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Dr Kathleen Dermody
Committee Secretary
Senate Committee on Foreign Affairs, Defence and Trade
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

20 January 2011

Dear Committee Secretary

Re: Submission in support of the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010

Please accept this letter as Oxfam Australia's submission to the Committee's inquiry into the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010.

Oxfam supports the intent of this Bill welcomes efforts to give effect to Australia's obligations under the Convention on Cluster Munitions. However, we urge the Parliament to revise and amend several key sections of the bill to provide greater clarity and help ensure Australia's obligations under the Convention on Cluster Munitions are met.

Oxfam Australia is a member of the Cluster Muniton Coalition Australia, a network of Australia non-governmental organisations working to end the harm caused by cluster bombs. Our agency continues to see the sustained and devastating impact of cluster munitions through our programs in places like Lao PDR, Afghanistan, Sri Lanka and Lebanon.

In Lao PDR, it is estimated that up to 80 million cluster bomblets dropped between 1964 and 1973 failed to explode¹. Only an estimated 0.55 per cent of these unexploded submunitions have since been destroyed and up to 25 per cent of the country's villages remain affected by the presence of unexploded ordnance (UXO).² Cluster munitions make up roughly 50% of UXO being found and cleared in the country. In areas that were previously considered safe to farm and go about daily life, UXO movements caused by flash flooding and severe rains have left people at greater risk of exposure to unexploded, unsurveyed UXO, including cluster remnants.

¹ Integrated Regional Information Networks (IRIN), *Laos: Deadly cost of unexploded cluster munitions*, 29 May 2008, available at: <http://www.unhcr.org/refworld/docid/4844053ec.html> [accessed 10 January 2011]

² National Regulatory Authority for UXO/Mine Action Sector in Lao PDR *UXO Problem*, available at: <http://www.nra.gov.la/uxoproblem.html> [accessed 10 January 2011]

Oxfam Australia is working in Lao PDR, through the Laos-Australia NGO Cooperation Agreement with AusAID, to increase awareness amongst communities about the dangers of UXO. We work with partners and village volunteers to distribute information and education materials about the dangers of UXO and safe behaviors to avoid injury.

The needs of UXO victims are complex and often long-term. Medical care, physical rehabilitation, psycho-social support and socio-economic reintegration are all necessary for recovery. In Lao PDR, Oxfam Australia is coordinating with the District Labour and Social Welfare Office to develop a Support Scheme for People with Disabilities. Oxfam is also a member of the Victim Assistance Technical Working Group under the National Regulatory Authority. Through this membership, we have the opportunity to share information on UXO-related activities such as progress on UXO clearance, UXO-derived victim's assistance programming, and access to baseline data on victims living in UXO-contaminated areas.

The deadly ongoing impact of these weapons underpins the importance of the Convention on Cluster Munitions and the need for all states to ratify and implement it. The convention not only prohibits the use, transfer, production and stockpiling of cluster munitions, but imposes a set of strong, positive obligations aimed at ensuring clearance of the weapons, assistance to victims, and discouragement of any activities prohibited by the Convention globally.

Oxfam Australia calls upon Australia to fulfill its legal responsibility fully in line with the object and purpose of the Convention on Cluster Munitions. As such, we wish to call attention to certain provisions of the Bill that may, as currently written, fail to achieve or even run counter to the convention's goals. It is critical that Australia's legislation fully implements *all* obligations under the convention, and prevents activities that should be understood as prohibited.

To this end, Oxfam Australia endorses the detailed recommendations made in the submission to this inquiry by Human Rights Watch and Harvard Law School's International Human Rights Clinic. In particular, we recommend the following amendments to the Bill:

Offences – Section 72.38

- **72.38** - preface all offences with the phrase “under any circumstances” e.g. “A person commits an offence if *under any circumstances* the person does any of the following with a cluster munition” (emphasis added). This clarifies that the convention's prohibitions are comprehensive and apply during both international and non-international armed conflicts, as well as situations that do not rise to the level of armed conflict. Including this phrase will foreclose exceptions to these restrictions.

Interoperability – Section 72.41

- **72.41** - clarify that all of the convention's prohibitions continue to apply during joint military operations
- **Section 72.41(b)** – to the list of activities prohibited during joint military operations, add a subsection (v): “participating in the planning of attacks that permit cluster munitions use” and (vi) “assisting with any of the above activities”
- **72.41(c)** – clearly prohibit Australian military personnel from requesting cluster munitions strikes

Jurisdiction over foreign military personnel, stockpiles and transit—Section 72.42

- Remove section 72.42 because it exempts the military personnel of non-party states

from prosecution for the stockpiling, retention or transfer of cluster munitions within Australian territory. This exemption violates Article 9 of the Cluster Munitions Convention and runs counter to Australia's obligations under Article 21(1) and (2) to encourage non-party states to adopt the convention's norms.

- **72.42(1)** – Delete the provision allowing transit of cluster munitions through Australian territory and add specific language prohibiting this activity
- **72.42(1)** –Delete the provision allowing hosting of foreign stockpiles of cluster munitions, and add specific language prohibiting this activity

Retention of Cluster Munitions and Submunitions—Section 72.39

- Delete this section, which allows for the retention of cluster munitions, or
- Clarify that the “specified cluster munitions” means “the minimum number absolutely necessary”; and enforce rigorous annual reporting requirements.

Additionally, in order to fully comply with its obligations under the Convention on Cluster Munitions, Oxfam Australia encourages the Australian Government to implement these additional elements in this legislation or elsewhere:

Prohibition on Investment

- Prohibit direct and indirect investment of public and private funds in the production of cluster munitions and their components.

Positive Obligations

- Encourage non-states parties to join the convention and promote the convention's norms to all states, including by designating a government agency for coordinating these activities.

We thank the Senate Committee for considering this submission and encourage the Parliament to adopt these revisions and support the passage of the Bill in order to swiftly ratify the Cluster Munitions Convention.

Yours Sincerely

Andrew Hewett
Executive Director
Oxfam Australia