



# THE CONVENTION ON CLUSTER MUNITIONS: LAW REVIEW FOR CAMBODIA FUTURE ACCESSION

## Key Messages

- ✚ Cambodia is the victim of Cluster Munitions and Anti-personnel mines. In ASEAN only Laos PDR is a party to CMC. There has been dialogue at national and regional level to lobby the members of ASEAN to become party to the CMC, most member states diplomatically express their support, but are reluctant to implement the terms of the Convention. They justify the delay on the ground of national security, military strategy and capacity to implement treaty obligations.
- ✚ Parties to the CMC, are obliged to: destroy stockpiles of cluster munitions (thereby preventing their use); and clear land of remnant cluster munitions.
- ✚ The Model Law of the CMC is workable in Cambodia with some modification of the existing laws.
- ✚ Should Cambodia become a party to CMC, a National Commission could be established under article 17 of the Weapons Law to specifically deal with the cluster munitions.

## Introduction

This brief 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 and are consistent with the Cluster Munitions Convention (CMC); and how Cambodian law can be modified to comply with the CMC.

## Law on Management of Weapons, Explosives and Ammunition

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

Before this law was adopted, the Royal Cambodian Government issued a statement that the law was needed to: eliminate the anarchical use of weapons by individuals; set conditions for ensuring proper use of weapons in armed units; make Cambodia a weapon-free society; and find legality for those whose businesses involve explosives. The Weapons Law was aimed at confiscating and destroying weapons held by individuals, and strengthening the management of weapons, explosive, and ammunition by the competent authorities (Royal Cambodian Statement No. 08).

## Substance of the Weapon Law

The Weapons Law governs the equipping, possession, carrying, utilization, purchase, sale, fabrication, trading, loan, transfer, hiring,

production, repair, transportation, transit, importation, exportation, and stockpiling of weapons, explosives and ammunition of any and all types in the Kingdom of Cambodia (Article 2). The Weapons Law applies to individuals and competent authorities that are in charge of weapons.

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, explosive and ammunition of any all types by the Royal Cambodian Armed Forces. 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 applies to cluster munitions/bombs.

Significantly the Weapons Law does not prohibit the use of weapons - it only regulates their management. The Weapons Law falls short of the requirements of the CMC that prohibits the use of cluster munitions and requires 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 Defense or the Minister of Interior if such weapons are 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 Defense (Cambodia Cluster Munitions Ban Policy, Landmine & Cluster Munitions, Monitor, 2015).

Article 17 of the Weapons Law states provides scope for reform in Cambodia in the area of cluster munitions. The Royal Government may establish a National Commission to control, direct, or to conduct reform on the management of weapons, explosive, and ammunition of any and all types in the Kingdom of Cambodia if necessary. In 2000 a National Commission to control, direct, conduct reform on Weapons and Explosives Management in Cambodia was created with a mandates until

2006. In the event that Cambodia seeks to become a party to CMC, a further National Commission could be established under article 17 to specifically deal with the cluster munitions.

## Model law of CMC: Adopt new law/policy or amendment to existing law?

The Model Law of CMC imposes a number of obligations on state parties in respect of cluster munitions. Two keys CMC obligations are; destruction of the stockpiles of cluster munitions (thereby preventing their use), and clearance of remnant cluster munitions in the soil.

It is significant to focus on the primary obligations of the treaty and whether there is a need to amend existing Cambodian law or adopt new policies or laws in order to enable Cambodia to comply. Cambodian Weapons law and criminal code analysis in comparison with Model Law of CMC requires examination.

### Prohibited Conduct and Penalties

Model Law: prohibiting conduct such as development, production, acquisition, possession, retention or stockpiling, or transfer of cluster munitions. Penalties can be imposed on bodies corporate and individuals in breach of the law (Part II).

Cambodian Weapons Law: does not prohibit conduct such as development, production, acquisition, possession, retention or stockpiling, or transfer of cluster munitions involving all types of weapons unless approval is obtained from the Competent Ministry (National Defense or Interior). Offence and penalties can be imposed only on individuals and competent authority. It does not extend to bodies corporate.

#### ➤ Proposed changes to Cambodian law:

It is suggested that Cambodia create a specific law based on the Model Law, which addresses the prohibited conduct 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 corporate (Article 18 of Cambodian Criminal Code).

### 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.

### 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 families and communities. The Model law requires state parties commit to (1) develop, implement and enforce any necessary national laws and policies and (2) 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 (Cambodian Mine Action and Victim Assistance Authority, Victim Assistance).

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, Veteran, and Youth Rehabilitation (MoSAVY) to better integrate activities with the Government's overall victim assistance efforts.

Cambodia has developed its National Strategic Plan on Disability from 2014 - 2018. It also has the program of Disability Action Council (DAC). It is noted that 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 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.

### Can Cambodia ratify the Convention?

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

Current Cambodian Law does not sufficiently cover the obligations contained in the CMC. Additional legislation is necessary regarding the destruction and clearance of mines and cluster munitions for Cambodia to ratify the treaty. Changes could be 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.

From this comparison and analysis, it appears that Model Law of the CMC should be workable in Cambodia.

## Highlighted process of law-making and treaty ratification review

The Executive (Government) and Legislative (Lawmakers) can request draft law or propose law to be reviewed by the National Assembly.

The draft laws or the proposed laws must first be submitted to the permanent standing committee of the National Assembly for review. The permanent standing committee can then decide to submit the draft or proposed law to one of the nine expert commissions of the National Assembly.

Expert Commissions, particularly Commission 4 which is the Interior, National Defense and Public Affair Commission and Commission 6 which is the Human Rights Commission of the National Assembly, are authorized to examine study and provide recommendations in relation to the conventions, treaties, and international agreements that are within the authority of the Parliament to consider signing and/or ratify.



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