



SAMOA

CLUSTER MUNITIONS PROHIBITION ACT 2012

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CLUSTER MUNITIONS PROHIBITION ACT 2012 2012, No. 11

AN ACT to give effect to the 2008 Convention on Cluster Munitions, and for related matters.

*[Assent date: 13 March 2012]
[Commencement date: 30 April 2012]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the Cluster Munitions Prohibition Act 2012.

(2) This Act commences on a date to be nominated by the Minister.

2. Interpretation – (1) In this Act, unless the context otherwise requires:

“Attorney-General” means the Attorney-General of Samoa;

“authorised cluster munition” means a cluster munition authorised under section 12;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“cluster munition” has the meaning given to it by section 3;

“Convention” means the Convention on Cluster Munitions, done at Dublin on 30 May 2008, which Samoa signed on 3 December 2009, and any amendments to, or substitutions of, the Convention that are, or will become, binding on Samoa from time to time, but does not include any amendments or substitutions that have been objected to by Samoa;

“corporation” means a body corporate formed or incorporated whether in Samoa or outside Samoa;

“Court” means the Supreme Court of Samoa;

“explosive submunition” means a conventional munition:

- (a) that is designed to function by detonating an explosive charge prior to, on, or after impact; and
- (b) that, in order to perform its task, is dispersed or released by a cluster munition;

“funds”:

- (a) means assets of every kind, whether tangible or intangible, moveable or immoveable, however acquired; and
- (b) includes legal documents or instruments in any form evidencing title to, or an interest in, assets of any kind;

“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;

“Minister” means the Minister responsible for Foreign Affairs;

“Ministry” means the Ministry responsible for Foreign Affairs;

“officer” means a member of the Police Service, or an officer of Customs;

“Police Service” means the Samoa Police Service;

“Samoa registered aircraft” means an aircraft registered or required to be registered in accordance with the Civil Aviation Act 1998 as a Samoa registered aircraft;

“Samoan ship or vessel” means, in accordance with the Shipping Act 1998:

- (a) a ship or vessel registered or licensed in Samoa; or
- (b) an unregistered ship or vessel for which a person has assumed Samoan nationality;

“self-deactivating” means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component of the munition that is essential to the munitions’ operation;

“self-destruction mechanism” means a mechanism, incorporated into a munition, that:

- (a) secures the destruction of that munition; and
- (b) functions automatically; and
- (c) is in addition to the munitions’ primary initiating mechanism;

“transfer”:

- (a) includes—
 - (i) importation into, and exportation from, Samoa; and
 - (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 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.

(2) Unless the context otherwise requires, any other term or expression used in this Act which is not defined shall have the same meaning as in the Convention.

3. Meaning of cluster munition – (1) A 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.

(2) A cluster munition does not include:

- (a) a mine; or
- (b) a munition or submunition that is designed—
 - (i) to dispense flares, smoke, pyrotechnics, or chaff; or

- (ii) to produce electrical or electronic effects; or
- (c) a munition that is designed exclusively for an air defence role; or
- (d) 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 10 explosive submunitions;
 - (ii) each explosive submunition weighs more than 4 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.

4. Application – (1) This Act binds the Government.

(2) This Act extends to every Samoa registered aircraft, and Samoan ship or vessel.

(3) This Act extends to acts done or omitted to be done outside Samoa by:

- (a) a Samoan citizen; or
- (b) a person ordinarily resident in Samoa; or
- (c) a member of the Police Service; or
- (d) a corporation.

(4) Subject to subsection (5), proceedings for a contravention of this Act in Samoa or anywhere outside Samoa shall not be instituted in Court unless the consent of the Attorney General has been obtained and the Attorney General has certified that it is expedient that the proceedings should be instituted.

(5) Despite subsection (4), a person may be arrested, or a warrant for a person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but no further or other proceedings shall be taken until the Attorney General consent has been obtained under subsection (4).

5. Purpose – (1) The purpose of this Act is to implement Samoa's obligations under the Convention.

(2) A person exercising a power conferred under this Act shall do so in compliance with Samoa's obligations under the Convention.

PART 2

ACTIVITIES RELATED TO CLUSTER MUNITIONS

Division 1 – Offences and exceptions to offences

6. Offences – (1) Subject to section 7, a person who, directly or indirectly, does one or more of the following commits an offence:

- (a) uses a cluster munition;
- (b) develops, produces, or otherwise acquires, a cluster munition;
- (c) possesses, retains, or stockpiles a cluster munition;
- (d) transfers a cluster munition to another person;
- (e) assists, encourages or induces another person to engage in any conduct under paragraphs (a) to (d);
- (f) invests funds with the intention that the funds be used, or knowing that they are to be used, in the development or production of cluster munitions.

(2) A member of the Police Service also commits an offence if he or she expressly requests 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 a party to the Convention; and
- (b) the choice of munitions used is within the exclusive control of the Police Service.

(3) A person who commits an offence under subsections (1) and (2) is to be punishable, upon conviction, by:

- (a) for a corporation, a fine not exceeding 100,000 penalty units; or
- (b) for a natural person, a fine not exceeding 10,000 penalty units or imprisonment for a term not exceeding 7 years, or both.

(4) This section does not limit the provisions of the Arms Ordinance 1960 relating to explosives.

7. Exceptions to offences in section 6(1) – (1) Despite section 6(1), an officer does not commit an offence by using, acquiring, possessing, retaining, or transferring an authorised cluster munition if the officer is doing so:

- (a) in the course of his or her employment or duties; and
- (b) for the purposes of developing, or training persons in, techniques of cluster munition detection, clearance, or destruction; and
- (c) in compliance with any notice given under section 12.

(2) Despite section 6(1), an officer does not commit an offence by seizing, receiving, or acquiring a cluster munition if the officer is doing so:

- (a) in the course of his or her employment or duties; and

- (b) for the purposes of destroying it, retaining it pending its destruction or transferring it so that it can be destroyed.

(3) Despite section 6(1), a person does not commit an offence in the circumstances set out in subsection (4) by:

- (a) possessing a cluster munition until an officer collects it from the person or destroys it; or
- (b) giving the cluster munition to an officer who is to collect it from the person or destroy it.

(4) The circumstances referred to under subsection (3) are:

- (a) that the person complies with section 14; and
- (b) that, as soon as practicable after becoming aware that he or she possesses the cluster munition, the person takes all reasonable steps to ensure that it is not used before an officer can collect or destroy it.

(5) Despite section 6(1), a person does not commit an offence by the person's conduct outside Samoa in relation to a cluster munition that is:

- (a) for the purposes of—
 - (i) destroying it; or
 - (ii) enabling another person to destroy it; or
 - (iii) rendering it harmless; or
 - (iv) enabling another person to render it harmless;and
- (b) in accordance with the Convention.

(6) A member of the Police Service does not commit an offence against section 6(1) 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 6(1).

8. Liability of an officer of a corporation – (1) Subject to subsection (2), if an offence was committed by a corporation, the following, as well as the corporation, is taken to be guilty of the offence:

- (a) a person who at the time of the commission of the offence was a director or was purporting to act in such capacity;
- (b) a person who at the time of the commission of the offence was a manager or was purporting to act in such capacity;
- (c) a person who at the time of the commission of the offence was a secretary or was purporting to act in such capacity;

- (d) a person who at the time of the commission of the offence was another similar officer of the corporation similar to those under paragraphs (a), (b) and (c) or was purporting to act in such capacity.

(2) A person stated under subsection (1)(a) to (d) is taken not to be guilty of an offence if the person proves that:

- (a) the offence was committed without his or her consent, connivance, tacit or otherwise; and
- (b) he or she exercised all such diligence to prevent the commission of the offence as ought to have been exercised, having regard to the nature of his or her functions in that capacity and to all the circumstances.

9. Application of this Division to certain explosive bomblets –

(1) In this section, “explosive bomblet” means a conventional munition:

- (a) that is not self-propelled; and
- (b) that weighs less than 20 kilograms; and
- (c) that is designed to function by detonating an explosive charge prior to, on, or after impact; and
- (d) that, in order to perform its task, is dispersed or released by a dispenser.

(2) This Division applies, with any necessary modifications, to explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to an aircraft, as if those explosive bomblets were cluster munitions.

Division 2 – Actions in relation to cluster munitions

10. Seizure, forfeiture, and destruction of cluster munitions –

(1) A cluster munition in respect of which an offence against section 6 has been committed:

- (a) may be seized without warrant by an officer; and
- (b) if not owned by the Government, is forfeit to the Government; and
- (c) must be either—
 - (i) authorised under section 12; or
 - (ii) destroyed by an officer.

(2) A cluster munition to be destroyed under subsection (1)(c)(ii) must be retained, pending destruction, as the Minister thinks fit.

11. Application of Customs Act 2014 – The provisions of the Customs Act 2014 that apply with respect to prohibited imports and prohibited exports, except the penalties for offences under that Act, shall extend and apply with respect to cluster munitions whose importation and exportation is prohibited under this Act, in all

respects as if the importation or exportation of the goods were prohibited under the Customs Act 2014.

12. Minister may authorise cluster munitions for certain purposes – (1) For the purposes of developing, or training persons in, techniques of cluster munition detection, clearance, or destruction, the Minister may, by notice in writing, authorise cluster munitions to be used, acquired, possessed, retained, or transferred.

(2) The Minister must not make a notice under subsection (1) if the making of the notice will result in the total number of cluster munitions authorised by all notices made under subsection (1) exceeding the number determined for the time being by the Minister under subsection (3).

(3) The Minister must specify, by notice in the Savali and in one other newspaper circulating in Samoa, the number of cluster munitions determined by the Minister to be the number that for the time being is the minimum number that is absolutely necessary for the purposes referred to in subsection (1).

Division 3 – Information

13. Purpose of this Division – The purpose of this Division is to ensure:

- (a) that the Chief Executive Officer has knowledge of dealings with cluster munitions that facilitates the making of Samoa's reports or clarifications under the Convention; and
- (b) that Samoa is otherwise able to fulfil its obligations under the Convention.

14. Supply of information – (1) A person who uses, develops, produces, otherwise acquires, possesses, retains, or transfers a cluster munition must:

- (a) notify the Minister of the cluster munition as soon as practicable; and
- (b) keep records in relation to the cluster munition and the purpose to which the cluster munition is put; and
- (c) prepare from those records, and send to the Chief Executive Officer, periodic reports relating to the cluster munition that are sufficient to enable the Minister to determine whether the Convention, this Act, and any regulations made under this Act are being complied with.

(2) A person commits an offence who:

- (a) without reasonable excuse, refuses or fails to comply with subsection (1); or
 - (b) in any document prepared under subsection (1), makes a statement or omits any matter knowing that, or being reckless as to whether, the statement or omission makes the document false or misleading in a material particular.
- (3) A person who commits an offence under subsection (2) shall be punishable, upon conviction:
- (a) for a corporation, a fine not exceeding 10,000 penalty units; or
 - (b) for a natural person, a fine not exceeding 1000 penalty units, or imprisonment for a term of 1 year, or both.
- (4) Nothing in this section applies to a person whose conduct in relation to a cluster munition is, by reason of section 7(5), not an offence against this Act.

PART 3 MISCELLANEOUS

15. Regulations – The Head of State, acting on the advice of Cabinet, may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, making provision for, or with respect to the following:

- (a) providing for any matter that is necessary or desirable for the purpose of implementing the Convention;
- (b) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this Act;
- (c) prescribing penalties not exceeding 100 penalty units for offences against regulations made under this Act;
- (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

16. Consequential amendment – Section 14(1) of the Police Powers Act 2007 is amended by deleting the word “The” and replacing it with “Subject to the Cluster Munitions Prohibition Act 2012, the”.

This is the official version of this Act as at 31 December 2018.

This Act has been revised by the Legislative Drafting Division from 2012 to 2018 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:

- (i) Numbers (figures) repeated in brackets removed;
- (ii) Present tense drafting style:
 - “shall” changed to “is to”;
 - “shall be deemed” changed to “is taken”;
- (iii) “him or her” and “his, her or it’s” changed to “the person/s” or title of person;
- (iv) “in respect of”, “in the case of” and “if the offender is” changed to “for”;
- (v) Section 4(3) paragraphs correctly renumbered to (a), (b), (c) and (d);
- (vi) References to “Customs Act 1977” changed to “Customs Act 2014”;
- (vii) Parts in roman numerals changed to decimal numbers.

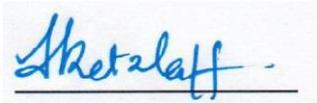
The following amendments have been made to this Act since its enactment:

By the *National Prosecutions Office Act 2015*

Section 4(4) and (5) omit “Attorney General” and substitute with “Director of Public Prosecutions”.

By the *Constitution Amendment Act (No. 1) 2017, No. 8*:

Section 4(4) and (5) omit “Director of Public Prosecutions” and substitute with “Attorney General”.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered
by the Ministry of Foreign Affairs and Trade.*
