

CAMBODIAN WEAPONS LAW & THE CONVENTION ON CLUSTER MUNITIONS

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This paper considers the current laws in place in Cambodia that regulate the management of weapons, explosives and ammunition; whether those laws are capable of covering cluster munitions; whether those laws are consistent with the Cluster Munitions Convention (CMC); and how Cambodian law can be modified to comply with the CMC.

1. Summary of the Law on Management of Weapons, Explosives and Ammunition in Cambodia, and whether some of this law already covers cluster munitions.

The primary weapons law in Cambodia is the Law on Management of Weapons, Explosives and Ammunition, which was adopted by the Cambodian parliament in 2005 (the Weapons Law).

Before this law was adopted, the Royal Cambodian Government issued a statement regarding the draft Weapons Law. The government stated that the law was needed to eliminate the anarchical use of weapons by individuals; to set conditions for ensuring proper use of weapons in armed units; to make Cambodia a weapon-free society; and to find legality for those whose businesses involve explosives. The Weapons Law was therefore aimed at confiscating and destroying weapons held by individuals, and strengthening the management of weapons, explosives, and ammunition by the competent authorities¹.

Since 2005, the Government has issued three additional sub-decrees to supplement the enforcement of the Weapons law as follows:

- Sub-decree on conditions and procedures for the control of arms and ammunition used by civilians;
- Sub-decree on conditions and procedures for the control of arms and ammunition within the Royal Cambodia Arms Forces, the Cambodian National Police and public institutions;
- Sub-decree on management of people in crisis.

The Weapons Law, in combination with the above sub-decrees, are the foundation of current weapons management in Cambodia.

Substance of the Weapons law

¹ No. 08, the Royal Cambodian Government, statement of motive on draft weapons law on Management of Weapons, Explosives, and Ammunition.

The Weapons Law governs the equipping, possession, carrying, utilization, purchase, sale, trading, loan, transfer, hiring, production, fabrication, repair, transportation, transit, importation, exportation, and stockpiling of weapons, explosives and ammunition of any and all types in the Kingdom of Cambodia². The Weapons Law applies to individuals and competent authorities that are in charge of weapons.

The Weapons Law is administered in Cambodia by the following government Ministries:

- The Ministry of National Defense is responsible for supply, control, and management of weapons as well as for the safety and security in stockpiling of weapons, explosives and ammunition of any all types of the Royal Cambodian Armed Forces; and
- The Ministry of Interior is responsible for weapons control in the national police forces, public institutions, by officials and the civilian population.

By including all types of weapons, explosives and ammunition, the Weapons Law appears to apply to cluster munitions/bombs.

However, significantly the Weapons Law does not prohibit the use of weapons – it only regulates their management. The Weapons Law therefore falls short of the requirements of the CMC that prohibit the use of cluster munitions and require the destruction of any existing cluster munitions stockpiles.

Article 16 of the Weapons Law states that in no case shall weapons, explosives and ammunition be destroyed or deleted from the list of weapons controlled by the Ministry without permission from the Minister of Defence or Minister of Interior if such weapons under the jurisdiction of either one of them.

Cluster Munitions continue to be stocked by Cambodia under the authority of the Ministry of National Defense. Accordingly, any proposal to destroy the stockpile must be directed to the Minister of the National Defense³.

² Article 2, Law on Management of Weapons, Explosives, and Ammunition (Weapons Law)

³ Cambodia Cluster Muniton Ban Policy, Landmine & Cluster Muniton, Monitor, 31 July 2015. “Reasons that Cambodia not joining the Convention, because Prime Minister still continues to receive advice from government authorities on the matter of Cambodia’s accession from Deputy Prime Minister and Minister of Defense, Tea Banh. The Ministry of Defense has raised a list of questions including how to destroy stockpiled cluster munitions and how to replenish the defense capabilities after their destruction”.

Article 17 of the Weapons Law states that, if deemed necessary, the Royal Government may establish a National Commission to control, direct, or to conduct reform on the management of weapons, explosives, and ammunition of any and all types in the Kingdom of Cambodia. This provides scope for reform in Cambodia in the area of cluster munitions.

In 2000 a National Commission to control, direct, to conduct reform on Weapons and Explosives Management in Cambodia was created with a mandate until 2006. In event that Cambodia seeks to become a party to CMC, a further National Commission could be established under Article 17 to deal with the cluster munitions specifically.

2. Model Law of CMC – Suggestions how workable this would be in Cambodia, or whether it would be better to propose amendments to existing law.

The Model Law imposes a number of obligations on state parties in respect of cluster munitions.

This part will focus on the primary obligations and whether there is a need to amend existing Cambodian law or adopt new policies or laws in order to allow Cambodia to comply with and accede to the treaty.

The two main CMC obligations of a state party are destruction of the stockpiles of cluster munitions (thereby preventing their use) and clearance of remnant cluster munitions in the soil.

The existing domestic laws to be analyzed here are the Weapons Law and Criminal Code.

Prohibited Conduct and Penalties:

- Model law:
 - Part II, Prohibited Conduct: prohibits the development, production, acquisition, possession, retention or stockpiling, or transfer of cluster munitions to anyone
 - Penalties: can be imposed on bodies corporate and individuals.
- Cambodian Weapons Law:
 - Prohibited Conduct: Prohibits conduct involving all types of weapons unless approval is obtained from the Competent Ministry (National Defense or Interior)
 - Offences and Penalties: Do not extend to bodies corporate, can only be imposed on individuals and competent authorities.

- Proposed changes to Cambodian Law:
 - It is suggested that Cambodia create a specific law based on the Model Law, which addresses the prohibited conducted in respect of cluster munitions – at present, the Weapons Law does not address the key areas of prohibited conduct in the Model Law.
 - There is no real need to amend the penalty provisions in the Weapons law to extend to bodies corporate because the Cambodian criminal code (general law) already covers bodies corporate by making them responsible (fine) for any offense committed by a personal representative of the body corporate⁴.

Extra-territorial application:

- Model law:
 - Section 3: extends the jurisdiction of the Model Law to conduct outside the territory of the state party by citizens of the state party and bodies corporate incorporated under the laws of the state party”.
- Cambodian law:
 - The Cambodia Criminal Code, article 19, states that for “Crimes committed outside Cambodian territory, Cambodian law shall be applied if the accused person has Cambodian nationality. ”
- Proposed changes to Cambodian Law:
 - There is no conflict between the Cambodian Criminal Code and the Model law (save in respect of bodies corporate) such that no changes are required.

Cluster Munitions Contaminated Areas:

- Model law:
 - Requires a state party to identify all cluster munitions contaminated areas, mobilize resources and develop a national plan to carry out activities such as protection of civilians, clearance and destruction.
- Cambodian Law:
 - does not address these issues.
- Proposed changes to Cambodian Law: A new policy or national plan is required regarding above-mentioned requirements.

⁴ Article 18, Cambodian Criminal Code.

Victim Assistance

- Model law:
 - Victims are defined by the Model Law to include all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalization or substantial impairment of the realization 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.
 - Requires state parties commit to:
 - Develop, implement and enforce any necessary national laws and policies
 - Develop a national plan and budget, including timeframe to carry out those activities to provide civilians and assist victims.

- Cambodian Policies/Laws:
 - Cambodia is party to the Mine-anti Personnel Ban Convention and Victim assistance is enshrined in the Anti-Personnel Mine Ban Treaty (Mine Treaty). The victim assistance framework in Cambodia is made up of components of treaties focusing on victim assistance, including the UN Convention on the Rights of People with Disability (UNCRPD) which plays a fundamental role in the creation of Cambodia's National Strategic Plan on Disability.⁵
 - In order to comply with Mine Treaty obligations on victim assistance, Cambodia established the Cambodia Mine Action and Victims Assistance Authorities (CMAA). CMAA coordinates with the Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MoSAVY) to better integrate activities with the Government's overall victim assistance efforts.
 - In addition, Cambodia has developed its National Strategic Plan on Disability from 2014 – 2018. It also has the program of Disability Action Council (DAC).⁶

However, CMAA and DAC do not specifically deal with cluster munitions victims.

- Proposed changes to Cambodian Law: As there is a strong foundation and development of national policy to protect and assist the victims of

⁵ Cambodian Mine Action and Victim Assistance Authority, victim assistance

⁶ Note: Cambodia is also party to the Convention on the Rights of People with Disability and then it adopted the Law on the Protection and Promotion of the Rights of Persons with Disabilities.

Mines, this could easily be extended to Cluster munitions, by extending the CMAA mandate and its capacity to provide assistance to both victims of Mines and Cluster Bombs.

3. Can Cambodia ratify the treaty?

Since the CMC entered into force on 01 August 2010, the period allowed for signatures has closed. However, states which did not sign the CMC can become party to the CMC through ratification or accession. In order to do this, a State must formally declare its consent to be bound by the CMC through its accession.

At present, Cambodian Law is not sufficient to cover the obligations contained in the CMC, such that further legislation would be necessary regarding destruction and clearance if Cambodia were to ratify the treaty. There could also be changes made to the existing laws or/and policies regarding the victim assistance and the creation of a National Commission to review cluster munitions under Article 17 of the Weapons Law. Overall, it appears that Model Law of the CMC should be workable in Cambodia.

4. Briefly additional information on the process of law making and treaty ratification in Cambodia

- The Executive (Government) can request draft law to be reviewed by the National Assembly.
- Legislative (lawmakers) can request proposed law to be reviewed by the National Assembly.
- The draft laws or the proposed laws must be submitted first to the Permanent Standing Committee of the National Assembly. Upon the permanent standing committee review, they can decide to submit it to one of the nine expert commissions of the National Assembly to examine and study the draft or proposed law.
- Expert Commissions of the National Assembly are authorized to examine, study and provide recommendations in relation to the conventions, treaties and international agreements the parliament should consider signing and/or ratifying within its authority, particularly commission 6.

Note: List of relevant laws

1. Law on Management of Weapons, Explosive and Ammunition, 01-06-2005
2. Establishment of Center for Mine and Explosive Clearing and Training, 10-05-2006.
3. Establishment of National Commission for Reforming the Management of Weapons and Explosives (10-04-2006)
4. Sub-decree No. 70 on the Management of Mines Clearing Operation for Social-Economic Development, 20-10-2004
5. Decision No. 41 on the Creation of National Commission for Weapon Management Reform in Cambodia (21-06-2000)
6. The establishment of Cambodian Authority for Managing Mine Action Programs and the Disables from Mines (04-09-2000)