

*Opinion of National Institution for Human Rights
On Draft Law on Amendment of Some Provisions of the Bahraini
Citizenship Law of 1963 accompanied to Decree No. (46) of 2014*

Introduction:

In appreciation of the efforts exerted by the Honorable Council of Representatives in relation to the issues of Human Rights, considering it as the Legislative Institution tasked with protecting the rights and public freedoms; and with all due respect to the considerations sought by the proposed Law sought by Draft Law on Amendment of Some Provisions of the Bahraini Citizenship Law of 1963 accompanied to Decree No. (46) of 2014; based upon the request of the Committee on Foreign Affairs, Defense and National Security at Council, the National Institution for Human Rights hereby refers to you its opinions on the mentioned proposed law taking into account the related provisions of the Constitution, documents and international conventions on human rights.

Thereupon, the National Institution for Human Rights hereby confirms that the right to citizenship is one of the fundamental elements of the legal personality a human being must enjoy. This right represents a political and legal relation between the individual and the state that obligates him/her to be loyal to it and obligates the state to protect this individual, grant him the benefits and rights resulting therefrom.

As a principle, the NIHR finds that while the state has the power to regulate and determine all issues relating citizenship acquisition, loss deprivation and revocation for purpose of protecting its security, safety and national, regional and international interests thereof, in all cases, this shall not affect the rights and public freedoms enshrined in the Constitution and all international covenants the State ratified and acceded to.

Based upon the above, the NIHR shall summarize its opinions about the draft law that includes three articles in addition to the preamble. These articles are as follows; **Article 1 thereof, replacing the stipulations of articles No. (8) and (9), paragraph (1), (10) and (11), the second article states the addition of two new articles under No. (11, bis, a) and (11, bis, b), while the third article is the executive article.**

This is detailed as follows

Article One

Article (8):

Stipulation as stated in the original law:

By the order of His Majesty the Governor, Bahraini nationality may be deprived from any person who has acquired the citizenship of Bahrain by naturalization, in the following two cases:

- (1) If a person acquired the nationality of Bahrain by deception or based on false statements or has hidden substantial information. In such event, Bahraini nationality may be withdrawn from any person who has acquired through that person by virtue of the provisions of section (4) of article (6) herein.
- (2) If a person is found guilty on a case connected with honor and honesty (impugns integrity), within five years of his acquisition of Bahraini nationality. In such event, nationality will be withdrawn from the guilty person only.

Stipulation as stated in the draft Law

By decree, and based upon a proposal by the Minister of Interior and approval of the Council of ministers, Bahraini nationality may be deprived from any person who has acquired the nationality of Bahrain by naturalization, in the following two cases:

- (a) If a person acquired the nationality of Bahrain by deception or based on false statements or has hidden substantial information of based upon forged documents. In such event, Bahraini nationality may be withdrawn from any person who has acquired through such method.
- (b) If a final judgment has been passed convicting him on a case connected with honor and honesty (impugns integrity), within ten years of his acquisition of Bahraini nationality.
- (c) If he restored his original nationality without prior permission from the Minister of Interior.
- (d) If he abandoned his continued ordinary residence in Kingdom of Bahrain for five successive years without permission from the Minister

of Interior or acceptable excuse.

The implementation of provisions of both clauses No. (c) and (d) of this article shall exclude the Bahraini who holds the nationality of one of the Member States of the Gulf Cooperation Council.

The Bahraini Nationality shall be withdrawn in the cases stipulated in clauses No. (b) and (c) of this article from the person only.

NIHR's Opinions:

The National Institution for Human Rights hereby finds that in spite of the good intention behind the draft law in article (8) including – for example – the determination of the cases, when the Bahraini nationality by naturalization can be withdrawn legally from the person, limiting the effect of this procedure to the person concerned only excluding the other persons who have acquired such nationality through such him, except in the event where such person has acquired the Bahraini Nationality by way of cheating, based upon incorrect statement, hiding substantial information or depending upon forged documents, it is shown that the same stipulation has allowed, by virtue of a decree based upon a proposal from the minister of interior and after approval of the council of ministers, the Bahraini nationality may be deprived from any person who has acquired the nationality of Bahrain by naturalization.

This means that the proposed amendment made the conclusion of legally determined cases for withdrawing the Bahraini Nationality dependent upon a resolution from the administrative authority, while the original stipulation prior to the amendment doesn't allow for withdrawing the Bahraini Nationality except by order from His Majesty the (The King) exclusively considering him the Head of the State and powers thereof and the protector of the rights and freedoms in the state, because this procedures has direct prejudice to the rights and freedoms of the individuals.

Therefore, the NIHR hereby confirms that it unacceptable as the stipulation mentioned in the original law issued on 1963 provides more guarantees and it is more consistent with the basic principles of human rights than the proposed stipulation, the subject matter of the opinion.

On the other hand, the NIHR finds that by examining the cases stipulated for deprivation of nationality as mentioned in the draft law; especially

paragraph (c) that refers to withdrawing Bahraini Nationality from the naturalized person whenever he restores his original nationality without permission from the minister of interior, and paragraph (d) that refers to the same result when the naturalized person abandons his continued ordinary nationality within Kingdom of Bahrain for five successive years without permission from the minister of interior or acceptable excuse; that although the cases determined for withdrawing nationality are specification for determination, such cases allows for absolute discretionary power for the administrative authority without determining the controls and procedures thereof in the original draft law.

This issue allows for the possibility of arbitrariness of such administrative authority in relation to withdrawing the Bahraini Nationality from those who have acquired it by way of naturalization. This may lead to invalidating the purposes sought by determining such cases in the original stipulation and will result in reducing the guarantees determined for protecting the rights and freedoms of the individuals.

Thereupon, the NIHR doesn't agree with the stipulation of article No. (8) as mentioned in the draft law and finds that it is necessary to link all cases determined for withdrawing the Bahraini nationality stipulated in the mentioned article with passing a final court judgment, by filing a lawsuit, whereby the administrative authority litigates such individual according to the legal procedures applicable in the kingdom in this regard; especially, when the issue is related to acquiring the Bahraini nationality by the nationalized person through cheating or forgery, making him subject to filing a criminal lawsuit.

Article (9) – paragraph (1):

A Bahraini citizen may lose his nationality in the following cases:

(A) If he has voluntarily acquired another nationality and an order is issued by His Majesty to withdraw the nationality of that person.

(B) If he renounces his Bahraini nationality and an order is issued by His Majesty to withdraw the nationality of that person.

Stipulation as mentioned in the draft law:

A Bahraini citizen may lose his nationality in the following cases:

(A) If he has voluntarily acquired a foreign nationality without obtaining the prior permission of the Minister of Interior.

Any Bahraini citizen who has acquired a foreign citizenship prior to the date of implementing the provision of the previous paragraph shall adjust his situation by renouncing the foreign nationality that he has acquired without obtaining the prior permission of the Minister of Interior within period doesn't exceed three months as of such date.

Any person in relation to a decree has been issued based upon a proposal of the Minister of Interior and after the Council of Ministers' approval that he maintain the foreign nationality, shall be deemed that he has lost the Bahraini Nationality in case that he didn't renounce the foreign nationality.

The violation of provisions of this clause on part of the Bahraini Citizen may not result in any prejudice to his Bahraini Nationality, if the other nationality is for any of the Member States of the Gulf Cooperation Council without prejudice to provisions of articles (11, bis, b) of this law.

(b) If he renounced his Bahraini Nationality and a decree has been issued based upon proposal of the Minister of Interior on approval thereof.

NIHR's Opinions:

The National Institution for Human Rights hereby agrees – as a principle – to the stipulation of article No. (9), paragraph (a) as mentioned in the draft law, because it states that when the Bahraini citizen acquires the nationality of a foreign country voluntarily or when the Bahraini citizen renounces his Bahraini Nationality by virtue of permission or approval of the administrative authority, as the case may be, this issue doesn't harm the individuals or prejudice their fundamental rights and freedoms. In both cases, the Bahraini National chooses the nationality with which he is satisfied voluntarily.

Nevertheless, the NIHR hereby confirms that the mentioned article should include a provision granting the Bahraini National who loses his Bahraini Nationality, because he has voluntarily chosen a foreign nationality without permit of the administrative authority or because he has renounced such nationality, the full right – in return – to restore his Bahraini Nationality by virtue of the law, whenever such person has renounced or lost for any

whatsoever reason the nationality of the foreign country that he has acquired. In addition, the period determined for the Bahraini National for purpose of adjusting his legal situations in conformity with the above article, which is determined as three months, isn't suitable for the requirements of the practical fact. Therefore, it is recommended that this period shall be increased to become six months at least.

Article (10)

Stipulation as mentioned in the original law:

Nationality of Bahrain may be deprived by order of His Majesty from whoever enjoys such nationality on the following cases:

- (A) If he enters in military service of a foreign country and keeps on service despite an order issued by His Majesty ordering him to leave such service.
- (B) If he helps or engages in service of an enemy country, or
- (C) If he causes harm to the security of the State.

Stipulation as mentioned in the draft law:

By virtue of proposal from the Minister of Interior and after approval of the council of Ministers the nationality of Bahrain may be deprived from whoever enjoys such nationality on the following cases:

- (A) If he enters in military service of a foreign country and keeps on service despite an order issued ordering him to leave such service.
- (B) If he helps or engages in service of a hostile country, or
- (C) If he causes harm to the interests of the kingdom or disposed in way contradicts with the loyalty duty thereof.

NIHR Opinions:

The National Institution for Human Rights hereby finds – as a principle – while it is the right of the state to revoke citizenship is a legitimate right followed in all legal legislations and systems aimed at maintaining the safety, security and interests of the citizen, practicing such right necessitates that such procedure should include some legal guarantees represented in determining the case of revocation clearly and specifically and the public authority shall perform transparent procedures in this regard. It is also essential that the nationality revocation may not be decided except by a final court judgment, and granting the person whose nationality has been revoked the right to Judicial Complaint Procedure as result thereto, because the nationality provocation measure is regarded as a punishment.

Therefore, by inferring the above article, we find that the draft law has determined – for limitation – the cases when the Bahraini Nationality may be revoked for those who enjoy the same. This approach agrees with the methodology shown by NIHR in the above paragraph; however, the stipulation subject matter of the opinion has allowed – according to a decree based upon proposal of Minister of Interior and approval of Council of Ministers – the deprivation of the Bahraini Nationality for the person who enjoys the same in the legally determined cases. This newly means that the proposed amendment made the cases determined for deprivation of the Bahraini Nationality by virtue resolution to be issued by the administrative authority, while the original stipulation mentioned in the law has granted the right of deprivation of the Bahraini Nationality by order of His Majesty (The King) exclusively considering him the head of the state and powers thereof and the protector of the rights and freedoms in the state.

Therefore, the NIHR hereby confirms that the proposed amendment is unacceptable as the stipulation mentioned in the original law issued on 1963 provides more guarantees and it is more consistent with the basic principles of human rights than the proposed stipulation subject matter of the opinion.

In addition, the cases determined by the draft law to revoke the Bahraini Nationality, especially paragraph (c), have considered that the disposal of the Bahraini citizen in way that contradicts with the duty of loyalty to the Kingdom as reason for revoking his nationality. Whereas, in order to avoid the arbitrariness of the discretionary power of the administrative authority related to revoking the Bahraini Nationality and the severe danger thereof and the effects thereof that prejudice the fundamental rights and freedoms of the human directly, because the controls thereof are wide; the right of the State to deprive its citizens of the nationality should be governed by a strict legal framework represented in determining the cases of deprivation of nationality and granting the persons deprived of nationality, the right to present an effective complaint as a result thereof.

Thereupon, the NIHR doesn't accept the stipulation of article No. (10) as mentioned in the draft law and finds that it is necessary to link all cases determined for withdrawing the Bahraini nationality stipulated in the mentioned article with a final court judgment, by filing a lawsuit, whereby the administrative authority litigates such individual whose nationality is wanted to be withdrawn according to the legal procedures applicable in the

kingdom in this regard by filing the criminal lawsuit or the administrative lawsuit against him as the case may be.

Article (11)

Stipulation as stated in the original law:

By order of His Majesty Governor, Nationality of Bahrain may be restored to any person who has lost nationality by virtues of the above three articles.

Stipulation as mentioned in the draft law:

By virtue of order of the King, the Nationality of Bahrain may be restored to any person who has lost nationality by virtues of provisions of this law without prejudice to the provision stipulated at end of article (7), paragraph (1) of this law.

NIHR's Opinion:

The National Institution for Human Rights hereby agrees to the stipulation of Article No. (11) as mentioned in the draft law by granting the King the absolute right and power to restore the Bahraini Nationality for person who has lost nationality by virtues of provisions of this law.

(Article Two)

Article (11, bis, a): new article

Stipulation as mentioned in the draft law:

After approval of Council of Ministers, the Minister of Interior shall issue a resolution determines the controls and procedures necessary for executing the provisions stipulated in articles No. (8), (9) and (10) of this law.

NIHRs' opinion:

The National Institution for Human Rights finds that the determination of the controls and procedures necessary for executing the provisions of deprivation, loss or revocation of the Bahraini Nationality should be stipulated clearly and decisively in the same law. Therefore, any obscurity of such provisions, use of phrases with wide meanings or broad standards or making the cases of withdrawal, loss or deprivation subject to permission or approval of the administrative authority shall be deemed as reduction of the legal guarantee that should be provided for the individuals.

Moreover, the new article as mentioned in the draft law is defective with violation to provisions of article (17), paragraph (a) of the constitution that rules:

"The Bahraini Nationality shall be defined by the law, and no person enjoying Nationality by origin may be deprived of it except in cases of high treason and dual nationality and in accordance with the conditions specified by the law."

In addition, article No. (31) of the constitution stipulate decisively that:
"Public rights and liberties laid down in this Constitution shall neither be regulated nor defined except by a law, or in accordance therewith. Such regulation or definition shall not affect the essence of the right or liberty".

Thereupon, it is shown that it isn't justified legally that the legal stipulation entrusts the administrative authority with determining the controls and procedures necessary for executing provisions of the law in cases featured with generality and obscurity and this leads to the possibility that this regulation or determination affects on the substantial right stipulated in the constitution.

In addition, the NIHR has previously given its opinion on both articles No. (8) and (10) of the draft law that the determination of cases of withdrawing or revoking the Bahraini Nationality should be in accordance with a final court judgment.

Thereupon, the NIHR hereby disagrees with stipulation of article No. (11, bis, a) as mentioned in the abovementioned draft law.

Article (11, bis, b): New article

Stipulation as stated in the draft law:

Any person who has voluntarily acquired the nationality of any of the Member States of the Gulf Cooperation Council without prior permission of Minister of Interior shall be subject of a fine of not less than BD 3000.000 and not more than BD 10000.000

The same penalty shall be applicable to the person who has acquired this nationality previously and failed to adjust his situation on the date stipulated in clause (a), paragraph (1) of article (9) of this law. In both cases, this may not result in losing the Bahraini nationality of the person and the criminal lawsuit may not be filed except based upon a request from the Minister of Interior.

NIHR's Opinion:

The National Institution for Human Rights agrees – as a principle – with stipulation of article No. (11, repeated, b) as stipulated in the draft law, but it finds that it is necessary to indicate that the entire stipulation causes obscurity and confusion; especially that the implementation of such article is linked to considering the provisions of article No. (9), paragraph (1) of the draft law. It is understood from the new article that the administrative authority shall be entitled to file a criminal lawsuit against the Bahraini citizen who has voluntarily acquired the nationality of one of the Member States of the Gulf Cooperation Council without obtaining the prior permission from such authority. At the same time, the conviction of such person may not result in losing the Bahraini Nationality only because the other nationality is nationality of a Member States of the Gulf Cooperation Council. This concept is applicable to the Bahraini who doesn't adjust his situation during the period stipulated in the draft law; namely, three months, whether voluntarily or for an acceptable excuse.

Therefore, the NIHR hereby proposes a reconsideration of this article or reformulating the same in conformity with the legal formulation method applicable in this regard.