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THE PRESIDENCY

No. 1097 13 October 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 18 of 2008: Prohibition or Restriction of Certain Conventional Weapons Act, 2008.

DIE PRESIDENSIE

No. 1097 13 Oktober 2008

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 18 van 2008: Wet op die Verbod op of die Beperking van Sekere Konvensionele Wapens, 2008.

Act No. 18, 2008

PROHIBITION OR RESTRICTION OF
CERTAIN CONVENTIONAL WEAPONS ACT, 2008

*(English text signed by the President.)
(Assented to 9 October 2008.)*

ACT

To enact 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 into South African law; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Republic—

- is committed to international humanitarian law, and particularly the law on armed conflict;
- recognises the general principle of the protection of the civilian population against the effects of hostilities;
- also recognises the principle of international law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited;
- further recognises the principle that prohibits or restricts the use in armed conflicts of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering;
- acknowledges the need to prohibit the use of weapons which inflict excessive injury or suffering on combatants or renders their death inevitable;
- acceded 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 of 10 October 1980 and its original three Protocols on 13 September 1995, Protocol IV on 13 October 1995 and the amended Protocol II on 26 June 1998; and
- is obliged in terms of international law, and in particular international humanitarian law, to incorporate the Convention and its Protocols into South African law by means of national legislation, and to further provide for appropriate penal sanctions,

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

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OBJECTS AND APPLICATION OF ACT

2. Objects of Act
3. Extraterritorial application of Act, and jurisdiction

*(Engelse teks deur die President geteken.)
(Goedgekeur op 9 Oktober 2008.)*

WET

Om die Konvensie oor Verbod op of Beperking van die Gebruik van Sekere Konvensionele Wapens wat Geag kan Word Uitermate Skadelik te Wees of wat Gevolge Sonder Onderskeid tot Gevolg Het tot Suid-Afrikaanse reg te verorden; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

AANHEF

NADEMAAL die Republiek—

- verbind is tot die internasionale humanitêre reg, en in die besonder die reg op gewapende konflik;
- die algemene beginsel van die beskerming van die burgerlike bevolking teen die gevolge van vyandelikhede erken;
- ook die internasionale regsbeginsel erken dat die reg van die partye by 'n gewapende konflik om metodes of middele van oorlogvoering te kies nie onbeperk is nie;
- voorts die beginsel erken wat die gebruik in gewapende konflikte van wapens, projektiële en materiaal en metodes van oorlogvoering wat van so 'n aard is dat dit oormatige beserings of onnodige lyding veroorsaak, verbied of beperk;
- die noodsaaklikheid erken om die gebruik te verbied van wapens wat uitermatige beserings of lyding aan vegtendes toebring of hul dood onafwendbaar maak;
- toetree het tot die Konvensie oor die Verbod op of Beperking van die Gebruik van Sekere Konvensionele Wapens wat Geag kan Word Uitermatig Skadelik te Wees of Gevolge Sonder Onderskeid te Hê van 10 Oktober 1980 en sy oorspronklike drie Protokolle op 13 September 1995, Protokol IV op 13 Oktober 1995 en die gewysigde Protokol II op 26 Junie 1998; en
- verplig is ingevolge internasionale reg en in die besonder die internasionale humanitêre reg om die Konvensie en sy Protokolle in te lyf in die Suid-Afrikaanse reg deur middel van nasionale wetgewing, en om voorts voorsiening te maak vir geskikte strafregtelike sanksies.

WORD DAAR DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

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Definitions

1. In this Act, unless the context indicates otherwise—
- “**anti-handling device**” means an anti-handling device as defined in the Schedule to the Anti-Personnel Mines Prohibition Act, 2003 (Act No. 36 of 2003);
- “**blinding laser weapon**” means a laser weapon specifically designed, as its sole combat function or as one of its combat functions, to cause permanent blindness to the naked eye; 25
- “**booby-trap**” means any device or material which is designed, constructed or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act; 30
- “**civilian objects**” means all objects which are not military objectives; 30
- “**component part**” means any identifiable component designed or adapted to form an essential and integral part of any weapon prohibited by this Act;
- “**concentration of civilians**” means any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads; 35
- “**Convention**” means 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 of 10 October 1980, acceded to by the Republic on 13 September 1995, and its Protocols; 40
- “**Department of Defence**” means the Defence Secretariat, the South African National Defence Force and any auxiliary service defined in the Defence Act, 2002 (Act No. 42 of 2002);
- “**employee of the Department of Defence**” means a member of the South African National Defence Force appointed in terms of the Defence Act, 2002 (Act No. 42 of 2002), or an employee of the Department of Defence appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994); 45

WET OP DIE VERBOD OP OF DIE BEPERKING
VAN SEKERE KONVENSONELE WAPENS, 2008

Wet No. 18, 2008

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Woordomsrywings

1. (1) In hierdie Wet, tensy uit die samehang anders blyk, beteken—
- “afstandsafgevuurde myn” ’n myn wat nie direk geplaas word nie, maar afgevuur word deur artillerie, ’n missiel, vuurpyl, mortier of soortgelyke wyse, of wat afgegooi word uit ’n vliegtuig, maar nie myne wat afgevuur word van ’n landgebaseerde stelsel nader as 500 meter nie, met dien verstande dat daardie myne gebruik word ooreenkomstig Artikel 6 en ander tersaaklike Artikels van Gewysigde Protokol II; 25
- “ander toestelle” handverskansde munisie en toestelle, insluitende geïmproviseerde ploftoestelle wat ontwerp is om te dood, te beseer of skade aan te rig en wat met die hand, deur afstandbeheer of outomaties na tydsverloop in werking gestel word; 30
- “beperkte wapens” wapens in artikels 6 en 7 bedoel;
- “brandwapen” enige wapen of munisie wat hoofsaaklik ontwerp is om voorwerpe aan die brand te steek of om brandwonde aan persone te veroorsaak deur die werking van vlam, hitte of ’n kombinasie daarvan, wat veroorsaak word deur ’n chemiese reaksie van ’n stof wat op die teiken afgevuur word; 35
- “burgerlike voorwerpe” alle voorwerpe wat nie militêre doelwitte is nie;
- “Departement van Verdediging” die Sekretariaat vir Verdediging, die Suid-Afrikaanse Nasionale Weermag en enige hulpdiens omskryf in die Verdedigingswet, 2002 (Wet No. 42 van 2002); 40
- “fopmyn” enige toestel of materiaal wat ontwerp, opgerig of aangepas is om te dood of te beseer en wat onverwags in werking tree wanneer ’n persoon ’n oënskynlik onskadelike voorwerp versteur of nader of ’n oënskynlik veilige handeling uitvoer; 45
- “hierdie Wet” ook enige regulasies ingevolge artikel 14 uitgevaardig;
- “inligting” enige opgetekende inligting, ongeag die vorm of medium;
- “invoer” om verbode wapens in enige deel van die Republiek in te bring of om sodanige wapens te laat inbring, hetsy in ruil vir geld of enige ander kommoditeit of voordeel al dan nie; 50
- “konsentrasie van burgerlikes” enige konsentrasie van burgerlikes, hetsy permanent of tydelik, soos in bewoonde dele van stede, of bewoonde dorpe of klein dorpies, of soos in kampe of kolonne vlugtelinge of afgevoerdes, of groepe swerwers;

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- “**export**” means to supply another person outside the Republic with prohibited weapons, whether or not that is done in exchange for currency or any other commodity or benefit;
- “**import**” means to bring prohibited weapons into any part of the Republic or to cause such weapons to be so brought in, whether or not that is done in exchange for currency or any other commodity or benefit; 5
- “**incendiary weapon**” means any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or combination thereof, produced by a chemical reaction of a substance delivered on the target; 10
- “**information**” means any recorded information regardless of form or medium;
- “**manufacture**” includes the design, development, production and assembly of prohibited weapons;
- “**military objective**” means any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation offers a definite military advantage; 15
- “**mine**” —
- (a) means any munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle; and 20
- (b) includes mines laid to interdict beaches, waterway crossings or river crossings; but
- (c) excludes anti-ship mines used at sea or in inland waterways;
- “**minefield**” means a defined area in which any number of mines have been placed, and includes areas which simulate minefields; 25
- “**Minister**” means the Minister of Defence;
- “**non-detectable fragments**” means any device or material the primary effect of which is to injure by fragments which in the human body escape detection by X-rays;
- “**other devices**” means manually emplaced munitions and devices, including improvised explosive devices designed to kill, injure or damage and which are actuated manually, by remote control or automatically after a lapse of time; 30
- “**permanent blindness**” means irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery;
- “**place**”, in relation to a mine, means to use, locate, emplace or situate a mine in a manner that would or could cause an explosion by the presence, proximity or contact of a vehicle, person or animal; 35
- “**police official**” means—
- (a) a member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995); 40
- (b) a person designated by the Minister of Safety and Security as a police official;
- (c) a military police official appointed by the Chief of the Defence Force in terms of section 30 of the Defence Act, 2002 (Act No. 42 of 2002); or
- (d) any other member of the South African National Defence Force deployed in a joint operation in cooperation with the South African Police Service; 45
- “**premises**” includes any land, building or structure or any vehicle, vessel, aircraft or other means of conveyance;
- “**prescribed**” means prescribed by regulation made under section 15;
- “**procure**” includes the obtaining of a prohibited weapon through purchase, forfeiture, donation, cession or transfer; 50
- “**prohibited weapons**” means weapons referred to in sections 5 and 8;
- “**protocols**” means the Protocols to the Convention, namely the—
- (a) Protocol on Non-Detectable Fragments (Protocol I), 10 October 1980;
- (b) Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention as amended on 3 May 1996); 55
- (c) Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), 10 October 1980;
- (d) Protocol on Blinding Weapons (Protocol IV to the 1980 Convention), 13 October 1995; 60

WET OP DIE VERBOD OP OF DIE BEPERKING
VAN SEKERE KONVENSIONELE WAPENS, 2008

Wet No. 18, 2008

- “Konvensie”** die Konvensie oor die Verbod op of die Beperking van die Gebruik van Sekere Konvensionele Wapens wat Geag kan Word Uitermate Skadelik te Wees of Gevolge Sonder Onderskeid te Hê van 10 Oktober 1980, waartoe die Republiek op 13 September 1995 toegetree het, en sy Protokolle;
- “militêre doelwit”** enige voorwerp wat as gevolg van sy aard, ligging, doel of gebruik ’n doeltreffende hydrae tot militêre optrede lewer en waarvan die algehele of gedeeltelike vernietiging, beslaglegging of neutralisering ’n besliste militêre voordeel inhou;
- “Minister”** die Minister van Verdediging;
- “myn”**— 10
- (a) enige munisie wat onder, op of naby die grond of ander oppervlakte geplaas is en ontwerp is om gedetoneer te word of te ontplof deur die teenwoordigheid, nabyheid of aanraking van ’n persoon of voertuig; en
- (b) ook myne wat gelê is om strande, waterwagoorgange of rivieroorgange af te sluit; maar 15
- (c) nie ook teenskipmyne wat ter see of in binnelandse waterweë gebruik word nie;
- “mynveld”** ’n afgebakende gebied waarin enige aantal myne gelê is, en ook gebiede wat mynvelde simuleer;
- “nie-opspoorbare skerwe”** enige toestel of materiaal waarvan die hoofdoelwit is om te beseer deur skerwe wat nie in die menslike liggaam deur X-strale opspoorbaar is nie; 20
- “onderdeel”** enige identifiseerbare onderdeel wat ontwerp of aangepas is om ’n noodsaaklike en integrale deel te vorm van enige wapen wat deur hierdie Wet verbied word; 25
- “oordrag”** ook die—
- (a) oordrag van titel van en beheer oor verbode wapens;
- (b) verkoop, huur, verhuur, leen, uitleen, skenk, gee, koop, ontvang of afstand doen of besit verkry van verbode wapens; en
- (c) vervoer op enige wyse van verbode wapens na, uit of deur die grondgebied van die Republiek; 30
- “permanente blindheid”** onomkeerbare en onherstelbare gesigsverlies wat ’n ernstige gestremdheid veroorsaak met geen vooruitsig op herstel nie;
- “perseel”** ook enige grond, gebou of struktuur of enige voertuig, vaartuig, vliegtuig of ander wyse van vervoer; 35
- “plaas”**, met betrekking tot ’n myn, om ’n myn te gebruik, die ligging te bepaal, te plaas of neer te sit op ’n wyse wat ’n ontploffing sal of kan veroorsaak deur die teenwoordigheid, nabyheid of kontak van ’n voertuig, persoon of dier;
- “polisiebeampte”**—
- (a) ’n lid van die Suid-Afrikaanse Polisie diens soos omskryf in artikel 1 van die Wet op die Suid-Afrikaanse Polisie diens, 1995 (Wet No. 68 van 1995); 40
- (b) ’n persoon wat deur die Minister van Veiligheid en Sekuriteit as polisiebeampte aangewys is;
- (c) ’n militêre polisiebeampte wat deur die Hoof van die Weermag ingevolge artikel 30 van die Verdedigingswet, 2002 (Wet No. 42 van 2002), aangestel is; 45
- of
- (d) enige ander lid van die Suid-Afrikaanse Nasionale Weermag wat in ’n gesamentlike operasie in samewerking met die Suid-Afrikaanse Polisie diens ontplooi word;
- “protokolle”** die Protokolle by die Konvensie, naamlik die— 50
- (a) Protokol oor Nie-opspoorbare Skerwe (Protokol I), 10 Oktober 1980;
- (b) Protokol oor die Verbod op of Beperking van die Gebruik van Myne, Fopmyne en Ander Toestelle, soos gewysig op 3 Mei 1996 (Protokol II by die 1980-Konvensie soos gewysig op 3 Mei 1996);
- (c) Protokol oor die Verbod op of die Beperking van die Gebruik van Brandwapens (Protokol III), 10 Oktober 1980; 55
- (d) Protokol oor Verblindende Wapens (Protokol IV by die 1980-Konvensie), 13 Oktober 1995;
- “teenhanteringstoestel”** ’n teenhanteringstoestel soos omskryf in die Bylae by die “Anti-Personnel Mines Prohibition Act, 2003” (Wet No. 36 van 2003); 60
- “uitvoer”** om ’n ander persoon buite die Republiek van verbode wapens te voorsien, hetsy dit gedoen word in ruil vir geld of enige ander kommoditeit of voordeel al dan nie;

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- “**remotely delivered mine**” means a mine not directly placed but delivered by artillery, missile, rocket, mortar or similar means, or dropped from an aircraft, excluding mines delivered from a land-based system from less than 500 metres, provided that those mines are used in accordance with Article 6 and other relevant Articles of Amended Protocol II; 5
- “**restricted weapons**” means weapons referred to in sections 6 and 7;
- “**this Act**” includes any regulations made in terms of section 14;
- “**transfer**” includes the—
- (a) transfer of title to and control over prohibited weapons;
 - (b) selling, hiring, letting, lending, borrowing, donating, giving, purchasing, receiving or parting with or gaining possession of prohibited weapons; and 10
 - (c) transit of prohibited weapons into, out of or through the territory of the Republic by any means;
- “**weapons**” means all conventional weapons referred to in the Convention. 15

CHAPTER 1

OBJECTS AND APPLICATION OF ACT

Objects of Act

2. The objects of the Act are to—
- (a) enact the Convention into law as contemplated in section 231(4) of the Constitution of the Republic of South Africa, 1996; 20
 - (b) ensure that the Republic complies with the Convention;
 - (c) prohibit the use, stockpiling, production, development, acquisition and transfer of prohibited weapons;
 - (d) provide for the reporting on the Republic’s compliance with the Convention to Parliament, and to the Secretary General of the United Nations. 25

Extraterritorial application of Act, and jurisdiction

3. (1) If an offence is committed in terms of this Act, a court of the Republic may try any—
- (a) South African citizen contemplated in the South African Citizenship Act, 1995 (Act No. 88 of 1995); 30
 - (b) person who is a permanent resident as contemplated in the Immigration Act, 2002 (Act No. 13 of 2002);
 - (c) juristic person incorporated or registered in the Republic,
- charged with that offence, notwithstanding the fact that the act or omission to which the charge relates was committed outside the Republic. 35
- (2) If an offence is committed in terms of this Act by a person other than a person referred to in subsection (1), a court of the Republic may try that person, notwithstanding the fact that the act or omission to which the charge relates was committed outside the Republic, if that act or omission affects or is intended to affect a public body, business or any other person in the Republic. 40
- (3) Any offence committed outside the Republic as contemplated in subsection (1) or (2) is, for the purposes of determining the jurisdiction of a court to try the offence, deemed to have been committed—
- (a) at the place where the accused is ordinarily resident or, in the case of a person contemplated in subsection (2), where the accused was arrested; or 45
 - (b) at the principal place of business of the accused.

CHAPTER 2

PROHIBITIONS OR RESTRICTIONS, OFFENCES AND PENALTIES

Anti-personnel mines

4. This Act is not applicable to anti-personnel mines which are prohibited in terms of the Anti-Personnel Mines Prohibition Act, 2003 (Act No. 36 of 2003). 50

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- “**verblindende laserwapen**” ’n laserwapen wat spesifiek ontwerp is om, as sy enigste gevegsfunksie of as een van sy gevegsfunksies, permanente blindheid van die naakte oog te veroorsaak;
- “**verbode wapens**” wapens in artikels 5 en 8 bedoel;
- “**verkry**” ook om ’n verbode wapen te bekom deur middel van aankoop, verbeurdverklaring, skenking, afstanddoening of oordrag; 5
- “**vervaardig**” ook die ontwerp, ontwikkeling, produksie en aanmeekaarsit van verbode wapens;
- “**voorskryf**” voorgeskryf deur regulasie uitgevaardig kragtens artikel 15;
- “**wapens**” alle konvensionele wapens in die Konvensie bedoel; 10
- “**werknemer van die Departement van Verdediging**” ’n lid van die Suid-Afrikaanse Nasionale Weermag aangestel ingevolge die Verdedigingswet, 2002 (Wet No. 42 van 2002), of ’n werknemer van die Departement van Verdediging aangestel ingevolge die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).

HOOFSTUK 1

15

OOGMERKE EN TOEPASSING VAN WET

Oogmerke van Wet

2. Die oogmerke van die Wet is om—
- (a) die Konvensie tot wet te verorden soos beoog in artikel 231(4) van die Grondwet van die Republiek van Suid-Afrika, 1996; 20
- (b) te verseker dat die Republiek die Konvensie nakom;
- (c) die gebruik, ophoping, vervaardiging, ontwikkeling, verkryging en oorplasing van verbode wapens te verbied;
- (d) voorsiening te maak vir verslagdoening oor die Republiek se nakoming van die Konvensie aan die Parlement en aan die Sekretaris-generaal van die Verenigde Nasies. 25

Ekstraterritoriale toepassing van Wet, en jurisdiksie

3. (1) Indien ’n oortreding kragtens hierdie Wet begaan word, mag ’n hof van die Republiek—
- (a) ’n Suid-Afrikaanse burger soos voorgeskryf in die Wet op Suid-Afrikaanse Burgerskap, 1995 (Wet No. 16 van 1995); 30
- (b) ’n persoon wat ’n permanente inwoner is, soos voorgeskryf in die “Immigration Act, 2002” (Wet No. 13 van 2002);
- (c) ’n regspersoon ingelyf of geregistreer in die Republiek, wat aangekla is van daardie oortreding, vervolg, nie teenstaande die feit dat die daad of versuim waarmee die aanklag verband hou, buite die Republiek begaan is. 35
- (2) Indien ’n oortreding ingevolge hierdie Wet begaan is deur ’n ander persoon as ’n persoon in subartikel (1) bedoel, mag ’n hof van die Republiek daardie persoon verhoor, nie teenstaande die feit dat die daad of versuim waarmee die klag verband hou, buite die Republiek gepleeg is, indien daardie daad of versuim ’n openbare liggaam in die Republiek affekteer of beoog om dit te affekteer. 40
- (3) Enige oortreding wat buite die Republiek begaan is soos voorgeskryf in subartikel (1) of (2), word vir die doeleindes van die vasstelling van ’n hof se jurisdiksie om die oortreding te verhoor, geag begaan te gewees het—
- (a) op die plek waar die beskuldigde gewoonlik woonagtig is of, in die geval van ’n persoon voorgeskryf in subartikel (2), waar die persoon gearresteer is; of 45
- (b) by die beskuldigde se hoofwerkplek.

HOOFSTUK 2

VERBOD OF BEPERKINGS, OORTREDINGS EN STRAWWE

Teenpersoneelmyne

50

4. Hierdie Wet is nie van toepassing nie op teenpersoneelmyne wat verbied word ingevolge die “Anti-Personnel Mines Prohibition Act, 2003” (Wet No. 36 van 2003).

Non-detectable fragments

5. No person may—
- (a) use, place, possess, procure, manufacture, stockpile, transfer, deal in, import or export any non-detectable fragments; or
 - (b) possess, procure, manufacture, stockpile, transfer, deal in, import or export a component part of a weapon contemplated in paragraph (a). 5

Mines, booby-traps or other devices

6. (1) No person may use or direct any mine, booby-trap or other device—
- (a) which is designed or of a nature to cause superfluous injury or unnecessary suffering; 10
 - (b) which employs a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations;
 - (c) in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either— 15
 - (i) such mine, booby-trap or other device is placed on or directed against a military objective; or
 - (ii) measures are taken to protect civilians from their effects; 20
 - (d) either in offence, defence or by way of reprisals, against the civilian population or against individual civilians or civilian objects;
 - (e) in an indiscriminate manner—
 - (i) which is not on or directed against a military objective, and in case of doubt as to whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be used; or 25
 - (ii) which employs a method or means of delivery which cannot be directed at a specific military objective; or 30
 - (iii) which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.
- (2) No person may use booby-traps or other devices— 35
- (a) which are in any way attached to or associated with—
 - (i) internationally recognised protective emblems, signs or signals;
 - (ii) sick, wounded or dead persons;
 - (iii) burial or cremation sites or graves;
 - (iv) medical facilities, medical equipment, medical supplies or medical transportation; 40
 - (v) children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;
 - (vi) food or drink;
 - (vii) kitchen utensils or appliances, except in military establishments, military locations or military supply depots; 45
 - (viii) objects of a religious nature;
 - (ix) historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; or
 - (x) animals or their carcasses; 50
 - (b) in the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material.
- (3) No person may use a self-deactivating mine equipped with an anti-handling device that is designed in such a manner that the anti-handling device is capable of functioning after the mine has ceased to be capable of functioning. 55
- (4) No person may use remotely delivered mines unless they are, to the extent feasible, equipped with an effective self-destruction or self-neutralisation mechanism and have a back-up self-deactivation feature, which is designed so that the mine will no longer function as a mine when the mine no longer serves the military purpose for which it was placed in position. 60

Nie-opspoorbare skerwe**5. Geen persoon mag—**

- (a) enige nie-opspoorbare skerwe gebruik, neersit, besit, verkry, vervaardig, opgaan, vervoer, verhandel, invoer of uitvoer nie; of
- (b) 'n onderdeel van 'n wapen soos in paragraaf (a) beskryf, besit, verkry, vervaardig, opgaan, vervoer, verhandel, invoer of uitvoer nie. 5

Myne, fopmyne of ander toestelle**6. (1) Geen persoon mag enige myn, fopmyn of ander toestel gebruik of rig—**

- (a) wat ontwerp is of waarvan die aard is om oortollige beserings of onnodige lyding te veroorsaak nie; of 10
- (b) wat 'n meganisme of toestel bevat wat spesifiek ontwerp is om deur die teenwoordigheid van algemeen beskikbare mynopspoorders, gedurende normale gebruik in opsporingsoperasies, die plofstof weens hulle magnetiese of ander nie-aanrakingsinvloed te ontsteek nie;
- (c) in enige stad, dorp, klein dorpie of ander gebied wat 'n soortgelyke konsentrasie burgerlikes bevat, waar daar nie gevegte tussen grondmagte plaasvind of dreigend lyk nie, tensy— 15
- (i) so 'n myn, fopmyn of ander toestel op 'n militêre doelwit geplaas of daarop gerig word; of
- (ii) maatreëls getref word om burgerlikes teen die gevolge daarvan te beskerm; 20
- (d) hetsy in aanval, verdediging of by wyse van weerwraak teen die burgerlike bevolking of teen individuele burgerlikes of burgerlike voorwerpe nie;
- (e) op 'n wyse sonder onderskeid—
- (i) wat nie op of gerig is teen 'n militêre doelwit nie, en in geval van twyfel of 'n voorwerp wat gewoonlik toegewys is aan burgerlike doeleindes, soos 'n plek van aanbidding, 'n huis of ander blyplek of 'n skool, gebruik word om 'n doeltreffende hydrae tot militêre optrede te lewer, sal dit aanvaar word nie gebruik te word nie; of 25
- (ii) wat 'n metode of afleweringwyse insluit wat nie op 'n spesifieke militêre doelwit gerig kan word nie; of 30
- (iii) wat verwag kan word om toevallige burgerlike lewensverlies, beserings aan burgerlikes, skade aan burgerlike voorwerpe, of 'n kombinasie daarvan, te veroorsaak nie wat buitensporig sal wees in verhouding tot die konkrete en direkte militêre voordeel wat voorsien word. 35

(2) Geen persoon mag enige fopmyne of ander toestelle gebruik nie—

- (a) wat op enige wyse verbind is tot of geassosieer word met—
- (i) internasionaal erkende beskermende embleme, tekens of seine;
- (ii) siek, gewonde of dooie persone;
- (iii) begraafplase, verassingsplekke of grafte; 40
- (iv) mediese geriewe, mediese toestelle, mediese voorrade of mediese vervoer;
- (v) kinderspeelgoed of ander draagbare voorwerpe of produkte wat spesiaal ontwerp is vir die voeding, gesondheid, higiëne, klere of opvoeding van kinders; 45
- (vi) kos of drank;
- (vii) kombuisgereedskap of -toestelle, behalwe in militêre instellings, militêre gebiede of militêre voorraaddepots;
- (viii) voorwerpe wat van 'n godsdienstige aard is;
- (ix) historiese monumente, kunswerke of aanbiddingsplekke wat die kulturele of geestelike erfenis van volkere uitmaak; of 50
- (x) diere of hulle karkasse;
- (b) in die vorm van oënskynlik skadelose voorwerpe wat spesifiek ontwerp en saamgestel is om plofstowwe te bevat.

(3) Geen persoon mag 'n selfontstekingsmyn gebruik wat toegerus is met 'n teenhanteringstoestel wat op so 'n manier ontwerp is dat die teenhanteringstoestel in staat is om te funksioneer nadat die myn opgehou het om in staat te wees om te funksioneer nie. 55

(4) Geen persoon mag afstandafgelewerde myne gebruik nie behalwe as hulle, sover moontlik, toegerus is met 'n doeltreffende selfvernietigings- of selfneutraliserings- 60

Incendiary weapons

7. No person may—
- (a) make the civilian population, individual civilians or civilian objects the object of attack by incendiary weapons;
 - (b) make any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons; 5
 - (c) make any military objective located within a concentration of civilians the object of attack by means of incendiary weapons except when such military objective is clearly separated from the concentration of civilians and all feasible precautions are taken with a view to limiting the incendiary effects to the military objective and to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects; or 10
 - (d) make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives. 15

Blinding laser weapons

8. No person may—
- (a) use, possess, procure, manufacture, stockpile, transfer, deal in, import or export blinding laser weapons; or 20
 - (b) possess, procure, manufacture, stockpile, transfer, deal in, import or export a component part of weapons contemplated in paragraph (a).

Offences and penalties

9. A person who contravenes section 5, 6, 7 or 8 or who orders or aids the contravention thereof, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding 15 years or to both a fine and such imprisonment. 25

Surrender of prohibited weapons and forfeiture to State

10. (1) Any person in possession of any prohibited weapon or component part immediately before the commencement of this Act must, within six months from the date of commencement of this Act, notify a police official of such possession in the prescribed manner. 30
- (2) In the event of any military operational deployment outside the Republic, any person in possession of any prohibited weapon or component part must notify a military police official or any other person designated by the Chief of the South African National Defence Force for this purpose. 35
- (3) The police official must record the notification contemplated in subsection (1) and immediately arrange for the collection of the prohibited weapon or component part.
- (4) Any person referred to in subsection (1) or (2) who fails to give the notification and remains in possession of a prohibited weapon or component part after the period prescribed in subsection (1) has expired is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding 15 years or to both a fine and such imprisonment. 40
- (5) All weapons and component parts collected in terms of this section shall be forfeited to the State. 45

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meganisme en 'n rugsteun-deaktiveringseienskap, wat so ontwerp is dat die myn nie langer as 'n myn sal funksioneer wanneer dit nie langer die militêre doel dien waarvoor dit in posisie geplaas is nie.

Brandwapens

7. Geen persoon mag— 5
- (a) die burgerlike bevolking of enige individuele burgerlike teikens vir 'n aanval deur brandwapens maak nie;
 - (b) enige militêre doelwit wat binne 'n konsentrasie van burgerlikes geleë is, die teiken vir 'n aanval deur lugafgelewerde brandwapens maak nie;
 - (c) enige militêre teiken wat binne 'n konsentrasie van burgerlikes geleë is, die teiken vir 'n aanval deur brandwapens maak nie tensy so 'n militêre teiken duidelik geskei is van die konsentrasie burgerlikes en alle moontlike voorsorg getref is met die oog daarop om die brandskade aan die militêre teiken te beperk en in elk geval die toevallige verlies van burgerlike lewe, beserings aan burgerlikes en skade aan burgerlike voorwerpe te vermy en te verminder; of 10
 - (d) woude of ander soorte plantbedekking die voorwerp vir aanval deur brandwapens maak nie tensy sodanige natuurlike elemente gebruik word om vegtendes of ander militêre teikens te bedek, verberg of kamoefleer of self militêre teikens is. 15

Verblindende laserwapens

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8. Geen persoon mag—
- (a) verblindende laserwapens gebruik, besit, verkry, vervaardig, ophoop, oorplaas, daarin handel dryf, dit invoer of uitvoer nie; of
 - (b) 'n onderdeel van die wapens voorgeskryf in paragraaf (a) gebruik, besit, verkry, vervaardig, ophoop, oorplaas, daarin handel dryf, dit invoer of uitvoer 25
nie.

Oortredings en strawwe

9. 'n Persoon wat artikels 5, 6, 7 of 8 oortree of die oortreding daarvan beveel of aanhelp, is skuldig aan 'n oortreding en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk van hoogstens 15 jaar of met beide 'n boete en sodanige gevangenisstraf. 30

Oorhandiging van verbode wapens en verbeurdverklaring aan Staat

10. (1) Iemand wat in besit is van enige verbode wapen of 'n onderdeel daarvan onmiddellik voor die inwerkingtreding van hierdie Wet, moet binne ses maande van die datum van die inwerkingtreding van hierdie Wet 'n polisiebeampte op die voorgeskrewe wyse van sodanige besit in kennis stel. 35

(2) In die geval van enige militêre ontplooiing buite die Republiek moet enige persoon wat in besit is van enige verbode wapen of 'n onderdeel daarvan, 'n militêre polisiebeampte of enige ander persoon wat deur die Hoof van die Suid-Afrikaanse Nasionale Weermag vir hierdie doel aangewys is, in kennis stel. 40

(3) Die polisiebeampte moet die kennisgewing van die saak in subartikel (1) bedoel op die voorgeskrewe wyse op rekord plaas en sonder versuim reël vir die afhaal van die verbode wapen of onderdeel.

(4) Enige persoon in subartikel (1) of (2) bedoel wat nalaat om kennis te gee en in besit bly van 'n verbode wapen of onderdeel na die tydperk soos voorgeskryf in subartikel (1) verstryk het, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk van hoogstens 15 jaar of met beide 'n boete en sodanige gevangenisstraf. 45

(5) Alle wapens of onderdele ingevolge hierdie artikel ingesamel, moet aan die Staat verbeurd verklaar word. 50

CHAPTER 3**REPORTING ON COMPLIANCE WITH CONVENTION****Reporting**

- 11.** The Minister must gather, record and disseminate information in order to supervise compliance with the Convention and must report on an annual basis on the Republic's compliance with the Convention— 5
- (a) through the Minister of Foreign Affairs, to the Secretary-General of the United Nations; and
 - (b) to Parliament before the Minister submits the report contemplated in paragraph (a). 10

Power to require information

- 12.** (1) The Minister may require information from any person if the information is necessary for—
- (a) the administration and enforcement of this Act; and
 - (b) compliance with the Convention. 15
- (2) The Minister may, by written notice served on any person, require that person to provide such information as may be necessary within the period and in the manner and form specified in the notice.
- (3) If a person, without reasonable excuse, refuses to provide the information in compliance with subsection (2), the Minister may apply to court for an order requiring the person to provide the information. 20
- (4) On hearing the application, the court may order the person to provide the information if the court concludes that, in the circumstances of the case, the production of the information is necessary to ensure South Africa's compliance with the Convention. 25

CHAPTER 4**GENERAL PROVISIONS****Exemptions**

- 13.** (1) The Minister may, on application by any organ of state or its agent, exempt such an organ of state or its agent from the prohibitions contemplated in sections 5 and 8 for the purposes of conducting research into development, testing and acquisition of counter-measures against the effects of prohibited weapons. 30
- (2) Any exemption contemplated in subsection (1) must—
- (a) be in writing; and
 - (b) state the terms and conditions of such an exemption. 35

Guidelines for training

- 14.** The Minister must ensure that—
- (a) general guidelines are issued in respect of the training of any official performing a function in terms of this Act or the Convention; and
 - (b) military instructions and operating procedures relevant to the Convention and this Act are issued, and that members of the South African National Defence Force receive training commensurate with their duties to comply with this Act. 40

Regulations

- 15.** (1) The Minister may, by notice in the *Gazette*, make regulations regarding— 45
- (a) anything that may or must be prescribed in terms of this Act; and
 - (b) any administrative or procedural matter which it is necessary to prescribe in order to give effect to the provisions of this Act.
- (2) Regulations made by the Minister prescribing the matters stated in section 10(1) must be made after consultation with the Minister of Safety and Security. 50

HOOFSTUK 3**VERSLAGDOENING OOR NAKOMING VAN KONVENSIE****Verslagdoening**

11. Die Minister moet inligting insamel, aanteken en ontleed sodat nakoming van die Konvensie beheer kan word en moet jaarliks verslag doen oor die Republiek se nakoming van die Konvensie— 5

- (a) deur die Minister van Buitelandse Sake aan die Sekretaris-generaal van die Verenigde Nasies; en
- (b) aan die Parlement voor die Minister die verslag in paragraaf (a) bedoel, voorlê. 10

Bevoegdheid om inligting te vereis

12. (1) Die Minister mag van enige persoon inligting vereis as die inligting noodsaaklik is vir—

- (a) die administrasie en inwerkingstelling van hierdie Wet; en
- (b) die nakoming van die Konvensie. 15

(2) Die Minister mag, deur middel van 'n geskrewe kennisgewing wat op enige persoon bedien is, vereis dat daardie persoon die inligting wat nodig is, binne die tydperk en op die wyse en in die vorm wat in die kennisgewing gespesifiseer is, verskaf.

(3) Indien 'n persoon, sonder redelike verskoning, weier om die inligting ooreenkomstig subartikel (2) te verskaf, mag die Minister by die hof aansoek doen om 'n bevel wat vereis dat die persoon die inligting verskaf. 20

(4) By die aanhoor van die aansoek mag die hof die persoon beveel om die inligting te verskaf indien die hof tot die slotsom kom dat, gegewe die omstandighede van die saak, die voorsiening van die inligting noodsaaklik is om Suid-Afrika se nakoming van die Konvensie te verseker. 25

HOOFSTUK 4**ALGEMENE BEPALINGS****Vrystellings**

13. (1) Die Minister kan, op aansoek deur 'n staatsorgaan of sy agent, sodanige staatsorgaan of sy agent vrystel van die verbod in artikels 5 en 8 bedoel vir die doel van die doen van ondersoek na ontwikkeling, toetsing en verkryging van teenmaatreëls teen die uitwerking van verbode wapens. 30

(2) 'n Vrystelling in subartikel (1) bedoel, moet—

- (a) op skrif wees; en
- (b) die terme en voorwaardes van sodanige vrystelling vermeld. 35

Riglyne vir opleiding

14. Die Minister moet verseker dat—

- (a) algemene riglyne uitgereik word met betrekking tot die opleiding van enige beampte wat kragtens hierdie Wet of die Konvensie 'n funksie vervul; en
- (b) militêre instruksies en operasionele prosedures wat relevant is tot die Konvensie en hierdie Wet, uitgereik word en dat lede van die Suid-Afrikaanse Nasionale Weermag opleiding ontvang wat met hulle pligte ooreenstem om hierdie Wet na te kom. 40

Regulasies

15. (1) Die Minister mag, deur kennisgewing in die *Staatskoerant*, regulasies 45 uitvaardig aangaande—

- (a) enigiets wat kragtens hierdie Wet voorgeskryf mag of moet word; en

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(3) The Minister must cause a copy of regulations made under this section to be tabled in Parliament as soon as possible after publication thereof.

Delegation of power and assignment of duty

16. (1) The Minister may—
- (a) delegate any power, in whole or in part, conferred upon him or her under this Act, except the power to make regulations in terms of section 14; and 5
 - (b) assign any duty, in whole or in part, imposed upon him or her in terms of this Act, to—
 - (i) the Secretary for Defence;
 - (ii) the Chief of the South African National Defence Force; or 10
 - (iii) an employee of the Department of Defence holding a position or rank of at least Director, Brigadier-General or Rear Admiral (Junior Grade).
- (2) A delegation or an assignment in terms of subsection (1)—
- (a) must be in writing;
 - (b) is subject to such terms and conditions as the Minister may impose; and 15
 - (c) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty in question.

Short title and commencement

17. (1) Before the commencement of this Act, the Minister must publish a notice in the *Gazette* setting out the English text of the provisions of the Convention as in force at such commencement. 20

(2) This Act is called the Prohibition or Restriction of Certain Conventional Weapons Act, 2008, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

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- (b) enige administratiewe of prosedure-aangeleentheid wat nodig is om voorgeskryf te word om uitvoering te gee aan die bepalings van hierdie Wet.
- (2) Regulasies deur die Minister uitgevaardig waarin die aangeleenthede in artikel 10(1) vermeld, voorgeskryf word, moet na oorlegpleging met die Minister van Veiligheid en Sekuriteit gedoen word. 5
- (3) Die Minister moet toesien dat 'n afskrif van die regulasies wat kragtens hierdie artikel uitgevaardig is, so gou moontlik na publikasie daarvan in die Parlement ter tafel gelê word.

Delegasie van bevoegdheid en toewysing van plig

16. (1) Die Minister kan— 10
- (a) enige bevoegdheid, in die geheel of gedeeltelik, wat kragtens hierdie Wet aan hom of haar verleen is, uitgesonderd die bevoegdheid om ingevolge artikel 14 regulasies uit te vaardig, delegeer; en
- (b) enige plig, in die geheel of gedeeltelik, wat hom of haar onder hierdie Wet opgelê is, delegeer aan— 15
- (i) die Sekretaris vir Verdediging;
- (ii) die Hoof van die Suid-Afrikaanse Nasionale Weermag; of
- (iii) 'n werknemer van die Departement van Verdediging wat 'n posisie of rang van minstens Direkteur, Brigadier-generaal of Skout-admiraal (Junior Graad) beklee. 20
- (2) 'n Delegasie of 'n oordrag kragtens subartikel (1)—
- (a) moet skriftelik wees;
- (b) is onderworpe aan die bedinge en voorwaardes wat die Minister stel; en
- (c) onthef nie die Minister van die verantwoordelikheid rakende die uitoefening van die betrokke bevoegdheid of die nakoming van die betrokke plig nie. 25

Kort titel en inwerkingtreding

17. (1) Voor die inwerkingtreding van hierdie Wet moet die Minister 'n kennisgewing in die *Staatskoerant* publiseer waarin hy die Engelse teks van die Konvensie se voorwaardes soos van krag by sodanige inwerkingtreding uiteensit.
- (2) Hierdie Wet heet die Wet op die Verbod op of die Beperking van Sekere Konvensionele Wapens, 2008, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal. 30