

Opinion of National Institution for Human Rights On Proposed Law submitted by Council of Representatives on Amendment of both articles No. (6 and 7) of Bahraini Citizenship Law of 1963

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 on amendment of some provisions of Citizenship Law of 1936; based upon the request of the Committee on Foreign Affairs, Defense and National Security at the Council, the National Institution for Human Rights hereby refers its opinions on the proposed law concerned taking into account the related provisions of the Constitution, documents and international conventions on human rights..

In clarification of the proposal of amendment, it is connected to the stipulation of both articles No. (6-7) of Bahraini Nationality Law of 1963 related to conditions of granting the Bahraini nationality to the alien, his wife and minor children and depriving them from some rights resulting from granting them the nationality for period of ten years as of the granting date (the right of election, representation, nomination and appointment in the local councils and right to utilize any of the kinds of the housing rights guaranteed for the holders of the Bahraini Nationality by birth) as well as organizing the process of losing and recovering the nationality by the Bahraini woman, who is married of alien.

Thereupon, NIHR will summarize its opinions regarding the provisions of the decree-by-law, which includes – in addition to the preamble – the first article thereof that rules the replacement of the stipulations of articles No. (6) and (7) and the second article is executive.

This is detailed as follows:

first article

Article (6):

Stipulation as stated in the original law:

(1) The Bahraini Citizenship may be granted, by order from His Majesty the Governor, to any alien of full legal capacity, if requested by the alien who should meet the following requirements:

(A) He has made Bahrain, his usual place of residence legally for at least twenty-five consecutive years or fifteen years consecutively for Arab nationals, provided, however, that this period shall commence after the effective date of this act.

(B) Shall be of good conduct.

(C) Must be conversant in Arabic.

(D) Shall have a real estate in Bahrain registered in his name at the Land Registry Office of the Government of Bahrain.

(2) Notwithstanding, the above Bahraini citizenship may be granted to anyone, by order of His Majesty the Governor. Bahraini Citizenship may also be granted, by Order of His Majesty the Governor, to any Arab person, upon his request, if that person has rendered Bahrain great services.

(3) An alien who has obtained the citizenship of Bahrain by virtues of this article, shall not be entitled to voting rights, representation, nomination or appointment in local councils (except clubs and private associations), except after the lapse of ten years from date of acquiring the citizenship. This provision is applicable to persons, who have acquired the Bahraini nationality before the effective date of this Act and the ten years span, begins from the effective date of this Act.

(4) If a person is granted the citizenship of Bahrain by virtues of this article, his wife and minor children, shall be regarded Bahraini by naturalization, starting from the date of granting the nationality.

Nationalities of wives

Stipulation as stated in the original law:

1. The Bahraini Citizenship may be granted, by order from His Majesty the Governor, to any alien of full legal capacity, if requested by the alien who should meet the following requirements:

- a. He has made Bahrain, his usual place of residence legally for at least twenty five consecutive years or fifteen years consecutively at least if he holds the nationality of any of the Arab Countries by birth.

- The succession may not be damaged if the person, who requests the Nationality has left Bahrain for an Official task. If he left Bahrain for other than the official task with intention to come back, the period he takes abroad shall be deducted from account of his residence in Kingdom of Bahrain.
- b. He shall be of good conduct.
 - c. He shall have legal sustenance to satisfy his needs.
 - d. He shall have a real estate in Bahrain registered in his name at the Land Registry Office or bank account not less than one hundred thousand Bahraini Dinars.
 - e. He shall not be sentenced in Bahrain or Abroad with criminal punishment or in crime involving moral turpitude or dishonesty or an offense involving public order throughout the period of his previous stay.
 - f. He shall be fluent in the Arabic language speaking, reading and writing and he shall Pass the exam prepared for such purpose, which is determined by virtue of resolution to be issued by the Minister of Interior.
 - g. He shall be familiar with the history, culture and traditions of the Bahraini People and he shall Pass the exam to be prepared for such purpose, which is determined by virtue of resolution to be issued by the Minister of Interior.
2. His Majesty the Governor may order granting the Bahraini Nationality to any to any Arab person, upon his request, if that person has rendered Bahrain great services.
 3. As exclusion from the provision of paragraph one of this article, the Bahraini Nationality may be granted for the holders of the rare specializations and the holders of professorships and doctorates according to the following conditions:
 - a) The Minister competent in his field of specialization shall recommend granting him the Bahraini nationality due to the urgent need for him in his field of specialization and the Kingdom of Bahrain.
 - b) He shall have passed more than ten years after acquiring the PHD. Degree and he shall have passed five years at least of such period in Kingdom of Bahrain.
 4. If a man has been granted the Bahraini Nationality according to this article, his minor children – at time of granting him the nationality – shall be Bahraini Nationality by naturalization, provided that they shall be entitled – within one year as of date of reaching the legal age - to choose between their original nationality or any other nationality. In addition, each child of such man to be born after naturalizing him shall be deemed Bahraini.
- Acquiring the Bahraini Nationality by the husband may not result in enjoying his wife with the Bahraini Nationality, unless she has informed the Ministry of Interior of her desire in this regard and the wife shall continue to reside with her husband in Bahrain for period of five years as of date of declaring her desire and the wife didn't separate from him during such period for other

than the death of the husband.

The Minister of Interior may exempt from this article partially or totally and he may deprive the wife from acquiring the Bahraini Nationality by virtue of reasons resolution.

5. The alien who acquires the Bahraini Nationality according to provisions of this article shall not be entitled to any of the following rights before passage of ten years as of date of acquiring this nationality:

a) Right to elect in, represent, nominate or to be appointed in the local councils (except for the clubs and associations).

b) Right to benefit from any kind of the housing services granted for the holders of the Bahraini Nationals by birth.

This provision shall be applicable to those who have been naturalized by the Bahraini Nationality before implementing this law.

The period of ten years shall be applicable to them as of date of acquiring the nationality.

The Bahraini who holds the nationality of any of the GCC's States shall be excluded from provisions of both above mentioned items.

Article (7):

Stipulation as stated in the original law:

1. If a foreign woman marries a Bahraini, after the date on which this Act enters into force, she will be a Bahraini. And if a Bahraini woman marries an alien, after the date on which this Act enters into force, she shall lose her Bahraini nationality, if and when she acquired the nationality of her husband; otherwise she remains Bahraini; and her Bahraini nationality will be retained to her upon her request, if marriage ceases to subsist and her usual residence is in Bahrain or she returns to live in Bahrain.
2. If a woman has acquired citizenship of Bahrain by virtue of the above article, or by virtue of section (4) of article (6) of this Act, she shall not lose her nationality if marriage ceases to subsist, unless she retained her original nationality or acquired another nationality. Nationality of such woman may be retained by declaration of His Majesty the Governor, if she requests such.

Stipulation as stated in the proposed law:

1. An alien woman who gets married to a Bahraini national, after the effective of this act, shall not become a Bahraini national, unless she expresses her wish to the Minister of Interior to acquire that nationality with the marriage relationship for five years after as of date of such wish, or her Bahraini husband or child died before passage of such period and she has from him Bahraini children by birth and she kept her legitimate and ordinary residence

in Kingdom of Bahrain until passage of such period, she may be granted the Bahraini Nationality.

The Minister of Interior may relinquish all this period or parts thereof, and may however, during this period, and for reasons pertaining to national security and public order, deprive that woman from acquiring the citizenship of Bahrain by way of marriage.

The concerned person may contest the resolution issued by Minister of Interior ruling the deprivation of the alien woman from acquiring the nationality by subordination to her husband before the major civil court.

2. A Bahraini woman who marries an alien, does not forfeit her citizenship unless she adopts the nationality of her alien husband. She may acquire her Bahraini nationality if marriage ties are broken and she expresses her wish to the Minister of Interior to acquire her original nationality, and makes Bahrain her usual residence or if she returns to live in Bahrain.

The Minister of Interior may relinquish all this period or parts thereof, and may however, during this period, and for reasons pertaining to national security and public order, deprive that woman from recovering the citizenship of Bahrain according to the preceding paragraph.

3. If a lien woman acquired the Bahraini Nationality according to paragraph No. (4) of article (6) if his law, she shall not lose the Bahraini Nationality when the marriage ties are broken, unless she has recovered her original nationality or acquired another nationality. Her Bahraini Nationality may be re-granted to her by order of His Majesty the Governor, upon her request.

NIHR Opinion:

First: In terms of the internal legislation

Item No. (e) of article (1) of the Bahraini Constitution stipulates:

" All the citizens – male and female - shall have the right to participate in the public affairs and enjoy all 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 his right to vote or to contest for elections except by law."

The explanatory memorandum stated on the interpretation of item No. (e) of article (1) of the Bahraini Constitution:

(the item No. (e) of article (1) concerns with achieving the equality between the men and women in the public participation and enjoying the political rights including the right of vote and right to contest for election . In order not to deprive any citizen from right to practice the right of election or nomination illegally, this item stipulates that " No citizen can be deprived of his right to vote or to contest for elections except by law.". This stipulation means that the legislator shall be entitled to issue a law, whereby he can deprive certain persons from practicing the right to vote or to contest for election for reasons related to their work, if such work contradicts with the practice of these both rights or either of them. This is an estimative issue for the legislator according to requirements of the public interest)".

In addition, Article No. (4) of the Bahraini constitution stipulates that:

"Justice is the basis of government. Cooperation and mutual respect provide a firm bond between citizens. Liberty, equality, security, trust, knowledge, social solidarity and equality of opportunities for citizens are pillars of society guaranteed by the State."

Article No. (17) of the Bahraini constitution stipulates that:

" (a). Bahraini nationality shall be determined by law. A person inherently enjoying his Bahraini nationality cannot be deprived of his nationality except in case of treason, and such other cases as prescribed by law".

The explanatory brief showed in the explanation of article (17) of the mentioned constitution that it is important to stipulate this article and the reasons for amending the same in contrary to the previous stipulation before conducting the amendment to the same as follows:

"Out of desire to equal between those who enjoy the Bahraini Nationality, whether originally or by way of naturalization, which achieves the international trends in this regard, agrees with the charter spirit and confirms that the Kingdom of Bahrain embraces all its citizens without separation between them; item (a) of this article has been amended. Such item limits the inadmissibility of deprivation from the nationality to those who enjoy the same originally and such banning became inclusive everyone enjoys the Bahraini Nationality. Therefore, the stipulation stated the following: "The Bahraini Nationality shall be defined by the law, and no person enjoying citizenship by origin may be deprived of it except in cases of high treason and the other cases specified by the law."

Paragraph (b) of article (16) of the Bahraini constitution stipulates:

"Citizens are equal in the assumption of public posts in accordance with the conditions specified by the law".

Article (18) of the Bahraini constitution stipulates:

"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".

In addition, Article (31) of the Bahraini constitution stipulates:

"The Public rights and freedoms stated in the present Constitution may only be regulated or limited by or in accordance with the law, and Such regulation or limitation may not prejudice the essence of the right or freedom".

By examining the paragraph No. (5) of article (6) subject matter of the proposal, it becomes clear for us that such paragraph didn't adopt a clear standard for depriving some citizens from the right of election, nomination and representation in the local councils in violation to the provisions of item (e) of article (1) of the Bahraini Constitution, which declared and organized such right according to a specific standard. The explanatory memorandum of the constitution showed in the interpretation thereof for the last paragraph of (e) related to the inadmissibility of depriving a citizen from the right of election or nomination except according to the law by stating that (...the legislator shall be entitled to issue a law, whereby he can deprive certain persons from practicing the right to election or nomination for reasons related to their work, if such work contradicts with the practice of these both rights or either of them ...)). This means that such articles restricts the right of the legislator to be entitled to deprive the citizens from the right of election or nomination for reasons related to the nature of their works, because this implies contradiction with the work being executed by them only. According to the concept of the violation, depriving the citizen from the right of election or nomination on another basis like their origin shall be deemed as discrimination and may not be considered as an acceptable subjective standard.

In addition, depriving a group or section of the citizens from the appointment in the municipality councils on the basis of origin (naturalization) for period of ten years as of date of acquiring the Bahraini Nationality is in violation to the principle of equality between the citizens in terms of occupying the public positions, which has been confirmed by the national labor charter and established by the Bahraini Constitution in Article (16/b) thereof. Thereupon, this is deemed as an express violation to provisions of the Bahraini Constitution.

It is remarkably noted from formulation of item (a), paragraph (5) of article (6) subject matter of the proposal that the deprivation wanted to be approved for the right of the election, nomination, representation and appointment for each person

acquired the Bahraini nationality for the first ten years shall be applicable to the national councils only. Item "a" limited the deprivation to the rights of local elections only from the Parliamentary Councils, because it limited the deprivation from such rights to scope of the local councils; consequently, this formulation shall not be applicable to the Parliamentary Councils and this in itself is deemed as unjustified discrimination depends on no ground in the explanatory memorandum of the amendment subject matter of the proposal.

The contradiction will be raised in paragraph (a) of article (5) subject of the proposal in case of approving the same, because the status of the aliens will be better than the holders of the Bahraini Nationals as long as they owns built real estate properties or plots within Kingdom of Bahrain. Article (2) of Decree-by-Law No. (3) of 2002 regarding the election of the members of the municipal councils according to the last paragraph thereof grants the right to elect the members in the municipal councils for each citizen of GCC's Council and others, who own built real estate properties or plots within Kingdom of Bahrain, as long as they meet the provisions of items No. (1, 2 and 3) of the same article. This is deemed as bad discrimination and severe contradiction with stipulations of the constitutions in more than one place and any of the constitutional principles adopted by the contemporary democratic constitutions.

In addition, paragraph (5) of article (6) subject matter of the proposal violates the purpose of the declaring the principle of equality between the citizens before the law and the concept thereof. This is the philosophy adopted by the National Labor Charter and stipulated in both articles Nos. (4 and 18) of the Bahraini Constitution. In confirmation on this, the Bahraini Constitutional Court has concluded the following in both cases No. (d/3/04) and (d/4/04) of 2, judicial, in terms of its interpretation of the principle of equality between the citizens before the stipulated law:

((..... whereas the purpose of the principle of equality between the citizens before the law stipulated in the constitution of Kingdom of Bahrain in both mentioned articles, which is repeated in the contemporary constitutions considering it the main ground for the rights and freedoms in different kinds thereof and the basis for the justice and social peace, is the protection of the rights and freedoms against all forms of discrimination that affect on or restrict the practice thereof; whether this is – as stipulated by the constitution – due to the naturalization, origin, language, religion or belief or due to any of the other discrimination forms not mentioned considering that the principle of equality is a mean for determining the equal protection that doesn't discriminate between the similar legal situations. The scope of implementing this principle isn't limited to the rights guaranteed by the constitution or the forms of discrimination mentioned by it, but it shall

extent to all rights and all forms of discrimination determined by the law. Whenever the law was different between the conditions, legal centers or persons which don't have unified fact and its estimation is based upon subjective bases, aims at purposes imply no dispute in the legitimacy thereof and guarantees the unified legal rule regarding persons of similar conditions without exceeding the requirements of such purpose, such law shall be factual pursuant to the estimative power possessed by the legislator. However, if the legislator adopts an opposite direction, he will consequently equal between unequal legal positions or between persons, who don't have similar condition in way causes the legitimate objectives on top thereof the objective of protecting the rights and freedoms established by provisions of the constitution or the law. Moreover, the implementation thereof in this regard is beyond the framework of the estimate power enjoyed by him factually resulting in violation to the constitution".

In confirmation of the Bahraini constitutional legislator on respect of principle of equality between the citizens; whether they are Bahrainis by birth or naturalization, some amendments have been made in 2002 to the constitutions ruling the amendment of the item No. (a) of article No. (17) and the cancelation of item No. (b) of the same article, which distinguishes between the citizens in terms of issue of deprivation of citizenship. The explanatory memorandum of the constitution showed the reason for amendment to article No. (17) by stating that "Out of desire to equal between those who enjoy the Bahraini Nationality, whether originally or by way of naturalization, which achieves the international trends in this regard, agrees with the charter spirit and confirms that the Kingdom of Bahrain embraces all its citizens without separation between them; item (a) of this article has been amended. Such item limits the inadmissibility of deprivation from the nationality to those who enjoy the same originally and such banning became inclusive everyone enjoys the Bahraini Nationality. Therefore, the stipulation stated the following: **"Bahraini nationality shall be determined by law. A person inherently enjoying his Bahraini nationality cannot be deprives of his nationality except in case of treason, and such other cases as prescribed by law"**. In line with this direction, item No. (b) of this article is cancelled, which was allowing the deprivation of the nationality from the naturalized person, so that the ruling shall be the same for all those who enjoy the Bahraini Nationality. While the constitutional legislator has equaled in the amendments made on 2002 between the citizens who enjoy the Bahraini Nationality by origin and those who enjoy the same by way of naturalization in issue of deprivation, then how a tool less than him differentiate between them in the rights and duties based upon discriminatory grounds as mentioned in the proposal subject matter of the opinion.

Such protection, which is confirmed by the constitutional legislator, may not be affected by the reference of the constitution to the law of regulating the process of deprivation of the nationality for those who enjoy the same on case of high treason and the other cases specified by the law, as long as this will be according to subjective principles as for those who enjoy the same whether by origin or naturalization and without any discrimination based upon the race, color, gender, language, religion, political or nonpolitical opinions, national or social origin, wealth, percentages or the other reasons.

Moreover, the Bahraini Constitution has allocated high position for the principles of justice, freedom and equality among the stipulations thereof and mentioned the same in beginning of part two thereof under the title (the fundamental constituents of the society). This proves that such principles are high and important among these stipulations. This is shown by the confirmation of the constitution on the inadmissibility of proposing the amendment thereof in any way as established by the Article No. (120/c).

The paragraph (5) of Article (6) subject matter of proposal implied exceeded on part of the ordinary legislator for the power granted to him on part of the constitutional legislator. While the power of the ordinary legislator in regulating the rights and duties is estimative, but this is depended upon the failure to apply restrictions by the constitution on such power to limit the same. This is concluded by the Bahraini Constitutional Government in case No. (d/3/6) of (4) judicial "constitutional" that (the constitutional origin for the power of the legislator in field of regulating the rights and duties shall be estimative, unless the constitution has imposed on him regarding the practice thereof determined controls limits the absoluteness thereof). The ordinary legislator exceeded such issue according to paragraph No. (5) of article (6) subject matter of the proposal due to failure to commit to the controls and restrictions stipulation in articles Nos. (4 and 18) of the constitution. Thereupon, this proposal is defective with unconstitutionality.

In addition, according to paragraph No. (5) of article (6) subject matter of the proposal not only exceeded the controls and restrictions confirmed by each of both articles Nos. (4 and 18) of the constitution, but also he moved to the area of organization authorized for him by the legislator by virtue of the constitution regarding the deprivation which is the essence of work of the constitutional legislator. Thereupon, the original of the right and the essence of the freedom is defective and damaged, when he deprived specific section of the citizens from some right and freedoms guaranteed for them by the constitution in their capacity as citizens. This violates the stipulation of article No. (31) of the constitution and this is confirmed by the constitutional court in Bahrain in both cases No. (d/3/04) and (d/4/04) of (2) judicial at session of 26th June 2006 by stating that ((... the power of the legislator in his organization shall be restricted with keeping the

existence thereof and thereof and the organization or determination shall not affect the essence thereof and shall not impose restrictions destroys the same as stated in article (31) of the constitution).

This may not be affected by the justification stated in the explanatory memorandum of the proposal subject matter of the opinion regarding the reason incited this proposed amendment is that there are negative effects resulted on numbers of those acquired the emergent Bahraini nationality in the last years. Such effects are represented in the pressure on the public services; especially, competing with the original naturalized person (by birth) in the housing services and procuring the job opportunities. While, this justification may be accepted in terms of the augmentation in the conditions and requirements of procuring the Bahraini Nationality mentioned in paragraphs No. (1, 2, 3 and 4) of article (6) subject matter of proposal considering the same as a political act, but it can't be accepted when the issue is related to the discrimination between the citizens in the rights based upon the origin, due to the violation thereof to provisions of the Bahraini Constitution as mentioned in article No. (18) of the constitution.

In addition, paragraph (1) of article (7) serves the discrimination between the alien spouses, who are married of Bahraini Citizens on basis of the origin of the husband, when the paragraph (1) has differentiated in terms of granting the Bahraini Nationality to the foreign spouse regarding her children from a Bahraini husband by birth or by origin. This paragraph granted the alien wife, who is married of Bahraini husband, the nationality, if she expressed her desire for the Minister of Interior for acquiring the Bahraini Nationality and deprived the alien wife, who is married of a Bahraini by naturalization from acquiring the Bahraini nationality. This issue isn't dependent upon subjective standard in granting the Bahraini nationality for a lien woman, who is married of Bahraini husband, but it is dependent upon discriminatory standard relies on the origin (birth) of the Bahraini husband as reason and ground for granting the nationality to the alien wife. This is deemed as discrimination between the Bahraini nationals in terms of acquiring the Bahraini Nationality by their alien wives in violation to provisions of both articles Nos. (18 and 4) of the Constitution.

Second: At level of the international covenants:

Article (2) of the International convent for civil and political rights that Kingdom of Bahrain became party thereto by virtue of Law No. (56) of 2006 stipulates that:

"1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind,

such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

Article No. (5) of the mentioned covenant confirms that:

"1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent."

Article No. (25) of the mentioned covenant confirms that:

"Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;**
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;**
- (c) To have access, on general terms of equality, to public service in his country."**

Article No. (26) of the mentioned covenant confirms that:

" All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, descent or any other reason".

Article No. (2) of the International Covenant for the Economic, Social and Cultural Rights that the Kingdom of Bahrain became party thereto according to Law No. (10) of 2007 that:

"The States Parties to the present Covenant undertake to that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Article No. (5) of the International covenant for the economic, social and cultural rights highlighted the same provisions mentioned in article No. (5) of the International covenant for the civil and political rights considering its joint provision in both covenants, because both international conventions keep the principle of the best and wide protection for the human rights and the limit of protection mentioned in the same is the minimum. If the laws of the state implied protection wider than such protection determined in both covenants, the priority shall be given to the wider protection undoubtedly.

The human rights committee, which is concerned with interpreting the covenant of the civil and political rights in its general comment No. (18) on the Non-discrimination stipulated in article No. (2/1), article (25) and article (26) of the covenant as follows:

"1. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Because of their basic and general character, the principle of non-discrimination as well as that of equality before the law and equal protection of the law, article 25 provides for the equal participation in public life of all citizens, without any of the distinctions mentioned in article 2.

12. While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not

specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant."

The human right committee concerned with the mentioned covenant stated on occasion of its comment of article No. (25) of the Covenant in its general comment No. (25), in the seventy five round of 1996 regarding the participation in the public affairs and the election right as follows:

"1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

2. The rights under article 25 are related to, but distinct from, the right of peoples to self determination. By virtue of the rights covered by article 1 (1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government.

Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol.

4. In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State) article 25 protects the rights of "every citizen". State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these

rights on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.

4. Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

10. The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.

17. The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.

23. Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective. and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensure that persons holding public service positions are free from political interference or

pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.

Article No. (1) of International Convention on the Elimination of All Forms of Racial Discrimination of 1965 that Kingdom of Bahrain became party thereof by virtue of decree No. (8) of 1990 that:

" 1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality."

Article No. (1) of International Convention on the Elimination of All Forms of Racial Discrimination mentioned above stated that:

"In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(e) Economic, social and cultural rights, in particular:

(1) The rights to work

(3) The right to housing;

(4) The right to public health, medical care, social security and social services;

The human rights committee, which is concerned with the covenant in its general comment No. (18) mentioned above on Non-discrimination stipulated in article No. (1) of International Convention on the Elimination of All Forms of Racial Discrimination and on occasion of its comment on each of article No. (2/1) and (26) as follows:

"6. The Committee notes that the Covenant neither defines the term "discrimination" nor indicates what constitutes discrimination. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

7. ... the Committee believes that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

The Committee on the Elimination of Racial Discrimination in its 11th general recommendation related to the non-citizens regarding its interpretation of the exclusions mentioned in article (1) of the agreement in relation to the Racial Discrimination in the 42nd round thereof in 1993 stated the following:

"1. Paragraph one of article No. (1) of International Convention on the Elimination of All Forms of Racial Discrimination defines the Discrimination. The paragraph (2) of the article from this definition excludes the actions to be made by any state party to the convention, which discriminates between the citizens and non-citizens. Paragraph (3) of article (1) restricts paragraph (2) of article (1) by stating that the states party to the convention aren't allowed to discriminate against any specific nationality in relation to the non-citizens.

3. The committee confirms that paragraph (2) of article (1) shall not be interpreted in any way degrades the rights and freedoms recognized and stipulated in the other conventions; especially, the international declaration for human rights, International Convent on the Economic, Social and Cultural Rights and International Convent on the Civil and Political Rights".

Remarks on the exclusions:

(somebody may imagine that some of the exclusions stated on the racial discrimination in article (1) and both paragraphs Nos. (1, 3 and 3) thereof

are related to the non-citizens and the citizens, but the above mentioned recommendation undoubtedly confirm that these exclusions shall be applicable to the non-citizens only without prejudice to the rights and freedoms stipulated in the other conventions).

Thereupon, paragraph (5) of article (6) with both items (a and b) thereof deprives each alien procured the Bahraini Nationality throughout period of first ten years as of date of procuring the same from the right of election, representation, nomination or appointment in the local council (excluding the clubs and special associations and from his right to utilize any of the kinds of the population services guaranteed for holders of the Bahraini Nationality by birth. This paragraph violates the international convention on the human rights that the Kingdom of Bahrain became party thereof, because it depends upon discriminatory standard based upon the determination of the rights and imposing the obligations among the citizens.

Paragraph (5) of article (6) subject matter of amendment discriminated between the Bahraini Citizens by birth and the Bahraini Citizens by naturalization or the persons who acquired the nationality in the right of election, representation, nomination or appointment in the local councils. Thereupon, such paragraph violates the stipulation of both paragraphs No. (1-2) of the article (2), paragraphs Nos. (1-2) of article (5), article No. (25) and article No. (26) of International Covenant for Civil and Political Rights, article No. (2) of Covenant of Economic, Social and Cultural Rights and article No. (1) and (5) of International Convention on the Elimination of All Forms of Racial Discrimination that the states party to the covenant shall respect the rights recognized in the covenant and shall guarantee the rights for all individuals whether existing in their territories or subject to their custody without discrimination due to the national origin. In addition, enjoying these rights shall be based upon equality and the states that signed the covenant shall guarantee the protection of individuals equally and effectively against the discrimination that is based upon the origin whether in the public participation as an elector or nominee and the occupancy of the public positions shall be based upon the general dependability. Such standard that is based upon the origin, which is stipulated in the article (5) subject matter of amendment, aims at the discrimination, exclusion, restriction and preference between the citizens on basis of the origin. This is the kind of discrimination that is determined by paragraph (1) of article (1) of the International Convention on the Elimination of All Forms of Racial Discrimination that the Kingdom of Bahrain has joined hereto. The exclusions mentioned in paragraph No. (1) of article (1) may not be depended thereupon, because they are applicable to the non citizens exclusively.

Thereupon, National Institution for Human Rights hereby finds that articles No. (1, 2, 3 & 4) of article (6) subject matter of the proposed law are in agreement with the provisions of the Bahraini Constitution and provisions of the international conventions related to the human rights that the Kingdom of Bahrain has joined hereto. It is considered that these paragraphs deal with the conditions that shall be satisfied by each alien applies for procuring the Bahraini Nationality, which are legal controls developed by the legislator according to a general standard for each person desires to procure the Bahraini Nationality. In this regard, the legislator shall have absolute power to set forth any conditions he deems suitable. Whereas, acquiring the nationality of state is closely related to the supreme policy of the state and the supreme power and sovereign thereof internally and externally aiming at the interest of the supreme political group. The common law jurisprudence get used to consider these acts as political acts that shall not be subject to the control of the court and shall not be subject to comment.

Regarding the paragraph No. (5) of article (6) of the proposed law subject matter of the proposed law; it violates the stipulation of the articles (1/e, 4, 16/b, 18 and 31) of the Bahraini Constitution, articles No. (2, 5, 25 and 26) of International Covenant on Civil and Political Rights, articles No. (2, 5) of International Covenant on Economic, Social and Cultural Rights and articles No. (1, 5) of International Convention on the Elimination of All Forms of Racial Discrimination that Kingdom of Bahrain has joined to all of them as mentioned above.

In addition, paragraph No. (1) of article (7) subject matter of the proposed law has violated the stipulations of articles No. (1/e, 4, 18 and 31) of the Bahraini Constitution, articles No. (2, 5) of International Covenant on Civil and Political Rights, articles Nos. (2, 5) of International Covenant on Economic, Social and Cultural Rights and articles No. (1, 5) of International Convention on the Elimination of All Forms of Racial Discrimination that Kingdom of Bahrain has joined to all of them as mentioned above.

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