

**National Institution for Human Rights' Opinion on the Draft Law on  
Domestic workers  
(Prepared in light of the draft law submitted by the Council of  
Representatives)**

**Introduction:**

In appreciation of the efforts exerted by the Honorable Council of Representatives in relation to the issues of Human Rights, considering it as the Legislative Institution tasked with protecting the rights and public freedoms; and with all due respect to the considerations sought by the proposed draft law on the Domestic workers (prepared in light of the draft law submitted by Council of Representatives) and based upon the request of the Council's Services Committee; the NIHR hereby presents its opinions on the draft law to the honorable committee taking into account the provisions of the Constitution and related international human rights covenants and treaties.

Whereas, the above-mentioned law consists of twenty six (26) articles, in addition to the preamble, dealing in total with the regulation of cases of bringing non-Bahraini domestic workers, referring to the most important conditions to be met by households to be granted a permit for domestic workers, the obligations imposed on recruitment agencies, the most important duties and responsibilities of the homeowner/employer and domestic workers and the relationship between the two parties, as well as the inclusion of the financial penalties represented in the fines the law stipulates against those who violate its provisions.

Whereas, the mandate determined for NIHR pursuant to the provisions of Law No. (26) No. 2014 on establishing the National Institution for Human Rights; especially, paragraph (b) of article (12), stipulates that NIHR:

**"To examine legislation and regulations enforced in the Kingdom which are related to human rights, and recommend amendments as it deems fit, particularly in connection with the consistency of such regulations with the Kingdom's international obligations in the human rights field. The NIHR shall be empowered to recommend enacting new legislations related to human rights".**

Thereupon, the NIHR hereby limits its opinion regarding the provisions of the Draft Law subject matter of opinion to the legal stipulations deemed related to or effective on the human rights and his fundamental freedoms; especially articles No. (7), (12), (17) and (20). Regarding the other aspects (language and legal formulation) as well as content, the NIHR hereby make reference to the formal comments contained in honorable Government's opinion memorandum and the memorandum of the Legislation and Legal Opinion Commission attached to the

draft law to consider the same as your honorable council deems satisfactory in this regard.

Before presenting its opinion, the NIHR hereby deems it is suitable to include this draft law in the Labor Law for the Private Sector pursuant to Law No. (36) of 2012 in line with the legislations that regulate similar topics; especially, article No. (34) of the draft law under discussion has referred to many provisions of the Labor Law for the Private Sector mentioned above.

**NIHR opinions on the draft law are detailed as follows:**

**Article (6):**

Stipulation as mentioned in the draft law:

**The following conditions shall be fulfilled by the homeowner:**

1. He shall be a Bahraini national and the Authority may allow a non-Bahraini to employ domestic workers in accordance to the conditions to be set forth by it for such purpose including the submission of Bank Guarantee in an amount of five hundred Bahraini Dinars to ensure the rights of the worker.
2. He shall be householder, person with disability or an elderly.
3. He shall not be convicted or referred to a court in a case of assaulting a worker and the homeowner shall be obligated to submit a written declaration in this regard accompanied by copy of his passport.
4. He shall have the financial capacity to meet his obligations toward the worker.

**NIHR's Opinion:**

The National Institution for Human Rights hereby observes that the above article stipulates the conditions that shall be fulfilled by the homeowner so that he can recruit a domestic worker. One of such conditions is that the homeowner shall not have been convicted or referred to a court in case of assaulting a worker and he shall present a written declaration in this regard accompanied by a copy of his passport. While such conditions ostensibly provides the protection for the worker from any breach that the worker may suffer by the employer, the NIHR finds that it is necessary that such condition shall be linked to a final and decisive judgment passed by a competent court in a case filed against him in his capacity as an employer. A mere referral to the court isn't sufficient. It is supposed the presumption of innocence is an inherent and standing right for everyone and it lacks only the issuance of a judgment with all pre-conditions thereof.

Thereupon, the NIHR hereby agrees to the conditions mentioned in article no. (6) of the current draft law, except for item No. (3) as detailed above.

**Article (12):**

**Stipulation as mentioned in the draft law:**

- a. The worker shall have the following obligations:
  1. perform domestic work honestly and sincerely.
  2. respect the privacy of the house where he works and maintains the properties of the homeowner and home contents.
  3. not disclose the secrets the household's secrets therewith.
  4. respect the prevailing traditions and customs of the society.
  5. Inform the homeowner before leaving, departing from or absenting form home.
- b. If it is proved that the worker has caused the loss of or damage to tools and materials owned or possessed by the homeowner or were in the possession of the worker intentionally or due to carelessness, the homeowner shall be entitled to deduct from the worker's salary the value of the lost or damaged items and the value of repair thereof. Should a dispute arise between the homeowner and the worker, the matter shall be referred to the Labor Market Regulatory Authority (LMRA) Personnel Affairs Committee stipulated in article (15) hereof.
- c. Should the worker escape from the employer's home for a reason not attributed to the employer, the worker shall incur all expenses incurred by the homeowner in addition the expenses of expatriating him/her to his homeland.
- d. The worker shall incur the expense of airlines ticket to his country should he personally decide to leave the Kingdom for any whatsoever reason.

**NIHR's Opinion:**

The National Institution for Human Rights is hereby of the view that the above article restricts the obligations imposed on the worker toward the employer (homeowner), but the restriction wasn't sufficient enough in item (c) regarding the determination of the expenses that shall be paid (*refunded*) by the worker to the employer in the event of the worker's escape; whether such expenses cover recruitment and employment expenses only or otherwise; especially that a beach to the contractual obligations necessitates that the violating party shall incur the compensation whenever so is required. Such compensation naturally includes the homeowners' gains as well as losses.

The stipulation of item (d) raises a question concerning the extent of considering the worker's absolute desire of to complete the procedures for traveling. In fact, this contradicts article no. (21) of the attached law that stipulates:

**"The worker is forbidden from leaving the Kingdom without the homeowner's permission of or that of office as the case may be. The Minister of Interior shall issue - in coordination with the Minister - a resolution on the provisions and procedures related to work permits for workers coming to the Kingdom and their departure procedures ".**

In addition, the above article overlooked the reference to the necessity that the worker shall perform the work entrusted to him at the homeowner exclusively.

Therefore, the NIHR hereby finds that it is necessary to determine the essence of the expenses that shall be refunded by the worker in accordance with item no. (3) of the above article, without leaving it unlimited. In addition, item (d) shall be amended by adding the phrase "without prejudice to provisions of article No. (21) of the law" to it. In addition, the NIHR confirms the importance to add a final item in the article which obligates the worker to perform the work entrusted to him at the homeowner exclusively.

#### **Article (17):**

Stipulation as mentioned in the draft law:

If any event of a complaint or information related to a breach to the rights of the worker or obligations of any homeowner or worker, the Authority shall take the following measures:

- a. Summon the homeowner and worker to the the Authority to settle the complaint amicably.
- b. If the complaint is related to worker's place of residence, the place of residence shall be inspected by male and female inspectors to ensure the implementation of the provisions hereof after seeking the approval of the homeowner in this regard.
- c. If the employer object to the inspection mentioned in paragraph (b) of this article, this shall be deemed as evidence against the homeowner to be considered by the authority in formulating its resolution on the complaint.
- d. If the inspection provided for in this article shows that there is any violation, the homeowner shall be warned to remove the effect of the same within one week from date of warning thereof; otherwise, an arrest report shall be prepared against him and the necessary measures provided for in the applicable Private Sector Labor Law shall be taken.

### **NIHR's Opinion:**

The National Institution for Human Rights believes that while the above mentioned article substantially regulates the procedures that shall be followed in event of receiving complaints related to a breach of the worker's rights, item (b) exceeds the limits of regulation and prejudices the privacy guaranteed by the Constitution of Kingdom of Bahrain on Places of Residence in article (25) thereof stipulating:

**"Places of residence shall be inviolable. They may not be entered or searched without the permission of their occupants except in the circumstances and manner specified by the law".**

In addition, article no. (17) of International Covenant for Civil and Political Rights that the government of Kingdom of Bahrain became party thereto according to law No. (56) of 2006, stipulates:

- "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honor and reputation.**
- 2. Everyone has the right to the protection of the law against such interference or attacks".**

The effect of the item (b) is applicable to the subsequent items which have all overlooked the international standards and national legislations and the Constitution by breaching the protection granted to individuals in their place of residence.

On the other hand, even though the inspection measure is issued by an entity other than the judicial entity and acquired the administrative nature, it is naturally deemed as one of the investigation procedures aimed at establishing the truth through search and investigation in a place granted special inviolability by virtue of the law. In addition, the mentioned inspectors enjoy the capacity of the judicial arrest officers, who are subject to articles and provisions of the decree by law No. (46) of 2002 on issuing the Criminal Procedures Law and the amendments thereof, which regulate the work of the judicial arrest officer.

It is also noted that item (c) establishes legal evidence against the homeowner which assumes the worker's complaint shall be deemed correct if the homeowner objects to the inspection of the place of residence. There is no doubt this evidence is ostensibly unconstitutional because there is no causal relationship between objection to inspection of the worker's place within the house of the employer and the validity of the complaint. There may be considerations leading

the homeowner to insist on objection to the inspection including the abuse of his moral reputation and infringement of his privacy.

Accordingly, the NIHR is of the view that the above mentioned article should be reviewed in such a way that doesn't contradict the right of the individual to the privacy and the inviolability of his place of residence guaranteed by virtue of the national legislations and international covenants, so that the right of the worker to ensure the soundness of his complaint shall not be given priority over the privacy granted by the legislation for the place of residence in way doesn't contradict the provisions of Decree-by-Law No. (46) of 2002 on issuing the Criminal Procedures Law and the amendments thereof in this regard.

**Article (20):**

Stipulation as mentioned in the draft law:

- a. The inspectors, who are employees of the authority, and appointed by the CEO to perform the inspection work and ensure the execution of the provisions of this law, statues, regulations and resolutions issued in execution thereof, shall have the following madate:
  1. Accessing to the workplaces, employment offices and other related places.
  2. Reviewing the registers related to the foreign employees.
  3. Checking out the work permits and identities of the foreigners.
  4. Requesting the necessary data, documents and information from the employers, recruitment offices, their representatives or persons in charge of actual management thereof.
- b. The employers, recruitment offices, their representatives or persons in charge of actual management thereof shall not hinder the authority's inspectors from performing their tasks and shall provide them with the correct documents, data and information necessary for performing their tasks within suitable period to be determined by them.
- c. The employees to be authorized by the Minister of Justice in agreement with the competent Minister shall have the power of judicial arrest officers as for the crimes provided for herein, committed within their competence circuits and related to their jobs.

The reports written regarding such crimes shall be referred to the Public Prosecution by virtue of resolution to be issued by the Authority's CEO.

**NIHR's Opinion:**

The National Institution for Human Rights hereby makes reference to the same opinion on the preceding article because the current article is related to the inspection procedures. In addition, the NIHR is of the view that the following paragraph shall be added to the beginning of the article:

**"Without prejudice to the provisions of Decree by Law No. (46) of 2002 on issuing the Criminal Procedures Law and amendments thereof that regulates the work of the judicial arrest officers."**

Therefore, the National Institution for Human Rights is of the view that it is preferred to add the above amendment to the preamble of the article so that it doesn't contradict the legal stipulations that regulate the work of the Judicial Arrest Officers stipulated in the Decree by Law No. (46) of 2002 on issuing the Criminal Procedures Law and amendments thereof with the draft law in question".

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