



ICRC

ADVISORY SERVICE
ON INTERNATIONAL HUMANITARIAN LAW

Model Law
Convention on Cluster Munitions

**Legislation for Common Law States on the
2008 Convention on Cluster Munitions**

MODEL LEGISLATION

CLUSTER MUNITIONS ACT 200X

An Act to implement the Convention on Cluster munitions in [INSERT COUNTRY NAME]

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SCHEDULE

2008 Convention on Cluster Munitions

MODEL

PART I - PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the Cluster Munitions Act [INSERT YEAR].

(2) This Act comes into force on [INSERT DATE/PROCEDURE].

2. Interpretation

In this Act –

“Abandoned cluster munitions” means cluster munitions or explosive submunitions that have not been used and that have been left behind or dumped, and that are no longer under the control of the party that left them behind or dumped them. They may or may not have been prepared for use;

“Cluster munition” means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. It does not mean the following:

- (a) A munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
- (b) A munition or submunition designed to produce electrical or electronic effects;
- (c) A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:
 - (i) Each munition contains fewer than ten explosive submunitions;
 - (ii) Each explosive submunition weighs more than four kilograms;
 - (iii) Each explosive submunition is designed to detect and engage a single target object;
 - (iv) Each explosive submunition is equipped with an electronic self-destruction mechanism;
 - (v) Each explosive submunition is equipped with an electronic self-deactivating feature;

“Cluster munition contaminated area” means an area known or suspected to contain cluster munition remnants;

“Cluster munition remnants” means failed cluster munitions, abandoned cluster munitions, unexploded submunitions and unexploded bomblets;

“Cluster munition victims” means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities;

“Convention” means the 2008 Convention on Cluster Munitions

“Dispenser” means a container that is designed to disperse or release explosive bomblets and which is affixed to an aircraft at the time of dispersal or release;

“Explosive submunition” means a conventional munition that in order to perform its task is dispersed or released by a cluster munition and is designed to function by detonating an explosive charge prior to, on or after impact;

“Explosive bomblet” means a conventional munition, weighing less than 20 kilograms, which is not self-propelled and which, in order to perform its task, is dispersed or released by a dispenser, and is designed to function by detonating an explosive charge prior to, on or after impact;

“Failed cluster munition” means a cluster munition that has been fired, dropped, launched, projected or otherwise delivered and which should have dispersed or released its explosive submunitions but failed to do so;

“Mine” means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle;

“Self-destruction mechanism” means an incorporated automatically-functioning mechanism which is in addition to the primary initiating mechanism of the munition and which secures the destruction of the munition into which it is incorporated;

“Transfer” involves, in addition to the physical movement of cluster munitions into or from national territory, the transfer of title to and control over cluster munitions, but does not involve the transfer of territory containing cluster munition remnants;

“Unexploded bomblet” means an explosive bomblet that has been dispersed, released or otherwise separated from a dispenser and has failed to explode as intended.

“Unexploded submunition” means an explosive submunition that has been dispersed or released by, or otherwise separated from, a cluster munition and has failed to explode as intended;

PART II - PROHIBITIONS AND OFFENCES

3. Prohibited conduct

(1) Subject to section 6, no person shall use cluster munitions;

(2) Subject to section 6, no person shall, directly or indirectly -

- (a) develop or produce cluster munitions;
- (b) acquire cluster munitions;
- (c) possess, retain or stockpile cluster munitions;
- (d) transfer cluster munitions to anyone.

(3) Subject to section 6, no person shall assist, encourage or induce anyone to engage in any activity referred to in paragraphs (1) and (2) above.

(4) Paragraphs (1) and (2) of this Article apply, *mutatis mutandis*, to explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft.

(5) This Act does not apply to mines.

4. Offences and Penalties

1. Any person who contravenes section 3 shall be guilty of an offence and liable upon conviction to:

- (a) in the case of an individual, imprisonment for a term not exceeding [] years or to a fine not exceeding [] or both;
- (b) in the case of a body corporate, a fine not exceeding [].

(2) Where an offence under paragraph (1) of this section, which is committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any negligence on the part of, any director, manager or other similar officer of the body corporate, or any person who was purporting to act in such capacity, such person, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished in accordance with paragraph (1)(a) of this section.

(3) Any court, which convicts a person under paragraphs 1(a) or (b), may order that cluster munitions used or otherwise involved in the commission of the offence be forfeited to the State.

5. Extra-territorial application¹

Section 3 extends to conduct outside the territory of [INSERT COUNTRY NAME] by citizens of [INSERT COUNTRY NAME] and bodies corporate incorporated under the laws of [INSERT COUNTRY NAME]

6. Exceptions: permitted conduct²

Section 3 does not apply to:

(1) acquisition, possession, retention or transfer of cluster munitions, explosive submunitions and explosive bomblets in accordance with a permission in force under section 11;

(2) the possession, retention or transfer of cluster munitions explosive submunitions and explosive bomblets by a member of the [INSERT NAME OF ARMED FORCES], a police officer, a court official, a customs official or any other such person appointed by the Minister by notice in writing in the course of that person's duties for the purpose of:

- (a) the conduct of criminal proceedings;
- (b) rendering cluster munitions harmless;
- (c) retaining cluster munitions for future destruction; and
- (d) delivering cluster munitions to [INSERT NAME OF AUTHORITY/PERSON DESIGNATED BY THE MINISTER] for destruction.

¹ Article 9 of the Convention requires States Parties to "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". It was widely understood in the negotiations that Article 9 does not explicitly require extra-territorial jurisdiction for prohibited acts; it is also clear, however, that the use of the term "appropriate" in "all appropriate legal, administrative and other measures" leaves States Parties discretion in determining the types of measures to be taken. In developing implementing legislation on other prohibited weapons (e.g. anti-personnel mines, chemical weapons), many States Parties have provided for extra-territorial jurisdiction. Given the likely cross-border nature of crimes committed in breach of this Convention, the ICRC encourages States to provide for extra territorial jurisdiction in the model legislation.

² States may wish to expressly provide for situations of military cooperation and operations with States not party to the Convention. If so then States should consider including a section dealing with Article 21 of the Convention.

PART III- COLLECTION AND DESTRUCTION OF CLUSTER MUNITIONS

7. Notification of Cluster Munitions

Any person who knowingly possesses cluster munitions and / or explosive bomblets, explosive submunitions or cluster munition remnants otherwise than in accordance with section 6, must, without delay, notify [INSERT NAME OF AUTHORITY/PERSON DESIGNATED BY THE MINISTER] to enable arrangements to be made for collection and destruction.

8. Destruction of Cluster Munitions

Subject to section 10, the Minister shall ensure -

- (1) the destruction of all stockpiled cluster munitions, explosive bomblets and explosive submunitions owned or possessed by [INSERT COUNTRY NAME] or under its jurisdiction and control;
- (2) the collection and destruction of all cluster munitions notified under section 7.

9. Cluster Munition Contaminated Areas

Where an area is identified as a cluster munition contaminated area or is suspected to be a cluster munition contaminated area, the Minister shall ensure the following, as soon as possible, in areas under the State's jurisdiction or control;

- (1) A survey, assessment and recording of the threat posed by cluster munition remnants, making every effort to identify all cluster munition contaminated areas;
- (2) An assessment and prioritisation of needs in terms of marking, protection of civilians, clearance and destruction, and take steps to mobilise resources and develop a national plan to carry out these activities;
- (3) The taking of all feasible steps to ensure that all cluster munition contaminated areas are perimeter-marked, monitored and protected by fencing or other means to ensure the effective exclusion of civilians;
- (4) The clearance and destruction of all cluster munition remnants; and
- (5) The conduct of risk reduction education to ensure awareness among civilians living in or around cluster munition contaminated areas of the risks posed by such remnants.

10. Victim Assistance

In consultation with the relevant Ministries, the Minister shall ensure compliance with the obligations of the Convention regarding risk education and victim assistance, in particular to;

- (1) Assess the needs of cluster munition victims;
- (2) Develop, implement and enforce any necessary national laws and policies;
- (3) Develop a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors;
- (4) Take steps to mobilise national and international resources;

(5) Not discriminate against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs;

(6) Closely consult with and actively involve cluster munition victims and their representative organisations;

(7) Designate a focal point within the government for coordination of matters relating to the implementation of this Article; and

(8) Strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

11. Permission to Acquire, Retain or Transfer

(1) The Minister may, in writing, grant permission for a specified number of cluster munitions, explosive bomblets and explosive submunitions to be retained or acquired, for the development of, or training in techniques for the detection clearance or destruction of cluster munitions explosive bomblets and explosive submunitions, or for the development of cluster-munition counter-measures, but the number of such items shall not exceed the minimum number absolutely necessary for these purposes.

(2) The transfer of cluster munitions to another State Party for the purpose of destruction, as well as for the purposes described in paragraph 1 of this section, is permitted.

PART IV - INFORMATION-GATHERING POWERS

12. Request for Clarification

The Minister, if in receipt of a Request for Clarification by another State Party, relating to a matter of compliance with the provisions of the Convention, shall provide, through the Secretary-General of the United Nations, within 28 days, all information that would assist in clarifying the matter.

13. Obtaining Information and Documents

The Minister may, by written notice served on any person, require such person to give the Minister such information or documents as is specified in the notice if the Minister has reason to believe that he or she has information or a document relevant to –

- (1) the administration or enforcement of this Act;
- (2) [COUNTRY's] obligation to report under Article 7 of the Convention; or
- (3) [COUNTRY's] obligation to provide information under Article 8 of the Convention.

14. Failure to Comply and Providing False Information

Any person who –

- (1) without reasonable excuse fails to comply with a notice served on him or her by the Minister; or
- (2) knowingly makes a false or misleading statement in response to a notice served on him or her,

shall be guilty of an offence and liable, on conviction, to imprisonment not exceeding [] years or a fine of [] or both.

PART V - ADMINISTRATION OF THE ACT

15. Regulations

The [INSERT NAME OF REGULATION-MAKING AUTHORITY] may make regulations providing for such other matters as are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

16. Act binding on the State

This Act binds the State.

SCHEDULE

Convention on Cluster Munitions