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Is It Election Or Selection: The First-Ever Qatari Shura Council Election Of 2021 In Comparison To The Hong Kong Legislative Council Election Of 2021

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Abstract

Despite the execution of the Permanent Constitution of the State of Qatar 2004, which entered into force on April 9, 2004, article 80 stipulates that the mechanism for selecting a member of the Shura Council shall be by election by two-thirds of the members and the Emir of the State of Qatar appoints the other third, However, the text of the article has been suspended and the work of a specific Shura Council is completely in accordance with the Amended Provisional Constitution of 1972. The suspension of article 80 remained until the elections that took place for the first time in Qatar's electoral history for the Shura Council on October 2, 2021. The executive authority tried to stop the implementation of Article 80 so that there is no elected Shura Council that represents the Qatari people, because this may weaken the power of the executive authority. Nevertheless, with the implementation of the election article of 80, is the Shura Council still appointed, or does it parallel the democratic parliaments in the world? This issue intersects with the model in Hong Kong for the Legislative Council, which has been suffering from the Chinese factor as the Chinese nationality plays a prominent role in passing a bill by an absolute majority that favors the pro-China Beijing Party.

Keywords

Shura Council, 2021 Election, Chinese Factor, Qatar Constitution

I. Introduction

On October 2, 2021, the State of Qatar held its first elections for the Qatari Shura Council in its legislative history. Nevertheless, legislative elections were supposed to be held in 2005, when the permanent constitution of the State of Qatar came into force.

Therefore, the Qatari Shura Council was appointed for a period of sixteen years by the Emir of the State of Qatar.¹ The constitution of 2005 stipulates that the Shura Council consists of forty-five members, thirty of whom are elected by direct public ballot and fifteen of whom are appointed by the Emir of the State of Qatar.²

However, not all Qatari citizens were eligible to run for membership in the Shura Council in the October 2021 elections; the Nationality Law of 2005 originally divided Qataris who may exercise political rights, such as running for Shura Council membership, into four categories and the most important category where it affects the conduct of elections is that “those residents of Qatar who have been resident in the country since 1930...”³ Accordingly, the Qatari legislator has restricted popular participation in elections by allowing only those who fall under the categories specified in the Nationality Law of 2005. Those to whom the nationality article does not apply are ineligible to exercise political rights such as the right to be elected and regarded as naturalized citizens. In this regard, the Qatari people are represented by a minority in the Shura Council election in October 2021.

On the other hand, the nationality factor, which played a role in preventing a large portion of Qataris from exercising their right to be elected, is strikingly like the Hong Kong model and the extent to which the Chinese factor affected the legislative council (LegCo) in the recent Legislative Council general election on 19 December 2021. The 2021 elections were not the same as the previous Hong Kong legislature elections due to a comprehensive overhaul of electoral rules imposed by Beijing, which increased the number of seats from 70 to 90.⁴ This increase from 70 to 90 seats in parliament is a result of the prominent role played by the People's Republic of China through the Chinese factor⁵, which ensures that the pro-Beijing party always wins a majority in elections. However, this sudden change resulted in widespread oppositional protests against the failure to reduce the number of GC seats from 35 to 20.⁶

This article aims to shed light on the nationality factor and its influential role in preventing a large segment of Qatari citizens from participating in the recent

¹ The Permanent Constitution of the State of Qatar, Article 77, Constitution of 2004 states that “The Shura Council shall consist of forty-five members, thirty of whom shall be elected by direct, general secret ballot, and the Emir shall appoint the remaining fifteen members from amongst the ministers or any other persons. The term of office of the appointed members of the Shura Council shall expire when these members resign their seats or are relieved of their posts.”

² *Ibid.*

³ Acquisition of Qatari Nationality Law, Article 1, Law No 38 of 2005 states that “The following shall be deemed to be Qatari Nationals: 1.1 Those residents of Qatar who have been resident in the country since 1930 and who maintained regular legal residence in the country until the enforcement date of the aforementioned Law No. 2 of 1961. 1.2 Any person who is proved to be of Qatari descent, albeit in the absence of the conditions set forth in the preceding sub-article, and additionally, any person in respect to whom an Emiri decree has been promulgated. 1.3 Persons to whom Qatari nationality has been reinstated in accordance with the provisions of law. 1.4 Any person born in Qatar or in a foreign country to a Qatari father in accordance with the preceding Articles.”

⁴ Zen Soo & Ken Moritsugu, “China sharply reduces elected seats in Hong Kong Legislature,” *Associated Press*, March 30, 2021, <https://apnews.com/article/china-reduces-seats-hong-kong-legislature-328bd38c45f351348f10b56d1c1c1a81>

⁵ See Ma Ngok, “The China Factor in Hong Kong Elections: 1991 to 2016,” *China Perspectives*, 2017, No. 3 (111) (2017), pp. 17-26.

⁶ Ramzy, Austin. “Hong Kong Delays Election, Citing Coronavirus. The Opposition Isn't Buying It.” *New York Times*. July 31, 2021. <https://www.nytimes.com/2020/07/31/world/asia/hong-kong-election-delayed.html>.

legislative elections in Qatar for the year 2021 because these citizens are naturalized and not native-born. The article comprises two parts. The first part discusses whether the judiciary has the authority to consider nationality issues related to running for membership in the Shura Council, or whether these issues are left to the executive authority's discretion. By analyzing the nationality factor in the Qatari model in relation to the Qatari Shura Council elections, it will become evident that the legislative event scheduled for October 2, 2021, is a selection, not an election.

The second section provides a historical account of the Legislative Council of Hong Kong prior to the agreement that transferred Hong Kong to the People's Republic of China. In addition, the article mentions the election period for the last legislative term, which concludes in December 2021. The section then specifies whether Hong Kong enjoys de facto independence because it has its own nationality law declaring the existence of a nation named Hong Kong. Additionally, the article discusses the role of the Hong Kong Court of Final Appeal in dealing with citizenship issues in general, so that candidates for Legislative Council elections can be said to challenge the commission's decision in court.

II. The Shura Council Of Qatar Under Previous Constitutions

Prior to the 1960s, the State of Qatar lacked an official Shura Council, as required in a 1963 proclamation by the ruler of Qatar at the time, Ahmed bin Ali Al Thani, who intended to establish a council representing the legislative authority as an advisory body. The statement was titled an explanation of the comprehensive framework for the nation's advancement. This announcement aired on April 28, 1963. The ruler at the time delivered this remark in response to the reform demands submitted by Qatari merchants, workers, and students in the form of a petition in March 1963.⁷ In its contemporary history, the State of Qatar has had four Shura councils, the first of which was constituted under Law No. 6 of 1964. The second council was constituted in accordance with the Provisional Constitution of 1970. The third council was then formed according to the Amended Provisional Constitution of 1972. The Permanent Constitution of the State of Qatar of 2004 established the Shura Council as the fourth council to represent legislative authority.⁸

In May 1964, Law No. 6 of 1964 was enacted to form the Qatari Consultative Body, an advisory council in which the ruler of the state would serve as president and the vice president as vice president. The advisory council consists of fifteen members chosen not from the general population but from the ruling Al Thani family.⁹ This advisory council exercised limited powers, such as addressing basic matters related to the state's general policy, which the administration brought to

⁷ Penelope Tuson, *Records of Qatar*, Archive Edition, vol. 7 (Archive Editions Ltd, 1991) 591.

⁸ Hassan Al-Sayed, "Factors Influencing the Effectiveness of Qatari Shura's Councils within the Relevant Governing Legislation," *International Review of Law 2 & 3* (2018): p. 195.

⁹ The law was issued on 6th May 1964 and was published in the Official Gazette in issue No.3 of 1964.

the council for consideration, and proposing recommendations about issuing of laws. In 1970, the name of the Shura Council was first incorporated into the state's provisional fundamental system. The council's sole function is to make recommendations to the nation's ruler. The constitution mandates that the council consists of both elected and minister-appointed members. As for the articles of the elected Shura Council under the constitution of 1970, none of them were implemented.¹⁰ As per the Amended Provisional Constitution of 1972, the functions of the Shura Council remained the same as those specified in the Provisional Constitution of 1970. However, the implementation of the system for electing members of the Shura Council was briefly postponed by the Constitution of 1972. However, the legislative elections were not held under the Constitution of 1972. The majority of the twenty selected members are merchants from the State of Qatar.¹¹ In contrast to earlier Qatari constitutions, the 2004 permanent constitution of the State of Qatar granted the Shura Council fundamental competencies. Election of thirty members and appointment of fifteen members by the Emir became the method for selecting members of the Council. The total number of members of the Council was 45.¹² The question is whether any Qatari is likely to run for a seat on the Qatari Shura Council, or whether there are impediments.

2.1 Is Everyone Who Holds Qatari Citizenship Able To Run For Membership In The Qatari Shura Council?

According to the Qatari Constitution of 2005, only native Qatari citizens are eligible to run for membership in the Qatari Shura Council.¹³ However, the English version of the article did not match the Arabic version since the Arabic version added the term native Asliah. Even though the term "native citizen" is the first condition for candidacy for membership, the constitutional legislator did not interpret the article in the explanatory memorandum with the importance of having an explanation for it; until the ambiguity, surrounding the article's implementation is removed. Instead, the constitutional legislator delegated the authority of determining who is a native Qatari to the 2005 Qatari Nationality Law, which defined native Qataris in four categories: first, those who settled in Qatar since 1930 and maintained regular legal residence until the implementation of the Qatari Nationality Law of 1961. Secondly, any person who proves to the Nationality Department that he is of Qatari origin. Third, those to whom citizenship has been reinstated in accordance with the provisions of the Nationality Law of 2005. Finally, anyone who was born in Qatar or abroad to a Qatari

¹⁰ The law was issued on 2nd April 1970.

¹¹ The law was published in the Official Gazette in issue No.5 on 1st January 1972.

¹² The Permanent Constitution of the State of Qatar, Article 80, Constitution of 2004

¹³ The Permanent Constitution of the State of Qatar, Article 80, Constitution of 2004 states "The members of the Advisory Council (Shura) must fulfill the following conditions: The members of the Advisory Council (Shura) must fulfill the following conditions: 1. be Qatari nationals; 2. be not less than thirty calendar years of age at the close nominations; 3. be fluent in the reading and writing of Arabic; 4. must not have been convicted by a competent court of law for an offense involving immoral behavior or dishonesty, unless rehabilitated in accordance with the law; and 5. be eligible to vote as determined by electoral law." The Constitution is available at: <https://almeezan.qa/LawPage.aspx?id=2284&language=en>

father.¹⁴ Reviewing the article on the four categories reveals that anyone with Qatari citizenship who does not fall into one of the four categories will be ineligible to seek a place on the Qatari Shura Council. Applying article 1 of the Nationality Law of 2005 inhibits a major segment of Qataris from exercising full constitutional entitlement to equal rights and obligations, as provided by the constitutional legislator.¹⁵ The Constitution, on the other hand, mentioned the principle of citizen equality in the right to be elected but did not include the phrase "original citizen."¹⁶ As a result, nationality matters relating to a Qatari's candidacy for membership in the Shura Council are governed by the Nationality Law of 2005, rather than the Constitution. Because the Constitution has given the Nationality Law exclusive authority over other legislation, the Nationality Law is able to govern nationality matters pertaining to who can run for the Qatari Shura Council instead of the constitution.¹⁷ The constitutional legislators not only decided to give the Nationality Law exclusive authority over nationality issues such as who is considered a native Qatari or not, but the constitution also fortified the Nationality Law against amendment unless strict procedures similar to those for amending the Constitution were followed.¹⁸ Furthermore, if an article of the Nationality Law contradicts a provision of the Constitution, the article of the Nationality Law would be treated as if there were a discrepancy between two constitutional articles, rather than being ruled unconstitutional. For this reason, the power of the Nationality Law "shall have a similar power to that of the Constitution." A portion of the Qatari people did not accept this type of interpretation of the Nationality Law for individuals eligible to run for membership in the Shura Council because of their devotion to the values of the Constitution, which enshrine the principle of equality in public rights and duties. Is the lack of acceptance of the 2005 Nationality Law, which allows a small group to run rather than a broad range of society, a sign that another, more flexible law exists?

2.2 Nationality Laws Of 1961 And 2005

Before the first-ever election on October 2, 2021, criticism of the 2005 Nationality Law grew; this was due to the exercise by a small group of Qataris of the right to be elected, and legal scholars preferred to implement the Nationality

¹⁴ Acquisition of Qatari Nationality Law, Article 1, Law No 38 of 2005 states that "The following shall be deemed to be Qatari Nationals: 1.1 Those residents of Qatar who have been resident in the country since 1930 and who maintained regular legal residence in the country until the enforcement date of the aforementioned Law No. 2 of 1961..."

¹⁵ The Permanent Constitution of the State of Qatar, Article 34, Constitution of 2004 states "Citizens shall be equal in terms of public rights and duties."

¹⁶ The Permanent Constitution of the State of Qatar, Article 42, Constitution of 2004 states "The State shall ensure the right of citizens to vote and to be elected in accordance with the Law."

¹⁷ The Permanent Constitution of the State of Qatar, Article 41, Constitution of 2004 states, "Qatari nationality and the rules governing it shall be prescribed by law, and the same shall have a similar power to that of the Constitution."

¹⁸ The Permanent Constitution of the State of Qatar, Article 144, Constitution of 2004 deals with the procedure for amending the constitution which states that "The Emir, or one-third of the members of the Shura Council, shall each have the prerogative to apply for the amendment of one or more of the Articles of this Constitution. If the majority of members of the Council accept the amendment in principle, the Council shall proceed to scrutinize it Article by Article. The amendment shall be passed by a two-thirds majority of the members of the Council. The said amendment shall not come into force without the approval of the Emir and its publication in the official *Gazette*. On the other hand, should the amendment proposal be rejected in principle or in substance, it may not be re-introduced within one year of the date of its rejection."

Law of 1961, which was issued and has never been implemented since its issuance.¹⁹ Although the Nationality Law of 2005 is comparable to the Law of 1961 in terms of deciding who qualifies as a native Qatari, the 1961 law only applied to people who had settled in Qatar from 1930 and maintained residency until the Nationality Law of 1961 took effect.²⁰ Furthermore, the 1961 law had to be kept since the 2005 Constitution, when it was enacted, endorsed, and accorded constitutional status to the 1961 law. As a result, the Constitution states that laws with constitutional status may not be amended until ten years have passed since the Constitution's entry into force; this means that the 1961 law cannot be amended until June 2015, denoting that the 2005 Nationality Law is unconstitutional because it repealed the 1961 law. In the same year that the Qatari Constitution was ratified.²¹ The fact that the Qatari candidate for Shura Council membership is originally Qatari is linked to the fact that everyone who acquires Qatari citizenship is denied the right to be elected, and the principle of disenfranchisement is applied indefinitely to all his progeny.²² The Nationality Law of 2005 adopts a trend that has been criticized by the legal community, namely, that anyone who obtains Qatari citizenship loses all political rights, including candidacy for membership in the Shura Council, and that this principle is applied indefinitely to the children of the naturalized father.²³ In terms of political rights, the legal community opposes the 2005 Nationality Law because one of the political rights that a naturalized individual is denied is the right to vote or be nominated to any legislative body.²⁴ The Nationality Law of 2005's explanatory memorandum justifies the legislator's tendency to prohibit naturalized persons from being elected

¹⁹ The 1961 law was published in the Official Gazette, No. 2 of 1961.

²⁰ Qatari Nationality Law, Article 1, Law No. 2 of 1961 states that "Qatari Nationals are those residents of Qatar who have been resident in the country since before 1930 and who have maintained regular legal residence in the country until the enforcement date of this Law. The residence of the ascendants shall be complementary to the residence of the descendants. A person shall be deemed to have maintained their regular residence in Qatar even when in residence in a foreign country provided, they had the intention of returning to Qatar."

²¹ Hassan Al-Sayed, "The Constitutional Nature of The Legislation's Provisions of Qatari Nationality and Its Effects on the New Issued Law of Nationality," *Journal of Law, Academic Publication Council, Kuwait University* 32, no. 3 (2008): p. 337. Also, the nationality law can only be amended the same way the Constitution of 2004 is amended. According to Art. 148 of the The Permanent Constitution of the State of Qatar 2004, which states that "No Article of this Constitution may be proposed for amendment within a period of ten years from the date of its coming into force."

²² Hassan Al-Sayed, "The Constitutional Nature of The Legislation's Provisions of Qatari Nationality and Its Effects on the New Issued Law of Nationality," *Journal of Law, Academic Publication Council, Kuwait University* 32, no. 3 (2008): p. 337-75.

²³ Acquisition of Qatari Nationality Law, Article 4, Law No 38 of 2005 states that "Qatari nationality shall be granted to those minor children below legal age who are resident with a naturalized person in Qatar at the time nationality is granted and to those born after that date. Qatari nationality may be granted, by a decision of the Emir, to the minor children of a naturalized person who are residing outside the country, after five years from the date of their first residence in Qatar, provided that they had not reached adulthood at the time of the application. Minor children of naturalized persons, who are granted Qatari nationality in accordance with the provisions of the preceding paragraph, shall declare in writing to the Minister of Interior their choice of their original nationality within one year of reaching the age of majority. The children of a naturalized person, who have reached the age of majority, may be granted Qatari nationality, by an Emiri decision, after fifteen (15) years have elapsed since taking up residence in Qatar."

²⁴ Acquisition of Qatari Nationality Law, Article 16, Law No 38 of 2005 states that "Naturalized Qataris shall not be equated with Qatari nationals in terms of the right to work in public positions or work in general until five (5) years after the date of naturalization. Naturalized Qataris shall not be entitled to participate in elections or nominations or be appointed in any legislative body."

or appointed on the grounds that this is consistent with the text of Art 80 of the Qatari Constitution of 2005, which states that anyone seeking membership in the Shura Council must be a native Qatari. However, because the text of Art 80 deals with the candidate's conditions and does not address the issue of election or appointment, the explanatory note's interpretation was incorrect in linking the text of Art 16 of the Nationality Law of 2005 to the text of Art 80 of the Constitution of Qatar of 2005.²⁵

According to Article 16 of the Nationality Law of 2005, the vast majority of Qataris are naturalized. As a result, significant demonstrations arose from the Al Murra tribe, which is Qatar's largest tribe, numbering even more than the number of members of the ruling Al Thani family. Dr. Hazaa Al-Athba, a Qatari lawyer specializing in administrative law at the Court of Cassation, spearheaded the protests. Al-Athba expressed his concern with the denial of political rights to a wide group of individuals, including the right to run for Shura Council membership and vote. In a video posted on his YouTube channel, Al-Athba sent a message to Qatar's Emir, Sheikh Tamim bin Hamad Al Thani., which includes a comprehensive rejection of the Shura Council's conditions for candidacy, including the requirement that the candidate be a native Qatari. Al-Athba and a number of his supporters were imprisoned, and Al-Athba has remained in detention to this day.²⁶

In various articles relating to candidates, the Legislation of Election No. 6 of 2021 favors the executive power, because all members of the Shura Council who passed the new election law for 2021 are appointed by the Emir. As a result, it would be natural for the executive branch to exert control over the council, which was elected for the first time in Qatar's history in 2021. If candidates resign from their former position, members of the executive authority, such as ministers and those promoted to the rank of minister, members of judicial bodies, members of all military authorities, and others, may propose themselves for membership in the Shura Council. The legislation, it was argued, bans these individuals from standing for membership even if they resign from their positions because the owners of these jobs' allegiance to the executive authority does not end with their resignation.²⁷ The fact that the Committee on Candidates is immediately subservient to the Ministry of Interior, which is effectively the major arm of the executive power, is one of the underlying reasons that the new electoral law pertaining to candidates reduces democracy.²⁸ A candidate may not hold a general election meeting without first notifying the Ministry of Interior's security department and informing the administration of the meeting's location and time.²⁹ Despite the fact that the 2003 Judicial Authority Law states that courts may not

²⁵ Explanatory Memorandum of Acquisition of Qatari Nationality Act 2005 regarding Art. 16.

²⁶ Bahrain News, "Human Rights Organizations Urge Qatar to Release Lawyer Dr. Hazza Bin Ali Almerri," *Bahrain News*, September 29, 2021, <https://www.bna.bh/en/HumanrightsorganisationsurgeQatartoreleaselawyerDr.HazzabinAliAlMerri.aspx?cms=q8FmFJgiscL2fwIzON1%2BDkj9QDviDH40ezZ0zWueDbk%3D> .

²⁷ Election Law, Article 11, Law No. 6 of 2021.

²⁸ Election Law, Article 12, Law No. 6 of 2021.

²⁹ Election Law, Article 24/1, Law No. 6 of 2021.

consider matters of nationality directly or indirectly, the new election law states that any candidate has the right to dispute the election's validity before the Court of Cassation. This appeal could deal with nationality, which would be a blatant breach of the Judicial Authority Law of 2003.³⁰

III. If the role of the executive authority in qatar is to deprive the naturalized of the exercise of political rights, can the qatari courts order the acceptance of the naturalized as a candidate for membership in the shura council?

The Universal Declaration of Human Rights establishes the principle of non-arbitrariness in depriving a citizen of his nationality, implying that a country's decision to deprive a person of his nationality is debatable, with citizens having recourse to the judiciary to invalidate the government's administrative decision.³¹ However, under the Qatar model, all matters of nationality are entirely at the discretion of the executive power, with no other body, including the judiciary, participating in the issuance of countermeasures. Courts, on the other hand, are prohibited from dealing directly or indirectly with matters of nationality and acts of sovereignty under the Judicial Authority Law of 2003.³² In this scenario, the executive authority will have an easier time extending the hand of absolute control and suppressing any dissent by revoking a candidate's citizenship if the candidate releases something that contradicts the administrative authority's directives. The Qatari legislature has established the ability to withdraw citizenship as a prerogative of the executive authority; where the loss of nationality is achieved in the following cases, in accordance with the Nationality Law of 2005: 1- If he joined the military forces of another country and refused to leave after receiving orders to do so. 2- If he is working for the advantage of a country at war with Qatar. 3- If he works for anyone, organization, association, or organization with the goal of undermining Qatar's social, economic, or political system. 4- If he is found guilty of a crime that jeopardizes his Qatari loyalty in a final decision. 5- If he has become a citizen of another country. If the public interest so necessitates, an Emiri decree may restore Qatari nationality to someone who has lost it under the requirements of the previous paragraph.³³ As a result, there is no guarantee that any Qatari person, whether born in Qatar or who has obtained Qatari citizenship, will not have their Qatari citizenship revoked by the executive authority. According to the author,

³⁰ Election Law, Article 45, Law No. 6 of 2021.

³¹ Universal Declaration of Human Rights, Article 15 states that "(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

³² Judicial Authority Law, Article 13, Law No 10 of 2003 states that "The Courts shall have no power to consider, either directly or indirectly, acts of sovereignty or issues of nationality."

³³ Acquisition of Qatari Nationality Law, Article 11, Law No 38 of 2005 states that "11.1 Joins the military forces of another country, and persists in this enlistment despite an order to desist therefrom. 11.2 Is employed by a country with which Qatar is at war. 11.3 Joins any authority, organization, association or group whose purpose is to undermine the social, economic or political structure of Qatar. 11.4 Is convicted of a crime which impugns his loyalty to the State of Qatar. 11.5 Acquires the nationality of another country. The Qatari nationality may be, by an Emiri decision, reinstated to the person who has lost it in accordance with the preceding sub-article 11.5, if the public interest so requires."

there must be an assurance that the executive authority will not revoke citizenship for illegitimate reasons, such as if the candidate is running for a different political party. Rather, the judge should interpret the facts and the law to the greatest extent practicable in the citizen's best interests.³⁴

The Qatari legislator was supposed to transfer the authority to assess nationality matters from the executive authority represented by the government to the administrative department of the Qatari courts. However, when determining the competencies of the administrative department in the Court of First Instance and Appeal, the legislator did the exact reverse, excluding the jurisdiction to consider matters of nationality and leaving it to the discretion of the executive authority.³⁵ As a result, the executive authority alone has control over nationality matters, with no other authority intervening or the citizen appealing the executive decision in court.

The Qatari Court of Cassation, in a case, refuses to respond to an appellant's appeal based on an objection to an executive decision involving a nationality question, arguing that courts cannot address any issue of nationality, even though the Court is supposed to do so of nationality, arguing that courts cannot address any issue of nationality, even though the Court is supposed to consider all cases without exception. The Qatari Court of Cassation, on the other hand, has not committed to following the premise that it is not permissible to consider nationality matters; in fact, if it had done so in one of the cases before it, it would have entirely broken the rule in the Judicial Authority Law of 2003.

The facts of a case before the Court in 2020 were that the first respondent filed a lawsuit in 2019 before the Court of First Instance, requesting proof of his marriage to the second respondent and that he states that she is his wife and that she is pregnant in the fifth month, and that their marriage was contracted in Morocco; he would like to prove his marriage to the second respondent, in accordance with Qatar's laws. When the Ministers of Health and the Interior intended to record the newborn's health calendar in 2019, the first respondent demanded that the requests be amended, and that confirmation of the daughter's lineage is added. As a result, the daughter's lineage was established by the Court

³⁴ Gary Endelman, *How to Prevent Loss of Citizenship* (Immigration Briefings, 1989).

³⁵ Settlement of Administrative Disputes Law, Article 3, Law No 6 of 2007 states that "Subject to the provisions of Article 13 of the Judicial Authority Law referred to, the Administrative Circuit shall exclusively consider the following administrative disputes: 1. Disputes over salaries and pensions, bonuses and allowances payable to employees or their heirs, irrespective of their job grades. 2. Applications by people regarding the abolition of final administrative decisions issued for the promotion of first-class employees or below and equivalent, or termination of their service and the disciplinary decisions pertaining thereto. 3. Applications by natural and juristic persons for the abolition of final administrative decisions, except for the following: a. Emiri orders, resolutions and decrees. b. Resolutions issued under Law No. 17 of 2002 on the protection of community. c. Decisions issued under the laws on private associations and foundations. d. Decisions issued under the laws on publications, publishing and licenses to publish newspapers and magazines. e. Decisions issued under the laws on weapons, ammunition and explosives licenses. f. Decisions issued under the laws on the entry, residence and deportation of foreigners. g. Decisions issued under the laws on expropriation for the common benefit. 4. Applications for compensation arising from the decisions described in paragraph 3 (b) and (c) of this Article, whether submitted directly or by proxy. 5. Administrative contract disputes."

of First Instance's decision. The appellants appealed the Court of First Instance's decision to the Court of Appeal, but the Court of Appeal affirmed the Court of First Instance's decision by proving the daughter's paternity.³⁶

The case was heard by the Court of Cassation, and the two appellants based their appeal on one reason: the Court of First Instance and the Appeals Court dealt with the issue of nationality by addressing the issue of proving the daughter's lineage, which includes nationality and the extraction of identification papers.³⁷ The Court of Cassation, on the other hand, dismissed the appeal, noting that under the Civil and Commercial Procedure Law of 1990, the Court of First Instance, consisting of three judges, has jurisdiction to rule in instances involving personal status. Proof of parentage is a question of personal status, not nationality, according to a provision of the Civil and Commercial Procedure Law of 1990.³⁸ Furthermore, the Court concluded that the law governing the registration of births and deaths provides that if a dispute arises over filiation, lineage, or any other personal status issue, the procedure for registering births and deaths must be suspended until the dispute is resolved by a competent court.³⁹

It turns out that the Qatari Court of Cassation specifically endorses the principle of abstention by refusing to address nationality considerations in another judgment. In a case heard in 2019, the Court of Cassation looked into the case of two appellants, one of them is a Qatari husband and the other a Palestinian wife. The wife filed a lawsuit in the Court of First Instance, asking for a ruling to overturn the Ministry of Interior's decision that the Palestinian wife was denied Qatari citizenship despite meeting all the requirements, including the passage of five years since her marriage, which allows her to obtain Qatari citizenship. The wife applied for citizenship, but the Ministry of Interior did not provide a decision, granting her Qatari citizenship.⁴⁰

The Court of First Instance concluded that it lacked jurisdiction over the case's merits, citing the fact that matters of nationality are outside of the judiciary's purview. The appellants appealed the Court of First Instance's decision to the Court of Appeal, which upheld the Court of First Instance's decision that matters of

³⁶ Civil and Commercial Matters (Appeal No. 291 of 2020 June 23, 2020).

³⁷ Civil and Commercial Matters (Appeal No. 291 of 2020 June 23, 2020).

³⁸ Civil and Commercial Procedure Law, Article 24, Law No 13 of 1990 states that "The Court of first instance which consists of three judges (referred to hereinafter as the Plenary Court) shall have jurisdiction to hear at first instance all lawsuits, civil and commercial disputes and administrative contracts if their value exceeds one hundred thousand Qatari Riyals (QR 100,000) as well as lawsuits of unknown value and lawsuits and disputes of personal status and succession. Its judgment shall be final in claims pertaining to inheritance, testament, *waqf* and dowry if the value of lawsuit does not exceed thirty thousand Qatari Riyals (QR 30,000). It shall also have jurisdiction to examine claims pertaining to the visitation rights to children in the custody of one parent, accompanying such children while traveling and custody payments. The court shall also have jurisdiction to decide on interlocutory applications, in addition to applications connected with the original application irrespective of their value or kind. It also has the exclusive jurisdiction to deliver judgments in lawsuits of bankruptcy, settlement or discharge from bankruptcy, ownership and other lawsuits provided for in the Law irrespective of their value. The Court of first instance has also the jurisdiction to deliver judgments on appeals submitted against judgments issued from the Summary Court or from the magistrate of summary therein."

³⁹ Registration of Births and Deaths Law, Article 35, Law No 3 of 2016.

⁴⁰ Court of Cassation, Appeal No. 555, a session on February 19, 2019 (The Court of Cassation of the State of Qatar 2019).

nationality were outside the courts' authority.⁴¹ The case was heard by the Court of Cassation, and the appellant's objection to the appeal ruling, which upheld the Court of First Instance's decision, was that the Court of First Instance had already considered the issue of nationality by simply adapting the appellant's request as an appeal against the Executive Authority's decision to deny the appellant's wife Qatari nationality despite the passage of five years. As a result, the court's judicial adjustment violates Article 13 of the Judicial Authority Law, which prohibits courts at all levels from considering citizenship matters.⁴² The Court of Cassation ruled that the appellants' reasoning was erroneous since matters of nationality are entrusted to the discretion of the executive authority, notably the Minister of Interior.⁴³

The Court of Cassation's refusal to consider cases involving nationality provisions relating to a citizen's political right to run for membership in the Shura Council and other nationality issues suggests that it avoids adjudicating nationality cases because it interferes with the executive authority's competence. When the executive power interferes with court judgments made in the name of the Emir of Qatar, the court's position is weakened.⁴⁴ Furthermore, the Emir can impeach judges through an Emiri decision, which is an executive tool that is even inferior to the Qatari Shura Council's legislative law.⁴⁵

IV. Nationality As An Argument For Sovereignty

It is worth mentioning that the clause prohibiting the judiciary from evaluating nationality issues relating to a candidate for Qatari Council membership contradicts the constitution.⁴⁶ The Judicial Authority Law, which prohibits the judiciary from examining citizenship rules directly or indirectly, was adopted by a council nominated entirely by the Emir and is not representative of the Qatari people in any way. The Shura Council has forty-five members, thirty of whom are elected and fifteen of whom are appointed by the Emir, according to Qatar's constitution.⁴⁷ Even if the Judicial Authority Law was passed in 2003 prior to the promulgation of the Qatari constitution in 2004, and the constitution states that what was passed previous to the 2005 constitution's adoption is still legitimate and

⁴¹ Court of Cassation, Appeal No. 555, a session on February 19, 2019 (The Court of Cassation of the State of Qatar 2019).

⁴² Court of Cassation, Appeal No. 555, a session on February 19, 2019 (The Court of Cassation of the State of Qatar 2019).

⁴³ Acquisition of Qatari Nationality Law, Article 8, Law No 38 of 2005. Also, see provisions of Law No. 21 of 1989 or Emiri decree No. 14 of 1993.

⁴⁴ The Permanent Constitution of the State of Qatar, Article 63, Constitution of 2004 states that "Judicial Authority shall be vested in the courts of law as prescribed in this Constitution, and judgments of the court shall be pronounced in the name of the Emir." Civil and Commercial Procedure Act 1990, Art. 69 states that "Judgments shall be delivered in the name of His Royal Highness, Emir of the State of Qatar." See Court of Cassation - Civil and Commercial Division - No.: 64 / 2012. See Judicial Authority Act 2003, Art. 14.

⁴⁵ Judicial Authority Law, Article 63, Law No 10 of 2003.

⁴⁶ Judicial Authority Law, Article 13, Law No 10 of 2003.

⁴⁷ The Permanent Constitution of the State of Qatar, Article 77 states that "The Shura Council shall consist of forty-five members, thirty of whom shall be elected by direct, general secret ballot, and the Emir shall appoint the remaining fifteen members from amongst the ministers or any other persons."

enforceable,⁴⁸ this is against the constitution's separation of powers principle.⁴⁹ Since the appointed members of the Shura Council are completely faithful to the executive authority, the legislative authority has no actual power in the appointed council era. The executive authority's decision to prevent the judiciary from reviewing nationality questions stems from the fact that nationality involves matters of sovereignty, as it falls under the political question theory. In the past, the executive authority considered nationality questions to be administrative activities, and hence nationality issues were subjects of sovereignty. As a result, nationality matters are outside the judiciary's jurisdiction and scrutiny.⁵⁰

Private law jurists in the Arab world believe that as long as nationality matters are linked to political matters, they will inevitably be deemed among the essential questions of sovereignty that fall outside the judiciary's jurisdiction.⁵¹ Regionally, not only does the Qatari judiciary support the view that nationality issues are matters of sovereignty that are not subject to judicial oversight, but the Iraqi Court of Cassation did so in 1970, holding that the Minister of Interior's discretionary authority falls within the state's sovereignty and may not be challenged.⁵² Legal analysts criticized the court for adopting this approach.⁵³ As a result, the judiciary has taken the position that nationality matters relating to parliamentary candidacy are within the executive authority's jurisdiction, whereas other nationality-related decisions are administrative decisions that cannot be appealed.⁵⁴ Citizenship issues, it should be noted, refer to all legal facts relating to any aspect of citizenship, including obtaining Qatari citizenship, citizenship issues related to candidacy for membership in the Qatari Shura Council, and other issues that are governed by the principle of subjecting them to the executive authority's jurisdiction and are not subject to judicial oversight.⁵⁵

It is unjust to the Qatari judiciary that subjugating all matters relating to nationality, which may deprive the candidate of a constitutional political right to represent the people in the Shura Council, is absolute power in the hands of the executive authority, which may be arbitrary given the candidate's lack of original Qatari nationality; this paralyzes the judiciary from even considering the possibility

⁴⁸ The Permanent Constitution of the State of Qatar, Article 143, states that "All provisions embodied in laws and regulations in force at the time this Constitution takes effect shall continue to be valid and effective unless where amended thereby. The enforcement of this Constitution shall not affect the provisions of the treaties and international agreements to which the State of Qatar is a party."

⁴⁹ The Permanent Constitution of the State of Qatar, Article 60.

⁵⁰ Meguenni Benamar, *'aemal alsayadat kaistithna' ean 'iikhtisas alqada' watutabyqatiha fi mawadi* Meguenni Benamar, *'Aemal Alsayadat Kaistithna' Ean 'Iikhtisas Alqada' Watutabyqatiha Fi Mawadi Aljinsay Dirasat Fi Alqanun Aljazayirii Walmuqaran* (Tiaret, Algeria : Ibn Khaldoun University, University , 2012) p.15.

⁵¹ Ezz El-Din Abdullah, *Private International Law* , vol. Part 1 (aljansayt wamarkaz al'ajanibi, matabie alhayyat almasrayt aleamat lilkitab, 1978) p. 587.

⁵² Court of Cassation, on January 22, 1970. Decision No. 35, huquqiyt thaniyt (The Court of Cassation of Iraq 1970)

⁵³ Mamdouh Abdel Karim Hafez, *Private International Law According to Iraqi and Comparative Laws* (Baghdad , Iraq: Dar Al-Hurriya for Printing and Publishing, 1977) p. 154-5.

⁵⁴ Court of Cassation (Civil Circuit) on June 26, 2000, Judgment No. 42/2000 (The Court of Cassation of the State of Kuwait 2000).

⁵⁵ Supreme Administrative Court, session December 20, 1992, Appeal No. 3111, Judicial Year 34. (Technical Office Group, Judicial Year 38) 342 (The Supreme Administrative Court of the Republic of Egypt 1992).

of administrative arbitrariness.⁵⁶ Examining the availability of the original nationality condition before the Qatari Court of Cassation, or amending the article relating to this condition by the Shura Council, which was elected for the first time on 10/2/2021, is one solution to the problem of executive authority's arbitrariness in matters of nationality.⁵⁷

If the principle of granting the executive authority the right to determine whether the candidate meets the condition of original nationality or not is recognized by constitutional jurisprudence, then the candidate must be granted the right to appeal the administrative decision at the implementation stage, in order to prevent those who, intend to run because the condition is not met. Giving the executive authority the capacity to legislate and implement at the same time is unthinkable.⁵⁸

Indeed, Qatar's executive authority has the capacity to legislate and implement on the question of nationality in relation to the Shura Council elections, which were held for the first time in Qatar's constitutional history on October 2, 2021. Emir Tamim bin Hamad Al Thani, Emir of the State of Qatar, issued the election law of 2021;⁵⁹ not only did the law impose unrealistic criteria on the candidate's original nationality, but it also required the voter to be a Qatari national.⁶⁰ Because most Qataris do not meet the criteria of original citizenship, these unattainable conditions are intended to achieve political purposes.⁶¹ Furthermore, the law empowers all military and civilian employees working for these military authorities to elect members of the Qatari Shura Council, which is unprecedented.⁶² Because of their unwavering commitment to the executive authority, the executive authority decided to allow soldiers to vote.

As a result, the Qatari legislator in the election law has drafted the articles of the law in accordance with the executive authority's objectives, which requires that the candidate be originally Qatari; as the concept of a Qatari as an original refers to the fact that his ancestors managed to live in Qatar before 1930, and this condition is not in line with most laws, including Arab legislation. For example, the Algerian legislator stipulates that the applicant must have Algerian nationality,

⁵⁶ Meguenni Benamar, *'aemal alsayadat kaistithna' ean 'iikhtisas alqada' watutabyqatiha fi mawadi* Meguenni Benamar, *'Aemal Alsayadat Kaistithna' Ean 'Iikhtisas Alqada' Watutabyqatiha Fi Mawadi Aljinsay Dirasat Fi Alqanun Aljazayirii Walmuqaran* (Tiaret, Algeria : Ibn Khaldoun University, University , 2012) p.16.

⁵⁷ The Egyptian Court of Cassation decided that Egyptian nationality is established by law for those who meet one of the cases stipulated in the Nationality Law. The court is finally competent to decide on its availability. Court of Cassation, Criminal Chamber, judgment dated October 28, 1952, set of cassation rulings (The Court of Cassation of the Republic of Egypt 1952).

⁵⁸ Meguenni Benamar, *'aemal alsayadat kaistithna' ean 'iikhtisas alqada' watutabyqatiha fi mawadi* Meguenni Benamar, *'Aemal Alsayadat Kaistithna' Ean 'Iikhtisas Alqada' Watutabyqatiha Fi Mawadi Aljinsay Dirasat Fi Alqanun Aljazayirii Walmuqaran* (Tiaret, Algeria : Ibn Khaldoun University, University , 2012) p.16.

⁵⁹ Election of the Shura Council Law, Law No 7 of 2021 was issued on 29th July 2021

⁶⁰ Election of the Shura Council Law, Article 1, Law No 7 of 2021

⁶¹ According to the last statistic of the Planning and Statistics Authority in March of 2022, the number of Qatar was 2,826,286, which includes non-Qataris. As for Qataris, they constitute a much smaller percentage of the total number, due to a large number of expatriate workers. Available at: <https://www.psa.gov.qa/ar/statistics1/StatisticsSite/pages/population.aspx>

⁶² Election of the Shura Council Law, Article 1, Law No 7 of 2021

regardless of whether it is original or acquired.⁶³ The Egyptian legislator stipulated that the nominee must be of Egyptian nationality and have an Egyptian father; dual nationality is not permitted.⁶⁴ Now, the article will discuss the Hong Kong model and the extent to which the Chinese factor interfered in the Hong Kong elections when the United Kingdom handed it over to China in 1997.⁶⁵

V. Legislative Council Elections Prior To The Sino-British Joint Declaration⁶⁶

Prior to the Sino-British Joint Declaration on 1 July 1997⁶⁷, the government realized that the Green Paper outlined the electoral roadmap⁶⁸ by proposing a wide-ranging constitutional reform that would allow the Hong Kong government to form a representative administration even during the British occupation.⁶⁹ The proposed method of election was indirect, as it occurred in 1985 and 1988, and the indirect election to the non-government members of the Legislative Council of Hong Kong was provided by the Electoral College, which consisted of several Councils.⁷⁰ Twenty-four unofficial members were elected at the proposal of the document, and the first election was held in 1985.

The first direct election for the Legislative Council took place in 1991.⁷¹ The 1995 election was the last Legislative Council election held under British rule. The Legislative Council consisted of 30 members selected by 29 Functional Constituencies, representing various sectors such as the social and economic sectors, 20 members elected by universal suffrage in 20 Geographical Constituencies, and 10 members selected by the Election Committee.⁷² The People's Republic of China did not accept the method of selecting members of the Legislative Council in 1995, so it formed a provisional Legislative Council on December 21, 1996, consisting of 60 appointed members, which went into effect

⁶³ The Algerian Organic Law of Election Law 16-10, Article 92.

⁶⁴ Egyptian House of Representatives Decree-Law, Article 8 states that: "...a candidate for membership of the House of Representatives must be an Egyptian, enjoying the Egyptian nationality individually..."

⁶⁵ See, Han Zhu, "Beijing's 'Rule of Law' Strategy for Governing Hong Kong," *China Perspectives* 1, no. 116 (2019): pp. 23-34.

⁶⁶ The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China signed the declaration, which states that "The Government of the People's Republic of China declares that to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories, hereinafter referred to as Hong Kong) is the common aspiration of the entire Chinese people and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997." For more information, see Official Publication, "Sino-British Joint Declaration on the Question of Hong Kong," *Loy. L.A. Int'l & Comp. L. Rev.* 7 (1984): p. 139.

⁶⁷ See, Ming K. Chan, "The Legacy of the British Administration of Hong Kong: A View from Hong Kong," *The China Quarterly*, no. 151 (1997): pp. 567-582.

⁶⁸ *Green Paper: The Further Development of Representative Government in Hong Kong*, 1984, 12.

⁶⁹ *Ibid*

⁷⁰ *Ibid*

⁷¹ "Historical Development of The Legislature, Legislative Council in Brief No.11"(Legislative Council Secretariat Education Service Team, 2022), <https://www.legco.gov.hk/education/files/pdf/en/Factsheet11.pdf>, 3.

⁷² Michael F. Martin, "Hong Kong's Legislative Council (Legco)" (Congressional Research Service, 2019), p. 1.

on July 1, 1997, the day Hong Kong was declared under the sovereignty of the People's Republic of China.⁷³

5.1 The Legislative Council Elections During The Hong Kong Special Administrative Region Period

On May 24, 1998, the first Legislative Council was convened in the Hong Kong Special Administrative Region (HKSAR).⁷⁴ As stated in the Joint Declaration, the Council of 1998 affirmed two fundamental principles, including "One Country, Two Systems" and "Hong Kong People Rule Hong Kong".⁷⁵

Hong Kong's Legislative Council elections were held on September 10, 2000⁷⁶, and the influence of Chinese identity was evident in the results. The drop in voter turnout from 53.29 percent in the 1998 elections to 43.32 percent in the 2000 elections exhibited the characteristics of interference. The decrease indicates China's intention to introduce its identity by increasing the vote share by five percent, which reached 29.6 percent, through pro-Beijing conservative party of Democratic Alliance for the Betterment of Hong Kong (DAB),⁷⁷ whereas support for the Democratic Party decreased by 8%.⁷⁸ Regarding the third Legislative Council elections, which were held on September 12, 2004, the Democratic Party and the pro-Beijing Party engaged in an intense rivalry. With 35 seats, the pro-Beijing party gained control of the legislature, while the opposition Democratic Party gained 25 seats.⁷⁹ In the fourth legislative council election, held on September 7, 2008, the Democratic Alliance for the Betterment of Hong Kong (DAB) party maintained its dominance with 37 seats, surpassing the Democratic Party's 23 seats.⁸⁰ This dominance was demonstrated by the pro-Beijing party's continued control of the Legislative Council polls in the fifth LegCo election, which was held on September 9, 2012, with the addition of 10 seats, bringing the total number of LegCo seats to 70 for the first time. The pro-Beijing party won nearly half of the geographical constituency seats with 17 out of 35 seats. Therefore, the pro-Beijing party won 43 of the 70 LegCo seats.⁸¹ With the sixth LegCo elections held on September 4, 2016, a new party called the Localists entered the electoral process for the first time, receiving the fewest seats after the pro-Beijing and Pan-Democratic parties. However, what is new about the 2016 elections is that the Pan-Democracy and Localists parties merged to form the Anti-establishment party,

⁷³ Michael F. Martin, "Hong Kong's Legislative Council (Legco)" (Congressional Research Service, 2019), p. 1.

⁷⁴ Shiu-hing Lo and Wing-yat Yu, "Election and Democracy in Hong Kong: The 1998 Legislative Council Election," *Occasional Papers/Reprint Ser. Contemp. Asian Stud*, 1999.

⁷⁵ Chee Keong Low and Tak Yip Low, "Selecting the Chief Executive of Hong Kong in 2017," *Lawasia*, 2013, pp. 19-37.

⁷⁶ Michael E. DeGolyer, "The Hong Kong SAR Legislative Council Elections of 2000," *China Perspectives* 32 (2000): pp. 49-56.

⁷⁷ Kit Poon, *The Political Future of Hong Kong: Democracy within Communist China* (Routledge, 2007), 72.

⁷⁸ *Ibid*

⁷⁹ "Legislative Council Election" (Electoral Affairs Commission, 2004).

⁸⁰ "Legislative Council Election" (Electoral Affairs Commission, 2008).

⁸¹ "Legislative Council Election" (Electoral Affairs Commission, 2012).

which won a total of 29 seats. Nonetheless, the pro-Beijing party retained a majority of 40 LegCo seats, ensuring victory.⁸²

Vi. Overview Of Candidature, Nomination, And Voting Arrangements Of Hong Kong Legco Election Of 2021

The Hong Kong Legislative Council (LegCo) general election for the seventh Legislative Council of Hong Kong was held on December 19, 2021.⁸³ The 2021 elections were not the same as the previous Hong Kong legislature elections due to a comprehensive overhaul of electoral rules imposed by Beijing, which increased the number of seats from 70 to 90.⁸⁴ This legislative reform reduced the number of seats for which geographical constituencies (GCs) nominate Legislative Council members from 35 to 20. The number of seats allocated to functional constituencies (FCs) remained unchanged at 30. The remaining 40 seats have been assigned to the 1500-person Election Committee.⁸⁵ Due to the COVID-19 pandemic, Chief Executive Carrie Lam has decided to postpone the elections to September 6, 2021, citing the Emergency Regulation Ordinance. Originally, the elections were scheduled to take place on September 6, 2020.⁸⁶ However, this sudden change resulted in widespread oppositional protests against the failure to reduce the number of GC seats from 35 to 20.⁸⁷ The government began repressing the riots by enforcing the Hong Kong National Security Law.⁸⁸ This crackdown led to the lowest voter turnout in the history of LegCo elections, despite the government providing free transportation and establishing polling stations at the Chinese border.⁸⁹

Voting for the Election Committee is open to all registered voters aged 21 or older who have ordinarily resided in Hong Kong for at least three years prior to the nomination period. Accordingly, according to the Election Committee's voting procedure, only its 1,500 members are eligible to vote. Each member of the EC is required to nominate forty candidates, and the forty candidates who received the most votes will be returned to the election.⁹⁰ The same conditions apply to the Election Committee for the Functional Constituency, with the exception that only

⁸² "Legislative Council Election" (Electoral Affairs Commission, 2016).

⁸³ *Improving Electoral System*. 2021. Part 2. Vol. Clause 4.

⁸⁴ Zen Soo and Ken Moritsugu, "China Sharply Reduces Elected Seats in Hong Kong Legislature," *Associated Press*, March 30, 2021, <https://apnews.com/article/china-reduces-seats-hong-kong-legislature-328bd38c45f351348f10b56d1c1c1a81>.

⁸⁵ Research Office, Information Services Division, Legislative Council Secretariat, *Statistical Highlights: 2021 Legislative Council Election* (24 February 2022)

⁸⁶ "Legco General Election Postponed for a Year," *Hong Kong Government*, July 31, 2020, <https://www.info.gov.hk/gia/general/202007/31/P2020073100898.htm>.

⁸⁷ Ramzy, Austin. "Hong Kong Delays Election, Citing Coronavirus. The Opposition Isn't Buying It." *New York Times*. July 31, 2021. <https://www.nytimes.com/2020/07/31/world/asia/hong-kong-election-delayed.html>.

⁸⁸ Helen Regan "China passes sweeping Hong Kong national security law." *CNN*, June 30, 2020, <https://edition.cnn.com/2020/06/29/china/hong-kong-national-security-law-passed-intl-hnk/index.html>

⁸⁹ Selina Cheng, "Hong Kong 'patriots' poll results: Lowest election turnout yet, as pro-govt candidates sweep into legislature." *Hong Kong Free Press*, December 20, 2021, <https://hongkongfp.com/2021/12/20/hong-kong-patriots-poll-results-lowest-election-turnout-yet-as-pro-govt-candidates-sweep-into-legislature/>

⁹⁰ *Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures*. 2021. Vol. Annex II.

eligible individuals and corporations may vote in the Functional Constituency.⁹¹ In contrast to the Election Committee and the Functional Constituency, the Geographical Constituency accommodates the highest number of direct elections. It permits all registered voters to vote based on the electoral district to which they belong.⁹²

4.1 The Eligibility Of Nomination And The Hong Kong Concept Of A 'Nation'

Although China and the United Kingdom signed the Sino-British Joint Declaration, this document did not address the principle of citizenship status for the indigenous people of Hong Kong, given that a nationality law would be issued for the Hong Kong people upon Hong Kong's independence from the United Kingdom.⁹³ The assumption of a nationality law for the Hong Kong people is a logical course of action, considering that when the United Kingdom ended its presence in Hong Kong, the next logical step would be to grant Hong Kong independence. However, the end of British occupation of Hong Kong did not result in the establishment of a nationality law for Hong Kong's citizens, but rather the transfer of Hong Kong's sovereignty to the People's Republic of China.⁹⁴

The procedure for transferring Hong Kong's sovereignty to the People's Republic of China as opposed to granting Hong Kong independence has resulted in a fundamental problem regarding the nationality of candidates for the Hong Kong LegCo because the people of Hong Kong lack a sense of national identity.⁹⁵ Two major factors contribute to the eradication of the Hong Kong people's nationality in relation to a LegCo candidate's nationality. The first factor relates to Article 67 of the Hong Kong Basic Law, while the second factor is specified in the Legislative Council Ordinance (Cap. 542), as of the most recent revision in May 2021.⁹⁶ Article 67 of the Basic Law provides that:

The Legislative Council of the Hong Kong Special Administrative Region shall be composed of Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country. However, permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the Region, provided that the proportion of such members does not exceed 20 percent of the total membership of the Council.

⁹¹ *Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures*. 2021. Vol. Annex II.

⁹² *Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures*. 2021. Vol. Annex II.

⁹³ Robin M. White, "Nationality and Hong Kong: A Tragedy in Five Acts," *Asia PAC. L. REV.* 6 (1998), 24.

⁹⁴ See D Podmore, *The Population of Hong Kong' in Hong Kong: The Industrial Colony* (Hong Kong: Hong Kong UP, 1971).

⁹⁵ John M., "O'Sullivan, Nationality as a Claim to Sovereignty," *An Irish Quarterly Review* 14, no. 56 (1925), 633-634.

⁹⁶ The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Article 67 and the Legislative Council Ordinance (Cap. 542), Art. 37 (1), (2), and (3) with regard to "Who is eligible to be nominated as a candidate."

The article specifies that a candidate for a seat in the Legislative Council must hold Chinese citizenship to be eligible for nomination.⁹⁷ The Draft of the Basic Law of 1988 did not include any specific requirements for Legislative Council candidacy, and there was no provision for a restriction on a candidate's nationality, even in the Sino-British Joint Declaration on the Question of Hong Kong.⁹⁸ Because Hong Kong is a global financial center, there are no special requirements for candidates.⁹⁹ Restrictive conditions regarding the candidate's nationality were not imposed until after the United Kingdom had violated the Joint Declaration's content by granting 50,000 Hong Kong households full British citizenship with the right of abode in the United Kingdom. As a result, the Basic Law 1989 Drafting Committee included Article 67 of the Hong Kong Basic Law.¹⁰⁰

Article 67, on the other hand, allows permanent residents of Hong Kong who have the right of abode in a foreign country to run as long as they do not exceed 20% of the total seats in the Legislative Council.¹⁰¹ In other words, a resident with a foreign nationality may run for the LegCo. Except for Australia, some countries, including the United States, Canada, the United Kingdom, and New Zealand, allow their citizens to hold dual citizenship of a foreign country while running for legislative office. In New Zealand, running for Parliament is not permitted, especially if the candidate is of foreign nationality.¹⁰² Accordingly, the principle of the right of abode in a foreign country in accordance with Article 67 of the Basic Law of Hong Kong is not in the interest of the indigenous people of Hong Kong; as the article seeks to marginalize the identity of the people of Hong Kong as an independent nation, and the article gives the right to a Chinese national and a foreign national the right to represent the nation, which indicates that the Basic Law believes in diversity and does not adopt the principle of indigenous peoples of Hong Kong.¹⁰³

The question remains, however, as to why a candidate with Chinese citizenship who resides in Hong Kong is not permitted to have the right of abode in a foreign country. Is it related to Hong Kong's Legislative Council disloyalty? The intent of the drafters of article 67 in stipulating that a candidate who holds Chinese citizenship should not hold foreign citizenship was not necessarily related to the issue of loyalty, but rather to the circumstances in which there are doubts about the resumption of sovereignty over Hong Kong in 1997, and the effect of the

⁹⁷ Simon N.M. Young, *Elected By Elite: Functional Constituency Legislators and Elections* (Hong Kong University Press, 2006), 120.

⁹⁸ Simon N.M. Young, *Elected By Elite: Functional Constituency Legislators and Elections* (Hong Kong University Press, 2006), 121.

⁹⁹ Xiao Weiyun, *One Country, Two System: An Account of the Drafting of the Hong Kong Basic Law* (Beijing: Peking University Press, 2001), 314.

¹⁰⁰ Xiao Weiyun, *One Country, Two System: An Account of the Drafting of the Hong Kong Basic Law* (Beijing: Peking University Press, 2001), 314.

¹⁰¹ Simon N.M. Young, *Elected By Elite: Functional Constituency Legislators and Elections* (Hong Kong University Press, 2006), 121.

¹⁰² C. Morris, "On Becoming (and Remaining) a Member of Parliament," *Public Law*, 2004, 11. See also, P.J. Spiro, "Dual Nationality and the Meaning of Citizenship," *Emory Law Journal* 46 (1997), 1411. See also K. Scherner-Kim, "The Role of the Oath of Renunciation in Current US Nationality Policy- To Enforce, To Omit, or Maybe to Change," *Georgetown Law Journal* 88 (2000), 329.

¹⁰³ Simon N.M. Young, *Elected By Elite: Functional Constituency Legislators and Elections* (Hong Kong University Press, 2006), 123.

principle of not allowing the right of abode in a foreign country constitutes a step to repel the British-Hong Kong immigration policy before 1997, especially since this policy has been marginalized by the people of Hong Kong after economic and political stability has been achieved since 1997.¹⁰⁴

Aside from Hong Kong's legislature, Chinese citizenship is necessary for the exercise of executive power in Hong Kong, as all key officials exercising executive power must hold Chinese citizenship. The tendency of the People's Republic of China to impose Chinese citizenship on principal officials of the executive authority in Hong Kong is nothing more than the formalization of the concept of a single, directly subordinate executive authority.¹⁰⁵ The candidates must be Hong Kong permanent residents without the right of abode in a foreign country.¹⁰⁶

As for the Legislative Council, in contrast to the conditions of the executive branch, which require members of the executive branch to hold Chinese citizenship, the candidates for the Legislative Council should represent the greatest diversity possible so that the people are represented rather than being limited to impossible conditions, provided that such candidates do not exceed 20 percent of the total seats of the Legislative Council of Hong Kong.¹⁰⁷

4.2 How to Implement Article 67's Twenty Percent Factor

Initially, the rules governing candidacy are applicable prior to the beginning of the election, until it is determined that the candidates meet the 20 percent requirement specified in Article 67 of the Basic Law. This approach is known as ex-ante implementation. The second alternative is for the Electoral Affairs Commission, which has the power to supervise elections, to implement rules that modify the Hong Kong Legislative Council election results so that the 20 percent threshold is not exceeded.¹⁰⁸ This technique is known as ex-post implementation. Since the establishment of the first legislature in 1998, the Hong Kong government has frequently adopted an ex-ante implementation strategy.¹⁰⁹ However, the 20 percent will go specifically to the 28 FCs, as these constituencies represent Hong Kong, such as tourism, and it is a concession to businessmen and professionals with foreign citizenship or the right to reside abroad.¹¹⁰ The 20 percent was negotiated between the People's Republic of China and the United Kingdom, with China proposing the 20 percent, and the citizenship rule subject to the Basic Law

¹⁰⁴ Simon N.M. Young, *Elected By Elite: Functional Constituency Legislators and Elections* (Hong Kong University Press, 2006), 123.

¹⁰⁵ The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Article 61 states, "The principal officials of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country..."

¹⁰⁶ See Ngok Ma, "The Rise of 'Anti-China' Sentiments in Hong Kong and the 2012 Legislative Council Elections," *China Review* 15, no. 1 (2015): pp. 39-66.

¹⁰⁷ Simon N.M. Young, *Elected By Elite: Functional Constituency Legislators and Elections* (Hong Kong University Press, 2006), 123.

¹⁰⁸ Electoral Affairs Ordinance (Cap.541), Article. 4(b).

¹⁰⁹ Simon N.M. Young, *Elected By Elite: Functional Constituency Legislators and Elections* (Hong Kong University Press, 2006), 123.

¹¹⁰ Christine Loh, *Underground Front: The Chinese Communist Party in Hong Kong* (Second Ed., Hong Kong University Press 2018) 180.

will be implemented in 1995. The ninth session of these negotiations took place on August 16-17, 1993.¹¹¹

V. The Court Of Final Appeal And Matters Of Nationality

In its first constitutional ruling in Hong Kong, the Court of Final Appeal (CFA) was unanimous in *Ng Ka Ling v. Director of Immigration*,¹¹² in which the Court affirmed its power to engage in judicial oversight on all matters, including of course questions of nationality, even after the handover of the Hong Kong sovereignty from the United Kingdom to the People's Republic of China (PCR). The decision of the judgment reads:

[The Hong Kong courts] undoubtedly have the jurisdiction to examine whether legislation enacted by the legislature of the Region or acts of the executive authorities of the Region are consistent with the Basic Law and, if found to be inconsistent, to hold them to be invalid. The exercise of this jurisdiction is a matter of obligation, not of discretion so that if inconsistency is established, the courts are bound to hold that a law or executive act is invalid at least to the extent of the inconsistency...¹¹³

However, the Basic Law limits the jurisdiction of the Court of Final Appeal to consider some issues that are exclusively within the purview of the executive authority, such as defense and foreign affairs. This necessarily means that the issues of nationality related to the candidates can be dealt with in court rulings.¹¹⁴ In the following paragraphs, the focus will be on the nationality-related decisions of the Court of Final Appeal, whether they pertain to the affairs of LegCo candidates or other nationality issues, in order to demonstrate that the Court has the authority to consider nationality issues.

In *Ng Ka Ling*, the applicants, who were born on the Mainland to Hong Kong permanent residents, argued that their constitutional right of abode in Hong Kong under Article 24(3) of the Basic Law¹¹⁵ was violated by immigration legislation passed by the PLC days after the transfer of sovereignty from the United Kingdom to the People's Republic of China. The Immigration Act, which the applicants believed violated their constitutional right of abode, stipulates that Chinese nationals who reside in the Mainland and wish to exercise the right of abode by descent must obtain permission from the Mainland's Director of Immigration in order to travel to Hong Kong.¹¹⁶ However, the Court ruled that not only does it have

¹¹¹ Lo Shiu Hing, *An Analysis of Sino-British Negotiations Over Hong Kong's Political Reform*, vol. 16 (Contemporary Southeast Asia, 1994), 187.

¹¹² (1999) 2 HKCFAR 4.

¹¹³ *Ng Ka Ling v Director of Immigration*, Decision of the Court of Final Appeal No. 2 HKCFAR 4 (The Court of Final Appeal of Hong Kong 1999). 25.

¹¹⁴ The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Article 19.

¹¹⁵ The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Article 24. reads: The permanent residents of the Hong Kong Special Administrative Region shall be: (1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region; (2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region; (3) Person of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2).

¹¹⁶ See para. 2(c) of Schedule 1 of the Immigration (Amendment) (No 3) Ordinance; *Ng Ka Ling v Director of Immigration*, Decision of the Court of Final Appeal No. 2 HKCFAR 4 (The Court of Final Appeal of Hong Kong 1999). 25.

the authority to invalidate legislation enacted by a local legislature that is inconsistent with the provisions of the Basic Law, but it also has the duty to issue a declaration of invalidity¹¹⁷ if the statutory laws of NPC or its Standing Committee NPCSC are found to be inconsistent with the Basic Law.¹¹⁸ The Court ruled that the Immigration Ordinance¹¹⁹ was unconstitutional because it required Hong Kong permanent residents residing on the Mainland to obtain a one-way permit prior to exercising their right of abode.¹²⁰

The Court's decision did not appease the Beijing government, which began to fear that the Court would uphold its authority to challenge the Beijing government's sovereignty with regard to the binding interpretation of the provisions of the immigration law. The Hong Kong government requested clarification of the Court's ruling in the Ng Ka Ling case. The Court responded to the Hong Kong government's request due to the controversy surrounding the court's ruling in the Ng Ka Ling case and the serious consequences it could bring, which could strain relations between the Beijing and Hong Kong governments. The Court issued a clarification, but this clarification was subject to the constitutional interpretation policy of Beijing. The Court then acknowledged that the NPCSC had the authority to issue a constitutional interpretation in accordance with Article 158 of the Basic Law, and that even the Hong Kong courts were required to follow this interpretation.¹²¹ The Court held that "the Court accepts that it cannot question ... the authority of the National People's Congress or the Standing Committee to do any act which is in accordance with the provisions of the Basic Law and the procedure therein".¹²² In its statement, the Court indicated that it has the authority to declare NPC or NPCSC legislative acts unconstitutional if they violate the Basic Law.¹²³

Assuming that the Court has jurisdiction over issues of the right of abode and that it does not violate Article 19 of the Basic Law, does it have the authority to intervene in the internal affairs of the LegCo?

The principle of non-interference in the internal affairs of the Legislative Council of Hong Kong is one of the constitutional principles adopted by the Court, as it guarantees that candidates and members of the LegCo will not be subject to pressures due to the Court's interference in the internal affairs of the Legislative Council.¹²⁴

¹¹⁷ Ng Ka Ling v Director of Immigration, Decision of the Court of Final Appeal No. 2 HKCFAR 4 (The Court of Final Appeal of Hong Kong 1999). 26.

¹¹⁸ Ng Ka Ling v Director of Immigration, Decision of the Court of Final Appeal No. 2 HKCFAR 4 (The Court of Final Appeal of Hong Kong 1999). 25.

¹¹⁹ Cap 115.

¹²⁰ In another example, in Chan Kam Nga v Director of Immigration, Decision No. 1 HKLRD 304 (The Court of Final Appeal of Hong Kong 1999).

¹²¹ Ng Ka Ling v Director of Immigration, Decision (No 2) 2 HKCFAR 141 (The Court of Final Appeal of Hong Kong 1999).

¹²² Ng Ka Ling v Director of Immigration, Decision (No 2) 2 HKCFAR 141 at 142 (The Court of Final Appeal of Hong Kong 1999).

¹²³ Albert HY Chen and Anne SY Cheung, "Debating the Rule of Law in Hong Kong," in *Asian Discourses of Rule of Law* (London: Routledge, 2004), 257.

¹²⁴ Han Zhu, "Beijing's 'Rule of Law' Strategy for Governing Hong Kong," *China Perspectives* 1, no. 116 (2019): pp. 23-34.

In *Leung Kwok Hung v President of the Legislative Council (No 1)*,¹²⁵ the Court had upheld the principle of non-interference in the Legislative Council's internal affairs. The Court ruled that when interpreting the application of the Statute's provisions, it is necessary to apply common law principles, including the constitutional principle that "the courts will not intervene to rule on the regularity or irregularity of the internal processes of the legislature but will leave it to [the Legislature to] determine exclusively for itself matters of this kind".¹²⁶

In *Leung Kwok Hung* case, during the relevant LegCo debate, two lawmakers attempted to filibuster a legislative bill by introducing hundreds of amendments. After 33 hours of uninterrupted debate, the President invoked Rule 92 of the Rules of Procedure,¹²⁷ which states that if a matter is raised that is not covered by the Rules of Procedure, the practice and procedure followed by the LegCo, the President will decide to end the debate.¹²⁸

Regarding the Court's decision in the *Leung Kwok Hung* case, the most crucial question is whether Article 73(1) of the Basic Law, which enables the LegCo to "enact, amend or repeal laws in accordance with the provisions of [the Basic Law] and legal procedures"¹²⁹ to ensure that the Hong Kong courts exercise their jurisdiction over the conformity of the process of lawmaking of the LegCo with the Rules of Procedure of the LegCo of Hong Kong. The Court noted that Article 73(1) of the Statute did not address whether a failure to comply with legal procedures during the legislative process could result in the invalidity of a law enacted after the non-compliance. Since Article 73 (1) is ambiguous on the issue of noncompliance, the Court ruled that the constitutional provisions do not alter the nature of the principle of non-interference in the Hong Kong LegCo's affairs.¹³⁰

VI. Conclusion

In conclusion, it was found out that the Qatari legislator only allows native Qataris to run for membership in the Qatari Shura Council, which was elected for the first time on October 2, 2021, even though the Shura Council's history dates

¹²⁵ *Leung Kwok Hung v President of the Legislative Council, Decision (No 1) (2014) 17 HKCFAR 689 at [28]* (The Court of Final Appeal of Hong Kong 2014).

¹²⁶ *Ibid*

¹²⁷ Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (Made by the Legislative Council of the Hong Kong Special Administrative Region on 2 July 1998 in Pursuance of Article 75 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China); Article 75(2) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China reads: "[t]he rules of procedure of the Legislative Council shall be made by the Council on its own, provided that they do not contravene this Law".

¹²⁸ Rule 92 of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (Made by the Legislative Council of the Hong Kong Special Administrative Region on 2 July 1998 in Pursuance of Article 75 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China) reads: "[i]n any matter not provided for in these Rules of Procedure, the practice and procedure to be followed in the Council shall be such as may be decided by the President who may, if he thinks fit, be guided by the practice and procedure of other legislatures".

¹²⁹ The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Article 73(1) reads: "The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions: ... [t]o enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures".

¹³⁰ *Leung Kwok Hung v President of the Legislative Council, Decision (No 1) (2014) 17 HKCFAR 689 at [38]* (The Court of Final Appeal of Hong Kong 2014).

back to 1972 under the 1972 amended provisional constitution. The permanent constitution of the State of Qatar for the year 2004 is the first constitution in Qatari history to provide for the acceptance of the idea of an elected Consultative Council. Article 77 establishes an elected Shura Council; however, it has not been used since 2004 until the first election day in the history of the Shura Council on October 2, 2021.

Given that the State of Qatar was under British Mandate, the legislator's recognition of the category of indigenous Qataris who have been in Qatar since 1930 creates the possibility of tying the legislation of 1930 with the question of whether the citizen is a native Qatari or not. The date of 3rd September 1971 is reasonably expected to be picked since it is the date of Qatar's independence, and Qatar has gained full sovereignty over its land, sea, and air borders. As a result, due to the exercise of the right to be elected by a tiny group of Qataris, criticism of the 2005 Nationality Law increased, and legal scholars preferred to adopt the Nationality Law of 1961, which was issued and has never been enforced since its issuance. The fact that the Qatari candidate for Shura Council membership is Qatari by birth is linked to the fact that everyone who obtains Qatari citizenship is denied the ability to be elected, and the principle of disenfranchisement is applied indefinitely to all his descendants.

Concerning Election Legislation No. 6 of 2022, which favors the executive power, the Emir appoints all members of the Shura Council who passed the new election legislation for 2021. As a result, the executive branch would wield significant power over the council. As for the judiciary, all nationality issues are totally at the discretion of the executive power, with no other body, including the judiciary, participating in the issuance of countermeasures. The Judicial Authority Law of 2003, on the other hand, prohibits courts from dealing directly or indirectly with matters of nationality and acts of sovereignty. As a result, the government's decision to exclude a candidate from the Qatari Shura Council elections on the grounds that he is not a Qatari native is considered final and cannot be challenged in court.

As for Hong Kong, although the People's Republic of China established its sovereignty over Hong Kong in 1997, Hong Kong has a different nationality system than the People's Republic of China, which affects Hong Kong Legislative Council candidates. First, Hong Kong has a cosmopolitan character; since people of different nationalities can live and work, and for the most part, there is no law that distinguishes them from the people of Hong Kong. This implied that Chinese nationality could not be the sole determinant of rights and responsibilities. The second reason relates to Hong Kong's autonomy, which necessitates a distinction between Chinese nationals on the mainland and Chinese nationals with a connection to Hong Kong.¹³¹

Hong Kong attained its cosmopolitanism by negating the principle of nationality, especially after a person was admitted to the territory. Long ago, a

¹³¹ Yash Ghai, "Nationality and the Right of Abode," *Hong Kong L.J.* 26 (1996), 155.

person's right to reside in Hong Kong was determined by their place of birth rather than their nationality.¹³² Therefore, any question regarding the nationality of a candidate for the Legislative Council of Hong Kong shall be governed by the Basic Law of Hong Kong, which shall provide for the enactment of a law for the Government of Hong Kong on matters of nationality, so that members of the Legislative Assembly of Hong Kong are no longer subject to the Chinese Nationality Law.

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¹³² Yash Ghai, "Nationality and the Right of Abode," *Hong Kong L.J.* 26 (1996), 155-6.

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