



ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

**Model Legislation
for Common Law States to Implement
the 1997 Ottawa Convention
on the Prohibition of the Use, Stockpiling,
Production and Transfer of Anti-personnel Mines
and on their Destruction**

MODEL LEGISLATION
for common law states

ANTI-PERSONNEL MINES ACT 200X

**An Act to implement the Convention on the Prohibition of
the Use, Stockpiling, Production and Transfer of Anti-personnel Mines
and on their Destruction in [INSERT COUNTRY NAME]**

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SCHEDULE

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction

ANTI-PERSONNEL MINES ACT 200X

MODEL LAW

An Act to give effect to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction in [INSERT COUNTRY NAME]

PART I - PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Anti-Personnel Mines Act [INSERT YEAR].

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

Interpretation

2. In this Act –

‘anti-handling device’ means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine;

‘anti-personnel mine’ means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped;

‘Convention’ means the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997, set out in the schedule to this Act, as amended from time to time in accordance with Article 13 of the Convention;

‘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;

‘mined area’ means an area which is dangerous due to the presence or suspected presence of mines;

‘Minister’ means the Minister of [INSERT MINISTER WITH RESPONSIBILITY FOR THIS ACT];

‘occupier’ includes a person present at the premises who is in apparent control of the premises;

‘transfer’ involves, in addition to the physical movement of anti-personnel mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced anti-personnel mines.

PART II - PROHIBITIONS AND OFFENCES

Prohibited conduct

3. (1) Subject to section 6, no person shall –

- (a) use an anti-personnel mine;
- (b) develop or produce an anti-personnel mine;
- (c) acquire an anti-personnel mine;
- (d) possess, retain or stockpile an anti-personnel mine;
- (e) transfer to anyone, either directly or indirectly, an anti-personnel mine.

(2) Subject to section 6, no person shall assist, encourage or induce, in any way, anyone to engage in conduct referred to in subsection (1) above.

Offences and Penalties

4. (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 subsection (1) 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, secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity, he 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 subsection (1)(a).

(3) Any court which convicts a person under subsections 1(a) and (b) may order that an anti-personnel mine or component part used or otherwise involved in the commission of the offence be forfeited to the State.

Extra-territorial applicationⁱ

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

Exceptions: conduct which is permitted

6. Section 3 does not apply to:

- (a) the placement, possession, retention or transfer of an anti-personnel mine in accordance with a permission in force under section 10;

- (b) the possession, retention or transfer of an anti-personnel mine 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:
- (i) the conduct of criminal proceedings;
 - (ii) rendering an anti-personnel mine harmless;
 - (iii) retaining an anti-personnel mine for future destruction; and
 - (iv) delivering an anti-personnel mine to [INSERT NAME OF AUTHORITY/PERSON DESIGNATED BY THE MINISTER] for destruction.

PART III- DESTRUCTION OF ANTI-PERSONNEL MINES

Delivery or notification of Anti-Personnel Mines

7. Any person who knowingly possesses an anti-personnel mine otherwise than in accordance with section 6, must, without delay, deliver it to [INSERT NAME OF AUTHORITY/PERSON DESIGNATED BY THE MINISTER] for destruction or notify [INSERT NAME OF AUTHORITY/PERSON DESIGNATED BY THE MINISTER] to enable arrangements to be made for collection and destruction.

Destruction of Anti-Personnel Mines

8. Subject to section 10, the Minister shall ensure the destruction of -
- (a) all stockpiled anti-personnel mines owned or possessed by [INSERT COUNTRY NAME] or under its jurisdiction or control;
 - (b) all anti-personnel mines in mined areas under the jurisdiction or control of [INSERT COUNTRY NAME];
 - (c) all anti-personnel mines notified or delivered for destruction under section 7.

Marking, monitoring and protection

9. Where an area is identified as a mined area or is suspected to be a mined area, the Minister shall, as soon as possible, ensure that such area is perimeter-marked and protected by fencing or otherwise employ such means as are necessary to notify civilians of the presence of anti-personnel mines until all anti-personnel mines contained therein are destroyed.

Permission to retain or transfer

10. The Minister may, in writing, grant permission for a specified number of anti-personnel mines to be placed, possessed, retained, or transferred, for the development of, or training in, mine detection, mine clearance or mine destruction techniques, but the number of such mines shall not exceed the minimum number absolutely necessary for these purposes.

PART IV - FACT-FINDING MISSIONS ⁱⁱ

Fact-finding Missions

11. If a fact-finding mission to [INSERT COUNTRY NAME] is authorised under Article 8 of the Convention, the Minister shall –
- (a) issue to every member of the mission an identity card -
 - (i) identifying the member by name, containing a recent photograph of the member, and indicating the member's status and authority to conduct a fact-finding mission to [INSERT COUNTRY NAME];
 - (ii) stating that the member enjoys the privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations;
 - (b) take the necessary measures to receive, transport and accommodate the mission;
 - (c) be responsible for ensuring the security of the mission to the maximum extent possible during their presence;
 - (d) make all efforts to ensure that opportunity is given to the mission to speak with all relevant persons who may be able to provide information relevant to the alleged compliance issue; and
 - (e) grant the mission access to all areas and installations under the control of the State where facts relevant to the alleged compliance issue could be expected to be collected.

General powers of Fact-finding Missions in relation to premises

12. (1) A fact-finding mission authorised under Article 8 of the Convention may enter [INSERT COUNTRY NAME] to collect information relevant to the alleged compliance issue and in particular shall have the power to:
- (a) search the premises and anything on the premises;
 - (b) inspect, examine, take measurements of, or conduct tests (including taking samples) concerning anything on the premises that relates to an anti-personnel mine;
 - (c) take photographs or make video or audio recordings or sketches of the premises or anything on the premises;
 - (d) inspect any book, record or document on the premises;
 - (e) take extracts from or make copies of any such book, record or document;
 - (f) take any equipment and materials onto premises as required to exercise powers in relation to the premises;
 - (g) require the occupier or any persons present on the premises to answer any questions put by the member of the fact-finding mission or produce any book, record or document requested by the member of the fact-finding mission;
- (2) The Minister may designate a person to accompany any member of a fact-finding mission in order to facilitate the carrying out of the functions of the mission.

Power of a member of a Fact-finding Mission to enter premises

13.(1) For the purpose of collecting information relevant to the alleged compliance issue, a member of a fact-finding mission may, subject to subsection (2):

- (a) enter any premises; and
 - (b) exercise therein the powers set out in Section 12 (1).
- (2) A member of a fact-finding mission is not authorised to enter premises under subsection (1) unless:
- (a) the occupier of the premises has consented to the entry; or
 - (b) the entry is made under a warrant issued under section 17.

Member of a fact-finding mission must produce identity card on request

14. Subject to section 15, a member of a fact-finding mission is not entitled to exercise any powers under this part of the Act in relation to premises if:

- (a) the occupier of the premises has required the member of a fact-finding mission to produce his or her identity card for inspection by the occupier; and
- (b) the member of a fact-finding mission fails to comply with the requirement.

Announcement before entry

15. (1) A member of a fact-finding mission must, before entering the premises under a warrant issued under section 17:

- (a) announce that he or she is authorised to enter the premises;
 - (b) identify himself or herself by producing his or her identity card to the occupier;
 - (c) make available to the occupier or another person who apparently represents the occupier who is present on the premises, a copy of the warrant;
and
 - (d) give any person at the premises an opportunity to allow entry to the premises.
- (2) A member of a fact-finding mission is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
- (a) to ensure the safety of a person; or
 - (b) to prevent serious damage to the environment; or
 - (c) to ensure that the effective execution of the warrant is not frustrated.

Occupier entitled to be present during search

- 16.(1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent two or more areas of the premises being searched at the same time.

Monitoring warrants

17. (1) A member of a fact-finding mission may apply to a magistrate for a warrant to enter premises under this section.
- (2) The magistrate may issue the warrant if the magistrate is satisfied, on information given on oath, that it is reasonably necessary that one or more members of a fact-finding mission should have access to the premises for purposes relevant to the alleged compliance issue. This subsection has effect subject to subsection (3).
- (3) The magistrate must not issue the warrant unless the member of a fact-finding mission or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
- (a) authorise one or more members of a fact-finding mission (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in subsection 12(1) in relation to the premises; and
 - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.

Equipment for Fact-finding Missions

18. A member of a fact-finding mission authorised under Article 8 of the Convention may import on written notice to the Minister the necessary equipment to be used exclusively in carrying out a fact-finding mission, and may export the equipment at the end of the mission. Such import and export shall be exempt from duty and tax.

Offences and Penalties

- 19.(a) Any person who knowingly makes a false or misleading statement in an application for a warrant under section 17 commits an offence and is liable on conviction to imprisonment for a term not exceeding [] or a fine not exceeding [] or both.
- (b) Any person who wilfully obstructs, hinders, resists or deceives any member of a fact-finding mission undertaking an inspection in [INSERT COUNTRY NAME] commits an offence and is liable on conviction to imprisonment for a term not exceeding [] or a fine not exceeding [] or both.

PART V - INFORMATION-GATHERING POWERS

Obtaining information and documents

20. The Minister may, by written notice served on any person, require him or her to give the Minister such information or documents as is specified in the notice if the Minister has reason to believe that the he has information or a document relevant to –
- (a) the administration or enforcement of this Act;
- (b) [COUNTRY's] obligation to report under Article 7 of the Convention; or
- (c) [COUNTRY's] obligation to provide information under Article 8 of the Convention.

Failure to Comply and Providing False Information

21. Any person who –
- (a) without reasonable excuse fails to comply with a notice served on him or her by the Minister; or
- (b) 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 VI - ADMINISTRATION OF THE ACT

Regulations

22. 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.

Act binding on the State

23. This Act binds the State.

SCHEDULE
Convention on the Prohibition of the Use, Stockpiling, Production
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END NOTES

ⁱ 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 is clear from the negotiating history that Article 9 does not 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 a wide margin of discretion when drafting implementing legislation, and in practice many States Parties have provided for extra-territorial jurisdiction in their domestic implementing legislation. Given the likely cross-border nature of crimes committed in breach of this Convention, the ICRC is of the opinion that it is "appropriate" to provide for extra territorial jurisdiction in the model legislation.

ⁱⁱ Part IV of the model legislation gives effect to Article 8 of the Convention concerning the operation of Fact-Finding Missions. It is based on a review of existing legislation in common law jurisdictions and is suggested as an appropriate means of implementing in a domestic context the requirements on States Parties of paragraphs 11, 12, 13 and 14 of Article 8.