

Working paper on:

The role of National Institution for Human Rights in promoting and protecting the right to vote and the right to contest for elections in the Kingdom of Bahrain

Submitted by Mr. Farid Ghazi Jassim Rafie

Member of the Council of Commissioners, Chairperson of the Committee on Economic,
Social and Cultural Rights
in the National Institution for Human Rights in Bahrain

In a workshop on

The role of National Institutions for Human rights in monitoring the elections

Organized by the Arab Network of National Institutions for Human Rights
in cooperation with the Regional Centre of the United Nations Development
Programme (UNDP)

13 - 15 March 2016

Amman - Jordan

Working paper on
The role of National Institution for Human Rights in promoting and protecting

the right to vote and the right to contest for elections in the Kingdom of Bahrain

Submitted by: Mr. Farid Ghazi Jassim Rafie
Member of the NIHR's Council of Commissioners, Chairperson of the Committee on Economic, Social and Cultural Rights

In workshop on the role of National Institution for Human Rights in monitoring elections
13 - 15 March 2016
Amman – Jordan

Main Themes

Introduction:

First Theme: National and international legal protection for the right to vote and the right to contest for elections

Second Theme: Reality of the practice of exercising the right to vote and the right to contest for elections in the Kingdom of Bahrain.

Third Theme: Monitoring the electoral process in 2014 by the National Institution for Human Rights.

Fourth Theme: Visualizing a proposal to activate the role of the National Institution for Human Rights in monitoring the electoral process.

Introduction

- The right to vote and the right to contest for elections is one of the most important civil and political rights, and one of the pillars of democratic rule where the people are the source of all powers. The existence of a transparent and fair electoral process is considered one of the most important guarantees for a country governed by the rule of law, and the absence of this right or impeding the enjoyment of exercising this right diminishes the legal elements of such country.
- Therefore, this working paper will address a countryment of legal protection mandated by national legislation in the Kingdom of Bahrain as well as the provisions of the international human rights law to promote and protect the right to vote and the right to contest for elections, focusing on the reality of exercising this right, monitoring the electoral process in 2014 by the National Institution for Human Rights and proposing a vision to activate the role of the National Institution for Human Rights in monitoring the electoral process in the future.

**First Theme: National and international legal protection of
the right to vote and the right to contest for elections**

National legal protection of the right to vote and the right to contest for elections

- The Constitution of the Kingdom of Bahrain stipulates very clearly in Article 1 (e) that: citizens, both men and women, are entitled to participate in public affairs and may enjoy political rights, including the right to vote and the right to contest for elections, in accordance with the present Constitution and the conditions and principles laid down by law. No citizen can be deprived of the right to vote or to contest for elections except by law.
- Also, the legislator sets legislations that include detailed rules governing the exercise of the right to vote and to the right to contest for elections and protecting this right, including the Legislative Decree No. (14) for the year 2002 on the exercise of political rights, as amended in relation to the referendum process and the election of members of the Council of Representatives, which includes due requirements to exercise these rights and conditions for prohibiting a person from the right to vote and the right to contest for elections, and matters relevant voters lists and the mechanism of organizing the referendum and election processes, leading up to setting the referendum and election crimes, penalties when imposed, as well as the identification the voting age, which is twenty years, by law.
- Legislative Decree No. 15 of 2002 on the Shura Council and the Council of Representatives, as amended, sets the composition of the Shura Council, its legal mandate, due requirements relevant to whoever is appointed as a member, defined conditions of the end of membership, whether through removal or the member to seek relief , along with the composition of the Council of Representatives, the mechanism of election by direct secret universal suffrage according to individual member election, with a countryment of the planned duration of the mandate of the Council, the conditions and procedures to be

observed in standing for election to membership of the Council of Representatives, the relevant provisions of the electoral propaganda, and defined conditions of the end of membership through removal or a member's resignation, in addition to the penalties imposed for violation of its provisions.

- With regard to the right to participate in public affairs, the provisions of the Municipal Law issued by Legislative Decree No. (35) of 2010, as amended to divide the Kingdom of Bahrain into a number of municipalities and the Capital Secretariat, stipulating the composition mechanism of the membership of municipal councils and the Capital Secretariat, the conditions to be fulfilled by those who are members thereof, specifying terms of reference assigned to municipal councils, the system of work, provisions relevant to executive authority and its financial resources, as the Legislative Decree No. (3) for the year 2002 country's on the election of members of municipal councils, as amended, indicating the terms of electing members of municipal councils, the conditions of depriving of such right, provisions relevant to the schedules of voters and electoral domicile, and other provisions relevant to the mechanism of the election, as the Legislative Decree also determines penalties for violation of its provisions, as well as the identification the voting age, which is twenty years, by law.
- To complement such legislative system to exercise the right to vote and the right to contest for elections, supplementary legislations to regulate the exercise of this right have been issued, for instance Legislative Decree No. (14) for the year 1973, on the arrangement of propaganda, and Resolution No. (77) for the year 2006, on the arrangement of the election campaign for elections of the House of Representatives and municipal councils, to address the issues and procedures relevant to electoral propaganda and penalties for violating it.

International legal protection of the right to vote and the right to contest for elections

- The right to vote and the right to contest for elections is established in international human rights instruments, specifically the Covenant on Civil and Political Rights, which acceded by the Kingdom of Bahrain under Law No. (65)

for the year 2007, where Article number (25) thereof countryd that every citizen, without any discrimination, shall have the right of participation in the management of public affairs, either directly or through representatives who are elected or to be elected in an integral elections run periodically by universal suffrage and secret voting, guaranteeing the free expression of the will of the voters.

- International instruments related to the right to vote and the right to contest for elections stress that exercising such right shall not be based on any discrimination among citizens, whether it's based on gender, race, language, religion, political or other opinion, national or social origin, property, birth or any other reason. The citizens' right to exercise their political rights, whether through voting or standing for elections, shall be under free and fair procedures in periodic elections, and over reasonable time periods under laws guaranteeing the exercise of such rights effectively, and voters shall have the freedom to cast their ballots for their chosen candidates, and to have the freedom to express their views fully and independently without being subjected to violence, threat of violence, coercion, enticement or any attempts to interfere with or manipulate such independence in any way.
- Regulating legislations of the electoral process may include reasonable restrictions designed to regulate the right to vote and the right to contest for elections or determining this right without compromising its essence. Among such regulating restrictions of this right is setting a minimum legal age to exercise the right to vote and the right to contest for elections, and in return, relevant international instruments consider that exercising this right by citizens based on such requirements as literacy, education level, affiliation or lack of affiliation to political parties or associations, deemed to be an unreasonable restraint which constitutes a violation of this right.
- To achieve the effective exercise of the right to vote and the right to contest for elections, the Country should take effective measures to ensure the exercise of such right is achieved. Such measures include the electoral, including a record of names and data of eligible voters, as voter registration is an integral part of the

electoral process, and lack of such lists of accurate and updated names and information may deprive a number of citizens of exercising their right in this regard.

- To ensure the full enjoyment of the right to vote and the right to contest for election, is also necessary to facilitate exchange of information and opinions relevant to the electoral process freely, through free press and other media capable of commenting and informing the public opinion on the course of this process with full transparency. Such right is linked to the necessity of taking all necessary measures by the country to ensure the enjoyment of other human rights relevant to such right to peaceful gather and hold peaceful public meetings, and the right of establishing associations as fundamental foundations for the effective exercise of the right to vote and the right to contest for elections.
- The Country should create an independent electoral commission to oversee the electoral process and ensure its integrity and functioning in accordance with the provisions of the law. This commission should ensure secrecy of the ballot during the electoral process in particular, and to protect the voters from all forms of temptation or coercion that may force them to reveal their electoral orientation and it should also ensure the integrity of the ballot box. Votes should be counted in the presence of candidates or their agents and the decisions taken by the electoral commission regarding the electoral process should be subject to judicial oversight to ensure the confidence of the voters and the public in the output of that process.

Second Theme: Reality of the practice of exercising the right to vote and the right to contest for elections in the Kingdom of Bahrain.

- With regard to practicing the right to vote and the right to contest for elections, and to complement the reform project led by His Majesty the King following the endorsement of National Action Charter in 2001, the restoration of parliamentary life, parliamentary and municipal elections for the first time in 2002, elections were held every four years in 2006 , 2010 and most recently in 2014, namely in on November 22, 2014, followed by the run-off on 29 November 2014 resulting in the formation of the Council of Representatives and the three municipal councils distributed over the governorates of the Kingdom.

- High Elections and Referendum Commission
Pursuant to the provisions of Law by Decree No. (14) for the year 2002 on exercising political rights and its as amendments, and Decree by-Law No. (3) of 2002 on election of municipal councils' members, and its amendments, a commission called "High Elections and Referendum Commission" to oversee the integrity of election and the referendum" was created and headed by the Minister of Justice and Islamic Affairs and endowments, and membership of a sufficient number of judges and counselors-at-law. The Commission has taken the responsibility of preparing the lists of voters, receiving the applications, examining and preparing countryments of the candidates, examining applications and objections relating to any action or decision issued by the Commission, and is generally concerned with overseeing the integrity of the referendum or election of members of the Council of Representatives and municipal councils.

- Election of Members of the Council of Representatives:
According to the figures and official statistics announced, the total number of candidates for membership of the Council of Representatives in the parliamentary elections of 2014 was (266) two hundred and sixty-six candidates, distributed over the four governorates of the Kingdom. The competed for forty seats in the Council of Representatives. The Capital Governorate is allocated (10) seats, Muharraq

Governorate (8) seats, Northern Governorate (12) seats, and the Southern Governorate 10) seats.

- Election of Members of Municipal Councils:

The total number of candidates for membership of the three municipal councils is one hundred and thirty five (135) candidates competed for 20 seats: The Muharraq province municipal council was allocated, by law, eight (8) seats, the Northern province municipal council was allocated twelve (12) seats, and Southern province municipal council was allocated ten (10) seats.

- Total Vote :

According to official statistics published figures, the total vote was (349,713). The total vote for the Capital Governorate was (90,349), Muharraq Governorate (68,618), Northern Governorate (119, 467) and Southern Governorate (71,279). Voter turnout in the parliamentary elections was (52.6%), while voter turnout in municipal elections was (59.1%) of the total vote.

- Election system in the Kingdom of Bahrain:

It is noteworthy that the election system in Bahrain is based on single a candidate selection, whether for membership of the Council of Representatives or municipal councils, where a voter may give his vote for one candidate from among several candidates, which means that the ballot paper shall have one candidate's name, as only one candidate is elected for each constituency (parliamentary or municipal).

- Legislative Amendments:

To enforce the outcomes of the National Consensus Dialogue involving all political parties, led by His Royal Highness the Crown Prince following the directives of His Majesty the King on the political theme, the parties to the dialogue agreed on the need to take corrective action, including legislative amendments dealing with constituencies and strengthening the independence of the High Elections Commission. Accordingly, the year 2014 witnessed a number of legislative amendments related to the electoral process, both for the election of

members of the Council of Representatives and members of municipal councils, which include the following:

- The issuance of Decree No. (71) for the year 2014 which determined the areas and electoral constituencies and their boundaries and the sub-committees required for electing the members of the Council of Representatives, as it divided the Kingdom of Bahrain into four electoral regions and defined the limit of every area to be as the limits of the governorate it is located in. It divided the Kingdom to (4) electoral districts as follows: the Capital area, Muharraq area , Northern area and Southern region. In accordance with the Decree No. (39) for the year 2002 the determination of areas, constituencies, boundaries and sub-committees for the election of the House of Representatives there were (5) electoral districts, where the Central Region was abolished from the latter.
- The issuance of Law No. (24) for the year 2014, amending some provisions of the Municipal Law issued by Legislative Decree No. 35 for the year 2001, which dealt with the division of the kingdom to four municipalities as follows: The Municipality of Muharraq, the Municipality of the Northern region, the Municipality of the Central Region, the Municipality of the Southern region, and the secretariat of the capital, where under this amendment Manama Municipality was canceled, to be replaced by the secretariat of the capital, resulting in the abolition of the Municipal Council of the Municipality of Manama and replaced by the Capital Secretariat Council, which consists of no fewer than (10) members appointed by Royal Decree, including the Chairman and Deputy Chairman from among members selected from civil society organizations concerned with municipal working, and who are experienced and competent, as well as residing in the Capital.
- The issuance of Decree No. (70) for the year 2014 on the abolition of the Municipality of the Central Region, which entailed the issuance of Resolution No. (35) for the year 2014 on the determination of areas, constituencies, boundaries and sub-committees for the election of members of the municipal council, in accordance with which the Resolution divided the municipal

electoral districts into three districts as follows: The Muharraq area, the Northern region, and the Southern area.

- Legal debate about the constitutionality of Law No. (24) for the year 2014 amending some provisions of the Municipal Law issued by Legislative Decree No. 35 for the year 2001, which abolished the Municipal Council of the Municipality of Manama, replacing it by the Capital Secretariat Council

- There was a legal debate about the constitutionality of this amendment as it deprives those who have the right to vote and the right to contest for election for municipal elections in this electoral district, which contradicts Article (1), paragraph (e) of the Constitution, which contrary that "*Citizens, both men and women, are entitled to participate in public affairs and may enjoy political rights, including the right to vote and to the right to contest for elections, in accordance with the present Constitution and the conditions and principles laid down by law*" and Article No. (18), which contrary that "*People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the basis of sex, origin, language, religion or creed*".
- Acting upon the constitutional procedures followed in this regard, and prior His Majesty the King's ratification of the amendment mentioned above, the law was been referred, before its release, to the Constitutional Court to decide on the extent of its conformity with the provisions of the Constitution, upon which a decision was made in July 9, 2014 by the Court ruling that the abolition of the Municipal Council of the Municipality of Manama, which was replaced by the Capital Secretariat Council was constitutional, and that the establishment of the Council of the Capital Secretariat Council and

the appointment of its members by Royal Decree is in compliance with the provisions of the Constitution.¹

Third Theme: Monitoring the electoral process in 2014 by National Institution for Human Rights

- As the NIHR, through its Council of Commissioners, did not start working actually until February 2013 upon the issuance of the Royal Decree restructuring the Institution, making it difficult to carry out effective monitoring of the parliamentary and the municipality elections which took place in November 2014, the NIHR, therefore, in line with its role in the protection of human rights, monitored the position of some political parties through their decision to boycott the parliamentary and municipal elections, and while the National Institution believes that position was an expression of its opinion and convictions under the Constitution, it is of the view that participating in the political affairs is a right for individuals guaranteed by the Constitution and international human rights instruments, with its full belief that the democratic approach embodied by the ballot box is the best way to ensure respect for human rights, the rule of law and the maintenance of national unity. Therefore the NIHR hoped to see participation of all national forces from different political shades in the electoral process for advancing reform, and to strengthen and protect the frameworks of democracy and human rights.
- Pursuant to the provisions of Law Decree No. (15) of 2002, regarding the Shura Council and the Council of Representatives, as amended, and in particular Article no. 27, which contrary that " All election campaigning has to stop all over the kingdom 24 hours before the date of elections. ", the NIHR noted that the official media broadcast a television interview with a candidates, in addition to that a local newspaper which published electoral advertisements for some candidates during the electoral silence period, which is deemed a clear violation of the provisions of Article mentioned above.

¹ Constitutional Court's decision on Royal referral number: (e. H. M / 2/2014) of year 12 judicial issued on July 9, 2014 and published in the Official Gazette in its edition (3165) dated July 17, 2014.

- Before and during the period leading up to the election process, the NIHR also monitored some security events that included damaging or burning private property for some of the candidates, attacking their premises and defacing election posters. The NIHR believes that this conduct is incompatible with the values and principles of democracy. In addition, these acts target public and private property, stressing that such acts would undermine the security and stability, terrorize innocent citizens and residents, threaten security and civil peace, as well as the prejudicing human rights and fundamental freedoms which should be enjoyed freely by all.
- On the other hand, the NIHR also spotted cases of child exploitation during the electoral process. This involved the employment of children in electoral campaigns for some candidates in public streets and roads. Thus, for the best interests of the child, the NIHR stresses that involving children in such acts might have bad effects and poses risk to their lives and security as it is not commensurate with their age group.
- Regarding the lists of voters, on polling day the NIHR spotted that a large number of names of eligible voters for parliamentary or municipal elections missing from the lists of voters. That was the result of the change in the number of districts due to the abolition of the Central Governorate, causing confusion for some constituencies and the inability of some citizens to exercise their electoral right. Thus, the NIHR believes that despite the pre-election announcement of the Higher Election Commission for voters to ensure that their names were included in the prescribed electoral lists, giving to them 45 days prior to polling day pursuant to the law on exercising political rights, it was necessary to avoid voter confusion caused by merging governorates following the abolition of the Central Governorate. The NIHR wishes that matter to be taken into account when preparing the lists of voters for the next round of general elections in 2018.
- To enhance the confidence of voters in outcomes of the electoral process and the role entrusted to the High Elections and Referendum Commission, the NIHR had hoped that the High Commission would publish a detailed report after the end of the electoral process in which it showed all details of the electoral process, whether for voters registration in voter lists, receiving applications for candidacy for the Council of Representatives or municipal councils, or at electoral propaganda phase, as well as voting and vote counting, announcement of results and considering electoral appeals. Involving civil society institutions in the membership of the High Elections and Referendum Commission to oversee the integrity of the election and the referendum is also important.

Fourth Theme: A proposal to activate the role of the National institution for Human Rights in supervising and monitoring the electoral process

Legal basis of supervising and monitoring the electoral process

- Article (2) of Law No. (26) for the year 2014 concerning the establishment of the National Institution for Human Rights stipulates that:
"An independent institution called "National Institution for Human Rights" is established responsible for promoting, protecting human rights, consolidating its values, disseminate awareness of its role and contributing to securing its practice"
- That Article followed by Article (12) in that Law to precisely identify the specific terms of reference assigned to the National Institution in order to achieve its objectives. Paragraphs number (e) and (g) of that article stipulated that the National Institution should do the following:
 - e) **"Monitor cases of human rights violations, conduct the necessary investigation, and draw the attention of the competent authorities to these violations and submission of proposals relating to the initiatives to put an end to such situations and, where necessary, to express an opinion on the position of these parties and their reactions"**.
 - g- **"Conduct field visits to in accordance with the applicable principles in order to monitor the human rights situation in correctional institutions, detention places, gatherings of labor, health and educational centers, or any other public place in which it is suspected that human rights violations are committed"**.
- As the mandate guaranteed by the law on establishing the National Institution includes the promotion and protection of all human rights, on equal footing as interdependent and inseparable rights, this mandate also extends to monitor, carry out the necessary investigations and conduct field visits to monitor the human rights situations, including the right of citizens to participate in the electoral process, whether by nominating or electing. From this point, the jurisdiction of National Institution to monitor the electoral process is an explicit matter mandated by law of its establishment, on the grounds that the practice of this process is only to ensure that citizens shall enjoy their prescribed rights.

Initial conception of the stages of supervising and monitoring the electoral process

The participation of NIHR in the supervision and monitoring of the parliamentary and municipal elections makes it necessary requires a number of preliminary and executive measures, which can be summarized as follows:

- Preliminary and Procedural Stage:
 - Signing of a memorandum of understanding (cooperation) with the **Legislation and Legal Opinion Commission**, the authority concerned with provide all technical support and logistical functions for the electoral process, and **the High Election and Referendum Commission**, headed by the Minister of Justice, Islamic Affairs and Endowments, the judicial authority tasked with overseeing the integrity of the electoral process.
 - Publish a countryment in the local daily newspapers, in addition to the Official Gazette, stating that the National Institution for Human Rights will participate in the supervision and monitoring of the parliamentary and municipal elections by an **national team** and calling on all relevant civil society organizations to nominate 3 of its members at the most to participate in the process.
 - Carry out media monitoring by a **specialist media team** from the same national team to monitor and follow up pre-election media coverage.

- Stages of the process of supervision and monitoring of the electoral process:

From the national team concerned with supervising and monitoring of the electoral process, 5 executive teams may be formed to assume responsibility for those important stages throughout the election process:

Stage 1: Voters' registration and entering them in the voter lists

Stage 2: Applications for candidacy for the Council of Representatives and the municipal council stage

Stage 3: Election Campaigning Voting, counting of votes and announcement of results stage.

Stage 4: Considering election challenges

- It also is proposed that the five executive teams shall be supported by two teams, the first is a **specialist legal team** to provide the necessary legal support, and the second is a **specialist media team** to monitor all media matters before, during and after the electoral process. The team leaders shall submit their relevant reports in preparation for drafting of the final report on the electoral process as a whole.

- National team involved in the supervision and monitoring of the electoral process:
 - The national team shall be formed at the invitation of the National Institution for Human Rights to all civil society organizations to participate in setting up the national team for the supervision and monitoring of the electoral process, according to which those organizations nominate no more than 3 persons, provided that they meet the following conditions:
 - 1- The nominee shall be a Bahraini national.
 - 2- The nominee shall be twenty-five full calendar years old at least.
 - 3- The nominee shall be have interest and knowledge of matters related to the electoral process.
 - 4- The nominee shall have no political affiliations that may affect the integrity of his monitoring and supervisory role.
 - The National Institution shall have the right following the mechanism it deems appropriate to choose from the nominees the appropriate persons from its point of view to be a member of the national team tasked with supervising and monitoring the electoral process, in coordination with the High Election and Referendum Commission.
 - Members of national team shall be assigned to the five governorates of the Kingdom, which consist of 40 local polling stations and 10 general polling stations, so that each local or general polling station shall have no less than (3) observers, i.e. a total of a minimum number of (150) observers. The national team members shall serve in their personal capacity.
- Training of national team members involved in the supervision and monitoring of the electoral process:

The existence of a national working team in the field of supervision and monitoring of the electoral process means that they should be offered an intensive training program, whether by the NIHR or by the assistance of specialist local and foreign cadres in this regard. Therefore, it is necessary that the training program for the team commence before a reasonable period of time prior to election time.