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BILL

To provide for the incorporation and enactment of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction into the South African Law; the implementation and enforcement of the Convention in South Africa; ensuring the destruction of anti-personnel mines; providing for domestic inspections; providing for international fact-finding missions to South Africa; providing for domestic as well as international co-operation; and providing for other matters relating to the obligations of the Republic under the Convention.

PREAMBLE

WHEREAS anti-personnel mines constitute a deadly scourge that kill and maim innocent and defenceless civilians during and after violent conflicts and inhibit socio-economic development and reconstruction;

AND WHEREAS anti-personnel mines have had a destabilising effect on civilian populations in Africa and in the SADC region in particular;

AND WHEREAS citizens should live in freedom, peace and security and should enjoy social justice, economic development and a safe environment;

AND WHEREAS the universal, comprehensive and immediate prohibition and destruction of anti-personnel mines is the only solution to rid the world of this scourge;

AND WHEREAS the Republic has placed a moratorium on the export of all mines and unilaterally destroyed all the Republic's stockpiled anti-personnel mines, save for those retained for the purposes of developing and conducting training in mine detection, mine clearance, mine deactivation or mine destruction techniques;

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AND WHEREAS domestic as well as international assistance and co-operation are necessary to ensure the expeditious eradication of anti-personnel mines as well as the care, rehabilitation and social and economic re-integration of mine victims;

AND WHEREAS the Republic of South Africa has signed and ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 18 September 1997;

AND WHEREAS the Convention requires State Parties to take appropriate legal measures to prevent and suppress the activities prohibited by the Convention;

AND WHEREAS the Republic is committed to the implementation of international humanitarian law and international law on armed conflict,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows -

CHAPTER 1 DEFINITION OF TERMS

Definitions

1. In this Act, unless the context indicates otherwise, any word or expression to which a meaning is ascribed in the Convention bears the same meaning, and -

- (a) "**agent**" means a person employed on behalf of the Department of Defence or the South African Police Service to destroy anti-personnel mines or develop and conduct training in mine detection, mine clearance or mine destruction techniques;
- (b) "**anti-handling device**" means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine;

- (c) **"anti-personnel mine"** means -
- (i) a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped; and
 - (ii) for the purposes of this Act, a mine other than an anti-personnel mine shall be considered to be an anti-personnel mine if it is designed to be or can be detonated by:
 - (1) a trip-wire or break-wire;
 - (2) a direct or indirect weight less than 150 kilograms;
 - (3) a sensitive fuse which can be unintentionally activated by the presence, proximity or contact of a person;
 - (4) an anti-handling device which can be unintentionally activated by the presence, proximity or contact of a person;
 - (5) any other mine or device which performs in a manner consistent with Section 1(c)(i);
- (d) **"competent court"** means any court of the Republic considered in Section 166(c)–(e) of the Constitution, including a military court, exercising criminal jurisdiction;
- (e) **"component part"** means any identifiable component of an anti-personnel mine that is designed or adapted to form part of an anti-personnel mine;
- (f) **"Constitution"** means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);
- (g) **"Convention"** means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997, signed by the Republic on 3 December 1997 and ratified by the Republic on 26 June 1998;
- (h) **"customs official"** means an officer or official as defined in the Customs and Excise Act, 1964 (Act 91 of 1964);

- (i) "**deal in**" means any activity relating to marketing, importation, exportation, conveyance, transfer or manufacturing of anti-personnel mines, whether or not that activity is in exchange for currency or any other commodity or benefit;
- (j) "**Department of Defence**" means the Defence Secretariat and the South African National Defence Force;
- (k) "**domestic inspector**" means a person who is appointed and authorised by the Minister to be a domestic inspector;
- (l) "**employee of the Department of Defence**" means a member of the South African National Defence Force employed in terms of the Defence Act, 1957 (Act 44 of 1957) and a civilian employee of the Department of Defence, employed in terms of the Public Service Act, 1994 (Act 103 of 1994);
- (m) "**exempted anti-personnel mine**" means an anti-personnel mine, which the Minister has authorised to be retained or transferred for the development of and training in mine detection, mine clearance or mine destruction techniques;
- (n) "**export**" means -
 - (i) the entering into an agreement by a person in the Republic to supply another person outside the Republic with an anti-personnel mine, whether or not that is done in exchange for currency or any other commodity or benefit; and
 - (ii) the transfer of an anti-personnel mine from the Republic to any place outside the Republic, or causing an anti-personnel mine to be so transferred, whether or not that is done in exchange for currency or any other commodity or benefit;
- (o) "**gazette**" means the Government Gazette;
- (p) "**import**" means to bring an anti-personnel mine into any part of the Republic, whether or not such bringing in is in exchange for currency or any other commodity or benefit;
- (q) "**information**" means any record regardless of form or medium;
- (r) "**international inspector**" means a person appointed by the Secretary-General of the United Nations as an international inspector and forms part of an international fact-finding mission to the Republic;

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- (s) "**judicial officer**" means a Magistrate as defined in Section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
- (t) "**manufacture**" includes the design, development, production and assembly of anti-personnel mines;
- (u) "**military museum**" means a military, regimental or veterans museum, exhibition or display, of a historical nature, for public or private display, that is accredited with the Department of Defence;
- (v) "**mine**" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle;
- (w) "**mined area**" means an area which is dangerous due to the presence or suspected presence of mines;
- (x) "**Minister**" means the Minister of Defence;
- (y) "**notify**" means, in terms of an anti-personnel mine, the notification of a designated and authorised police official of possession of an anti-personnel mine in person and such notification must receive a reference number of such notification;
- (z) "**organ of state**" means an organ of state as defined in Section 239 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);
- (aa) "**person**" means a natural or juristic person and includes a natural or juristic person of foreign nationality present or acting within the borders of the Republic;
- (bb) "**place**" means, in relation to an anti-personnel mine, to use, locate, emplace or situate an anti-personnel mine in a manner that would or could cause, an explosion by the presence, proximity or contact of a person;
- (cc) "**police official**" means -
 - (i) a member of the South African Police Service as defined in Section 1 of the South African Police Service Act, 1995 (Act 68 of 1995);
 - (ii) a person designated by the Minister for Safety and Security as a police official;

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- (iii) a military police official;
- (iii) a member of the South African National Defence Force deployed in a joint operation in co-operation with the South African Police Service;
- (dd) "**possess**" means to have an anti-personnel mine under the control of a person or in an area under the control of a person;
- (ee) "**premises**" includes, land, any building or structure, or any vehicle, vessel, aircraft or other means of conveyance;
- (ff) "**private collector**" means a person who collects firearms, is a member of an accredited collectors' association, and is not a public collector;
- (gg) "**procure**" means to obtain an anti-personnel mine through purchase, forfeiture, donation, cession, transfer or discovery;
- (hh) "**public collector**" means a person who collects firearms for display to the public and is accredited as such in terms of the Firearms Control Act, 2000 (Act 60 of 2000);
- (ii) "**public museum**" means an institution as defined in Sections 3 (1) and (2) of the Cultural Institutions Act, 1998 (Act 119 of 1998);
- (jj) "**Republic**" means the Republic of South Africa;
- (kk) "**Schedule**" means Schedule 1 to this Act;
- (ll) "**state party**" means a State that has signed and ratified or acceded to the Convention;
- (mm) "**this act**" includes the regulations;
- (nn) "**transfer**" Includes -
 - (i) the transfer of title to and control over an anti-personnel mine;
 - (ii) the selling, hiring, letting, lending, borrowing, donating, giving, purchasing, receiving or parting with or gaining possession of an anti-personnel mine;

- (iii) the transit of anti-personnel mines into, out of or through the territory of the Republic or territory under its jurisdiction or control by any means but does not involve the transfer of territory containing emplaced anti-personnel mines.

CHAPTER 2 ENACTMENT AND OBJECT OF THE ACT

Enactment of the Convention as Part of South African Law

2. (1) The Convention applies in the Republic, subject to the provisions of this Act.

(2) The Minister may from time to time by notice in the *Gazette* amend Schedule 1 to reflect any changes made to the Convention if those changes are binding on the Republic in terms of Section 231 of the Constitution.

Principle Objects of the Act

3. The principle objects of the Act are -
- (a) to make the Convention part of the South African Domestic Law and to create a framework to ensure that the Convention is effectively implemented in the Republic; and
 - (b) to ensure that anything done in terms of this Act conforms with the obligations of the Republic in terms of the Convention; and
 - (c) to prohibit the use, stockpiling, production, development, acquisition and transfer of anti-personnel mines and ensure the destruction thereof; and
 - (d) to provide for domestic inspections and international fact-finding missions to South Africa as well as for domestic and international co-operation; and
 - (e) to enable any competent court to try and punish offenders who have committed crimes or offences referred to in this Act; and
 - (f) to provide for other matters relating to the obligations of the Republic under the Convention.

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CHAPTER 3 PROHIBITIONS AND PENALTIES

Prohibition

4. Unless authorised by the Minister in terms of this Act or otherwise provided for in this Act, neither an Organ of State nor a person within the Republic or any South African citizen outside the Republic may -

- (a) place an anti-personnel mine;
- (b) possess an anti-personnel mine;
- (c) procure an anti-personnel mine;
- (d) manufacture an anti-personnel mine;
- (e) stockpile an anti-personnel mine;
- (f) transfer an anti-personnel mine;
- (g) deal-in an anti-personnel mine;
- (h) import or export an anti-personnel mine;
- (i) possess, procure, manufacture, stockpile, transfer, deal-in, import or export a component part;
- (j) possess, procure, manufacture, stockpile, transfer, deal-in, import or export plans or designs for the purposes of manufacturing an anti-personnel mine or a component part;
- (k) attempt or conspire to violate any provisions in sub-sections 4(a) to (j).

Assistance

5. No person may in any way assist, encourage or induce any person to engage in any act prohibited by Section 4.

Penalty

6. (1) Natural persons contravening Sections 4 or 5 shall be guilty of an offence and liable, on conviction, to imprisonment for a term not exceeding XX years or to a fine not exceeding RYYYY¹ or to both.

(2) Juristic persons contravening Sections 4 or 5 shall be guilty of an offence and liable, on conviction, to a fine not exceeding RYYYY².

(3) The Court, convicting any person of an offence under this Act may declare any weapon, vehicle, uniform, equipment, real or other property or object in respect of which the offence was committed or which was used for, in or in connection with the commission of the offence, forfeited to the State.

CHAPTER 4 APPLICATION OF THE ACT

Application

7. This Act extends outside the territorial borders of the Republic to all South African citizens and body corporates registered in South Africa and any person subject to military law as considered in Section 3 of the Military Discipline Supplementary Measures Act, 1999 (Act 16 of 1999), whether or not such a person is a South African citizen.

Jurisdiction of Courts

8. (1) Any competent court of law of the Republic may, with the written consent of the National Director of Prosecutions, try a person for an offence referred to in Sections 4 and 5, notwithstanding the fact that the act or omission to which the charge relates, was committed outside the Republic.

(2) For the purpose of conducting trials within the Republic, criminal proceedings for any act prohibited in terms of this Act that is committed outside the territorial borders of the Republic may be instituted and the offence will be deemed as having been committed in the territory of the Republic.

¹ The penalty and Rand-value shall be specified by the State Law Advisor during the certification process.

² *Ibid.*

(3) Despite any law to the contrary, any Magistrates Court has jurisdiction to impose any penalty provided for in terms of this Act.

Precedence³

9. This Act has precedence over all other legislation relating to the regulation and control of anti-personnel mines, including, but not limited to -

- (a) the Firearms Control Act, 2000 (Act 60 of 2000);
- (b) the Explosives Act, 1956 (Act 26 of 1956);
- (c) the Regulation of Foreign Military Assistance Act, 1998 (Act 15 of 1998); and
- (d) the Armaments Development and Production Act, 1968 (Act 57 of 1968).

CHAPTER 5 EXEMPTIONS

Minister's Power to Authorise Retention of an Anti-Personnel Mine

10. (1) The Minister may exempt the persons specified in Sections 13(1)&(2) from the prohibitions stipulated in Section 4 and authorise such persons to retain mines for the purposes of developing and conducting training in mine detection, mine clearance or mine destruction techniques.

(2) All anti-personnel mines retained for the purposes stated in Section 10(1) shall be kept in accordance with the provisions of the Explosives Act, 1956 (Act 26 of 1956), except where so exempted from that Act.

Restriction on the Number of Anti-Personnel Mines to be Retained

11. (1) The Minister must ensure that the total number of anti-personnel mines that are retained does not exceed the minimum number absolutely necessary for the purposes stated in Section 10(1).

³The Conventional Arms Control Bill cannot be included until promulgated as an Act.

(2) The total number of anti-personnel mines retained may not in any instance exceed 5 000⁴ anti-personnel mines.

(3) The number of components commonly used in other mines will not be limited.

Transfer of Anti-Personnel Mines

12. With the written authorisation of the Minister, and subject to national legislation on arms transfers, an anti-personnel mine may be transferred to and from the Republic for the purposes stated in Section 10(1), or for destruction or acquiring new technology or techniques for the purposes stated in Section 10(1).

Control Over, Possession and Use of Anti-Personnel Mines

13. (1) The Department of Defence and the South African Police Service are authorised to possess and have control over anti-personnel mines that the Minister has authorised to be retained for the development of and training in mine detection, mine deactivation, mine clearance or mine destruction techniques.

(2) With the written authority of the Minister, Organs of State, organisations, private companies and agents of the Department of Defence or the South African Police Service may possess anti-personnel mines for the purposes stated in Section 10(1).

(3) A police official or an employee of the Department of Defence specifically designated and tasked for that purpose may in the course of his or her explicit employment or duties seize, receive, use, possess, move, destroy or transfer anti-personnel mines for the purposes stated in Section 10(1).

(4) A police official may seize, receive, possess, move or transfer anti-personnel mines for the purpose of enforcing any law.

Clerk of the Court

14. A clerk of the court may receive, possess, move or transfer an anti-personnel mine for purpose of evidence in criminal proceedings.

Customs Officials

15. (1) A Customs Official may possess anti-personnel mines that have been seized in the course of his or her duties and exercise of his or her powers as determined by Section 4 of the Customs and Excise Act, 1964 (Act 91 of 1964).

⁴ This is the number of anti-personnel mines South Africa reported to the Secretary General of the United Nations as being retained in its first Article 7 report dd 01 September 1999.

(2) Such mines shall, within a reasonable time, be handed over to a police official.

Mine Clearance Activities by South African Persons

16. (1) A South African person may undertake mine clearance activities outside the territorial borders of the Republic.

(a) Any person undertaking any such activity shall register in terms of and operate in accordance with South African arms control and foreign military assistance legislation and the regulations thereto.

(b) Such registered persons engaged in mine clearance activities may in the course of his or her explicit employment or duties possess and transfer anti-personnel mines for the sole purposes of destruction.

Public Museums, Military Museums, Public Collectors and Private Collectors

17. With written authorisation from the Minister and subject to any conditions specified by the Minister in regulations, a public museum, military museum, public collector or private collector may possess an anti-personnel mine or component part thereof provided that such mine or component part thereof is devoid of explosive materials and explosive triggering devices.

Military Activities.

18. (1) The Department of Defence may participate in operations, exercises or other military activities with the armed forces of a State that is not a party to the Convention provided that the operation, exercise or military activity is not in contravention of the Convention and that such participation does not amount to active assistance in any activity prohibited by the Convention.

(2) If such a contravention occurs, the Minister shall review and may terminate further involvement in the operation, exercise or other military activity or may take other appropriate action as he or she may deem necessary.

19. (1) A military force of another State visiting the Republic in terms of an international obligation or an agreement between that state and the Republic, and the members of such a force, shall be bound by the provisions of this Act.

(2) Any such agreement concluded between that State and the Republic shall, where appropriate, make reference to this Act.

CHAPTER 6 DESTRUCTION AND CLEARANCE OF ANTI-PERSONNEL MINES

Surrender of Anti-Personnel Mines and Forfeiture to the State

20. (1) Unless authorised by the Minister in terms of this Act or otherwise provided for in this Act, any person knowingly in possession of an anti-personnel mine, or a component part thereof, must, within a reasonable time not exceeding six months after the commencement of this Act, take all reasonable steps to notify a designated and authorised police official of such possession and arrange for its collection.

(2) Designated and authorised police officials shall register such notification and take all reasonable and immediate steps to ensure the collection of such mines.

(3) In the instance of a military operational deployment outside of the Republic, a military police official, or any other person designated for this purpose, may be notified and take possession of any anti-personnel mine.

(4) All anti-personnel mines collected or seized shall, without notice, be forfeited to the State.

Destruction of Anti-Personnel Mines held in the Republic or Territory under the Jurisdiction or Control of the Republic

21. (1) The Minister shall ensure the destruction of all stockpiled and emplaced anti-personnel mines held in the Republic or territory under the jurisdiction or control of the Republic, with the exception of any anti-personnel mines that are authorised to be retained for the purposes stated in Section 10(1).

(2) The destruction of anti-personnel mines may only be undertaken by a competent authority in the Department of Defence or the South African Police Service, or by another Organ of State or an agent authorised to do so by a competent authority in the Department of Defence or the South African Police Service.

(3) The destruction of anti-personnel mines shall at all times be carried out in full compliance with applicable environmental and occupational health and safety legislation and the regulations thereto.

Record of Destroyed Anti-Personnel Mines

22. The Department of Defence and the South African Police Service shall maintain a written record in the prescribed format of all anti-personnel mines destroyed by them.

CHAPTER 7

DOMESTIC INSPECTIONS RELATING TO COMPLIANCE WITH THE ACT

DOMESTIC INSPECTORS

Appointment of Domestic Inspectors

23. (1) The Minister may in writing, appoint a competent person as a domestic inspector to undertake domestic inspections aimed at -

- (a) investigating and enforcing compliance with this Act; or
- (b) assisting or accompanying an international inspector investigating alleged non-compliance with the Convention.

(2) The Minister shall issue to every domestic inspector a certificate of appointment identifying the domestic inspector by name, indicating the inspector's status and authority to conduct inspections and setting out such other information and any conditions attached to his or her duties or powers.

(3) A domestic inspector must comply with the instructions of the Minister in exercising his or her powers and performing his or her functions.

Conditions Imposed on a Domestic Inspector

24. (1) The Minister may impose conditions on a domestic inspector relating to -

- (a) the protection of sensitive equipment, information or areas;
- (b) the protection of the Constitutional obligations of the Republic with regard to property rights, search and seizure and any other Constitutional rights; and
- (c) the physical protection and safety of the domestic inspector;

(2) Any condition may provide that the domestic inspector is not authorised to exercise specified powers whilst on specified premises.

(3) Domestic inspectors shall adhere to commonly accepted safety standards and practices relevant to anti-personnel mines.

Termination of Appointment of a Domestic Inspector

25. (1) The Minister may at any time terminate the services of a domestic inspector due to -

- (a) incapacity;
- (b) incompetence;
- (c) failure to comply with any condition imposed by the Minister;
- (d) failure to comply with any instruction of the Minister; or
- (e) any other justifiable reason that the Minister may determine.

INVESTIGATION, SEARCH OF PREMISES AND SEIZURE OF ITEMS

Powers

26. (1) A domestic inspector accompanied by a police official, may -
- (a) make any inquiries relating to this Act as he or she may deem necessary;
 - (b) search any premises, subject to Sections 27 to 34, -
 - (i) that he or she has reason to suspect contains an anti-personnel mine, component parts thereof or any information or material relating to a contravention of this Act; or
 - (ii) for the investigation of any matter in terms of this Act.

(2) A domestic inspector accompanied by a police official, may seize, lock up, seal, mark, fasten or otherwise secure any premises, equipment or goods if he or she has reason to believe that any contravention under this Act has been or is intended to be committed in respect thereof or in connection therewith.

Search with a Warrant

27. (1) A domestic inspector through a police official, must apply to a judicial officer having jurisdiction in the area in which the premises in question are situated for a search warrant where there are reasonable grounds to believe that a contravention of this Act has been, or is intended to be committed.

(2) The judicial officer shall issue the warrant if satisfied that it is reasonably necessary that one or more police officials or domestic inspectors should have access to the premises for the purposes of finding out whether the Act has been contravened.

(3) The judicial officer shall not issue the warrant unless he or she is furnished with sufficient information under oath or affirmation to convince him or her of the necessity for the warrant.

(4) A warrant issued in terms of this section -

(a) may be issued on any day and shall be of force until -

(i) it is executed;

(ii) it is cancelled by the person who issued it, or if such person is not available, by any person with like authority;

(iii) the expiry of one month from the day of its issue; or

(iv) the purpose for the issuing of the warrant has lapsed;

(b) shall be executed by day unless the person who issues the warrant authorises the execution thereof by night at times which shall be reasonable, and any entry or search of any premises in terms of this warrant shall be conducted with strict regard to decency and order, including -

(i) a person's right to, respect for and the protection of a persons dignity;

(ii) the right of the person to freedom and security;

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(iii) the right of the person to his or her personal privacy;

28. A person is guilty of an offence if in the course of applying for a warrant he or she makes a false or a misleading statement and shall be punishable, on conviction, by a term of imprisonment not exceeding XX years or a fine of RYYY⁵ or both.

Identification Prior to Entry

29. (1) A police official and a domestic inspector shall, before entering the premises under a warrant so issued -

- (a) audibly announce that he or she is authorised to enter the premises and must demand admission to the premises;
- (b) notify the person in control of the premises of the purpose of the entry, unless the police official or domestic inspector is, on reasonable grounds, of the opinion that an item that is the subject of the search may be destroyed if such admission is first demanded and such purpose is first notified;
- (c) hand to such a person upon request a copy of the warrant or, if such person is not present, affix such a copy to a prominent place on the premises;
- (d) supply such a person at his or her request with particulars regarding his or her authority to execute such a warrant; and
- (e) give any person at the premises an opportunity to allow entry to the premises.

(2) A domestic inspector who wishes to inspect any premises shall, on request of the person in charge of that premises, show his or her certificate of appointment to that person.

(3) A domestic inspector shall carry his or her certificate of appointment at all times when exercising powers and performing functions as a domestic inspector.

Search without a Warrant

30. A domestic inspector accompanied by a police official, may search premises without a search warrant, if -

⁵ The penalty and Rand-value shall be specified by the State Law Advisor during the certification process.

- (a) a person who is competent to do so consents to such entry, search, seizure or removal;
- (b) he or she has reasonable grounds to believe that immediate entry to the premises is required for one or more of the following reasons -
 - (i) to ensure the safety of a person;
 - (ii) to prevent serious damage to the environment; or
 - (iii) a judicial officer would have granted a search warrant had one been applied for and the delay caused by obtaining any such warrant would defeat the object of the entry, search, seizure or removal.

Right of Occupier to be Present at a Search

31. (1) If a domestic inspector accompanied by a police official, is executing a search warrant in relation to the premises, the occupier or another person legally representing the occupier has a right to observe the search, except in circumstances relating to Section 30 where the inspector believes on reasonable grounds that immediate entry is required.

(2) A person's right to observe the search ceases if that person impedes the search.

Resistance against Entry into Premises

32. (1) A domestic inspector accompanied by a police official, may on the authority of the warrant issued enter upon and search any premises, use such force as may be reasonably necessary to overcome resistance by the person in charge of the premises to such entry, search, seizure or removal.

(2) No person shall be entitled to compensation for any loss or damage arising out of any *bona fide* action of a police official or a domestic inspector under Section 32(1).

Obstruction.

33. Any person wilfully obstructing or knowingly making a false statement to a police official or a domestic inspector during an inspection shall be liable, on conviction, to imprisonment not exceeding XX years or a fine of RYYYY⁶ or both.

⁶ *Ibid.*

Access to Any Item at the Premises

34. (1) A domestic inspector accompanied by a police official, inspecting premises shall, relating to the enforcement of this Act -

- (a) have access to any area, container or item on the premises;
- (b) examine anything on the premises;
- (c) make copies of any information or record kept or used in relation to the premises and remove such copies from the premises;
- (d) make photographic copies of anything on the premises;
- (e) interview any person on the premises; and
- (f) take and remove for analysis samples of anything on the premises.

(2) A domestic inspector accompanied by a police official, inspecting premises may retain any item on the premises for a reasonable period for the purpose of further investigation.

(3) A domestic inspector accompanied by a police official, inspecting a premise shall -

- (a) issue a receipt in respect of any item removed or found on such premises and suspected, upon reasonable grounds, to be an item in contravention of this Act or necessary to the investigation of any matter in terms of this Act; and
- (b) return an item, except any item prohibited by this or any other Act, as soon as possible after the purpose of such removal has been accomplished.

(4) Anti-personnel mines seized or preserved for evidence in criminal proceedings shall be held, handled and disposed of in terms of the Criminal Procedure Act, 1977 (Act 51 of 1977) as amended and the Explosives Act, 1956 (Act 26 of 1956) as amended.

CHAPTER 8 INTERNATIONAL INSPECTIONS REGARDING COMPLIANCE WITH THE CONVENTION

International Fact-Finding Missions to the Republic

35. (1) In accordance with Article 8 of the Convention, an international fact-finding mission, authorised and mandated by the State Parties and appointed by the Secretary General of the United Nations, may -

- (a) on at least 48 hours notice, enter the Republic to investigate any matter concerning the Republic's alleged non-compliance with the Convention; and
- (b) stay in the Republic, or areas under the control of the Republic, for up to 14 days, and at any particular site for up to 7 days, unless otherwise agreed to by the Minister.

(2) The Minister shall -

- (a) take the necessary administrative measures to receive, transport and accommodate the mission;
- (b) be responsible for ensuring the security of the mission to the maximum extent possible while in the Republic or territory under the control of the Republic;
- (c) make all efforts to ensure that the mission is given the opportunity to speak with all relevant persons who may be able to provide information related to the compliance matter in question; and
- (d) grant the mission access to all areas and installations under the control of the Republic where facts relevant to the compliance matter could be expected to be collected.

(3) The Minister shall instruct domestic inspectors appointed under Section 23 to accompany and assist international inspectors. A domestic inspector shall carry out such assistance in terms of Sections 26 to 34.

(4) International inspectors, when accompanied by a domestic inspector, shall have all rights outlined in Sections 26 to 34.

(5) The cost of the fact-finding mission shall be borne by the State Parties to the Convention.

(6) Within the provisions of the Public Finance Management Act, 1999 (Act 1 of 1999), the Minister may reimburse any person who is not part of the fact-finding mission in respect of authorised expenditure incurred in connection with carrying out the functions of a fact-finding mission.

Certificate as an International Inspector

36. The Minister shall issue to every member of an international fact-finding mission in South Africa a certificate that -

- (a) identifies the international inspector by name and indicates the inspector's status and authority to conduct a fact-finding mission in South Africa;
- (b) states that the international inspector enjoys the privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February, 1946; and
- (c) sets out such other information and any conditions attached to the international inspector's fact-finding activities in South Africa as the Minister considers advisable.

Immunities and Privileges of International Inspectors

37. (1) An international inspector to the Republic shall enjoy -
- (a) the privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations;
 - (b) immunity in respect of things done or omitted to be done by the international inspector in carrying out his or her functions under the Convention;
 - (c) immunity from arrest or detention and the like inviolability for all papers and documents, as accorded a diplomatic agent; and
 - (d) exemption and privileges in respect of his or her personal baggage, as accorded a diplomatic agent.

(2) An international inspector to the Republic may import the necessary equipment to be used exclusively in carrying out a fact-finding mission, and may subsequently export the equipment from the Republic. Such import and export shall be exempt from duty and tax.

Conditions Imposed on International Inspector

38. (1) The Minister may impose conditions on an international inspector relating to -

- (a) the protection of sensitive equipment, information or areas;
- (b) the protection of the Constitutional obligations of the Republic with regard to property rights, search and seizure and any other Constitutional rights; and
- (c) the physical protection and safety of the inspector.

(2) Any condition of appointment may provide that the inspector is not authorised to exercise specified powers whilst on specified premises.

(3) In the event that the Minister imposes any condition on an international inspector, the Minister shall nevertheless make every reasonable effort to demonstrate through alternative means the Republic's compliance with the Convention.

(4) International inspectors shall adhere to commonly accepted safety standards and practices relevant to anti-personnel mines.

CHAPTER 9 INTERNATIONAL CO-OPERATION

International Co-operation.

39. (1) Any international co-operation or assistance rendered or received by the Republic under Article 6 of the Convention must take place in terms of a formal agreement between the Republic and the other party or parties to the agreement.

(2) The agreement shall specify -

- (a) the nature and conditions of the assistance or co-operation;
- (b) the obligations of all parties, including obligations in terms of costs and reimbursements;
- (c) any diplomatic privileges and immunities to be enjoyed by any person; and
- (d) procedures for the settlement of disputes.

(3) The agreement may provide for -

- (a) the exchange of equipment, material and scientific and technological information concerning the implementation of the Convention;
- (b) humanitarian de-mining, including -
 - (i) assistance for mine clearance;
 - (ii) victim assistance;
 - (iii) mine awareness programmes; and
 - (iv) any other related activities;
- (c) the care, rehabilitation and social and economic reintegration of mine victims;
- (d) assistance through the United Nations system, other international or regional organisations or institutions, non-governmental organisations or institutions, or on a bilateral basis, or by contributing to any United Nations fund established for assistance in mine action; and
- (e) any other matter relating to the implementation of the Convention.

Authorisation of South African Persons to take part in an International Fact-Finding Mission outside the Republic

40. (1) The Minister may, in consultation with another Minister where necessary, appoint and authorise in writing any qualified South African expert to be a member of an international fact-finding mission to another country.

(2) The appointed person will, for the purposes of the fact-finding mission, carry out his or her activities in terms of the directives and instructions of the body or entity authorised by the State Parties.

(3) The appointed person will throughout the fact-finding mission report to and be accountable to the body or entity authorised by the State Parties.

(4) The person will be employed in terms of an agreement signed by the Minister, or his or her duly authorised representative, and a duly authorised representative of the body or entity. The agreement shall state:

- (a) the conditions of employment;
- (b) obligations of all parties in terms of monies expended and future expenses;
- (c) the privileges and immunities of the person concerned;
- (d) the settlement of disputes; and
- (e) any other matter that the parties wish to specify.

CHAPTER 10 INFORMATION AND RECORDS

Reporting

41. The Minister shall be responsible for -

- (a) gathering, recording and disseminating information for the purposes of ensuring compliance with the Convention and this Act and reporting, through the Minister of Foreign Affairs, to the Secretary-General of the United Nations on the Republic's compliance with the Convention. This shall include but not be limited to the following -
 - (i) the annual reports of the Republic required under Article 7 of the Convention, and other reports where necessary, to the Secretary-General of the United Nations;

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- (ii) information relating to mine clearance, including lists of experts, expert agencies or national points of contact, for the United Nations database on mine clearance; and
 - (iii) institutions or persons authorised by the Minister to retain or transfer anti-personnel mines;
- (b) monitoring the Republic's compliance with the Convention;
- (c) record keeping with regard to anti-personnel mines that have been destroyed and those that have been exempted for purposes allowed by this Act.

Information Gathering Powers

42. (1) The Minister shall have the power to gather information from any person if the Minister has reason to believe that such information is relevant for -

- (a) the administration or enforcement of this Act;
- (b) ensuring compliance with the Convention, including providing information under Article 8 of the Convention;
- (c) annual reporting to the Secretary-General of the United Nations as required by Article 7 of the Convention; or
- (d) record keeping.

(2) The Minister may, by written notice served on any person, require that person to provide such information, within the period and in the manner and form specified in the notice.

Failure to Comply & Providing False Information

43. (1) A person shall be guilty of an offence if he or she -
- (a) without reasonable excuse fails to comply with a notice served on him or her by the Minister; or
 - (b) intentionally or recklessly provides false information.

(2) An offence in terms of Section 41(1) shall be punishable, on conviction, to imprisonment not exceeding XX years or a fine of RYYY⁷ or both.

⁷ *Ibid.*

CHAPTER 11 ADMINISTRATION OF THE ACT

General Provisions

44. (1) The Minister shall be responsible for administering this Act.

(2) The Minister must ensure that general guidelines are issued in respect of training the relevant officials in the Convention.

Regulations

45. (1) The Minister may promulgate regulations in the gazette to -

- (a) carry out and give effect to the provisions of this Act; or
- (b) specify procedures to this Act.

(2) A regulation promulgated in terms of this Act shall enjoy the same force and effect of this Act.

Delegations

46. (1) The Minister may, in writing, delegate part or all of his or her duties and powers provided for in this Act to -

- (a) the Secretary for Defence; or
- (b) the Chief of the South African National Defence Force; or
- (c) an employee of the Department of Defence holding a position or rank of at least Director, Brigadier General or Rear Admiral (Junior Grade).

(2) A person to whom the Minister has delegated powers and duties in terms of Section 43(1) shall exercise those powers and perform those duties subject to such terms and conditions as may be specified in the delegation.

(3) The Minister may require the delegatee to perform specific functions and provide performance reports.

(4) The Minister may withdraw the delegation at any time.

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(5) The delegation of power does not divest the Minister of his or her responsibilities under this Act.

Short Title

48. The Short Title of this Act shall be “The Prohibition of Anti-Personnel Mines Act” and shall commence on a date to be fixed by the President by proclamation in the Gazette.

SCHEDULE 1

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997

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Preamble

The States Parties,

Determined to put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement,

Believing it necessary to do their utmost to contribute in an efficient and co-ordinated manner to face the challenge of removing anti-personnel mines placed throughout the world, and to assure their destruction,

Wishing to do their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration of mine victims,

Recognising that a total ban of anti-personnel mines would also be an important confidence-building measure,

Welcoming the adoption of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, and calling for the early ratification of this Protocol by all States which have not yet done so,

Welcoming also United Nations General Assembly Resolution 51/45 S of 10 December 1996 urging all States to pursue vigorously an effective, legally-binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines,

Welcoming furthermore the measures taken over the past years, both unilaterally and multilaterally, aiming at prohibiting, restricting or suspending the use, stockpiling, production and transfer of anti-personnel mines,

Stressing the role of public conscience in furthering the principles of humanity as evidenced by the call for a total ban of anti-personnel mines and recognising the efforts to that end undertaken by the International Red Cross and Red Crescent Movement, the International Campaign to Ban Landmines and numerous other non-governmental organisations around the world,

Recalling the Ottawa Declaration of 5 October 1996 and the Brussels Declaration of 27 June 1997 urging the international community to negotiate an international and legally binding agreement prohibiting the use, stockpiling, production and transfer of anti-personnel mines,

Emphasising the desirability of attracting the adherence of all States to this Convention, and determined to work strenuously towards the promotion of its universalisation in all relevant fora including, inter alia, the United Nations, the Conference on Disarmament, regional organisations, and groupings, and review conferences of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects,

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Basing themselves on the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, on the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants,

Have agreed as follows:

Article 1
General obligations

1. Each State Party undertakes never under any circumstances:

- a) To use anti-personnel mines;
- b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;
- c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.

2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.

Article 2
Definitions

1. "Anti-personnel mine" means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.

2. "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.

3. "Anti-handling device" means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine.

4. "Transfer" involves, in addition to the physical movement of anti-personnel mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced anti-personnel mines.

5. "Mined area" means an area which is dangerous due to the presence or suspected presence of mines.

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Article 3
Exceptions

1. Notwithstanding the general obligations under Article 1, the retention or transfer of a number of anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction techniques is permitted. The amount of such mines shall not exceed the minimum number absolutely necessary for the above-mentioned purposes.
2. The transfer of anti-personnel mines for the purpose of destruction is permitted.

Article 4
Destruction of stockpiled anti-personnel mines

Except as provided for in Article 3, each State Party undertakes to destroy or ensure the destruction of all stockpiled anti-personnel mines it owns or possesses, or that are under its jurisdiction or control, as soon as possible but not later than four years after the entry into force of this Convention for that State Party.

Article 5
Destruction of anti-personnel mines in mined areas

1. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party.
2. Each State Party shall make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced and shall ensure as soon as possible that all anti-personnel mines in mined areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians, until all anti-personnel mines contained therein have been destroyed. The marking shall at least be to the standards set out in the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.
3. If a State Party believes that it will be unable to destroy or ensure the destruction of all anti-personnel mines referred to in paragraph 1 within that time period, it may submit a request to a Meeting of the States Parties or a Review Conference for an extension of the deadline for completing the destruction of such anti-personnel mines, for a period of up to ten years.
4. Each request shall contain:
 - a) The duration of the proposed extension;
 - b) A detailed explanation of the reasons for the proposed extension, including:
 - (i) The preparation and status of work conducted under national demining programs;

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- (ii) The financial and technical means available to the State Party for the destruction of all the anti-personnel mines; and
 - (iii) Circumstances which impede the ability of the State Party to destroy all the anti-personnel mines in mined areas;
- c) The humanitarian, social, economic, and environmental implications of the extension; and
- d) Any other information relevant to the request for the proposed extension.

5. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.

6. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 3, 4 and 5 of this Article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this Article.

Article 6
International co-operation and assistance

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance, where feasible, from other States Parties to the extent possible.

2. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.

3. Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organisations, or on a bilateral basis.

4. Each State Party in a position to do so shall provide assistance for mine clearance and related activities. Such assistance may be provided, inter alia, through the United Nations system, international or regional organisations or institutions, non-governmental organisations or institutions, or on a bilateral basis, or by contributing to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance, or other regional funds that deal with demining.

5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled anti-personnel mines.

6. Each State Party undertakes to provide information to the database on mine clearance established within the United Nations system, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.

7. States Parties may request the United Nations, regional organisations, other States Parties or other competent intergovernmental or non-governmental fora to assist its authorities in the elaboration of a national demining program to determine, inter alia:

- a) The extent and scope of the anti-personnel mine problem;
- b) The financial, technological and human resources that are required for the implementation of the program;
- c) The estimated number of years necessary to destroy all anti-personnel mines in mined areas under the jurisdiction or control of the concerned State Party;
- d) Mine awareness activities to reduce the incidence of mine-related injuries or deaths;
- e) Assistance to mine victims;
- f) The relationship between the Government of the concerned State Party and the relevant governmental, inter-governmental or non-governmental entities that will work in the implementation of the program.

8. Each State Party giving and receiving assistance under the provisions of this Article shall co-operate with a view to ensuring the full and prompt implementation of agreed assistance programs.

Article 7
Transparency measures

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party on:

- a) The national implementation measures referred to in Article 9;
- b) The total of all stockpiled anti-personnel mines owned or possessed by it, or under its jurisdiction or control, to include a breakdown of the type, quantity and, if possible, lot numbers of each type of anti-personnel mine stockpiled;
- c) To the extent possible, the location of all mined areas that contain, or are suspected to contain, anti-personnel mines under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of anti-personnel mine in each mined area and when they were emplaced;
- d) The types, quantities and, if possible, lot numbers of all anti-personnel mines retained or transferred for the development of and training in mine detection, mine clearance or mine destruction techniques, or transferred for the purpose of destruction, as well as the institutions authorised by a State Party to retain or transfer anti-personnel mines, in accordance with Article 3;

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- e) The status of programs for the conversion or de-commissioning of anti-personnel mine production facilities;
 - f) The status of programs for the destruction of anti-personnel mines in accordance with Articles 4 and 5, including details of the methods which will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;
 - g) The types and quantities of all anti-personnel mines destroyed after the entry into force of this Convention for that State Party, to include a breakdown of the quantity of each type of anti-personnel mine destroyed, in accordance with Articles 4 and 5, respectively, along with, if possible, the lot numbers of each type of anti-personnel mine in the case of destruction in accordance with Article 4;
 - h) The technical characteristics of each type of anti-personnel mine produced, to the extent known, and those currently owned or possessed by a State Party, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of anti-personnel mines; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information which may facilitate mine clearance; and
 - i) The measures taken to provide an immediate and effective warning to the population in relation to all areas identified under paragraph 2 of Article 5.
2. The information provided in accordance with this Article shall be updated by the States Parties annually, covering the last calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.
3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

Article 8
Facilitation and clarification of compliance

1. The States Parties agree to consult and co-operate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of co-operation to facilitate compliance by States Parties with their obligations under this Convention.
2. If one or more States Parties wish to clarify and seek to resolve questions relating to compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information which would assist in clarifying this matter.

3.If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of the States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.

4.Pending the convening of any meeting of the States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.

5.The requesting State Party may propose through the Secretary-General of the United Nations the convening of a Special Meeting of the States Parties to consider the matter. The Secretary-General of the United Nations shall thereupon communicate this proposal and all information submitted by the States Parties concerned, to all States Parties with a request that they indicate whether they favour a Special Meeting of the States Parties, for the purpose of considering the matter. In the event that within 14 days from the date of such communication, at least one-third of the States Parties favours such a Special Meeting, the Secretary-General of the United Nations shall convene this Special Meeting of the States Parties within a further 14 days. A quorum for this Meeting shall consist of a majority of States Parties.

6.The Meeting of the States Parties or the Special Meeting of the States Parties, as the case may be, shall first determine whether to consider the matter further, taking into account all information submitted by the States Parties concerned. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach a decision by consensus. If despite all efforts to that end no agreement has been reached, it shall take this decision by a majority of States Parties present and voting.

7.All States Parties shall co-operate fully with the Meeting of the States Parties or the Special Meeting of the States Parties in the fulfilment of its review of the matter, including any fact-finding missions that are authorised in accordance with paragraph 8.

8. If further clarification is required, the Meeting of the States Parties or the Special Meeting of the States Parties shall authorise a fact-finding mission and decide on its mandate by a majority of States Parties present and voting. At any time the requested State Party may invite a fact-finding mission to its territory. Such a mission shall take place without a decision by a Meeting of the States Parties or a Special Meeting of the States Parties to authorise such a mission. The mission, consisting of up to 9 experts, designated and approved in accordance with paragraphs 9 and 10, may collect additional information on the spot or in other places directly related to the alleged compliance issue under the jurisdiction or control of the requested State Party.

9.The Secretary-General of the United Nations shall prepare and update a list of the names, nationalities and other relevant data of qualified experts provided by States Parties and communicate it to all States Parties. Any expert included on this list shall be regarded as designated for all fact-finding missions unless a State Party declares its non-acceptance in writing. In the event of non-acceptance, the expert shall not participate in fact-finding missions on the territory or any other place under the jurisdiction or control of the objecting State Party, if the non-acceptance was declared prior to the appointment of the expert to such missions.

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10. Upon receiving a request from the Meeting of the States Parties or a Special Meeting of the States Parties, the Secretary-General of the United Nations shall, after consultations with the requested State Party, appoint the members of the mission, including its leader. Nationals of States Parties requesting the fact-finding mission or directly affected by it shall not be appointed to the mission. The members of the fact-finding mission shall enjoy privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946.

11. Upon at least 72 hours notice, the members of the fact-finding mission shall arrive in the territory of the requested State Party at the earliest opportunity. The requested State Party shall take the necessary administrative measures to receive, transport and accommodate the mission, and shall be responsible for ensuring the security of the mission to the maximum extent possible while they are on territory under its control.

12. Without prejudice to the sovereignty of the requested State Party, the fact-finding mission may bring into the territory of the requested State Party the necessary equipment which shall be used exclusively for gathering information on the alleged compliance issue. Prior to its arrival, the mission will advise the requested State Party of the equipment that it intends to utilise in the course of its fact-finding mission.

13. The requested State Party shall make all efforts to ensure that the fact-finding mission is given the opportunity to speak with all relevant persons who may be able to provide information related to the alleged compliance issue.

14. The requested State Party shall grant access for the fact-finding mission to all areas and installations under its control where facts relevant to the compliance issue could be expected to be collected. This shall be subject to any arrangements that the requested State Party considers necessary for:

- a) The protection of sensitive equipment, information and areas;
- b) The protection of any constitutional obligations the requested State Party may have with regard to proprietary rights, searches and seizures, or other constitutional rights; or
- c) The physical protection and safety of the members of the fact-finding mission.

In the event that the requested State Party makes such arrangements, it shall make every reasonable effort to demonstrate through alternative means its compliance with this Convention.

15. The fact-finding mission may remain in the territory of the State Party concerned for no more than 14 days, and at any particular site no more than 7 days, unless otherwise agreed.

16. All information provided in confidence and not related to the subject matter of the fact-finding mission shall be treated on a confidential basis.

17. The fact-finding mission shall report, through the Secretary-General of the United Nations, to the Meeting of the States Parties or the Special Meeting of the States Parties the results of its findings.

18. The Meeting of the States Parties or the Special Meeting of the States Parties shall consider all relevant information, including the report submitted by the fact-finding mission, and may request the requested State Party to take measures to address the compliance issue within a specified period of time. The requested State Party shall report on all measures taken in response to this request.

19. The Meeting of the States Parties or the Special Meeting of the States Parties may suggest to the States Parties concerned ways and means to further clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of the States Parties or the Special Meeting of the States Parties may recommend appropriate measures, including the use of co-operative measures referred to in Article 6.

20. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach its decisions referred to in paragraphs 18 and 19 by consensus, otherwise by a two-thirds majority of States Parties present and voting.

Article 9

National implementation measures

Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

Article 10

Settlement of disputes

1. The States Parties shall consult and co-operate with each other to settle any dispute that may arise with regard to the application or the interpretation of this Convention. Each State Party may bring any such dispute before the Meeting of the States Parties.

2. The Meeting of the States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States parties to a dispute to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure.

3. This Article is without prejudice to the provisions of this Convention on facilitation and clarification of compliance.

Article 11

Meetings of the States Parties

1. The States Parties shall meet regularly in order to consider any matter with regard to the application or implementation of this Convention, including:

- a) The operation and status of this Convention;
- b) Matters arising from the reports submitted under the provisions of this Convention;

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- c) International co-operation and assistance in accordance with Article 6;
- d) The development of technologies to clear anti-personnel mines;
- e) Submissions of States Parties under Article 8; and
- f) Decisions relating to submissions of States Parties as provided for in Article 5.

2. The First Meeting of the States Parties shall be convened by the Secretary-General of the United Nations within one year after the entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.

3. Under the conditions set out in Article 8, the Secretary-General of the United Nations shall convene a Special Meeting of the States Parties.

4. States not parties to this Convention, as well as the United Nations, other relevant international organisations or institutions, regional organisations, the International Committee of the Red Cross and relevant non-governmental organisations may be invited to attend these meetings as observers in accordance with the agreed Rules of Procedure.

Article 12 **Review Conferences**

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.

2. The purpose of the Review Conference shall be:

- a) To review the operation and status of this Convention;
- b) To consider the need for and the interval between further Meetings of the States Parties referred to in paragraph 2 of Article 11;
- c) To take decisions on submissions of States Parties as provided for in Article 5; and
- d) To adopt, if necessary, in its final report conclusions related to the implementation of this Convention.

3. States not parties to this Convention, as well as the United Nations, other relevant international organisations or institutions, regional organisations, the International Committee of the Red Cross and relevant non-governmental organisations may be invited to attend each Review Conference as observers in accordance with the agreed Rules of Procedure.

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Article 13
Amendments

1. At any time after the entry into force of this Convention any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Depositary, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Depositary no later than 30 days after its circulation that they support further consideration of the proposal, the Depositary shall convene an Amendment Conference to which all States Parties shall be invited.

2. States not parties to this Convention, as well as the United Nations, other relevant international organisations or institutions, regional organisations, the International Committee of the Red Cross and relevant non-governmental organisations may be invited to attend each Amendment Conference as observers in accordance with the agreed Rules of Procedure.

3. The Amendment Conference shall be held immediately following a Meeting of the States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.

4. Any amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to the States Parties.

5. An amendment to this Convention shall enter into force for all States Parties to this Convention which have accepted it, upon the deposit with the Depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 14
Costs

1. The costs of the Meetings of the States Parties, the Special Meetings of the States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not parties to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.

2. The costs incurred by the Secretary-General of the United Nations under Articles 7 and 8 and the costs of any fact-finding mission shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

Article 15
Signature

This Convention, done at Oslo, Norway, on 18 September 1997, shall be open for signature at Ottawa, Canada, by all States from 3 December 1997 until 4 December 1997, and at the United Nations Headquarters in New York from 5 December 1997 until its entry into force.

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Article 16**Ratification, acceptance, approval or accession**

1. This Convention is subject to ratification, acceptance or approval of the Signatories.
2. It shall be open for accession by any State which has not signed the Convention.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depository.

Article 17**Entry into force**

1. This Convention shall enter into force on the first day of the sixth month after the month in which the 40th instrument of ratification, acceptance, approval or accession has been deposited.
2. For any State which deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the 40th instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 18**Provisional application**

Any State may at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally paragraph 1 of Article 1 of this Convention pending its entry into force.

Article 19**Reservations**

The Articles of this Convention shall not be subject to reservations.

Article 20**Duration and withdrawal**

1. This Convention shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depository and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating this withdrawal.
3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depository. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.

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4. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law.

Article 21
Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention.

Article 22
Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.