



# General Assembly

Distr.: General  
14 August 2017

Original: English

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017

#### Opinion No. 36/2017 concerning Ahmad Suleiman Jami Muhanna al-Alwani (Iraq)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 16 January 2017 the Working Group transmitted to the Government of Iraq a communication concerning Ahmad Suleiman Jami Muhanna al-Alwani. The Government replied to the communication on 15 March 2017. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



## Submissions

### *Communication from the source*

4. Ahmad Suleiman Jami Muhanna al-Alwani, born in 1969, is an Iraqi national. Mr. Al-Alwani usually resides in Ramadi, Anbar Province.

### Background

5. The source reports that, in December 2012, ongoing peaceful demonstrations and sit-ins began to be held in Ramadi, Anbar Province, by Iraqi Sunnis protesting against their marginalization under government policies and especially against the discriminatory and abusive use of counter-terrorism measures targeting them. The protraction of those peaceful sit-ins reportedly turned the city into the symbolic centre of the Sunni protest movement countrywide.

6. At the time of those events, Mr. Al-Alwani had been serving his second mandate as a member of the Iraqi Council of Representatives within the parliamentary block Al-Iraqiya, a secular alliance, and acting as head of the Parliamentary Economic and Investment Committee. As a Sunni leader, he had reportedly also been a vocal critic and political opponent of the Government of former Prime Minister Al-Maliki. In addition, he had been well known as a parliamentarian for having strongly and publicly criticized corruption within the Iraqi political leadership.

7. While campaigning ahead of the national elections of 30 April 2014, Prime Minister Al-Maliki had repeatedly threatened to remove the demonstration site and, on 22 December 2013, had accused protesters of “stirring strife” and “sheltering al-Qaeda-linked militants”. However, the protests were reportedly peaceful, and the leaders repeatedly stated that the site was open to police inspection at any time and that no opposition from them to a governmental attempt to search the site had ever been reported.

8. It is in that context that Mr. Al-Alwani was arrested on 28 December 2013, despite his parliamentary immunity protecting him pursuant to article 63.2.b of the Constitution of Iraq.

### Arrest and detention

9. According to the source, on 28 December 2013 at 3.45 a.m., on the direct orders of the Prime Minister’s Office, a task force composed of officers of the Army, Special Weapons and Tactics units and Counter Terrorism Forces — all in military uniforms — stormed Mr. Al-Alwani’s house, firing live bullets. Some of his security officers responded with fire in order to protect Mr. Al-Alwani and themselves. As a result of the attack, Mr. Al-Alwani’s brother, Ali Suleiman, and five of his bodyguards, were killed.

10. The source reports that Mr. Al-Alwani was subsequently arrested and was beaten and insulted while being dragged out of his house. Since the arrest, no arrest warrant has even been shown to Mr. Al-Alwani or his family and the exact reasons for the arrest were not explained to them. Some officials have claimed in the media that he had been “wanted on suspicion of terrorism” but without providing him or his lawyer with an exact description of the incriminating acts and the charges brought against him.

11. According to the information from the source, the Minister for Defence, Saadoun Al-Dulaimi, declared the following day that, if the protests ceased within two days, Mr. Al-Alwani would be released, thus revealing an attempt by the Government to use this arrest as a political tool to shut down the peaceful protests in Ramadi.

12. However, the peaceful protests did not stop and, on 30 December 2013, security forces reportedly started to bulldoze the sit-in site, after having cut off mobile telephone communications and Internet access across Anbar Province. A violent incursion by the Iraqi security forces, which included firing at protesters with live bullets, reportedly left at least 17 people dead. Subsequently, more than 40 members of the Council of Representatives from the Al-Iraqiya bloc resigned, demanding Mr. Al-Alwani’s release and denouncing his arrest as politically motivated.

13. The source reports that, after his arrest, Mr. Al-Alwani was taken to a secret place of detention, where he was held for one month. The authorities systematically refused to provide information to his family and lawyer about his whereabouts or the charges pending against him. The Council of Representatives officially asked the Government to disclose the information to them, but to no avail. His relatives later learned that, while being secretly detained, Mr. Al-Alwani was beaten and subjected to other acts of torture in order to force him to make confessions. As a result, he was forced to sign official documents containing statements that he was not allowed to read.

#### Trial proceedings

14. According to the source, Mr. Al-Alwani reportedly reappeared one month after his arrest when he was presented on 27 January 2014 before the Public Prosecutor of the Central Criminal Court of Iraq in Baghdad. At that time, he had visible marks of torture and was handcuffed and hooded. He was then charged, under article 4 of the Anti-Terrorism Law No. 13 of 7 November 2005, with “assault on military assets and killing and injuring security forces for terrorist ends” for the murder and attempted murder of members of the security forces. That law provides that “anyone who committed, as a main perpetrator or a participant, any of the terrorist acts ... shall be sentenced to death”. The first trial hearing was then held on 9 March 2014 before the Central Criminal Court.

15. Mr. Al-Alwani’s lawyer, Badee Arif Izat, was reportedly never allowed to contact his client or visit him in prison to prepare his defence, but could only briefly talk to him in court, in the constant presence of members of the Iraqi Special Forces.

16. According to the source, in March 2014, Mr. Al-Alwani was transferred to a detention centre controlled by the Counter Terrorism Forces, located in the “Green Zone” in Baghdad, where he was held in solitary confinement and denied access to the outside world. His family, lawyer and members of the Council of Representatives have reportedly not been allowed to visit him in prison.

17. Later that month, while on his way to a meeting with officials from the United Nations Assistance Mission for Iraq (UNAMI), Mr. Al-Alwani’s lawyer was reportedly arrested by a patrol of the Iraqi Special Forces, claiming that he had been “carrying false identity documents”. He was then blindfolded and taken to a secret location within the Green Zone, where he was questioned about his motives for defending Mr. Al-Alwani. After having been kept blindfolded for 12 hours, he was threatened and forced to make a video recording in which he stated that he had not been subjected to torture, before being released.

18. The source reports that, on 23 November 2014, the Central Criminal Court sentenced Mr. Al-Alwani to death for terrorism under article 4 of the Anti-Terrorism Law, on the basis of his confessions extracted under torture and after a heavily flawed trial. In fact, the judge reportedly dismissed all the exculpatory evidence, only considered the version of the facts provided by the security services and refused to hear the defence witnesses. In addition, during the trial, Mr. Al-Alwani’s lawyer was denied the right to cross-examine the witnesses of the prosecution, and his statements denouncing the trial irregularities were dismissed. Finally, the allegations of torture presented by Mr. Al-Alwani were not taken into consideration and no inquiry was initiated in respect of those allegations.

19. Mr. Al-Alwani’s lawyer filed an appeal before the Court of Cassation, which was pending at the time of the submission by the source. On 12 November 2015, a hearing was held but the Court decided to postpone its decision indefinitely.

20. In December 2015, Mr. Al-Alwani was transferred from the detention centre controlled by the Counter Terrorism Forces located in the Green Zone, where he had been held since March 2014, to the Al-Khadimiya prison north of Baghdad. According to the source, he was still not allowed to receive visits from his family or his lawyer. Moreover, access to the detention centre was particularly difficult as it was under the control of the Shia militia groups operating with the support of the government authorities. Mr. Al-Alwani’s family was reportedly concerned about his conditions of detention and fears that he may be subjected to reprisals for his Sunni background.

21. In the light of the above information, the source submits that Mr. Al-Alwani's detention falls within categories I, II and III of the categories applicable to the consideration of cases by the Working Group.

Category I: absence of legal basis justifying the deprivation of liberty

22. Article 9 (1) of the Covenant provides that "no one shall be deprived of his liberty except on the grounds and in accordance with such procedure as are established by law". However, according to the source, Mr. Al-Alwani's detention lacks a legal basis for two reasons: he was secretly detained without charges for one month; and his detention violates Iraqi constitutional law, which provides for immunity from arrest to members of the Council of Representatives.

23. Mr. Al-Alwani was arrested on 28 December 2013 and detained in a secret location until 27 January 2014, when he first appeared before the Public Prosecutor of the Central Criminal Court. During that time, his family, lawyer and members of the Council of Representatives were unable to obtain any information on his whereabouts or on the charges pending against him.

24. The source submits that Mr. Al-Alwani's secret detention from 28 December 2013 to 27 January 2014 therefore represents a violation of articles 9 of the Universal Declaration of Human Rights and of the Covenant and was devoid of any legal basis.

25. Furthermore, as a member of the Council of Representatives, Mr. Al-Alwani was entitled to immunity from arrest and detention, as established under constitutional law. Article 63.2.b of the Constitution prohibits the arrest of a member of parliament during his legislative term, unless the decision to lift the immunity is taken "by an absolute majority of the Council" if accused of a felony, or if the person is caught committing a felony in flagrante delicto.

26. The source reports that the Council of Representatives was, however, never informed of the decision to arrest and detain Mr. Al-Alwani and never took a decision as to whether to lift his immunity. On the contrary, the Council was only able to obtain information about his whereabouts and the charges pending against him after he was first brought to Court on 27 January 2014, one month after his arrest.

27. Given that the constitutional guarantees for parliamentary immunity from arrest and detention were violated in the present case, the source thus submits that the arrest and detention of Mr. Al-Alwani is devoid of legal basis and violates article 9 (1) of the Covenant, falling under category I.

28. The source also wishes to highlight that the Inter-Parliamentary Union (IPU) issued three resolutions regarding the case of Mr. Al-Alwani. In the first resolution, issued in March 2014, it urged the Iraqi authorities to ensure that Mr. Al-Alwani's fundamental rights were fully respected and requested the provision of official information on his whereabouts and that the parliamentary investigative committee be allowed to visit him in detention. In a second resolution, adopted in January 2015, it urged the Iraqi judicial authorities to lift the death penalty and called for investigations to be opened into allegations of violations committed during the investigative phase and trial. In a third resolution, issued in October 2015, it demanded the agreement by the Iraqi authorities to a mission of the Committee of the Human Rights of Parliamentarians in Iraq to gather first-hand information on Mr. Al-Alwani's case and discuss it with the relevant authorities. At the time of the submission by the source, IPU had not yet received a response from the Iraqi authorities.

Category II: deprivation of liberty resulting from the exercise of the rights or freedoms enshrined in the Covenant

29. The source submits that Mr. Al-Alwani has been arbitrarily arrested and detained as a result of his exercise of the right to freedom of opinion and expression. He had reportedly been a vocal critic and opponent of government policies and a prominent supporter of the peaceful demonstrators of Ramadi, which had denounced the government policy of

marginalization of part of the Iraqi population, especially the discriminatory use of abusive counter-terrorism measures against them.

30. According to the source, the fact that the Minister for Defence had proposed to release Mr. Al-Alwani in exchange for dismantling the protest site demonstrated that he had been considered a leader who shared and voiced the concerns of his constituents and that the Government had intended to take advantage of his status to end the peaceful protests. In addition, more than 40 members of the Council of Representatives from the Al-Iraqiya bloc resigned to protest against Mr. Al-Alwani's arrest, requesting his release. The resigning representatives claimed that the arrest had resulted from a political move calculated to benefit Prime Minister Al-Maliki in the 2014 national elections by shutting down his rivals. According to the source, the use of the Anti-Terrorism Law to neutralize political opponents who publicly criticized government policies was common in Iraq, as in the case of Tariq al-Hashimi, the former Vice President and leading member of the Al-Iraqiya coalition, who had been sentenced to death for "terrorism" in absentia on the basis of confessions extracted under torture of his employees.

31. Because Mr. Al-Alwani's arrest was the result of his political affiliation and his condemnation of government policies, the source submits that it represents an unlawful interference with his right to hold opinions and, more specifically, political opinions, as guaranteed by articles 19 of the Universal Declaration of Human Rights and of the Covenant. Therefore, Mr. Al-Alwani's detention falls under category II.

#### Category III: non-observance of international fair trial norms

##### *Violations occurring during the pretrial detention phase*

32. According to the source, Mr. Al-Alwani was arrested without being presented with an arrest warrant or being informed of the reason for his arrest. Furthermore, no arrest warrant was ever provided after the arrest, in violation of article 9 (2) of the Covenant. It is noteworthy that article 17.2 of the Constitution provides that homes may not be entered, searched or put in danger except by a judicial decision and in accordance with the law, and that article 92 of the Iraqi Criminal Procedural Code states that no one may be lawfully arrested without an arrest warrant or order. Both provisions were thus violated in the present case.

33. While neither Mr. Al-Alwani nor his lawyer have been informed of the exact description of the incriminating acts or the charges brought against him, some officials have claimed in the media that he had been "wanted on suspicion of terrorism". The source believes that this constitutes a violation of the right of Mr. Al-Alwani to the presumption of innocence.

34. Furthermore, as he was not allowed to communicate with his family or his lawyer for the length of his detention, Mr. Al-Alwani's incommunicado detention constitutes per se a violation of the right to a fair trial, as he was placed outside the protection of the law for a prolonged period of time.

35. In addition to the denial of his right to challenge the lawfulness of his detention before a judicial authority during the period of pretrial detention, Mr. Al-Alwani's rights to counsel and to prepare his defence were also violated. Indeed, he was prevented from contacting his lawyer, who himself had been subjected to reprisals for representing Mr. Al-Alwani.

##### *Violations of fair trial guarantees committed during the trial phase*

36. The source highlights that, from the first hearing, Mr. Al-Alwani was hooded and handcuffed when presented before the Public Prosecutor, thereby violating the right to a fair and public hearing and the principle of equality of arms and presumption of innocence, as enshrined in article 14 (1) of the Covenant.

37. During the trial, the defence lawyer was prevented from cross-examining witnesses for the prosecution, thus violating the guarantees of the right to defence, as enshrined in

article 14 (3) (b) of the Covenant and article 19.4 of the Constitution, as well as in article 123.b.ii and 144 of the Criminal Procedural Code.

38. In addition, the fact that Mr. Al-Alwani was reportedly tortured while he was secretly detained during the investigation stage and consequently forced to sign official documents without being allowed to read them represents a violation of article 5 of the Universal Declaration of Human Rights and articles 7 and 10 of the Covenant. Moreover, the confessions extracted under torture were reportedly admitted as evidence during his trial and no investigation was opened into his allegations. The source submits that this represents a clear violation of article 14 (3) (g) of the Covenant and article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, it also violates both article 35.2 of the Constitution and article 127 of the Criminal Procedural Code, prohibiting torture and the use of any confession made under duress.

39. Finally, the source underlines that the imposition of the death penalty following a flawed procedure violates article 6 (2) of the Covenant, which provides that the imposition of the death penalty should not be contrary to other provisions of the Covenant. The source also notes that the systematic issuance of death sentences in a flawed judicial system which “presents significant risks of grievous and irreversible carriage of justice” has been denounced by UNAMI as a violation of the right to life. Additionally, the Central Criminal Court is reportedly notorious for seriously failing to meet international standards of due process and fair trial, such as the heavy reliance on confessions obtained under torture or the common denial of the right to defence, as witnessed in the present case. The source highlights that these serious flaws in the administration of justice by the Court are of utmost gravity considering that it has jurisdiction over “terrorism” cases, and that such accusations are systematically used to silence members of the opposition or critics of the Government.

40. Consequently, the source submits that the case of Mr. Al-Alwani demonstrates a non-observance of international fair trial norms, giving his detention an arbitrary character, thereby falling under category III.

#### *Response from the Government*

41. On 16 January 2017, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 17 March 2017 about the current situation of Mr. Al-Alwani, and any comment on the source’s allegations.

42. The Working Group also requested the Government to clarify the legal grounds justifying his continued detention, as well as its compatibility with the obligations of Iraq under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Mr. Al-Alwani’s physical and mental integrity.

43. In its response dated 15 March 2017, the Government transmitted to the Working Group as enclosures the case files of the Central Criminal Court in the two criminal proceedings against Mr. Al-Alwani (No. 109/C1/2014 of 23 November 2014 and No. 607/C1/2016 of 10 May 2016). The Government did not elaborate on the documents other than stating that they constituted the reply of the competent authority with regard to Mr. Al-Alwani’s case.

#### *Central Criminal Court of Iraq: Decision No. 109/C1/2014 of 23 November 2014*

44. The Government submits that, according to the first case file, a three-member panel of judges convened on 22 November 2014 for trial in accordance with the Anti-Terrorism Law No. 13 of 2005. The Court convened for the trial held in public, in the presence of the General Prosecutor, Mr. Al-Alwani and his lawyer. The Court officially charged Mr. Al-Alwani with the murder of Ali Obeid Alwan and the attempted murder of Ibrahim Mohsen Jassem and Mothana Shamkhi Jibar. Mr. Al-Alwani denied the charges. The Court recorded the testimonies of the defence witnesses, concluded the proceedings and issued its judgment.

45. The Government contends that, according to the facts of the case summarized in the judgment, anti-terrorism military forces had been dispatched to Anbar Province to execute arrest warrants issued for terrorism charges against Mr. Al-Alwani and his brother, Ahmad Suleiman al-Alwani, on the basis of intelligence reports about their presence with two other fugitives in Mr. Al-Alwani's residence. Upon arrival, the military forces came under intense gunfire from the house. The commander called upon those inside to cease firing and identified his forces as the Iraqi army, but they continued to take fire. The military forces had to fire back and storm the residence.

46. The clashes inside the house and in the yard reportedly caused multiple deaths and injuries, including the persons named in paragraph 44 above. One of the shooters, who was disguised as a woman and who later turned out to be Mr. Al-Alwani, was arrested in possession of an empty Kalashnikov rifle. Four grenades and three additional rifles were also found in the house.

47. The seized rifles were sent to the Directorate of Criminal Evidence Investigations. According to the Directorate, the rifles had recently discharged smokeless gunpowder, including the one used by Mr. Al-Alwani. The Directorate reportedly further stated that the key elements in the discharge of weapons had been discovered on Mr. Al-Alwani's clothes. The Government contends that the two reports clearly indicated that Mr. Al-Alwani had fired at the murdered and the two injured persons.

48. The judgment of the Court included that it had heard the testimonies of the witnesses in the present and other separate cases. Those statements had been registered during the investigation. The witnesses affirmed that Mr. Al-Alwani had taken part in shooting at the military forces.

49. The Court examined the judicial arrest warrants that the military forces had executed, including the one for Mr. Al-Alwani. It also reviewed Mr. Al-Alwani's statements during the investigation and proceedings, in which he confessed that he had been present at the crime scene and that his brother had been wanted because of a terrorist charge against him. The Government claims that Mr. Al-Alwani also confessed to purchasing prohibited weapons but denied shooting at the military forces.

50. According to the Government, the Court therefore found Mr. Al-Alwani guilty on the charge of murder and the two charges of attempted murder. The Court sentenced Mr. Al-Alwani to death by hanging for the crime of murder, and Mr. Al-Alwani's detention period between 28 December 2013 and 22 November 2014 was taken into consideration. The Government contends that Mr. Al-Alwani and his lawyer were given the right to appeal to the Federal Court of Cassation within 30 days from the issuance of the judgment. The Court also handed down to Mr. Al-Alwani two life sentences, for the attempted murder of Mothana Shamkhi Jibar and the attempted murder of Ibrahim Mohsen Jassem. The Court ordered the seized weapons to be confiscated and deposited by the competent military authorities after the finalization of the verdict. The civil plaintiffs, the injured and the Counter Terrorism Forces were granted the right to ask for compensation after the finalization of the verdict. The verdict was issued, read and explained in public on 23 November 2014.

Central Criminal Court of Iraq: Decision No. 607/C1/2016 of 10 May 2016

51. The Government also submits that, according to the second case file, a three-member panel of judges convened on 10 May 2016 for trial in accordance with the Anti-Terrorism Law No. 13 of 2005. The court convened in public in the presence of the General Prosecutor, Mr. Al-Alwani and his lawyer.

52. The Court charged Mr. Al-Alwani with inciting violence against the security forces and the Iraqi people and using violence and threats to stir up sectarian strife or civil war or sectarian infighting with his speech at the sit-in square in Ramadi, in accordance with the provisions of article 4 (1) read in conjunction with article 2 (4) of the Anti-Terrorism Law No. 13 of 2005. Mr. Al-Alwani reportedly denied the charge. After hearing the prosecutor and defence attorney read out their statements, the Court concluded proceedings and issued its judgment.

53. The Government contends that, according to the facts of the case summarized in the judgment, Mr. Al-Alwani gave speeches at the so-called sit-in squares in Ramadi, Anbar Province, in which he incited violence against the security forces and the Iraqi people and used violence and threats to stir up sectarian strife or civil war or sectarian infighting with the aim of destabilizing the nation for terrorist purposes.

54. According to the Government, the Court admitted as evidence Mr. Al-Alwani's confessions stating that he had made hate speeches, as well as the confession of the defendant Karim Shaker in his capacity as a witness supported by DVDs and photographs showing the sit-in area, the incitement by Mr. Al-Alwani of the people to attack security forces and his encouragement of sectarian strife. The Government claims that the evidence was sufficient for the Court to convict Mr. Al-Alwani, and that he had confessed that he had given speeches inciting sectarian violence and strife and murder of security forces at all stages of the investigation, preliminary and judicial, and before the Court. The Court therefore convicted him of violating the provisions of article 4 (1) read in conjunction with article 2 (4) of the Anti-Terrorism Law No. 13 of 2005.

55. The Court subsequently sentenced Mr. Al-Alwani to death by hanging for inciting violence against the security forces and the Iraqi people and using violence and threats to stir up sectarian strife or civil war or sectarian infighting with his speech at the sit-in square in Ramadi, in accordance with the Anti-Terrorism Law of 2005. Mr. Al-Alwani and his lawyer were given the right to appeal to the Federal Court of Cassation within 30 days from the issuance of the judgment. The verdict was issued, read and explained in public on 10 May 2016.

*Further comments from the source*

56. The response received from the Government of Iraq concerning the two judgments by the Central Criminal Court was transmitted to the source for comments on 16 March 2017. In its comments of 10 April 2017, the source first argues that the second judgment (No. 607/C1/2016 of 10 May 2016) was not relevant to the present submission to the Working Group, but it chose to clarify further the allegations presented in that judgment.

57. The source points out that the judgment of 10 May 2016 was vague as it did not clearly specify facts and occasions relating to the speeches of Mr. Al-Alwani in which he allegedly incited violence, but instead merely stated that he had given speeches at the so-called sit-in squares in Ramadi, Anbar Province. The source adds that a parliamentary committee mandated to investigate Mr. Al-Alwani's alleged hate speech during the Al-Anbar protests had exonerated him.

58. The source also recalls that Mr. Al-Alwani was arrested on 28 December 2013 in the context of the ongoing protests and that, the following day, the Minister for Defence declared that if protests were to cease within two days, Mr. Al-Alwani would be released. The source reiterates that this declaration revealed the intention of the Government to use Mr. Al-Alwani's arrest as a tool to shut down the peaceful protests in Ramadi. As the protests continued, on 30 December 2013, security forces started to bulldoze the sit-in site, and the Iraqi security forces reportedly used violence to repress the protest, firing live bullets at the protesters, leaving at least 17 people dead. The source also repeats its argument in paragraph 30 above with regard to the resignation of more than 40 members of the Council of Representatives from the Al-Iraqiya bloc.

59. According to the source, it was therefore clear that the charges of incitement to hatred and violence against Mr. Al-Alwani had been completely politically motivated, and that he had been sentenced for his exercise of the right to freedom of opinion and expression, especially in the light of the fact that he had been protected by parliamentary immunity.

60. The source further adds that the Central Criminal Court sentenced Mr. Al-Alwani to death for the mere act of "incitement" in accordance with the provisions of article 4 (1) read in conjunction with article 2 (4) of the Anti-Terrorism Law No. 13 of 2005. The source submits that this was a violation of article 6 (2) of the Covenant, given that "incitement" does not qualify as a "most serious crime", the only type of crime for which capital punishment is allowed under that article.



61. Moreover, the source notes that the vaguely worded Anti-Terrorism Law of 2005 came under criticism from the Human Rights Committee for its broad definition of terrorism. The Committee recommended that counter-terrorism measures be restricted in order to be fully compatible with the Covenant (see CCPR/C/IRQ/CO/5, para. 9).

62. With regard to the first judgment (No. 109/C1/2014 of 23 November 2014), the source acknowledges that it concerned the facts it had referred to in its initial submission. In that judgment, the Central Criminal Court sentenced Mr. Al-Alwani to death on 23 November 2014 in accordance with the provisions of article 406 (1) (h) of the Criminal Procedural Code rather than article 4 of the Anti-Terrorism Law.

63. The source recalls that, on 28 December 2013, a task force composed of officers of Special Weapons and Tactics units and the Counter Terrorism Forces stormed Mr. Al-Alwani's house, firing live bullets. Contrary to the judgment, the source submits that the security forces did not provide any clear explanation as to their identity. Mr. Al-Alwani's security guards opened fire in response to an armed attack by an unknown force, solely for the purpose of protecting Mr. Al-Alwani and themselves.

64. The source also states that, contrary to the assertion made in the judgment that military forces had been dispatched to Anbar Province to execute arrest warrants, Mr. Al-Alwani was not provided with an arrest warrant at the moment of his arrest, nor were his relatives given any explanations as to the reasons for the raid or arrest.

65. As to the findings in the judgment that four grenades and three more rifles were found inside the house, the source reasons that this was only logical given that Mr. Al-Alwani had been provided with a protection unit, evidently well-armed, by the Government as a sitting member of the Council of Representatives.

66. With regard to Mr. Al-Alwani's supposed "confessions" cited in the judgment, the source further notes that the judgment ignored the fact that he was forced to sign them under torture without even reading them beforehand.

67. The source further contends that the judgment made reference to several other pieces of evidence in addition to Mr. Al-Alwani's confessions but dismissed all the exculpatory evidence. The source argues that the Court simply accepted at face value the version of events provided by the Government without even hearing from the defence witnesses. The source also submits that scientific experts mandated to analyse forensic or other type of evidence in Iraq could not be considered independent as they reportedly routinely confirm the allegations made by the prosecution.

68. The source adds that the response from the Government lacked information rebutting the allegations of violations of fair trial rights, such as Mr. Al-Alwani's lengthy incommunicado detention and the denial of his right to a defence. The Government also failed to provide information concerning the serious allegations of harassment against Mr. Al-Alwani's first lawyer, Badee Arif Izat, who reportedly withdrew from the case as a consequence.

## Discussion

69. At the outset, the Working Group expresses its appreciation to both the source and the Government for their submissions in relation to the arrest, conviction and imprisonment of Mr. Al-Alwani, as well as their political and legal context.

70. The Working Group will consider in turn each of the categories applied by it, mindful that it is entitled to assess the laws and proceedings of the court to determine whether they meet the relevant rules and standards of international law.

71. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

72. The Working Group recalls that, where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he or she was

entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.<sup>1</sup>

#### Category I

73. The Working Group will first consider whether the deprivation of liberty of Mr. Al-Alwani falls under category I of the categories applicable to the cases under consideration by the Working Group.

74. The source has alleged that, following a gunfire battle, in which his brother and five of his bodyguards were killed, Mr. Al-Alwani was arrested on 28 December 2013 without being presented with an arrest warrant or being informed of the reasons for his arrest. The source has also alleged that, although some officials claimed in the media that Mr. Al-Alwani had been “wanted on suspicion of terrorism”, they failed to provide him or his lawyer with an exact description of the incriminating acts or charges brought against him. In addition, on 27 January 2014, one month after his arrest, Mr. Al-Alwani first appeared before the Public Prosecutor of the Central Criminal Court, where he was charged with “assault on military assets and killing and injuring security forces for terrorist ends” for the murder and attempted murder of members of the security forces under article 4 of the Iraqi Anti-Terrorism Law No. 13 of 2005.

75. While the judgment (No. 607/C1/2016 of 10 May 2016), as transmitted by the Government to the Working Group, stated that the security forces had been dispatched to Mr. Al-Alwani’s residence to execute arrest warrants for him and his brother, the Government has not substantiated its contention in order to refute the *prima facie* allegations put forward by the source.

76. The Working Group finds that the Government has thus failed to take the necessary formal procedures to establish the legal basis for Mr. Al-Alwani’s arrest by obtaining a judicially approved warrant. The Working Group further observes that his subsequent incommunicado detention for a period of one month without being presented before the judge is equally wanting in legal foundation, in violation of article 9 (3) of the Covenant.

77. In that respect, the Working Group notes with deep concern a series of cases over the past few years in which the Government of Iraq has subjected its citizens and foreign nationals to secret detention or incommunicado detention.<sup>2</sup> Such practices of incommunicado detention effectively place the victims outside the protection of the law and deprive them of any legal safeguards thereby seriously curtailing their ability to challenge their detention. The Working Group in its practice has always consistently argued that holding persons incommunicado breaches the right to challenge the lawfulness of detention before a judge.<sup>3</sup>

78. In the light of the foregoing, the Working Group concludes that Mr. Al-Alwani’s arrest and incommunicado detention between 28 December 2013 and 27 January 2014 lacks a legal basis in violation of article 9 of the Universal Declaration of Human Rights and article 9 (1) and 9 (3) of the Covenant, falling under category I.<sup>4</sup>

79. Furthermore, the Government has failed to take the necessary formal procedures to establish the legal basis for the arrest and detention of a sitting member of the Council of Representatives. In the present case, it is evident that Mr. Al-Alwani was denied his immunities as a member of the Iraqi Parliament, in view of article 63 (2) of the Constitution.

<sup>1</sup> See *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, International Court of Justice Reports 2010, p. 661, para. 55; and opinions No. 41/2013, para. 27, and 59/2016, para. 61.

<sup>2</sup> See opinions No. 29/2016, No. 20/2016 and No. 5/2014.

<sup>3</sup> See, e.g., opinions No. 53/2016 and No. 56/2016.

<sup>4</sup> See opinion No. 39/2016, para. 45.

80. The Working Group recalls that article 9 (1) of the Covenant states that: “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. Therefore, for deprivation of liberty to be considered lawful or not arbitrary, the previously established legal procedure must be respected.<sup>5</sup> In that context, the Human Rights Committee has stated that, as part of the procedures for carrying out deprivation of liberty, officials authorized to arrest should be identified.<sup>6</sup>

81. The purpose of parliamentary immunity and the procedure for withdrawing it prior to the detention or prosecution of lawmakers is to protect the legislative process from judicial abuses. Against that backdrop, in countries whose laws establish specific grounds and a special procedure for the deprivation of liberty and/or prosecution of lawmakers, those standards specify “such grounds and in accordance with such procedure as are established by law”. As mentioned above, when the legal order requires the withdrawal of immunity as a precondition for depriving a person of liberty, that requirement must be observed. Once immunity has been withdrawn, the authorities are empowered to order a person’s detention. Failure to withdraw immunity results in arbitrary detention, as the detention was not ordered by an authorized judicial official and it constitutes a violation of the right of due process in criminal proceedings.

82. Parliamentary immunity can be divided into the privilege from legal actions for statements made in the exercise of parliamentary functions (parliamentary non-accountability) and the privilege of personal immunity from deprivation of liberty for criminal charges (parliamentary inviolability) within the domestic jurisdiction.<sup>7</sup> The two privileges roughly correspond to the functional immunity and personal immunity accorded to foreign state officials in international law.

83. Parliamentary inviolability has indeed served long as the bulwark against the arbitrary arrest or detention of the people’s elected representatives by other State organs. However, unfortunately, there have been numerous instances in the past of legislators facing various forms of persecution, including arbitrary deprivation of liberty.<sup>8</sup> The circumstances surrounding Mr. Al-Alwani’s arrest and detention amply justify the guarantee of parliamentary inviolability enshrined in national constitutions, including that of Iraq, and in article 9 (1) of the Covenant.

84. As is customary, parliamentary inviolability under the Iraqi Constitution is not absolute. A member of the Council of Representatives may be arrested if the Council lifts the immunity by a majority vote or if he is caught in flagrante delicto. The Government could therefore have legally based the arrest and detention of Mr. Al-Alwani, a member of the Council of Representatives, on those exceptional grounds.

85. However, in the present case, it cannot be said that Mr. Al-Alwani was caught in flagrante delicto in the commission of “assault on military assets and killing and injuring security forces for terrorist ends”. Instead, security forces reportedly stormed his residence in the middle of the night.

86. It also cannot be said that the Council of Representatives voted by an absolute majority to lift Mr. Al-Alwani’s personal immunity in accordance with article 63 (2) (b) of the Constitution. On the contrary, the Council has officially asked the Government for information regarding his whereabouts or charges against him to no avail and its members have not been allowed to visit him in prison.

<sup>5</sup> See Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 11.

<sup>6</sup> *Ibid.*, para. 23.

<sup>7</sup> See “Parliamentary Immunity: Background Paper prepared by the Inter-Parliamentary Union”, United Nations Development Programme Initiative on Parliaments, Crisis Prevention and Recovery in association with the Inter-Parliamentary Union (September 2006). Available from [www.agora-parl.org/sites/default/files/UNDP-IPU%20-%20Parliamentary%20Immunity%20-%202006%20-%20EN%20-%20Parliamentary%20Institution.pdf](http://www.agora-parl.org/sites/default/files/UNDP-IPU%20-%20Parliamentary%20Immunity%20-%202006%20-%20EN%20-%20Parliamentary%20Institution.pdf).

<sup>8</sup> See IPU decisions on human rights cases by the Governing Council and the Committee on the Human Rights of Parliamentarians, available from [www.ipu.org/iss-e/hr-cases.htm](http://www.ipu.org/iss-e/hr-cases.htm).

87. The Working Group consequently finds that the deprivation of liberty of Mr. Al-Alwani, in the absence of the implementation of the corresponding procedure for the removal of his immunity, was carried out in violation of applicable Iraqi law under its Constitution as well as legal standards deriving from international instruments. The Working Group therefore concludes that his deprivation of liberty is in violation of the rights set out in article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant. As such, it also adds weight to the view that the deprivation of liberty of Mr. Al-Alwani falls under category I.

### Category III

88. With regard to category III, the Working Group will now consider whether the deprivation of liberty of Mr. Al-Alwani is in violation of the international norms of due process and guarantees to a fair trial, in particular articles 3, 5, 6, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 7, 9, 10 and 14 of the Covenant. The relevant yet not exhaustive factual and legal considerations, which have not been credibly disputed by the Government, are as follows:

(a) On 28 December 2013, Mr. Al-Alwani was arrested without an arrest warrant, in violation of the national procedure established by law, including article 17 (2) of the Constitution and article 92 of the Criminal Procedural Code (article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant);

(b) Mr. Al-Alwani was not brought promptly before a judge, but instead held incommunicado at a secret place for one month (see para. 76 above), which effectively nullified his right to recognition everywhere as a person before the law (articles 6 and 9 of the Universal Declaration of Human Rights and articles 9 (3), 9 (4) and 16 of the Covenant);

(c) Mr. Al-Alwani's right to presumption of innocence was violated as some officials claimed in the media that he had been "wanted on suspicion of terrorism"<sup>9</sup> (article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant);

(d) Mr. Al-Alwani was interrogated without the presence of his lawyer in violation of article 19 (4) of the Constitution and articles 123 (b) (2) and (c) and 144 of the Criminal Procedural Code ensuring the right to an attorney in all phases of investigation and trial<sup>10</sup> (articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) and (d) of the Covenant);

(e) Mr. Al-Alwani was not allowed to contact or receive visits from his lawyer to prepare his defence but could only briefly talk to him in court in the constant presence of members of the Iraqi Special Forces, which violated his right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing (articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) and (d) of the Covenant);

(f) The experience of Mr. Al-Alwani's first lawyer, Mr. Izat, who was arrested and taken by security forces to a secret location and questioned for 12 hours while blindfolded, severely violated Mr. Al-Alwani's right to defend himself through legal assistance of his own choosing. The Government did not provide any information with regard to the allegations of harassment against the lawyer, who eventually withdrew from the case (article 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) and (d) of the Covenant);

<sup>9</sup> It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. See Human Rights Committee, general comment No. 35, para. 30. See also Human Rights Committee, *Gridin v. Russian Federation*, Communication No. 770/1997, Views adopted on 20 July 2000, paras. 3.5 and 8.3.

<sup>10</sup> Human Rights Committee, *Bondar v. Uzbekistan*, Communication No. 1769/2008, 25 March 2011, para. 7.4.

(g) Mr. Al-Alwani was forced to sign a confession under torture without being able to read the content. In addition, the confession was accepted as a primary source of evidence in his conviction by the Central Criminal Court (articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) and (3) (g) of the Covenant);

(h) The Court of Cassation postponed its decision indefinitely after a hearing on 12 November 2015. Furthermore, a decision has reportedly still to be made, more than three years after the initial arrest of Mr. Al-Alwani, in violation of his right to be tried without undue delay (article 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (c) of the Covenant).

89. The Working Group underlines that the use of confessions extracted from torture is prohibited. The Working Group concurs with the Human Rights Committee, when it stated, in paragraph 41 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, that:

... article 14, paragraph 3 (g), guarantees the right not to be compelled to testify against oneself or to confess guilt ... A fortiori, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence ... .

90. The Working Group takes note of the judgment by the International Court of Justice in the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, in which the Court expressed the opinion that the prohibition of torture was part of customary international law and it had become a peremptory norm (*jus cogens*) (para. 99).<sup>11</sup> The Working Group further notes that the prohibition of torture is codified in article 5 of the Universal Declaration of Human Rights and articles 7 and 10 of the Covenant, and in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

91. The Working Group notes that the death sentence passed against Mr. Al-Alwani on the basis of a confession extracted under torture is a particularly grave miscarriage of justice and additionally engages violation of article 6 (2) of the Covenant, stipulating that a death sentence may be imposed only for “the most serious crimes” and only if it is not contrary to the provisions of the Covenant. According to the safeguards guaranteeing protection of the rights of those facing the death penalty, capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.<sup>12</sup> This is hardly the case in relation to the trial and conviction of Mr. Al-Alwani.

92. The Working Group urges the Government to adopt effective measures to guarantee that coerced confessions or statements are inadmissible in practice, that the burden of proof is on the prosecution and the courts where there is an allegation of a statement made under torture and that sanctions are taken against judges who fail to respond appropriately to allegations of torture raised during judicial proceedings in accordance with recommendations of the Committee against Torture (see CAT/C/IRQ/CO/1, para. 22).

93. With regard to legal assistance, the Working Group notes that Mr. Al-Alwani was interrogated without the presence of his lawyer and was not allowed to contact or receive visits from his lawyer to prepare his defence. The Working Group underlines that denial of legal assistance is a violation of article 14 (3) (b) of the Covenant and principle 17.1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of their Liberty to Bring Proceedings Before a Court.

<sup>11</sup> See [www.icj-cij.org/files/case-related/144/144-20120720-JUD-01-00-BI.pdf](http://www.icj-cij.org/files/case-related/144/144-20120720-JUD-01-00-BI.pdf).

<sup>12</sup> The safeguards guaranteeing protection of the rights of those facing the death penalty, approved by the Economic and Social Council in its resolution 1984/50 of 25 May 1984, para. 4.

94. The Working Group also notes with serious concern that the first lawyer of Mr. Al-Alwani was reportedly harassed by security forces and eventually withdrew from the case, in violation of his client's right to defend himself through legal assistance of his own choosing. The Working Group underlines that it is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedies whenever a violation still occurs. The Working Group recalls in particular that principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of their Liberty to Bring Proceedings Before a Court states that "[l]egal counsel shall be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment".<sup>13</sup>

95. In the light of the foregoing, the Working Group concludes that the non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by Iraq, is of such gravity as to give the deprivation of liberty of Mr. Al-Alwani an arbitrary character, falling under category III.

96. Given the concerns expressed in the present opinion in relation to the violation of fair trial rights, the Working Group recalls the various resolutions of the General Assembly<sup>14</sup> in which the Assembly called upon States that still maintain the death penalty to establish a moratorium on executions with a view to abolishing it.

#### Category II

97. The Working Group will now consider whether Mr. Al-Alwani's arrest and detention resulted from his legitimate exercise of his human rights and fundamental freedoms, as stated in category II of the categories applicable to the consideration of cases by the Working Group.

98. The Working Group notes that, from December 2012, Iraqi Sunnis had reportedly been holding peaceful demonstrations and sit-ins in Ramadi, Anbar Province, against their marginalization under government policy, including the discriminatory and abusive use of counter-terrorism measures targeting them.

99. The Working Group further considers the fact that Mr. Al-Alwani, in his capacity as a Sunni opposition member of the secular Al-Iraqiya bloc and head of the Parliament's Economic and Investment Committee, was a vocal and well-known critic of former Prime Minister Al-Maliki's alleged corruption and sectarian policies.

100. Given the peaceful nature of the demonstrations and Mr. Al-Alwani's political activism, the Working Group finds that Mr. Al-Alwani's second trial, conviction and death sentence (No. 607/C1/2016 of 10 May 2016) for his speeches at the sit-in square in Ramadi further violated his right to freedom of expression and peaceful assembly. Although the judgment claims that Mr. Al-Alwani had incited violence and terror with his speeches, there is no description let alone evaluation of the details of his speech; it is not even clear when or where he spoke or to whom. A parliamentary committee mandated to investigate the incident reportedly exonerated Mr. Al-Alwani's speech, and the Government has failed to question it in its response.

101. In addition, Mr. Al-Alwani's conviction, under the Anti-Terrorism Law No. 13 of 2005 for his speeches at the sit-in square in Ramadi, raises a particular concern about the vagueness of the legislation.

102. Vaguely and broadly worded laws have a chilling effect on the exercise of the right to freedom of expression, with the potential for abuse. In that vein, the Working Group notes that the Human Rights Committee raised concern at the broad definition of "terrorism" in the Anti-Terrorism Law, which is susceptible to wide interpretation, and

<sup>13</sup> See also opinion No. 14/2017, para. 55.

<sup>14</sup> General Assembly resolutions 62/149 (2007), 63/168 (2008), 65/206 (2010) and 67/176 (2012).

urged the Government to take the steps necessary to address the breadth of the definition of terrorism (see CCPR/C/IRQ/CO/5, paras. 9-10).

103. The Working Group has warned from its early years that anti-terrorism laws “by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike and thereby increase the risk of arbitrary detention” with the consequence that “[l]egitimate democratic opposition, as distinct from violent opposition, becomes a victim in the application of such laws” (see E/CN.4/1995/31, para. 25 (d)). The Working Group therefore concludes that Mr. Al-Alwani’s deprivation of liberty resulted from the violation of his right to political participation.

104. In view of the circumstances, the Working Group concludes that Mr. Al-Alwani’s arrest and detention resulted from the exercise of his right to freedom of opinion and expression and of peaceful assembly, guaranteed by articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 25 of the Covenant, falling within category II of the categories applicable to the consideration of cases submitted to the Working Group.

#### Category V

105. The Working Group will now examine whether Mr. Al-Alwani’s deprivation of liberty constitutes illegal discrimination under international law, falling under category V.

106. The Working Group notes that Mr. Al-Alwani has reportedly been held at the Al-Khadimiya prison under the control of Shia militia groups operating with the support of the governmental authorities since March 2014 without access to his family or lawyer and where he is feared to be subjected to reprisals because of his Sunni background.

107. The Working Group is of the view that Mr. Al-Alwani’s flawed arrest, trial, conviction and death sentence is part of an attempt by the Government to suppress the legitimate criticism of widespread corruption and the grievances generated by its discriminatory and abusive use of counter-terrorism measures to marginalize its Sunni citizens. The proposal by the then-Minister for Defence, Saadoun al-Dulaimi, to release Mr. Al-Alwani in exchange for the end of the Ramadi protest adds credibility to the charge of religiously or politically motivated persecution.<sup>15</sup> The Working Group believes that the circumstances surrounding the deprivation of liberty of Mr. Al-Alwani also strongly suggest that he was targeted and discriminated against for his Sunni background and political opinions and activities.

108. The Working Group notes that Mr. Al-Alwani’s arrest occurred four months before the national elections were to take place, and that more than 40 parliamentarians from the opposition Al-Iraqiya bloc resigned in protest. That timing meant that he could not campaign effectively for himself or his colleagues to be elected, and the electors could thus not freely form their opinion or choose their leaders.

109. Given the above observations, the Working Group considers that Mr. Al-Alwani’s deprivation of liberty constitutes a violation of article 2 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant on the grounds of discrimination based on religion and political opinion that aimed at and resulted in ignoring the equality of human beings, falling under category V.

110. The Working Group notes that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the fundamental rules of international law may constitute crimes against humanity.

<sup>15</sup> The Working Group reiterates that all States have a duty to take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life. See article 4 (1) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted by the General Assembly in its resolution 36/55 of 25 November 1981.

111. Given that the issues of torture, counter-terrorism measures and the reprisals and harassment against a lawyer are involved in the present case, the Working Group wishes to refer these matters to the attention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on the independence of judges and lawyers.

### **Disposition**

112. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Ahmad Suleiman Jami Muhanna al-Alwani, being in contravention of articles 2, 3, 5, 6, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and of articles 2, 6, 7, 9, 14, 16, 19, 21, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

113. Consequent upon the opinion rendered, the Working Group requests the Government of Iraq to take the steps necessary to remedy the situation of Ahmad Suleiman Jami Muhanna al-Alwani without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

114. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al-Alwani immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

115. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the attention of the Special Rapporteur on torture, the Special Rapporteur on terrorism and the Special Rapporteur on the independence of judges and lawyers for appropriate action.

116. The Working Group further brings to the attention of the Government the calls for reform of a broad definition of terrorism susceptible to wide interpretation and mandatory death penalty for a wide range of activities defined as terrorist acts in the Anti-Terrorism Law No. 13 of 2005 (see CCPR/C/IRQ/CO/5, para. 9).

### **Follow-up procedure**

117. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Al-Alwani has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Al-Alwani;
- (c) Whether an investigation has been conducted into the violation of Mr. Al-Alwani's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Iraq with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

118. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

119. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the



opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

120. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>16</sup>

*[Adopted on 28 April 2017]*

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<sup>16</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.