

**WORKSHOP**  
**ON THE ROLE OF THE CARIBBEAN COMMUNITY**  
**IN**  
**PURSUING THE AIMS**  
**OF**  
**THE OTTAWA CONVENTION**

Hilton Trinidad and Conference Centre  
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## GOOD PRACTICES

### IN THE ESTABLISHMENT OF NATIONAL IMPLEMENTING LEGISLATION

#### A case study in the establishment of legislation – Trinidad and Tobago

Colleagues,

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, also referred to as The Ottawa Convention or the “Mine Ban Treaty” was opened for signature on December 3, 1997.

The Convention is part of the international response to the widespread suffering caused by anti-personnel mines. The Convention is based on customary rules of international humanitarian law applicable to all States. These rules prohibit the use of weapons which by their very nature do not discriminate between civilians and combatants or which cause unnecessary suffering or superfluous injury.

Paragraph 1 of Article 17 of the Convention states:

*This Convention shall enter into force on the first day of the sixth month after the month in which the 40<sup>th</sup> instrument of ratification, acceptance, approval or accession has been deposited.*

The international response to this convention was such that it entered into force on March 3, 1999.

The Convention was signed by Trinidad and Tobago on December 4, 1997 and instruments of ratification were deposited on April 2, 1999. Trinidad and Tobago follows the dualist tradition in international law which means that the State is required to enact its international obligations into its domestic legislation to give it the force of law. The next step for Trinidad and Tobago therefore was to municipalize its obligations under the Convention as stipulated under Article 9:

*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.*

Trinidad and Tobago sought in the main to achieve the following, as per the Convention:

- Defining the crime
- Procedural elements, with respect to jurisdiction and exceptions
- Search and seizure elements
- Fact-finding Missions
- Information gathering
- Powers of the Minister

The Anti-Personnel Mines Act, 2000 (Act No. 48 of 2000) (the “Act”) was therefore enacted. This Act can be accessed on the Parliament’s website: [www.ttparliament.org](http://www.ttparliament.org)

The Act was assented to by the President on September 28, 2000. Section 1 of the Act provided that the Act shall come into force on such date as may be fixed by the President by Proclamation published in the *Gazette*. The Act received Presidential proclamation on November 11, 2000.

The Act is divided into 4 Parts and is structured as follows:

- Part I – Preliminary. This Part deals primarily with definitions.
- Part II – Offences Relating to Anti-Personnel Mines
- Part III – Fact Finding Missions under the Ottawa Convention
- Part IV - Miscellaneous

Section 3 of the Act gives effect to the Ottawa Convention in Trinidad and Tobago.

Section 4 repeats the General Obligations outlined in Article 1 of the Convention.

Section 5 seeks to give extra-territorial application of prohibitions under the Act to nationals of Trinidad and Tobago. It is worth noting that this provision can only be operationalized if relevant Mutual Legal Assistance or Extradition Treaties are in effect.

Section 6 repeats Article 3 which deals with exceptions stated in the Convention. These exceptions are *inter alia* for the purpose of development and training in mine detection, mine clearance or mine destruction techniques.

The Minister referred to in the Act is the Minister of National Security. The Permanent Secretary in the Ministry of the National Security is given certain responsibilities under the Act, which we feel needs to be revisited. The recommendation is that an inter-ministerial advisory body comprising personnel from the Army, Police and Customs would be the kind of administrative/bureaucratic machinery that Act requires.

Section 7 is in furtherance of Article 9 of the Convention which deals with National Implementation Measures. The section places an obligation on persons to declare possession of any anti-personnel mines and criminalizes non-disclosure. Subsection 4 makes the offence summary and imposes a fine of \$50,000 and imprisonment for seven years. The Interpretation Act of Trinidad and Tobago states that all fines and imprisonment are stated as maximum penalties.

Section 8 provides for search of prohibited objects in public places with a warrant issued by a Magistrate.

Section 9 empowers the destruction of anti-personnel mines discovered in the course of the search and makes the occupier of the premises from where the mines were removed liable on summary conviction to a fine of \$50,000 and imprisonment for seven years.

Section 10 deals with the obligations outlined in Article 8 of the Convention dealing with Facilitation and Clarification of Compliance. It provides for Fact-Finding Missions to enter Trinidad and Tobago with authority given by the President who is obliged to consult the Ministry of National Security in this matter.

Section 11 creates certain offences so that the Fact-Finding Mission could carry out its functions effectively. These offences deal specifically with obstructing the Fact-Finding Mission in its quest for information.

Section 12, in keeping with paragraph 10 of Article 8, confers privileges and immunities to the members of the Fact-Finding Mission. The privileges and immunities conferred under the Act are as set out in the First Schedule to the Privileges and Immunities Diplomatic Consular and International Organisations Act (Chap. 17:01). This Act follows the Articles of the Vienna Convention on Diplomat Relations of 1961 which has the force of law in Trinidad and Tobago.

Section 13 provides for the reimbursement of expenses incurred by the Fact-Finding Mission by the Government. Article 14 paragraph 2 of the Convention states:

*... the costs incurred of any fact finding mission shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.*

Section 14 empowers the Permanent Secretary of the Ministry of National Security (recall recommendation that an advisory body be used) to seek information from any person if the Permanent Secretary has reasonable cause to believe such information would be needed in connection with the Convention. The Permanent Secretary would also be empowered to require persons to keep records. This section also creates certain offences.

Section 15 creates offences for contravention of the Act. The provisions under Article 1 of the Convention are made offences in this section.

Section 16 empowers the Comptroller of Customs and Excise to institute proceedings if prohibited objects are moved into or out of the jurisdiction. (Movement of objects into or out of the jurisdiction falls under the purview of the Comptroller of Customs, which falls under the portfolio of the Ministry of Finance).

Section 17 sets out defences that are available for a person charged with offences stipulated under the Act.

In critiquing our own Trinidad and Tobago model, we felt that in keeping with the international humanitarian aspect of the Convention, provision ought to have been made for compensation to victims, in a sense for “Life Beyond the Mines” as envisioned throughout the convention namely in the third recital to the Preamble; in Article 5 Paragraph 4 sub-paragraph (c), in Article 6 Paragraph 3 and Article 6 Paragraph 7 sub-paragraph (e).

In closing I would like to comment on the fact that Trinidad and Tobago is pleased to have been listed by Landmine Monitor (LM) as one of 49 State Parties without Anti-Personnel Mine Stockpiles. This information can be retrieved by visiting [www.icbl.org](http://www.icbl.org)

I thank you.