

## **National Institution for Human Rights (NIHR)'s Opinions on the Conclusion of the Resolution of the Council of Representatives on the Draft Law to Modify some of the Provisions of the Criminal Procedures Law issued by Decree – Law No. (46) of 2002**

(Prepared in light of the Draft Law Presented by the Council of Representatives)

(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 Criminal Procedures Law issued by Decree – Law No. (46) of 2002 (prepared in light of the Draft Law presented by the Council of Representatives), **which is decided to be refused in principle**, and upon request of the Council of Representatives' Committee on Foreign Affairs, Defense and National Security, 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 provisions of the current Draft Law to the extent it finds directly touching or influential upon basic human rights and freedoms, **especially Articles (57), (63), (64), (77), (84) Paragraph (1), (86) Paragraph (1), (141), (149), (294) Paragraph (1), (297) and (142 bis) of the Draft Law**, otherwise, it shall refer to the opinion memo of the esteemed government and the memo of the Legislation and Legal Opinion Commission enclosed with the Draft Law for anything related to formal and substantive observations in order to avoid redundancy.

### **Article (57):**

The NIHR believes that the duration stipulated in the original Law, i.e. **forty eight hours**, is consistent with the international provisions on human rights on the one hand and the requirements of justice on the other hand.

### **Article (63):**

The NIHR agrees with the draft Article, which stipulates for the necessity of having **a periodic and regular** independent judicial control over reform and rehabilitation institutions, being the warrantor of the proper execution of judicial rulings issued by the courts of various degrees, and being a supervisory body over the rights and freedoms of individuals with restricted freedoms, pursuant to the provisions of the Constitution, law and international conventions joined or endorsed by the Kingdom of Bahrain.

#### **Article (64):**

The NIHR believes that the legal provisions established by the original Article is more general and inclusive, which guarantee the rights of individuals with restricted freedoms to present their written and oral complaints under the umbrella of the independent judicial control.

#### **Article (77):**

The NIHR agrees to combine the power of the Judicial Officers to use military force, if necessary, with taking the permission of the competent prosecution, pursuant to the provision of the draft Article.

#### **Article (84) Paragraph (1):**

The NIHR believes that obliging the Public Prosecution to determine the day, time and place to proceed with the investigation procedures achieves the intended justice for all parties of the criminal case on the one hand and corresponds with the international provisions on human rights on the other hand.

#### **Article (86) Paragraph (1):**

The NIHR agrees with the provision of the Draft Law, which stipulates that the delegation resolution issued by the Public Prosecution should be issued in a written form, is a real guarantee for parties of the criminal case or other relevant parties, especially in the evidentiary process. In addition, the investigation procedures, including the delegation resolution, are verified and considered before the competent court, which finds it easy to verify the validity of all investigation procedures upon writing the delegation resolution.

#### **Article (141):**

The NIHR believes that the duration stipulated in the original Law, i.e. twenty four hours, is consistent with the international provisions on human rights on the one hand and the requirements of justice on the other hand.

#### **Article (149):**

The NIHR agrees in principle with the draft Article, which acknowledges the right of the accused person to grieve against the remand resolution issued against him/her. However, in order to achieve the targeted effective grievance, it should be hierarchical to start with the chairman of the authority that issued the resolution and ending with the competent court.

#### **Article (294) Paragraph (1):**

The NIHR agrees with the modification of the Draft Law, since the extension of the duration of the respondents' right to appeal, from 15 days as stipulated in the original Law to 30 days, corresponds with the provisions of Article (295) of the same Law on the one hand and with the international provisions on human rights on the other hand.

#### **Article (297):**

For opinions on this Article of the Draft Law, the NIHR refers to the same rationales justified by it on Article (294) Paragraph (1) above, in order to avoid redundancy and prolongation.

**Article (142 bis):**

For opinions on this Article of the Draft Law, the NIHR refers to the same rationales justified by it on Article (149) Paragraph (1) above, in order to avoid redundancy and prolongation.

## 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 Criminal Procedures Law issued by Decree – Law No. (46) of 2002 (prepared in light of the Draft Law presented by the Council of Representatives), **which is decided to be refused in principle**, and upon request of the Council of Representatives' Committee on Foreign Affairs, Defense and National Security, 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 is composed of 4 articles, where **Article 1** provides for the replacement of Articles (18), (57), (63), (64), (77), (81), (84) Paragraphs (1) and (4), (86) Paragraph (1), (133), (134) Paragraph (2), (141), (144), (149), (161) Paragraphs (1) and (3), (167), (179), (187) Paragraph (1), (195) Paragraph (2), (261) Paragraph (2), (263) Paragraphs (1) and (4), (281), (283) Paragraph (1), (286), (294) Paragraph (1), (297), (302) Paragraph (3), (314), (321), (328) and (422) of the Criminal Procedures Law, **Article 2** adds a third Paragraph to Article (142) and adds 2 new Articles No. (142 bis) and (149 bis), and **Article 3** cancels the last Paragraph of Article (147) of the same Law, in addition to an executive **fourth Article**.

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 provisions of the current Draft Law to the extent it finds directly touching or influential upon basic human rights and freedoms, **especially Articles (57), (63), (64), (77), (84) Paragraph (1), (86) Paragraph (1), (141), (149), (294) Paragraph (1), (297) and (142 bis) of the Draft Law**, otherwise, it shall refer to the opinion memo of the esteemed government and the memo of the Legislation and Legal Opinion Commission enclosed with the Draft Law for anything related to formal and substantive observations in order to avoid redundancy, as acceptable by your esteemed Council in this regard.

### **Article (57):**

#### **The draft Article:**

The Judicial Officer shall immediately hear the statements of the accused person, and in case of no innocence evidence, shall send him/her within **twelve hours** to the Public Prosecution.

The Public Prosecution shall interrogate him/her within **twelve hours** then order either to incarcerate or release him/her.

#### **NIHR's opinions:**

The NIHR believes that, although the Draft Law reduces the established period for Judicial Officers and Public Prosecution, in case of arresting or interrogating the accused person, to **twelve hours** instead of **forty eight hours** as stipulated by the original Law, which is a good route, as per standards, that corresponds with Article (9) Paragraphs (2) and (3) of the International Covenant on the Civil and Political Rights' provisions, that was joined by the Kingdom of Bahrain by virtue of Law No. (56) of 2006, which stipulate that the accused person shall be "**expeditiously**" notified with the accusations attributed to him/her and shall have the right either to be sent to trial within "**a reasonable time**" or to be released, the reduction of this duration to twelve hours, however, may not go in line with the purpose, which is to be heard by the Judicial Officer or to be interrogated by the Public Prosecution, being a short time that is not enough for such bodies to take necessary procedures to achieve justice.

The Committee on Human Rights, which is entrusted with the interpretation of the provisions of the International Covenant on Civil and Political Rights, in stating the phrase "**expeditiously**"<sup>1</sup> i.e. maximum **forty eight hours**, may be more consistent with the provision of the original Article, stipulating that the accused person shall enjoy the established safeguards during the period of his/her arrest.

Therefore, the NIHR believes that the duration established by the original Law, which is determined to be forty eight hours, is consistent with the international provisions on human rights on the one hand and the requirements of justice on the other hand.

<sup>1</sup> Concluding observations of the Human Rights Committee during its consideration of the periodic reports of State Parties to the International Covenant on Civil and Political Rights, including (Uzbekistan): Document No. (CCPR/CO/83/UZB), (Ukraine): Document No. (CCPR/C/UKR/CO/6) and (Moldova): Document No. (CCPR/C/MDA/CO/2).

### **Article (63):**

#### **The draft Article:**

- a. President and undersecretaries of the Supreme Court of Appeal and the Public Prosecutor shall visit and inspect the prisons on a quarterly basis and present the reports thereof to the Supreme Judicial Council.
- b. Without prejudice to the above Paragraph, President of the Supreme Civil Court of Appeal, President of the High Civil Court, the Execution Judges and members of the Public Prosecution may inspect the prisons at any time in order to verify that there are no detainees who are imprisoned on an unlawful basis, and may further review books of the prison as well as arrest and detention orders, take copies thereof and communicate with any detainee to listen to whatever complaint he/she may have. Prison wardens and staff shall provide them with all assistance to collect the information they may require.

#### **NIHR's opinions:**

The NIHR believes that, although the original Article gives the right to members of the judicial authority to control and inspect over the reform and rehabilitation institutions, which is a principle that corresponds with the necessity of having an independent judicial control over such institutions, the Draft Article, which stipulates that such control and visits are to be on a periodic and regular basis (**on a quarterly basis**), creates an independent and effective control to secure the proper execution of judicial rulings issued by the courts of various degrees, and being a supervisory body over the rights and freedoms of individuals with restricted freedoms, pursuant to the provisions of the Constitution, law and international conventions joined or endorsed by the Kingdom of Bahrain, and is consistent with the relevant legal provisions established by Law No. (18) of 2014 on Issuance of the Reform and Rehabilitation Institutions Law, especially Article (63) thereof.

Therefore, the NIHR agrees with the draft Article, which stipulates for the necessity of having **a periodic and regular** independent judicial control over reform and rehabilitation institutions, being the warrantor of the proper execution of judicial rulings issued by the courts of various degrees, and being a supervisory body over the rights and freedoms of individuals with restricted freedoms, pursuant to the provisions of the Constitution, law and international conventions joined or endorsed by the Kingdom of Bahrain.

#### **Article (64):**

##### **The draft Article:**

Every prisoner has the right to submit a written complaint to the prison warden at any time and ask him to report it to the President of the Supreme Civil Court of Appeal, the President of the High Civil Court, the Execution Judge or the members of the Public Prosecution. **The complaint may be presented in a closed envelope.** The prison warden shall receive the complaint and **provide the complainant with a receipt mentioning the date of receiving it** and shall immediately notify the receiving party after documenting the complaint in the record prepared for such purpose. A document shall be filed in the prisoner's folder, indicating that the complaint has been notified to the concerned body **within maximum 3 days from the date of submitting thereof,** after being documented in the record prepared for such purpose. **A document shall be filed in the prisoner's folder indicating that the complaint has been reported to the concerned body and the date of notification.**

Anyone, when it comes to its knowledge that there is a detainee who is imprisoned on an unlawful basis or who exists in a place that is not intended for imprisonment, shall notify the Execution Judge or a member of the Public Prosecution pursuant to the above Paragraph, in which case both of them shall immediately move to the detainee's place, perform the investigation, order to release the detainee who is imprisoned on an unlawful basis and edit minutes in this regard to be submitted to the Public Prosecutor **in order to file the criminal proceedings** against the defendant that caused such imprisonment.

In case of issuance of an order to file the complaint with no further action **by the receiving party,** the complainant shall be notified.

##### **NIHR's opinions:**

The NIHR believes that the legal provisions stipulated in the original Article are more general and comprehensive and ensure more the rights and freedoms of individuals whose freedoms are restricted, since the provision of the Draft Article is limited to submitting the complaint in a written form, while the original Article allows for submitting it in a written or oral form, as it may be impossible sometimes to submit a written complaint. In addition, the Draft Article gives the Public Prosecutor the right to file criminal proceedings against the defendant that caused such unlawful imprisonment rather than any other procedures, while the original Article gives him the right to take all legal actions including filing criminal proceedings against such defendant and informing competent authorities to take disciplinary actions against him being an employee in the public sector.

Therefore, the NIHR believes that the legal provisions established by the original Article is more general and inclusive, which guarantee the rights of individuals with restricted freedoms to present their written and oral complaints under the umbrella of the independent judicial control.

### **Article (77):**

#### **The draft Article:**

To perform their duties, the Judicial Officers may use military force directly **upon permission of the competent prosecution.**

#### **NIHR's opinions:**

The NIHR believes that the provision of the Draft Law, which stipulates that the Judicial Officers shall use military force if necessary upon permission of the competent prosecution, represents a judicial guarantee that is consistent with the international provisions of human rights, especially as Article (44) of the same Law stipulates that: **“Judicial Officers shall report to the Public Prosecution and work under his supervision with regard to their job duties”**. Therefore, It is fine to combine this power with taking the permission of the competent prosecution that does not interfere at all with the requirements of the case of necessity from urgency or intervention.

Therefore, the NIHR agrees to combine the power of the Judicial Officers to use military force, if necessary, with taking the permission of the competent prosecution, pursuant to the provision of the draft Article.

### **Article (84) Paragraph (1):**

#### **The draft Article:**

The accused person, the victim, the civil rights plaintiff and responsible thereof and their representatives may all attend the investigation procedures. The member of the Public Prosecution shall notify them with the day **and the time** to proceed with the investigation procedures and the place thereof.

#### **NIHR's opinions:**

The NIHR believes that adding the phrase **“the time”** by the draft law, in cases in which the member of the Public Prosecution performs the investigation procedures, is a matter which is consistent with the actual empowerment of the accused person to seek an advocate during investigations in particular. This attitude may be supported by the situation adopted by the Human Rights Committee during its consideration of the reports of the countries that fall under



the umbrella of the International Covenant on Civil and Political Rights<sup>2</sup>, which was joined by the Kingdom of Bahrain by virtue of Law No. (56) of 2006.

Therefore, the NIHR believes that obliging the Public Prosecution to determine the day, time and place to proceed with the investigation procedures achieves the intended justice for all parties of the criminal case on the one hand and corresponds with the international provisions on human rights on the other hand.

#### **Article (86) Paragraph (1):**

##### **The draft Article:**

The member of the Public Prosecution, in all cases in which he delegates any other party to perform some investigations, **shall consider to issue the delegation resolution in a written form**, which shall indicate issues to be investigated or actions to be taken.

##### **The NIHR's opinions:**

The NIHR believes that the provision of the Draft Law, which stipulates that the delegation resolution issued by the Public Prosecution should be issued in a written form, indicating issues to be investigated or actions to be taken, is a real guarantee for parties of the criminal case or other relevant parties, especially in the evidentiary process. In addition, the investigation procedures, including the delegation resolution, are verified and considered before the competent court, which finds it easy to verify the validity of all investigation procedures upon writing the delegation resolution.

Therefore, the NIHR agrees with the provision of the Draft Law, which stipulates that the delegation resolution issued by the Public Prosecution should be issued in a written form, as per the abovementioned rationales.

#### **Article (141):**

##### **The draft Article:**

The member of the Public Prosecution shall immediately interrogate the arrested accused person. In case of failing, he shall order to place him/her in the appropriate incarceration until being interrogated, provided that the incarceration period shall not exceed **twelve hours**, after which the administrator shall send him/her to the Public Prosecution either to be immediately interrogated or to be released upon order.

<sup>2</sup> Concluding observations of the Human Rights Committee during its consideration of the periodic reports of State Parties to the International Covenant on Civil and Political Rights, including (Ireland): Document No. (CCPR/C/IRL/CO/3), and (Holland): Document No. (CCPR/C/NLD/CO/4).



### **NIHR's opinions:**

For opinions on this Article of the Draft Law, the NIHR refers to the same rationales justified by it on Article (57) above, in order to avoid redundancy and prolongation.

Therefore, the NIHR believes that the duration stipulated in the original Law, i.e. twenty four hours, is consistent with the international provisions on human rights on the one hand and the requirements of justice on the other hand.

### **Article (149)<sup>3</sup>:**

#### **The draft Article:**

The Public Prosecution may order provisional release of the remanded accused person at all times on its own or upon request of the accused person, upon **bailing to be paid by him/her** and undertaking to be present whenever he/she is required and not to flee from the execution of the verdict that may be issued against him/her.

**The application for provisional release, which is presented by the remanded accused person, shall be decided within twenty four hours from the date of submitting thereof, and those whose applications are refused may submit their appeal before the Execution Judge within three days from the date of refusal, which shall be decided by the Judge within three days from the date of submitting thereof after reviewing the documents of the Public Prosecution and the accused person. Appeal shall be held as per Article (158) of this Law.**

### **NIHR's opinions:**

The NIHR believes that, as per Article (9) Paragraph (4) of the International Covenant on Civil and Political Rights, which was joined by the Kingdom of Bahrain by virtue of Law No. (56) of 2006, **"every person deprived of his/her freedom by arrest or detention shall have the right to refer to any court to judge the lawfulness of his/her detention immediately without delay"**. In addition, the Principles for the Protection of all Persons under any Form of Detention or Imprisonment indicate the same meaning, especially the Principle No. (32), which stipulates that: **"1. The detained person or his/her advocate has the right at any time to file a case, as per domestic law, before judicial authority or otherwise to appeal against the unlawfulness of his/her detention in order to obtain a release order without delay if his/her detention is proved unlawful"**.

<sup>3</sup> Article (149) was modified by virtue of Law No. (39) of 2014, in which the remanded accused person is given the right to grieve against the resolution issued against him/her, i.e. after referring the current Draft Law to the Legislative Power on 4 February 2010.

Therefore, acknowledging the right of the accused person to grieve against the remand resolution issued against him/her goes in line with the rights of the accused person established by the international instruments on human rights in this regard. However, in order to achieve the targeted aim of the effective grievance, it should be hierarchical to start with the chairman of the authority that issued the resolution and ending with the competent court, in order to prevent any monopolization of the resolution and possibility of arbitrariness thereof, by giving the accused person the right to claim for release by the competent prosecution. If his/her request for release is refused, he/she may grieve before the Public Prosecutor, who shall make decision thereupon within forty eight hours from the date of submitting thereof. The expiration of the mentioned period without decision shall be deemed as refusal, which requires referring the request consequentially to the competent court, which shall make its decision within three days.

Therefore, the NIHR agrees in principle with the draft Article, which acknowledges the right of the accused person to grieve against the remand resolution issued against him/her. However, in order to achieve the targeted effective grievance, it should be hierarchical to start with the chairman of the authority that issued the resolution and ending with the competent court.

#### **Article (294) Paragraph (1):**

##### **The draft Article:**

The appeal shall occur by report at the clerk of the court that issued the verdict or before the prison warden within **thirty** days from the date of saying the verdict issued in presence or the verdict issued in the opposition, or from the date of expiration of the scheduled time for opposition in the verdict issued in absence, or from the date of the verdict as null.

##### **NIHR's opinions:**

The NIHR believes that the extension of the duration of the respondents' right to appeal, from 15 days as stipulated in the original Law to 30 days, corresponds with the provisions of Article (295) of the same Law, which gives the Public Prosecution thirty days from the time of verdict issuance to appeal. In addition, the extension of the duration for appeal gives the respondent an enough time to prepare his/her procedural or substantive pleas, since this right is one of the basic components of the right to fair trial guarantees, established by the provisions of the International Covenant on Civil and Political Rights, which was joined by the Kingdom of Bahrain by virtue of Law No. (56) of 2006, especially Article (14) Paragraph (5), which stipulates that: **"everyone convicted of a crime shall have the right to seek a higher court under the law and to have his/her conviction order and sentence reconsidered"**.

Therefore, the NIHR agrees with the Draft Law as per the abovementioned rationales.

### **Article (297):**

#### **The draft Article:**

If one of the litigants appeals within the scheduled thirty days duration, the time of appeal for all the other litigants who have the right to appeal shall be extended to be present at the scheduled hearing session.

#### **NIHR's opinions:**

For opinions on this Article of the Draft Law, the NIHR refers to the same rationales justified by it on Article (294) Paragraph (1) above, in order to avoid redundancy and prolongation.

Therefore, the NIHR agrees with the modification mentioned in the Draft Law.

### **Article (142 bis):**

#### **The draft Article:**

- a. The accused person against whom the remand order is issued may grieve against it within twenty four hours from the date of issuance thereof. The member of the competent Public Prosecution shall make his decision in the grievance within twelve hours from the date of submitting thereof. In case of refusal, the reason shall be mentioned.
- b. Those whose grievance is refused or who miss the time of grievance may contest against the remand order or the refusal order before the Execution Judge within three days from the date of issuance of the refusal decision or missing the time of grievance mentioned in the above Paragraph. The Judge shall issue his decision in the contest within three days from the date of submitting thereof after reviewing the documents.

#### **NIHR's opinions:**

For opinions on this Article of the Draft Law, the NIHR refers to the same rationales justified by it on Article (149) above, in order to avoid redundancy and prolongation.

Therefore, the NIHR agrees in principle with the Draft Article with consideration for the rationales justified by it on Article (149) of the same Draft Law.