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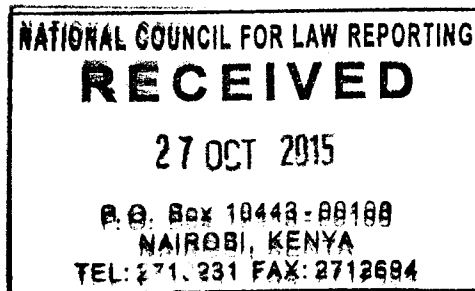
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**THE PROHIBITION OF ANTI-PERSONNEL
MINES ACT**

No. 21 of 2015

Date of Assent: 8th October, 2015

Date of Commencement: 26th October, 2015

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**THE PROHIBITION OF ANTI-PERSONNEL MINES
ACT, 2015**

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, 2015.

Short title

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

Interpretation.

“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;

“anti-personnel mine” means a mine that is designed, altered or intended to explode by the presence, proximity or contact of a person and that is capable of incapacitating, injuring or killing one or more persons. Mines that are designed, altered or intended to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, and that are equipped with anti-handling devices are not considered to be anti-personnel mines as result of being so equipped;

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

“Convention” means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, set out in the Schedule to this Act, as amended from time to time in accordance with Article 13 of the Convention therein;

“mine” means a munition designed, altered or intended 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;

“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.

“transfer”, in respect of anti-personnel mines, includes, in addition to the physical movement of anti-personnel mines, the transfer of title to and control over anti-personnel mines, but does not include the transfer of territory containing emplaced anti-personnel mines;

(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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

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

Implementation of the Convention.

(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.

4. The purpose of the Act is to implement Kenya's obligations under the Convention.

Purpose of the Act

5. This Act shall bind the State.

Act to bind the State.

PART II—OFFENCES RELATING TO ANTI-PERSONNEL MINES

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

Prohibited conduct.

- (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.

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

Application of prohibitions to places outside Kenya.

(2) Section 6 (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 6, 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 6 committed outside Kenya may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in Kenya.

8. (1) In proceedings for an offence under section 6, 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 6 (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 possession of a prohibited object is permitted for—

- (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.

9. (1) A person is not guilty of an offence under section 6 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 6 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) The defences available under this section in respect of an offence under section 6 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—

Suspicious objects.

(a) has reasonable grounds to suspect that an object is 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 8,

(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 8,

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 8,

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.

Power to remove or immobilise objects.

(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 8.

(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 this section—

Power to destroy removed objects.

- (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,

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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—

Power to enter premises and destroy objects.

- (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 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.

Compensation for
destruction.

14. (1) This section applies where—

- (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.

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

Offences relating to
destruction, etc.

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

16. (1) Where it is 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.

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

(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.

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.

Offences in connection with fact-finding missions.