

*National Institution for Human Rights (NIHR)'s Opinions on the
Draft Law to Modify some of the Provisions of the Law No. (37) of 2012 on the
Issuance of the Child Law*

(Executive Summary)

In consideration of the efforts undertaken by the esteemed Council of Representatives in all matters related to the human rights issue, being the constitutional organization vested in the protection of public rights and freedoms, and in appreciation for the considerations targeted by the Draft Law to modify some of the provisions of the Law No. (37) of 2012 on the issuance of the Child Law, which stipulates, as mentioned in the attached Explanatory Note, to replace the "Ministry of Human Rights", which has been cancelled, with the "National Institution for Human Rights (NIHR)", and to redistribute the terms of reference and tasks between Ministry of Labor and Social Development, which is concerned with child affairs, and the NIHR, in terms of the importance of having a body or authority to be concerned with children's rights and the protection thereof, and upon request of the Council of Representatives' Committee on Women and Child Affairs, the NIHR hereby refers its opinions on the Draft Law to the esteemed Committee, taking into consideration the relevant provisions of the Constitution as well as international human rights instruments and conventions.

Therefore, the NIHR's opinions, as detailed below, shall be limited to the current Draft Law to the extent it finds directly touching or influential upon basic human rights and freedoms, otherwise, it shall refer anything related to formal observations and legal drafting to the concerned Committee in your esteemed Council, being the body with the authentic capacity in this regard.

First: Articles No. (11), (12), (18), (19), (51) and (55) of the Draft Law:

Articles No. (11), (21) and (51):

The NIHR agrees in principle upon its engagement in membership of the National Committee on Childhood and the Board of Directors of the Child Protection Center, both include in their memberships ministries, competent governmental bodies and relevant civil society institutions. The NIHR, however, asserts the importance that such membership may not contradict with the terms of reference entrusted to it pursuant to its Establishment Law as well as "the Paris Principles" that are deemed the legal reference of the NIHR's work on the one hand, or the terms of reference entrusted to the National Committee on Childhood and the Child Protection Center on the other hand.

Articles No. (18) and (19):

The NIHR agrees in principle to consider the kindergartens as the place dedicated to care for children under **the age of three** as stipulated in the Draft Law instead of **the age of four** as stipulated in the original Law. However, this matter should be referred to the competent governmental body for opinion.

The NIHR further believes that assigning to it the periodic supervision on kindergartens is actually achieved in reality in a broader and more comprehensive way pursuant to the provisions of Article (12) Paragraphs (d) and (g) of its Establishment Law.

Article (55):

The NIHR agrees in principle upon the Draft Law provision, which stipulates that the Board of Directors of the Child Protection Center shall prepare quarterly reports on the Center's efforts, activities and whole work. However, the NIHR believes that such reports should better be annual or semi-annual at a minimum. But this matter should be referred to the competent governmental body for opinion. In addition, the NIHR believes that it is preferable to redraft the current Article to conform with the sound legal drafting style in this regard.

Second: Articles No. (20), (21), (23), (38), (43) and (56) of the Draft Law:

The NIHR agrees upon the modifications mentioned in the Draft Law, which grant the NIHR supervisory or regulatory terms of reference or powers, jointly with the concerned governmental bodies, to enforce some of the provisions of the current Law, and believes that the essence of such modifications is more accurately achieved in reality in a comprehensive and detailed manner, pursuant to Article (12) Paragraphs (b), (c), (e), (f), and (g) of the NIHR's Establishment Law.

Third: Articles No. (22), (25), (26), (28), (40) and (54) of the Draft Law:

The NIHR believes that the modifications covered by the abovementioned Articles shall neither prejudice or affect the public rights or freedoms related to the children's category, as they are merely formal modifications due to the cancellation of the "Ministry of Human Rights" and transferal or its terms of reference to the "Higher Committee for Human Rights" under presidency of the "Ministry of Foreign Affairs" as well as the merge of Ministry of Labor and Ministry of Social Development under the title of "Ministry of Labor and Social Development".

Therefore, the NIHR finds it preferable to introduce a new Article in the Draft Law, which stipulates the replacement of the phrase "ministry concerned with child affairs" with the phrase "Ministry of Human Rights and Social Development", and which replaces the phrase "minister concerned with child affairs" with the phrase "Minister of Human Rights and Social Development", whenever they are referred to in that Law, in order to avoid redundancy and prolongation in the Draft Law, the matter which corresponds with the proper approach taken by the Bahraini legislator in the drafting of national laws and legislations. Moreover, Article (40) of the Draft Law replaces the phrase "Minister of Media Affairs and Culture and Monuments Authority" with the phrase "Minister of Culture" although the correct name of the authority is "Bahrain Authority for Culture and Monuments".

Explanatory Note

Introduction:

In consideration of the efforts undertaken by the esteemed Council of Representatives in all matters related to the human rights issue, being the constitutional organization vested in the protection of public rights and freedoms, and in appreciation for the considerations targeted by the Draft Law to modify some of the provisions of the Law No. (37) of 2012 on the issuance of the Child Law, which stipulates, as mentioned in the attached Explanatory Note, to replace the “Ministry of Human Rights”, which has been cancelled, with the “National Institution for Human Rights (NIHR)”, and to redistribute the terms of reference and tasks between Ministry of Labor and Social Development, which is concerned with child affairs, and the NIHR, in terms of the importance of having a body or authority to be concerned with children’s rights and the protection thereof, and upon request of the Council of Representatives’ Committee on Women and Child Affairs, the NIHR hereby refers its opinions on the Draft Law to the esteemed Committee, taking into consideration the relevant provisions of the Constitution as well as international human rights instruments and conventions.

And whereas the abovementioned Draft Law includes the replacement of the provisions of Articles No. (11), (12), (18), (19), (20), (21), (22), (23), (25), (26), (28), (38), (40), (43), (51), (54), (55) and (56) of Law No. (37) of 2012 on the issuance of the Child Law.

And whereas the NIHR’s terms of reference, pursuant to the provisions of Article (12) Paragraph (b) of its Establishment Law No. (26) of 2014, stipulate that:

“The NIHR may study legislations and codes applicable in the Kingdom of Bahrain, which are relevant to human rights, and recommend modifications it finds appropriate, especially with regard to conformity of such legislations with Bahrain’s international human rights commitments, and may further recommend the issuance of new legislations relevant to human rights”.

Therefore, the NIHR’s opinions, as detailed below, shall be limited to the current Draft Law to the extent it finds directly touching or influential upon basic human rights and freedoms, otherwise, it shall refer anything related to formal observations and legal drafting to the concerned Committee in your esteemed Council, being the body with the authentic capacity in this regard.

First: Articles No. (11), (12), (18), (19), (51) and (55) of the Draft Law:

Article (11):

The draft Article:

A National Committee for Childhood shall be formed, by decree of the Council of Minister, under chairpersonship of Minister of Labor and Social Development and membership of representatives of Ministry of Labor and Social Development, Ministry of the Interior, **the NIHR**, Ministry of Education, Supreme Council for Women, Public Prosecution, **Ministry of Information Affairs**, Ministry of Health, Ministry of Justice, Islamic Affairs and Endowments, Ministry of Foreign Affairs, Bahrain University and **Ministry of Youth and Sports**, as well as two members from civil society institutions concerned with childhood.

Article (12):

The draft Article:

The National Committee for Childhood shall have the following terms of reference:

1. To propose a national strategy on childhood **to act on improving the conditions of children in the Kingdom of Bahrain** and to assist the bodies concerned with childhood in the development and enhancement of their projects and programs that serve and secure child's rights, **which are safeguarded by Islam, guaranteed by the Constitution of the Kingdom of Bahrain and emphasized by the international conventions without discrimination.**
2. To monitor and study the problems and basic needs of **the childhood sector in various social, educational, health, psychological and physical fields, to determine problems and challenging facing this sector** and to propose appropriate solutions as well as **policies**, legislations and recommendations to the competent official bodies in the Kingdom of Bahrain.
3. To coordinate and cooperate among various governmental bodies and civil institutions on the childhood issue.
4. **To find new and effective mechanisms for the enhancement of cooperation and coordination among all relevant parties concerned with child development and protection process.**
5. **To find a mechanism for the assessment of initiatives of childhood sector so as to be more effective.**
6. To cooperate with regional, Arab and international competent authorities and organizations working in the childhood field and to benefit from their expertise and programs to achieve its goals.
7. To establish a detailed information base for everything related to childhood in the Kingdom of Bahrain and to attempt to follow-up the updating thereof in coordination



8. To prepare national reports on international conventions signed by the Kingdom of Bahrain, especially the International Convention on Child Rights.

Article (51):

The draft Article:

The Board of Directors of the Child Protection Center shall be formed every 3 years by virtue of decree of the **Minister of Labor and Social Development**, which shall comprise representative members from Ministry of Justice, Islamic Affairs and Endowments, Ministry of the Interior, Ministry of Health, Ministry of Education, Ministry of Labor and Social Development, **Ministry of Information Affairs**, **the NIHR** and Supreme Council for Women as well as two members from civil society institutions.

NIHR's opinions:

The NIHR agrees upon the importance of being involved in the national committees on the human rights of certain categories and the centers on the protection of a certain human right, since such membership creates participatory work between competent governmental bodies and relevant civil society institutions and the NIHR, the matter which is positively revealed in the enhancement and protection of the human rights for this specific category in the state system. However, in all cases, such membership in the national committees or specialized centers may not contradict with the NIHR's terms of reference entrusted to it pursuant to its Establishment Law, which derives from the Paris Principles on relevant national institution centers for enhancement and protection of human rights, being an international constitution for the NIHR's work.

On this basis, the NIHR agrees in principle upon its engagement in membership of the National Committee on Childhood and the Board of Directors of the Child Protection Center, both include in their memberships ministries, competent governmental bodies and relevant civil society institutions. The NIHR, however, asserts the importance that such membership may not contradict with the terms of reference entrusted to it pursuant to its Establishment Law on the one hand or the terms of reference entrusted to the National Committee on Childhood and the Child Protection Center on the other hand, especially as Article (12) Paragraph (8) of the Draft Law assigns to the National Committee on Childhood the mission to prepare national reports on international conventions signed by the Kingdom of Bahrain related to the child, which contradicts with the terms of reference of the national human rights institutions deriving their legal reference of work from Paris Principles, which state that the NIHR may consult with the government and give its opinions and notes rather than preparing reports on international human rights conventions instead of the government, since the Establishment Law of the NIHR assigns to it the mission of submitting reports analogous to the national reports of international committees on human rights, which may not contradict with the terms of reference of its membership in the National Committee on Childhood and the Board of Directors of the Child Protection Center.

In addition, the NIHR believes that Article (12) of the Draft Law requires redrafting on the legal perspective in the introduced or proposed settings, since some of the terms of reference mentioned therein are characterized by ambiguity, generality and unintelligibility.

Therefore, the NIHR agrees in principle upon its engagement in membership of the National Committee on Childhood and the Board of Directors of the Child Protection Center, both include in their memberships ministries, competent governmental bodies and relevant civil society institutions. The NIHR, however, asserts the importance that such membership may not contradict with the terms of reference entrusted to it pursuant to its Establishment Law as well as “the Paris Principles” that are deemed the legal reference of the NIHR’s work on the one hand, or the terms of reference entrusted to the National Committee on Childhood and the Child Protection Center on the other hand

Article (18):

The draft Article:

The kindergarten is defined as any place dedicated for the care of children under the age of **three**. Kindergartens shall be licensed by Ministry of Labor and Social Development, which controls and supervises upon them and **the NIHR shall perform periodic supervisory visits to them.**

Minister of Labor and Social Development shall issue the provisions and executive resolutions thereon.

Article (19):

The draft Article:

Kindergartens aim at achieving the following purposes:

1. To give social care for children and to develop their talents and capacities.
2. To prepare the children physically, culturally, psychologically and morally in the right way, in consistence with goals and religious values of the society.
3. **To educate the children through educational syllabuses that fit each age stage till the age of three.**
4. To raise awareness among families to bring children up in the right way.
5. To foster and develop the social ties between the kindergarten and family.
6. **Both Minister of Labor and Social Development and Minister of Education** shall issue a decree to determine approaches and methods to achieve the abovementioned purposes.

NIHR's opinions:

The NIHR agrees in principle to consider the kindergartens as the place dedicated to care for children under **the age of three** as stipulated in the Draft Law instead of **the age of four** as stipulated in the original Law. However, this matter should be referred to the competent governmental body for opinion. Furthermore, the Explanatory Note enclosed with the Draft Law devoid of any reference to of explanation of such modification.

With regard to granting the NIHR the power to perform periodic supervisory visits to the kindergartens pursuant to Article (18) of the Draft Law under study, the Article does not define the phrase **"periodic supervisory visits"**. Furthermore, the abovementioned proposed term of reference is stipulated more widely and broadly in Article (12) Paragraph (d) of the NIHR's Establishment Law as follows:

"The NIHR shall monitor human rights violation cases, make necessary investigations, draw the attention of competent bodies, submit proposals related to initiatives that aim at putting an end to such cases and show opinion, if necessary, on the situation and responses of such bodies and authorities".

In addition, Paragraph (g) the same Article stipulates that:

"The NIHR shall perform field visits, as per standard practices, to monitor human rights situation in the reform institutions, places of detention, labor gatherings, health and educational houses or any other public places in which violation of human rights is suspected".

Therefore, the NIHR agrees in principle to consider the kindergartens as the place dedicated to care for children under **the age of three** as stipulated in the Draft Law instead of **the age of four** as stipulated in the original Law. However, this matter should be referred to the competent governmental body for opinion.

The NIHR further believes that assigning to it the periodic supervision on kindergartens is actually achieved in reality in a broader and more comprehensive way pursuant to the provisions of Article (12) Paragraphs (d) and (g) of its Establishment Law.

Article (55):

The draft Article:

The Child Protection Center shall prepare **a quarterly report on the activity of the Center in general and on the cases received by the Center as well as the procedures undertaken to deal therewith in particular** as well as an annual report on the activity of the Center during the previous fiscal year and obstacles facing the Center with the proposed solutions thereof. The Center shall refer **all the reports to the Board of Directors at the times scheduled for each report** within two months from the end of the fiscal year, for the annual report on the financial position of the Center, and the Board shall then refer the report to Minister of Labor and Social Development accompanied by observations of the Center to take necessary actions.

NIHR's opinions:

The NIHR agrees in principle upon the Draft Law provision, which stipulates that the Board of Directors of the Child Protection Center shall prepare quarterly reports on the Center's efforts, activities and whole work as well as financial reports on the Center. However, the NIHR believes that such reports should better be annual or semi-annual at a minimum, since three months is too short to prepare such reports. Moreover, this matter should be referred to the competent governmental body for opinion, since the Explanatory Note attached to the Draft Law is devoid of any reference to of explanation of such modification. In addition, the NIHR believes that it is preferable to redraft the current Article to conform with the sound legal drafting style in this regard.

Therefore, the NIHR agrees in principle on the provision of the Draft Law and believes that it is necessary to refer to the competent governmental body for opinion. In addition, the NIHR believes that it is preferable to redraft the current Article to conform with the sound legal drafting style in this regard.

Second: Articles No. (20), (21), (23), (38), (43) and (56) of the Draft Law:

Article (20):

The Draft Article:

Natural and legal persons shall be licensed to establish kindergartens pursuant to the provisions issued by decree of Minister of **Labor and Social Development**.

The decree to accept or refuse to grant the license shall be issued within (thirty days) from the date of application. No decree during the abovementioned duration shall be deemed as decline.

Those whose application is refused either explicitly or by judgment may appeal before the competent court within (thirty days) from the date of being announced with the refusal or from the date of expiration of the abovementioned duration.

The licensed party shall set out an internal regulation within (thirty days) from the date of issuance of the license of the kindergarten, to be approved by Ministry **of Labor and Social Development**, and Minister of Labor and Social Development shall issue a decree to determine the rules and conditions to be included in the typical regulation of the kindergartens **after being reviewed and showing observations by the NIHR.**

Article (21):

The Draft Article:

The Competent technical bodies in Ministry **of Labor and Social Development** shall take over the technical inspection of and financial and administrative supervision on the kindergartens in order to verify the enforcement of the provisions of this Law and the decrees issued thereupon. Ministry **of Labor and Social Development** shall further inform the kindergartens with any proved aspects of violation, **after briefing the NIHR on the results of the supervision,** and shall notify them for correction in an appropriate time.

Article (23):

The Draft Article:

In case of imminent risks that may threaten the safety and health of children, **and after supporting the NIHR's observations**, Minister of **Labor and Social Development** may temporarily close the kindergarten until correction of its situation within ten working days. This decision shall be binding unless reasons are eliminated.

Owner of the kindergarten may appeal the decision before the Urgent Matters Court within thirty days from being announced thereof.

Article (38):

The Draft Article:

The State shall establish child libraries in all governorates of the Kingdom upon decree of Ministry of Education. Child clubs shall further be established with consideration to needs of children with disabilities, which shall report to Ministry of Human Rights and Social Development. Minister of Labor and Social Development shall issue a decree on how to establish and organize thereof **in coordination with the NIHR and other relevant bodies**.

Article (43):

The Draft Article:

A Center under the title of "Child Protection Center" shall be established in **Ministry of Labor and Social Development**, whose organizational structure shall combine branch offices for Ministry of Justice, Ministry of the Interior, Ministry of Health, Ministry of Education, **Ministry of Foreign Affairs and the NIHR**.

Article (56):

The Draft Article:

If the child is in urgent need for protection, or is likely to leave the country, the Public Prosecution, upon request of the Chairman of the Center, shall issue a temporary decision to transfer the child care outside the family, where the child's matter shall be referred to the competent court on the first working day to make a decision thereon or to determine the person or body bound to oversee or care for the child, either temporarily or permanently, as well as the child support and the person liable thereof.

Ministry of Labor and Social Development in coordination with the NIHR shall procure a safe place for child care outside the family, either temporarily or permanently, due to child abuse by parents or caregiver.

NIHR's opinions:

With all consideration for modifications mentioned in the Draft Law, which in their entirety grant the NIHR some terms or reference or supervisory or regulatory powers, in partnership with competent governmental bodies, to enforce some of the provisions of the Child Law under study, which undoubtedly enhance and protect the rights of this category, and with reference to the NIHR's Establishment Law No. (26) of 2014, especially Article (12), which determine the NIHR's terms of reference in detail as follows:

- b. To study legislations and codes applicable in the Kingdom relevant to human rights and recommend the modifications it finds appropriate, especially in relation with consistency of such legislations with the Kingdom's international obligations to human rights, and to recommend the issuance of new human rights-relevant legislations,
- c. To examine the relevance of legislative and regulatory provisions in regional and international conventions on the human rights issues and submit proposals and recommendations to competent authorities on everything that may enhance and protect human rights, including the recommendation to join the regional and international conventions on human rights,
- e. To monitor cases of violation of human rights, make necessary investigations, draw the attention of competent bodies, submit proposals related to initiatives that aim at putting an end to such cases and show opinion, if necessary, on the situation and responses of such bodies and authorities.
- f. To receive, study and examine complaints related to human rights, refer those it finds appropriate to the competent bodies and make effective follow-up thereof, to enlighten the relevant bodies with the necessary procedures to be taken and assist them thereon, or to cooperate in the settlement thereof with the relevant bodies,
- g. To perform field visits, as per standard practices, to monitor human rights situation in the reform institutions, places of detention, labor gatherings, health and educational houses or any other public places in which violation of human rights is suspected,

which are, in their entirety, more accurate, comprehensive and detailed than the provisions of the Articles of the Draft Law under study, therefore, the terms of reference to be given to the NIHR are achieved in reality without any need for making modifications to the Child Law, recently issued, in addition to the fact that some of the terms of reference mentioned in the Draft Law are the capacity of the concerned governmental body, and thus the NIHR's role comes subsequently to supervise and control their actions.

Therefore, the NIHR believes that the proposed modifications mentioned in the Draft Law under study are achieved more accurately in reality in a comprehensive and detailed manner pursuant to the provisions of Article (12) Paragraphs (b), (c), (e), (f) and (g) of the NIHR's Establishment Law.

Third: Articles No. (22), (25), (26), (28), (40) and (54) of the Draft Law:

Article (22):

The Draft Article:

Minister of Justice, Islamic Affairs and Endowments shall issue a decree in agreement with **Minister of Labor and Social Development** to give some of the staff of the competent bodies referred herein as per Article (21) the capacity of judicial officer.

Article (25):

The Draft Article:

Ministry of Justice and Social Development shall issue an alternative care system, which aims at providing children, whose conditions prevent their continuation in their natural families, with social, psychological and health care, and **Minister of Labor and Social Development** shall issue a decree to organize such alternative care.

Article (26):

The Draft Article:

Social care institution for children who are deprived of family care means any shelter house for children, which covers children deprived of family care, children whose parent(s) are unknown, children who are orphans and the like.

A child may continue in the institution if he/she is enrolled in higher education until his/her graduation as long as the condition that have led to his/her enrolment at the institution is existing and he/she has successfully passed all the educational stages.

Minister of Labor and Social Development shall issue a decree to determine the typical regulation of such institutions as well as data included therein.

Article (28):

The Draft Article:

Ministry of Justice and Social Development shall dedicate places in the social centers in all governorates of the Kingdom to enforce the visit provision in morning and evening periods throughout the week and provide a specialized work crew.

Article (40):

The Draft Article:

Cinema and equivalent public places shows shall be banned for children pursuant to conditions and rules issued by decree of **Minister of Public Information and Culture and Monuments Authority**. Exploiters, cinema directors, beneficiaries and party organizers shall be prohibited from allowing children to access such places or watch their shows in case such shows are banned for children as determined by the competent body. It shall further be prohibited to be accompanied by children while watching such movies or shows.

Article (54):

The Draft Article:

- a. The Chairman of the Child Protection Center shall be appointed by virtue of decree of **Minister of Labor and Social Development** upon recommendation of the Board of Directors of the Center.
- b. The Child Protection Center shall be managed by a full-time specialized Chairman, in order to conduct the administrative and technical affairs of the Center and supervise its work progress.

NIHR's opinions:

The NIHR believes that the modifications covered by the abovementioned Articles shall neither prejudice or affect the public rights or freedoms related to the children's category, as they are merely formal modifications due to the cancellation of the "Ministry of Human Rights" and transferal or its terms of reference to the "Higher Committee for Human Rights" under presidency of the "Ministry of Foreign Affairs" as well as the merge of Ministry of Labor and Ministry of Social Development under the title of "Ministry of Labor and Social Development".

Therefore, the NIHR finds it preferable to introduce a new Article in the Draft Law, which stipulates the replacement of the phrase "ministry concerned with child affairs" with the phrase "Ministry of Human Rights and Social Development", and which replaces the phrase "minister concerned with child affairs" with the phrase "Minister of Human Rights and Social Development", whenever they are referred to in that Law, in order to avoid redundancy and prolongation in the Draft Law, the matter which corresponds with the proper approach taken by the Bahraini legislator in the drafting of national laws and legislations. Moreover, Article (40) of the Draft Law replaces the phrase "Minister of Media Affairs and Culture and Monuments Authority" with the phrase "Minister of Culture" although the correct name of the authority is "Bahrain Authority for Culture and Monuments".