



2008 Convention on Cluster Munitions
Model Legislation. Act to implement the
Convention on Cluster Munitions

Chapeau to Model Law:

While 2008 adoption of the Convention on Cluster Munitions was a disarmament milestone, states must take further actions to operationalize its provisions and realize its objectives. To this end, Article 9 obliges all states parties to adopt national implementation measures. It states: “Each State Party shall take all appropriate legal, administrative and other measures to implement this Convention, 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.” Legislation is the most powerful form of implementation given its binding and enduring nature.

National legislation promotes implementation of the convention’s prohibitions and positive obligations and compliance with Article 9. Strong laws can also bolster the norm against cluster munitions, discouraging future use, even by states not party. Taking a clear stand against cluster munitions is critical at a time of ongoing use.

National legislation further advances universalization because, for many states, it is a domestic prerequisite to joining the convention. It clears the way for those states that have signed the convention to ratify it and those that did not sign before entry to force to accede. Both ratification and accession (a one-step process for joining, which is also referred to as acceptance or approval) express a state’s consent to be bound by a treaty.

To facilitate the adoption of strong legislation, the Cluster Munition Coalition has developed the model law that follows. The model penalizes violations of the convention’s prohibitions, as required by Article 9. It helps ensure a state fulfills stockpile destruction, clearance, victim assistance, and reporting duties. It applies to explosive bomblets, covers corporations and individuals, and establishes extraterritorial jurisdiction.

This model law was developed in conjunction with Human Rights Watch and Harvard Law School’s International Human Rights Clinic. It draws heavily on their report *Staying Strong: Key Components and Positive Precedent for Convention on Cluster Munition Legislation*.¹ Other models have been developed by the International Committee of the Red Cross (for common law states)² and by New Zealand (for states that do not possess and are not contaminated by cluster munitions).³

The CMC is available to provide additional information and to support states working on national implementation legislation. Please contact: info@iclemc.org

¹ https://www.hrw.org/sites/default/files/reports/cluster0914_ForUpload_0.pdf

² http://www.clusterconvention.org/files/2013/03/model_law_clusters_munitions.pdf

³ http://www.clusterconvention.org/files/2013/03/Model-Legislation_Cluster-Munitions-Act-2011.pdf

MODEL LEGISLATION
CLUSTER MUNITIONS ACT 202X
An Act to Implement the Convention on Cluster Munitions in [INSERT COUNTRY NAME]

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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. Purpose

The purpose of this Act is to implement the Convention on Cluster Munitions (2008) in [INSERT COUNTRY NAME].

3. Scope and Application

- (1) This Act applies to cluster munitions and explosive submunitions, and to explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft.
- (2) This Act does not apply to mines.
- (3) This Act applies to all acts done or omitted in [INSERT COUNTRY NAME] or at any place that is under the jurisdiction or control of [INSERT COUNTRY NAME].
- (4) This Act also applies to all acts done or omitted outside [INSERT COUNTRY NAME] by a citizen of [INSERT COUNTRY NAME] or by bodies corporate incorporated under the laws of [INSERT COUNTRY NAME].

4. 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;

“Key component” means an item that forms an integral and indispensable part of a cluster munition;

“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;

“Relevant National Authority” means the Minister responsible for the administration of the relevant provision of this Act or any other national authority designated by such Minister;

“Person” means natural persons and legal persons;

“Self-deactivating” means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example a battery, that is essential to the operation of the munition;

“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”

(a) means:

- (i) physical movement into, through, and from [INSERT COUNTRY NAME]; or
- (ii) the transfer of title to, and control over, cluster munitions; but

(b) does not include 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

5. Prohibited Conduct

- (1) Subject to section 7, no person shall, under any circumstances, use cluster munitions;
- (2) Subject to section 7, no person shall, under any circumstances, directly or indirectly:
 - (a) develop or produce cluster munitions or any of their key components;
 - (b) acquire cluster munitions or any of their key components in any manner;
 - (c) possess, retain, or stockpile cluster munitions or any of their key components;
 - (d) transfer cluster munitions or any of their key components;
 - (e) move cluster munitions or any of their key components across, above, or through the territory and/or territorial waters of [INSERT COUNTRY NAME];
 - (f) provide funds to or invest funds in a company that develops, produces, acquires, stores, or transfers cluster munitions or key components thereof.
- (3) Subject to section 7, no person shall, under any circumstances, directly or indirectly, assist, encourage, or induce anyone to engage in any activity referred to in paragraphs (1) and (2) above.
- (4) While a member of the armed forces [or security forces] does not commit an offence against section 5(1) or (2) merely by engaging, in the course of his or her duties, in operations, exercises, or other military activities with the armed forces of a State that is not a party to the Convention and that has the capability to engage in conduct prohibited by section 5(1) or (2), the conduct listed in this section remains prohibited during such operations, exercises, or other military activities.⁴
- (5) A member of the armed forces [or security forces] of a foreign country that is (i) not a party to the Convention on Cluster Munitions or (ii) a person who is connected with such forces shall not stockpile cluster munitions in [INSERT COUNTRY NAME].

6. Seizure and Destruction of Cluster Munitions

Any cluster munition connected with the commission of an offence under paragraphs (1) or (2) (a-d) of section 5 may be seized without warrant and must be destroyed by an officer.

7. Exceptions to Offences in Section 5: Permitted Conduct

- (1) Section 5 does not apply to:
 - (a) the acquisition, possession, retention, or transfer of cluster munitions, explosive submunitions, and explosive bomblets by a member of the [INSERT NAME OF ARMED

⁴ The following paragraph could be added to section 5 as paragraph 4(bis):

No member of the armed forces of [INSERT NAME OF THE COUNTRY] shall expressly request the use of cluster munitions when:

- (a) he or she is engaged in operations, exercises, or other military activities with the armed forces of a state that is not party to the Convention on Cluster Munitions; and
- (b) the choice of munitions used is within the exclusive control of the armed forces of (INSERT NAME OF THE COUNTRY).

FORCES or SECURITY FORCES], a police officer, a court official, a customs official, or any other such person appointed by the Relevant National Authority by notice in writing in the course of that person's duties for the purpose of:

- (i) conducting criminal proceedings;
- (ii) rendering cluster munitions harmless;
- (iii) retaining cluster munitions for future destruction; or
- (iv) delivering cluster munitions to [INSERT NAME OF AUTHORITY/PERSON DESIGNATED BY THE RELEVANT NATIONAL AUTHORITY] for destruction.

(2) The transfer of cluster munitions to another State Party for the purpose of destruction is permitted.

8. Penalties

(1) Any person who contravenes section 5 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) Except as specifically provided for in this Act, any person who contravenes any provision of this Act other than section 5 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 [].

(3) Where an offence by a body corporate under paragraph (1) of this section 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.

(4) Any court that 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.

PART III – COLLECTION AND DESTRUCTION OF CLUSTER MUNITIONS

9. Destruction of Cluster Munitions and Production Facilities

(1) The Relevant National Authority shall ensure:

- (a) the identification and separation of all stockpiles of cluster munitions, explosive bomblets, and explosive submunitions within the state party's territory or under its control;
- (b) the destruction of all stockpiled cluster munitions, explosive bomblets, and explosive submunitions owned or possessed by [INSERT COUNTRY NAME] or under its jurisdiction or control as soon as possible and no later than [INSERT LEGAL DEADLINE UNDER ARTICLE 3 OF THE CONVENTION];
- (c) the collection and destruction of all cluster munitions notified under section 11; and

- (d) the designation of [INSERT NAME OF COMPETENT AUTHORITY] to guide and oversee the actions under 11(1) (2) and (3).
- (2) The Relevant National Authority shall ensure that the owners of facilities that produce cluster munitions or components intended for use in cluster munitions convert or decommission these facilities. The owners of these facilities shall provide the Relevant National Authority with information regarding the status of conversion or decommissioning to facilitate submission of a report under Article 7 of the Convention.

10. Cluster Munition Contaminated Areas

Where an area under the jurisdiction or control of [INSERT COUNTRY NAME] is identified as a cluster munition contaminated area or is suspected to be a cluster munition contaminated area, the Relevant National Authority shall ensure the following, as soon as possible and in respect of subsection (4) no later than [INSERT LEGAL DEADLINE UNDER ARTICLE 4 OF THE CONVENTION]:

- (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 mobilisation of resources and development of 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) Risk reduction education to ensure awareness among civilians living in or around cluster munition contaminated areas of the risks posed by such remnants.⁵

11. 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 7, must, without delay, notify [INSERT NAME OF AUTHORITY/PERSON DESIGNATED BY THE RELEVANT NATIONAL AUTHORITY] to enable arrangements to be made for collection and destruction.

⁵ If the Convention is adopted by a former user state, insert requirement to provide to a State Party that it contaminated with cluster munitions, inter alia, technical, financial, material, or human resources assistance, as well as information about the type, quantity, and location of cluster munitions remnants.

PART IV – VICTIM ASSISTANCE

12. Victim Assistance

In consultation with the relevant Ministries, the Relevant National Authority shall ensure compliance with the obligations of the Convention regarding victim assistance, in particular to;

- (1) Collect reliable relevant data with respect to cluster munition victims;
- (2) Assess the needs of cluster munition victims;
- (3) Develop, implement, and enforce any necessary national laws and policies;
- (4) 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;
- (5) Take steps to mobilise national and international resources;
- (6) 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;
- (7) Closely consult with and actively involve cluster munition victims and their representative organisations;
- (8) Designate a focal point within the government for coordination of matters relating to the implementation of this section; and
- (9) 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.

PART V – INTERNATIONAL ASSISTANCE AND PROMOTION OF THE CONVENTION

13. International Cooperation and Assistance

The Relevant National Authority shall ensure:

- (1) the establishment, where necessary or advantageous, of an administrative framework to facilitate the provision of any possible technical, material, and financial assistance to other states parties for:
 - (a) stockpile destruction,
 - (b) clearance,
 - (c) victim assistance,
 - (d) emergency situations, and
 - (e) economic and social recovery;
- (2) the promotion of the fullest exchange of equipment and scientific and technological information; and
- (3) the facilitation of the entry and exit of personnel, material, and equipment from donor states.

14. Promotion of the Convention on Cluster Munitions and its Norms

The Relevant National Authority shall:

- (1) encourage states that have not joined the Convention to ratify, accept, approve, or accede to this Convention, with the goal of attracting the adherence of all States to this Convention;
- (2) promote the Convention's norms to all states;
- (3) give notice of [INSERT COUNTRY NAME] obligations under the Convention through both political and military channels before and during joint operations with a state not party;
- (4) discourage use of cluster munitions through both political and military channels in all circumstances, including before and during joint operations with a state not party; and
- (5) designate a government agency responsible for coordinating these activities and for implementing the Convention and this Act.

PART VI – REPORTING AND INFORMATION-GATHERING POWERS

15. Transparency

The Relevant National Authority shall ensure the submission to the Secretary-General of the United Nations initial and annual reports as detailed in Article 7 of the Convention.

16. Request for Clarification

The Relevant National Authority, 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.

17. Obtaining Information and Documents

The Relevant National Authority may, by written notice served on any person, require such person to give the Relevant National Authority such information or documents as is specified in the notice if the Relevant National Authority 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.

18. 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 Relevant National Authority, 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 VII – ADMINISTRATION OF THE ACT

19. 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.

20. Act Binding on the State

This Act binds the State.