

REPUBLIC OF SOUTH AFRICA

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# ANTI-PERSONNEL MINES PROHIBITION BILL

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*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette 23744 of 26 August 2002) (The English text is the official text of the Bill)*

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(MINISTER OF DEFENCE)

[B 44—2002]

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# BILL

To enact the "Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction" into law; to provide for the destruction of anti-personnel mines; to provide for domestic and international inspections; to provide for international cooperation; and to provide for matters connected therewith.

WHEREAS anti-personnel mines constitute a deadly scourge that kills and maims innocent and defenceless civilians during and after violent conflicts and inhibits socio-economic development and reconstruction;

AND WHEREAS anti-personnel mines have had a destabilising effect on civilian populations in Africa and in the region of the Southern African Development Community in particular;

AND WHEREAS citizens should live in 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;

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

AND WHEREAS the Republic 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 States 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,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## SCHEDULE

## Definitions

1. In this Act any word or expression to which a meaning has been assigned in the Convention bears the meaning so assigned thereto and, unless the context indicates otherwise—

“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 and mine-destruction techniques; 20

“anti-personnel mine” includes any other mine or device which performs in a manner consistent with an anti-personnel mine as defined in the Convention;

“component part” means any identifiable component designed or adapted to form part of an anti-personnel mine; 25

“Convention” means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 18 September 1997, which is set out in the Schedule and was signed by the Republic on 3 December 1997 and ratified by the Republic on 26 June 1998;

“customs official” means an officer as defined in section 1 of the Customs and Excise Act, 1964 (Act No. 91 of 1964); 30

“Department of Defence” means the Defence Secretariat and the South African National Defence Force as referred to in section 4B of the Defence Act, 1957 (Act No. 44 of 1957);

“domestic inspector” means a person appointed as a domestic inspector by the Minister in terms of section 14; 35

“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 No. 44 of 1957), and an employee of the Department of Defence employed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994); 40

“export” means—

(a) 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; or

(b) 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; 45

“import” means to bring an anti-personnel mine into any part of the Republic, or causing an anti-personnel mine to be so brought in, whether or not that is done in exchange for currency or any other commodity or benefit; 50

“information” means any recorded information regardless of form or medium;

“international inspector” means a person appointed by the Secretary-General of the United Nations as an international inspector and who forms part of an international fact-finding mission to the Republic; 55

- “**manufacture**” includes the design, development, production and assembly of anti-personnel mines;
- “**Minister**” means the Minister of Defence;
- “**organ of state**” means an organ of state as defined in section 239 of the Constitution; 5
- “**party**” means any state that has signed and ratified, or acceded to, the Convention;
- “**person**” has the meaning assigned to it in the Interpretation Act, 1957 (Act No. 33 of 1957), and, except in section 30, includes an organ of state;
- “**place**”, in relation to an anti-personnel mine, means 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; 10
- “**police official**” means—
- (a) a member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995); 15
  - (b) a person designated by the Minister for Safety and Security as a police official;
  - (c) a military police official; or
  - (d) any other member of the South African National Defence Force deployed in a joint operation in cooperation with the South African Police Service;
- “**possess**” means to have an anti-personnel mine under one’s control in an area under one’s control; 20
- “**premises**” includes any land, building or structure or any vehicle, vessel, aircraft or other means of conveyance;
- “**procure**” means to obtain an anti-personnel mine through purchase, forfeiture, donation, cession, transfer or discovery; 25
- “**this Act**” includes any regulation made under section 32;
- “**transfer**” includes the—
- (a) transfer of title to and control over an anti-personnel mine;
  - (b) selling, hiring, letting, lending, borrowing, donating, giving, purchasing, receiving or parting with or gaining possession of an anti-personnel mine; and 30
  - (c) transit of an anti-personnel mine into, out of or through the territory of the Republic by any means but does not involve the transfer of land containing emplaced anti-personnel mines.

## CHAPTER 1

### OBJECTS AND APPLICATION OF ACT, AND ENACTMENT OF CONVENTION INTO LAW 35

#### Objects of Act

2. The objects of the Act are to—
- (a) enact the Convention into law as required by section 231(3) of the Constitution; 40
  - (b) ensure that anything done in terms of this Act conforms to the obligations of the Republic in terms of the Convention;
  - (c) prohibit the use, stockpiling, production, development, acquisition and transfer of anti-personnel mines and to ensure the destruction thereof;
  - (d) provide for domestic and international inspections; and 45
  - (e) provide for international co-operation.

#### Enactment of Convention into law

3. (1) Subject to this Act, the Convention has the force of law in the Republic.
- (2) The Minister may from time to time by notice in the *Gazette* amend the Schedule to reflect any changes made to the Convention if those changes are binding on the Republic in terms of section 231 of the Constitution. 50

#### Extraterritorial application of Act, and jurisdiction

4. (1) Any competent court, which includes a military court as defined in section 1 of the Military Discipline Supplementary Measures Act, 1999 (Act No. 16 of 1999), may, with the written consent of the National Director of Public Prosecutions, try any— 55

- (a) South African citizen as contemplated in the South African Citizenship Act, 1995 (Act No. 88 of 1995);
- (b) juristic person incorporated or registered in the Republic; or
- (c) person contemplated in section 3 of the Military Discipline Supplementary Measures Act, 1999 (Act No. 16 of 1999), whether or not such a person is a South African citizen, 5

for any offence in terms of this Act, notwithstanding the fact that the act or omission to which the charge relates was committed outside the Republic.

(2) Notwithstanding any law to the contrary, any magistrate's court has jurisdiction to impose any penalty provided for in terms of this Act. 10

## CHAPTER 2

### PROHIBITION, OFFENCES AND PENALTIES

#### Prohibition

5. Subject to section 7 or 8, no person may—
- (a) place, possess, procure, manufacture, stockpile, transfer, deal in, import or export an anti-personnel mine; 15
  - (b) possess, procure, manufacture, stockpile, transfer, deal in, import or export a component part; and
  - (c) possess, procure, manufacture, transfer, deal in, import or export plans or designs for the purposes of manufacturing an anti-personnel mine or a component part. 20

#### Offences and penalties

6. (1) Any natural person who contravenes a provision of section 5 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 25 years or to both a fine and such imprisonment. 25

(2) Any juristic person which contravenes a provision of section 5 is guilty of an offence and liable on conviction to a fine not exceeding R1 million.

(3) Any court convicting any person of an offence under this Act may, in addition to any other punishment imposed in respect of that offence, declare any weapon, vehicle, uniform, equipment 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, to be forfeited to the State. 30

## CHAPTER 3

### EXEMPTIONS

#### Minister may authorise possession of anti-personnel mines 35

7. (1) (a) The Minister may exempt any organ of state or any employee of such organ, any agent or any other person from a prohibition referred to in section 5 and may authorise such organ, employee, agent or person to possess anti-personnel mines for the purposes of developing and conducting training in mine-detection, mine-clearance or mine-destruction techniques or for their destruction. 40

(b) Any exemption contemplated in paragraph (a) must be in writing and must state the number of anti-personnel mines that may be possessed under the authorisation in question.

(2) (a) The total number of mines which may be exempted for possession by an organ of state in terms of subsection (1) may not exceed 5000. 45

(b) If the Minister authorises the possession of anti-personnel mines by an agent or any other person as contemplated in subsection (1), he or she must limit the number of mines which may be possessed in each case to the least number of mines necessary for the purpose of the authorisation in question.

(3) Any person who possesses an anti-personnel mine in terms of an authorisation contemplated in subsection (1) must keep such mine in accordance with the provisions of the Explosives Act, 1956 (Act No. 26 of 1956). 50

### Minister may authorise transfer of anti-personnel mines

8. Subject to any law regulating the transfer of arms, an anti-personnel mine may only be transferred to and from the Republic with the written authorisation of the Minister.

### Customs officials

9. A customs official who seizes an anti-personnel mine in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), must hand such mine over to a police official within a reasonable time. 5

### Public museums, military museums, public collectors and private collectors

10. (1) Subject to any condition prescribed by a regulation made under section 32, a public museum, military museum, public collector or private collector may possess an anti-personnel mine or component part if— 10

- (a) the Minister authorises such possession; and
- (b) such mine or part is devoid of explosive material and explosive triggering devices.

(2) For the purposes of this section— 15

- (a) “**military museum**” means a military, regimental or veterans’ museum, or an exhibition or display of a historical nature for public or private display, that is accredited by the Department of Defence; 15
- (b) “**private collector**” means a person who collects firearms, is a member of an accredited collectors’ association and is not a public collector; 20
- (c) “**public collector**” means a person who collects firearms for display to the public and who is accredited as such in terms of the Firearms Control Act, 2000 (Act No. 60 of 2000); and
- (d) “**public museum**” means an institution defined as such in section 3(1) and (2) of the Cultural Institutions Act, 1998 (Act No. 119 of 1998). 25

### Military activities

11. (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 as long as such—

- (a) operations, exercises or activities are not in contravention of the Convention: 30  
and
- (b) participation does not amount to assistance in any activity prohibited by the Convention.

(2) If such contravention occurs, the Minister must order the termination of any further involvement in the operation, exercise or activity in question or may take such other appropriate action as he or she may deem necessary. 35

(3) 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 force are bound by this Act.

## CHAPTER 4 40

### DESTRUCTION AND CLEARANCE OF ANTI-PERSONNEL MINES

#### Surrender of anti-personnel mines and forfeiture to State

12. (1) Unless exempted by the Minister as contemplated in section 7, any person in possession of an anti-personnel mine or a component part immediately before this Act took effect must, within six months from the date on which this Act took effect, notify a police official designated by the Minister for Safety and Security of such possession. 45

(2) In the event of any military operational deployment outside the Republic, any person in possession of an anti-personnel mine or a component part must notify a military police official or any other person designated by the Chief of the South African National Defence Force for this purpose. 50

(3) The police official, military police official or other person, as the case may be, must register the notification in the manner prescribed by a regulation made under

section 32 and must arrange for the collection of the mine or component part without delay.

(4) All anti-personnel mines collected in terms of this section are forfeited to the State.

#### **Destruction of anti-personnel mines held in Republic**

13. (1) Subject to section 7, the Minister must ensure the destruction of all stockpiled and emplaced anti-personnel mines in the Republic. 5

(2) The destruction of anti-personnel mines may only be undertaken by a competent authority appointed by the Department of Defence or the South African Police Service, an agent or any other organ of state authorised to do so by a competent authority appointed by the Department of Defence or the South African Police Service. 10

(3) Any destruction of an anti-personnel mine must be carried out in compliance with any applicable environmental and occupational health and safety legislation.

### **CHAPTER 5**

#### **DOMESTIC INSPECTIONS**

##### **Appointment of domestic inspector 15**

14. (1) The Minister may, in writing, appoint a competent person as a domestic inspector to—

- (a) investigate and enforce compliance with this Act; or
- (b) assist an international inspector investigating any alleged non-compliance with the Convention. 20

(2) The Minister must 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 any conditions imposed on him or her in terms of section 15.

(3) A domestic inspector must comply with the instructions of the Minister in performing his or her functions. 25

(4) A domestic inspector who is not in the full-time service of the State must be paid such remuneration and allowances as the Minister may, with the approval of the Minister of Finance, determine.

##### **Conditions imposed on domestic inspector 30**

15. (1) The Minister may impose any condition on a domestic inspector regarding the performance of his or her functions, which conditions may relate to the protection—

- (a) of sensitive equipment, information or areas;
- (b) of any constitutional right; and
- (c) safety of the domestic inspector. 35

(2) A condition imposed under subsection (1) may require a domestic inspector not to exercise a specified power while on specified premises.

(3) Domestic inspectors must adhere to commonly accepted safety standards and practices with regard to anti-personnel mines.

##### **Termination of appointment of domestic inspector 40**

16. The Minister may, after giving a domestic inspector an opportunity to make representations and considering such representations, for good reason terminate the appointment of such a domestic inspector.

##### **Entry and search of premises with warrant**

17. (1) A domestic inspector accompanied by a police official may, on the authority of a warrant issued in terms of subsection (5) and subject to section 18, enter any premises specified in the warrant, including a private dwelling, and— 45

- (a) inspect, photograph, copy, test and examine any document, record, object or material, or cause it to be inspected, photographed, copied, tested and examined; 50



- (b) seize any document, record, object or material if he or she has reason to suspect that it might be used as evidence in a criminal trial; and
- (c) examine any activity, operation or process carried out on the premises.
- (2) A domestic inspector who removes anything from the premises being searched must— 5
- (a) issue a receipt for it to the owner or person in control of the premises; and
- (b) unless it is an item prohibited in terms of this Act, return it as soon as practicable after achieving the purpose for which it was removed.
- (3) Upon the request of a domestic inspector acting in terms of a warrant issued in terms of subsection (5), the occupant and any other person present on the premises must— 10
- (a) make available or accessible or deliver to the inspector any document, record, object or material which pertains to an investigation contemplated in subsection (1) and which is in the possession or under the control of the occupant or other person; 15
- (b) furnish such information as he or she has with regard to the matter under investigation; and
- (c) render such reasonable assistance as the inspector may require to perform his or her functions in terms of this Act efficiently.
- (4) Before questioning any person at the premises in question, the domestic inspector or police official must advise that person of his or her right to be assisted at the time by an advocate or attorney, and allow that person to exercise that right. 20
- (5) A warrant contemplated in subsection (1) may be issued by a judge or a magistrate—
- (a) in relation to premises on or from which there is reason to believe that a contravention of this Act has been or is being committed; and 25
- (b) if it appears from information on oath or affirmation that there are reasonable grounds to believe that there is evidence available in or upon such premises of a contravention of this Act.
- (6) The warrant may impose restrictions on the powers of the domestic inspector. 30
- (7) A warrant issued in terms of this section—
- (a) remains in 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; 35
- (iii) the expiry of one month from the day of its issue; or
- (iv) the purpose for the issuing of the warrant has lapsed, whichever occurs first; and
- (b) must be executed by day unless the person who issues the warrant authorises the execution thereof by night. 40
- (8) No person is entitled to compensation for any loss or damage arising out of any *bona fide* action by a police official or domestic inspector under this section.
- (9) Anti-personnel mines seized or preserved for evidence in criminal proceedings must be held, handled and disposed of in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and the Explosives Act, 1956 (Act No. 26 of 1956). 45

#### **Identification prior to entry, and resistance against entry**

- 18.** (1) A domestic inspector or police official who has obtained a warrant in terms of section 17(5) must immediately before entering the premises in question—
- (a) audibly announce that he or she is authorised to enter the premises and demand admission to the premises; and 50
- (b) notify the person in control of the premises of the purpose of the entry, unless there are reasonable grounds to believe that such announcement or notification might defeat the purpose of the search.
- (2) The domestic inspector must—
- (a) hand to the person in control of the premises a copy of the warrant or, if such person is not present, affix such a copy to a prominent place on the premises; and 55
- (b) on request of the person in charge of such premises, show his or her certificate of appointment to that person.

(3) A domestic inspector or police officer contemplated in subsection (1) may overcome resistance to the entry and search by using such force as is reasonably required, including the breaking of a door or window of the premises.

(4) Before using force, the police officer or domestic inspector must audibly demand admission and must announce the purpose of the entry, unless there are reasonable grounds to believe that doing so might defeat the purpose of the search. 5

#### **Entry and search of premises without warrant**

19. A domestic inspector, accompanied by a police official, may enter and search any premises and seize or remove any anti-personnel mine without a warrant if—

(a) a person who is competent to do so consents to such entry, search, seizure or removal; or 10

(b) immediate entry to the premises is required—

(i) to ensure the safety of any person; or

(ii) to prevent serious damage to the environment.

and there are reasonable grounds to believe that a warrant would be issued in terms of section 17(5) and that the delay caused by obtaining a warrant would defeat the object of the warrant. 15

#### **Offences and penalties in respect of search of premises**

20. (1) A person is guilty of an offence if he or she wilfully obstructs, or knowingly makes a false statement to, a police official or domestic inspector during a search under a warrant obtained in terms of section 17(5). 20

(2) Any person convicted of an offence contemplated in subsection (1) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.

### **CHAPTER 6**

25

#### **INTERNATIONAL INSPECTIONS**

##### **International fact-finding missions to Republic**

21. (1) An international fact-finding mission, authorised and mandated by the parties and appointed by the Secretary-General of the United Nations, may in accordance with Article 8 of the Convention enter and stay in the Republic to investigate any matter concerning the Republic's alleged non-compliance with the Convention. 30

(2) The Minister—

(a) must take the necessary administrative measures to receive, transport and accommodate the mission;

(b) is responsible for ensuring the security of the mission to the maximum extent possible while in the Republic; 35

(c) must 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 relating to the compliance matter in question; and

(d) must 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. 40

(3) The Minister must instruct a domestic inspector to accompany and assist an international inspector.

(4) An international inspector, when accompanied by a domestic inspector and a police official, has all the rights referred to in sections 17, 18 and 19. 45

(5) The costs of any international fact-finding mission are to be borne by the parties.

(6) Subject to the Public Finance Management Act, 1999 (Act No.1 of 1999), the Minister may reimburse any person who is not part of the international fact-finding mission in respect of any expenditure legitimately incurred by that person in connection with such mission. 50

**Certificate as international inspector**

22. The Minister must 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; 5
- (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 any condition contemplated in section 23.

**Conditions imposed on international inspector** 10

23. (1) The Minister may impose any condition on an international inspector regarding the performance of his or her functions, which conditions may relate to the protection—

- (a) of sensitive equipment, information or areas;
- (b) of any constitutional right; and 15
- (c) safety of the international inspector.

(2) A condition imposed under subsection (1) may require an international inspector not to exercise a specified power while on specified premises.

(3) In the event of the Minister imposing any condition on an international inspector, the Minister must make every reasonable effort to demonstrate through alternative 20 means the Republic's compliance with the Convention.

(4) International inspectors must adhere to commonly accepted safety standards and practices with regard to anti-personnel mines.

**Immunities and privileges of international inspectors**

24. (1) An international inspector enjoys the privileges and immunities under Article 25 VI of the Convention on the Privileges and Immunities of the United Nations set out in Schedule 3 to the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001).

(2) (a) An international inspector may import any equipment necessary to perform his or her functions in respect of a fact-finding mission into the Republic, and may export the equipment from the Republic at the end of the mission. 30

(b) The import and export of equipment contemplated in paragraph (a) is free from any tax or duty.

**CHAPTER 7****INTERNATIONAL COOPERATION****International cooperation** 35

25. (1) Any international cooperation or assistance rendered or received by the Republic under Article 6 of the Convention must take place in terms of a formal agreement.

(2) The agreement must specify—

- (a) the nature and conditions of the cooperation or assistance; 40
- (b) the obligations of all parties to the agreement, including financial obligations;
- (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 45 information concerning the implementation of the Convention;
- (b) humanitarian assistance, including—
  - (i) assistance for mine clearance;
  - (ii) victim assistance; and
  - (iii) mine-awareness programmes; 50
- (c) the care, rehabilitation and social and economic reintegration of mine victims; and
- (d) assistance as contemplated in paragraph 4 of Article 6 of the Convention.

### Authorisation to take part in international fact-finding mission outside Republic

26. (1) The Minister may, in consultation with a competent 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) Any person so appointed and authorised must, for the purposes of the fact-finding mission, perform his or her functions in terms of the directives and instructions of a body or entity authorised by the parties. 5

(3) Throughout the fact-finding mission the person is accountable to the body or entity authorised by the parties and he or she must report to it during such mission.

(4) (a) The person must 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. 10

(b) The agreement must at least state—

(a) the conditions of employment;

(b) the financial obligations of all parties to the agreement; 15

(c) the privileges and immunities of the person concerned; and

(d) the manner of settlement of disputes.

## CHAPTER 8

### INFORMATION AND RECORDS

#### Reporting 20

27. (1) The Minister must—

(a) gather, record and disseminate information in compliance with the Convention and must report, through the Minister of Foreign Affairs, to the Secretary-General of the United Nations on the Republic's compliance with the Convention; 25

(b) monitor the Republic's compliance with the Convention; and

(c) keep a record of all exemptions granted in terms of section 7 and a record of all anti-personnel mines destroyed in terms of this Act.

(2) The report contemplated in subsection (1)(a) must include—

(a) the annual reports required under Article 7 of the Convention; and 30

(b) the information required under the Convention regarding mine clearance, including lists of experts, expert agencies and national points of contact for the United Nations database on mine clearance.

#### Power to gather information

28. (1) The Minister may gather information from any person if the information is necessary for— 35

(a) the administration and enforcement of this Act; and

(b) compliance with the Convention.

(2) The Minister may, by written notice served on any person, require that person to provide such information as may be necessary within the period and in the manner and form specified in the notice. 40

#### Record of anti-personnel mines in possession or destroyed

29. Any person contemplated in section 7(1) or 13(2) must maintain a written record in the prescribed format of all anti-personnel mines in his or her possession or destroyed by him or her. 45

#### Offences and penalties in respect of provision of information

30. (1) A person is guilty of an offence if he or she—

(a) without reasonable excuse, fails to comply with a notice contemplated in section 28(2);

(b) intentionally or recklessly provides false information in relation to such notice; or 50

(c) fails to maintain a record as contemplated in section 29.

(2) Any person convicted of an offence contemplated in subsection (1) is liable to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

## CHAPTER 9

### GENERAL PROVISIONS

5

#### Guidelines for training

31. The Minister must ensure that general guidelines are issued in respect of the training of any official performing a function in terms of this Act or the Convention.

#### Regulations

32. The Minister may, by notice in the *Gazette*, make regulations regarding— 10
- (a) anything that may or must be prescribed in terms of this Act; and
  - (b) any administrative or procedural matter which it is necessary to prescribe in order to give effect to the provisions of this Act.

#### Delegation of power and assignment of duty

33. (1) The Minister may delegate any power, in whole or in part, conferred upon him 15  
or her by this Act, except the power to make regulations in terms of section 32, and assign any duty, in whole or in part, imposed upon him or her in terms of this Act, to—
- (a) the Secretary for Defence;
  - (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 20  
least Director, Brigadier-General or Rear Admiral (Junior Grade).
- (2) A delegation or an assignment in terms of subsection (1)—
- (a) must be in writing;
  - (b) is subject to such terms and conditions as the Minister may impose; and
  - (c) does not divest the Minister of the responsibility concerning the exercise of 25  
the power or the performance of the duty in question.

#### Short title and commencement

34. This Act is called the Anti-Personnel Mines Prohibition Act, 2002, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

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

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.

### 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;
  - (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;
- (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.

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;
- (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.

## 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.

**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 Depositary.

**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 Depositary 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 Depositary. 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.
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.

## MEMORANDUM ON THE OBJECTS OF THE ANTI-PERSONNEL MINES PROHIBITION BILL, 2002

1. 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 (also known as the Mines Ban Treaty or MBT) ("the Convention"). The Convention requires "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 9). In terms of section 231(4) of the Constitution an international agreement becomes law when it is enacted into law by national legislation. The Bill seeks to fulfil the requirements of the Constitution and Article 9 of the Convention.

2. The objects of the Bill are to—

- (a) prohibit the use, stockpiling, production and transfer of anti-personnel mines;
- (b) address transgressions by South African citizens and juristic persons incorporated or registered in the Republic outside the borders of the Republic;
- (c) empower the Minister to exempt certain persons from the prohibition, as long as the mines are retained or transferred for training or development of techniques relating to mine detection, mine clearance and mine destruction;
- (d) enable the South African National Defence Force to participate in operations, exercises or other military activities with the armed forces of a State that is not a party to the Convention, as long as it is not in contravention of the Convention or amounts to active assistance in any activity prohibited by the Convention;
- (e) ensure the destruction of all anti-personnel mines held by the Republic, with the exception of anti-personnel mines exempted by the Minister for training or development of techniques for detection, clearance, destruction or de-activation;
- (f) regulate domestic and international inspections, and to provide for inspections by United Nations commissioned fact-finding missions and specify the obligations of the parties involved in a fact-finding mission; and
- (g) place an obligation on the Minister of Defence to report on South Africa's compliance, via the Minister of Foreign Affairs, to the Secretary-General of the United Nations.

### 3 CONSULTATION

3.1 The following departments or institutions assisted the Department of Defence in the drafting of the Bill, and were represented on a drafting committee:

- Department of Public Enterprises (represented by Denel).
- Department of Foreign Affairs.
- South African Police Service.
- CSIR (Defencetek).
- International Committee of the Red Cross (ICRC).

3.2 The drafting committee undertook extensive public consultation, in partnership with the International Coalition to Ban Landmines, as follows:

- Greater Gauteng — Workshop with civil society in the greater Gauteng area, hosted by the Group for Environmental Monitoring in Braamfontein, Johannesburg.
- Greater Western Cape — Workshop with civil society in the greater Western Cape area, hosted by the Centre for Conflict Resolution at the University of Cape Town.
- Greater Durban Area — Workshop with civil society in the greater Durban/Pietermaritzburg area, hosted by ACCORD in Mount Edgecombe.
- De-Mining Industry — Workshop with the South African Humanitarian De-Mining Industry, who conduct de-mining operations outside of the Republic's territorial borders.

### 4. FINANCIAL IMPLICATIONS FOR STATE

There are no significant financial implications for the State arising from the Bill that cannot be accommodated under the current budget of the Department of Defence.



## 5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Defence are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.