

**THE ANTI-PERSONNEL MINES AND CLUSTER
MUNITIONS (PROHIBITION) ACT 2016****Act No. 11 of 2016***I assent***BIBI AMEENAH FIRDAUS GURIB-FAKIM***24 June 2016**President of the Republic*

ARRANGEMENT OF SECTIONS*Section*

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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 and the Convention on Cluster Munitions**

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Anti-Personnel Mines and Cluster Munitions (Prohibition) Act 2016.

2. Interpretation

In this Act –

“anti-handling device” means a device which –

- (a) is intended to protect a mine;
- (b) is part of, linked to, attached to, or placed under the mine; and
- (c) is activated when an attempt is made to tamper with, or otherwise intentionally disturb, the mine;

“anti-personnel mine” –

- (a) means a mine which is designed –
 - (i) to be exploded by the presence, proximity or contact of a person; and
 - (ii) to injure or kill a person; but
- (b) does not include a mine which is –
 - (i) designed to be detonated by the presence, proximity or contact of a vehicle, as opposed to a person; and
 - (ii) equipped with an anti-handling device;

“Anti-Personnel Mine Ban Convention” means the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction;

“cluster munition” –

- (a) means a conventional munition which is designed to disperse or release explosive submunitions each of which weighs less than 20 kilogrammes;
- (b) includes such explosive submunitions; but
- (c) does not include a munition or submunition which –
 - (i) is designed to dispense flares, smoke, pyrotechnics or chaff or exclusively for an air defence role;
 - (ii) is designed to produce electrical or electronic effects; or

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- (iii) in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics –
- (A) each munition contains less than 10 explosive submunitions; and
 - (B) each explosive submunition weighs more than 4 kilogrammes, is designed to detect and engage a single target object and is equipped with an electronic self-destruction mechanism or self-deactivating feature;

“Cluster Munitions Convention” means the 2008 Convention on Cluster Munitions;

“destruction” means destruction of an anti-personnel mine in such manner as may be prescribed;

“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 bomblet” means a conventional munition, weighing less than 20 kilogrammes, which –

- (a) is not self-propelled;
- (b) in order to perform its task, is dispersed or released by a dispenser; and
- (c) is designed to function by detonating an explosive charge before, on or after impact;

“explosive submunition” means a conventional munition which –

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

“mine” means a munition designed to be –

- (a) placed under, on or near the ground or other surface area; and
- (b) 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 a mine;

“Minister” means the Minister to whom responsibility for the subject of defence is assigned;

“transfer”, in relation to cluster munitions, explosive bomblets or anti-personnel mines –

- (a) includes, in addition to the physical movement of cluster munitions, explosive bomblets or anti-personnel mines, the transfer of title to and control over cluster munitions, explosive bomblets or anti-personnel mines; but
- (b) does not include the transfer of territory containing cluster munition remnants or emplaced anti-personnel mines.

3. Application of Act

This Act shall bind the State.

4. Prohibited acts

(1) Notwithstanding the Explosives Act but subject to subsection (2), no person shall –

- (a) develop, produce or otherwise acquire, stockpile, retain, use or transfer to anyone, directly or indirectly, any anti-personnel mine, cluster munition or explosive bomblet specifically designed to be dispersed or released from a dispenser affixed to an aircraft;
- (b) in any manner, assist, encourage or induce any other person to engage in any act prohibited under paragraph (a).

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- (2) Notwithstanding subsection (1) –
- (a) the retention, acquisition or transfer of any anti-personnel mine, cluster munition or explosive bomblet for the development of, and training in, mine detection, clearance or destruction techniques, cluster munition detection or clearance, destruction of explosive bomblets or submunitions, or cluster munition countermeasures shall not, where the quantity of such mines does not exceed the minimum number absolutely necessary for those purposes; or
 - (b) the transfer of any anti-personnel mine, and cluster munition or explosive bomblet for the purpose of destruction,

shall not constitute an offence.

5. Legality of acts

Notwithstanding any other enactment and without prejudice to the obligations of Mauritius or of any other person under the Anti-Personnel Mine Ban Convention –

- (a) any act done by a member of a fact-finding mission in conformity with, and for the purposes of, Article 8 of the Anti-Personnel Mine Ban Convention or, with the authorisation of the Minister, by any other person for the purpose of assisting the member in accomplishing the mission; or
- (b) the importation into and export from Mauritius of any equipment, material or technological information for the purposes of implementing the Anti-Personnel Mine Ban Convention,

shall not constitute an offence.

6. Request for information

The Minister may, by notice in writing, require any person whom he has reason to believe has any information or document relevant to -

- (a) the administration or enforcement of this Act; or

- (b) the compliance by the State with an obligation under Article 7 or 8 of the Cluster Munitions Convention or Article 7 or 8 of the Anti-Personnel Mine Ban Convention,

to provide such information or document to the Minister within such period as may be specified in the notice.

7. Offences

(1) (a) Subject to section 9, any person who contravenes section 4 shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

(b) The Court before which a person is convicted of an offence under paragraph (a) shall, in addition to any penalty imposed by the Court, order any anti-personnel mine, cluster munition or explosive bomblet in respect of which the offence was committed to be forfeited.

(2) Any person who –

- (a) fails to comply with a notice under section 6; or
- (b) on complying with the notice, knowingly or recklessly provides the Minister with information or documentation that is false or misleading,

shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 10 years.

8. Prosecution

No prosecution for an offence under this Act shall be instituted except by, or with the consent of, the Director of Public Prosecutions.

9. Jurisdiction

(1) Where the act alleged to constitute an offence under section 4 occurred outside Mauritius, a Court in Mauritius shall, regardless of whether or not the act constitutes an offence at the place of its commission, have jurisdiction in respect of that offence if the person to be charged –

- (a) is a citizen of Mauritius;

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- (b) is ordinarily resident in Mauritius;
 - (c) was arrested in Mauritius or in its territorial waters or on board a ship or aircraft registered or required to be registered in Mauritius at the time the offence was committed;
 - (d) is a company incorporated, or registered as such under any law, in Mauritius;
 - (e) is a body of persons incorporated in Mauritius, or an unincorporated body operating in Mauritius.

(2) Any act alleged to constitute an offence under this Act and which is committed outside Mauritius by a person, other than a person contemplated in subsection (1), shall, regardless of whether or not the act constitutes an offence or not at the place of its commission, be deemed to have been committed also in Mauritius if that –

- (a) act affects or is intended to affect a public body, a business or any other person in Mauritius;
- (b) person is found to be in Mauritius;
- (c) person is, for any reason, not extradited by Mauritius, or if there is no application to extradite that person.

(3) Any offence committed in a country outside Mauritius as contemplated in subsection (1) or (2) is, for the purpose of determining the jurisdiction of a Court to try the offence, deemed to have been committed –

- (a) at the place where the accused is ordinarily resident; or
- (b) at the accused person's principal place of business.

(4) Where a person is charged with conspiracy or giving instructions to commit an offence, the offence shall be deemed to have been committed not only at a place where the act was committed, but also at every place where the conspirator or the person giving instructions acted or, in case of an omission, should have acted.

10. Regulations

(1) The Minister may, for the purposes of this Act, make such regulations as he thinks fit.

(2) Any regulations made under subsection (1) may provide for –

- (a) the identification of any mined area and the restriction of access thereto; and
- (b) the manner in which anti-personnel mines, cluster munitions or explosive bomblets shall be destroyed.

11. Repeal

The Anti-Personnel Mines (Prohibition) Act is repealed.

Passed by the National Assembly on the twenty first day of June two thousand and sixteen.

Bibi Safeena Lotun (Mrs)
Clerk of the National Assembly
