



9 BEDFORD ROW INTERNATIONAL

Chambers of Anthony Berry QC
9 Bedford Row
London, WC1R 4AZ
DX: LDE 453
T 020-7489-2727
F 020-7489-2828

<http://www.9-bedford->

President James Hamilton
International Association of Prosecutors,
Hartogstraat 13,
2514 The Hague,
The Netherlands.

Re: IAP Executive Committee member, Ali bin Fadhel Al-Buainain.

Dear President Hamilton,

I write in relation to the above named Executive Committee member to make a formal complaint against his presence on the Executive Committee under Article 6.2 of the IAP (International Association of Prosecutors) Constitution and call for his suspension from the Association. It has come to my attention that Dr. Al- Buainain, as head of the Bahraini office of Public Prosecution has, and continues to allow that office to breach IAP prosecution standards, as well as international Human Rights law. The attached report by Ceartas-Irish Lawyers for Human Rights, which is the basis and content of this complaint, details circumstances where Dr. Al- Buainain has (1) prosecuted individuals for activities protected by the freedom expression and assembly, (2) failed to adhere to fair procedures and due process standards, and (3) failed to investigate and prosecute on matters of torture. The nature and seriousness of the breaches are detailed in the said report and it is submitted that the presence of Dr. Al-Buainain on the IAP Executive Committee is contrary to the following the obligations, standards and objectives set by the IAP:

- Article 1.3 (a) of the IAP Constitution, the Association is “[T]o promote the effective, fair, impartial and efficient prosecution of criminal offences”;
- Article 1.3 (b) of the IAP Constitution, the Association is “[T]o 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”;
- Article 1.3 (c) of the IAP Constitution “[T]o promote and enhance those standards and principles which are generally recognised internationally as necessary for the proper and independent prosecution of offences”;
- Article 1.3 (d) of the IAP Constitution, the Association is to “[T]o 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”;

- Article 7 (a) of the Procedure for nominating persons to membership of the Executive Committee within the IAP Executive Committee Protocol, which holds that “[A]ny 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*”;
- Article 1 (h) of the 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*”;
- Article 1 (f) of the 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*”;
- Article 4.1 of the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutor “[P]rosecutors *shall perform their duties fairly, consistently and expeditiously*”;
- Articles 4.3 of the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutor which states that a prosecutor is to “[R]efuse 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”; and
- Article 4.3 of the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors which states that prosecutors should seek to ensure that “[A]ppropriate action is taken against those responsible for using [torture] such methods.”

The United Nations issued Guidelines on the Role of the Prosecutor in 1990¹ (hereinafter: UN Guidelines) that stipulate:

“[Prosecutors] play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles², thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime”.

Whereas the Guidelines uphold the Prosecutor’s right to freedom of expression, belief, association and assembly under section 8, this section nevertheless contains a strong proviso for the rights to be exercised “in accordance with the law and the recognized standards and ethics of their profession”.

“Section 8 - Prosecutors like other citizens are entitled to freedom of expression,

¹ Guidelines on the role of the Prosecutor, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

² Namely, the “Principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal”. See UN Guidelines, *supra*.

belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

“Section 9 - Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.”

Further, sections 13(a) and 13(b) of the UN Guidelines provide that “in the performance of their duties, prosecutors shall:

- a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
- b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

Further, section 23 of the UN Guidelines provides that “Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.”

Comparatively, at common law, it is submitted that the principles and rules of procedure of England and Wales, where the Code for Crown Prosecutors stipulates that:

“Prosecutors must be fair, independent and objective. They must not let any personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation, or gender identity of the suspect, victim or any witness influence their decisions. Neither must prosecutors be affected by improper or undue pressure from any source. Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.”³

In sum, it is respectfully submitted to the IAP that the duty of a prosecutor to act independently is paramount. In this regard it is quite clear that in cases involving crimes of an international character that impact on a nation and its sovereign integrity, a clear, transparent and systematic approach is

³ The Code for Crown Prosecutors, General Principles, 2.4 (United Kingdom).

needed, one that determines priorities and selects matters for prosecution in a fair and transparent manner and one that serves society as a whole, not solely a segment thereof.

This has been one of the guiding principles in addressing impunity in other jurisdictions at both the national and international levels. One of the principal aspects of a national response to civil unrest is the issue of prosecutorial independence and discretionary powers. In order to properly discharge one's responsibilities when making a decision, a Prosecutor must be subject to transparent criteria and standards that govern such decisions.⁴ Guidelines and standards that apply to charging decisions made must be available to the public and guidelines must take into account international standards⁵ and take advantage of proven practices in well established criminal justice systems elsewhere.⁶ They must also be consistent with and conform to domestic law and practices in the region in which they operate.

The discretion to charge a person with a criminal offence is arguably among the greatest of the powers of the State and must therefore be strictly separate from any executive or judicial function.⁷ As a result the authority must be exercised in as objective and open a manner as possible. The exercise of the discretion must be impartially applied with a view to establishing what happened, how it happened and the accurate identification of the person or persons who bear legal responsibility. This is particularly so as regards the investigation and prosecution of crimes of an international character and charging decisions *must* take account of the public interest. This is linked back to the societal right to know the truth, as matters in such cases the role of the Prosecutor as an *independent* and *impartial* selector of facts is vital as this undoubtedly contributes to uncovering the truth for victims in the larger sense.

It is respectfully submitted that, in these circumstances, if it may be established that Dr. Al- Buainain has breached his prosecutorial duties, then his independence cannot be guaranteed to the requisite level. It is submitted that Dr. Al- Buainain has conducted investigations in accordance with a

⁴ See e.g., Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1999

⁵ See e.g., Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1999; International Association of Prosecutors, Standards of professional responsibility and statement of the essential duties and rights of prosecutors (23 April 1999)

⁶ See e.g., Council of Europe, Committee of Ministers, Recommendation (2000) 19 on the Role of public prosecution in the criminal justice system (6 October 2000); Crown Prosecution Service, *Charging Standards* (London: Oxford University Press, 2005); American Bar Association, ABA Standards on Criminal Justice, Prosecution Function (3rd Edition – 1993); United States Department of Justice, United States Attorney's Manual, 9-27.00, Principles of Federal Prosecution (January 2007); Prosecution Guidelines of the Office of the Director of Public Prosecutions for New South Wales (20 October 2003); The Federal Prosecution Service Deskbook (Canada) (01 March 2006)

⁷ See Guidelines on the Role of Prosecutors, para. 10

perceived bias and will not be sufficiently separated from being emotionally tied to the matters at issue and will not be capable of discharging his duties independently and impartially.

It is put forward that given the evidence contained in the Ceartas – Irish Lawyers for Human Rights report and the above mentioned provisions, the position of Dr. Al- Buainain on the Executive Committee is untenable and his continued presence puts the IAP into disrepute. Thereafter, I call upon the President and Secretariat of the IAP to receive and take with absolute seriousness this complaint and act in accordance with Annex 3 of the Constitution.

I look forward to hearing from you.

Yours sincerely,



Toby M. Cadman
IAP member

c.c Elizabeth Howe, The Hague, The Netherlands
Derk Kuipers, West Maling, UK