



# CEARTAS

Irish Lawyers for Human Rights

## Report on Bahrain's Attorney General Dr. Ali bin Fadhel Al- Buainain and his position in the International Association of Prosecutors





Report on Bahrain's Attorney  
General Dr. Ali bin Fadhel Al-  
Buainain and his position in the  
International Association of  
Prosecutors

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Ceartas-Irish Lawyers for Human Rights is an independent non-profit organisation that seeks to promote and realise human rights standards internationally through innovative legal actions. We provide a platform to explore existing and alternative legal strategies by bringing together a range of legal professionals through our pro-bono register and expert groups. Ceartas primarily aims to effect human rights change in other countries through the use of Irish, regional and international mechanisms with the view to promoting accountability on international human rights issues.

For more information visit [www.ceartaslaw.org](http://www.ceartaslaw.org)

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## EXECUTIVE SUMMARY

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This report, using evidence widely available, examines the role of Dr. Ali bin Fadhel Al-Buainain, Attorney General of Bahrain, and his suitability as an Executive Committee member of the International Association of Prosecutors.

In 2012 Ceartas became concerned that the Attorney General was acting in such a way that puts his position as head of the Bahraini office of Public Prosecution at odds with international standards. Accordingly an investigation was conducted into three core areas where the Attorney General activities raised significant human rights concerns, (1) freedom of expression and assembly, (2) due process and fair procedures and (3) investigating and prosecuting on matters of torture. The investigation found that:

1. Dr. Ali bin Fadhel Al-Buainain has and continues to oversee the prosecution of individuals for expressing their political opinions, which as a result denies citizens the right to freedom of expression. Additionally, the Attorney General has and continues to prosecute individuals for engaging in political protest, which in turn denies citizens their right to freedom of assembly.
2. Dr. Ali bin Fadhel Al-Buainain has overseen the prosecution of defendants without adherence to their rights to due process and fair procedures.
3. The office of Public Prosecution is not capable, nor is it in a position to impartially investigate matters of torture. In addition, the office has shown patterns of failure in the use of its statutory powers to supervise and investigate state detention facilities, which in turn has fostered a culture of impunity towards torture.

These findings demonstrate numerous breaches of international human rights laws and international standards, particularly those relating to public prosecution. As a result Ceartas believes that Dr. Ali bin Fadhel Al-Buainain's position as an Executive Committee member in the International Association of Prosecutors is untenable. This opinion is built upon the fact that the Objectives and Code of Conduct for Prosecutors as well as the Executive Committee Protocol of the Association are unequivocally clear in their aim to ensure the promotion of human rights, fair procedures, due process and ethical standards of prosecution.

## 1. INTRODUCTION

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- 1.1 Ceartas, Irish Lawyers for Human Rights, is an independent non-profit organisation that seeks to promote and realise human rights standards internationally through innovative legal actions. In 2012 Ceartas became concerned that human rights abuses were occurring in Bahrain, particularly within the operation of its criminal justice system. As a result an investigation was conducted into Bahrain's criminal justice system, which in turn focused on the role of its Attorney General, Dr. Ali bin Fadhel Al-Buainain who heads the office of Public Prosecution.
- 1.2 The report, divided into three sections looks at the Attorney General in terms of his role in the (1) prosecution of individuals for engaging in activities protected by the rights to freedom of expression and assembly, (2) adherence to fair procedures and due process and (3) investigation and prosecution on allegations of torture. The report also details the Attorney General's role as Executive Committee Member to the International Association of Prosecutors (IAP), and seeks to determine whether he meets the standards set by the organisation to hold such a position.
- 1.3 Finally, the report concludes by identifying its findings from the investigation and gives a set of recommendations that address the identified issues.

## 2. BACKGROUND TO RECENT CHANGES IN THE CRIMINAL JUSTICE SYSTEM OF BAHRAIN

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- 2.1 In February 2011 Bahrain experienced a sustained period of unrest, including mass protests that called for political reform.<sup>1</sup> In response on the 15<sup>th</sup> of March 2011, the Government of Bahrain declared a '*State of National Safety*' pursuant to Royal Decree No. 18 of 2011.<sup>2</sup> This decree established a two-tiered National Safety Court system made up of the Primary National Safety Court<sup>3</sup>, and the National Safety Court of Appeal.<sup>4</sup> Each Court had had a panel of three Judges appointed by the Commander-in-Chief of the Bahrain Defence Force<sup>5</sup> and were both granted a broad jurisdiction over a range of crimes.<sup>6</sup> Responsibility for prosecuting cases before these National Safety Courts was vested in the Military Prosecution,<sup>7</sup> a body that is distinct from the office of the Public Prosecution.
- 2.2 The State of National Safety was lifted on the 1<sup>st</sup> June 2011 by Royal Decree No. 39 of 2011,<sup>8</sup> and to coincide with this, the National Government established the Bahrain Independent Commission of Inquiry (BICI). This Commission was made up of internationally recognised legal and human rights experts<sup>9</sup> who were required to investigate and report on human rights incidents during the period of mass protest. The BICI subsequently did so on the 23<sup>rd</sup> November 2011 through a 500 page report. Crucially this report issued a number of recommendations for reform in the judicial and criminal law system, which were ultimately accepted by the Bahraini Government.
- 2.3 One of the BICI recommendations was No. 1720 which endorsed a "*full review in ordinary courts all convictions and sentences from National Security Courts where fundamental principles of fair trial were not respected.*"<sup>10</sup> Consequently, on the 29<sup>th</sup> June 2011 it was ordered by Royal Decree that all cases and appeals not yet adjudicated by the National Safety Court would be transferred to the civilian courts and that every person convicted would have a right of appeal to the civilian courts.<sup>11</sup> By the 7<sup>th</sup> October

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<sup>1</sup> US Department of State, 2012. *2011 Country Reports on Human Rights Practices: Bahrain*. pg.1, Washington: US Department of State, (accessed, 13/9/12) <http://bahrain.usembassy.gov/policy/human-rights-report.html>

<sup>2</sup> Royal Decree 18 of 2011, (accessed, 2/11/12) <http://treaties.un.org/doc/Publication/CN/2011/CN.261.2011-Eng.pdf>

<sup>3</sup> *ibid* Article 8

<sup>4</sup> *ibid* Article 9

<sup>5</sup> *Ibid* Article 2

<sup>6</sup> *Ibid* Article 7

<sup>7</sup> *Ibid* Article 7

<sup>8</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Para 1170, (accessed 26/11/12) <http://www.bici.org.bh/BICIreportEN.pdf>

<sup>9</sup> Professor M. Cherif Bassiouni Sir Nigel S. Rodley, Justice Philippe Kirsch, Dr Mahnoush Arsanjani, and Dr Badria al 'Awadhi

<sup>10</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Para 1720, (accessed 26/11/12) <http://www.bici.org.bh/BICIreportEN.pdf>

<sup>11</sup> Royal Decree No. 28 of 2011, (accessed 12/12/12) [http://www.biciactions.bh/wps/themes/html/BICI/pdf/1720/decreed\\_62\\_2011\\_en.pdf](http://www.biciactions.bh/wps/themes/html/BICI/pdf/1720/decreed_62_2011_en.pdf)

2011 the National Safety Court ceased to function,<sup>12</sup> and had handed down some 502 convictions in 165 separate cases.<sup>13</sup>

- 2.4 The subsequent appeals to the civilian courts were handled by the office of the Public Prosecution where the Attorney General of Bahrain Dr. Ali bin Fadhel Al-Buainain exercises “*full administrative control over the execution of their law enforcement powers*” as “*head*”<sup>14</sup> of the office.<sup>15</sup>

### 3. OVERVIEW OF THE INTERNATIONAL ASSOCIATION OF PROSECUTORS

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- 3.1 Established by the United Nations in 1995 the International Association of Prosecutors, (IAP) is the only global non-governmental organisation of prosecutors. Based in the Hague in the Netherlands, the IAP is an international community of prosecutors committed to setting and raising standards of professional conduct and ethics for prosecutors worldwide by promoting the rule of law, fairness, impartiality, human rights and international co-operation to combat crime. Today the IAP has more than 145 organisational members from over 96 different jurisdictions, representing every continent, as well as many individual members that include Dr. Ali bin Fadhel Al-Buainain.
- 3.2 One of the most important objectives of the IAP is to “*promote and enhance those standards and principles which are generally recognised internationally as necessary for the proper and independent prosecution of offences.*”<sup>16</sup> As a result, the IAP developed the internationally recognised “Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors” in 1999.<sup>17</sup> These standards serve as an international benchmark for the conduct of individual prosecutors, and were adopted by a United Nations Crime Commission Resolution in 2008. The importance of these standards cannot be underestimated and according to the President of the organisation,

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<sup>12</sup> US Department of State, 2012. 2011 Country Reports on Human Rights Practices: *Bahrain*. pg.11  
Washington: US Department of State, (accessed 13/9/12) <http://bahrain.usembassy.gov/policy/human-rights-report.html>

<sup>13</sup> Bahrain National News, 25/02/2012, (accessed 10/11/12)

<http://www.bna.bh/portal/en/news/495850>

[http://www.biciactions.bh/wps/themes/html/BICI/pdf/report/nc\\_report\\_en\\_app5.pdf](http://www.biciactions.bh/wps/themes/html/BICI/pdf/report/nc_report_en_app5.pdf)

<sup>14</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Para 109, (accessed 26/11/12)

<http://www.bici.org.bh/BICIreportEN.pdf>

<sup>15</sup> *Ibid* para 115.

<sup>16</sup> Object 1.3 (d) Constitution of the International Association of Prosecutors, (accessed 2/1/13)

[http://www.iap-](http://www.iap-association.org/ressources/CONSTITUTION%20June%202011%20with%20annexes.pdf)

[association.org/ressources/CONSTITUTION%20June%202011%20with%20annexes.pdf](http://www.iap-association.org/ressources/CONSTITUTION%20June%202011%20with%20annexes.pdf)

<sup>17</sup> *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*  
[http://www.iap-association.org/ressources/UN\\_Resolution\\_IAP\\_Standards\\_draft\\_as\\_approved\[1\].pdf](http://www.iap-association.org/ressources/UN_Resolution_IAP_Standards_draft_as_approved[1].pdf)  
(accessed 16/01/13)

Mr James Hamilton, “*all organisational members of the IAP are expected to commit to the Standards of Professional Conduct for Prosecutors adopted by the IAP in 1999.*”<sup>18</sup>

- 3.3 The IAP is managed by its Executive Committee which elects a President, six Vice Presidents, Secretary General, General Counsel and 14 Executive Committee Members. One of the 14 Executive members is Dr. Ali bin Fadhel Al-Buainain. This Executive Committee is bound by the terms of the IAP Constitution and more specifically the Executive Committee Protocol which states that “*any nominee (for the Executive Committee) must be able to show: a) commitment to the IAP’s Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors.*”<sup>19</sup>

Regional conference of the IAP in  
Astana 5<sup>th</sup> October 2011



## 4. PROSECUTION FOR THE RIGHTS OF EXPRESSION AND ASSEMBLY

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- 4.1 The BICI under Recommendation 1722 (h) recommended that “*all persons charged with offences involving political expression, not consisting of advocacy of violence, have their convictions reviewed and sentences commuted or, as the case may be, outstanding charges against them dropped.*”<sup>20</sup> Subsequently on 24<sup>th</sup> December 2011 the Dr. Ali bin Fadhel Al-Buainain announced that 343 defendants who had been convicted in 43 cases of crimes “*relating to speech protected by the right to freedom of expression*” would have these particular charges dropped on their appeals to the civilian courts.<sup>21</sup>
- 4.2 However, this has not been the case, as seen in the case of **Mr Mahdi Abu Dheeb**, former President and of the Bahrain Teachers’ Association. Initially Mr Dheeb was prosecuted by the Military Prosecutor in the National Safety Courts on the 25<sup>th</sup> September 2011 for using his position within the Bahrain Teachers Association to call for a strike, inciting hatred of the regime, disseminating fabricated stories and

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<sup>18</sup>International Association of Prosecutors, (accessed, 7/1/13) <http://www.iap-association.org/default.aspx>

<sup>19</sup> Executive Committee Protocol, (accessed, 11/2/13) [http://www.iap-association.org/ressources/IP\\_Annex%205%20-%20Ex%20Com%20protocol\\_V2.pdf](http://www.iap-association.org/ressources/IP_Annex%205%20-%20Ex%20Com%20protocol_V2.pdf)

<sup>20</sup> *Ibid* para 1722(h)

<sup>21</sup>Bahrain National News, 24/12/2011, (assessed 23/11/12)

<http://www.bna.bh/portal/en/news/486221>

(also cited by Human Rights Watch in their 2012 report “*No Justice in Bahrain*”)

information on top of other similar charges.<sup>22</sup> In October 2012 his appeal came before the civilian courts under the prosecutorial remit of the Attorney General, however, Mr Dheeb was nonetheless prosecuted for expressing his political views i.e. calling for a *“strike during the events of February 2011, advising teachers not to go to work and parents to pull their children out of school.”*<sup>23</sup> The court found in favour of the prosecution and Mr Dheeb was sentenced to five years in prison.<sup>24</sup>

4.3 Many individuals continue to be prosecuted for expressing their views in Bahrain including the prominent human rights activist **Mr Nabeel Rajab**, President of the Bahrain Centre for Human Rights and Director of the Gulf Centre for Human Rights. On the 9<sup>th</sup> July 2012 the office of Public Prosecution successfully prosecuted Mr Rajab for expressing his views when he made the Bahraini Prime Minister (Sheikh Khalifa bin Salman Al Khalifa) the subject of a tweet *“[E]veryone knows you are not popular and if it weren’t for the need for money, (the Muharraq residents) would not have welcomed you.”*<sup>25</sup> According to Chief Prosecutor Nayef Yusuf Mahmoud the charge was brought because it amounted to *“smearing the people of Muharraq and questioning their patriotism.”*<sup>26</sup> Mr Rajab was sentenced to three months in prison and was acquitted on appeal whilst in detention.<sup>27</sup> However, this was not the only occasion where Mr Rajab was prosecuted for expressing his own views. On the 16<sup>th</sup> August 2012 he was prosecuted for inciting and participating in *“assemblies and organizing through social media websites unlicensed demonstrations”* during the periods of 12<sup>th</sup> January, 14<sup>th</sup> February and 31<sup>st</sup> March 2012.<sup>28</sup> As a result of expressing his opinion in relation to a political protest Mr Rajab was sentenced to three years in prison<sup>29</sup> and on appeal had it reduced to two years<sup>30</sup>.

4.4 While the Attorney General gave an undertaking not to prosecute *“speech protected by the right to freedom of expression”*, he nevertheless failed to undertake not to prosecute for *“political expression”*, as recommended by the BICI at paragraph 1722 (h) (see paragraph 3.1). While there is no strict definition of what *“political expression”* is under international human rights law, it can be implied to mean political discourse and political protest, which in turn is associated with the rights of freedom of expression

<sup>22</sup> Amnesty International “Bahraini Teachers Convictions Upheld” (accessed 27/11/12)  
<http://www.amnesty.org/en/library/asset/MDE11/060/2012/en/9c8ad0de-7fc8-4c49-8337-dca64e7d8838/mde110602012en.html>

<sup>23</sup> Information Affairs Authority Press Release 21/10/12, (accessed 16/11/12)  
<http://iaa.bh/pressReleasedetails.aspx?id=375>

<sup>24</sup> *Ibid*

<sup>25</sup> Human Rights Watch, News Releases 11/07/12, (accessed 11/11/12)  
<http://www.hrw.org/news/2012/07/11/bahrain-rights-activist-jailed-insulting-tweets>

<sup>26</sup> Bahrain National News, 09/07/2012, (accessed 10/11/12)  
<http://www.bna.bh/portal/en/news/516360>

<sup>27</sup> Information Affairs Authority Press Release 23/08/12, (accessed 24/11/12)  
<http://iaa.bh/pressReleasedetails.aspx?id=304>

<sup>28</sup> Information Affairs Authority Press Release 18/08/12, (accessed 24/11/12)  
<http://www.iaa.bh/pressReleasedetails.aspx?id=299>

<sup>29</sup> Information Affairs Authority Press Release 16/08/12, (accessed 23/11/12)  
<http://www.iaa.bh/pressReleasedetails.aspx?id=297>

<sup>30</sup> BBC “Bahrain activist Nabeel Rajab’s prison sentence reduced”, 11/12/12 (accessed 11/12/12)  
<http://www.bbc.co.uk/news/world-middle-east-20679191>

and assembly. Ceartas is also the view that the right of freedom of expression is integral to the enjoyment to the right of freedom of assembly, and that any infringement on the freedom of assembly is an infringement on the freedom of expression. This opinion is shared by the United Nations Human Rights Committee who in General Comment No. 34 stated that “*The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. For instance, freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association.*”<sup>31</sup> Accordingly, Bahraini citizens should not expect to be prosecuted for engaging in political protest, as it would infringe on their rights, as well as it being at odds with BICI recommendation 1722 (h).

4.5 Looking at the case of **Mr Ali al-Ekry**, an orthopaedic surgeon, one can see a pattern of prosecution for “*political expression*” i.e. political protest and the right to assembly. Mr al-Ekry was initially sentenced on the 29<sup>th</sup> September 2011 by the National Security Court to 15 years for politicising and occupying Salmaniya Medical Complex, hiding weapons, chanting anti-government slogans and misrepresenting the number and nature of casualties in the media in an attempted coup d'etat.<sup>32</sup> He, like others was granted an appeal to the civilian courts and had offences for expressing his views dropped, namely charges under Articles 165<sup>33</sup>, 168<sup>34</sup> and 169<sup>35</sup> of the Bahraini Penal Code. However, “*political expression*” activities, i.e. political protest and the right to freedom of assembly, were not dropped and on the 1<sup>st</sup> October 2012 Deputy Attorney General Abdulrahman Al Sayyed announced that Mr al-Ekry had been prosecuted and convicted of “*illegal assembly*”<sup>36</sup> for which he was sentenced to five years imprisonment. An additional offence was also included, “*possession and concealment of white weaponry*”<sup>37</sup> (a term used to describe non-firearms to serve a terrorist purpose).<sup>38</sup>

4.6 According to human rights organisation Human Rights Watch the office of Public Prosecution are continuing to prosecute Bahraini citizens for offences covered by the rights to freedom of expression and assembly<sup>39</sup>, and this is most evident in the case of

<sup>31</sup> United Nations Human Rights Committee, General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights July 2011, (accessed 16/2/13),

<http://bangkok.ohchr.org/programme/documents/general-comment-34.aspx>

<sup>32</sup> Bahrain National News, 14/10/2012, (accessed 30/10/12)

<http://www.bna.bh/portal/en/news/475057>

<sup>33</sup> “Any person who incites with the use of one of the publication methods to develop hatred of the ruling regime or show contempt towards it” Amiri decree no. 15 of 1976 with respect to enactment of the Penal Code, (accessed 1/12/12) [http://www.moj.gov.bh/en/Print\\_p68b7.html?printid=938](http://www.moj.gov.bh/en/Print_p68b7.html?printid=938)

<sup>34</sup> *Ibid* “any person who willfully broadcasts any false or malicious news reports, statements or rumours or spreads adverse publicity”.

<sup>35</sup> *Ibid* “publishes by any method of publication untrue reports, falsified or forged documents or documents falsely attributed to another person, should they undermine the public peace or cause damage to the country’s supreme interest or to the State’s creditworthiness.”

<sup>36</sup> Information Affairs Authority Press Release 1/10/12, (accessed 24/11/12)

<http://www.iaa.bh/pressReleasedetails.aspx?id=351>

<sup>37</sup> *Ibid*

<sup>38</sup> BBC “Bahrain court rejects medics’ appeal” 1/10/12, (accessed 15/11/12) <http://www.bbc.co.uk/news/world-middle-east-19783355>

<sup>39</sup> “In recent months authorities have brought criminal charges against activists and others solely for their exercise of the rights to freedom of expression and peaceful assembly” Human Rights Watch, “Bahrain: Promises Unkept, Rights Still Violated” November 2012, (accessed 20/12/12) <http://www.hrw.org/news/2012/11/22/bahrain-promises-unkept-rights-still-violated>

**Mr Sayed Youssef Al-Mahafdha**, the acting vice president of the Bahrain Centre for Human Rights. According to Deputy Attorney General Mohammed Salah he was arrested on the 17<sup>th</sup> December 2012 for *“for disseminating false information regarding the clashes between the security forces and protestors ... on his twitter account.”*<sup>40</sup>

4.7 The above demonstrates that the Bahraini office of Public Prosecution has prosecuted and continues to prosecute Bahraini citizens for political expression. This denies Bahraini citizens their rights of freedom of expression and assembly, which in turn violates the International Covenant on Civil and Political Rights<sup>41</sup> and Universal Declaration of Human Rights<sup>42</sup> (Bahrain is a signatory to both). These actions have drawn worldwide criticism and most notably from Margaret Sekaggya, the United Nations Special Rapporteur for Human Rights Defenders, who stated that *“[t]he continuing repression of free speech in Bahrain runs counter to international law and standards that individuals will not be prosecuted for peaceful political speech.”*<sup>43</sup> Furthermore these actions run contrary to Recommendation 1722(h) from the BICI report (see paragraph 3.1).

4.8 These prosecutorial actions also run contrary to Article 1(h) of the IAP’s “Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors” which states that *“[P]rosecutors shall: h) respect, protect and uphold the universal concept of human dignity and human rights.”*<sup>44</sup> It is clear that the actions of the office of Public Prosecution are in breach of the IAP Standards for Prosecution. Nevertheless, the Attorney General who heads and enjoys full administrative control of this office sits on the Executive Committee of the IAP where he seeks *“to protect human rights as laid down in the Universal Declaration of Human Rights.”*<sup>45</sup>

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<sup>40</sup> Bahrain National News 20/12/2012, (accessed 9/1/13) <http://www.bna.bh/portal/en/news/538576>

<sup>41</sup> Articles 19 & 21, UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, (accessed 2/1/13) <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>

<sup>42</sup> Articles 19 & 20 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), (accessed 2/1/13) <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>

<sup>43</sup> United Nations Office of the High Commissioner for Human Rights, 23/8/12 (accessed 42/13) <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12456&LangID=E>

<sup>44</sup> Standards of professional responsibility and statement of the essential duties and rights of prosecutors, (accessed 16/1/13) [http://www.iap-association.org/ressources/UN\\_Resolution\\_IAP\\_Standards\\_draft\\_as\\_approved\[1\].pdf](http://www.iap-association.org/ressources/UN_Resolution_IAP_Standards_draft_as_approved[1].pdf)

<sup>45</sup> Constitution of the International Association of Prosecutors (accessed 2/2/13) <http://www.iap-association.org/ressources/CONSTITUTION%20June%202011%20with%20annexes.pdf>



مملكة البحرين  
النيابة العامة



Attorney General Dr. Ali bin Fadhl Al-Buainain



Deputy Attorney General Abdul Rahman Al Sayyed



Head of Special Investigations Unit, Nawaf Abdullah Hamza



Chief Public Prosecutor Wael Boualai



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## 5. ADHERENCE TO FAIR PROCEDURES AND DUE PROCESS

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- 5.1 The BICI report found that in relation to prosecutions before the National Safety Courts *“a pattern of due process violations occurred at the pre-trial and trial levels that denied most defendants elementary fair trial guarantees.”*<sup>46</sup> It particularly noted that detainees being held were denied *“prompt and full access to legal counsel”*<sup>47</sup> and subjected *“to torture”*<sup>48</sup> and *“coercion in signing confessions.”*<sup>49</sup> These confessions were used in the National Safety and Civilian Courts<sup>50</sup>, and according to the BICI *“prosecutorial personnel may have implicitly condoned this lack of accountability.”*<sup>51</sup> As a result the BICI, under Recommendation No. 1720 concluded that there should be a *“review in ordinary courts of all convictions and sentences rendered by the National Security Courts”*<sup>52</sup> and as previously mentioned, this was accepted by the governing powers via Royal Decree 62 of 2011. Thereafter, and from the 7<sup>th</sup> October 2011 onwards the National Safety Courts were closed<sup>53</sup> and their cases transferred to the remit of civilian courts where the Attorney General and his office of Public Prosecution has prosecutorial authority.
- 5.2 While this action was welcomed there has nonetheless been a pattern of failure on the part of the Attorney General to ensure that due process and fair procedures are applied. This failure is clearly evident in the case of the **21 opposition political leaders**<sup>54</sup> who were prosecuted with 12 different offences that included *“organising and participating in rallies without the permission”* *“inciting in compliance with the law”* and *“insult (ing) the army”* (Full list of charges outlined in Annex 1).<sup>55</sup> On the 22<sup>nd</sup> June 2011 the Military Prosecutor was successful in upholding the charges against 14 of the leaders (seven had fled the country and are still in hiding) in the National Safety Court (one was sentenced to two years another to five years, 11 to 15 years and eight received life sentences).<sup>56</sup>
- 5.3 The BICI report noted that when 14 of these opposition political leaders were held in Al Qurain Prison, they were subjected to a *“discernible pattern of mistreatment”* for the

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<sup>46</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Para1702, (accessed 26/11/12) <http://www.bici.org.bh/BICIreportEN.pdf>

<sup>47</sup> *Ibid* Para 1702

<sup>48</sup> *Ibid* Para 1694

<sup>49</sup> *Ibid* Para 1697

<sup>50</sup> *Ibid* Para 1697

<sup>51</sup> *Ibid* Para 229

<sup>52</sup> *Ibid* Para 1702

<sup>53</sup> US Department of State, 2012. 2011 Country Reports on Human Rights Practices: Bahrain. pg.11, Washington: US Department of State, (accessed 13/9/12) <http://bahrain.usembassy.gov/policy/human-rights-report.html>

<sup>54</sup> Abdulwahab Hussain Ali, Ibrahim Sharif Abdulraheem Mossa, Hassan Ali Mushaima, Abdulhadi Al Khawaj, Abduljalil Abdullah Al Singas, Mohammed Habib Al Safaf, Saeed Mirza Ahmed, Abduljalil Mansoor Makki, Al Hurra Yousif Mohammed, Abdullah Isa Al Mahroos, Salah Hubail Al Khawaj, Mohammed Hassan Jawad, Mohammed Ali Ismael, Akeel Ahmed Al Mafoodh, Ali Hassan Abdullah, Abdulghani Ali Khanjar, Saeed Abdulnabi Shehab, Abdulraoof Al Shayeb, Abbas Al Umran and Ali Hassan Mushaima. Bahrain National News, 8/5/2012, (accessed 23/10/12) <http://www.bna.bh/portal/en/news/455661>

<sup>55</sup> *Ibid*

<sup>56</sup> Bahrain National News, 22/6/2012, (accessed 27/10/12) <http://www.bna.bh/portal/en/news/461921>

purpose of obtaining “*statements or confessions*.”<sup>57</sup> However, during their appeal to the civilian courts the Chief Public Prosecutor Mr Nayef Yusif, told the court that the Office of Public Prosecution would include all evidence submitted to the court, including the confessions obtained under duress.<sup>58</sup> This was also echoed by the Secretary General of the Supreme Judicial Council who stated that “[T]he case documents include reports on all evidence and investigations.”<sup>59</sup> Consequently on the 4<sup>th</sup> September 2012 the Secretary General of the Supreme Judicial Council announced that 13 defendants were successfully prosecuted with “*conspiracy to overthrow the government, espionage and violation of the Constitution*”, with seven being convicted in absentia. Following this the opposition political leaders appealed the decision to the Court of Cassation, however on the 7<sup>th</sup> January 2013 Deputy Attorney General, Abdulrahman Al Sayyed announced that their appeal had failed.<sup>60</sup>

5.4 This judgement received international condemnation by the Secretary General of the United Nations Ban Ki-moon who said that he “*deeply regrets*” the decision of a Bahraini appeals court to uphold the sentences.<sup>61</sup> Similarly UN High Commissioner for Human Rights Ms Navanethem Pillay earlier stated that given “*[G]iven the gravity of the charges, the scant evidence available beyond confessions, the serious allegations of torture and the irregularities in the trial processes, it is extremely disappointing that the convictions and sentences have been upheld in appeals proceedings that often took place behind closed doors.*”<sup>62</sup>

5.5 In the case of the **20 medical professionals**<sup>63</sup> there is a similar failure on the part of the Attorney General to ensure that fair procedures and due process were respected by the office of Public Prosecution. Initially these medics had been sentenced to five and 15 years on the 29<sup>th</sup> September 2011 by the National Safety Court for taking part in gatherings aimed at jeopardising the general security, possessing weapons, occupying a government hospital, inciting hatred to the regime, as well as other alleged crimes.<sup>64</sup> However, during their civilian court appeal the Public Prosecutor introduced new

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<sup>57</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Para 1230, (accessed 26/11/12) <http://www.bici.org.bh/BICIreportEN.pdf>

<sup>58</sup> Human Rights Watch, News Release “Bahrain: Reject Confessions Linked to Torture” 21<sup>st</sup> June 2012, (accessed 4/12/12) <http://www.hrw.org/news/2012/06/21/bahrain-reject-confessions-linked-torture>

<sup>59</sup> Information Affairs Authority Press Release 4/09/2012, (accessed 9/11/12) <http://www.iaa.bh/pressReleasedetails.aspx?id=322>

<sup>60</sup> Bahrain National News, 30/9/2011, (accessed 8/1/13) <http://www.bna.bh/portal/en/news/540795>

<sup>61</sup> United Nations News Centre, 8/1/13 (accessed 8/1/13) <http://www.un.org/apps/news/story.asp?NewsID=43889&Cr=bahrain&Cr1>

<sup>62</sup> United Nations News Centre “Harsh sentences for Bahraini activists ‘deeply regrettable’ – UN human rights chief” 6/09/12 (accessed 1/12/12) <http://www.un.org/apps/news/story.asp?NewsID=42816&Cr=bahrain&Cr1>

<sup>63</sup> Dr. Ali Al-Ekri, Dr. Nader Diwani, Dr. Ahmed Abdul Aziz Omran, Dr. Mahmoud Asghar, Rola Al Saffar, Dr. Abdulkhaleq Al-Oraibi, Dr. Ghassan Dhaif, Dr. Bassim Dhaif, Sayed Marhoon Al-Wedaie, Dr. Nada Dhaif, Dr. Fatima Haji, Dheya Ibrahim AbuIdris, Dr. Najah Khalil Al-Haddad, Dr. Saeed Al-Samahiji, Dr. Zahra Al-Sammak, Ali Hassan Alsddi, Ibrahim Abdullah Ibrahimn, Hassan Mohammed Said, Mohammed Faiq Ali, Qassim Mohammed Omran.

<http://www.bna.bh/portal/en/news/474815> Bahrain National News, 30/9/2011, (accessed 8/11/12)

<sup>64</sup> *Ibid*

evidence.<sup>65</sup> This action is highly questionable considering that they were facing an appeal and not a retrial. The office of Public Prosecution in this instance did not respect the international judicial and due process norms particularly that, during a defendants appeal he, or she has the right to rebut the previous courts judgment using the evidence already submitted by the prosecution in the lower court. In fact if new evidence is submitted by the prosecution the case becomes a retrial and not an appeal. Furthermore, this new evidence was an array of weapons, however only two defendants were originally convicted of weapons offenses by the National Security Court, namely Ali Al Sadadi and Ali al-Ekry<sup>66</sup>, which in turn makes the prosecutors' display of evidence of no relevance to the other defendants.<sup>67</sup> Consequently, on the 2<sup>nd</sup> October 2012, the civilian court upheld the convictions of nine of medics with two others being convicted in absentia (See Annex 2 for additional info).<sup>68</sup>

5.6 The prosecution and subsequent conviction in these instances should be considered in light of the fact that the Bahraini government on the 19<sup>th</sup> September 2012 (before the trial of the 20 medical professionals) agreed to 145 of the 176 United Nations Human Rights Councils recommendations under the Universal Periodical Review of Human Rights records of states.<sup>69</sup> Of these 145 accepted recommendations there is recommendation number 115.115 which states that the government must “[E]nsure that all detainees charged with an offense established under the law, receive a fair trial before the ordinary criminal courts, in conformity with international standards.”<sup>70</sup> There is also recommendation number 115.123 which requires that the government “[A]dopt standards on trials in criminal cases and also to guarantee the rights of detainees and prisoners, in keeping with best practices and relevant international standards.”<sup>71</sup>

5.7 Looking at the case of Mr **Mohammed Ali Ahmed Mushaima**, one can see that the office of Public Prosecution is willing to go as far as to prosecute the dead. Mr Mushaima was initially arrested and given a seven year sentence by the Military court in February 2011 for “vandalism, rioting, assaulting a police officer, and resisting arrest”, but had died in early October 2012.<sup>72</sup> However, when his appeal came before the civilian courts in January of 2013 he was nonetheless prosecuted posthumously, even after his former lawyer, Mohsen al-Alawi who was present on the day, objected to it.<sup>73</sup> Prosecuting the

<sup>65</sup> Human Rights Watch, “No Justice in Bahrain, unfair Trials in Military and civilian courts” USA, (2012), pg 21 (accessed 20/12/13) <http://www.hrw.org/sites/default/files/reports/bahrain0212webwcover.pdf>

<sup>66</sup> Bahrain National News, 30/9/2011, (accessed 8/11/12) <http://www.bna.bh/portal/en/news/474815>

<sup>67</sup> Human Rights Watch, “No Justice in Bahrain, unfair Trials in Military and civilian courts” USA, (2012), pg 21 (accessed 20/12/13) <http://www.hrw.org/sites/default/files/reports/bahrain0212webwcover.pdf>

<sup>68</sup> Aljazeera “Bahrain medics jailed after losing appeal” 2/10/12 (accessed 9/12/12) <http://www.aljazeera.com/news/middleeast/2012/10/201210254756409870.html>

<sup>69</sup> United Nations Human Rights Council “Report of the Working Group on the Universal Periodic Review Bahrain” 6<sup>th</sup> July 2012. A/HRC/21/6 , (accessed 15/11/2012) [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-6\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-6_en.pdf)

<sup>70</sup> Ibid Pg 22

<sup>71</sup> Ibid Pg 23

<sup>72</sup> Information Affairs Authority Press Release 2/10/12, (accessed 5/2/13) <http://www.iaa.bh/pressReleasedetails.aspx?id=352>

<sup>73</sup> BBC “Bahrain’s justice system under Scrutiny” 29/1/13, (accessed 14/2/13) <http://www.bbc.co.uk/news/world-middle-east-21188144>

dead is clearly at odds with the right to give testimony and defend oneself in the course of a trial, and is almost unheard of since 897AD when Pope Stephen VI exhumed his predecessor's corpse, Pope Formosus and prosecuted him in the infamous Cadaver Synod.<sup>74</sup>

- 5.8 Examining the information and facts above one can see the shortcomings of the Attorney General's office of Public Prosecution in adhering to due process and fair procedures in the civilian courts. This opinion is echoed by Human Rights Watch<sup>75</sup> in their reports on Bahrain. Thereafter, it is difficult to reconcile these findings with Article 1(f) of the IAP's Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutor, which states that "[P]rosecutors shall: f) Always protect an accused person's right to a fair trial."<sup>76</sup> Further inconsistencies in IAP standards are also seen in relation to Articles 4.3 which states that a prosecutor is to "refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment."<sup>77</sup> Finally it should also be noted that the right to a fair trial is an established right from the Universal Declaration of Human Rights (Article 10), and that under the Constitution of the IAP, Objective 1.3(d) ensures that the IAP "respect and seek to protect human rights as laid down in the Universal Declaration of Human Rights."<sup>78</sup> To this end Ceartas contends that the Bahraini office of Public Prosecution does not adhere to the standards set for prosecutors by the IAP.

## 6. INVESTIGATING AND PROSECUTING ON MATTERS OF TORTURE

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- 6.1 The BICI under recommendation No. 1716 held that the Bahraini Government should set up an independent body to investigate the many allegations of torture and abuse of civilians by state agents with a view to bringing legal proceedings.<sup>79</sup> As a result on the 28<sup>th</sup> February 2012, the Attorney General established a 'Special Investigations Unit'

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<sup>74</sup> Donald E. Wilkes, Jr., Professor of Law, University of Georgia School of Law, (accessed 5/2/13) [http://www.law.uga.edu/dwilkes\\_more/his31\\_cadaver.html](http://www.law.uga.edu/dwilkes_more/his31_cadaver.html)

<sup>75</sup> "Bahrain's civilian criminal courts have shown themselves to be little better than the military courts in providing fair trials in highly politicized cases" Human Rights Watch, "No Justice in Bahrain, unfair Trials in Military and civilian courts" USA, Human Rights Watch, (2012) Page 6. (accessed 20/12/13) <http://www.hrw.org/sites/default/files/reports/bahrain0212webwcover.pdf>

<sup>76</sup> Standards of professional responsibility and essential duties and rights of prosecutors (accessed 16/1/13) [http://www.iap-association.org/ressources/UN\\_Resolution\\_IAP\\_Standards\\_draft\\_as\\_approved\[1\].pdf](http://www.iap-association.org/ressources/UN_Resolution_IAP_Standards_draft_as_approved[1].pdf)

<sup>77</sup> *Ibid*

<sup>78</sup> Constitution of the International Association Of Prosecutors <http://www.iap-association.org/ressources/CONSTITUTION%20June%202011%20with%20annexes.pdf> [accessed 2 January 2013]

<sup>79</sup> "to establish a national, independent and impartial mechanism to determine the accountability of those in government who have committed unlawful or negligent acts resulting in the deaths, torture and mistreatment of civilians with a view to bringing legal and disciplinary action against such individuals, including those in the chain of command, military and civilian, who are found to be responsible under international standards of 'superior responsibility'" Report of the Bahrain Independent Commission of Inquiry (BICI), Para 1716, (accessed 26/11/12), <http://www.bici.org.bh/BICIreportEN.pdf>

within his office and under his observation.<sup>80</sup> This unit was created, and is now headed by Public Prosecutor Nawaf Abdullah Hamza who has the power to investigate and prosecute for *“all cases arising out of the events of 2011 on which the BICI report was based.”*<sup>81</sup>

6.2 According to the monitoring body for the implementation of the BICI recommendations, the “External Legal Advisory Group”, this Special Investigation Unit should have *“autonomy of action” “transparency”, “accountability”* as well as being *“impartial”* and *“fully independent.”*<sup>82</sup> However, there are legitimate concerns that this new unit does not meet these standards given that it is run by the office of Public Prosecution, which has previously demonstrated an inability to impartially investigate and prosecute matters concerning torture. These concerns were initially expressed by the United Nations Committee Against Torture in its 2005 report to the United Nations General Assembly. It held that there is a *“failure to investigate promptly, impartially and fully the numerous allegations of torture and ill-treatment and to prosecute alleged offenders, and in particular the pattern of impunity for torture and other ill-treatment committed by law enforcement personnel.”*<sup>83</sup> This perception is shared by many Bahraini’s and particularly those working in the human rights field who have stated that the unit *“has failed to take any action that could be considered to hold the government accountable for its own actions.”*<sup>84</sup> In addition 12 out of the 13 opposition leaders who were imprisoned (see paragraph 4.2) have refused to have their allegations of torture investigated by this unit. One of the leaders, Ibrahim Sharif, informed Amnesty International that *“the system is not independent.”*<sup>85</sup>

6.3 The lack of trust given to this prosecution unit also emanates from its inability to investigate on matters of torture. The Chairman of the BICI, M. Cherif Bassiouni in November of 2012 noted that this unit *“does not have investigators or forensic experts on its staff.”*<sup>86</sup> This lack of investigators or forensic staff within the unit fails to adhere to the standards set by Article 3(a) of the “United Nations Principles on the Effective Investigation and documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” which states that *“the investigative authority shall have the*

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<sup>80</sup> Attorney General Decision Establishing a Special Investigations Unit, 2012 (accessed 10/1/13) [http://www.biciactions.bh/wps/themes/html/BICI/pdf/1716/decision\\_special\\_investigations\\_unit\\_en.pdf](http://www.biciactions.bh/wps/themes/html/BICI/pdf/1716/decision_special_investigations_unit_en.pdf)

<sup>81</sup> *Ibid*

<sup>82</sup> External Legal Advisory Group, “Advice on implementation of the BICI Institutional Recommendations” pg 105, (accessed 17/11/2012) [http://www.biciactions.bh/wps/themes/html/BICI/pdf/report/nc\\_report\\_en\\_app2.pdf](http://www.biciactions.bh/wps/themes/html/BICI/pdf/report/nc_report_en_app2.pdf)

<sup>83</sup> UN Committee Against Torture (CAT), *UN Committee against Torture: Conclusions and Recommendations, Bahrain*, 21 June 2005, CAT/C/CR/34/BHR, page 3, (accessed 18/12/2012) <http://www.unhcr.org/refworld/docid/42cd72dd4.html>

<sup>84</sup> BRAVO, BCHR & BYSHR “*The BICI Reforms Promises of Progress, a Worsening Reality*”, Bahrain, November 2012. pg 15, (accessed 16/1/13) <http://bahrainrights.hopto.org/BCHR/wp-content/uploads/2012/11/PROMISES-OF-PROGRESS-FULL-REPORT.pdf>

<sup>85</sup> Amnesty International, “*Freedom has a price; Two years after Bahrain’s uprising*”. February 2013. pg 9, (accessed 1/2/2013) [http://www.amnesty.org.uk/uploads/documents/doc\\_23012.pdf](http://www.amnesty.org.uk/uploads/documents/doc_23012.pdf)

<sup>86</sup> Human Rights Watch, 22/11/2012 News, (accessed 28/12/12) <http://www.hrw.org/news/2012/11/22/bahrain-promises-unkept-rights-still-violated>

power and obligation to obtain all the information necessary to the inquiry.”<sup>87</sup> Similarly there are concerns that the office of Public Prosecution lacks the will to maintain a professional standard of confidentiality. This was most evident when the office of Public Prosecution released details of charges to the media concerning “23 suspects relating to planning and executing a campaign of violence, intimidation and subversion in the Kingdom” and proceeded to describe the accused as members of “a sophisticated terrorist network.”<sup>88</sup> The failure to keep prosecutorial confidentiality falls short of the standards set by Article 13(c) of the United Nations Guidelines on the Role of Prosecutors which states that “In the performance of their duties, prosecutors shall: (c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise; innocent until proven guilty.”<sup>89</sup> Such action also breaches the right to the presumption of innocence found under Article 11<sup>90</sup> of the Universal Declaration of Human Rights and Article 14(2)<sup>91</sup> of the International Covenant on Civil and Political Rights.

- 6.4 While there are clearly questions in respect of the impartiality, independence and public trust on the part of this Special Investigation Unit, it would be unreasonable to say that no progress has been made, as 92 cases of deaths of protestors and deaths in custody have been investigated.<sup>92</sup> However, only four low ranking officers and one first lieutenant have been convicted in the deaths of two protestors and the serious injury of another (as of 28<sup>th</sup> February 2013).<sup>93</sup> Furthermore, these figures should be considered in light of the fact that 559 complaints of torture were originally received by the BICI investigators.<sup>94</sup> Concern over the ability of this Special Investigation Unit to act promptly and responsibly was also expressed by the Chairman of the BICI in November 2012 where he said that “[T]he public prosecution has yet to investigate over 300 cases of alleged torture, some involving deaths in custody, and there has been no investigation, let alone prosecution, for command responsibility, even at the immediate supervisory level, of people killed in custody as a result of torture.”<sup>95</sup>

<sup>87</sup> Article 3(a) of Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (accessed 14/1/13)

<sup>88</sup> Gulf Daily News “Terrorism Network is broken” 5/12/10“, (accessed 7/1/2013) <http://www.gulf-dailynews.com/source/XXXIII/169/pdf/PAGE02.pdf>

<sup>89</sup> Article 13(c) Guidelines for the Role of Prosecutors, 1990, (accessed 8/1/13) <http://www2.ohchr.org/english/law/prosecutors.htm>

<sup>90</sup> Articles 11 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), (accessed 2/1/13) <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>

<sup>91</sup> Articles 14(2), UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, (accessed 2/1/13) <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>

<sup>92</sup> Amnesty International, “Freedom has a price; Two years after Bahrain’s uprising”. February 2013. pg 9, (accessed 1/2/2013) [http://www.amnesty.org.uk/uploads/documents/doc\\_23012.pdf](http://www.amnesty.org.uk/uploads/documents/doc_23012.pdf)

<sup>93</sup> Human Rights Watch. “Bahrain: No Progress on Reform” February 2013, (accessed 1/3/13) <http://www.hrw.org/news/2013/02/28/bahrain-no-progress-reform>

<sup>94</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Para 1181, (accessed 26/11/12) <http://www.bici.org.bh/BICIreportEN.pdf>

<sup>95</sup> Human Rights Watch “Bahrain: Promises Unkept, Rights Still Violated” News Release 22/11/12, (accessed 30/11/12) <http://www.hrw.org/news/2012/11/22/bahrain-promises-unkept-rights-still-violated>

- 6.5 In addition, it is important to note that all of the 559 reported incidents of torture were conducted by state personnel whilst in “*state custody*”<sup>96</sup> .i.e. prisons and detention centres. This again raises concern over the willingness of the office of Public Prosecution to act in the first instance given that when these alleged acts were occurring the office of Public Prosecution had “*the right to inspect prisons at any time*” as well as the power “*to contact any detained individual to receive their complaints.*”<sup>97</sup> Additionally, Article 56 of The Bahrain Law of Judicial Authority expressly gave the office of Public Prosecution the power of “*supervision of prisons and other places in which criminal laws are implemented.*”<sup>98</sup> The importance of these powers were seen when the BICI investigators found that due to the lack of accountability a “*culture of impunity*” towards torture emerged,<sup>99</sup> which resulted in the death of at least five detainees (See Annex 3 for details of the deceased).<sup>100</sup>
- 6.6 The failure to supervise prisons and detention centres by the office of Public Prosecution was compounded by the Attorney General’s failure to bring proceedings against state officials who perpetrated these abuses. According to the BICI, Article 44 of the Bahraini Code of Criminal Procedure gives the Attorney General the power to “[I]nitiate criminal trial proceedings against any law enforcement official violating the Code of Criminal Procedure.”<sup>101</sup> In consequence of this failure the BICI under recommendation 1719 went as far as to endorse legislation that requires the Attorney General to investigate claims of torture in the future.<sup>102</sup>
- 6.7 The above demonstrates that the office of Public Prosecution has failed in its duties to supervise prisons, and in turn prevent the type of torture that the BICI investigators found to have occurred. These prosecutorial shortcomings should be considered in terms of Article 4.3 of the IAP’s “Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors” which states that prosecutors should seek to ensure that “*appropriate action is taken against those responsible for using such methods.*”<sup>103</sup> Therefore, it is again evident that a visible gap exists between the

<sup>96</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Para 1181, (accessed 26/11/12) <http://www.bici.org.bh/BICIreportEN.pdf>

<sup>97</sup> Article 63 Legislative decree No.(46) of the year 2002 with respect to promulgating the code of Criminal Procedures, (accessed 7/1/13) [http://www.vertic.org/media/National%20Legislation/Bahrain/BH\\_Code\\_Criminal\\_Procedure.pdf](http://www.vertic.org/media/National%20Legislation/Bahrain/BH_Code_Criminal_Procedure.pdf)

<sup>98</sup> Article 56 Bahrain Law of Judicial Authority 2002, (accessed 7/1/13) <http://www.track.unodc.org/LegalLibrary/LegalResources/Bahrain/Laws/Bahrain%20Law%20of%20Judicial%20Authority%202002.pdf>

<sup>99</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Para 1240, (accessed 26/11/12) <http://www.bici.org.bh/BICIreportEN.pdf>

<sup>100</sup> *Ibid* paragraphs 987 to 1008

<sup>101</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Para 115, (accessed 26/11/12) <http://www.bici.org.bh/BICIreportEN.pdf>.

<sup>102</sup> *Ibid* Para 1719 “adopt legislative measures requiring the Attorney-General to investigate claims of torture and other forms of cruel, inhuman or degrading treatment or punishment, and to use independent forensic experts”

<sup>103</sup> Standards of professional responsibility and statement of the essential duties and rights of prosecutors (accessed 16/1/13) [http://www.iap-association.org/ressources/UN\\_Resolution\\_IAP\\_Standards\\_draft\\_as\\_approved\[1\].pdf](http://www.iap-association.org/ressources/UN_Resolution_IAP_Standards_draft_as_approved[1].pdf)

actions/omission of the Attorney General and his office of Public Prosecution and the standards set for prosecutors by the IAP.

## 7. FINDINGS

- 7.1 The above demonstrates that the Attorney General, who as “*head*”<sup>104</sup> of the Office of Public Prosecution, and Executive Committee member of the IAP has not kept in line with the standards, constitution and protocols set by the IAP. Specifically Ceartas holds that the following IAP provisions to be breached:

<b>International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties</b>
<b>Article 1 (h):</b> Respect, protect and uphold the universal concept of human dignity and human rights...always protect an accused person’s right to a fair trial
<b>Article 1 (f):</b> Prosecutors shall always protect an accused person’s right to a fair trial.
<b>Article 4.1:</b> Prosecutors shall perform their duties fairly, consistently and expeditiously.
<b>Article 4.3:</b> refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect’s human rights and particularly methods which constitute torture or cruel treatment....seek to ensure that appropriate action is taken against those responsible for using such methods;

<b>International Association of Prosecutors Constitution</b>
<b>1.3</b> The objects of the Association are:
<b>a)</b> to promote the effective, fair, impartial and efficient prosecution of criminal offences;
<b>b)</b> to respect and seek to protect human rights as laid down in the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;
<b>c)</b> to promote high standards and principles in the administration of criminal justice, including procedures to guard against or address miscarriages, in support of the rule of law;
<b>d)</b> To promote high standards and principles in the administration of criminal justice, including procedures to guard against or address miscarriages, in support of the rule of law.

<sup>104</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Para 109, (accessed 26/11/12)  
<http://www.bici.org.bh/BICIreportEN.pdf>

7.2 Ceartas has also found the following provisions under International Human Rights law and standards to have been breached and/or not have been adhered to by the Attorney General and his office of Public Prosecution.

<b>Guidelines on the Role of Prosecutors 1990</b>
<p><b>Article 3:</b> Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.</p> <p><b>Article 12:</b> Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.</p> <p><b>Article 13(a):</b> In the performance of their duties, prosecutors shall: Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination</p> <p><b>Article 13(c):</b> Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;</p> <p><b>Article 14:</b> Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.</p> <p><b>Article 15:</b> Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.</p> <p><b>Article 16:</b> When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.</p>

<b>Universal Declaration of Human Rights 1948</b>
<p><b>Article 5:</b> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</p> <p><b>Article 10:</b> Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</p>

**Article 19:** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20(1):** Everyone has the right to freedom of peaceful assembly and association.

### International Covenant on Civil and Political Rights 1966

**Article 19(1):** Everyone shall have the right to hold opinions without interference.

**Article 19 (2):** Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

**Article 21:** The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 14(1):** All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

**Article 14(3)g:** In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (g) Not to be compelled to testify against himself or to confess guilt.

### Arab Charter on Human Rights 1994

**Article 8(1):** No one shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment or punishment.

**Article 8(2):** The State Parties shall protect every person in their territory from being subjected to such practices and take effective measures to prevent such acts. The practice thereof, or participation therein, shall be regarded as a punishable offense. Each victim of an act of torture is entitled to a right to compensation and rehabilitation

**Article 13(1):** Everybody has the right to a fair trial in which sufficient guarantees are ensured, conducted by a competent, independent and impartial tribunal established by law, in judging the grounds of criminal charges brought against him or in determining his rights and obligations. State Parties shall ensure financial aid to those without the necessary means to pay for legal assistance to enable them to defend their rights.

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984**

**Article 15:** Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made

**Article 12:** Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

**Code of Conduct for Law Enforcement Officials 1979**

**Article 2** In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

**Article 5:** No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

**Article 6:** Law enforcement officials shall ensure the full protection of the health of persons in their custody

**Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1975**

**Article 9:** Wherever there is reasonable ground to believe that an act of torture as defined in Article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint

**Article 12:** Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

<b>Standard Minimum Rules for the Treatment of Prisoners 1977</b>
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<p><b>Article 55:</b> There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.</p>
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<b>Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2006</b>
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<p><b>Article 4:</b> In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.</p>
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<b>Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2000</b>
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<p><b>Article 3(a):</b> The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. 1 The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.</p>
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## 8. RECOMMENDATIONS

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- 8.1 Ceartas is of the view that Dr. Ali bin Fadhel Al-Buainain's position as Executive Committee on the IAP is untenable given that the organisation seeks to promote the very principles he has, and continues to breach in Bahrain. It is therefore recommended that in order to preserve the integrity of the IAP, the Attorney General should resign his position and membership to the organisation. This action is in accordance with the IAP Executive Committee Protocol, namely that if a member does not show "*commitment to the IAP's Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors; and b) demonstrable work on behalf of the IAP and/or in support of its objectives*" he/she should "*resign from the Executive.*"<sup>105</sup>
- 8.2 Failing voluntary resignation, a complaint should be brought, and supported, against Dr. Al-Buainain calling for his expulsion from the IAP through the Complaints Protocol, which holds that "*The IAP will consider seriously and respond promptly to any allegation by a member of a serious breach of the IAP's Objects or Standards.*"<sup>106</sup> Thereafter, the remaining members of the Executive Committee may under Article 6.2 of the IAP Constitution "*Recommend to the General Meeting that a member be expelled...if it is considered that he/she or it has been guilty of dishonourable conduct or that continuation of his/her or its active participation in the activities of the Association or of his/her or its membership is detrimental to the Association.*"<sup>107</sup>
- 8.3 Ceartas also recommends that the aforementioned Bahraini nationals in this report have their convictions judicially reviewed in a court that guarantees fair procedures, due process and adherence to the principles of international human rights law.
- 8.4 It is further recommended that the Attorney General should fully implement BICI recommendation 1722(h)<sup>108</sup>, and by doing so drop all charges, and cease further prosecutions, against Bahraini citizens who express political opinion or engage in political protest.
- 8.5 Finally, Ceartas recommends that the Attorney General fully implement Recommendation 1722 (b)<sup>109</sup> of the BICI report and to establish an independent, impartial and reputable body capable of investigating allegations arising from torture, and in doing so, dissolve the current "*Special Investigation Unit*" tasked with the duty.

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<sup>105</sup> Executive Committee Protocol (accessed, 29/11/13) [http://www.iap-association.org/ressources/IP\\_Annex%205%20-%20Ex%20Com%20protocol\\_V2.pdf](http://www.iap-association.org/ressources/IP_Annex%205%20-%20Ex%20Com%20protocol_V2.pdf)

<sup>106</sup> International Association of Prosecutors, Complaints Protocol <http://www.iap-association.org/default.aspx>

<sup>107</sup> Constitution of the International Association of Prosecutors, (accessed 2/1/13) <http://www.iap-association.org/ressources/CONSTITUTION%20June%202011%20with%20annexes.pdf>

<sup>108</sup> "*To review convictions and commute sentences of all persons charged with offences involving political expression, not consisting of advocacy of violence, or, as the case may be, to drop outstanding charges against them.*" Report of the Bahrain Independent Commission of Inquiry (BICI), Para 1722(h) (accessed 26/11/12) <http://www.bici.org.bh/BICIreportEN.pdf>

<sup>109</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Para 1722(b) (accessed 26/11/12) <http://www.bici.org.bh/BICIreportEN.pdf> "*To establish a standing independent body to examine all complaints of torture or ill-treatment, excessive use of force or other abuses at the hands of the authorities*".

## ANNEXES

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### Annex 1<sup>110</sup>

1. Organising and managing a terrorist group for the overthrow and the change of the country's constitution and the royal rule in accordance with article (1,6) of the law no. 58 for 2006 related to the protection of society against terrorist acts.
2. The seeking and correspondence with a terrorist organization abroad working for a foreign country to conduct heinous acts against the Kingdom of Bahrain in accordance with Article (122) of the criminal law for the 1976.
3. An attempt to overthrow and change the country's constitution and Royal rule by force in accordance with Article (148) of the criminal law for 1976.
4. An attempt to incite and solicit the overthrow and change the country's constitution and Royal rule by force in accordance with Article (160) of the criminal law for 1976.
5. The collection and providing of money for the terrorist group with the knowledge of its practices and terrorist activities in accordance with law related to money laundering and financing terrorism for the year 2001.
6. The obtaining of publications that contain content inciting the overthrow of the governing law in the country by force in accordance with Article (161) of the same law.
7. Insult the army according to the article (216) of the same law.
8. Inciting publicly towards the hatred of the governing law of the country in accordance to Article no (165) of the same law.
9. Broadcasting false news and rumours that caused the threatening of public security and inflecting damage to public interest in accordance to Article (168) of the same law.
10. Inciting the hatred of a certain sect of people in accordance to Article (172) of the same law.
11. Inciting incomppliance with the law that is considered a crime in accordance with Article (173) of the same law.
12. Organising and participating in rallies without the permission of the specialized body according to Article (1,2,3,9,13) of the law related to meetings and processions for 2006.

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<sup>110</sup>Bahrain National News, 8/5/2012, (accessed 23/10/12) <http://www.bna.bh/portal/en/news/455661>

## Annex 2<sup>111</sup>

1. Dr. Ali Al-Ekri, pediatric orthopedic surgeon — 15 years — reduced to five years
2. Dr. Nader Diwani, pediatrician — 15 years — reduced to one month,
3. Dr. Mahmoud Asghar, pediatric surgeon — 15 years — reduced to six months
4. Dr. Abdulkhaleq Al-Oraibi, rheumatologist — 15 years — reduced to one month,
5. Dr. Ghassan Dhaif, maxillofacial surgeon — 15 years — reduced to one year
6. Dr. Bassim Dhaif, orthopedic surgeon — 15 years — reduced to one month,
7. Dr. Saeed Al-Samahiji, ophthalmologist — 10 years — reduced to one year
8. Ali Hassan Al-Sadadi — 15 years — tried in absentia
9. Ibrahim Abdullah Ibrahim — 15 years — reduced to three years
10. Deya Ebrahim Jaffer, nurse — Five years — reduced to two months
11. Dr. Qassim Mohammed Omran — 15 years — tried in absentia
12. Dr. Zahra Al-Sammak, anesthesia consultant — 5 years — acquitted
13. Dr. Hassan Mohammed Nasser Al-Toblani, head of ICU — 10 years — acquitted
14. Dr. Ahmed Abdulaziz Omran Hassan — 15 years — acquitted
15. Sayed Marhoon Al-Wedaie, Director of Paramedics — 15 years — acquitted
16. Mohammed Faeq Ali Al-Shehab, lab technician — Five years — acquitted
17. Rula Al-Saffar, Head of Nursing, — 15 years — acquitted
18. Dr. Fatima Haji, rheumatologist — Five years — acquitted
19. Dr. Najah Khalil, consultant, family physician, — Five years — acquitted
20. Dr. Nada Dhaif, dentist — 15 years — acquitted

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<sup>111</sup> Physicians for Human Rights (accessed 8/11/12)  
<http://physiciansforhumanrights.org/issues/persecution-of-health-workers/bahrain/medics-on-trial-in-bahrain.html>

## **Annex 3<sup>112</sup>**

### **Hasan Jassim Mohamed Maki**



**1971 - 3<sup>rd</sup> April 2011**

Mr Maki was taken into custody on the 28<sup>th</sup> March 2011 and was pronounced dead due to heart failure on the 3<sup>rd</sup> April. The BICI report found that he died due to torture

### **Ali Isa Ibrahim Saquer**



**1980 - 9<sup>th</sup> April 2011**

Mr Saquer was taken into custody on the 5<sup>th</sup> April 2011 and was pronounced dead on the 9<sup>th</sup> due to hypovolemic shock. The BICI report found that he died due to torture

### **Zakariya Rashid Hassan Al Asheri**



**1971- 9<sup>th</sup> April 2011**

Mr Al Asheri was taken into custody on the 2<sup>nd</sup> April 2011 and was pronounced dead on the 9<sup>th</sup> due to heart failure. The BICI found that he died due to torture

### **Jaber Ebrahim Yousi Mohamed Alawiyat**



**10<sup>th</sup> March 1970 – 12<sup>th</sup> June 2011**

Mr Alawiyat was taken into custody on the 30<sup>th</sup> April and was released on the 9<sup>th</sup> June. The BICI found that he died due to torture during his time in custody.

### **Abdulkarim Ali Ahmed Fakhrawi**



**1<sup>st</sup> January 1962 – 11<sup>th</sup> April 2011**

Mr Fakhrawi was taken into custody on the 3<sup>rd</sup> of April 2011 and pronounced dead due to kidney failure on the 11<sup>th</sup> April. The BICI report found that his death was due to torture.

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<sup>112</sup> Report of the Bahrain Independent Commission of Inquiry (BICI), Annex A, (accessed 26/11/12)  
<http://www.bici.org.bh/BICIreportEN.pdf>





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