Mauritius

National Preventive Mechanism Act

Act 21 of 2012

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National Preventive Mechanism Act
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Mauritius

National Preventive Mechanism Act

Act 21 of 2012

Commenced on 1 July 2013

[This is the version of this document at 30 June 2017.]

1. Short title

This Act may be cited as the National Preventive Mechanism Act.

2. Interpretation

In this Act—

"**Chairperson**" means the Chairperson of the Commission;

"**Commission**" means the National Human Rights Commission established under the Protection of Human Rights Act;

"**Deputy Chairperson**" means the Deputy Chairperson of the Commission who is assigned to the Division;

"**Division**" means the National Preventive Mechanism Division referred to in section 3;

"**Minister**" means the Minister to whom responsibility for the subject of human rights is assigned;

"**Optional Protocol**" means the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 18 December 2002 and acceded to by the Government of Mauritius on 21 June 2005;

"**place of detention**"—

(a) means any place where a person is or may be deprived of his liberty by virtue of an order given by a public authority or at its instigation or with its acquiescence;

(b) includes a police cell, a prison, a Correctional Youth Centre, a Rehabilitation Youth Centre and a mental health care centre;

"**Subcommittee**" means the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, established under the Optional Protocol.

3. National Preventive Mechanism Division

(1) There shall be for the purposes of this Act a National Preventive Mechanism Division which shall be a Division of the Commission.

(2) The National Preventive Mechanism Division shall for the purposes of Part IV of the Optional Protocol be the National Preventive Mechanism.

(3) Section 3 of the Protection of Human Rights Act shall apply to the Division.

(4) The Division shall consist of—

(a) the Chairperson as its head;

(b) a Deputy Chairperson; and

(c) 2 members.

(5) Of the 2 members referred to in subsection (4) (c)—

(a) one member shall be selected from a list submitted by nongovernmental organisations involved in social work in prisons; and

(b) the other member shall be a person having knowledge and experience in the field of human rights, law, employment, industrial relations, business administration, education, sociology, policing, social work, psychology, psychiatry, medicine or prison management.

(6) The Division may, where it considers necessary, co-opt any expert with the relevant professional expertise, experience and knowledge to assist it in the discharge of its functions under this Act.

4. Functions of Division

The functions of the Division shall be—

(a) to visit places of detention on a regular basis so as to examine the treatment of persons deprived of their liberty with a view to ensuring their protection against torture and inhuman or degrading treatment or punishment;

(b) to investigate any complaint which may be made by a detainee and, where the detainee so requests, investigate the complaint privately;

(c) to make to the Minister recommendations regarding the improvement of the treatment and conditions of persons deprived of their liberty in places of detention, taking into consideration the relevant norms of the United Nations;

(d) to submit to the Minister and other relevant authorities proposals and observations concerning legislation relating to places of detention and the treatment of persons deprived of their liberty;

(e) to work, where appropriate, in co-operation or consultation with any person or body, whether public or private, in connection with the discharge of any of its functions under this Act and the Optional Protocol.

5. Powers of Division

(1) The Division shall have such powers as may be necessary to effectively discharge its functions under this Act and the Optional Protocol.

(2) Without prejudice to the generality of its powers under subsection (1), the Division shall, notwithstanding any other enactment, be given—

(a) full access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location;

(b) access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) access to any place of detention and its installations and facilities;

(d) the opportunity to have private interviews with persons deprived of their liberty, personally or with a translator where necessary, as well as with any other person whom they have reason to believe may supply relevant information;

(e) the freedom to choose the places they want to visit and the persons they want to interview;

(f) the freedom to determine its own procedures, including its programmes of visits;

(g) the freedom for its members to be accompanied, if needed, by such expert with the relevant professional expertise, experience and knowledge as the Chairperson may determine, on visits to detention centres;

(h) the right to have contacts with the Subcommittee and to exchange information with it.

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6. Meetings of Division

(1) Subject to subsection (2), the Division shall regulate its meetings in such manner as it thinks fit.

(2) Three members of the Division, including the Chairperson or Deputy Chairperson, shall constitute a quorum.

7. Staff of Division

The Commission shall provide the Division with adequate staff and facilities for the proper discharge of its functions.

8. Confidentiality of information

(1) Notwithstanding section 300 of the Criminal Code or any other enactment providing for the confidentiality of information, any person who is in possession, or is otherwise aware, of any information relating to the detention of a person in a place of detention shall disclose that information to the Division or the Subcommittee on being required to do so by the Division or the Subcommittee.

(2) Any confidential information obtained by the Division shall be privileged.

(3) The Division shall not publish personal data relating to any person without that person's express consent.

9. Protection from liability

(1) No criminal, disciplinary or administrative sanction shall be taken against any person for having communicated, in good faith, any information to the Division or the Subcommittee.

(2) No action, suit or other legal proceedings shall lie against the Division or a member or officer of the Division in respect of anything done, or purported to be done, in good faith, and in pursuance of the functions and powers conferred under this Act or in respect of any publication by or under the authority of the Division of any report, proceedings or any other matter under this Act.

10. Offences

Any person who—

(a) conceals, destroys, alters, tampers with, or otherwise disposes of, any article, or book, record, accounts, report or data, stored electronically or otherwise, or other document, which he has been summoned or required to produce;

(b) obstructs or assaults a member or an officer of the Division in the exercise of his functions and powers under this Act;

(c) impersonates a member or an officer of the Division;

(d) without lawful justification or reasonable excuse—

(i) hinders or resists the Division or any other person in the discharge of its or his functions and powers under this Act; or

(ii) fails to comply with any lawful requirement of the Division or any other person under this Act;

(e) knowingly misleads the Division or a member or an officer of the Division by giving false information,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

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11. Regulations

The Minister may, after consultation with the Commission, make such regulations as he thinks fit for the purposes of this Act.

12. ***

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