The Minister underscored that allegations of torture should have been investigated and documented by a certified medical doctor within the detention facility when they allegedly occurred to establish their veracity.

33. The Committee also met with the President of the High Judicial Council, Mr. Faiq Zaidan, who echoed the Minister of Justice's views regarding the case, particularly about the applicability of General Amnesty Law No. 27 of 2016. Mr. Zaidan also stated that the judicial authorities have deliberately stalled the case before the court of cassation to enable a tribal resolution, which would pave the way for an amnesty. Mr. Zaidan also explained that, according to sections 153 and 154 of the Iraqi Penal Code, both the general amnesty⁶ and the special pardon (amnesty)⁷ require the dropping of charges by the complainant.

34. The Committee asked the Chief Prosecutor, Judge Najm Abdulla Ahmed, whether the Prosecutor General has the power to reopen the case based on the information provided by the Committee and other reliable sources regarding the unfairness of the proceedings in Mr. Al-Alwani's case and the allegations of torture. Judge Ahmed stated that the Chief Prosecutor's Office could provide an opinion on decisions issued by the criminal court with a view to suggesting a retrial if the sentence is a death penalty or life imprisonment only if certain conditions are met following the Iraqi law (for instance the discovery of new evidence) and if the court of cassation has issued a final decision in the case of Mr. Al-Alwani.

4. Meeting with the complainants and Mr. Al-Alwani in detention

- Observations of the complainants

35. The Committee met with the complainants and Mr. Al-Alwani's lawyer to keep abreast of recent legal developments. They confirmed that Mr. Al-Alwani's appeals were pending before the court of cassation. They also added that his trial was marred with blatant irregularities, including the violation of his parliamentary immunity, his allegations of torture, the absence of eyewitnesses testifying to Mr. Al-Alwani killing the two soldiers, and the inconsistencies in the accounts of the prosecution's witnesses. According to the complainants, this compelling evidence should have prompted a mistrial and the release of the former parliamentarian years ago.

36. Recalling the incident in 2013, the complainants stated that the security situation in the Anbar Province was chaotic. Therefore, they had no opportunity to identify the forces that had stormed Mr. Al-Alwani's residence at 3 a.m. They also added that the attack was aggressive as the force attacked other houses nearby, with gunfire and shootings in the street. Almost 50 individuals had stormed Mr. Al-Alwani's residence in addition to a dozen more who had allegedly blocked the road. The complainants later learned that the forces who attacked Mr. Al-Alwani's home were given the orders to raid a house filled with terrorists, which explains the violent shootings that took place and the

⁴ Article 1 of the Iraqi General Amnesty Law No. 27 of 2016, "A general amnesty shall be granted to an Iraqi citizen sentenced to death or other penalties or measures depriving him or her of liberty whether the sentence was issued in person or in absentia and whether it has been issued by the last degree-court or not without affecting the civil, disciplinary liability of the accused".

⁵ Article 3 of the Iraqi General Amnesty Law No. 27 of 2016: "In order to implement the provisions of Articles 1 and 2 of this law, the complainant or the victim's relatives must waive their right before the investigative authority or the relevant court and the payment by the accused of the financial obligations incurred by those covered by the provisions of this law in the interest of the state or persons".

⁶ Section 153(1) of the Iraqi Penal Code: "A general amnesty is issued in accordance with the law and results in the termination of legal proceedings and the quashing of any conviction obtained by means of those proceedings as well as the lapse of all primary, incidental or supplemental penalties and precautionary measures. A general amnesty, has no effect on any penalty previously".

⁷ Section 154(1) of the Iraqi Penal Code: "A special amnesty is issued by Republican decree and the prescribed penalty lapses in whole or in part as a result or is substituted for a lesser penalty prescribed by law".

killing of Mr. Al-Alwani's brother, five of his security detail and the two soldiers. A family member present during the attack recalled that Mr. Al-Alwani was unarmed and locked his family in a room located in the basement. When he heard that security forces were looking for him, he asked them to stop shooting and surrendered himself peacefully. In addition, the complainants claim that, according to a medical report provided in court, the shooting of one of the soldiers was allegedly at short range (less than 70 centimetres), which contradicts the prosecution's statements against Mr. Al-Alwani who, according to his family, was in the basement and unarmed. The details described by the complainants related to the attack were allegedly not considered by the court.

37. The complainants emphasized that Mr. Al-Alwani was a peaceful person who spoke against injustice and terrorism. They also confirmed that when Daesh invaded Iraq, Mr. Al-Alwani's tribe fought alongside the Government's forces for a year and a half to drive them out of the country, demonstrating Mr. Al-Alwani's commitment to peace and his stance against terrorism. Moreover, considering that the cases of several Sunni leaders who were once accused of terrorism in 2013–2014 had been resolved, the complainants fail to understand the reasons preventing Mr. Al-Alwani's case resolution. The complainants also added that Mr. Al-Alwani's tribe paid 500,000 USD to settle the case with the family of the first soldier killed during the raid and stated that the tribe had also tried to resolve the matter with the family of the other soldier killed during the raid by offering generous compensation but to no avail. They believe that his family is being pressured not to settle the case.

38. The Committee also discussed Mr. Al-Alwani's transfer to another detention facility due to the recent decision to demolish the facility where he is currently detained. The complainants wished for him to be transferred to the Sousa prison facility located in the Kurdistan Province, as it would facilitate family visits.

- *Prison visit*

39. The Committee extends its gratitude to the Iraqi authorities, including the Council of Representatives, the Minister of Justice, and the Director General of the Al-Khadimiya maximum-security prison north of Baghdad, for facilitating the meeting with Mr. Al-Alwani. The prison officer brought Mr. Al-Alwani from his cell to the Director General's office, where he usually meets with visitors. Mr. Al-Alwani was not handcuffed and appeared in good health. The visit included the complainants, members of the Human Rights Committee, the Director General of the prison, and other officers. Despite the lack of privacy, given the large number of officers in the room, the Committee held an open dialogue with Mr. Al-Alwani, who appeared to speak freely about his situation and the reasons preventing his release.

40. Mr. Al-Alwani thanked the Committee for its visit and expressed his frustration about his continued detention after 10 years for crimes he did not commit. He recalled the attack against his residence, stating it had resulted from a secret informant's tip allegedly informing the authorities that he was hiding fugitive terrorists in his residence, a fabricated lie to detain him. On 28 December 2013, at 3 a.m., he heard gunfire in his street, and his security officers, whom the Government had provided to ensure his safety as a sitting member of the Council of Representatives, rushed to protect him and his family while stating that the armed men were dressed in military clothing. Mr. Al-Alwani stated that the Governor of Anbar Province had called him two days earlier to warn him about the attack, but he had not believed him. Mr. Al-Alwani, therefore, instructed his security officers not to shoot and said he would talk to the Iraqi security forces to understand why they had raided his residence, given that he was a sitting member of the Council of Representatives and had immunity. As he made his way towards the Iraqi security forces, M. Al-Alwani was allegedly beaten, insulted and accused of being a terrorist before being dragged into a military vehicle to an unknown location. The security forces did not provide an arrest warrant at the moment of his arrest, and his relatives were not given any explanations as to the reasons for the raid or arrest. He also learned that his brother had been killed during the assault.

41. Mr. Al-Alwani was taken to an operation office in Anbar Province, where no legal safeguards had been respected. In March 2014, he was transferred to an "unofficial" detention centre controlled by the Counter Terrorism Forces, located in the "Green Zone" in Baghdad, where he was held for two years in solitary confinement and denied access to visits from his family, lawyers and members of the Council of Representatives.

42. During the first two years of detention in the centre controlled by the Counter Terrorism Forces, Mr. Al-Alwani was allegedly beaten, mistreated and suffered other acts of torture to force him to make a confession. As a result, he was forced by the intelligence officers to sign official documents containing false confessions. Mr. Al-Alwani allegedly lost the sight in his left eye due to his beating. In July 2015, he defied the intelligence officer in charge of his case and asked about the identities of the individuals who tortured him. The intelligence officer ignored his questions, and two days later, the same individuals who tortured him returned to his cell to torture him again in retaliation for his questions. The beating, harassment and lack of visits during those two years took a toll on Mr. Al-Alwani's physical and mental health.

43. On 16 December 2015, Mr. Al-Alwani was transferred to Compound 13 in Baghdad, where he was held for a week in a small cell and was beaten and mistreated. Mr. Al-Alwani stated that he still remembers the faces of his tormentors, who did not bother covering their faces given the then prevailing impunity in Iraq. On 22 December 2015, Mr. Al-Alwani was transferred to the Al-Khadimiya maximum-security prison north of Baghdad. He claimed he was beaten, insulted and mistreated during his first day in this prison. After that, his detention conditions improved, as he started receiving regular visits from his lawyers, family members, and members of the Council of Representatives. The detention facility provided medical care and facilitated his transfer to a hospital in 2021 to undergo surgery on his left eye. He explained that his eye surgery should have taken place in 2015 but, given the security situation, leaving the prison was unsafe as he used to receive death threats while he was in detention in the "Green Zone".

44. Mr. Al-Alwani stated that the Iraqi authorities are aware of the political dimension of his case and that he is an innocent man who had fallen victim to a sectarian divide in the country. He therefore fails to understand the reasons preventing the authorities from releasing him based on the legal irregularities pointed out by his lawyers. He also emphasized the inconsistencies in the accounts given by the prosecution's witnesses during the trial and who are none other than members of the Iraqi security forces that carried the raid against his residence. The first witness allegedly said that Mr. Al-Alwani was holding a rifle and wearing a jumpsuit. The second witness said he was wearing the Iraqi military uniform, while the third witness said he was wearing pyjamas with an empty Kalashnikov rifle. He also added that the Iraqi soldiers injured during the incident were the same individuals who testified against him, and each requested US dollars 100,000 to drop the charges.

45. Regarding the charges of inciting sectarian hatred, Mr. Al-Alwani stated that his speeches had advocated for Al-Anbar to become an autonomous province. He also added that, in 2013, he had opened an investigation into the National Bank of Iraq based on suspicions of corruption as the Chair of the Council of Representatives Finance Committee. According to him, this investigation had inconvenienced several high-ranked individuals and made him an easy target for the Government. Mr. Al-Alwani also recalled that, months before the raid against his residence, he had received a call from the American Embassy warning him about a possible attack, but he had refused to believe it. Given his outspoken views against the policies of the then government led by then Prime Minister Mr. Nouri Al-Maliki, Mr. Al-Alwani suspected he would be the target of a fabricated criminal case. Still, he did not expect the violent raid, the murder of his brother, and his torture and solitary confinement in prison.

46. The Committee later learned from the complainants that Mr. Al-Alwani is convinced that his case remains unresolved because of the intense influence of Mr. Nouri Al-Maliki and the Government of Iran. He also added that he required surgery for his stomach, which can only be performed outside of Iraq, and enlisted the Committee's support in facilitating this surgery.

5. Meeting with the international community

47. The Committee extends its gratitude to His Excellency Ahmed Amjad Ali, Ambassador of Pakistan, Mr. Anders Wiberg, Head of the European Union Advisory Mission in Iraq and his team, and Mr. Ghulam Mohammad Isaczai, Deputy Special Representative of the Secretary-General, Resident and UN Humanitarian Coordinator, for the valuable information they shared regarding the political, security and human rights situation in Iraq.

48. These interlocutors emphasized that the presence of the Committee in Iraq shows the authorities' openness and willingness to put human rights first, including by addressing previous human rights violations. The recent visit of the United Nations High Commissioner for Human Rights to Iraq shortly before the Committee's visit in August 2023 also shows the authorities' commitment to promoting national reconciliation and correcting past abuses. This commitment is illustrated by several government draft laws currently under review by the Council of Representatives to promote women's and children's rights. However, these initiatives were also met with resistance, noting that discussions around human rights ignite political tensions and posturing. The current draft law on the right of freedom of expression and freedom of association reportedly aims to restrict civic space, the anti-prostitution draft law prohibits and punishes same-sex relationships by death, while the word "gender" has been demonized and misused by certain groups as an equivalent for the term "homosexuality" prompting its prohibition and the replacement of the word "homosexuality" with "sexual deviance".⁸

49. The UNAMI pledged to support the work of the Committee by visiting Mr. Al-Alwani soon if they are allowed by the authorities to maintain a spotlight on his case.

V. Findings and recommendations

50. The Committee welcomes the Iraqi authorities' openness to resolve the case of Mr. Al-Alwani and notes with satisfaction that political figures across the board have expressed their solidarity with Mr. Al-Alwani and their willingness to help settle his case using all possible means at their disposal. The Committee wishes to thank the extensive collaboration of the Council of Representatives and, particularly and its Human Rights Committee for facilitating the Committee's mission and ensuring its smooth conduct. The Committee also welcomes the improvement in Mr. Al-Alwani's detention conditions since 2015 and the special treatment he has received these past few years.

51. The Committee recalls that the case of Mr. Al-Alwani took place against a political backdrop of violent internal and sectarian tensions, which had led Iraq into a full-scale war against Daesh and other terrorist groups. The political landscape at the time, the rampant chaos and violence in Anbar Province and other critical areas, and the country's sectarian divide all lend an undeniable political dimension to the case of Mr. Al-Alwani. Informal discussions with various interlocutors also emphasized the role of former Prime Minister Nouri Al-Maliki, who allegedly continues to strongly influence Iraqi politics despite not having an official position within the Iraqi Government. Mr. Al-Maliki's unwillingness to meet with the Committee also adds credibility to the complainant's allegations that the charges against Mr. Al-Alwani were politically and religiously motivated. The Committee is therefore convinced that a political resolution of the case would be the best way forward as it would illustrate Iraq's commitment to promoting human rights by addressing the violations and injustice committed against Mr. Al-Alwani, an Iraqi citizen and former member of the Council of Representatives whose rights should have been protected by the Iraqi constitutional and legal safeguards.

52. The Committee was shocked at obtaining strong confirmation from Mr. Al-Alwani that he has been held in solitary confinement, tortured and denied access to the outside world for two years. The Committee was also concerned with the authorities' reluctance to investigate Mr. Al-Alwani's allegations of torture, considering that any acts of torture should have been reported at the time and documented by a certified doctor. The Committee recalls that Mr. Al-Alwani's detention from December 2013 until December 2015 took place in the absence of all legal safeguards, which should have been observed by the Iraqi authorities. As 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, the State of Iraq has the duty to address and investigate allegations of torture, especially those allegedly committed inside detention centres, given that "allegations of torture and ill-treatment of detainees were frequent in Iraqi places of detention", as emphasized in the report of the UNAMI and the Office of the United Nations Commissioner for Human Rights (OHCHR) on the legal conditions and procedural

⁸ On 8 August 2023, the Iraqi Communications and Media Commission issued a directive ordering a ban on the word gender and instructing media outlets to replace the term "homosexuality" with "sexual deviance" in their published and broadcast language. Reportedly, the decision still requires final approval.

safeguards to prevent torture and ill-treatment.⁹ The Committee also wishes to recall that the UN Committee against Torture (CAT) had expressed concern over the years at the lack of an explicit 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 had called for the Iraqi authorities to ensure that all allegations of torture be investigated promptly, effectively and impartially and that the perpetrators be held personally accountable. The CAT had 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. Based on the information on file, the Committee believes that the authorities could have identified the perpetrators at the time. Considering the information collected, namely Mr. Al-Alwani's statement that he still remembers the faces of his tormentors and possibly the identity of intelligence officers who were in charge of his case, it might still be possible for the authorities to identify the perpetrators and hold them accountable. The Committee, therefore, calls on the Iraqi authorities to investigate Mr. Al-Alwani's allegations of torture immediately and hold accountable those responsible to end the impunity.

53. Regarding the legal proceedings, the Committee repeatedly heard that the fundamental element blocking the resolution of the case was the refusal of the family of the second soldier killed during the raid against Mr. Al-Alwani's residence to drop the charges and accept financial compensation from Mr. Al-Alwani's tribe. According to the authorities, the Iraqi Penal Code and the General Amnesty Law No. 27 of 2016 require the victim's family to drop the charges to settle the case. The Committee learned that such a settlement could pave the way for a pardon or an amnesty on all counts, including those related to inciting sectarian violence. If Mr. Al-Alwani is not amnestied but pardoned fully or partially through a presidential decree, his death sentences might be lifted or commuted into a lighter sentence, suggesting that the years spent in detention could be considered enough for the release of Mr. Al-Alwani in the case of a presidential pardon. However, although it acknowledges the victim's right to reparation and financial compensation pursuant to Iraqi laws, the Committee finds that Mr. Al-Alwani's release cannot only rely on the outcome of the tribal settlement given the serious doubts that his case had complied with primary fair trial and due process guarantees. The Committee also notes that Mr. Al-Alwani's detention can no longer be justified in the current Iraqi political landscape since several interlocutors acknowledged that he was targeted and discriminated against for his Sunni background and political opinions.

54. The Committee fails to understand the reasons preventing the judicial authorities from considering the numerous violations committed against Mr. Al-Alwani, including the breach of his parliamentary immunity, his incommunicado detention in a secret location, allegations of torture that had never been investigated, his confession allegedly signed under torture, which was accepted as a primary source of evidence by the Central Criminal Court, the lack of evidence in the criminal cases and the case related to inciting sectarian violence to declare a mistrial in the case of Mr. Al-Alwani and release him immediately. Moreover, these violations are consistent with the findings and conclusions of the UN Working Group on Arbitrary Detention in its opinion on Mr. Al-Alwani's case (Opinion No. 36/2017), which called on the Iraqi authorities to "release Mr. Al-Alwani immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law."¹⁰

55. The Committee also established that the Council of Representatives (Parliament) had not lifted Mr. Al-Alwani's parliamentary immunity by a majority of votes under Article 63(2)(b) of the Constitution. The Iraqi Parliament had officially requested the Government to provide information on Mr. Al-Alwani's whereabouts or the charges brought against him, and its members were not allowed to visit him in prison. The Committee also established that accusations of inciting sectarian violence had not been supported by any evidence, and a parliamentary committee mandated to investigate the incident reportedly exonerated Mr. Al-Alwani's statements. In addition, Mr. Al-Alwani was arrested in

⁹ UNAMI and OHCHR, "Human Rights in the Administration of Justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment", August 2021.

¹⁰ See UN Working Group on Arbitrary Detention Opinion No. 36 (2017) concerning Ahmad Suleiman Jami Muhanna Al-Alwani (Iraq), para. 114.

his residence after security forces allegedly attacked him in the middle of the night, which rules out the possibility that he was caught *in flagrante delicto*.

56. Although it acknowledges the crucial role played by the Council of Representatives in promoting a satisfactory resolution in the case of Mr. Al-Alwani, the Committee fails to understand why the parliamentary authorities did not undertake an independent inquiry to establish the origin and circumstances of the raid, which had led to the murder of Mr. Al-Alwani's brother and which should not go unpunished. The Committee recalls that the Council of Representatives is entitled to ask the relevant authorities to investigate the circumstances of the raid and make use of its oversight power to request clear answers from the Government. The Committee also calls on the parliamentary authorities to provide it with a copy of the 2013 report exonerating Mr. Al-Alwani's speech.

57. The Committee reiterates that the case of Mr. Al-Alwani should be seen as a national cause of concern to all Iraqi leaders and decision-makers, irrespective of their religious or political affiliation, and calls on the executive authorities in Iraq, political and religious leaders across the board and all members of parliament, regardless of their political affiliation, to stand united for the protection and promotion of human rights by promoting the resolution of his case, uphold his human rights and ensure that he will not be executed as a result of politically motivated charges. Therefore, the Committee calls on the Iraqi authorities to release Mr. Al-Alwani promptly and grant him appropriate compensation in light of the flawed legal proceedings and the impunity for the alleged acts, namely torture, solitary confinement and lack of medical treatment in the early stages of his detention.

58. Given the recent information collected concerning the transfer of Mr. Al-Alwani to another detention facility, the Committee wishes to enlist the support of the Minister of Justice in ensuring that Mr. Al-Alwani is transferred to a detention facility closer to his family to facilitate visits. The Committee also strongly hopes that the Adviser to the Prime Minister on Tribal Affairs will take a leading role in resolving the case of Mr. Al-Alwani and urges the executive and judicial authorities to cooperate fully to bring about a satisfactory resolution in his case.

59. Finally, the Committee wishes to express concern regarding the current draft laws that appear to curtail human rights and contradict Iraq's willingness to promote human rights. The Committee reiterates the IPU's readiness to assist the Iraqi Council of Representatives in strengthening its role as the guardian of its members' human rights and those of all Iraqi citizens by providing capacity-building training and facilitating the exchange of information and best practices with other national parliaments in the region and beyond.

Geneva, September 2023