L.N. 266 of 2007

IMMIGRATION ACT
(CAP. 217)

Board of Visitors for Detained Persons Regulations, 2007

BY virtue of the powers conferred by article 36 of the Immigration Act, the Deputy Prime Minister and Minister for Justice and Home Affairs has made the following regulations:-

Title.

1. The title of these regulations is the Board of Visitors for Detained Persons Regulations, 2007.

Board of Visitors.

2. (1) There shall be a Board of Visitors for Detained Persons, hereinafter referred to as "the Board", composed of a Chairman, a minimum of two and maximum of eight members and a Secretary as shall be appointed annually by the Minister responsible for immigration, hereinafter referred to as "the Minister".

(2) The Visitors shall hold office from the 1st January of the year for which they shall be appointed.

(3) If any vacancy in the Board occurs during the year, on account of death, resignation or for any other cause, the Minister shall, as soon as practicable, appoint another person to fill the vacancy:

Provided that the Board and the members thereof may act notwithstanding any such vacancy.

Functions of the Board.

3. The Board shall have the following functions:

(*a*) to satisfy itself as to the treatment of detainees, the state of detention centres premises and the administration of the detention centres;

(*b*) monitor the administration of the detention centres' disciplinary system and inform the Minister of its findings; this includes the authority to attend disciplinary hearings of detainees;

(*c*) to advise the Minister on any matter relating to the care of detainees, as well as to the organisation and improvement of

the detention centres and the Detention Service, which the Minister may refer to it or any ancillary matter on which the Board deems it opportune to tender its advice to the Minister;

(*d*) to advise the Minister on matters relating to work and activity to be performed by detainees;

(*e*) to inquire into and report upon any matter which it deems proper, or the Minister requests it, to enquire into;

(f) to act as the body of persons responsible for a National Preventive Mechanism for the prevention of torture, as provided for in the Optional Protocol to the United Nations Convention against Torture; and

(*g*) to perform such other functions as are assigned to it under these regulations.

Meetings and proceedings of the Board.

4. (1) The Board shall meet at least once a month at such place as the Board may from time to time determine.

(2) Except where otherwise provided in these regulations, the quorum for meetings of the Board shall be of half the number of members plus one.

(3) The meetings of the Board shall be presided by the Chairman or, in his absence, the Deputy Chairman or a member appointed by the Board to preside the meeting.

(4) The Head (Detention Services), hereinafter referred to as "the Head", may attend the whole or any part of a meeting of the Board if so invited by the Board and shall give to the Board any information it may require for the due exercise of its functions.

(5) Minutes of the proceedings and deliberations of the Board shall be drawn up by the Secretary of the Board and the relative Minutes Book shall be kept in his custody. Such minutes shall be read and confirmed at the first meeting after the meeting to which they relate, or any subsequent meeting, and shall be signed by the Chairman or other member presiding the meeting at which they are confirmed and by the Secretary.

(6) Evidence on oath, in connection with a complaint or an enquiry under these regulations, may be heard by one or more of the Board's members as may be designated for that purpose by the Board which shall also designate the member who will administer the oath.

Visits and inspections by the Board.

5. (1) The Board shall visit and inspect Detention Centres not less than once a month in such manner as the Board deems convenient.

(2) If the Board so requests, such visits and inspections shall be attended by the Head and any other officer designated by the Head.

(3) The detainees shall be asked if they have any complaints to make with regard to their treatment in the Detention Centres and any detainee wishing to make a complaint shall be heard in such part of the Centre as the Board may deem fit:

Provided that no sanction shall be ordered, applied, permitted or tolerated against any person or organization for having communicated to the Board any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

(4) Neither the Head nor any other officer shall be present while a detainee is making a complaint before the Board. The Head, however, shall be heard on any such complaint.

(5) The Board shall keep a record of all complaints made to it by detainees and its decision thereon, and shall, if it deems necessary, take the sworn evidence of the complainant and of such officers and other detainees or other persons as the Board may deem relevant. The oath shall be administered by the Chairman or other member presiding.

(6) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

(7) Where it is not considered practicable by the Board to carry out a visit or an inspection under the foregoing provisions of this regulation by all the members of the Board, a visit or an inspection carried out by not less than three members designated for such purpose by the Board shall be deemed a visit or an inspection carried out by the Board, and the foregoing provisions shall apply to any such visit or inspection in the same manner and to the like effect as to one carried out by the Board. Any record kept by the members carrying out such a visit or inspection and any complaint received by such members shall

be referred to the Board at its next meeting and entered in the minutes, provided that if it is necessary to hear any evidence on oath during any such visit or inspection the oath may be administered by any one of the members conducting the visit or inspection.

(8) The members of the Board may also make such visits or inspections either together or separately at any time, whether by day or night, whenever they consider it desirable to do so. Such visits or inspections may also be made without prior notice to the Head. A report of such visits or inspections shall be made to the Board at its next meeting unless the members carrying out the visit or inspection consider to inform the Board earlier through the Chairman.

Hearing of other complaints.

6. It shall also be the duty of the Board to hear and decide upon, as soon as practicable, any request or complaint made to it by a detainee, or any person on his behalf, other than those made directly to it or to any of its members during the course of a visit or inspection.

Decisions of the Board.

7. (1) The decisions of the Board shall be taken by a majority of the members present and voting. In the case of an equality of votes the Chairman shall have a casting vote in addition to his original vote.

(2) The decisions of the Detention Board shall not be binding upon the Head but it shall be the duty of the Head to take serious cognizance of the recommendations of the Board following a decision taken as provided in subregulation (1) and to enter into a dialogue with the Board on possible implementation measures. When the Head, or any other officer acting on his behalf, is of the opinion that the recommendations of the Board cannot be implemented for reasons which are in the best interests of the Detention Centre administration, an explanation in writing of these reasons shall, within one month of the date of receipt of the Board's recommendations, be forwarded to the Chairman of the Detention Board and copied to the Minister, or to a person delegated by him. The Minister, or the person delegated by him, may confirm or vary the decision of the Head.

Official record of visits by Board or its members.

8. (1) The members of the Board shall make a note in the official Visitors' Book of every visit or inspection made by them, with such remark as they deem proper in regard to the Detention Centres and the detainees.

(2) The official Visitors' Book shall be produced to the Board at each monthly meeting and at such other times as the Board may require.

(3) The Minister may request to examine the official Visitors' Book and the minutes book of the Board.

Disqualification and abstention of members.

9. (1) No person having any interest in any contract for the supply of goods or services to the Detention Centres shall be a member of the Board.

(2) If any member of the Board is related by consanguinity or affinity, up to the fourth degree inclusive, to any detainee or has any professional interest in any detainee, other than as a member of the Board, he shall forthwith make a declaration of such relationship or interest to the Board and such declaration shall be entered in the minutes. The said member shall thereafter abstain from taking part in the proceedings and deliberations of the Board on any question relating to such detainee and from voting thereon.

(3) A member who absents himself without valid reason for more than four consecutive meetings shall be considered as having resigned his post.

Matters for Head's attention.

10. The Board shall draw the attention of the detainee to any matter which calls for his attention and shall report to the Minister any matter which it considers expedient to report to him.

Abuses in Detention Centres.

11. The Board shall inform the Minister immediately of any abuse which comes to its knowledge and shall have power to recommend to the appropriate authority the taking of disciplinary action against any officer.

Inspection of food.

12. The Board shall arrange for the food of the detainees to be inspected by a member of the Board at frequent intervals.

Reports on detainee's health.

13. The Board shall inquire into any report made to it, or any information otherwise coming to its knowledge, that a detainee's health, mental or physical, has been or is likely to be injuriously affected by any conditions of his detainment.

Access to premises and records.

14. (1) The Board and every member thereof shall have access at any time to every part of the Detention Centres and to every detainee and may interview any detainee out of the sight and hearing of all officers.

(2) The Board and every member thereof shall have access to all Detention Centres' records.

Annual report.

15. (1) The Board shall make an annual report to the Minister at the end of each year concerning the state of the Detention Centres and their administration and, generally, the carrying out of its functions.

(2) Confidential information collected by the Board shall be privileged and no personal data shall be published without the express consent of the person concerned.

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