

THE VISITING FORCES ACT, 2007

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REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 8 of 2007

[L.S.]

AN ACT to provide for the presence, activities, privileges
and immunities of members of visiting forces and
for matters connected therewith

[Assented to 23rd March, 2007]

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:—

PART I

PRELIMINARY

Short title **1.** This Act may be cited as the Visiting Forces Act, 2007.

Interpretation **2.** In this Act—

Chap. 14:01

“Chief of Defence Force” has the meaning assigned to it by section 2 of the Defence Act;

“civil court” has the meaning assigned to it by the Defence Act;

“civil prison” has the meaning assigned to it by section 138(1) of the Defence Act;

“Defence Council” means the Defence Council constituted under section 7 of the Defence Act;

“dependant”, with reference to a member of a visiting force or to a member of the armed forces of a designated State, means the wife or husband of such member or any other person wholly or mainly maintained by him or in his custody, charge or care;

“designated State” means a state other than Trinidad and Tobago, that is designated under section 4;

“forces”, in relation to a designated State, means the naval, military or air forces of that designated State;

“Minister” means the Minister with responsibility for national security;

“military establishment” has the meaning assigned to it by section 138(1)(c) of the Defence Act;

“service authorities” means land forces, marine forces and air forces;

“service court” means a court martial of a visiting force and includes the service authorities of a designated state who are empowered by the laws of that state to deal with charges brought against persons subject to the service law of that state;

“service law” in relation to a designated state, means the law governing all or any of the forces of that state;

“Trinidad and Tobago forces” means the Trinidad and Tobago Defence Force established under the Defence Act; and

“visiting forces” means any body, contingent or detachment of the forces of a designated state for the time being present in Trinidad and Tobago in connection with official duties and includes civilian personnel designated under section 4 as a civilian component of a visiting force.

3. This Act applies to a designated State.

Application of Act

4. The President may by Order—

Orders designating states

- (a) designate any country as a designated State for the purposes of this Act;
- (b) declare the extent to which this Act is applicable in respect of any designated State; and
- (c) designate civilian personnel as a civilian component of a visiting force.

PART II

JURISDICTION IN RELATION TO VISITING FORCES

5. (1) Members of a visiting force shall enjoy immunity from the civil and criminal jurisdiction of Trinidad and Tobago in respect of actions taken in the course of their official duties. Immunity from prosecution

(2) Where any member of a visiting force commits an offence against any law in force in Trinidad and Tobago while acting outside his official duties, the civil court shall exercise jurisdiction in respect of that offence.

Previous trial by civil court

6. (1) Where a member of a visiting force has been tried by a civil court and has been convicted or acquitted, he may not be tried again in Trinidad and Tobago for the same offence by a service court, but nothing in this section shall prevent a service court from trying within Trinidad and Tobago, a member of the visiting force for any violation of rules of discipline arising from an act or omission that constituted an offence for which he was tried by a civil court.

(2) A certificate signed by the Registrar of the Supreme Court, a Judge, a Magistrate or a Clerk of the Court stating—

- (a) that a member of a visiting force has been tried before a civil court for an offence specified in the certificate;
- (b) the result of the trial;
- (c) the judgment or order of the court,

shall, for purposes of this section, be evidence of the matters stated in the certificate.

Right of service court in certain cases

7. (1) The service court of a visiting force has the right to exercise jurisdiction in relation to an offence alleged to have been committed by a member of the visiting force in respect of—

- (a) the property or security of the designated State;
- (b) another member of the visiting force, his property or his dependant; or
- (c) an act done or anything omitted in the performance of official duty.

(2) Subject to this Act, the service authorities and service courts of a visiting force may exercise within Trinidad and Tobago in relation to members of that force, all the criminal and disciplinary jurisdiction that is conferred upon them by the law of the designated State to which they belong.

(3) Where the dependant of a visiting force is alleged to have committed an offence in respect of paragraphs (a) and (b) of subsection (1), the courts of the designated State to which that dependant of the visiting force belongs shall exercise jurisdiction in respect of the offence.

(4) Nothing in this section shall be construed as derogating from the provisions of any enactment restricting the commencement of any proceedings or requiring the consent of any authority to the prosecution of an offence alleged to have been committed by a member of a visiting force.

8. (1) Where a member of a visiting force has been Previous trial by service court tried by a service court of that visiting force and has been convicted or acquitted, he may not be tried again by a civil court for the same offence.

(2) For the purposes of this section, a certificate under the hand of the officer presiding over a service court, or the officer in command of a visiting force stating—

- (a) that a member of the visiting force has been tried before a service court for an offence specified in the certificate;
- (b) the result of the trial;
- (c) the judgment or order of the Court,

shall be evidence of the matters stated in the certificate.

Primary rights may
be waived

9. (1) A court having jurisdiction pursuant to sections 5(2) and 7 may, in accordance with Rules made for the purposes of this section, waive such jurisdiction in favour of the court not having jurisdiction and thereupon the latter court shall have jurisdiction in the matter.

(2) A certificate of the service authorities of a designated State stating that anything alleged to have been done or omitted by a member of a visiting force of that state was or was not done or omitted in the performance of official duty, shall be receivable in evidence in any civil court, and for the purposes of this Act is *prima facie* proof of that fact.

Immunities and
privileges of
members of service
courts and witnesses

10. The members of a service court of a visiting force exercising jurisdiction by virtue of this Act, and witnesses appearing before such service court, have respectively the like immunities and privileges as—

- (a) a court martial exercising jurisdiction under the Defence Act; and
- (b) witnesses appearing before any such court martial.

Arrest

11. For the purposes of enabling the service authorities and service courts of a visiting force to exercise more effectively the powers conferred upon them by this Act, the Chief of Defence Staff, if so requested by the officer in command of the visiting force or by the designated State, may from time to time by general or special orders to the Trinidad and Tobago forces or any part thereof, direct the officers and soldiers thereof to arrest members of the visiting force alleged to have committed offences against the law of the designated State and to hand over any person so arrested to the appropriate authorities of the visiting force.

12. (1) Where any sentence has been passed by a service court within or outside of Trinidad and Tobago upon a member of the armed forces of a designated State, then for the purposes of any legal proceedings within Trinidad and Tobago—

Sentence, detention
and proof thereon

- (a) the service court shall be deemed to have been properly constituted;
- (b) its proceedings shall be deemed to have been regularly conducted; and
- (c) the sentence shall be deemed to have been within the jurisdiction of the service court and in accordance with the law of the designated State.

(2) Any member of a visiting force or a dependant who is detained in custody—

- (a) in pursuance of a sentence mentioned in subsection (1); or
- (b) pending the determination by a service court of a charge brought against him,

shall, for the purposes of any legal proceedings in Trinidad and Tobago, be deemed to be in lawful custody.

(3) For the purposes of any legal proceedings within Trinidad and Tobago, a certificate under the hand of the officer in command of a visiting force, stating that the persons specified in the certificate sat as a service court, shall be receivable in evidence and shall be conclusive proof of that fact.

(4) A certificate under the hand of an officer referred to in subsection (3), stating that a member of that force or a dependant, is being detained in either of the circumstances described in subsection (2), shall be receivable in evidence and shall be conclusive proof of the cause of the detention, but not of his being a member of the visiting force or a dependant.

Place of
imprisonment or
detention

13. (1) Where a member of a visiting force or a dependant of any such member has been sentenced by a service court to undergo a punishment involving incarceration, the incarceration may, at the request of the officer in command of the visiting force and in accordance with this Act, be served wholly or partly in a civil prison or military establishment and the provisions of the Defence Act relating to the carrying out of punishments of imprisonment or detention imposed upon officers and soldiers of the Trinidad and Tobago forces shall apply *mutatis mutandis*.

(2) The Chief of Defence Staff shall, in accordance with the Defence Act, and having regard to the nature of the place of incarceration to which the offender would have been committed under the law of the designated State, determine whether the offender's punishment is to be served in whole or in part in a civil prison or in a military establishment.

Police functions

14. The authority of members of a visiting force to exercise police functions, including the power of arrest, in relation to any member of that force, shall be the same as authorized by the service law of that force, but nothing herein contained shall empower a member of a visiting force to exercise police functions in respect of a person who is not a member of the visiting force.

Death sentence

15. Notwithstanding anything in the foregoing provisions of this Part relating to a sentence by a service court, a sentence of death passed by a service court shall not be carried out in Trinidad and Tobago.

Firearms, explosives
and ammunition

16. Members of a visiting force acting in the course of their duties, except civilian personnel may, if authorized to do so by orders of the service authorities of the visiting force, possess and carry explosives, ammunition and firearms.

17. No proceedings shall be entertained by any court in Trinidad and Tobago with regard to the pay of any person in respect of service as a member of a visiting force, with regard to the terms of such service or with regard to a person's discharge from such service.

Restriction on proceedings in respect of service of members, etc., of visiting force

PART III

ATTACHMENTS OF AND TO TRINIDAD AND TOBAGO FORCES

18. (1) The Defence Council—

- (a) may attach temporarily to the Trinidad and Tobago forces, a member of another force who is placed at the disposal of the Defence Council for the purpose by the service authorities of the country to which the other force belongs; and
- (b) subject to anything to the contrary in the conditions applicable to his service, may place any member of the Trinidad and Tobago forces at the disposal of the service authorities of another country for the purpose of being attached temporarily by those authorities to a force of that country.

Temporary attachments to Trinidad and Tobago forces and to forces of another country

(2) While a member of a visiting force is by virtue of this section attached temporarily to the Trinidad and Tobago forces, he is subject to the law relating to the Trinidad and Tobago forces in like manner as if he were a member of the Trinidad and Tobago forces, and shall be treated and have the like powers of command, punishment and notwithstanding section 14, arrest, in respect of members of the Trinidad and Tobago forces, as if he were a member thereof of relative rank.

(3) The Minister after consultation with the Attorney General may by Order direct that, in relation to members of a visiting force to which this section applies, the statutes relating to the Trinidad and Tobago forces shall apply with such exceptions and subject to such adaptations and modifications.

(4) When the Trinidad and Tobago forces and a visiting force to which this section applies are serving together, whether jointly or in combination—

(a) a member of the visiting force shall be treated and shall have over members of the Trinidad and Tobago forces the like powers of command as if he were a member of the Trinidad and Tobago forces of relative rank; and

(b) if the forces are acting in combination, any officer of the visiting force appointed to command the combined force, or any part thereof, by agreement between the Trinidad and Tobago forces and the government of the designated State to which that visiting force belongs—

(i) shall be treated and shall have over members of the Trinidad and Tobago forces the like powers of command, punishment and arrest; and

(ii) may be vested with the like authority,

as if he were an officer of the Trinidad and Tobago forces of relative rank and holding the same command.

(5) For the purposes of this section, forces shall be deemed to be serving together or acting in combination if and only if they are declared to be so serving or so acting by order of the Defence Council, and the relative rank of members of the Trinidad and Tobago forces and of visiting forces shall be such as may be provided for in the said order.

PART IV

CLAIMS FOR PERSONAL INJURIES AND PROPERTY DAMAGE

19. Subject to sections 20 and 21, for the purposes of the State Liability and Proceedings Act—

Claims against
designated State
Chap. 8:02

- (a) a tort committed by a member of a visiting force while acting in the course of his official duties shall be deemed to have been committed by a public officer while acting in the course of his official duties;
- (b) property owned, occupied, possessed or controlled by a visiting force shall be deemed to be owned, occupied, possessed or controlled by the State; and
- (c) a service motor vehicle or aircraft of a visiting force shall be deemed to be owned by the State.

20. Except where the Minister by Order so directs in respect of the ships of any particular designated state, section 19 does not apply to a claim arising out of or in connection with the navigation, operation or salvage of a ship or the loading, carriage or discharge of cargo, unless the claim is a claim arising out of death or injury to the person.

Ships

21. No proceedings lie against the State by virtue of section 19, or against any member of a visiting force who is deemed to be a public officer under section 19, in respect of a claim by a member of a visiting force, his personal representative or a dependant, arising out of the death or injury to the member, if compensation has been paid or is payable by a designated State, or out of any funds administered by an agency of a designated State, for the death or injury.

No proceedings lie
where compensation
payable

Settlement of claims
against visiting
forces

22. (1) The Minister may make arrangements whereby claims in respect of acts or omissions of—

- (a) members of visiting forces; or
- (b) other persons connected to those forces and specified in the arrangements,

may be satisfied by payments made by the Minister, of such amounts as may be—

- (c) adjudged by any court in Trinidad and Tobago or such authority as may be provided by the arrangements; or
- (d) agreed between the claimant and the Minister,

so, however, that the acts or omissions in respect of which the claim is made shall be acts or omissions of a description to which the arrangements relate.

(2) Any expenses of the Minister incurred in satisfying claims in pursuance of any arrangement under this section or otherwise, shall be defrayed out of monies provided by Parliament.

(3) The Minister shall take such steps as may be required to ensure that persons concerned with any arrangement made by him under this section are informed of the nature and operation of the arrangements.

PART V

CORONER'S INQUEST

Provisions as to
coroner's inquest

23. (1) If any coroner having jurisdiction to hold an inquest touching a death, is satisfied that the deceased person at the time of his death had a relevant association with a visiting force, then unless the Director of Public Prosecutions otherwise directs, the coroner shall not hold the inquest or, if the inquest has begun but has not been completed, shall adjourn the inquest.

(2) Subject to subsection (1), if on an inquest the coroner is satisfied—

- (a) that a person who in accordance with section 7 is subject to the jurisdiction of the service courts of a designated State has been charged before a court of that state with the homicide of the deceased person, whether or not that charge has been dealt with; or
- (b) that such a person is being detained by an authority of that State with a view to being so charged,

then unless the Director of Public Prosecutions otherwise directs, the coroner shall adjourn the inquest and furnish the Registrar General with a certificate stating the particulars necessary for the registration of the death so far as they have been ascertained at the inquest.

(3) Where an inquest is adjourned under this section, the coroner shall not resume the inquest except on the direction of the Director of Public Prosecutions and, where the coroner does resume the inquest, he shall proceed in all respects as if the inquest had not previously been begun, except that the coroner shall not be required to view the body or to furnish the Registrar General with any certificate.

(4) Notwithstanding the Registers of Births, Deaths and Marriages Act, the Registrar General shall Chap. 44:02 not be required to give a certificate of information concerning deaths under that Act to the person giving information concerning a death, if that person informs the Registrar General that it is proposed to remove the body of the deceased out of Trinidad and Tobago.

(5) In this section—

- (a) the expression “homicide” includes murder, manslaughter, infanticide and any offence under the law of the designated State in question, corresponding to any of those offences;
- (b) a reference to a person having at any time a relevant association with a visiting force, is a reference to his being at that time, a person of one or other of the following descriptions:
 - (i) a member of that visiting force or a member of a civilian component of that force; or
 - (ii) a person, not being a citizen of Trinidad and Tobago ordinarily resident in Trinidad and Tobago who is a dependant of a member of that visiting force or of a civilian component of that force; and
- (c) in determining whether a person is, or was at any time, ordinarily resident in Trinidad and Tobago, no account shall be taken of any period during which he has been or intends to be present in Trinidad and Tobago while being a member of a visiting force or of a civilian component of such a force, or while being dependant of a member of a visiting force or of such a civilian component.

PART VI

TAXATION

24. (1) A visiting force may import into Trinidad and Tobago free of customs duty and any tax, equipment for the visiting police force and such quantities of provisions, supplies and other goods for the exclusive use of the visiting force. ^{Tax and other exemptions}

(2) No tax or fee is payable in respect of the licensing or registration of service vehicles of a visiting force or in respect of the use of those vehicles on any road in Trinidad and Tobago.

(3) No customs duty or tax is payable on any fuel, oil or lubricants intended for use exclusively in the service vehicles, aircraft or vessels of a visiting force.

(4) Within six months of his first arrival to take up duty in Trinidad and Tobago and within six months of the first arrival of any dependant to join him, a member of a visiting force may import free of customs duty and any other tax—

- (a) his personal effects and furniture; and
- (b) the personal effects and furniture of his dependants.

(5) The salaries and emoluments paid to members of visiting forces by their designated States are exempt from taxation.

PART VII

MISCELLANEOUS

25. Notwithstanding the provisions of section 42 of the Motor Vehicles and Road Traffic Act, a member of a visiting force shall not be required to hold a driver's licence issued under that Act, and may drive a service vehicle on any road in Trinidad and Tobago without being the holder of such a licence if he is the holder of a valid driver's licence issued under any law of the designated State to which he belongs. ^{Driver's licences Chap. 48:50}

Regulations and
Rules

26. (1) The Minister may make regulations for the carrying out of the purposes and provisions of this Act and without prejudice to the generality of the foregoing the regulations may provide for—

- (a) the summoning of civilian witnesses before a service court;
- (b) determining where a sentence of imprisonment shall be spent; and
- (c) prescribing anything that is required by the Act to be prescribed.

Chap. 4:01

(2) The Rules Committee of the Supreme Court may make Rules under the Supreme Court of Judicature Act, for the purpose of waiving jurisdiction under section 5(2).

(3) The Minister on the advice of the Attorney General may make Rules for the purpose of waiving jurisdiction under section 7.

Act to bind State

27. This Act binds the State.

Passed in the House of Representatives this 9th day of March, 2007.

J. SAMPSON
Clerk of the House

Passed in the Senate this 13th day of March, 2007.

J. SANDY
Acting Clerk of the Senate