



CONSTITUTION KINGDOM OF BAHRAIN



هيئة التشريع والإفتاء القانوني
Legislation & Legal Opinion Commission

2012

In the name of God, the Merciful, the Compassionate

We, Hamed Bin Isa Al Khalifa, Amir of the State of Bahrain

By virtue of the provisions of the National Action Charter which endorsed overwhelmingly in referendum by the people of Bahrain,

Having examined the Constitution,

The Amiri Order No. (17) of 2001 with respect of the ratification of National Action Charter,

Upon submission of the chairmen of committee formed by Decree (5) of 2001 for the amendment of certain provisions of the Constitution,

And after notifying the Council of Ministers,

HEREBY enacted and assent the amended Constitution as follow:

Signed: Hamed Bin Isa Al Khalifa,

Amir of the State of Bahrain

Issued at Rifa'a Place

On: 2nd Du Alhja, 1422 Hijra,

Corresponding to: 14th February, 2002

In the name of God, the Merciful, the Compassionate Constitution of the Kingdom of Bahrain

In the name of God on high, and with His blessing, and with His help, we Hamad bin Isa Al Khalifa, Sovereign of the Kingdom of Bahrain, in line with our determination, certainty, faith, and awareness of our national, pan-Arab and international responsibilities; and in acknowledgment of our obligations to God, our obligations to the homeland and the citizens, and our commitment to fundamental principles and our responsibility to Mankind,

And in implementation of the popular will expressed in the principles enshrined in the National Action Charter; pursuant to the authority entrusted to us by our great people to amend the Constitution; out of our desire to complete the requirements of the democratic system of Government for our beloved nation; striving for a better future in which the homeland and the citizen will enjoy greater welfare, progress, development, stability and prosperity through earnest and constructive cooperation between Government and citizens which will remove the obstacles to progress; and out of a conviction that the future and working for the future is what all of us seek in the coming stage; and in view of our belief that such an objective requires the exertion of efforts; and in order to complete the march, we have amended the existing Constitution.

This amendment has taken account of all the lofty values and the great human principles enshrined in the National Action Charter. These values and principles confirm that the people of Bahrain surge ahead in their triumphant march

towards a bright future, God willing, a future in which the efforts of all parties and individuals unite, and the authorities in their new garb devote themselves to achieve the hopes and aspirations under his tolerant rule, declaring their adherence to Islam as a faith, a code of laws and a way of life, with their affiliation to the great Arab nation, and their association with the Gulf Cooperation Council now and in the future, and their striving for everything that will achieve justice, good and peace for the whole of Mankind.

The amendments to the Constitution proceed from the premise that the noble people of Bahrain believe that Islam brings salvation in this world and the next, and that Islam means neither inertness nor fanaticism but explicitly states that wisdom is the goal of the believer wherever he finds it he should take it, and that the Qur'an has been remiss in nothing.

In order to achieve this goal, it is essential that we listen and look to the whole of the human heritage in both East and West, adopting that which we consider to be beneficial and suitable and consistent with our religion, values and traditions and is appropriate to our circumstances, in the conviction that social and human systems are not inflexible tools and instruments which can be moved unchanged from place to place, but are messages conveyed to the mind, spirit and conscience of Man and are influenced by his reactions and the circumstances of his society.

Thus these constitutional amendments are representative of the advanced cultural thought of our beloved nation. They base our political system on a constitutional monarchy founded on counsel [shura], which in Islam is the highest model for governance, and on the people's participation in

the exercise of power, which is the foundation of modern political thought. The Ruler, with his perspicacity, chooses certain experienced people to constitute the Consultative Council (Majlis al-Shura), and the aware, free and loyal people choose through elections those who make up the Council of Deputies (Majlis al-Nuwwab), and thus the two Councils together achieve the popular will represented by the National Assembly (Al-Majlis al-Watani).

These constitutional amendments undoubtedly reflect the joint will of the King and the people, and achieve for everyone the lofty ideals and the great humanitarian principles contained in the National Action Charter, and ensure that the people will advance to the highest position for which their ability and preparedness qualifies them, and which accords with the greatness of their history, and allows them to occupy their appropriate place among the civilised nations of the world.

This constitution that we have promulgated contains the amendments that have been carried out in accordance with the provisions of the National Action Charter and that complement all the un-amended texts.

We have attached an explanatory memorandum which will be used to explain its enactment.

Chapter I

The State

Article 1

- a. The Kingdom of Bahrain is an independent Islamic Arab State, fully sovereign. The people of Bahrain are part of the Arab Nation and whose territory is part of the great Arab homeland. Its sovereignty may not be assigned or any of its territory abandoned.
- b. The regime of the Kingdom of Bahrain is a hereditary constitutional monarchy, which has been handed down by the late Sheikh Isa bin Salman Al Khalifa to his eldest son Sheikh Hamad Bin Isa Al Khalifa, the King of Bahrain. Thenceforward it will pass to his eldest son, one generation after another, unless the King in his lifetime appoints a son other than his eldest son as successor, in accordance with the provisions of the Decree on inheritance stated in the following paragraph.
- c. All provisions governing inheritance are regulated by a special Royal Decree that will have a constitutional character, and which can only be amended under the provisions of Article 120 of the Constitution.
- d. The system of Government in the Kingdom of Bahrain is democratic, sovereignty being in the hands of the people, the source of all powers. Sovereignty shall be exercised in the manner stated in the present Constitution.
- e. Citizens, both men and women, are entitled to participate in public affairs and enjoy their 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.

- f. The present Constitution may be amended only partly, and in the manner provided herein.

Article 2

The religion of the State is Islam. The Islamic Shari'a is a main source of legislation. The official language of the State is Arabic.

Article 3

The State flag, emblem, logos, honours and national anthem are laid down by law.

Chapter II

Basic Constituents of Society

Article 4

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 opportunity for citizens are pillars of society guaranteed by the State.

Article 5

- a. The family is the corner – stone of society, deriving its strength from religion, morality and patriotism. The law preserves its lawful entity, strengthens its bonds and values, under its aegis extends protection to mothers and

children, tends the young and protects them from exploitation and safeguards them against moral, bodily and spiritual neglect. The State cares in particular for the physical, moral and intellectual development of the young.

- b. The State guarantees reconciling the duties of women towards the family with their work in society, and their equality with men in political, social, cultural, and economic spheres without breaching the provisions of Islamic canon law (Shari'a).
- c. The State guarantees the requisite social security for its citizens in old age, sickness, disability, orphanhood, widowhood or unemployment, and also provides them with social insurance and healthcare services. It strives to safeguard them against ignorance, fear and poverty.
- d. Inheritance is a guaranteed right governed by the Islamic Shari'a.

Article 6

The State safeguards the Arab and Islamic heritage. It contributes to the advancement of human civilization and strives to strengthen the bonds between the Islamic countries, and to achieve the aspirations of the Arab nation for unity and progress.

Article 7

- a. The State sponsors the sciences, humanities and the arts, and encourages scientific research. The State also guarantees educational and cultural services to its citizens. Education is compulsory and free in the early stages as specified and provided by law. The necessary plan to combat illiteracy is laid down by law.

- b. The law regulates care for religious and national instruction in the various stages and forms of education, and at all stages is concerned to develop the citizen's personality and his pride in his Arabism.
- c. Individuals and bodies may establish private schools and universities under the supervision of the State and in accordance with the law.
- d. The State guarantees the inviolability of the places of learning.

Article 8

- a. Every citizen is entitled to health care. The State cares for public health and the State ensures the means of prevention and treatment by establishing a variety of hospitals and healthcare institutions.
- b. Individuals and bodies may establish private hospitals, clinics or treatment centers under the supervision of the State and in accordance with the law.

Article 9

- a. Ownership, capital and work in accordance with the principles of Islamic justice are basic constituents of the social entity of the State and the national wealth, and are all individual rights with a social function regulated by law.
- b. Public property is inviolable, and its protection is the duty of every citizen.
- c. Private ownership is protected. No one shall be prevented from disposing of his property except within the limits of the law. No one shall be dispossessed of his property except for the public benefit in the cases

specified and the manner stated by law and provided that he is fairly compensated.

- d. General confiscation of the property of any person shall be prohibited, and confiscation of particular property as a penalty may not be inflicted except by court judgment in the cases prescribed by law.
- e. The relationship between the owners of land and real estate and their tenants shall be regulated by law on economic principles while observing social justice.
- f. The State shall endeavour to provide housing for citizens with limited income.
- g. The State shall make the necessary arrangements to ensure the exploitation of land suitable for productive farming, and shall strive to raise the standards of farmers. The law stipulates how small farmers are to be helped and how they can own their land.
- h. The State shall take the necessary measures for the protection of the environment and the conservation of wildlife.

Article 10

- a. The national economy is based on social justice, and it is strengthened by fair cooperation between public and private sectors. Its objective, within the limits of the law, is economic development according to a well-ordered plan and achievement of prosperity for the citizens, all within the bounds of the law.
- b. The State endeavours to achieve the economic union of the Gulf Cooperation Council states and the states of the Arab League, and everything that leads to rapprochement, cooperation, coordination and mutual assistance among them.

Article 11

All natural resources and its revenues are State property. It shall ensure their preservation and proper exploitation, due regard being given to the requirements of State security and national economy.

Article 12

The State shall ensure the solidarity of society in shouldering burdens resulting from public disasters and ordeals, and compensating any war casualties as a result of performing their military duties.

Article 13

- a. Work is the duty of every citizen, is required by personal dignity and is dictated by the public good. Every citizen has the right to work and to choose the type of work within the bounds of public order and decency.
- b. The State ensures the provision of job opportunities for its citizens and the fairness of work conditions.
- c. There is no forced labour except in the cases specified by law for national exigency and for a fair consideration, or implementing court judgment.
- d. The law regulates the relationship between employees and employers on economic basis while observing social justice.

Article 14

The State encourages cooperation and saving, and supervises the regulation of credit.

Article 15

- a. Taxes and public expenditures are based on social justice, and their payment is a duty under the law.
- b. The law regulates exemption of low incomes from taxes in order to ensure that a minimum standard of living is safeguarded.

Article 16

- a. Public jobs are a national service entrusted to their incumbents, and State employees shall have the public interest in mind when performing their jobs. Foreigners shall not be entrusted with public posts except in those cases specified by law.
- b. Citizens are equal in the assumption of public posts in accordance with the conditions specified by law.

Chapter III

Public Rights and Duties

Article 17

- 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.
- b. No Bahraini citizen may be deported from Bahrain or prevented from returning thereto.

Article 18

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.

Article 19

- a. Personal liberty is guaranteed under the law.
- b. A person cannot be arrested, detained, imprisoned or searched, or his place of residence specified or his freedom of residence or movement restricted, except under the provisions of the law and under judicial supervision.
- c. A person cannot be detained or imprisoned in locations other than those designated in the prison regulations covered by health and social care and subject to control by the judicial authority.
- d. No person shall be subjected to physical or mental torture, or inducement, or degrading treatment, and the penalty for so doing shall be specified by law. Any statement or confession proved to have been made under torture, inducement, or such treatment, or the threat thereof, shall be null and void.

Article 20

- a. No crime and no penalty may be established except by virtue of law, and penalty may be imposed except for offences committed after the relevant law has come into force.
- b. Penalty is personal.

- c. An accused person is presumed innocent until proved guilty in a legal trial in which he is assured of the necessary guarantees to exercise the right of defence at all stages of the investigation and trial in accordance with the law.
- d. It is forbidden to harm an accused person physically or mentally.
- e. Every person accused of an offence must have a lawyer to defend him with his consent.
- f. The right to litigate is guaranteed under the law.

Article 21

The extradition of political refugees is prohibited.

Article 22

Freedom of belief is absolute. The State guarantees the inviolability of worship, and the freedom to perform religious rites and hold religious parades and meetings in accordance with the customs observed in the country.

Article 23

Freedom of opinion and scientific research is guaranteed. Everyone has the right to express his opinion and publish it verbally, in writing or otherwise under the rules and conditions laid down by law, provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused.

Article 24

With due regard for the provisions of the preceding Article, the freedom of the press, printing and publishing is guaranteed under the rules and conditions stipulated by law.

Article 25

Dwellings are inviolate. They cannot be entered or searched without the permission of their occupants except in circumstances and manner specified by law.

Article 26

The freedom of postal, telegraphic, telephonic and electronic communication is safeguarded and its confidentiality is guaranteed. Communications shall not be censored or their confidentiality breached except in exigencies specified by law and in accordance with procedures and under guarantees prescribed by law.

Article 27

The freedom to form associations and unions on national principles, for lawful objectives and by peaceful means is guaranteed under the rules and conditions stipulated by law, provided that the fundamentals of the religion and public order are not infringed. No one can be forced to join any association or union or to continue as a member.

Article 28

- a. Individuals are entitled to assemble privately without a need for permission or prior notice, and no member of the security forces may attend their private meetings.
- b. Public meetings, demonstrations and gatherings are permitted under the rules and conditions stipulated by law, but the purposes and means of the meeting must be peaceful and must not be prejudicial to public decency.

Article 29

Any individual may address the public authorities in writing over his signature. Group approaches to the authorities may only be made by statutory bodies and corporate persons.

Article 30

- a. Peace is the objective of the State. The safety of the nation is part of the safety of the Arab homeland as a whole, and its defence is a sacred duty of every citizen. Performance of military service is an honour for citizens and is regulated by law.
- b. Only the State may establish the Defence Force, National Guard, and Public Security services. Non-citizens are assigned such tasks only in case of maximum necessity and in the manner prescribed by law.
- c. General or partial mobilisation shall be regulated by law.

Article 31

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.

Chapter IV

Public Authorities

General Provisions

Article 32

- a. The system of Government rests on a separation of the legislative, executive and judicial authorities while maintaining cooperation between them in accordance with the provisions of the present Constitution. None of the three authorities may assign all or part of its competence stated in the present Constitution. However, limited legislative delegation for a particular period and specific subject(s) is permissible, whereupon the power shall be exercised in accordance with the provisions of the Delegation Law.
- b. Legislative authority is vested in the King and the National Assembly in accordance with the Constitution. Executive authority is vested in the King together with the Council of Ministers and Ministers, and judicial rulings are issued in his name, the whole being in accordance with the provisions of the Constitution.

Section 1

The King

Article 33

- a. The King is the Head of the State, and supreme representative of the Nation, and his person is inviolate. He is the loyal protector of the religion and the homeland, and the symbol of national unity.
- b. The King safeguards the legitimacy of the Government and the supremacy of the constitution and the law, and cares for the rights and freedoms of individuals and organisations.
- c. The King exercises his powers directly and through his Ministers. Ministers are jointly answerable to him for general Government policy, and each Minister is answerable for the affairs of his Ministry.
- d. The King appoints and dismisses the Prime Minister by Royal Order, and appoints and dismisses Ministers by Royal Decree as proposed by the Prime Minister.
- e. The Cabinet shall be re-formed as aforementioned in this article at the start of each legislative term of the National Assembly.
- f. The King appoints and dismisses members of the Consultative Council by Royal Order.
- g. The King is the Supreme Commander of the Defence Force. He commands it and charges it with national tasks within the homeland and outside it. The Defence Force is directly linked to the King, and maintains the necessary secrecy in its affairs.
- h. The King chairs the Higher Judicial Council. The King appoints judges by Royal Orders, as proposed by the Higher Judicial Council.

- i. The King awards honours and decorations in accordance with the law.
- j. The King establishes, grants and withdraws civilian and military ranks and other honorary titles by Royal Order, and can delegate others to carry out these functions on his behalf.
- k. The currency is minted in the name of the King in accordance with the law.
- l. On ascending the throne, the King takes the following oath at a special meeting of the National Assembly:

“I swear by Almighty God to respect the Constitution and the laws of the State, to defend the liberties, interests and properties of the people, and to safeguard the independence of the nation and the integrity of its territories.”

- m. The Royal Court is attached to the King. A Royal Order shall be issued to regulate it. Its budget and the rules for the budget’s control are set by a special Royal Decree.

Article 34

- a. In the event of his absence abroad and the inability of the Crown Prince to act for him, the King shall appoint a Deputy by Royal Order to exercise his powers during his period of absence. This Order may include a special regulation for the exercise of these powers on his behalf or may limit their scope.
- b. The conditions and provisions of Paragraph (b) of Article 48 of the present Constitution shall apply to the King’s Deputy. If he is a Minister or a member of the Consultative Council or the Council of Deputies, he shall

not participate in ministerial or parliamentary business during the period he deputes for the King.

- c. Before exercising his powers, the King's Deputy shall take the oath prescribed in the preceding Article, including the phrase: "and I shall be loyal to the King". The oath shall be taken in the National Assembly if in session, and if not it shall be taken before the King. The Crown Prince shall take this oath once, even if he deputes for the King a number of times.

Article 35

- a. The King may amend the Constitution, propose laws, and is the authority for their ratification and promulgation.
- b. A law shall be deemed ratified and the King shall promulgate it if six months have elapsed from the date on which it was submitted to him by the Consultative Council and Council of Deputies without it being returned to these Councils for reconsideration.
- c. With due regard for the provisions pertaining to amendment of the Constitution, if within the interval prescribed in the preceding paragraph the King returns to the Consultative Council and the Council of Deputies for reconsideration the draft of any law by way of a Decree in justification, he shall state whether it should be reconsidered in that same session or the next.
- d. If the Consultative Council and the Council of Deputies, or the National Assembly, re-approve the draft by a majority of two thirds of their members, the King shall ratify it, and shall promulgate it within one month of its approval for the second time.

Article 36

- a. Aggressive war is forbidden. A defensive war is declared by a Decree which shall be presented to the National Assembly immediately upon its declaration, for a decision on the conduct of the war.
- b. A state of national safety or martial law shall be proclaimed only by Decree. In all cases, martial law cannot be proclaimed for a period exceeding three months. This period may not be renewed except with the consent of the majority of the members of the National Assembly present.

Article 37

The King shall conclude treaties by Decree, and shall communicate them to the Consultative Council and the Council of Deputies forthwith accompanied by the appropriate statement. A treaty shall have the force of law once it has been concluded and ratified and published in the Official Gazette.

However, peace treaties and treaties of alliance, treaties relating to State territory, natural resources, rights of sovereignty, the public and private rights of citizens, treaties pertaining to commerce, shipping and residence, and treaties which involve the State Exchequer in non-budget expenditure or which entail amendment of the laws of Bahrain, must be promulgated by law to be valid.

Under no circumstances may a treaty include secret clauses which conflict with those openly declared.

Article 38

If between the convening of both the Consultative Council and the Council of Deputies sessions, or during the period in which the National Assembly is in recess, should any event occur that requires expediting the adoption of measures that brook no delay, the King may issue relevant Decrees that have the force of law, provided they do not contravene the Constitution.

Such Decrees must be referred to both the Consultative Council and the Council of Deputies within one month from their promulgation if the two Councils are in session, or within a month of the first meeting of each of the two new Councils in the event of dissolution or if the legislative term had ended. If the Decrees are not so referred, their legal force shall abate retrospectively without a need to issue a relevant ruling. If they are referred to the two Councils but are not confirmed by them their legal force shall also abate retrospectively.

Article 39

- a. The King shall put forth the regulations for implementation of the laws, by Decrees which shall not include amendment or suspension of those laws or exemption from their implementation. The law may prescribe a lower instrument than a Decree for promulgation of the regulations necessary for their implementation.
- b. The King shall put forth the control regulations and the regulations necessary for the organization of public directorates and departments, by Decrees in a manner which does not conflict with the laws.

Article 40

The King shall appoint and dismiss civil servants, military personnel, and political representatives in foreign States and with international organizations, within the bounds and on the conditions prescribed by law, and shall accredit the representatives of foreign States and organizations.

Article 41

The King may abate or commute a sentence by Decree. A total amnesty may be granted only by law, and shall apply to offences committed before the amnesty was proposed.

Article 42

- a. The King shall issue the Orders for elections to the Council of Deputies in accordance with the provisions of the law.
- b. The King shall summon the National Assembly to convene by Royal Order, and shall open its proceedings and bring them to a close in accordance with the provisions of the Constitution.
- c. The King may dissolve the Council of Deputies by virtue of a decree that prescribes the reasons pertaining thereof, after seeking the opinions of both Presidents of the Council of Deputies and the Consultative Council and the President of the Constitutional Court. The Council of Deputies may not be dissolved for the same reasons again.¹

¹ Article (42/Para C) was amended by the Constitutional amendments issued in 2012.

Article 43

The King may conduct a popular referendum on important laws and issues connected with the interests of the State. The issue on which the referendum has been held is considered to have been agreed upon if approved by a majority of those who cast their votes. The result of the referendum shall be binding on all and effective from the date it is declared and it shall be published in the Official Gazette.

Section 2

The Executive Authority

Council of Ministers-Ministers

Article 44

The Council of Ministers shall consist of the Prime Minister and a number of Ministers.

Article 45

- a. The incumbent of a Ministry must be a Bahraini, aged not less than thirty (30) years by the Gregorian Calendar and must enjoy full political and civil rights. Unless otherwise provided, the provisions pertaining to Ministers apply also to the Prime Minister.
- b. The salaries of the Prime Minister and Ministers shall be laid down by law.

Article 46

The Prime Minister and the Ministers shall, before assuming their duties, take the oath specified in Article 78 of the present Constitution before the King.

The Prime Minister shall present the Government program to the Council of Deputies within thirty (30) days from the date of being sworn in, or during his first attended meeting if absent. If the majority's members of the Council did not approve the program within thirty days, the Government shall represent the program to the Council after making any amendments it deems appropriate within twenty one (21) days as of the date of rejecting it the first time.

If the Council of Deputies majority of two thirds of its members insists on rejecting the program for a second time during a period not more than twenty one (21) days; the King shall accept the cabinet resignation. If the Council does not approve the new Government program during the said periods and timeline; the King may dissolve the Council, or accept the cabinet resignation and appoints a new cabinet. The Council must issue a resolution accepting or rejecting the program within the stipulated timeline. Upon the lapse of any of the prescribed periods without a resolution from the Council, the governmental program shall be deemed approved.²

² Article (46) – New Paragraph was added by the Constitutional amendments issued in 2012.

Article 47

- a. The Council of Ministers shall oversee State interests, put forth and follow through the implementation of general Government policy, and supervise the course of business in the Government apparatus.
- b. The King shall chair those meetings of the Council of Ministers which he attends.
- c. The Prime Minister shall supervise performance of the tasks of the Council of Ministers and the course of its business, implement its resolutions and coordinate between the various Ministries and integrate their affairs.
- d. Relinquishment by the Prime Minister of his position for any reason shall entail removal of all Ministers from their posts.
- e. The deliberations of the Council of Ministers shall be confidential. Its resolutions shall be adopted when a majority of its members attend and there is a majority of those attending in favour. In the event of a tied vote, the side on which the Prime Minister's vote is cast shall prevail. The minority shall abide by the opinion of the majority unless they resign. Council resolutions shall be submitted to the King for approval in cases where issue of a relevant Decree is required.

Article 48

- a. Each Minister shall supervise the affairs of his Ministry and implement the general policy of the Government in that Ministry. He shall also decide the orientation of the Ministry and supervise the putting of it into practice.
- b. While in charge of his Ministry, a Minister may not assume any other public office, nor may he even indirectly practice a profession or conduct industrial,

commercial or financial business, nor may he participate in contracts concluded by the Government or public institutions, or combine his ministerial position with the membership of the board of directors of any company except as a non-remunerated Government representative. Also during this period the Minister may not purchase or rent a State asset even by way of public auction, nor may he lease, sell, or barter any of his assets to the State.

Article 49

If the Prime Minister or the Minister relinquishes his position for any reason, he shall continue discharging his duties until a successor is appointed.

Article 50

- a. The law shall regulate public institutions and municipal departmental bodies so as to ensure their independence under State direction and supervision. The law shall ensure the municipal departmental bodies can administer and oversee the services that have a local character and are within their area.
- b. The State shall direct public welfare institutions for the public good in a manner consistent with general State policy and the interest of its citizens.

Section 3

The Legislative Authority

National Assembly

Article 51

The National Assembly consists of two Councils: the Consultative Council and the Council of Deputies.

Part 1

The Consultative Council

Article 52

The Consultative Council consists of forty members who are duly appointed by virtue of a Royal Order as per the procedures, regulations and parameters set forth by a Royal Order.³

Article 53

Any member of the Consultative Council must be a Bahraini national; hence must have been neutralized as a Bahraini national for not less than ten years, and does not hold any other nationality except that of a GCC member state provided that the Bahraini nationality is his origin, enjoys all political and civil rights, and his name is included in any of the electoral registers, must not be less than a full thirty five years of age by the Gregorian Calendar on the day of

³ Article (52) was amended by the Constitutional amendments issued in 2012.

appointment, and must be experienced or have rendered distinguished services to the Nation.⁴

Article 54

- a. The term of membership of the Consultative Council is four years, and members may be reappointed when their term has expired.
- b. If for any reason the place of a member of the Consultative Council becomes vacant before his term is due to expire, the King shall appoint a replacement to serve until the end of the term of his predecessor.
- c. Any member of the Consultative Council may ask to be exempted from membership of the Council by applying to the President of the Council, and the President is to submit the request to the King. Membership shall not terminate until the date on which the King accedes to the request.
- d. The King shall appoint the President of the Consultative Council for the same period as the Council, and the Council shall elect two Vice-Presidents for each convening period.

Article 55

The Consultative Council shall meet when the Council of Deputies meets, and the convening period for both Councils shall be the same.

If the Council of Deputies is dissolved, sessions of the Consultative Council shall be halted.

⁴ Article (53) was amended by the Constitutional amendments issued in 2012.

Part 2

The Council of Deputies

Article 56

The Council of Deputies is composed of forty members elected directly by universal suffrage and secret ballot in accordance with the provisions prescribed by law.

Article 57

A member of the Council of Deputies must meet the following requirements:

- a. He must be a Bahraini national; who must have been naturalized as a Bahraini national for not less than ten years, and does not hold any other nationality except that of a GCC member state, provided that the Bahraini nationality is his origin, enjoys all political and civil rights, and his name is included in any of the electoral registers.⁵
- b. On the day of his election he must be not less than thirty years of age by the Gregorian Calendar.
- c. He must read and write Arabic fluently.
- d. His membership of the Consultative Council or the Council of Deputies must not have been abrogated by a resolution of the Council to which he belonged due to loss of confidence and esteem or for being in breach of duties of membership. However, a person whose membership has been abrogated may put himself forward

⁵ Article (57/Para A): was amended by the Constitutional amendments issued in 2012.

as a candidate if the legislative term during which the resolution to abrogate his membership was taken has elapsed, or if the Council of which he was a member adopts a resolution to cancel the impediment to candidature entailed by abrogation of membership upon expiry of the convening period during which the resolution to abrogate his membership was taken.

Article 58

The term of the Council of Deputies is four calendar years commencing with the day of its first session. Elections for a new Council of Deputies shall be held during the last four months of that term, while observing the provisions of Article 64 of the Constitution. A person whose period of membership has ended may be re-elected.

The King may, when necessary, extend the legislative term of the Council of Deputies by Royal Order for a period not exceeding two years.

Article 59

If for any reason a seat of a member of the Council of Deputies becomes vacant before his term is due to expire, the vacancy is filled by election within two months from the date of announcement of the vacancy by the Council, and the new member shall serve until the end of term of his predecessor.

If the vacancy is caused by the resignation of the member, he may not nominate candidacy to the Council membership in the legislative term during which he resigned.

If the vacancy occurs within the six months that precede the end of the legislative term of the Council, there shall be no election of a replacement member.⁶

Article 60

At its first session the Council of Deputies shall choose from among its members a President and two Vice Presidents for the same duration as the Council's term. If the place of any of them falls vacant, the Council shall choose a replacement to serve out his term.

In all cases election shall be by an absolute majority of those present. If there is no such majority on the first ballot, the election shall be conducted again between the two who secured the most votes. If a third party tied with the second of the two, he shall participate with them both in the election in the second ballot, and in this case the election shall be by proportional majority. If this proportional majority results in a tie, the Council shall choose by lot.

The first session shall be chaired by the eldest member until such time as a President of the Council of Deputies is elected.

Article 61

The Council shall form the committees necessary for its business during the first week of its annual assembly. These committees may exercise their powers while the Council is in recess.

⁶ Article (59) was amended by the Constitutional amendments issued in 2012.

Article 62

The Court of Cassation shall have jurisdiction to rule on challenges relating to elections to the Council of Deputies, in accordance with the relevant law.

Article 63

The Council of Deputies is the competent authority to accept a resignation from its membership. The resignation shall be deemed final only from when the Council decides to accept it, and the place shall become vacant from the date of that acceptance.

Article 64

- a. If the Council of Deputies is dissolved, elections for a new Council of Deputies must be held not later than four months from the date of dissolution. If elections are not held during that period the dissolved Council of Deputies shall regain its full constitutional powers, and meets immediately as though the dissolution never occurred, and shall continue its business until a new Council is elected.
- b. Notwithstanding the preceding paragraph, the King may defer election of the Council of Deputies if there are compelling circumstances whereby the Council of Ministers considers holding elections is not possible.
- c. If the compelling circumstances mentioned in the preceding paragraph continue, the King, taking the opinion of the Council of Ministers, may restore the dissolved Council of Deputies and invite it to convene. This Council of Deputies shall be regarded as extant from the date of promulgation of the Royal Decree

restoring it. It shall exercise its full constitutional powers. The provisions of the present Constitution shall apply to it including those pertaining to completion of the Council's term and dissolution. The session the Council holds in such a case shall be regarded as its first session irrespective of the date of its commencement.

Article 65

Upon an application signed by at least five members of the Council of Deputies, any Minister may be questioned about interpellations addressed to him on matters falling within his competence.

Interpellations must be made according to the conditions and procedures prescribed by the Council of Deputies' rules of procedures. Any questioning of a Minister must be conducted within the Council, unless the Council majority decides it must be probed by a specialized committee following at least eight (8) days from its presentation, unless the competent Minister requests the acceleration of questioning.

Interpellations may lead to the matter of confidence in the Minister being put to the Council of Deputies under the provisions of Article (66) of the present Constitution.⁷

Article 66

- a. Each Minister shall be responsible to the Council of Deputies for the affairs of his Ministry.

⁷ Article (65) was amended by the Constitutional amendments issued in 2012.

- b. A question of confidence in a Minister may be put forward only at his own wish or upon an application signed by at least ten members of the Council of Deputies following the debate of the question put to him, and the Council may not give its decision on the application until seven days after its submission.
- c. If the Council of Deputies decides by a majority of two thirds of its members to give a vote of no confidence in a Minister, he shall be regarded as having withdrawn from the Ministry from the date of the no-confidence vote, and he shall submit his resignation forthwith.

Article 67

- a. The subject of confidence in the Prime Minister shall not be raised in the Council of Deputies.
- b. If at least ten (10) Council members lodge a substantiated request stating the inability to cooperate with the Prime Minister, hence the Council majority agree to the request; it is thereto referred to the Council's Office to review and is thereto returned within not more than two weeks as of the date the request was made.
- c. The Council of Deputies may not issue its resolution of inability to cooperate with the Prime Minister before seven days of referring the request to the Council's office.
- d. If the Council of Deputies approved by a majority of two thirds of its members the inability to cooperate with the Prime Minister, the issue is thereto submitted to the King to settle either by relieving the Prime Minister of his

duties and form a new cabinet, or dissolving the Council of Deputies.⁸

Article 68

- a. The Council of Deputies may express its wishes to the Government regarding public matters. The Government shall reply in writing to the Council within six months. If the Government is unable to meet these wishes, it shall state to the Council the reasons therefore.
- b. Upon an application signed by at least five members of the Council of Deputies, a general issue may be submitted for debate to clarify the Government policy and to exchange opinions thereon as per the controls prescribed by the Council's rules of procedure

The Council's office shall include the public debate request on its agenda in the first succeeding session to decide upon the issue without discussion.⁹

Article 69

The Council of Deputies may at any time form commissions of inquiry or delegate one or more of its members to investigate any matter coming within the powers of the Council stated in the Constitution, and the commission or member is to present the findings of the inquiry not later than four months from the date of commencement of the inquiry.

⁸ Article (67) Para B, C, D was amended by the Constitutional amendments issued in 2012.

⁹ Article (68) was amended by the Constitutional amendments issued in 2012.

Ministers and all State employees are to provide such testimony, documents and statements as are asked of them.

Part 3

Provisions Common to Both Councils

Article 70

No law shall be promulgated unless approved by both the Consultative Council and the Council of Deputies, or the National Assembly as the situation demands, and ratified by the King.

Article 71

The National Assembly shall convene on the second Saturday in the month of October unless the King decides to invite it to convene before this date. If that day is an official holiday, it shall convene on the first working day following that holiday.

Article 72

The normal convening period for both the Consultative Council and the Council of Deputies shall last for at least seven months, and this convening period may not be closed before the budget is approved.

Article 73

As an exception to the provisions of the two foregoing Articles, the National Assembly shall convene on the day following the expiry of one month from the date of

appointment of the Consultative Council or election of the Council of Deputies whichever occurs later, unless the King decides to invite it to convene before that date.

If the date of convening the National Assembly in that period is later than the annual date prescribed in Article 71 of the Constitution, the convening period prescribed in Article 72 of the Constitution shall be reduced by the amount of the difference between the two aforementioned dates.

Article 74

The King shall inaugurate the ordinary convening period of the National Assembly with a Royal address. He may delegate the Crown Prince or whomever he decides to inaugurate the convening period and deliver the Royal address on his behalf. Each of the two Councils shall choose a committee from among its members to prepare the draft reply to the address, and each Council shall submit its reply to the King after it is approved.

Article 75

Both the Consultative Council and the Council of Deputies shall be called, by Royal Decree, to meet in extraordinary session if the King deems it necessary, or if so requested by a majority of members of either Council.

When in extraordinary session the two Councils may not consider matters other than those for which it has been called to convene.

Article 76

The King may by Royal Order adjourn the ordinary and extraordinary sessions.

Article 77

Any meeting of the Consultative Council or the Council of Deputies which is not held at the prescribed time and place shall be null and void and resolutions taken thereat shall be invalid.

Article 78

Every member of the Consultative Council and the Council of Deputies shall take an oath in public session, prior to pursuing their work in the Council or its committees, as following: "I swear by Almighty God to be faithful to the country and to the King, to respect the Constitution and the laws of the State, to defend the liberties, interests and properties of the people, and to discharge my duties k honestly and truthfully."

Article 79

Sessions of the Consultative Council and the Council of Deputies shall be open to the public. They may be held in secret at the request of the Government, the President of the Council, or ten members, and the request shall be debated in secret session.

Article 80

For a meeting of either the Consultative Council or the Council of Deputies to be valid, a quorum of more than half the members of each Council must be present. Resolutions shall be taken on an absolute majority of members present, except in cases where a special majority is stipulated. In the event of a tied vote, the matter shall be decided in favour of the side that includes the President of the Council. If the voting relates to the Constitution, voting shall be conducted by calling upon members by name.

If there is a lack of quorum for either Council to convene on two successive occasions, the meeting of the Council shall be deemed valid provided that the number of members attending is not less than one quarter of the Council's members.

Article 81

The Prime Minister shall present draft laws to the Council of Deputies, which is entitled to pass, amend or reject the draft law. In all cases the draft law shall be referred to the Consultative Council, which is entitled to pass, amend or reject the draft law or to accept any amendments which the Council of Deputies had introduced to the draft law, or had rejected or amended them. However, priority of debate shall always be given to draft laws and proposals put forward by the Government.

Article 82

If the Consultative Council does not approve a draft law passed by the Council of Deputies, whether the Consultative

Council's resolution involves rejection, amendment, deletion or addition, the President of the Council shall return it to the Council of Deputies for reconsideration.

Article 83

If the Council of Deputies accepts a draft law as submitted by the Consultative Council, the President of the Council of Deputies shall refer the draft law to the Prime Minister within no more than two weeks for purposes of submitting it to the King.¹⁰

Article 84

The Council of Deputies may reject any amendment made to a draft law by the Consultative Council, and may insist on its previous decision without introducing any new amendments to the draft law. In such a case the draft law shall be returned to the Consultative Council for reconsideration. The Consultative Council may accept the resolution of the Council of Deputies or insist on its previous decision.

Article 85

If both Councils disagree on any draft law twice, the National Assembly shall convene under the chairmanship of the President of the Council of Deputies to discuss the disputed articles thereof. For the draft law to be accepted, the National Assembly must issue a resolution approved by the majority of attending members. If the draft law is

¹⁰ Article (83) was amended by the Constitutional amendments issued in 2012.

rejected as such; it shall not be submitted to the National Assembly again in the same convening period.¹¹

Article 86

In all cases where a draft law is approved, the President of the Council of Deputies shall submit it within not more than two weeks to the Prime Minister to present the draft law to the King.¹²

Article 87

Every draft law that regulates economic or financial matters, and the Government requests its urgent consideration, shall first be submitted to the Council of Deputies so that it takes a resolution on it within fifteen days. When that period elapses, the draft law is presented to the Consultative Council with the opinion of the Council of Deputies if there is such an opinion, so that the Consultative Council decides on it within a further period of fifteen days. If the two Councils should disagree on the draft law in question, the matter is referred to the National Assembly for a vote on it within fifteen days. If the National Assembly does not reach a resolution on it within that period, the King may issue the draft law as a Decree that has the force of law.

Article 88

The Prime Minister may deliver a statement before either the Council of Deputies or the Consultative Council, or any of their competent committees pertinent to a matter within his

¹¹ Article (85) was amended by the Constitutional amendments issued in 2012.

¹² Article (86) was amended by the Constitutional amendments issued in 2012.

competence. The Prime Minister may delegate any Minister to do so. The Council or Committee may discuss the statement and make notes therein.¹³

Article 89

- a. A member of either the Consultative Council or the Council of Deputies represents the people and cares for public interest. He shall not come under the sway of any authority in his work in either Council or its committees.
- b. No member of the Consultative Council or the Council of Deputies shall be called to account for expressing his opinions or ideas in the Council or its committees unless the opinion expressed is prejudicial to the fundamentals of the religion or the unity of the nation, or the mandatory respect for the King, or is defamatory of the personal life of any person.
- c. Other than in a case of *flagrante delicto*, it shall be impermissible during the convening period for any detention, investigation, search, arrest or custodial procedures or any other penal action to be taken against a member except with the permission of the Council of which he is a member. Outside the convening period, permission must be sought from the President of the relevant Council.

The non-issue of a resolution by the Council or its President on the permission which is being sought within one month from the date of receipt of the request shall be regarded as permission.

¹³ Article (88) was amended by the Constitutional amendments issued in 2012.

The Council must be informed of any measures which may be taken under the preceding paragraph while it is convened, and it must invariably be informed at its first session of any action taken against a member during the Council's annual recess.

Article 90

The King may by Royal Order postpone the convening of the National Assembly for not more than two months, and such postponement shall not be repeated more than once in any one convening period. The period of postponement shall not be counted within the convening period provided by Article 72 of the present Constitution.

Article 91

Any member of the Council of Deputies may address the Ministers with written questions to clarify any issues pertinent to their jurisdiction. Only the questioning member has a right to comment once on the Minister reply. If the Minister adds new information, the Council member right to comment is renewed thereof.¹⁴

The question may not relate to an interest of the questioner or his relatives to the fourth degree, or be made by proxy.

Article 92

- a. Any fifteen (15) members of either the Council of Deputies or Consultative Council have the right to

¹⁴ Article (91) – First Paragraph was amended by the Constitutional amendments issued in 2012.

propose a constitutional amendment. Any member of either Council is entitled to propose laws; each proposal is referred to the specialized committee of the Council where the law was proposed to express its opinion. If the Council accepts the proposal, it is referred to the Government to formulate it as a draft amendment of the Constitution or as a draft law and present it to the Council of Deputies within six months at the most from the date of referral thereto.¹⁵

- b. Any proposal for a law which has been presented in accordance with the preceding paragraph and rejected by the Council to which it was presented may not be re-presented during the same convening period.

Article 93

The Prime Minister and Ministers may attend sessions of the Consultative Council and Council of Deputies, and both Councils shall listen to the Prime Minister and Ministers whenever they ask to speak. They may co-opt such senior officials or their Deputies as they wish.

A Council may require the competent Minister to attend when a matter relating to his Ministry is being debated.

Article 94

- a. The regulations for the course of business in both the Consultative Council and the Council of Deputies and their committees, and the principles governing debate, voting, questioning, cross-examination and all the

¹⁵ Article (92) Para A was amended by the Constitutional amendments issued in 2012.

powers prescribed in the Constitution shall be prescribed by law, and similarly the penalties for a member being in breach of the regulations or failing to attend Council or committee sessions without acceptable excuse.

- b. Each Council may add to the law that regulates it such supplementary provisions as it sees fit.

Article 95

Maintenance of order within the Consultative Council and Council of Deputies is a matter for its President. Guards shall be allocated to each Council and they will receive their orders from the Council's President.

No armed force may enter either Council of the National Assembly or remain in the vicinity of its doors unless so requested by its President.

Article 96

The remuneration of members of the Consultative Council and Council of Deputies shall be laid down by law. If this remuneration is amended, such amendment shall not take effect until the start of the next legislative term.

Article 97

Membership of the Consultative Council and Council of Deputies may not be combined, nor may membership of either Council be combined with the assumption of public office.

Other cases of non-combination shall be prescribed by law.

Article 98

During his period of membership a member of the Consultative Council or the Council of Deputies may not be appointed to the board of directors of a company or participate in contracts concluded by the Government or public institutions except in those cases prescribed by law.

Nor during that period may he purchase or rent a State asset, or lease, sell or barter any of his assets to the State, unless by way of public auction or invitation to tender or application of the regulations governing expropriation in the public interest.

Article 99

If a state of incompetence arises with respect to a member of Consultative Council and Council of Deputies during his membership, his membership shall be abrogated, and his place become vacant on a resolution taken by two thirds of the members of the Council of which he is a member. The membership of a member of the Consultative Council or Council of Deputies may also be abrogated for loss of confidence or esteem or for being in breach of the duties of membership. A resolution to abrogate membership must secure a two thirds majority of the members of the Council of which he is a member. If taken by the Consultative Council, the resolution shall be submitted to the King for approval.

Article 100

Members of the Consultative Council and Council of Deputies shall not be awarded medals or decorations during their term of membership.

Part 4

Provisions on the Convening of the National Assembly

Article 101

In addition to the occasions when both Councils of Consultative Council and Council of Deputies, that is the National Assembly, convene as a congress under the Constitution, the King may call such a meeting of his own initiative or at the request of the Prime Minister.

Article 102

The National Assembly meeting shall be chaired by the President of the Council of Deputies and in his absence, by the President of the Consultative Council followed by the First Vice-President of the Council of Deputies, followed by the First Vice-President of the Consultative Council.¹⁶

Article 103

In other cases where the constitution stipulates a special majority, the National Assembly meeting shall not be deemed legal without the attendance of the majority of members from each Council. If a quorum was not attained

¹⁶ Article (102) was amended by the Constitutional amendments issued in 2012.

twice consecutively, the meeting is thereto regarded correct provided that the number of present members from each Council is not less than a quarter of its members. Resolutions are adopted by vote of the majority of present members; and when the votes are equal, the voting side supported by the presiding President shall prevail.¹⁷

Council

Section 4

The Judicial Authority

Article 104

- a. The honour of the judiciary, and the probity and impartiality of judges, is the basis of Government and the guarantee of rights and freedoms.
- b. No authority shall prevail over the judgment of a judge, and under no circumstances may the course of justice be interfered with. The law guarantees the independence of the judiciary, and the law shall stipulate the guarantees of judges and the provisions pertaining to them.
- c. The law shall stipulate the provisions pertaining to the Public Prosecution Office, the tasks of the office for delivery of formal legal opinions, the preparation of legislation, State representation before the law, and personnel employed on such matters.
- d. The provisions governing advocacy shall be regulated by law.

¹⁷ Article (103) was amended by the Constitutional amendments issued in 2012.

Article 105

- a. The various types and degrees of the courts shall be regulated by law, and the law shall state their functions and jurisdiction.
- b. The jurisdiction of military courts shall be confined to military offences committed by members of the Defence Force, the National Guard, and the Security Forces. It does not extend to other persons except when martial law is declared and within the bounds prescribed by law.
- c. Court hearings shall be held in public except in exceptional cases prescribed by law.
- d. A Higher Judicial Council shall be established by law to supervise the smooth running of work in the courts and their supporting organs. The powers of the Higher Judicial Council in the functional affairs of judicial personnel and the Public Prosecution Office shall be prescribed by law.

Article 106

A Constitutional Court shall be established, and shall comprise a President and six members, all of whom are appointed by a Royal Order for a period specified by the law. The court's area of competence is to watch over the constitutionality of laws and statutes.

The law shall state the regulations that ensure that the members of the Court are not liable to dismissal, and specifies the procedures that are followed before the Court. The law shall guarantee the right of the Government, Consultative Council, the Council of Deputies and notable individuals and others to challenge before the Court the constitutionality of laws and statutes. A ruling by the Court

that a text in a law or a statute is unconstitutional shall have a direct effect, unless the Court specifies a subsequent date for the purpose. Thus if the Court's rule on unconstitutionality is related to a text in the penal code then the convictions made on the basis of such a text are deemed null and void.

The King may refer to the Court any draft laws before they are adopted to determine the extent of their agreement with the Constitution. The Court's determination is binding on all State authorities and on everyone.

Chapter V

Financial Affairs

Article 107

- a. Public taxes shall only be established, amended and abolished by law, and persons shall only be exempted from paying them wholly or in part in those cases prescribed by law. A person may only be instructed to pay other taxes, duties and costs within the bounds of the law.
- b. The provisions governing the collection of taxes, duties and other public monies, and the procedures for their disbursement, shall be prescribed by law.
- c. The provisions governing the maintenance and management and the terms for the disposition of State property, and the limits within which any part of such property may be assigned, shall be prescribed by law.

Article 108

- a. Public loans shall be contracted by law. The State may lend or guarantee a loan by law within the credit limits prescribed for the purpose in the Budget Law.
- b. Local bodies such as municipalities or public institutions may lend, borrow or guarantee a loan in accordance with the laws relevant to them.

Article 109

- a. The financial year shall be prescribed by law.
- b. The Government shall prepare the annual general budget draft law, inclusive of revenues and expenditures. It is thereto submitted to both Councils of Deputies and Consultative within at least two months before the end of the fiscal year. The finance committees of each Council shall convene in a joint meeting to discuss the drafted budget with the Government. Each committee shall submit an independent report at the end of discussions to its respective Council. The draft law shall be submitted to the Council of Deputies for debate and revert it to the Consultative Council for review, according to the constitutional parameters. Amendments may be made to the draft law in agreement with the Government.
- c. Debating the drafted budget shall be according to its index. The budget of two fiscal years at the most may be drawn up; hence no appropriations from the general revenues shall be allocated to any form of expenditure except by law.¹⁸

¹⁸ Article (109) Para B, C was amended by the Constitutional amendments issued in 2012.

- d. The State general budget shall be promulgated by law.
- e. If the Budget Law is not promulgated before the beginning of the financial year, the previous budget shall be adhered to until the law's promulgation, and revenue shall be collected and expenditure disbursed in accordance with the laws in force at the end of that year.
- f. Under no circumstances may the maximum estimates of expenditure stated in the Budget Law and laws in amendment thereof be exceeded.

Article 110

Any disbursement which is ex-budget or in excess of the budget estimates must be made by operation of law.

Article 111

- a. Particular sums of money may be allocated to more than one financial year by law if the nature of the disbursement so requires. The appropriations for each, as decided by the aforementioned law, shall be tabled in the successive annual budgets of the State.
- b. An exceptional budget running for more than one financial year may also be allocated for the disbursement referred to in the preceding paragraph.

Article 112

The Budget Law may not contain any wording establishing a new tax, increasing an existing tax, or amending an existing law, or avoiding the promulgation of a law on a matter for which the Constitution provides that it shall be regulated by law.

Article 113

The final account of the financial affairs of the State for the year elapsed shall be submitted firstly to the Council of Deputies during the five months following the end of the financial year. It shall be approved by a resolution rendered by both the Consultative Council and Council of Deputies, accompanied by their observations, and shall be published in the Official Gazette.

Article 114

The provisions pertaining to independent public budgets, their appendices, and their final accounts, shall be laid down by law, and they shall be subject to the provisions governing the State budget and its final account. The provisions governing the budgets and final accounts of municipalities and local public institutions shall also be laid down by law.

Article 115

The Government shall submit to both Councils of Deputies and Consultative a statement on the State financial and economic positions, to which the annual general budget draft law is attached; in addition to the implemented measures to carry out the enforced budget appropriations, as well as the impact of the aforementioned on the new draft budget.¹⁹

¹⁹ Article (115) was amended by the Constitutional amendments issued in 2012.

Article 116

An Audit Court shall be set up by law, and the law shall guarantee its independence. It shall assist the Government and the Council of Deputies in controlling the collection of State revenues and the disbursement of its expenditure within the budget limits. The Audit Court shall submit an annual report on its business, with its views, to both the Government and the Council of Deputies.

Article 117

- a. Any commitment to exploit a natural resource or a public utility shall be only by operation of law and for a limited time. The preliminary procedures shall ensure that the search and exploration work are facilitated and that openness and competition are realized.
- b. No monopoly may be granted except by law and for a limited period.

Article 118

Currency and banking as well as weights, measures and standards are regulated by law.

Article 119

The law shall regulate emoluments, pensions, compensation, relief and remuneration being a charge on the State Treasury.

Chapter VI

General and Final Provisions

Article 120

- a. Exception to paragraphs (b, c and d) of Article (35) of the present Constitution, for any provision of the present Constitution to be amended the amendment must be approved by two thirds majority of each Council members of the Consultative Council and the Council of Deputies, and the amendment must be ratified by the King. If any of the two Councils disapproves the amendment or the proposed text; the National Assembly shall convene at the attendance of two thirds of its members to discuss the amendments draft. The approval of two thirds of the Assembly is required to validate the amendments draft.²⁰
- b. If an amendment to the Constitution is refused, it may not be re-submitted earlier than one year from that refusal.
- c. It is not permissible to propose an amendment to Article 2 of the present Constitution, and it is not permissible under any circumstances to propose the amendment of the constitutional monarchy and the principle of inherited rule in Bahrain, as well as the bicameral system and the principles of freedom and equality established in the present Constitution.

²⁰ Article (120) Para A was amended by the Constitutional amendments issued in 2012.

- d. The powers of the King stated in the present Constitution may not be proposed for amendment in an interval during which another person is acting for him.

Article 121

- a. The application of the present Constitution does not breach the treaties and agreements which Bahrain has concluded with states and international organisations.
- b. Exception to the provision of the second paragraph of Article 38 of the present Constitution, all laws, laws by Decree, Decrees, statutes, orders, edicts and circulars that have been issued and are in force prior to the first meeting convened by the National Assembly remain proper and valid, unless amended or rescinded in accordance with the regulations prescribed in the present Constitution.

Article 122

Laws are published in the Official Gazette within two weeks of their issue, and are enforced one month after the date of their publication, and this period may be shortened or prolonged if the law specifically prescribed it.

Article 123

No provision of the present Constitution may be suspended except during the proclamation of martial law, and within the limits prescribed by the law. It is not permissible under any circumstances to suspend the convening of the Consultative Council or the Council of Deputies during that period or to infringe upon the immunity of their members, or during the proclamation of a state of national safety.

Article 124

The provisions of the laws apply only to what occurs from the date the laws came into force, and have no retroactive effect. The law may state, in articles other than those pertaining to the penal code, that its provisions have a retroactive effect, with the agreement of the majority of the members of both the Consultative Council and the Council of Deputies, or if circumstances require it, the National Assembly.

Article 125

This amended Constitution shall be published in the Official Gazette, and shall be effective from the date of its publication.

Hamad bin Isa Al Khalifa



**EXPLANATORY
MEMORANDUM ON
AMENDMENTS
TO THE CONSTITUTION OF
THE KINGDOM OF BAHRAIN
ISSUED IN THE YEAR
2002 A. D.**



**IN THE NAME OF GOD, THE BENEFICENT, THE
MERCIFUL**

**EXPLANATORY MEMORANDUM ON
AMENDMENTS
TO THE CONSTITUTION OF THE KINGDOM OF
BAHRAIN ISSUED IN THE YEAR 2002 A. D.**

Bahrain witnessed political and constitutional changes since it adopted a Constitution on 6 December 1973. In view of the desire of H. H. the Amir to achieve progress and prosperity to the country, and to develop its political system to realize a sound democratic way of life in keeping with the democratic ethos prevalent in the world today, its general principles were delineated recording the bases of this development from the political, social and economic angles. These principles were endorsed by the National Action Charter and placed before the people in a referendum on 14 February 2001. The people of Bahrain accorded to it an overwhelming consensus to act as an authority for marching on the road to democracy, which the State wanted to consummate.

This Charter contained the political philosophy, which should govern the Bahrain society in future including its historic personality, and illustrating the infrastructure needed for its society, its system of rule, which will be implemented in future and it describes the functioning of parliamentary way of life. The Charter included the fundamentals of economics for the society, the basis of national security, inter-Gulf and foreign relations and the changes, which were to be made to the existing Constitution to activate the basic concepts mentioned in it.

Whereas the activation of the principles mentioned in this Charter requires that the process of amending the existing Constitution harmonizes with the larger aims contained in it and which will enable Bahrain to continue its march within the framework of the modernization of the State institutions and their constitutional powers; H. H. the Amir entrusted the Technical Consultative Committee by virtue of Decree No. (5) of 2001 with the task of preparing draft constitutional amendments in terms described by the National Action Charter as needful. However, it was for this Committee to take into consideration the bases and principles contained in the Charter, which would serve the country's interests. The President of this Committee was to raise the draft changes proposed to H. H. the Amir enclosing an explanatory memorandum with all studies showing different legal opinions before preparing the draft amendments so that His Highness could take appropriate steps for issuing the amended Constitution.

The Committee benefited from the opinions of constitutional experts of different countries, discussed different points of view in regard to the procedures to be followed for changing the Constitution and the amendments to be carried out in keeping with the principles contained in the National Action Charter.

In this explanatory memorandum, the Committee has explained the method by which the opinion crystallized over amending the present Constitution, and the changes, which were effected to this Constitution and the justification for them within the framework of legal opinions and studies presented by experts.

SECTION ONE

THE MANNER IN WHICH THE CONSTITUTION WAS AMENDED

Questions were raised in the Committee, which was formed for the purpose of preparing the draft amendments to the Constitution, on the means and procedures to be adopted for changing the Constitution, so that they realized the principles approved by the people in a referendum on the Charter.

Adherence to these procedures required that the Committee should begin by defining the extent of obligatory commitment imposed by the general principles contained in the Charter and futuristic guidelines forming the basis of constitutional amendments; and thereafter determine the manner in which the Constitution should be amended in the light of the principles and rules contained in the Charter.

First: The Obligatory Force of National Action Charter:

Some States proceed by laying down the general principles defining the new philosophy, which aims at realizing them through the medium of declarations of rights or charters before the world at large, so that they could be a means of guaranteeing the rights and liberties of the people. The examples thereof are the American Declaration of Rights, the French Declaration of Rights, the Egyptian National Action Charter and the Algerian National Action Charter.

With the desire of H. H. the Amir for laying down a philosophy and the basis for channeling the future course of democracy in Bahrain, His Highness decided to have

recourse to the latest democratic system prevalent in the world of today. Accordingly a national referendum was held over a document incorporating those principles, bases and goals. This goes along with what the present Constitution has incorporated in saying that the people have the sovereignty and they are the source of all power.

Differences dogged the jurists over defining the legal force of the various declarations and charters as some saw them as surpassing the Constitution, while some others saw them having as much validity as a constitutional document. The majority was inclined to the view that such declarations and documents were considered obligatory by the framers of the Constitution and thus enjoyed a higher status as they represented major trends which the people desired and they included settled constitutional principles in human consciousness in society.

Hence it was essential that the constitutional jurist and the ordinary jurist alike should abide them. Hence some referred to them as "the Constitution of constitutions".

The Committee settled for the view that the nature of the National Action Charter of the State of Bahrain, whether considered to be above the status of the Constitution or of the same status, nevertheless it has an obligatory quality, based on the following facts:

- 1- The Charter was issued following a national referendum of people having sovereignty in the State. Similarly, the form in which the principles and bases have been drafted give the impression of being compulsory, which render them a basis for amending the Constitution and laying down laws.

- 2- His Highness the Amir's address to the Nation referring the Charter to the people for a referendum Stated: "The Charter will be considered as the authority for our national march ahead. We shall go ahead with right guidance in our national action and continue our advance on this basis until we modernize the State institutions and their constitutional powers and achieve in each phase what we consider to be reflecting the aspirations of the people." This confirms that the Charter is the guide for future action and a compulsory basis for the State to develop its legal systems so as to guarantee its progress.
- 3- What has appeared in the Charter about looking forward to the future says: "All are in agreement over the contents of the Charter, both at the level of the Government and of the people. Taking into consideration that it represents an instrument of future action for the country, and the implementation of the basic concepts contained in it necessitate certain constitutional changes, it is essential to abide by the following: ..." This emphasizes the obligatory nature of the principles outlined in it and the need for the Constitution to comply with them.
- 4- What further emphasizes its obligatory nature is the provision in the Charter which says: "The agreement of the people over the Charter expresses their desire to realize a stable and prosperous future for the country under the leadership of H. H. Shaikh Hamad Bin Isa Al Khalifa, the Amir"

Second: The means of changing the existing Constitution of the State of Bahrain in the light of the Charter:

The Constitution of the State of Bahrain issued in 1973 included the text of Article 104 providing for procedures for amending it. The text of this Article stated: "Any change in the provisions of this Constitution should be carried out with the approval of two thirds majority constituting the National Assembly and the ratification thereof by the Amir in exception of the rule contained in Article (35) of this Constitution".

Questions were raised about the manner in which this Constitution could be amended, within the framework of the principles and rules contained in the National Action Charter as being the ultimate document in the State of Bahrain to be followed by the Constitutional legislature.

In the light of constitutional principles determined by constitutional concepts and the developments witnessed by the State of Bahrain **the Committee veered to the view that Article 104 of the existing Constitution was no longer valid for amending the Constitution within the framework of procedures Stated therein for the following reasons:**

1. The expressions contained in the Charter aver in their context that the people have entrusted H. H. the Amir with effecting constitutional changes.
2. The letter raised by the President of the Supreme Committee for preparing the Draft Charter to H. H. the Amir, which was under the gaze of the people at the time of the referendum. Stated: "The Committee, on completion of

its sittings, decided to raise the Draft National Charter to H. H. the Amir as a document of our renewal of trust and a pledge of allegiance, so that His Highness may proceed as he may think fit and proper in the interests of the country:'

This Statement confirmed that the Committee prepared the Draft Charter and the people who agreed with its contents entrusted to His Highness such measures, as he considered necessary to activism and implement the Charter by bringing about the amendment of the Constitution within the framework of the principles and rules of the Charter as necessary.

3. The will of the people as expressed in the referendum and the acceptance by H. H. the Amir of the people's will by ratification of the Charter, make it clear that the people entrusted to His Highness the steps to be taken to amend the Constitution within the scope of the principles and rules contained in the Charter and to select the means considered suitable for effecting the constitutional changes, their approval and issuance.

4. If H. H. the Amir desired within the framework of the Charter and authorization by the people, to apply Article 104 of the existing Constitution for amending its provisions, he will not be able to do so in the light of the prescribed constitutional principles and the prevailing conditions in Bahrain as such application will not be possible for the following reasons:

- The National Council stands dissolved and the Amiri Order No 4 issued on 26 August 1975 terminated the operation of the rules dealing with the National Council as contained in the Constitution of Bahrain of 1973. As against it this

Council is non-existent constitutionally, particularly since the people affirmed it by their endorsement of the National Action Charter against the background of the non-existence of the Council, thus confirming the absence of any role for it in the constitutional life of Bahrain. Any recourse to it now would be considered an affront to national will expressed through its endorsement of the Charter, and the non-abidance by H.H. the Amir of the implementation of the national will. Hence it will not be possible for this Council, which is non-existent constitutionally to exercise its mandates contained in the present Constitution, which includes its agreement to the amending of the Constitution.

Apart from the constitutional non-existence of the National Council, it is also non-existent actually and in fact.

Despite the existence of the Amiri Order No 4 of 1975 dissolving the National Council and transferring the legislative authority to H. H. the Amir and the Council of Ministers, and even if it is said that it is possible that this order could be cancelled, such a demand did not find its place in the Charter apart from the fact that it is not in harmony with its texts even if this opinion is made operative and given a new lease of life in this Council. It is attributable to the fact that the tenure of the National Council according to the present Constitution was fixed at four years. This period ended and with it ended the actual and legal existence of the Council. Its revival in its old folly became legally untenable.

It will not be possible to talk of holding elections to a new Council undertaking the amending of the Constitution by following the procedures laid down in Article (104) of the Constitution of 1973 because it violates the principles

contained in the Charter. These principles became operative with their approval by the people in a referendum, which resulted in the cancellation of the rules contained in the current constitution, which were contrary to it, as from the date of the said approval, contrary to the current Constitution. The Charter adopted the system of bi-cameral legislature with women's participation in elections and their candidacy for the membership of representative councils. It will not be possible to apply these new principles before the Constitution is amended for organizing the methods of selecting the two Councils defining their prerogatives and the conditions for selecting their members and the nature of such selections.

The Committee concluded this submission of the prescribed constitutional principles and the current situation in Bahrain noting that the only way to change the Constitution lay in effecting it through a sincere Amiri will, in implementation of the commitment entrusted to H.H. the Amir by the people in the referendum over the Charter, and its acceptance by His Highness by ratifying it. The constitutional amendments in this case will be considered as having been issued in pursuance of the people's desire. What was issued by H. H. the Amir was in implementation of it.

Without a doubt, the legislative authority has the right, after the return of parliamentary life in the wake of the changes effected in the Constitution of 1973, to suggest other changes or change the amendments in accordance with the procedures laid down in the amended Constitution,

SECTION TWO

CHANGES MADE TO THE CONSTITUTION

AND THEIR JUSTIFICATION

The Articles of the Charter mentioned the subjects, which needed constitutional amendments. In this connection **these words may be quoted:**" whereas H, H. the Amir is desirous of establishing a democratic system anchoring a balanced structure guaranteeing constitutional political palmer ship between the people and the Movement; separating the three organs of authority; strengthening the instruments of judicial authority, establishing a Constitutional Court and a Bureau for Financial Control, and whereas, there was abundant Royal intent to change over at the beginning' of the Third Millennium to a modern State complementing its political and constitutional framework, for interacting with the latest developments at the local, regional and global levels: and whereas the lesson of the experience of Bahrain in political and economic action throughout the past three decades requires that we take into account the new political, economic, social and legislative developments; and in order to face the future challenges in the wake of new developments at the global level. We veered to the opinion that we abide by certain immutable national, political and constitutional facts in the identity of the State in confirmation of the system of heredity constitutional democratic monarchy whereby the King of the country served his people. He is a symbol of an independent identity with hopes and aspirations for progress. for introducing modernization in the Constitution of the county in the light of the democratic experiences of different countries in enlarging the base of people's participation in bearing the

burden of rule and administration. Some of these experiments proved that the adoption of a bi-cameral system of legislation offered the advantage of benefiting from the wisdom of knowledgeable and experienced members of the Consultative Council. Interacting with people's opinion of different persuasions since the Council members were elected directly." **The Second Chapter Stated: First:** The system of rule in Bahrain will be a hereditary constellational monarchy. **Second:** It was proper that Bahrain should take its place among the constitutional monarchies having a democratic system, which could materialize people's aspirations for progress. **Fourth:** The system of rule in the State of Bahrain will be democratic. Sovereignty therein will be of the people who will be the source of all authority. **Fifth:** The system of rule, dedicated to the well-established democratic principle, will be based on the separation of the three organs of authority as per the rules of the Constitution: legislative, executive and judiciary, with co-operation between them as per the rules of the Constitution. H. H. the Amir will be at the head of the three organs of authority. **Sixth:** The State will work for completing the judicial bodies provided for in the Constitution and lay down the Judicial body which will have jurisdiction over disputes concerning the constitutionality of the laws and regulations. **Seventh:** The people, men and women, will enjoy the right to participate in public affairs and have political rights in the Country starting with the right of election and candidacy.... "And what was Stated in the **Third Chapter: First:** It will be necessary to establish a Bureau for Financial Control" and what appeared in the **Fifth Chapter.** ".. For greater people's participation in public affairs and inspired by the principle of consultation as being a vital Islamic principle on which is based the system of rule in Bahrain, and believing

in the rights of the people as a whole, and their right to exercise their rights in line with ancient democratic practices. It was in Bahrain's interest to organize its legislative authority through two Councils ... a Council freely elected directly to undertake legislative functions ... and a nominated Council consisting of experienced and specialist members whose expertise could be availed of as advice based on knowledge and experience.

Within the framework of the principles of the people's will and their trends as contained in the Charter, the constitutional amendments were made highlighting the following pioneering concepts:

1- According a share to the application of the esteemed Islamic Shari'a more than that included in the un-amended constitution. The changes emphasized that the Islamic Shari'a was deep-rooted in the people's conscience and occupied a position worthy of it.

The text of the Constitution before its amendment, Stated in its Article (2) that the State Religion was Islam. and that the Islamic Shari' a was the main source of legislation, and that in Article (6) it provided that the State will protect the Islamic heritage, and in Article 7 (b) it said that it would patronize religious education at various stages and types of education.

Constitutional amendments were introduced to enlarge their scope. They did not halt at these texts only but extended them to reflect the effect of Islamic Shari'a on other texts of the Constitution. In this context Article (33) Stated that the King was the Faithful Protector of Religion and thus the responsibility of protecting religion devolved on the Head of

State and the highest authority in it assuring greater protection. From this also proceeded the adoption of the system of the Consultative Council in addition to the Council of Deputies. (Article 52 and subsequent Articles) implementing God's injunctions: **{and consult them in affairs}**; **{Their affairs are mutual consul}** and in support of the Sunna of the Prophet *peace be upon him* on consultation and justice and emphasizing the enhancement of Islamic Shari'a in this consultation by providing for a national referendum in Article (43). In the field of emphasizing the role of Islamic Shari'a as forming the basis of the system of rule in the Kingdom, Article (5) referred to the need for guaranteeing equality between men and women without treading on the rules of Islamic Shari'a. Articles (23, 24 and 27) Stated that it should be ensured that the freedom of opinion, of scientific research, printing and publishing, forming societies and guilds, shall not offend the Islamic faith. Abidance by the laws of Islamic Shari'a and the base on which rests the true religion of Islam is the condition for practicing these rights and liberties.

All these texts were introduced to ensure that the Islamic Shari'a, in the sense of Islamic Jurisprudence, was the main source of legislation which would direct the law-maker to the basic Islamic perspective without preventing him from innovating rules from other sources on matters on which the Islamic Jurisprudence had not pronounced its verdict or it was considered desirable to frame rules about them which did not violate it, in keeping with the needs of natural developments over a period of time.

No doubt that these texts emphasized that the State Religion was Islam and the Islamic Shari'a had a basic role in society which was not incompatible with the sanctity of worship or

the freedom to perform religious rituals. This was confirmed in Article (22) of the Constitution which Stated: "Freedom of conscience is absolute. The State guarantees the sanctity of worship and the freedom to perform religious rituals, take out processions and to hold religious gatherings in accordance with the normal practice followed in the country."

2- Deepening the democratic trend, the amendments ensured more public rights and liberties as well as obligations for a greater activation of the democratic system in keeping with human rights over which the world community lays emphasis always.

3- Developing the concepts adopted by the Constitution before its amendment combining the features of both the Parliamentary and Presidential systems and adding to them some features resembling direct democracy:

If the un-amended Constitution,, was to adopt a middle road to introduce a representational system whereby certain features of both the parliamentary and presidential systems were combined in the interests of national unity and stability this trend, hence the constitutional amendments affirmed this direction, and did not forget, while accepting the merits of the parliamentary system, the drawbacks as revealed in democratic experiments even as the merit of stability in the presidential system did not escape their notice.

In defining the contours of this middle path between the Parliamentary and the Presidential systems and selecting a position in between them for the Constitution of Bahrain, the constitutional amendments preceded in the direction of adopting from both, which harmonized legal and theoretical

considerations and local compulsions and practical positions. This trend led to defining the powers of the King as the Head of State and relations between the Legislative and executive authorities.

If the established rule Stated that the conventional representative system was based on the independence of the Deputies in exercising their prescribed powers in respect of the people who were not entitled to participate with them in their exercise, It was the result of the development of systems adopted certain semi- direct features of democracy departing from the basic tenets of the traditional representational system. After the Deputies assumed authority for themselves, it was the right of the people to assert their participation in its exercise and do so actively. Thus the modern trends inclined towards transplanting the widely prevalent representative system with certain features of semi-direct democracy.

In keeping with this global trend which is picking up today and desiring enlargement of the people's participation in the conduct of the Kingdom's affairs, the constitutional amendments adopted the concept of national referendum. While this idea is in keeping with the development of contemporary constitutional systems, its adoption has been of the Holy Qur'an there is the story in the Surat Al Naml of the advise sought by Bilgis, the Queen of Sheba from the knowledgeable people of her community, God Almighty says in His sacred book: "in the name of God, the Beneficent, the Merciful ((She said, "**O eminent ones, to me has been delivered a noble letter. It is from Solomon, it reads: 'In the name of Allah, the Entirely Merciful, the Especially Merciful. Be not haughty with me but come to me in submission [as Muslims].** She said, "O eminent

ones, advise me in my affair. I would not decide a matter until you witness [for] me."))And to the end of the Verses. Thus the Queen consulted her people in the matter and they delegated to her the authority to act as she thought fit. She decided to send to Solomon a gift to see what would be his response ... to the end of the well-known story.

Acting on the bases and principles contained in the Charter and within the framework of what has been Stated above, certain amendments were made in the texts of the Constitution of 1973 so as to achieve the aim which people entertained and confirmed in the referendum.

These changes were in respect of two basic matters; the system of monarchy and the bi-cameral system. These two matters were subdivided under other rules which were compatible with them and which complemented the principles contained in them, in addition to certain subsidiary rules to which the Charter referred.

First: The Monarchical Form is the basic pillar of the System of Rule:

Complementary imports were put together of what the Charter contained as the core of ushering in a new reign. It acted as a pivot for bringing about the required changes, for preserving national unity and stability. Based on it was the desire that the Head of State should be the father figure for the sons of the soil, one and all. This is what was emphasised in the Charter, it stated "political and constitutional constants should be adhered to in the identity of the State to ensure the system of constitutional democratic hereditary monarchy whereby the King of the country serves

his people and symbolizes their independent identity and aspirations."

The hereditary system was an immutable political and constitutional fact on which Bahrain was based throughout its hoary history, whereby the spirit of a single united family joined them together, the rulers and the ruled alike. The ruler of a country with a hereditary system is known by various titles such as King, Amir, Sultan, Emperor or Kaiser. The title adopted by the Constitution before the issuance of the Charter was "The Amir" but the Charter preferred the title "The King" so that it went along with the development achieved by Bahrain and could proceed further to realize its aspirations in future. Thus it stated: "God Almighty bestowed on Bahrain the bounty of stability and it achieved progress by leaps and bounds and faced many challenges. After it acquired a measure of maturity in international relations and in its sovereign institutions based on equality between its citizens and protection of their interests and unity, it was but moot that Bahrain should occupy its place among the constitutional monarchies enjoying a democratic system, capable of realizing for its people their aspirations for progress. "

The Charter gave expression to the effects of it in Chapter Six (First Clause) saying: "The system of rule in the State of Bahrain will be a constitutional hereditary monarchy."

Despite the fact that the titles the "King" and the "Amir" refer to broadly the same system, which is hereditary or monarchical there is no doubt that the term monarchy differs in its exact technical import from the term 'the Amiri System'. The term "King" is not used in a Kingdom except for a single person who is its head, apex and leader.

However, the term Amir may be used in some states to princes of royal family .Hence the term 'the King' singles him out both in his title as well as in his stature, making him both a symbol of the Kingdom and of its people, whether inside or outside the country. This uniqueness is matched by considerable increase in the King's responsibilities towards his country and his people necessitating changes in rules contained in the Constitution.

In implementation of what the Charter stated about changing the name of the State of Bahrain to the Kingdom of Bahrain and its Head as the King, the constitutional amendments aimed at achieving this goal. Paragraph (b) of Article (1) stated: "Rule over the Kingdom of Bahrain will be a constitutional monarchy. The rule passed from the Late Shaikh Isa Bin Salman Al Khalifa to his eldest son Shaikh Hamad Bin Isa AI Khalifa and will pass on hereafter to his eldest son and so on in hereditary succession, unless the King appoints during his lifetime, a son other than the eldest son as his successor, according to the rules of succession outlined in the Decree on Succession."

This amendment to the text of the first paragraph of Article (1) necessitated changes to certain texts of the Constitution to bring in the term "the King" to replace the term "the Amir" and substitute 'the Kingdom of Bahrain' for the 'State of Bahrain', as well as some others to be in conformity with these new terms and the adoption of the bi-cameral legislature.

1 - Texts in which the terms "The King" and "The Kingdom of Bahrain" occur:

The title ' Amir ' was altered to read ' The King ' and ' The State of Bahrain ' to ' The Kingdom of Bahrain ' in the texts appearing in the two articles 1 (a, b, c, d) , 32 (b), the title of Section One in Chapter Four; Articles 33, 34, 35, 37 Paragraph One, Article 38 Paragraph One, Articles 39, 40, 41, 42, 46, 47 (b, e) , , Articles 52, 54 (b, c, d), Article 58 ,Second Paragraph, , Article 64 (b, c): and Article 67 (d), Articles 70, 71 73 ,First Paragraph, , Articles 74, 75 ,First Paragraph), Articles 76, 78, 83, 86, 87, 89) (b), Articles 90, 99 Second Paragraph, Articles 101, 106 First and Third Paragraphs and Article 120 (a, c, d).

The amendment of some of these Articles was restricted to changing the nomenclature alone without changing the texts of the Constitution as they were before the amendment: and some Articles, as will be outlined, included the nomenclature and the consequent rules resulting from it.

2 - The rules. Which were changed so as to be in harmony" with the monarchical system:

The adoption of the system of monarchy necessitated a change in some of the Articles in the existing Constitution and addition of some new ones. These are as under:

Article (33):

The Charter provisioned that the rule aimed at protecting the country, enhancing its status, preserving national unity, achieving a comprehensive development in the political, economic, social, cultural and other spheres. Since, according to the Charter, the King is the fountainhead of the triple powers of the legislative, executive and judicial authority, and the main burden for realizing the goals laid down in the Charter for facing the future challenges in the wake of the new developments on the world stage rested on his shoulders. Article (33) was amended defining the responsibilities of the King in his capacity as the head of State and an arbiter between its different organs.

A - Clauses (a, b) Stated that "the King is the Head of State and its highest representative. He enjoys absolute immunity, which cannot be impinged. He is the Faithful Defender of Faith and the country and the symbol of national integrity. He protects the legality of rule, the supremacy of the Constitution and law, the rights of the people, institutions and their freedom,"

B - Dedicated to democratic principles and clarifying the role of the Government in the management of the affairs of the Kingdom, clause (c) was amended to read: "The King shall exercise his powers both directly and through his Ministers". In accordance with the well-established constitutional systems of the world, which have opted for the parliamentary system or a representational system incorporating certain features of the Presidential system; the King will exercise these prerogatives through royal orders and decrees, Before the decrees are put up to the King, the

Prime Minister and the concerned Ministers will sign them as the case may be.

In conformity with these prerogatives, which the Constitution has bestowed on the King for his exclusive use, the orders will be issued as Royal Injunctions under only the King's signature without the signatures of the Prime Minister or the Ministers. As for other jurisdictions which the King exercises through his Ministers, they will be in the shape of decrees signed by the King after the signature thereon of the Prime Minister and the concerned Ministers according to circumstances, meaning thereby that he will be content with the signature of the Prime Minister in cases where the subject of the Decree does not concern any specific ministry or many ministries. In this case the signature of the King is not merely a certification of the signature of the Council of the Prime Minister and the concerned Ministers but that the King has the right to approve or disapprove of the decree as he may think fit.

C - As a result of the adoption of the bi-cameral system, clause (f) was added to accord the right to the King, by a Royal Order, to appoint members to one of the two Councils (Consultative Council) and relieve them, so that the formation of the Consultative Council differed from the formation of the Council of Deputies as the latter was to be by direct election from among the citizens. This is in conformity with the constitutional rules, which provide for a bi-cameral legislature with dissimilarity in the mode of selecting members for the two Councils.

D - Since the Defence Force needs to protect the secrecy of its proceedings and its command is one of the basic functions of the King, as well as protecting the

independence of the country, and the safety of its soil internally and externally, and in implementation of the oath taken as per Clause (J) of Article (33) Clause (g) was amended to enable the King to honor his oath by assuming command of the Defence Force and allot to it national tasks inside the territory of the Kingdom and outside it, and that the Defence Force could establish with him a direct relationship and preserve necessary secrecy in its affairs. There is no doubt that in order to realize these goals, what is issued by the King in pursuance of Clause (g) will be in the shape of Royal Decrees signed by the King alone, even when the Minister of Defence is present.

By virtue of this text the King assumes the command of the Defence Force and orders the raising and disbandment of military units and their weaponry. He supervises all their affairs including the strategy for national Defence, concepts of use of force, planning and programming their development for facing the challenges faced by the Kingdom within the framework of its obligations at the Gulf in regional and global levels. It is the King who will order the use of force within or outside the Kingdom.

The phrase "preserve the necessary secrecy in its affairs" refers to plans for construction and development, orders and instructions regarding operational plans, the organizational structure for military budgets including future provisions, man-power outlays, all military documents and correspondence bearing the security classification 'secret' and 'top secret', information about preparedness and battle-efficiency, funds ear-marked for security and military intelligence and budgetary provisions for projects concerning armament, recruitment and development. This is no bar to recurring budgetary provisions for the Defence

Force bearing the same number in the general budget of the State.

E. In pursuance of achieving maximum measure of independence for the judiciary and in view of the existence of several judicial entities in Bahrain, the Charter has projected the need for establishing a Judicial Body, which will undertake supervision over the constitutionality of legislation. Article (106) of the amended Constitution stipulates the establishing of a Constitutional Court) This is the concern expressed in Article (106) of this amended Constitution by establishing a Constitutional Court wherein paragraph (c) provides for the King to head the Supreme Judicial Council and appoint Judges by Royal Decrees based on the recommendations of the Supreme Judicial Council. This confirms the independence of the Judiciary and keeps it immune from the domination of the executive since it is directly linked to the King as the Head of State. This does not prevent, in the nature of things, the King from nominating a deputy to preside over the Supreme Judicial Council on his behalf from among the current Presidents of the Judicial Bodies or potentially one in the future.

F. Paragraph (J) was added to state that the King could create, grant or withdraw civil, military and other honorary titles. He could authorize anyone else to do so on his behalf. This is a right that can be exercised by virtue of a Royal Decree

G. Regulating the form in which the King would take the Constitutional Oath and specifying the body before which this oath is to be taken, Paragraph (I) of the Article was amended to read: " The King, at the time of assuming the throne, at a special session of the National Council, shall

take the following oath:" ... It means that the King would take the oath once while ascending the throne. If he had taken an oath before any body other than the newly formed National Council, it would not be necessary to repeat the oath before the new Council. The oath taken earlier before the body existing at the time would be considered adequate.

H. In view of the fact that the Royal Court is associated with the functions of the King, which requires that it should enjoy his special confidence, the custom followed in some monarchies is that the King should have absolute freedom in appointing its staff and mode of functioning. Hence, paragraph (m) was added to the said Article (33) to state: "The Royal court will be Subordinate to the King and will be organized as per Special Royal Decree."

In conformity with this text there is a separation of the regulations governing the transaction of work at the Royal Court and the rules applied to the special budget and its control and supervision. The King will issue a Royal Decree regulating the system of functioning of the Royal Court. As for the budget of the Royal court and supervision over it, a special Royal Decree will be issued on it signed by the King in addition to the signature of the President of the Council of Ministers. The Rules and Regulations of organization of work at the Royal Court will cover all aspects of the working system, such as the appointment of officials, allotment of duties between them and the system of work and other duties, which are naturally associated approval with them. As for the budget of the Court and its supervision, the functions include all that concerns its determination, and the rules of expenditure and the competent authority to supervise such expenditure that may be from within the Court or outside, in the shape of a

Committee or any other body. The Decree issued in respect of all such matters need not be placed before the National Assembly.

Article (35):

A. Article 35 (a), prior to its amendment, was restricted to defining the right of the King to suggest laws. In view of the fact that the Constitution represented the highest legal principles, some people opined that the term law was not comprehensive enough to be applied to the Constitution. Some asserted that the term 'law' embraced all legal principles including the Constitution, which led to the interpretation by a few people saying that the right to suggest amendments to the Constitution has not been included in the text dealing with the prerogative of the King to introduce legislation. Hence Article (35) (a) was amended to forestall any differences in interpretation by stating clearly that the King will have the right to amend the Constitution and propose laws. He will also have the right to propose amendments to the Constitution in addition to his right to moot laws as provided for in the Constitution before it was amended.

B. Paragraph (b) of this Article stated prior to its amendment the fixed period within which the law should be returned to the National Council for its review as thirty days. Since this period was not enough to examine the draft law raised before the King for his approval, particularly in view of Article (106) defining the right of the King to refer the draft laws to the Constitutional Court before issuing them for its views about its conformity with the Constitution, this paragraph was amended to extend the period to six months. This was to allow sufficient time for a close study of the

draft law and to assess the extent of its conformity or non-conformity with the Constitution before it was approved or referred back to the Consultative Council and the Council of Deputies for its review or to the Constitutional Court.

C. Paragraph (d) of this Article provided that the approval of the draft law after it is returned by the King should be by a two thirds majority of the members of the Consultative Council and the Council of Deputies or the National Assembly as the case may be.

Article (36):

Whereas the legal principle States that necessity makes the forbidden lawful, and the safety of the State is above law, and keeping in view the possible exposure of the Kingdom to emergency situations threatening the safety of the country externally such as war and internally such as civil disturbances, floods, epidemics and the like, it was necessary to equip the authorities of the State with exceptional means which could guarantee the protection of the State and its safety under these circumstances.

As these situations vary in their extent, from minor to great, as well as seriousness, one has to be careful in not trampling upon the rights and liberties of the people except to the bare minimum extent needed to cope with the situation. Article (36) of the Constitution has differentiated between two types of situations, viz., State of National Security and the State of Martial Law. The means employed by the State will depend upon the situation the State is faced with and it would differ in either of the situations stated above.

A State of National Security is declared to gain control over a situation in the country which threatens public security either in the entire Kingdom or in any part thereof, in order to secure the rights of the people and to gain control over the situation expeditiously. Martial Law will not be declared except when the security and safety of the Kingdom are threatened; or when the normal laws are inadequate to cope with the situation; or when the Declaration of State of National Security does not serve the purpose; and the situation demands the adoption of exceptional and extraordinary measures for curbing intrigue and armed insurgency and impose security for the safety of the Kingdom and the Bahrain Defence Force.

Based on this differentiation when a State of National Security is declared, the necessary procedures required to regain control of a situation in any case are less stringent and suppressive of people's rights and liberties than those which are enforced when a declaration of Martial Law is made.

Article (36) (b) stipulates that a 'State of National Security or Martial Law will not be declared except by a Decree. Under all circumstances the declaration shall not extend for more than three months. It will not be extended except with the approval of the National Assembly by a majority of those present.'

Under the circumstances, it does not prevent the King from seeking the opinion of the Council of Deputies or the Consultative Council or both, over declaring a State of National Security or Martial Law in advance if the situation permitted. It is a matter left to the discretion of the King without making it obligatory for him.

By virtue of this Paragraph, the Declaration of State of National Security or Martial Law may cover all parts of the State or a part of it, The King may, while making the declarations through a Royal Decree, issue instructions, which may be considered necessary for the Defence of the Kingdom even if they violated the laws currently in operation.

Article (38):

This Article contains the matter of Royal Decrees of Law, which the King may issue in the absence of the two Councils. This power has been hedged in by many restraints in terms of time and circumstances as to when they could be issued and the duration of their enforcement.

As the settled rule States that these Decrees will be considered as promulgated and acted upon from the date of their issuance to the date they are referred to the two Councils, consequentially there will be an emergence of legal centers and acquisition of rights by individuals during this interim period. In order to protect these rights and centers, in the case of the two Councils disapproving the Decrees issued, Article (38) was amended to provide for the termination of these consequences as from the date of issue of the order stating refusal by the two Councils, as the case may be; or from the date on which it was to be placed before the two Councils if not done. Termination in this case does not have retrospective effect. This is in conformity with the fact that these Decrees derived their strength from Article (38) itself. Hence the date of termination will be the date of disapproval, or after the passage of a month since their issue without first placing them before the Consultative Council and the Council of Deputies if in session, or after a month of

the first meeting of the two Councils in case of the dissolution of the Council of Deputies or the suspension of the sittings of the Consultative Council or in the case of the conclusion of the legislative term without the Decrees being placed before the two Councils while the exceptional legislative rights Stated in this Article come to an end and the natural prerogatives of the two Councils are restored.

There should be differentiation between the Law Decrees issued in the course of representational life (that is, in between the sessions of the two Councils or when the Council of Deputies is dissolved and the meetings of the Consultative Council are adjourned and the legislative sessions of both Councils have concluded), and the Decrees which are issued when Parliamentary life is suspended. It is the first category alone on which Article (38) is applicable whereby they become invalid if they are not placed before the two Councils within a month of their meeting or if the two Councils do not approve of them. As for the other category, their legal validity remains intact when the Parliament returns to representational life. These laws will remain in force unless cancelled by the Parliament or amended by other laws, as they do not come under the purview of Article (38), which does not spontaneously apply except in the case of representational life. They are subject to rules and regulations contained in the Royal Decree about the suspension of parliamentary life since this matter has been entrusted to the King and the; Council of Ministers. Based on it, if it is not intended that these legal decrees are cancelled or amended by law at the recall of Parliamentary life, the legislative authority should frame fresh laws for cancelling them or amending them or else they will remain in force.

Article (42):

This Article was added to lay down paragraph (a) which states the prerogative of the King to issue orders for holding elections to the Council of Deputies according to the legal procedure laid down for it. And Paragraph (b) empowers the King to convene the National Assembly or adjourn its sessions by a Royal Decree or open the session. Whereas Paragraph (c) of this Article provided for the right of the King to dissolve the Council of Deputies by a Decree, it did not add anything new in this regard. Though it transcribed the relevant text contained in the Constitution of 1973 in the first paragraph of Article (65) for the sake of coordinating the various texts of the Constitution.

Article (43):

As a result of the development witnessed by the contemporary world in the democratic process, most of the modern constitutions adopted the widely prevalent representational system through a national referendum, which is considered a manifestation of semi - direct democracy.

All constitutional amendments followed in this direction and a national referendum was decided upon which would allow the people to actively participate and exercise their power. Hence Article (43) was added to accord to the King, if he so intended, the right to hold a people's referendum about the laws and important issues linked with the country's highest interests. The result of the referendum was obligatory and

operative from the date of its announcement and publication in the Official Gazette.

Article (50):

In order to activate the role of the local administrative bodies and to enable them to achieve local development, Article (50) (a) was reinforced by adding to it: ' It will guarantee to the administrative bodies of the Municipalities the administration of public utilities of a local character which enter their domain and their supervision.

Second: Adoption of the bi-cameral system of representation:

Countries differ in defining the system by which a Parliament is constituted in two ways. These are the systems of either a single house or of two houses. Both these systems have their supporters and opponents. The selection of either system by a State is not governed by mere theoretical considerations but by the circumstances faced by it and its past experience.

The most important feature of a bi-cameral system is that it provides for benefiting from knowledgeable and experienced people who are appointed to the Council interacting with the opinions of different segments of the people who are elected by direct election. Thus on the one hand, we have in the Parliament people with experience, knowledge and wisdom in the field of legislation and on the other youthful elements bursting with enthusiasm.

The bi-cameral system provides for the division of legislative responsibility between the two bodies. It represents a sure guarantee for a proper conduct of Parliamentary proceedings whereby the principle of mutual supervision is realized in respect of their functioning. This prevents attempts by anyone of them to be arbitrary in legislation and confrontational with the other authority, particularly with the Executive. This is what protects the State from the evil of conflict and wrangling against authority leading to waste of national effort and damage to public interest.

The adoption of the bi-cameral system prevents errors and hastens legislation. If either Council commits an error or is guided by sentiment or temporary influences, the other rectifies the error when the matter is placed before it. A debate on draft laws for the second time in the other Council ensures better clarity and hence avoidance of error especially when the legislative authority lays down the legal bases marked by relative stability. It is neither necessary nor in the public interest to hurry in these matters. If the passage of draft laws **and** their discussion in the two Councils slows down the **process** of law making as claimed by its critics who oppose this system, what compensates this delay is the fact that the laws that are passed have better acceptability and serve public interest better than if they had been passed by a single house.

Moreover, this system lessens the chances of confrontation between the legislative and the executive wings of authority. If the legislative authority were to consist of a single house, such confrontation could lead to political violence. If, however, it were to consist of two houses and one of them differed with the Government, the other would play the role

of an arbitrator between them. If it concurs with one of the two it would force the other party to soften its attitude. Thus a comprehensive peace and a friendly arbitration will prevail among the public authorities. It has been observed that constitutional systems having a single legislature have a shorter life or lesser stability than the bi-cameral system. This phenomenon is visible in the history of England, Belgium, and France etc.

These merits of a bi-cameral system, which score over the features of a single legislature, has led certain States having a single house to switch over to the bi-cameral system during the last few years. Examples of this are Portugal, Spain and Morocco.

In order to benefit from the advantages of a bi-cameral system, the Charter adopted the people's preference for the bi-cameral system over the uni-cameral system. It provided for a nominated Council with members having expertise and competence so that their knowledgeable opinions could be sought. The other Council was to be constituted by directly and freely elected members in a manner that maintained balance between the two. The Constitutional Amendment designated the first Council as the Consultative Council and the second one as the Council of Deputies. The two together were named the National Assembly.

The Constitutional Amendments aimed at achieving parity in the composition of the Consultative Council and the Council of Deputies and fixed the number for each Council at forty for balance in composition as well as in the legislative functions of the two bodies as decreed in the Charter. As for the Supervisory Authority, it was basically

vested in the Council of Deputies as it was composed of elected members.

The amendments also did not want to whittle down the legislative powers catered for in the old Constitution before its amendment. On the contrary, new paragraphs were added to the existing text outlining further guarantees for legislative functions and enabling both Councils to exercise their prerogatives in a manner better than they could have done prior to the amendments.

The essential matter, which the Constitutional Amendments addressed, was the revision of legislative powers as listed in the Constitution before its amendment within the framework of the Consultative Council and the Council of Deputies. This led to changes in laws about the formation of the National Council in its original form so that the powers of the Consultative Council and the Council of Deputies were defined accurately to prevent differences cropping up in their interpretation in future. Thus, the proceedings of both Councils would run smoothly and without hindrance.

In order to achieve all that, the title of Chapter Three was changed so as to include the term National Council along with the term 'Legislative Authority'. Article (51) Stated that the National Assembly would consist of two bodies: the Consultative Council and the Council of Deputies. This Chapter comprised of four Sections dealing consecutively with the Consultative Council, the Council of Deputies, and Common Regulations for Both Councils and the National Council, which meant a joint session of both the Consultative Council and the Council of Deputies.

Articles (52-55) (The Consultative Council):

These Articles were added to the Constitution and dealt with the composition of the Consultative Council from the point of view of its formation and the conditions, which its members must fulfill before their nomination to it, the Rules which govern its membership and functioning.

Article (52):

Article (52) Stated: "The Consultative Council will consist of Forty Members appointed by a Royal Decree".

Article (53):

This Article consists of the special rules required of Members of the Consultative Council in addition to the general conditions required to be fulfilled by all Members whether of the Consultative Council or the Council of Deputies. It stipulates that a Member of the Consultative Council should not be less than thirty- five years AD of completed age on the day of appointment whereas it was thirty years in respect of Members of the Council of Deputies. This was in keeping with the trend prevailing in the countries having a bi-cameral system. It also required of the Member of the Consultative Council to be experienced or has rendered distinguished service to the country. This is in conformity with the aim of having such a Council.

Article (54):

Paragraph (a) fixed the duration of membership of both Councils to four years. Thus it equalized the period of membership of both the Consultative Council and the

Council of Deputies thus achieving parity between the two Councils. Paragraph (b) dealt with the vacancy arising from a member being relieved of his duties for any reason whatsoever and the apparatus for appointing his successor, which is the same process as for appointing members to the Council with the proviso that the term of the new member will be complementary to the term of his predecessor. Paragraph (c) dealt with the request of a member to be relieved of his post and accorded to the King the prerogative to do so as he is the appointing authority. Paragraph (d) dealt with the selection of the President of the Consultative Council and his two Deputies. Whereas the King selected and appointed the President of the Council, he accorded to the Council the right to elect two Deputies to the President.

Article (55):

Paragraph (a) of Article (55) stipulated that the date of convening of the Consultative Council will be the same as for the Council of Deputies and the term of their sessions will be the same. Paragraph (b) stipulated that in the case of the dissolution of the Council of Deputies the meetings of the Consultative Council would also be terminated. The paragraph aims at ensuring the participation of both Councils together in decision making so that anyone of them does not become independent in the absence of the other.

Articles (56)-(69) (Council of Deputies):

These Articles were formulated in respect of the Council of Deputies. Some of these Articles were retained in their old form as they were before amending the Constitution at the time of organizing the National Assembly. Some of them were altered to be in keeping with the bi-cameral system,

particularly in laying down the powers of the Council of Deputies.

Article (56):

This Article fixed the number of the members of the Council to be forty and restricted its membership to elected members alone. It thus excluded Ministers from being its members by virtue of the posts they held.

Article (57):

This Article granted to every Bahraini the right to candidacy for membership of the Council of Deputies provided he fulfilled the condition of being an original citizen. A new condition has been added to the existing conditions which stipulate that he should not have had his membership suspended by the Council of which he was a member (Consultative or Council of Deputies) because of loss of confidence or credibility or default in the performance of his duties. The ban on his candidacy will be considered temporary as a candidate whose membership has lapsed may offer his candidacy again for the next legislative term in all cases and in the next session if the Council disqualifying him revokes its earlier decision.

Article (58):

After this Article laid down the term of the Council of Deputies as four years, it specified that the elections for the new Council should be held during the last four months whereas previously this period was two months. The purpose of this amendment was to avoid any delay in the election of the new Council because of the inadequacy of the

time allotted. The Article also stipulated that it was permissible for a member to be re-elected when the term of his membership had expired thus emphasizing its legality so that the absence of such a specific clause could not be interpreted to the contrary. It also provided for the right of the King to extend the legislative term of the Council of Deputies, when necessary, not exceeding two years, so that there was no legislative vacuum because of any delay in the election to the new Council. By this provision it was ensured that people's participation continued without a break through the elected Council of Deputies even when the legislative term had ended and the new Council had not been elected due to unavoidable reasons.

Article (60):

The third paragraph of this Article provided for the first meeting of the Council of Deputies to be presided over by the oldest member in age, whereas formerly it was by the President of the Council of Ministers:

Article (62):

This Article stipulated that the Cassation Court is competent to settle election suits and this is in conformity with the existing judicial hierarchy in Bahrain. It achieves what was intended in Article (57) prior to the amendment for transferring this power from the Supreme Civil Appeal Court to any other civil Higher Court constituted by law.

Article (63):

This Article includes the phrase "The post will be considered vacant as from the date of acceptance of resignation." This was done so that there was no need for the Council to take a new decision to announce a vacancy when the resignation was accepted as any such announcement could be delayed for any reason. This rendered the Council complete so that all would participate in realizing public interest.

Article (64):

The right to dissolve the Council of Deputies before the due date of the end of the legislative term is considered the most important right conferred by the Constitution to the Executive Authority among the Parliamentary Rules when confronting Legislative Authority. This right represents the most serious type of control of the Executive over the Parliament since it is considered a counter weapon for ministerial responsibility laid down vis-a-vis the Council of Deputies.

Article (64) ensured a precise regulatory method in the case of the dissolution of the Council of Deputies so that Parliamentary life was not affected for a long time as a result of the dissolution, which is resorted to sometimes. It is a regulation, which establishes a balance between the legislative and the executive and provides for a rapid return to Parliamentary life as soon as possible.

While Article (42) (c) stipulated for the King to dissolve the Council by a Royal Decree stating therein the reasons for it, it also Stated its impropriety for the second time for the

same reasons. Article (64) completed the regulation about this right. It stated in Paragraph (a) the necessity to conduct elections to the Council within a period not exceeding four months. Before the amendment, this paragraph required that the elections be held for the new Council within two months of the date of dissolution. This amendment aimed at making the maximum period to conduct elections to the Council in case of dissolution, to be the same as that stated in Article (58) for conducting elections in the case of the conclusion of the legislative term. This Article retained the paragraph, which was operative before that, which is the recall of the old Council if the new Council was not elected within the stipulated period of four months.

Paragraph (b) conferred on the King the right to postpone the elections to the New Council, if the period of four months mentioned in Paragraph (a) for a return to Parliamentary life was inadequate, in view of any compelling circumstances, which may develop which he along with the Council of Ministers may deem the holding of elections impossible.

In order to lessen the effects of such postponement, paragraph (c) empowered the King, based on the opinion of the Council of Ministers, to recall the old Council to complete its legal term and thus ensure the continuity of Parliamentary life.

Article (65):

In order that the right of questioning is exercised to realize the purpose for which it was intended, and in view of the consequences that it may entail in some cases in placing confidence in the Minister questioned, Article (65)

stipulated that the questionnaire addressed to a Minister should be signed by at least five members of the Council of Deputies and should not relate to any personal interest of the questioner or of his relatives up to the fourth grade or of any of his clients.

Article (66):

This Article restricted the right of raising the issue of confidence in a Minister to only the Council of Deputies in its capacity as a Council elected by the people. It prescribed the required majority for deciding the withdrawal of confidence in a Minister as a two thirds majority. These accords with the majority required for dropping a member either of the Consultative Council or the Council of Deputies. The Article banned Ministers from participating in a vote of confidence ever since the Constitution by virtue of Article (56) which restricted the membership of the Council to elected members only.

Article (67):

This Article deals with a situation where there is no possibility of co-operation with the President of the Council of Ministers if so proposed by two third members of the Council of Deputies. However, it is for the National Assembly comprising of the Consultative Council and the Council of Deputies to take a decision on it in a combined meeting. It requires the concurrence of two third members of those who constitute this Council. This is in view of the seriousness of the matter and it's leading to a ministerial vacuum threatening public interest. The Article has retained the provision contained in Article (69) (b) as it was before the amendment, which stipulated that the resolution of the

National Assembly will be raised to the King for a decision on relieving the President of the Council of Ministers, appointing a new ministry or dissolving the Council of Deputies.

Article (68):

This Article has stipulated that any requests that are made to the Government should be in writing to ensure that 'they are earnest and well-studied. It also required that the reply of the Government to the Council should be in writing in case of impracticability of acceptance of these requests, so that the Council could know the reasons very clearly as to why they could not be implemented.

Article (69):

This Article added a phrase making it incumbent on the Parliamentary Enquiry Committees or the Member appointed to investigate, to submit the result of the inquiry within a period not exceeding four months from the date of its commencement. The purpose of this addition was to ensure that matters stabilized quickly within a reasonable period as otherwise it could lead to queries and differences.

3 - Articles (70-100) (Common Regulations for Both Councils)

In order to avoid the repetition of identical regulations separately laid down for the Consultative Council and the Council of Deputies, the Constitution was amended so as to include all such regulations under one head, viz., "Common Regulations for Both Councils". The amendment made that the regulations, which existed before it remained as they

were, as long as they did not clash with the adoption of the bi-cameral system. The amendment was restricted to changing the text wherein the terms the Consultative Council and the Council of Deputies were used sometimes and the term the National Assembly in some other cases. It is to be noted that the term National Assembly, in the context of the altered text meant the joint meeting of the Consultative Council and the Council of Deputies.

The Articles, which were amended, in order to harmonize the adoption of the bi-cameral system are as follows:

Article (71):

This Article defined the date of meeting of the National Assembly as the Second Saturday of the beginning of October whatever the date is, and accorded to the King the right to convene it before the abovementioned date.

Article (72):

This Article has provided for the term of the annual session not to be less than seven months and retained the other proviso that it will not be adjourned before the budget is passed.

Article (73):

This Article has fixed the date of the meeting of the National Assembly for the first time after the general elections are held; and this is to be the day following the end of the month of the date when the Consultative Council is appointed or the election of the Council of Deputies takes place whichever is later; that is, from the date of completion of the

formation of the two Councils. It has conferred on the King the right to convene the meeting before this date and retained the second paragraph of the Article as it was.

Article (74):

This Article has amended the nomenclature of the Opening Address of the King at the annual session of the National Assembly to be in keeping with the adoption of the system of monarchy and called it the "Lofty Address"; and conferred on the King the right to depute the Crown Prince or any deputy to open the inaugural session and deliver the Lofty Address.

Article (80):

This Article has amended the Regulation regarding parity of votes in either of the two houses while voting on a resolution, in which case the vote of the President will be considered a casting vote. It added a special clause in the case of voting on amending the Constitution in which case voting will be done by announcing the names of the Members. The Article has catered for dealing with the lack of quorum in either Council in two successive meetings; in which case the meeting will be considered valid if the number of members attending it is not less than one-fourth of the number of Council members. The aim is to goad the members to attend the meetings of both Councils and actively participate in exercising their privilege and enabling the National Assembly (Consultative Council and the Council of Deputies) to perform their duties.

Articles (81-85):

These Articles have regulated the procedures for debating the draft laws by both the Consultative Council and the Council of Deputies and Stated that the draft law will be placed by the Government before the Council of Deputies in the first instance. If it agreed with the draft law, altered it, refused it or added to it new provisions, the President of the Council of Deputies will refer it to the President of the Consultative Council. If the Consultative Council agreed with the opinion of the Council of Deputies, the matter ends there. If the two agreed to accept the draft law the President of the Consultative Council will send it to the President of the Council of Ministers to raise it to the King.

If, however, the Consultative Council objected to the opinion of the Council of Deputies, the President of the Consultative Council will refer the objection to the President of the Council of Deputies. If the Council of Deputies agreed with the opinion of the Consultative Council, the matter of the draft law ends there in terms of the agreement so reached.

If the Council of Deputies did not agree with the objections raised by the Consultative Council, it will be referred by the President of the Council of Deputies to the President of the Consultative Council once again for its reconsideration. If the Consultative Council agreed with the draft law as received from the Council of Deputies, it will be sent by the President of the Consultative Council to the President of the Council of Ministers to be placed before the King. If the Consultative Council insisted on its previous decision, then the President of the Consultative Council will refer it to the National Assembly, which will meet under its President to

consider the various Articles and take decisions regarding the Articles disagreed upon by the Consultative Council.

The draft law will be considered as agreed to, if the majority of members present have affirmed it. If, however, it did not receive such majority, it will be considered as rejected. The draft law will not be placed before the National Assembly during the same session again.

Article (86):

This Article specifies a single channel for referring the draft law after its approval, to the President of the Council of Ministers to raise it to the King. This authority was given to the President of the Consultative Council, regardless of where the agreement became effective, may it emanate from the Consultative Council or from the Council of Deputies or the National Assembly.

Article (87):

Article (87) has regulated the procedure for considering draft laws of economic or financial nature, which are referred by the Government for consideration on a priority basis. It has a fixed time limit of (fifteen days) for each of the Council of Deputies and the Consultative Council as well as the National Assembly for consideration when the matter is referred to them. If this period lapses without a decision on it, the King may issue a Decree having the force of law. Such a Decree, after its issue, will not be placed before the National Assembly. The wisdom behind this law lies in compensating for the harm caused to national interests through a delay in deciding on the law, particularly to economic interests, which in most cases require urgent

action in laying down the regulations governing them. This Article has restricted itself to situations requiring urgency in the consideration of laws related to economic or financial issues so as to realize the intended goal.

Article (89):

Paragraph (b) of this Article was amended to lay down the necessary rules for the principle of not blaming the members of the Consultative Council or the Council of Deputies for expressing their opinions and views in the Council or its Committees in realizing the principle of respect for adhering to values and tenets, bases of faith, due respect for the King and protection for the sanctity of private life. Hence the Article Stated: "No member of the Consultative Council or the Council of Deputies will be blamed for expressing his opinion or thinking in the Council or its Committees unless the opinion expressed therein is offensive to the basis of faith, against national unity, does not show due respect to the King or constitutes slander against a person whoever he may be."

Article (90):

This Article provides for the postponement of the meeting of the National Assembly by a Royal Decree, so as to be in consonance with the convening of ordinary and extraordinary sessions, and their dissolution. It modifies the period of postponement to be two months and disallows its extension during the same term more than once.

Article (91):

In co-ordination with what has been stated regarding raising

questions, the second paragraph of this Article has banned questions relating to the questioner's personal interest or the interests of his relatives up to grade four or of any of his clients. This Article has given the right of questioning to members of the Consultative Council and the Council of Deputies so the right is accorded to both Councils.

Article (92):

This Article has differentiated between the right of the members of the Consultative Council and the Council of Deputies to suggest amendments to the Constitution and their right to propose draft laws. With regard to amending the Constitution it has stipulated that the proposal should be mooted by at least fifteen members. It has given to every member the right to propose draft laws. The purpose of making this differentiation is to be in line with the contemporary Constitutional trends, which differentiate between the procedure for altering the Constitution and for changing ordinary laws. The Article added: "If the Council accepted the, proposal it will forward it to the Government to be put in the form of a draft amendment to the Constitution or a draft law and submit it to the Council of Deputies during the same or the next session."

Article (93):

As against the cancellation of the text, which provided for the President of the Council of Ministers and other Ministers to be members of the legislative authority, Article (93) was altered to give them the right to attend the meetings of the Consultative Council and the Council of Deputies.

Article (99):

This Article was added to regulate cases of lapse of membership of a member of the Consultative Council or of the Council of Deputies. The Article differentiated between the cases of lapse of membership because of lapse of any of the conditions laid down in the Constitution or the Laws of the Consultative Council and the Council of Deputies, and cases of lapse of membership as a consequence of loss of confidence, credibility or failure to perform as a member. In order to ensure fairness in having recourse to this provision, the Article has enjoined that the decision to suspend a member should be approved by two third members of the Council to which he belongs. As the appointment of the members of the Consultative Council is done by a Royal Decree, it became necessary to raise the Resolution of the Consultative Council suspending the membership, to the King for his approval. This is what this Article stipulates.

4- Articles (101-103) (Convening the National Assembly):

In view of the possibility of there being differences in the viewpoints of the Consultative Council and the Council of Deputies, leading sometimes in the failure to take decisions and thus hurting public interest, Articles (101 to 103) were added to amicably assist them in solving the differences which could arise between the two Councils through the intercession of the National Assembly between them.

Article (101):

While the amended Constitution laid down certain conditions as to when the meeting of the National Assembly

had to be convened, there could be cases, which were not covered by them.

Such cases required that the two Councils should meet together to find common solutions to them. Hence this Article provided for the King to convene the National Assembly whenever he considered it necessary, or upon the request of the President of the Council of Ministers.

Article (102):

Outlining the nature of the convening of the National Assembly, this Article specified that the President of the Consultative Council will preside over its meetings. In the case of his absence, the President of the Council of Deputies will preside over them. Thereafter the First Deputy to the President of the Consultative Council and then the First Deputy to the President of the Council of Deputies.

Article (103):

This Article has defined the majority required for the convening of the National Council. In cases other than where the Constitution requires a specific majority, it will be a majority of the members of each of the two Councils, so that it ensures the minimum representation required to take a decision in these circumstances which is the majority of members present excluding the President, it made the vote of the President as casting vote in case of equal voting. According to this provision the President does not vote except in the case of equal number of votes cast in respect of the resolution placed before them. In such an event his vote will be considered a casting vote for approval or disapproval.

Thirdly - Other amendments contained in the Constitution:

Apart from the major amendments described earlier imposed by the National Action Charter under the caption "Future Projections", this Constitution includes certain amendments which are in conformity with the aims described in the National Action Charter at different places.

1- Amendments. Which aim at extending: the preservation of the basic infrastructure of Society, rights and public duties and realizing: a greater measure of democracy:

In realization of a greater measure of democracy and in keeping with contemporary political trends as well as the demands made by the charters of the world for guaranteeing human rights, some of the Articles were amended in the following manner:

Article (1):

Paragraph (E) of this Article aimed at realizing equality between men and women in participating in public affairs and enjoying political rights including the right to election and nomination. "No citizen is to be denied the right to be elected or nominated except for as provided in law." The Article also stipulates that the legislator may legislate a law depriving some people of their right to election or nomination for reasons connected with the nature of their work, when such work prevents them from exercising both or either of their rights . It is a matter for the legislator to determine in the light of public interest.

Article (5):

Paragraph (b) was added to this Article to emphasize the concern of the State about women and enabling them to reconcile between their family obligations and their functioning in society within the framework of the Islamic Shari' a. Hence it said: "The State will reconcile the duties and obligations of women towards their families and their work in society; and ensure that they have equality with men politically, culturally and economically without prejudice to the rules of the Islamic Shari'a."

Article (7):

With the aim of promoting the national spirit, Paragraph (b) was amended and stipulated that the Government pay attention to national educational training of different types at various stages. In conformity with the demand of the Charter for encouraging the private sector in the educational field, Paragraph (c) permitted individuals and institutions to establish private universities in addition to private schools as provided for in the Constitution before its amendment.

Article (9):

The Charter gave particular attention to environmental protection and demanded that a National Strategy be devised for its preservation, and all steps and legal procedures be adopted to delimit pollution. Hence Paragraph (h) was added to Article (9), so that the State was committed to take all necessary measures for the protection of the environment and the preservation of flora and fauna.

Article (10):

Bahrain, in "its capacity as a member of the Arab Gulf Co-operation Council and of the League of Arab States, affirmed in Article (10), in implementation of a provision of the Charter, cooperation between the Kingdom of Bahrain and the Arab States in general, and the Gulf States in particular. Hence, Paragraph (b) stipulated: "The State will work towards achieving economic unity for the GCC States and the Arab League States and for that, promotes their getting together, their mutual co-operation, solidarity and collaboration."

Article (13):

Paragraph (b) of this Article was amended to read: "The State will provide opportunities for work to the citizens with just conditions" instead of "the State will provide work" to clarify the specific responsibility of the State.

Article (17):

In pursuance of ensuring equality between those enjoying Bahrain nationality, whether by virtue of their origin or naturalization, it has followed world trends in this respect in keeping with the spirit of the Charter. It emphasizes the guardianship of Bahrain of all its citizens without any discrimination between them. Hence the amendment of Paragraph (a) of this Article, which was limited to forbidding the cancellation of citizenship of only the original Bahraini, has extended the immunity to all Bahrainis who enjoyed its citizenship. Therefore, the Paragraph states: : "Bahraini citizenship will be defined by law and anyone enjoying it cannot be deprived of it except in case of high

treason and other circumstances laid down by law." In conformity with this trend, Paragraph (b) of this Article was deleted, which permitted the withdrawal of citizenship from a naturalized citizen. Thus the law was one and uniformly applicable to all citizens enjoying Bahraini citizenship.

Articles (23, 24, 27):

The Charter has stated that the world today had become a small village governed by a tremendous technological resurgence and a gigantic information revolution. The concepts emerging from this revolution perhaps contradict humanitarian considerations and moral values. In order to co-relate the horizons of progress, in this age of globalization, to religious and moral bases on which the Bahraini society is anchored, these Articles were amended so as to link freedom of opinion, scientific research, journalism, printing and publishing, forming societies and guilds, with the fundamental bases of the Islamic faith and national unity.

Article (26)

In the face of scientific progress which is overwhelmed by information revolution and modern electronic equipment in contemporary societies, and the risk it poses to the sanctity of personal lives of citizens, this Article was amended so as to include in the means of protection of privacy, impropriety of censoring electronic mail except as provided for in specific laws. It will be considered on par with postal, telegraphic and telephonic communications.

Article (28):

In implementing people's freedom to have their private meetings, Paragraph (a) of this Article affirmed that the holding of private meetings is a right of the citizens and there is no need for permission or prior intimation for it.

Article (30):

Emphasizing the importance of defending the security of the country, Paragraph (a) of this Article laid down that Defence is a sacred duty of every citizen.

2-Constitutional Court:

Article (103) of the Constitution, prior to its amendment had stipulated that the law will define the judicial authority having the power to decide disputes concerning the constitutionality of rules and regulations. In regard to the importance of control over the constitutionality of laws, since they are important guarantees to ensure a faithful implementation of the Constitution and there is no breach of its laws, the Charter emphasized the need to lay down such authority. Article (103) left the matter of defining the type of authority, which exercised supervisory control to the law. It gave the law the right to determine the type of such authority in its discretion. It will be observed perhaps that this authority could be merely a division of the Cassation Court or a Special Court constituted independently of other established judicial courts. Desiring a stable supervisory role in ensuring the constitutionality of legislation, the constitutional amendment preferred that the text of the

Constitution itself should include as to who is this authority and what are the principles, which should govern its organization. It should be such that the regulation issued in this connection, should leave it to the law to lay down the details which will govern its functioning within the framework of the texts of the Constitution. Hence Article (106) stipulated: "A Constitutional Court will be established with a President and six members under a Royal Decree for a period laid down in law, entrusted with the supervision of the constitutionality of rules and regulations." The Article preferred that supervisory control should be given to a Constitutional Court especially constituted for this purpose as the position of the Constitutional Court lay outside the scope of normal judicial grades. It can dispose of many of the problems resulting from legislative action being placed before ordinary judicial authority. It is also permissible to include in this Court, in addition to the judges, some legal scholars to achieve the aim behind constituting such a Court and concur with its role. In order to preserve the independence of the Court, the said Article has stipulated that its members cannot be removed during their term of membership, and hence the law of inception of the Court is restricted to laying down the necessary bases for activating this guarantee.

In view of the fact that the rule States: 'a challenge to the constitutionality of a law does not prevent its application until the Court decides that it is unconstitutional. The result of it is that the enforcement of the law, which violates the Constitution, continues to be valid for a period, which may be long or short - a criticism levelled against the subsequent review of the constitutionality of laws - and hence the text aims at compensating this deficiency. It gives to the King the right to refer to the Court any draft laws approved by

both the Consultative Council and the Council of Deputies before their issue as regards their conformity with the Constitution. If the Court finds that the law does not conform to the Constitution, it prevents the King from issuing it. If, on the other hand, the Court finds it in tune with the Constitution, it will give to the King the right to issue it. Such approval does not prevent the King from returning the draft law to the two Councils for its review for some other reasons apart from its conformity or non-conformity with the Constitution. The text aims at clarifying that the report of the Court in this situation will be binding on all State organs and all others. This prevents an appeal against the law once again, after it is issued as it has already been decided.

In order that differences are not stirred up as a result of the order of the Constitutional Court declaring a law or regulation ultra-constitutional from the angle of passage of time since the issue of this order, the Article stipulates: "Any order passed about the unconstitutionality of rules and regulations will have immediate effect unless the Court lays down a subsequent date for it. If the order of unconstitutionality refers to the text of a criminal offence, then the incriminating orders issued in regard to that text would be null and void".

By virtue of this Article, any actions or decisions taken in implementation of the law, which is declared unconstitutional, will remain valid until the date of publication of this law in the official gazette or a subsequent date determined by the Court for its coming into effect. This does not affect the right of the one who challenged the constitutionality of the law to benefit from the verdict of unconstitutionality issued in his lawsuit filed objectively.

The Article has made an exception of the principle of the verdict taking immediate effect. The guilty verdicts in criminal cases based on the law, which is subsequently declared unconstitutional will be considered null and void and all consequences flowing from them will be automatically invalidated. If, however, the text is restricted to mentioning the criminal indictments issued, primarily the same decision will apply to all cases, which have not yet been decided at the time of issue of the decision by the Constitutional Court. These law- suits will be considered void.

3-Financial Matters:

If financial occupation were the historical reason for instituting the Parliamentary system, the contemporary constitutional trends have made a considerable impact on the powers of the Parliament over financial legislation. Whereas the Charter aimed at keeping pace with world trends, the Constitutional Amendments went along in harmony with these trends while keeping in view the special circumstances of the Kingdom of Bahrain. This is reflected in the following amendments:

Article (109):

In view of the complexity and accuracy involved in the preparation of a budget in the present times, the contemporary constitutional trends make it compulsory that the approval of the Government be obtained for any amendment proposed by the members of Parliament. In keeping with these trends, Paragraph (b) of Article (109)

added the words:" Any amendment may be made to the budget with the agreement of the Government."

In view of the magnitude of the projects undertaken by the State at present, an annual allocation of funds sometimes may be found to be inadequate for a project. Hence paragraph (c) was added, providing for budgeting for more than a financial year in agreement with the current procedure for preparing a budget.

The following phrase was deleted from the Article: "If the National Assembly approved some new heads of account, they will be acted upon." This was contained in paragraph (e) of Article (90) before its amendment and was found to be impracticable of application in the context of the bi-cameral system. The budget is first placed before the Council of Deputies, which in its turn refers it to the Consultative Council with its opinion on all its contents comprehensively, so that the Consultative Council may decide as it thinks proper. In view of this, it will not be proper to place before the Shura Council, only certain heads of account to the exclusion of others. This will not permit the Consultative Council and the Council of Deputies to agree only over a part of the budget enabling action on it independently.

The following phrase was deleted from Article (110): "Similarly, transference of any amount from one head of account to another" which was catered for in Article (91) before its amendment. That is because the classification of the budget has diversified these days and might develop further, making the very idea of classification of the budget redundant leading possibly to categorization on new bases altogether.

Article (116):

This Article was amended so as to ensure total independence for the Bureau of Financial Supervision; this was done by not attaching it to any department. This gave the law issued for its formation the choice to select the means by which this independence could be achieved. It could be achieved by attaching it to the Royal Court directly in its capacity as the pinnacle of State authority and an arbiter between its various organs. This is what leads to greater effectiveness of the Bureau and impart to its officials the authority to exercise active financial control in respect of different organs of State.

4-General Rules and Conclusion:

In addition to the amendments carried out within the ambit of these laws, the incorporation of the nomenclatures " the King" and "the Consultative Council" and "the Council of Deputies" was carried out by adding a new paragraph to Article (120) (c) Also Article (121) (b) was amended. Similarly Articles (123 and 125) were amended logically as per principles incorporated in the Charter.

Article (120):

Article (120) (c) added on the subjects, which are taboo to any alterations in the Constitution. These were mentioned in Article (104) (c) before its amendment. New subjects, who are mentioned in the National Action Charter, forbade any proposal to change the system of Monarchy and the bi-cameral system.

Article (121):

Usually, rules, decrees, regulations, orders and decisions are issued in the period between the adjournment of the Parliament and its recall, establishing legal entities and acquired rights of people, which need to be protected and preserved. Hence Article (105) (b) of the 1973 Constitution provided for the continued validity of all laws, decrees, regulations, orders, decisions and notices in force in working this Constitution unless amended or cancelled according to the procedure laid down in law in this Constitution.

Even if the paragraph were to remain as it is, and the amended Constitution included the phrase " while acting according to this Constitution" as contained in its Article (125), this interpretation does not match practical reality where the Constitutional changes cannot be implemented unless certain laws are issued; such as special laws governing the formation of the Consultative Council and the Council of Deputies, the law for practicing political rights, the law of internal regulations for the Consultative Council and the Council of Deputies. These are laws, which cannot be made constitutionally except after the Constitution sanctioning them is issued containing the rules forming their basis.

In view of this, it was necessary to change the phrase "while working the Constitution" to "as being acted upon, before the National Assembly held its first meeting" so as to include in this Article all legal provisions issued in the period between the publication of the Constitution and the meeting of the National Council, in addition to what was issued before the Constitution was amended. It is established that the laws, which were issued before this period or are

issued during this period, will be the ones, which are issued when Parliamentary life remains suspended as a matter of fact, because of the non-existence of the Consultative Council and the Council of Deputies. Consequently, their legal validity does not lapse when Parliamentary life is revived. The laws will be considered valid unless they are cancelled by the Parliament under other laws because they are not subject to the rule under Article (38) and they are not a priori applicable except when Parliamentary life is restored. This has been explained earlier while interpreting this Article.

Article (121) aimed at adding to what is contained in Article (105) (b) other forms like decrees of laws and declarations as part of the text, so that there is no controversy in their regard at the time of their application. If the term decree has generally been used, it means as far as this Article is concerned, all the decrees whose texts have appeared in the Constitution whatever their description may be

Article (123):

This Article was amended as a result of the alteration in Article (36) (b), which added the State of National Security to the State of Martial Law.

In order to achieve the purpose of this addition, Article (123) specified that no law of the Constitution would be suspended except when Martial Law is declared. It meant that when a State of National Security is declared, no provision of the Constitution whatever can be suspended, nor can the convening of the Consultative Council or the Council of Deputies be interrupted nor can the indemnity enjoyed by

their members be compromised during the Declaration of Martial Law or of State of National Security.

Article (125):

This Article stipulated for the publication of the amended Constitution and specified the date for its implementation. The Article used the phrase "the Amended Constitution" to clarify that this Constitution which was issued by His Highness, the Amir, in implementation of the national will asserted through their approval of the Charter included the texts of the Constitution of 1973, which were not amended. Similarly, the texts, which were amended, were put together as one document formulating the Constitution of the Kingdom of Bahrain.

The Introduction preceding the texts of this amended Constitution is to be considered as integral part of it and subject to its rules and regulations, both legally and in respect of the method of amending it.

The elucidatory notes contained in this Explanatory Memorandum will be treated as reference material in interpreting the texts of this Constitution and the rules thereof in activating what has appeared in the introduction.

GOD ALONE GRANTS SUCCESS,,,



**CONSTITUTIONAL
AMENDMENTS IN THE
KINGDOM OF BAHRAIN
ISSUED IN 2012**



Constitutional Amendments in the Kingdom of Bahrain

Issued in 2012

We, Hamad Bin Isa Al Khalifa, King of the Kingdom of Bahrain,

Having reviewed the constitution,

The Consultative Council and the Council of Deputies approved the following Constitutional Amendments, and we have ratified and promulgated it:

Article One

The following constitutional article recitals (42/para C), (52), (53), (57/para A), (59), (65), (67/Para B, C, D), (68), (83), (85), (86), (88), (91/first paragraph), (92/para A), (102), (103), (109/Para B, C), (115), (120/para A); are replaced with the hereunder recitals:

Article (42/Para C):

The King may dissolve the Council of Deputies by virtue of a decree that prescribes the reasons pertaining thereof, after seeking the opinions of both Presidents of the Council of Deputies and the Consultative Council and the President of the Constitutional Court. The Council of Deputies may not be dissolved for the same reasons again.

Article (52)

The Consultative Council consists of forty members who are duly appointed by virtue of a Royal Order as per the procedures, regulations and parameters set forth by a Royal Order.

Article (53)

Any member of the Consultative Council must be a Bahraini national; hence must have been neutralized as a Bahraini national for not less than ten years, and does not hold any other nationality except that of a GCC member state provided that the Bahraini nationality is his origin, enjoys all political and civil rights, and his name is included in any of the electoral registers, must not be less than a full thirty five years of age by the Gregorian Calendar on the day of appointment, and must be experienced or have rendered distinguished services to the Nation.

Article (57/Para A):

A member of the Council of Deputies must meet the following requirements:

- a. He must be a Bahraini national; who must have been neutralized as a Bahraini national for not less than ten years, and does not hold any other nationality except that of a GCC member state, provided that the Bahraini nationality is his origin, enjoys all political and civil rights, and his name is included in any of the electoral registers.

Article (59):

If for any reason a seat of a member of the Council of Deputies becomes vacant before his term is due to expire, the vacancy is filled by election within two months from the date of announcement of the vacancy by the Council, and the new member shall serve until the end of term of his predecessor.

If the vacancy is caused by the resignation of the member, he may not nominate candidacy to the Council membership in the legislative term during which he resigned.

If the vacancy occurs within the six months that precede the end of the legislative term of the Council, there shall be no election of a replacement member.

Article (65)

Upon an application signed by at least five members of the Council of Deputies, any Minister may be questioned about interpellations addressed to him on matters falling within his competence.

Interpellations must be made according to the conditions and procedures prescribed by the Council of Deputies' rules of procedures. Any questioning of a Minister must be conducted within the Council, unless the Council majority decides it must be probed by a specialized committee following at least eight (8) days from its presentation, unless the competent Minister requests the acceleration of questioning.

Interpellations may lead to the matter of confidence in the Minister being put to the Council of Deputies under the provisions of Article (66) of the present Constitution.

Article (67) Para B, C, D

b. If at least ten (10) Council members lodge a substantiated request stating the inability to cooperate with the Prime Minister, hence the Council majority agree to the request; it is thereto referred to the Council's Office to review and is thereto returned within not more than two weeks as of the date the request was made.

c. The Council of Deputies may not issue its resolution of inability to cooperate with the Prime Minister before seven days of referring the request to the Council's office.

d. If the Council of Deputies approved by a majority of two thirds of its members the inability to cooperate with the Prime Minister, the issue is thereto submitted to the King to settle either by relieving the Prime Minister of his duties and form a new cabinet, or dissolving the Council of Deputies.

Article (68)

- a. The Council of Deputies may express its wishes to the Government regarding public matters. The Government shall reply in writing to the Council within six months. If the Government is unable to meet these wishes, it shall state to the Council the reasons therefore.

- b. Upon an application signed by at least five members of the Council of Deputies, a general issue may be submitted for debate to clarify the Government policy and to exchange opinions thereon as per the controls prescribed by the Council's rules of procedure

The Council's office shall include the public debate request on its agenda in the first succeeding session to decide upon the issue without discussion.

Article (83)

If the Council of Deputies accepts a draft law as submitted by the Consultative Council, the President of the Council of Deputies shall refer the draft law to the Prime Minister within no more than two weeks for purposes of submitting it to the King.

Article (85)

If both Councils disagree on any draft law twice, the National Assembly shall convene under the chairmanship of the President of the Council of Deputies to discuss the disputed articles thereof. For the draft law to be accepted, the National Assembly must issue a resolution approved by the majority of attending members. If the draft law is rejected as such; it shall not be submitted to the National Assembly again in the same convening period.

Article (86)

In all cases where a draft law is approved, the President of the Council of Deputies shall submit it within not more than

two weeks to the Prime Minister to present the draft law to the King.

Article (88)

The Prime Minister may deliver a statement before either the Council of Deputies or the Consultative Council, or any of their competent committees pertinent to a matter within his competence. The Prime Minister may delegate any Minister to do so. The Council or Committee may discuss the statement and make notes therein.

Article (91) – First Paragraph

Any member of the Council of Deputies may address the Ministers with written questions to clarify any issues pertinent to their jurisdiction. Only the questioning member has a right to comment once on the Minister reply. If the Minister adds new information, the Council member right to comment is renewed thereof.

Article (92) Para A

a. Any fifteen (15) members of either the Council of Deputies or Consultative Council have the right to propose a constitutional amendment. Any member of either Council is entitled to propose laws; each proposal is referred to the specialized committee of the Council where the law was proposed to express its opinion. If the Council accepts the proposal, it is referred to the Government to formulate it as a draft amendment of the Constitution or as a draft law and present it to the Council of Deputies within six months at the most from the date of referral thereto.

Article (102)

The National Assembly meeting shall be chaired by the President of the Council of Deputies and in his absence, by the President of the Consultative Council followed by the First Vice-President of the Council of Deputies, followed by the First Vice-President of the Consultative Council.

Article (103)

In other cases where the constitution stipulates a special majority, the National Assembly meeting shall not be deemed legal without the attendance of the majority of members from each Council. If a quorum was not attained twice consecutively, the meeting is thereto regarded correct provided that the number of present members from each Council is not less than a quarter of its members. Resolutions are adopted by vote of the majority of present members; and when the votes are equal, the voting side supported by the presiding President shall prevail.

Article (109) Para B, C

b. The Government shall prepare the annual general budget draft law, inclusive of revenues and expenditures. It is thereto submitted to both Councils of Deputies and Consultative within at least two months before the end of the fiscal year. The finance committees of each Council shall convene in a joint meeting to discuss the drafted budget with the Government. Each committee shall submit an independent report at the end of discussions to its respective Council. The draft law shall be submitted to the Council of Deputies for debate and revert it to the Consultative Council for review, according to the constitutional parameters.

Amendments may be made to the draft law in agreement with the Government.

c. Debating the drafted budget shall be according to its index. The budget of two fiscal years at the most may be drawn up; hence no appropriations from the general revenues shall be allocated to any form of expenditure except by law.

Article (115)

The Government shall submit to both Councils of Deputies and Consultative a statement on the State financial and economic positions, to which the annual general budget draft law is attached; in addition to the implemented measures to carry out the enforced budget appropriations, as well as the impact of the aforementioned on the new draft budget.

Article (120) Para A

- a. Exception to paragraphs (b, c and d) of Article (35) of the present Constitution, for any provision of the present Constitution to be amended the amendment must be approved by two thirds majority of each Council members of the Consultative Council and the Council of Deputies, and the amendment must be ratified by the King. If any of the two Councils disapproves the amendment or the proposed text; the National Assembly shall convene at the attendance of two thirds of its members to discuss the amendments draft. The approval of two thirds of the Assembly is required to validate the amendments draft.

Article Two

A new paragraph shall be introduced to Article (46) of the constitution, stipulating the hereunder:

Article (46) – New Paragraph

The Prime Minister shall present the Government program to the Council of Deputies within thirty (30) days from the date of being sworn in, or during his first attended meeting if absent. If the majority's members of the Council did not approve the program within thirty days, the Government shall represent the program to the Council after making any amendments it deems appropriate within twenty one (21) days as of the date of rejecting it the first time.

If the Council of Deputies majority of two thirds of its members insists on rejecting the program for a second time during a period not more than twenty one (21) days; the King shall accept the cabinet resignation. If the Council does not approve the new Government program during the said periods and timeline; the King may dissolve the Council, or accept the cabinet resignation and appoints a new cabinet. The Council must issue a resolution accepting or rejecting the program within the stipulated timeline. Upon the lapse of any of the prescribed periods without a resolution from the Council, the governmental program shall be deemed approved.

Article Three

The herein constitutional amendments shall be published in the official gazette, and enter into force as of the date of publishing the amendments thereof.

King of the Kingdom of Bahrain

Hamad Bin Isa Al Khalifa

Issued at Riffa' Palace:

On: 12th of Jamadah Al AKher, 1433 Hijria

Corresponding to: 3rd of May 2012

**EXPLANATORY
MEMORANDUM PERTINENT
TO THE CONSTITUTIONAL
AMENDMENTS IN THE
KINGDOM OF BAHRAIN
ISSUED IN 2012**

Explanatory Memorandum Pertinent to the Constitutional Amendments in the Kingdom of Bahrain, Issued in 2012

Introduction:

Article (35) Para (a) of the Constitution stipulated the right of HM the King to propose amendments to the Constitution and is able to enact laws, as is the right of any fifteen members of the Consultative Council or the Council of Deputies provided the proposed amendments specify the provisions to be deleted, added, or changed; hence underlining the justifications calling for such an undertaking. In order for the amendments to be approved the votes of two thirds of the members of each of the Parliamentary Councils are required, in addition to the endorsement of HM the King as a crucial and an imperative element which the National Assembly cannot override. Moreover, Article (120) Para (c) has also prohibited the amendment of Article (2) of the Constitution, the Monarchy system, the principle of hereditary rule, the systems of both parliamentary councils, the principles of freedom and equality as illustrated by the Constitution.

As a result of the political developments witnessed by the State at this stage, and the Royal desire to induce progress, prosperity, and to develop the political system aimed at achieving further sound democracy that is commensurate with the ethos of modern democracy prevalent in the world today; an invitation was extended to engage in a National Compatibility Dialogue aimed at reviewing the current

developments observed by society, and to propose the general principles upon which political, social and economic developments are based.

The National Compatibility Dialogue ensued in proposals pertinent to the objectives it endeavors to achieve, hence the issue of Constitutional reforms assumed a priority in the proposals put forth to amend the Constitution therein based on the existing Constitution that sets a clear framework of a political system which stipulates segregation of authorities, guarantees the freedom of religion, expression of opinion and election; and thus underpins human rights and is based on political societies plurality and the right to form societies and associations, and thus guarantees the freedom of the press. The aforementioned falls within the binding framework of principles stipulated in the National Charter, which encompasses a number of national constants that must not be altered nor amended; Should any amendments be made, they shall be limited to other recitals than the constants should they be related to the Executive or the Legislative Authority, without detriment or deviation from the clear controls stipulated in the National Charter.

The National Action Charter which has been emphasized by the Constitution can be summarized in the underlining notion with which the Constitution was developed, therefore, it may not be amended without the joint will of the people and HM the King; thus awards HM the King and the legislative authority the right to propose necessary changes as per the procedures prescribed in the Constitution; in addition to upholding the systems of both Parliamentary Councils, whereby an amendment may not include the system of one Council without the other; hence it is

permitted – but should not entail diversion from or contravene the clear controls encompassed in the National Action Charter - to reconsider the scope of authorities awarded to the Council of Deputies, and the possibility of increasing its supervisory tasks, re-organizing the relationship between both Parliamentary Councils and the executive authority to attain additional balance, maximizes the role played by the Council of Deputies in terms of overseeing and accountability, and to undertake additional parliamentary procedures already supported by the existing Constitution along with the stipulated presidential appearances.

The herein explanatory memorandum demonstrates the objectives underlying the Constitutional amendments, and the Articles amended to fulfill such objectives. The recitals prescribed in this memorandum, in terms of objectives and clarifications of the amended Articles, shall be envisaged as amendments to the explanatory memorandum of the existing Constitution.

First Section

Constitutional Amendments Objectives

Deriving from the Royal desire to induce progress, prosperity and to develop the political system aimed at achieving further sound democracy, and within the framework of the dividends of National Compatibility Dialogue; HM the King requested – as per the provisions of Article (35/a) – the amendment of the existing Constitution, whereas the objectives of such amendments are:

First: Increasing Parliamentary system appearances in the prevalent system of rule:

As per the existing Constitution provisions and its explanatory memorandum, and in compliance with the principles contained in the National Action Charter; the system enforced in the Kingdom of Bahrain is a mixed one that stands intermediary between the parliamentary and presidential, whereas it draws legitimacy from the political will that is expressed in general balloting of parliamentary elections, and the referendums utilized by HM the King for important laws and matters related to the higher interest of the Nation ; and that the Constitutional changes are not aimed to seed an absolute parliamentary system, but rather increase parliamentary appearances within the framework of recitals stipulated in the National Charter under the title of the regime: *“The King is the Head of the State, his person shall be immune and inviolable, and he is the Supreme Commander of the Armed Forces, and the Symbol of the country’s independence, and is the cornerstone of rule in the Kingdom of Bahrain. He shall exercise his powers through his Ministers who shall collectively report to him, and he shall appoint the Prime Minister and Ministers, as well as relieve them of their duties as per the powers prescribed in the constitution”*.

Within this context which is stated in the Charter, the existing Constitution awarded HM the King a sublime status, by allocating a whole chapter to describe it. He is the Supreme representative of the State, the symbol of national unity, the protector of religion and the Nation, he is the protector of the the legitimacy of the regime, the rule of law and the Constitution; safeguards the rights and freedoms of

individuals and authorities, and he is the head of the Executive Authority in terms that he exercises such authorities in person by means of Royal Orders, or through his Ministers by means of Royal Decrees.

The said amendments of the existing Constitution preserves this sublime status stipulated by the National Action Charter, and reinforced it within the framework of parliamentary appearances in the regime.

Second: Reorganizing the relationship between the Executive and the Legislative Authorities to achieve greater balance:

Within the framework of the outcomes of the National Compatibility Dialogue, the Constitutional amendments were keen to re-organize the relations between both the executive and legislative authorities, to achieve greater balance therein.

The amendments stipulate the introduction of new guarantees that are enforced by HM the King when utilizing his right to dissolve the Council of Deputies and in appointing the Consultative Council, and enhance the legislative authority role by awarding a vote of confidence to the Government appointed by HM the King. Additionally, the introduction of new guarantees that ensure all members of the Council of Deputies participate in discussing interpellations addressed to Ministers, activate the role of the Council in deciding on the inability to cooperate with the Prime Minister, and determine a period for the Government to specify why it cannot comply with the wishes of the Council, award the Council the right for a public debate,

determine a timeline to revert draft laws to the Council from which they originated, develop special rules to draw up the budget by both Councils to enact the new budget with the commencement of the new fiscal year, and does not avail for drawing up the budget for two consecutive fiscal years.

Third: Re-organizing both Parliamentary Councils to avail a bigger role to the Council of Deputies and achieves ideal selection of the members thereof:

The Constitutional amendments to attain this objective are keen to re-organize both Parliamentary Councils, which in turn avails for the Council of Deputies to be the sole supervisory body of the executive authority; hence awards the Council President chairmanship of the National Assembly, and reverting the approved draft laws by both Councils to the Government pending the appropriate procedures for issuing. It also attains the ideal selection of members in both Councils.

The bicameral system is envisaged as one of the most important constants endorsed by the National Action Charter, whereby the Constitution may not reconsider it nor revert to the unilateral Council system; otherwise it would contravene the clear prescribed recitals in chapter five of the Charter pertinent to parliamentary life. Considering the Charter has clearly stated the pivotal need to uphold a bicameral system that is commensurate with world democratic and Constitutional developments; hence the existing Constitutional organization of both parliamentary Councils are in line with the prevalent developments at the time; it does not hinder reviewing the provisions pertinent to this issue that avail coping with the political, economic and

social changes, and within the framework of controls set forth by the Charter for that purpose; thus the most important aspect is having an equal number of members in both Councils, and the Council of Deputies is formed by means of direct free balloting, while the Consultative Council is formed by Royal Order.

The world Constitutional doctrine conditioned in the establishment of a bicameral system that both Councils participate in legislative undertakings, at least in terms of the right to propose draft laws and to approve or reject them. The aforementioned does not necessarily mean absolute equality in political overseeing; however, if one of the Councils is confined to an advisory role then the Constitution would have reverted to the unilateral parliamentary system, even though it appears to be bicameral in form.

In harmony with the dividends of National Compatibility Dialogue, the said Constitutional amendments bolstered the supervisory role of the Council of Deputies, which permits the Council to unilaterally take this role.

If the Council of Deputies, under the existing Constitution, unilaterally assumes most of the overseeing tasks of the executive authority, such as the no vote of confidence, questioning Ministers in matters within their sphere of competence, and forming fact-finding committees; the amendments also awarded it the right to decide on the inability to cooperate with the Prime Minister, questioning Ministers, the right to debate the governmental program after the latter is sworn in, in addition to the right of accepting or rejecting this program; whereas if accepted the

Government would have won the Council's vote of confidence; and the right to debate a general issue, which corresponds to the trends in some international bicameral Constitutions that award an elected Council the power to oversee the executive authority actions.

The existing Constitution gave the President of the Consultative Council the authority to revert draft laws approved by both Councils to the Prime Minister pending the appropriate procedures to issue them; and the priority to chair meetings of the National Assembly; the amendments granted the President of the Council of Deputies such authorities and priority, taking into consideration that he represents the will of the people, therefore, this does not contravene the bicameral system stipulated in the Charter.

In addition to the conditions that must be present in members of both Parliamentary Councils, the amendments stipulate two new conditions of membership, it requires the lapse of ten years of neutralization as a Bahraini national to nominate candidacy for the Council of Deputies membership or for appointment on the Consultative Council; as well as not holding any other nationality excluding any GCC member-state nationality, provided the Nationality of Bahraini is his original.

The National Charter stated that members of the Consultative Council are selected by appointment. However, it did not specify a particular method by HM the King to select these members. The existing Constitution provided that appointment of Consultative Council members is a privilege of HM the King by Royal Order; nevertheless, the amendment stipulated that HM the King is to issue a Royal

Order prior to appointment underlining the procedures and controls governing the selection process of members; which in turn reflects the utmost transparency in the selection process of Consultative Council members, and ensures that the society would have a wider representation in the Council.

Second Section

Texts Included in the Constitutional Amendments

Within the framework of the will of the people that ensued from the National Compatibility Dialogue pertinent to changes of the existing Constitution, the amendments encompassed two primary changes: re-organizing the relationships between the executive and legislative authorities; and re-organizing both Parliamentary Councils. Other sub-divisions emanated from these issues that complement and supplement the prescribed principles thereto.

First: Amended Articles to re-organize the relationship between the Executive and Legislative Authorities.

The Constitutional amendments introduced to bolster the National Assembly role, both Councils, and relations with the executive authority were confined to Articles (42/c, 46, 52, 65, 67/b, c, d; 68, 88, 91/first paragraph, 92/d, and 109 b/, c.

Article (42/c):

The text of this Article in the existing Constitution provided HM the King the right to dissolve the Council of Deputies

by virtue of a decree, reasons for such decree must be stated, so the Council may not be dissolved for the same reasons again. The amendment added new guarantees to existing ones; save for the dissolving right confined to an agreement between HM the King and Prime Minister, it is now prohibited to resort to this undertaking without reverting to the opinion of the Presidents of the Consultative Council, the Council of Deputies, and President of the Constitutional Court; which is regarded as a guardian of Constitutional applications, and corresponds to modern Constitutional trends. Even though the opinions of the aforementioned are not binding to HM the King; it would, nevertheless, provide a more comprehensive scope before HM the King issues a decree to dissolve the Council. Moreover, it is a manifestation of the Consultative principle stipulated in Islamic Sharia being the main source of legislation as per Article (2) of the Constitution.

Article (46) – new paragraph and Article (88)

Considering that HM the King is the sole competent authority to select a cabinet as per Article (33/d) of the Constitution, an issue that draws legitimacy from the recitals prescribed in the National Action Charter under the theme: *“The King shall appoint the Prime Minister and Ministers, as well as relieve them of their duties”*. The Charter did not obligate HM the King to appoint Ministers according to the result of the Parliamentary elections , in terms of allocating the number of seats for each political society or grouping; but rather awarded HM the King full freedom to choose whoever he deems appropriate to form a Government in the general interest of the Kingdom. However, in consistency with the objectives of Constitutional changes to bolster the

legislative authority role, Article (46) was amended by adding a new paragraph that awarded the Council of Deputies the right to accept or reject the program put forth by a new Government formed by HM the King, whereby the Prime Minister shall present the Government program within 30 days from the date of being sworn in to the Council, and if rejected the Premier would re-present the program after making the appropriate changes. If the Council insisted on rejecting the program, HM the King shall accept the resignation of the Government and form a new one, which must present its program to the Council. If the Council rejects the new Government program, HM the King may dissolve the Council or accept the resignation of the Government.

This amendment shall not prejudice the right of the Council to propose – upon reviewing the Government program – to request changes to the program in consultation with the Government before voting on the program, be it for the first or second Government formed.

If HM the King accepted the resignation of a Government for a second time without dissolving the Council, it does not prejudice his right to dissolve the Council if it rejects the governmental programs once again.

The amendment emphasized the need to determine the timelines which the Council has in order to pass a decision on the governmental program, whereby if such timeline elapsed without a clear decision from the Council, the program is deemed accepted and the Government enjoys a vote of confidence. The amendment has also distinguished between the required majority to reject a program in the first

time, and the required majority for a second rejection or consequent ones. A majority of the Council members is required for the first rejection, and two thirds for the second rejection, and for every consequent Government formed.

The phrase “if the Council does not approve the new Government program as per the same procedures and timelines” means it is imperative to be utilized pertinent to the Council rejection of the second Government program and other consequent Governments. If HM the King accepts the consequent Governments resignation, the same procedures followed by the first Government in terms of representing the program to the Council if rejected the first time are followed, before HM the King considers dissolving the Council or accept the Government resignation, provided this is attained within the same timelines set forth by the new paragraph for the Council to decide on the program.

As the text of Article (42/c) stipulate the issuing of a decree to dissolve the Council after consulting with the President of Consultative Council, the President of Council of Deputies and President of the Constitutional Court; it is, however, not applicable when HM the King dissolves the Council due to rejection of the Government program for a second time. HM the King may dissolve the Council by virtue of a Royal Order not a Decree, because the issue is related to a Government already formed by HM the King, not due to a dispute between a Government which program was accepted then differed with the Council; hence HM the King stands as a referee. The Royal Order to dissolve the Council as per Article (46-New Paragraph) does not require consulting with the President of Consultative Council, the President of

Council of Deputies and the President of the Constitutional Court, but is rather subject to the discretion of HM the King.

The addition of a new paragraph to Article (46) was followed by the need to amend Article (88), which stipulated that a newly formed Government must submit its program to the National Assembly, hence the Council role in this case is confined to expressing its observations thereto; however, it did not mandate the Council acceptance of the Government program in order to remain in office. The second added paragraph has caused legal repercussions pertinent to the new Government presentation of its program to the Council of Deputies, in the possibility of accepting the Government resignation if the Council rejects its program. As such, enforcing Article (88) is no longer in harmony and contravenes with the new paragraph of Article (46), an issue that calls for coordinating both Articles to avail their proper functionality within the specified scopes.

As such, Article (88) was amended to avail for the Prime Minister the opportunity to deliver a statement before either parliamentary Council, or any of their competent committees regarding to any issue within his competency, and may delegate any Minister to do so. The amendment prescribes that delivering a statement is optional and according to the discretion of the Prime Minister without commitment to form a new cabinet, or governed by a mandate, or subject to either Council or their competent committees. The role of the Council or competent committee shall be confined to discuss and make observations immediately to the Prime Minister to fulfill the general interest objectives thereof.

Article (52):

The Charter stated that the number of Consultative Council members must be equal to that of the Council of Deputies thus the latter are elected and the former are appointed. Article (52) stipulated the appointment of Consultative Council members by a Royal Order; however the Consultative and Deputy Councils law conditioned that members enjoy extensive experiences, or have provided valued services to the Nation from amongst certain segments, which avails full freedom to HM the King to select the best out of the said segments without restrictions.

In order to achieve full transparency with regard to the process of selecting Consultative Council members, and guaranteeing wide representation of the society segments on the Council; Article (52) was amended to state the need of developing general rules that regulate the procedures and controls of selection, hence determine the methodology of this undertaking so as to be available to HM the King before issuing an appointment Order. The said regulating rules, which are subject to a Royal Order, are binding in selecting the Council members; hence may be amended and changed by virtue of the Royal Order, and are immediately applicable to the appointments after they are issued.

Article (65):

Article (65) of the Constitution stated the right of the Council of Deputies members to question the Ministers on matters falling within their competence. The Article has also established the conditions governing the acceptance of

questioning and dates of debate. It also availed putting a vote of confidence in the Minister before the Council.

This text did not determine the methodology by which questioning is made, and left it to the internal system of the Council as is the case in all Constitutions that envisage questioning as one of the overseeing tools. As such, the Council internal system prescribed the methodology by which such questioning is conducted and the procedures of debate thereto.

In order to refrain from prolonging the Constitutional text by including too many details, the subjective condition in the existing Constitution stipulated that questioning should not be related to a personal interest by the questioning member, or his relatives to the fourth degree, or any of his agents; in addition to other conditions prescribed in the Council internal system. As for paragraph (3) of the existing Article, it was amended to clearly state that questioning must be conducted within the Council whether in a public session, or behind closed doors as per the set procedures in the regulations; unless a majority of the Council, not only the attendees, decide to carry out the questioning by a specialized committee as an exception. Additionally, there is a condition not to allow questioning before the lapse of eight days from the presentation thereof, unless a request was made by the Minister concerned to speed up the questioning process, not a mere approval on the request of a Council member therein.

Article (67) (Para b, c, d)

In line with achieving further balance between both the executive and legislative authorities, Article (67) was amended to avail a unilateral role to the Council of Deputies in deciding on the inability to cooperate with the Prime Minister, and thus reduce the restrictions governing this decision; hence result in difficulties to access this right.

Para (b) of this Article conditioned in the Constitution the approval of two thirds of the Council members to decide on the inability to cooperate with the Prime Minister. However, it now gave the right to ten Council members; provided the approval on this request is presented to the Council in order to commence procedures thereof by a majority of votes, i.e. the votes of 21 members. The request shall be submitted to the Council Office, which must include the request on the Council agenda during a period not exceeding 2 weeks of its presentation thereof.

Considering that the decision on the inability to cooperate with the Prime Minister required the approval of both Parliamentary Councils at a National Assembly meeting with two thirds of the members attending; the decision is now limited to the approval of the Council of Deputies as per the amended Para (d), requiring the vote of two thirds of members without the intervention of the Consultative Council, and without the need to convene the National Assembly thereto.

The impact of the Council of Deputies on the inability to cooperate with the Prime Minister differs from the vote of no confidence in any of the competent Ministers. Article

(66) stipulates that a Minister shall be considered to have resigned his office as from the date of the decision of no confidence, and must resign immediately according to the Constitutional formality. This means that any undertaking by the said Minister following the decision shall be considered void; whereas in such a case the provisions of Article (49) of the Constitution shall apply in terms that the Minister shall continue discharging the urgent business thereof until a replacement is appointed.

The above text calls for the appointment of another Minister, or that the business of this portfolio shall be discharged by an Acting Minister until a replacement is appointed. As for a Prime Minister whom a decision was made regarding the inability to cooperate with according to Article (67), and HM the King accepted the resignation of his cabinet; there are no obstacles that hinder applying the provisions of Article (49) thereof. He shall continue to discharge the urgent business thereof until his successor is appointed to avoid a ministerial vacuum.

With regard to HM the King entitlement to use his right to dissolve the Council of Deputies when it decides that it could no longer cooperate with the Prime Minister as per the amended Article 42/a; it is not required to issue a decree to dissolve the Council after consulting with the Presidents of both parliamentary Councils and the President of the Constitutional Court; for HM the King shall act as a referee between both the executive and legislative authorities, an issue that calls for a decision to dissolve the Council by virtue of a Royal Order not a Decree that requires the signature of the Prime Minister, considering he is one of the parties to the dispute. As such, the guarantees stipulated in

Article (42/a) of the Constitution cannot be enacted in terms of HM the King right to dissolve the Council of Deputies.

Article (68):

Article (68) was amended to establish a new guarantee in vitalizing the role of written wishes put forth by the Council of Deputies to the Government, and to uphold the right of the Council in putting forth a public matter for debate to clarify the Government policy therein, and exchange opinions thereon.

Article (68) of the Constitution stipulates that the Government may only respond in writing to state why it cannot comply with the wishes of the Council, and, did not specify a period that is binding to the Government to reply. The amendment of Para (a) of this Article made it imperative to the Government to reply to the Council proposals within six months, availing a reasonable period for the Government to respond, and to decide on the prospects of either to comply or reject such wishes provided it states its justifications for the latter. If the Government failed to respond within the specified period, the Council is entitled to act according to any of the supervisory instruments awarded by the Constitution.

Article (68) did not award the Council of Deputies the right to put forth a public matter for debate, before amendment. As such, Para (b) was added to award this right according to the controls prescribed in the Council internal system. Moreover, In order not to waste the Council time in aimless debates; this paragraph stipulated the need to submit the request for debate to the Council in order to decide on its

validity for debating or discarding it, or by reverting it to a specialized committee before casting a vote thereto; all of which are according to the procedures prescribed in the internal system of the Council, particularly in terms of the number of participants in a debate.

Article (91) – First Paragraph

Considering that the existing Constitution gave each member in both Parliamentary Councils the right to address questions to Ministers; for there is the National Action Charter did not prescribed any terms that prevent including an amendment of the Constitution to limit inquiries to members of the Council of Deputies. As such, the first paragraph of Article (91) was amended to award this right solely to members of the Council of Deputies, it is implicitly understood that a question should not exceed the parameters of inquiry rather than criticism and defaming; otherwise it would be an interpellation as per Article (65) of the Constitution, which calls for applying provisions of this Article thereto.

Article (92) Para (a):

Article (92/a) of the Constitution stated that any proposed amendments presented by either the Council of Deputies or Consultative Council, in addition to the draft laws suggested by members of either Council are referred to the Government to be drafted and returned to the Council of Deputies during the same legislative term or the consequent one.

The National Action Charter contains no principles to govern this issue, nor sets any boundaries thereon. As such, the Article was amended to state that the period to draft the proposals into a draft law or Constitutional amendment should not exceed six months from the date of presentation.

The amendment does not prejudice the right of the Government to attach all its notes on the proposal to amend the Constitution or the draft law referred from any of the Councils, so as to be considered upon debating the issue if viable. The period prescribed by this Article is regulatory; hence the legitimacy of Constitutional amendments or pending laws shall not be jeopardized if the Government did not abide by them.

Article (109) Para (b, c)

Due to the unique nature of the general budget coupled with the complications and accuracy of drawing it up within the modern framework of technological and knowledge advancement; and in line with the modern Constitutional trends, Article (109) of the Constitution stated the rules to draw up the budget and procedures of promulgating it.

The last decade has proved that certain paragraphs of this Article must be changed so as both Parliamentary Councils would be able to seriously and effectively discuss the draft budget, in a manner that avails active and genuine participation in the examination thereof; while allowing for the new budget to be put into effect and on time without applying Para (h) of this Article which stipulates the application of the preceding budget until the new budget law

is promulgated. The new amendment also prohibits drawing up the budget for more than two fiscal years.

In line with achieving these objectives, Paras (b) and (c) of Article (109) were amended; whereas Para (b) stated that the Government must submit the Draft budget simultaneously to both Parliamentary Councils, at least two months before the lapse of the current fiscal year; prior to it being submitted to the Council of Deputies for examination then referred to the Consultative Council for consideration, it undermined the effectiveness of the latter Council to seriously examine and debate the draft law due to the time being short before the new fiscal year begins.

This paragraph was amended to counter the complications and accuracy with which modern budgets are characterized, an issue that calls for the cooperation and efforts of both parliamentary Councils to discuss it within the framework of clarifications put forth by the Government. Accordingly, this paragraph stipulated submitting the draft budget to the finance committees of both Councils in a joint meeting for discussion with the Government. This provides a larger scope to enrich the debates, and reach better solutions pertinent to the observations made; hence it would summarize the time of discussions and prevent repetition of notes should both committees meet independently. Moreover, the amendment did not require a joint decision by both committees to approve or disapprove the draft budget after hearing the viewpoints of all members, to honor the independent point of view of both committees. The amendment allowed each committee to submit an independent report, provided that the Council of Deputies examines the draft first and issues its report; then refer it to

the Consultative Council with their prior knowledge of the discussions of the joint meeting, to examine the draft law as per the procedures prescribed in the Constitution pertinent to Draft laws.

The amendment also maintained the principle of allowing changes to be made to the Draft budget in agreement with the Government.

Para (c) of this Article abolished all concerns pertinent to the Government drawing up the budget for two fiscal years, which was allowed previously. It incorporated the phrase “the budget may be drawn for two fiscal years at the most”, to replace “the budget may be drawn for more than one fiscal year”.

Second: Amended Texts to Re-organize Both Parliamentary Councils

The re-organized Constitutional amendments made to both Parliamentary Councils consists of availing the Council of Deputies a larger supervisory role, and achieve a better selection process to both Council members in Articles (53, 57/a, 59, 83, 85, 86, 102, 103, 115, 120/a).

Articles (53, 57/a)

Articles 53 and 57 stated the conditions which must be met by members of both Parliamentary Councils. The explanatory memorandum also stated with regard to Article (57/a) that it allowed every Bahraini national to nominate candidature to the Council of Deputies membership. The text provided that neutralized citizens may nominate their candidature as soon as they have acquired the citizenship.

Whereas, Article (53) did not specify any conditions pertinent to a neutralized citizen to be appointed as member of the Consultative Council. The explanatory memorandum, however, explained the concept of this Article by prescribing special terms for a Consultative Council member in addition to the general conditions which must be met by members of both Parliamentary Councils. This may be interpreted as any citizen holding the Bahraini nationality, whether original or neutralized, may be appointed as member of the Consultative Council.

Both Articles were amended to differentiate between a Bahraini by origin, and a citizen who was \ neutralized according to the citizenship law, in terms of the required conditions. Each Article stipulated that for membership of either Council, a period of ten years must elapse on acquiring the citizenship.

The differentiations stipulated in the amended Articles (53, 57/a) are a general trend in all Constitutions with regard to engaging political rights, hence do not infringe on the principles of human rights. Most Constitutions require the lapse of a specific period of time to ensure loyalty thus achieves guarantees to the State, which international experiments proved their necessity; hence a neutralized citizen may not practice the right to represent Bahrainis in Parliament before the lapse of the specified tenor.

However, both Articles and other Constitutional Articles did not tamper with the conditions, but are rather prescribed by the political rights law. As such, this law allows for any neutralized citizen to practice his voting right without any

time restrictions; considering it a lesser danger than candidature for parliamentary Councils.

In line with achieving the same objectives that called for differentiation between the original Bahraini and a neutralized citizen with regard to candidature of parliamentary Councils, both Articles (53, 57/a) added a new condition to the already existing ones, which is, the candidate should not hold a nationality other than the Nationality of Bahrain, whether he attained a permit for the same from the competent authorities or not, as holding two nationalities casts a shadow which disperses the loyalty of a person.

The moral of this amendment is that any person wishing to enjoy the membership of any of the parliamentary Councils, must waiver any other nationality he is holding before nominating for elections or appointment.

The dual nationality condition does not apply to a Bahraini by origin that acquired the nationality of a GCC member state, due to the lack of wisdom in doing so, and based on the belief in the unity of goal and destiny as well as join interest of GCC nations.

Article (59):

This Article states that when the seat of a member of the Council of Deputies vacates before the due term, a replacement must be elected within two months, as of the date of announcement being made by the Council; unless the vacancy occurred during the six months proceeding the legislative term of the Council, then no election is held.

To prevent the possibility of member resignation then re-nomination his candidature during the same legislative term; the text clearly stipulated that a resigned member may not run for office during the same legislative term as per Para (d) of Article (57) of the Constitution, which does not allow for any member who was disqualified or breached the membership boundaries to run for office during the legislative term, unless the Council decides otherwise. Considering that a resignation is an expression of the member wish, it is different from being disqualified as an expression of the Council desire. The Council may not intervene in the wish of the resigned member, in the same manner in which it should when disqualified.

Articles (83, 85, 86, 102):

These Articles were amended to shift the priority to refer draft laws approved by both Councils to the Government pending its procedures for promulgation, to the President of the Council of Deputies. It also gives the President priority to chair the National Assembly meetings; in addition to other amended foregoing Articles, which made political overseeing of the executive authority actions the sole specialty of the Council of Deputies (Articles 46, 67/b, c and d; 68/b and 91-first paragraph). Articles (83, 86) also stipulated that the President of the Council of Deputies must refer a draft law approved by both Councils to the Prime Minister, who shall submit it to HM the King to issue within a period not exceeding two weeks; prior to the amendment, it was the president of the Consultative Council who had the authority to submit the draft law to HM the king to issue.

The amended Article (85) stipulates that if both Councils disagreed on a draft law twice, the National Assembly shall convene as per the Constitution during the same legislative term, whereas the President of the Council of Deputies shall preside over the meeting, prior to the amendments, this right had been granted to the President of the Consultative Council. Article (102) has also stipulated that the President of the Council of Deputies must preside over the National Assembly meeting, and in his absence the President of the Consultative Council shall take over, followed by the first deputy to the President of the Council of Deputies and then the first deputy to the President of the Consultative Council. The amended Article changed the priority as to who should chair the National Assembly meetings, and who should replace them when absent as per the order prescribed hereinabove.

Article (103):

Views differed in interpreting Article (103) of the Constitution with regard to the quorum of the National Assembly. This Article in the existing Constitution states: “meetings of the National Assembly shall be deemed correct only if a majority of the members constituting the assembly are present”. Some interpreted this that a majority must be present otherwise the meeting is incorrect, while others sought provisions of Article (80) of the Constitution that set the quorum for meetings of both parliamentary Councils, whereas it states: “for a meeting of either Parliamentary Council to be correct, at least half of its members must be present. If the quorum was not attained two consecutive times, then the meeting shall be deemed correct, provided that not less than a quarter of the members are”.

The amended Article (103) adopted the view which sought provisions of Article (80) and decided: “if the quorum of the Assembly was not complete two consecutive times, the meeting shall be deemed correct provided that not less than quarter of the Assembly members are present”.

Article (115):

In line with what Article (109/ b, c) determined with regard to referring the draft budget to a joint committee ensuing from the finance committees of both parliamentary Councils to examine prior to being reviewed by each Council; Article (115) was amended so as the Government must deliver a statement before both Councils pertinent to the financial and economic positions in the State and arrangements made to implement the appropriation of the budget in effect and the effect thereof on the new draft budget. Prior to the amendment, the statement was made before the Council of Deputies only. The amendment came to put the statement before the joint committee from both Parliamentary Councils when they review the new draft budget, which shall assist both committees to submit a report to their respective Councils.

Article (120):

This Article stipulated in Para (a) “for an amendment to be made to any provision of this Constitution, it is stipulated that it shall be passed by a majority vote of two thirds of the members constituting both Parliamentary Councils”. Despite the fact that this Article did not prescribe resorting to the National Assembly when both Councils are in disagreement, there were many questions on the validity of presenting the

Constitutional amendments to the Consultative Council or the National Assembly, if the Council of Deputies did not approve such amendments. The Article amendment clearly laid down a provision therein.

Considering that Article (120) stipulated the approval of both Parliamentary Councils on any Constitutional amendments, it is implicitly understood that the abstention of any Council means such amendments cannot be amended. As such, the Article was amended to fulfill this purpose, whereby the National Assembly would convene as per the Constitution during the same legislative term at the attendance of two thirds of its members, without prescribing any attendance percentage by any of the Councils, whereas the draft amendment shall be ratified at the approval of two thirds of the National Assembly members.

The clarifications put forth by this explanatory memorandum are envisaged as reference in interpreting the amendments and related provisions thereof, hence shall be mandatory to the Constitution. Moreover, in accordance with the text of Article (125) of the Constitution, the herein amendments and explanatory memorandum shall be published in the official gazette, and enter into force as of the date of publishing thereof.

