

SPECIAL ISSUE

Kenya Gazette Supplement No. 23 (Bills No. 6)



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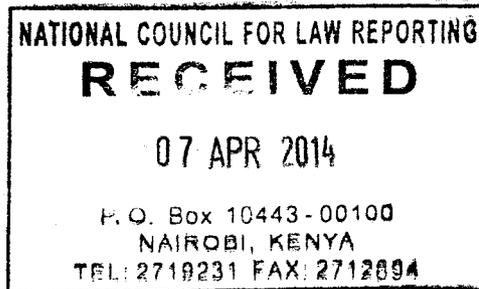
NATIONAL ASSEMBLY BILLS, 2014

NAIROBI, 3rd March, 2014

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**THE PROHIBITION OF ANTI-PERSONNEL MINES
BILL, 2014**

A Bill for

AN ACT of Parliament to provide for the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and their destruction in accordance with the Ottawa convention, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Prohibition of Anti-Personnel Mines Act, 2014, and shall come into operation on such day as the Cabinet Secretary may, by notice in the Gazette, appoint.

Short title and commencement.

2. (1) In this Act, unless the context otherwise requires—

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to defence.

“premises” includes any land and any vehicle, vessel or aircraft;

“prohibited object” means an anti-personnel mine or any component of an anti-personnel mine.

(2) For the purposes of this Act, a person participates in the acquisition of an object if the person—

(a) acquires the prohibited object or enters into a contract to acquire it; or

(b) makes arrangements under which another person either acquires the prohibited object or enters into a contract to acquire it.

(3) For the purposes of this Act, a person participates in the transfer of an object if the person—

(a) transfers the object or enters into a contract to transfer it; or

(b) makes arrangements under which another person either transfers the object or enters into a contract to transfer it.

(4) A reference in this Act to transferring an object

includes a reference to—

- (a) disposing of the object; and
 - (b) delivering the object to another person.
- (5) For the purposes of this Act—
- (a) a person acquires an object if he buys it, hires it, borrows it or accepts it as a gift; and
 - (b) a person disposes of an object if he sells it, lets it on hire, lends it or gives it.

(6) For the purposes of this Act, a person shall not be deemed to acquire or dispose of a prohibited object by reason only of his acquisition or disposal of an interest in or right over land containing one or more emplaced anti-personnel mines.

Implementation of
the Convention.

3. (1) Subject to this Act, the Convention set out in the Schedule shall have the force of law in Kenya.

(2) The Cabinet Secretary may from time to time by notice in the Gazette, amend the Schedule to reflect any changes made to the Convention, or any other subsequent protocols which may be ratified or acceded to by the Republic, if those changes are binding on the Republic.

Act to bind the
State.

4. This Act shall bind the State.

PART II—OFFENCES RELATING TO ANTI-PERSONNEL MINES

Prohibited conduct.

5. (1) Subject to the provisions of this Part, no person shall—

- (a) use an anti-personnel mine;
- (b) develop or produce a prohibited object;
- (c) participate in the acquisition, stockpiling, retention or transfer of a prohibited object;
- (d) have a prohibited object in his possession; or
- (e) participate in the transfer of a prohibited object.

(2) Subject to the provisions of this Part, no person shall assist, encourage or induce any other person to engage in any conduct mentioned in subsection (1).

(3) A person who contravenes this section commits an

offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or both.

(4) A person who aids, abets, encourages assists counsels, procures, incites, finances, attempts, conspires or convinces any person to engage in prohibited conduct specified in subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

6. (1) Section 5 (1) applies to conduct in Kenya or elsewhere.

Application of prohibitions to places outside Kenya.

(2) Section 5 (2) applies to assistance, encouragement and inducements in Kenya or elsewhere, and so applies irrespective of whether the conduct assisted, encouraged or induced takes place, or (if it takes place) takes place in Kenya or elsewhere.

(3) Subsections (1) and (2) of section 5, so far as they apply respectively to—

- (a) conduct outside Kenya; and
- (b) assistance, encouragement and inducements outside Kenya,

impose prohibitions only on Kenyan nationals and bodies incorporated under the laws of Kenya.

(4) Proceedings for an offence under section 5 committed outside Kenya may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in Kenya.

7. (1) In proceedings for an offence under section 5, it is a defence for the accused to satisfy the court that his conduct was authorised by this section.

Authorised conduct.

(2) A person's participation in the transfer of a prohibited object is authorised by this section if—

- (a) it is with the intention that the object will be used only for purposes permitted by subsection (8); and
- (b) the transfer in question is authorized by the Cabinet Secretary for the purposes of this subsection.

(3) A person's participation in the transfer of a

prohibited object is authorised by this section if it is only for the purpose of enabling the object to be destroyed.

(4) The possession by a person of a prohibited object is authorised by this section if it is only for the purpose of enabling the object to be destroyed.

(5) The possession by a person of a prohibited object is authorised by this section if—

(a) it is with the intention that the object will be used only for purposes permitted by subsection (8); and

(b) the object is one which the Cabinet Secretary has for the purposes of this subsection authorized him to have in his possession.

(6) A person's participation in the acquisition of a prohibited object is authorised by this section if—

(a) the acquisition concerned is by means of a transfer which is authorised by virtue of subsection (2) or (3); and

(b) he participates in that acquisition—

(i) with the intention that the object will be used only for purposes permitted by subsection (8); or

(ii) for the purpose (with or without a further transfer) of enabling the object to be destroyed.

(7) The assistance, encouragement or inducement by any person of conduct mentioned in section 5 (1) is authorised by this section if, at the material time, he believed on reasonable grounds that the conduct in question is or will be authorised by this section.

(8) The purposes permitted by this subsection are—

(a) the development of techniques of mine detection, mine clearance or mine destruction;

(b) training in techniques of mine detection, mine clearance or mine destruction; and

(c) the purposes of any proceedings under this Act or of any criminal investigation or other criminal proceedings in which the object in question is or may be evidence.

(9) No person shall be authorised by the Cabinet

Secretary for the purposes of subsection (2) or (5) to transfer, or to have in his possession, any prohibited objects of any description in numbers in excess of what is necessary for the purposes permitted by subsection (8).

(10) Authorisation by this section of any conduct does not indemnify any person against, or otherwise abrogate or affect, a liability under any other Act in respect of that conduct.

8. (1) A person is not guilty of an offence under section 5 in respect of any conduct of his which—

International
military operations.

(a) takes place in the course of, or for the purposes of, a military operation to which this section applies, or the planning of such an operation; and

(b) is not, and does not relate to, the laying of anti-personnel mines in contravention of the Ottawa Convention.

(2) In proceedings for an offence under section 5 in respect of any conduct, it is a defence for the accused to satisfy the court that—

(a) the conduct was in the course of, or for the purpose of, a military operation or the planning of a military operation;

(b) the conduct was not the laying of an anti-personnel mine;

(c) at the time of the conduct he believed on reasonable grounds that the operation was or would be an operation to which this section applies; and

(d) he did not know, and had no reason to suspect, that the conduct related to the laying of anti-personnel mines in contravention of the Ottawa Convention.

(3) This section applies to a military operation—

(a) which takes place wholly or mainly outside Kenya;

(b) which involves the participation both of members of the defence forces of the Republic and of members of the defence forces of a State other than Kenya; and

(c) in the course of which there is or may be some

deployment of anti-personnel mines by members of the defence forces of one or more States that are not parties to the Ottawa Convention, but in the course of which such mines are not to be laid in contravention of that Convention.

(4) If in any proceedings any question arises whether any actual or planned military operation involved the participation of any person, a certificate issued by or under the authority of the Cabinet Secretary stating any fact relating to that question shall be conclusive evidence of that fact.

(5) For the purposes of this section, the laying of anti-personnel mines shall be deemed to be in contravention of the Ottawa Convention in any circumstances other than those where the mines are laid by members of the defence forces of a State that is not a party to that Convention.

(6) For the purposes of this section, a State is a party to the Ottawa Convention if, under Article 16 of that Convention, that State has ratified, accepted or approved that Convention or has acceded to it and either—

(a) that Convention is in force in relation to that State; or

(b) paragraph 1 of Article 1 of that Convention is being provisionally applied in relation to that State in accordance with Article 18.

(7) In this section—

(a) “defence forces of the Republic” means any of the defence forces within the meaning of the law relating to defence forces;

(b) “military operation” includes any land, naval or air force operation; and

(c) “operation” includes exercise and other activities.

(8) The defences available under this section in respect of an offence under section 5 extend to apply in respect of any offence of conspiring or attempting to commit the offence concerned.

9. (1) In proceedings for an offence under section 5 (1) (a), (d) or (e), it is a defence for the accused to satisfy the court that, at the time of the conduct in question, he did not know and had no reason to suspect that the object

concerned was an anti-personnel mine or a component of an anti-personnel mine.

(2) In proceedings for an offence under section 5 (1) (c), (d) or (e) in relation to a component of an anti-personnel mine, it is a defence for the accused to satisfy the court that—

- (a) at the time of the conduct in question, there was no proposal to use the component as part of an anti-personnel mine; or
- (b) at that time, he did not know and had no reason to suspect that there was any proposal to use the component as part of an anti-personnel mine.

(3) In proceedings for an offence under section 5 (1) (d) in relation to any object, it is a defence for the accused to satisfy the court that—

- (a) at the time of the conduct in question, he did not know and had no reason to suspect that the object was a prohibited object; or
- (b) although he came to know or suspect, while the object was in his possession, that it was a prohibited object, he took all reasonable steps, as soon as reasonably practicable after he first had that knowledge or suspicion, to inform the Cabinet Secretary or a member of the police force of what he knew or suspected.

(4) In proceedings for an offence under section 5 (2), it is a defence for the accused to satisfy the court that, at the time when he assisted, encouraged or induced the conduct in question, he did not know and had no reason to suspect that the conduct related, or might relate, to a prohibited object.

(5) The defences available under this section in respect of an offence under section 5 extend to apply in respect of any offence of conspiring or attempting to commit the offence concerned.

PART III—SECURING THE DESTRUCTION OF ANTI-PERSONNEL MINES

10. (1) Where the Cabinet Secretary—

- (a) has reasonable grounds to suspect that an object is

Suspicious objects.

a prohibited object; and

(b) has reasonable grounds to believe that the person in possession of the prohibited object is not a person whose possession of it is authorised by section 5,

(c) the Cabinet Secretary may serve a notice under this section on any person mentioned in subsection (3).

(2) A notice under this section shall—

(a) describe the object and state its location;

(b) state that the Cabinet Secretary suspects that the object is a prohibited object and give the reasons for his suspicion;

(c) state that he is considering whether to secure its destruction under this Part;

(d) state that any person may make representations in writing to the Cabinet Secretary that the object is not a prohibited object or that it is lawfully in his possession; and

(e) state that a person on whom the notice is served and who has the object in his possession shall not relinquish possession before a date specified in the notice.

(3) A notice under this section may be served on—

(a) any person who appears to the Cabinet Secretary to have the object in his possession; or

(b) any other person who appears to the Cabinet Secretary to have an interest which the Cabinet Secretary believes will be materially affected by the service of the notice.

11. (1) Where the Cabinet Secretary has reasonable grounds to suspect—

(a) that a prohibited object is on any premises; and

(b) that none, or not all, of the persons in possession of the object are persons whose possession of the object is authorised by section 6,

he may, with the consent of the occupier of the premises, by instrument in writing authorise a person to enter the

premises and to search them:

Provided that the consent of the occupier shall not be necessary in relation to premises to which the public has access.

(2) A judge or magistrate who is satisfied, on information on oath, that there are reasonable grounds to believe —

(a) that a prohibited object is on any premises; and

(b) that none, or not all, of the persons in possession of the object are persons whose possession of it is authorised by section 6,

may issue a warrant in writing authorising a person acting under the authority of the Cabinet Secretary to enter the premises, if necessary by force, at any time within one month from the time of issue of the warrant and to search the premises.

(3) Subject to subsection (4), if a person enters premises under an authorisation or warrant under this section and a prohibited object is found there, he may make the object safe and—

(a) may seize and remove it if it is reasonably practicable to do so; or

(b) may, in any case, affix a warning to the object, or in a conspicuous position to something near the object, stating that the object is not to be moved or interfered with before the date specified in the warning.

(4) A person shall not exercise the powers conferred by subsection (3) if he is satisfied that the only persons in possession of the object are persons whose possession of it is authorised by section 6.

(5) For the purposes of subsection (3), an object is made safe if, without being destroyed, it is prevented from being an immediate danger (by the disconnection of a detonator or otherwise).

(6) This section applies whether or not a notice under section 10 has been served on any person.

12. (1) This section applies if an object is removed from premises under section 11, and for the purposes of

Power to destroy removed objects.

this section—

- (a) the first six-month period is the period of six months beginning with the day after the removal; and
 - (b) the second six-month period is the period of six months beginning with the day after the first six-month period ends.
- (2) If, at any time in the first six-month period—
- (a) any person appears to the Cabinet Secretary to have had the object in his possession immediately before its removal; or
 - (b) any other person appears to the Cabinet Secretary to have an interest which the Cabinet Secretary believes would be materially affected by the object's destruction,

the Cabinet Secretary shall serve on that person a notice under this section.

- (3) A notice under this section shall—
- (b) describe the object and state its location;
 - (b) state that the Cabinet Secretary proposes to secure its destruction and give the reasons for his proposal;
 - (c) state that the person on whom the notice is served may object to the Cabinet Secretary's proposal; and
 - (d) state that any such objection—
 - (i) shall be made in writing to the Cabinet Secretary before such date as is specified in the notice; and
 - (ii) shall show cause why the object should not be destroyed.
- (4) Subject to subsection (5), the Cabinet Secretary may, at any time in the second six-month period, authorise a person to destroy the object.
- (5) No action shall be taken under subsection (4) unless the Cabinet Secretary has—

- (a) afforded any person on whom a notice under this section has been served an opportunity to respond within the period allowed by the notice; and
- (b) taken into account any objections made to the proposal to destroy the object, whether made in response to a notice or otherwise.

(6) If any object is removed from premises under section 11 and destroyed under this section, the Cabinet Secretary may recover from any person who had possession of the object immediately before its removal any costs reasonably incurred by the Cabinet Secretary in connection with the removal and destruction.

(7) If—

- (a) an object is removed from premises under section 11;
- (b) at the end of the second six-month period, the Cabinet Secretary has not authorized the destruction of the object; and
- (c) a person had possession of the object immediately before its removal,

the Cabinet Secretary shall return the object to the person mentioned in paragraph (c) or, if there is more than one, to the person the Cabinet Secretary thinks appropriate.

13. (1) This section applies where a warning has been affixed under section 11, and for the purposes of this section—

- (a) the first six months of the warning is the period of six months beginning with the day after the warning was affixed; and
- (b) the second six months of the warning is the period of six months beginning with the day after the first six months of the warning ends.

(2) If at any time in the first six months of the warning the Cabinet Secretary has reasonable grounds to believe that—

- (a) any person had the prohibited object in his possession immediately before the warning was

Power to enter premises and destroy objects.

affixed; or

- (b) any other person has an interest which would be materially affected by the object's destruction,

the Cabinet Secretary shall serve on that person a notice under this section.

(3) A notice under this section shall—

- (a) describe the object and state its location;
- (b) state that the Cabinet Secretary proposes to secure its destruction and give the reasons for his proposal;
- (c) state that the person on whom the notice is served may object to the Cabinet Secretary's proposal; and
- (d) state that any such objection—
 - (i) shall be made in writing to the Cabinet Secretary before such date as is specified in the notice; and
 - (ii) shall state why the object should not be destroyed.

(4) Subject to subsection (6), the Cabinet Secretary may, at any time within the second six months of the warning, with the consent of the occupier of the premises where the object is believed to be located, authorise a person to enter the premises and to destroy the object:

Provided that the consent of the occupier shall not be necessary in relation to premises to which the public have access.

(5) A judge or magistrate who is satisfied, on information on oath—

- (a) that an object in respect of which a warning has been affixed under section 11 is on any premises;
- (b) that the Cabinet Secretary has decided, within the second six months of the warning, that the object should be destroyed; and
- (c) that the requirements of subsection (6) have been complied with,

may issue a warrant in writing authorising a person acting

under the authority of the Cabinet Secretary to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to destroy the object if it is found there.

(6) No action shall be taken under subsection (4) or (5) unless the Cabinet Secretary has—

- (a) afforded any person on whom a notice under this section has been served an opportunity to respond within the period allowed by the notice; and
- (b) taken into account any objections to the object's proposed destruction, whether made in response to a notice or otherwise.

(7) Where an object is destroyed under this section the Cabinet Secretary may recover, from any person who had possession of the object immediately before the warning was affixed under section 11, any costs reasonably incurred by the Cabinet Secretary in connection with the destruction.

14. (1) This section applies where—

Compensation for destruction.

- (a) an object has been destroyed under section 12 or 13;
- (b) a person claims—
 - (i) he had an interest which was materially affected by the destruction; and
 - (ii) he sustained a loss as a result of the destruction; and
- (c) notice was not served on the person under the section concerned (whether or not one was served on any other person).

(2) The High Court, on application made by the person concerned and on finding his claim to be justified, may order the Cabinet Secretary to pay to the person such amount, if any, by way of compensation as the Court thinks just;

Provided that, if the Court is satisfied that the object would have been destroyed even if notice had been served on the applicant under the section concerned, no compensation shall be payable under this section.

Offences relating to
destruction, etc.

15. (1) A person—

- (a) on whom a notice has been served under section 10 in relation to an object that was in his possession at the time the notice was served; and
- (b) who, without reasonable excuse, relinquishes possession of the object before the date specified under section 10 (2) (e),

commits an offence.

(2) A person who willfully obstructs any person acting, or attempting to act, in pursuance of any of the provisions of this Part commits an offence.

(3) A person who, without reasonable excuse—

- (a) interferes with a warning affixed under section 11 in relation to an object; or
- (b) before the date specified in the warning, moves or interferes with the object, commits an offence.

(4) A person who commits an offence under the provisions of this section shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

(5) A person who knowingly makes a false or misleading statement in response to a copy of a notice served under any of the provisions of this Part commits an offence, and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

PART IV—FACT-FINDING MISSIONS

Rights of entry, etc.,
for fact-finding
missions

16. (1) Where it proposed that any of the functions of a fact-finding mission should be carried out in Kenya, the Cabinet Secretary may issue an authorisation under this section in respect of that mission.

(2) An authorisation under this section shall—

- (a) contain a description of the area of Kenya (in this section referred to as the “specified area”) in which the fact-finding mission is to carry out functions; and
- (b) state the names of the members of the mission.

(3) Such an authorisation shall have the effect of authorising the members of the fact-finding mission—

- (a) to exercise within the specified area such rights of access, entry and unobstructed inspection as are required for the purposes of the carrying out of the mission's functions under the Ottawa Convention; and
- (b) to do such other things within that area in connection with the carrying out of the mission's functions as they are entitled to do by virtue of that Convention.

(4) Such an authorisation shall, in addition, have the effect of authorising any member of the police force to give such assistance as any member of the fact-finding mission may request for the purpose of facilitating the carrying out of the functions of the mission in accordance with the Ottawa Convention.

(5) Any member of the police force giving assistance in accordance with subsection (4) may use reasonable force for the purpose mentioned in that subsection.

(6) The validity of any authorisation purporting to be issued under this section in respect of any fact-finding mission shall not be called in question in any court of law at any time before the conclusion of the carrying out of the mission's functions in Kenya.

(7) Accordingly, where an authorisation purports to be issued under this section in respect of any fact-finding mission, no proceedings (of whatever nature) shall be brought at any time before the conclusion of the carrying out of the mission's functions in Kenya if those proceedings would, if successful, have the effect of preventing, delaying or otherwise affecting the carrying out of the mission's functions.

(8) If in any proceedings any question arises whether a person at any time was, or was not, a member of any fact-finding mission, a certificate issued by or under the authority of the Cabinet Secretary stating any fact relating to that question shall be conclusive evidence of that fact.

(9) If an authorisation is issued under this section, the Cabinet Secretary may issue an amendment varying the

specified area, and—

- (a) from the time when the amendment is expressed to take effect this section shall apply as if the specified area were the area as varied;
- (b) subsections (6) and (7) shall apply to the amendment in the same manner as they apply to the authorisation; and
- (c) the Cabinet Secretary may issue further amendments varying the specified area, and in such a case paragraphs (a) and (b) shall apply.

Offences in connection with fact-finding missions.

17. (1) A person who, without reasonable excuse, neglects or fails to comply with any request made, for the purpose of facilitating the carrying out by an authorised fact-finding mission of its functions under the Ottawa Convention—

- (a) by a member of such a mission; or
- (b) by a member of the police force assisting such a mission,

commits an offence.

(2) A person who willfully obstructs any member of an authorised fact-finding mission in the carrying out of the mission's functions under the Ottawa Convention commits an offence.

(3) A person who knowingly makes a false or misleading statement to any member of an authorized fact finding mission in the carrying out of the missions functions under the Ottawa convention commits an offence.

(4) A person who commits an offence under this section shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(5) In this section “authorised fact-finding mission” means a fact-finding mission in respect of which an authorisation has been issued under section 16.

Privileges and immunities for fact-finding missions.

18. (1) Members of a fact-finding mission shall enjoy—

- (a) immunity from suit and legal process in respect of things done or omitted to be done by them in the

carrying out of their functions under the Ottawa Convention;

(b) the like immunity from personal arrest or detention and the like inviolability for all papers and documents as, in accordance with the Privileges and Immunities Act, are accorded to a diplomatic agent; and

Cap. 179.

(c) the like exemptions and privileges in respect of their personal baggage as, in accordance with that Act, are accorded to a diplomatic agent.

(2) The immunities, privileges and exemptions accorded to members of fact-finding missions by virtue of subsection (1) (b) and (c) shall be enjoyed by them at any time when they are in Kenya either—

(a) for the purpose of carrying out in Kenya any of the functions of the mission; or

(b) while in transit to or from a country or territory in connection with the carrying out, in that country or territory, of any of the functions of the mission.

(3) If any of the immunities, privileges or exemptions accorded to a member of a fact-finding mission under this section is waived in any particular case by the Secretary General of the United Nations, this section shall have effect in that case as if it did not confer that immunity, privilege or exemption on that member of the mission.

(4) If in any proceedings a question arises whether a person is or is not entitled to any immunity, privilege or exemption by virtue of this section, a certificate issued by or under the authority of the Cabinet Secretary stating any fact relating to that question shall be conclusive evidence of that fact.

19. The Cabinet Secretary shall take the necessary administrative measures for purposes of facilitating the accommodation, transportation, security and related needs of the fact-finding mission while on Kenyan territory.

Administrative issues.

20. The Cabinet Secretary may reimburse any person in respect of expenditure incurred in connection with the carrying out of the functions of a fact-finding mission.

Reimbursement of expenditure.

PART V—INFORMATION AND RECORDS

Information and records for Ottawa Convention purposes.

21. (1) The Cabinet Secretary may, by notice served on any person, require him to give, in a form and within a reasonable period specified in the notice, such information as may be so specified, being information which the Cabinet Secretary has reasonable grounds to believe is or will be needed in connection with anything to be done for the Purposes of the Ottawa Convention.

(2) Information required by a notice under subsection (1) may relate to a state of affairs subsisting before or after the coming into force of this Act or of the Ottawa Convention.

(3) The Cabinet Secretary may, by notice served on any person, require him to keep such records as may be specified in the notice, being records which the Cabinet Secretary has reasonable cause to believe will facilitate the giving of information which that person may at any time be required to give under subsection (1).

(4) A person who without reasonable excuse neglects or fails to comply with a notice served on him under this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or both.

(5) A person on whom a notice is served under subsection (1) and who knowingly makes a false or misleading statement in response to it commits an offence, and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

Power to search and obtain evidence.

22. (1) A judge or magistrate who is satisfied, on information on oath, that there are reasonable grounds to believe—

- (a) that an offence under this Act is being, has been or is about to be committed on any premises; or
- (b) that evidence of the commission of such an offence is to be found on the premises,

may issue a warrant in writing authorising a person acting under the authority of the Cabinet Secretary to enter the premises, if necessary by force, at any time within one

month from the time of the issue of the warrant and to search them.

(2) A person who enters any premises under the authority of a warrant under this section may—

- (a) inspect any document found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under this Act;
- (b) take copies of, or seize and remove, any such document;
- (c) inspect, seize and remove any device or equipment found on the premises which he has reasonable cause to believe may be required as such evidence; and
- (d) inspect, sample, seize and remove any substance found on the premises which he has reasonable cause to believe may be required as such evidence.

(3) A member of the Kenya Police Service who enters any premises—

- (a) under the authority of the warrant; or
- (b) by virtue of subsection (2) (a),

may search any person found on the premises who he has reasonable grounds to suspect is in possession of any document, device, equipment or substance which may be required as evidence for the purposes of proceedings in respect of an offence under this Act:

Provided that no person shall be searched by a person of the opposite sex.

(4) A person who willfully obstructs another in the exercise of any power conferred by a warrant under this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

23. (1) This section applies to information which—

- (a) was obtained under, or in connection with anything done under, this Act or the Ottawa

Disclosure of
information.

Convention; and

(b) relates to a particular business or other activity carried on by any person.

(2) So long as the business or activity continues to be carried on, the information shall not be disclosed, except—

(a) with the consent of the person for the time being carrying on the business or activity;

(b) in connection with anything done for the purposes of the Ottawa Convention;

(c) in connection with anything done for the purposes of this Act;

(d) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;

(e) in connection with the enforcement of any restriction on imports or exports; or

(f) with a view to ensuring the security of Kenya.

(3) A person who discloses information in contravention of this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

(4) Nothing in this or any other Act or law shall be deemed to prevent a disclosure of any information to which this section applies if it is made in circumstances mentioned in any of paragraphs (b) to (f) of subsection (2).

PART VI—MISCELLANEOUS PROVISIONS

24. (1) With the consent of the Attorney-General given under the Criminal Procedure Code, proceedings for an offence under section 5, or for any offence of conspiring or attempting to commit such an offence, may be instituted by order of the Commissioner of Customs if it appears to him that the offence has involved either—

(a) the movement of a prohibited object into or out of any country or territory; or

(b) any proposal or attempt to move a prohibited object into or out of any country or territory.

(2) Any proceedings instituted under subsection (1) shall be commenced in the name of an officer authorised by the Commissioner of Customs for the purpose.

(3) In the case of the death, removal, discharge or absence of the officer in whose name any such proceedings were commenced, those proceedings may be continued by another officer authorised by the Commissioner.

25. (1) The court by or before which a person is convicted of an offence under this Act may by order declare that anything shown to the court's satisfaction to relate to the offence shall be forfeited and thereupon destroyed or otherwise dealt with in such manner as is specified in the order.

Forfeiture in case of conviction.

(2) In particular, the court may declare that the thing is to be dealt with as the Cabinet Secretary may see fit; and, in such a case, the powers of the Cabinet Secretary shall include power to direct the destruction of that thing or to secure its disposal in any other way that appears to him appropriate.

(3) Where—

(a) the court proposes to declare anything to be forfeited under this section; and

(b) a person claiming to have an interest in it applies to be heard by the court,

the court shall not order its forfeiture unless that person has been given an opportunity to show cause why the order should not be made.

26. (1) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

Offences by bodies corporate etc.

(a) a director, manager, secretary or other officer of the body corporate; or

(b) any person who was purporting to act in any such capacity,

he, as well as the body corporate, shall be deemed to have committed that offence and shall be liable to be proceeded

against and punished accordingly.

(2) In subsection (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Warrants and
authorisations.

27. (1) A person acting under an authorisation or warrant under this Act may take with him such other persons and such equipment as appear to him to be necessary.

(2) If the authorisation or warrant so provides, the powers conferred on any person by an authorisation or warrant under this Act shall be exercisable only in the presence of a member of the police force.

(3) The occupier of any premises—

(a) in relation to which it is proposed to exercise a right of entry in reliance on an authorisation or warrant under this Act; or

(b) on which an inspection is being carried out in reliance on such an authorisation or warrant,

or a person acting on behalf of the occupier of any such premises, shall be entitled to require a copy of the authorisation or warrant to be shown to him by a person purporting to act in pursuance of it.

Rules.

28. The Cabinet Secretary may make such rules, not inconsistent with this Act, as may be necessary or expedient for carrying out or giving effect to this Act.

SCHEDULE (S. 3)

CONVENTION ON THE PROHIBITION OF THE USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTI- PERSONNEL MINES AND ON THEIR DESTRUCTION

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 coordinated 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,

Recognizing 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 recognizing 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 organizations 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,

Emphasizing the desirability of attracting the adherence of all States to this Convention, and determined to work strenuously towards the promotion of its universalization in all relevant fora including, inter alia, the United Nations, the Conference on Disarmament, regional organizations, 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:

the preparation and status of work conducted under national demining programs;

- (i) the financial and technical means available to the State Party for the destruction of all the anti-personnel mines; and
- (ii) 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 cooperation 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 organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, 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 organizations or institutions, non-governmental organizations 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 organizations, 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 cooperate 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 authorized 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 cooperate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of cooperation 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 cooperate 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 authorized 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 authorize 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 authorize 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 utilize 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 cooperative 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 cooperate 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 cooperation 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 organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations 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 organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations 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 organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations 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 OF OBJECTS AND REASONS

The legislative proposal giving rise to this Bill has been submitted by the Cabinet Secretary for Defence. The Convention on the Prohibition of the use, Stockpiling, Production and Transfer of anti-personnel Mines and on their Destruction (Known as the Ottawa Convention) provides a comprehensive framework for ending the suffering caused by anti-personnel. States that are parties to the Convention (of which Kenya is one) have undertaken to cease production and acquisition of these weapons and to dispose of existing stockpiles. Ancillary undertakings include periodic reporting to the Secretary General of the United Nations on implementation of the Convention and allowing fact-finding mission to visit the country.

Most of the obligations undertaken by parties to the Convention do not require a legislative basis. Article 9 of the Convention, however, requires a party to the Convention to impose penal sanctions to suppress activities prohibited under the Convention. The object of this Bill is to impose the required sanctions, in such circumstances and with such exceptions as are consistent with the terms of the Convention.

Part I (clause 1 and 2) names the proposed Act and defines words and expressions used in it, in particular "mine", "anti-personnel mine" and "prohibited object". The definitions reflect those contained in Article 2 of the Convention. Clause 3 provides for the implementation of the Ottawa convention.

Part II (clause 4-8) prohibits certain conduct in relation to landmines and their components, subject to prescribed exceptions. Use, development and production of anti-personnel mines is prohibited. Acquiring, transferring or possessing anti-personnel mine or a component of such a mine are also prohibited, except for the purposes of certain military operations or training exercises or in other circumstances permitted under Article 3 of the Convention.

Part III (clause 9-14) provides for the location and rendering safe of anti-personnel mines and component parts, for the issue of warnings and other notices and for the removal and destruction of mines and components by persons authorized by the Minister. Provision is made for the issue of warrants and authorisations to search premises where necessary.

Part IV (clause 15 -19) contains provisions designed to facilitate the performance by an authorized fact-finding mission of its functions under the Convention.

PART V (clause 20-22) requires certain records to be kept and enables the Cabinet Secretary to require information to be provided to him concerning matters relevant to the implementation of the Convention.

Part VI (clause 23-27) contains provisions of a general or supplemental nature, including a power for the Cabinet Secretary to make rules for the implementation of the Act.

This Bill is not a Bill concerning county governments.

The enactment of this Bill will occasion additional expenditure of public funds to be provided for through the estimates.

Dated 25th February, 2014.

ADEN DUALE,
Leader of the Majority Party.