



# Implementing the Convention on Cluster Munitions

## Components of Strong Law and Supporting Examples

### September 2014

Article 9 of the Convention on Cluster Munitions obliges states parties to implement the convention nationally through all appropriate legal, administrative, and other measures. Legislation is the most powerful form of implementation because it is binding and more difficult to change than administrative measures.

This reference document presents the essential components of strong national legislation, grouped under the following headings:

- negative obligations under the convention,
- prohibition on assistance and related interpretive issues,
- positive obligations under the convention, and
- breadth of coverage.

For each component, the relevant source in the Convention on Cluster Munitions is given in parentheses. Under each component, this document also bulleted examples of provisions in existing statutes that will be useful for states looking to incorporate the convention's obligations into their domestic law.

To date, 22 of 84 states parties have adopted national legislation. For more information on the components of strong legislation, the reasons behind them, and exemplary existing provisions, see Human Rights Watch and Harvard Law School's International Human Rights Clinic, *Staying Strong: Key Components and Positive Precedent for Convention on Cluster Munitions Legislation*, September 2014.

## Negative Obligations

### Use

Legislation should **prohibit the use** of cluster munitions. (Article 1(1)(a))

- All existing legislation recognizes a prohibition on the use of cluster munitions.

### Development, Production, and Other Forms of Acquisition

Legislation should **prohibit the development, production, and acquisition** of cluster munitions. (Article 1(1)(b))

- All existing legislation recognizes a prohibition on the development, production, and acquisition of cluster munitions.
- *Guatemala, Hungary, and Samoa* prohibit direct and indirect development, production, and acquisition, and *Italy* prohibits these activities in any way.
- *Spain* prohibits as development any activity consistent with the creation of new cluster munitions or the modification of pre-existing cluster munitions.
- The *Czech Republic* prohibits acquisition of patent rights for the development of technologies designed for the purpose of manufacturing cluster munitions or their components.

Legislation should **require the conversion or decommissioning of production facilities** for cluster munitions. (Articles 1(1)(b) and 7(1)(d))

- *France and Hungary* require reporting on conversion and decommissioning.
- *Austria* permits courts to order owners to destroy or modify equipment and facilities used to manufacture cluster munitions.

### Transfer

Legislation should **prohibit the transfer** of cluster munitions to anyone. (Article 1(1)(b))

- All existing legislation recognizes a prohibition on the transfer of cluster munitions.
- The *Cook Islands, New Zealand, Samoa, and the United Kingdom* define “transfer” as meaning either physical transfer or legal transfer of title.
- *Guatemala, Hungary, and Italy* prohibit direct and indirect transfer.

## Stockpiling

Legislation should **prohibit the stockpiling** of cluster munitions. (Article 1(1)(b))

- All existing legislation recognizes a prohibition on the stockpiling of cluster munitions.
- *Guatemala, Hungary, and Samoa* prohibit direct and indirect stockpiling.
- The *Czech Republic* prohibits stockpiling of cluster munition components.

## Penal Sanctions

Legislation should **impose penal sanctions** on all natural and legal persons who knowingly and willfully violate the prohibition on use, production, transfer, and stockpiling. (Articles 1 and 9)

- All existing legislation imposes some kind of penal sanctions—imprisonment and/or fine—for use, production, transfer, and stockpiling.

## Prohibition on Assistance and Interpretive Issues

### Prohibition on Assistance

Legislation should **prohibit in any way assisting, encouraging, or inducing anyone to engage in any activity prohibited by the convention.** (Article 1(1)(c))

- *At least 14 states* explicitly prohibit assistance in legislation that is specific to cluster munitions, and 6 of those explicitly impose penal sanctions for assistance.<sup>1</sup> Other states establish prohibitions and create penalties for assistance in general codes.
- *Samoa* prohibits direct or indirect assistance.

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<sup>1</sup> *Australia, the Czech Republic, France, Germany, Guatemala, Hungary, Ireland, Italy, Liechtenstein, New Zealand, Norway, Samoa, Switzerland, and the United Kingdom.* States explicitly imposing penal sanctions for assistance are italicized.

## Relations with States Not Party: Joint Military Operations

*Legislation should ensure that the prohibitions in the convention, especially on assistance, apply under all circumstances, including joint military operations with states not party. It should also require governments to give notice of their obligations and discourage others from using cluster munitions. (Articles 1 and 21)*

- *Some states* prohibit assistance without making any exceptions for joint military operations, implying that their militaries may not engage in any activity prohibited by the convention during such operations.
- *New Zealand* both prohibits assisting, encouraging, or inducing another person to engage in any prohibited activity and clarifies that a member of the armed forces does not commit an offense merely by engaging in joint military operations with a state not party. Although unnecessary because it is undisputed that states parties may participate in joint military operations and that their troops would not be criminally liable for unknowingly assisting in prohibited acts, such a provision represents a possible model for states wishing explicitly to permit participation without saying assistance is ever allowed.
- *A number of states*, including *Ireland* and *Norway*, have issued interpretive policy statements clarifying that Article 21 of the convention does not justify derogation from the convention's core prohibitions.

## Prohibition on Foreign Stockpiles

*Legislation should prohibit assistance in the form of hosting foreign stockpiles. (Article 1(1)(c))*

- *At least 12 states* with existing implementation laws have issued policy statements declaring the hosting of foreign stockpiles unlawful.<sup>2</sup>
- The *United Kingdom* has eliminated all foreign stockpiles of cluster munitions from its territory.

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<sup>2</sup> Austria, Belgium, the Czech Republic, Ecuador, France, Germany, Guatemala, Ireland, Luxembourg, New Zealand, Norway, and Spain. See International Campaign to Ban Landmines-Cluster Munition Coalition (ICBL-CMC), *Cluster Munition Monitor 2014*, August 2014, <http://www.the-monitor.org/index.php/LM/Our-Research-Products/Cluster-Munition-Monitor>, p. 28.

## Prohibition on Transit

*Legislation should prohibit assistance in the form of allowing transit of cluster munitions. (Article 1(1)(c))*

- *Austria* and *Germany* explicitly prohibit transit of cluster munitions across national territory or through national airspace.
- *At least 12 states* with existing implementation laws have issued policy statements declaring the transit of cluster munitions unlawful.<sup>3</sup>

## Prohibition on Investment

*Legislation should prohibit assistance in the form of direct or indirect investment of public and private funds in companies that manufacture cluster munitions or components intended for use in cluster munitions. (Article 1(1)(c))*

- *New Zealand* criminalizes the investment of “funds,” which it defines broadly to include “assets of every kind, whether tangible or intangible, moveable or immovable, however acquired.”
- *Belgium* criminalizes all forms of financial support, including credit and bank guarantees and the purchase of financial instruments.
- *Ireland, Liechtenstein, Samoa, and Switzerland* prohibit both direct and indirect investment.
- *Belgium* prohibits investment in both foreign and domestic companies.
- *Italy* criminalizes financial assistance to companies that develop, produce, acquire, store, or transfer *parts* of cluster munitions.
- *Belgium* and *Ireland* require divestment when a company receiving investment begins manufacturing cluster munitions.
- *Belgium* provides for the creation of a public document listing companies that qualify as cluster munitions producers.

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<sup>3</sup> Austria, Belgium, the Czech Republic, Ecuador, France, Germany, Guatemala, Ireland, Luxembourg, New Zealand, Norway, and Spain. Ibid.

# Positive Obligations

## Stockpile Destruction

*Legislation should require the separation and destruction of all stockpiles of cluster munitions within the state party's territory or under its control. Legislation should set a deadline of as soon as possible, but no more than eight years after entry into force of the convention for that state party. (Article 3)*

- *Austria, Belgium, the Czech Republic, France, Guatemala, Hungary, and Italy* require stockpile destruction.
- *Austria and Belgium* set three-year deadlines for stockpile destruction.

## Clearance

*Legislation should establish a process for the identification and destruction of all cluster munitions in contaminated areas under the states party's jurisdiction or control. Legislation should set a deadline of as soon as possible, but no more than ten years after entry into force of the convention for that state party. (Article 4)*

- *Guatemala and Hungary* oblige the state to undertake clearance in the event of becoming affected by cluster munitions.

## Victim Assistance

*Legislation should designate a governmental focal point for victim assistance, provide for consultation with victims on the development and implementation of a national plan, ensure victims are given medical care, rehabilitation, and psychological support that is age and gender sensitive, promote socioeconomic inclusion, and guarantee the victim assistance plan is non-discriminatory. (Article 5)*

- *Guatemala and Hungary* include comprehensive victim assistance provisions in their implementation legislation.

## International Cooperation and Assistance

*Legislation could establish an administrative framework to **facilitate provision of assistance to other states parties** for fulfillment of the convention's positive obligations, **promote the exchange of equipment and scientific and technological information**, and **require the facilitation of entry and exit of personnel, materiel, and equipment from donor states.** (Article 6)*

- *Hungary and Italy* commit to international assistance and cooperation in their legislation.
- *Italy* requires establishment of a fund to be used to provide assistance to affected states for clearance and destruction of cluster munitions remnants and victim assistance.

## Transparency

*Legislation should **require reporting on the implementation of the government's obligations.** (Article 7)*

- *Hungary and Italy* affirm their obligations to report on implementation.
- The *Cook Islands, Japan, and New Zealand* empower a minister to require persons to provide information related to the state's Article 7 obligations.
- *France* details requirements for annual reporting on activities related to cluster munitions.

## Compliance

*Legislation could **establish a mechanism for responding expeditiously to another state party's request for clarification on matters relating to treaty compliance.** (Article 8)*

- The *Cook Islands, Hungary, and Italy* address Article 8 compliance requests in their legislation.
- *Italy* designates the Ministry of Foreign Affairs as the authority to make and receive requests pursuant to Article 8 of the convention.
- The *Cook Islands* empower the Minister of Foreign Affairs and Immigration to require persons to provide information related to the state's Article 8 obligations.

## Relations with States Not Party: Promotion of Universal Adherence and Norms

*Legislation could require that the government encourage states that have not joined the convention to become states parties, require the government to promote the convention's norms, and designate a government agency responsible for coordinating these activities. (Article 21(1 and 2))*

- *Hungary* adopts the language of the convention to encourage states to ratify, accept, approve, or accede to the convention with the goal of universal adherence.
- *Italy* stipulates that its assistance fund be disbursed in part to raise awareness against the use of cluster munitions and promote universalization.

## Breadth of Coverage

### Explosive Bomblets

*Legislation should make clear that all obligations apply equally to cluster munitions and explosive bomblets. (Article 1(2))*

- *At least 12 states* clarify that their laws apply, as a whole or in part, to both cluster munitions and explosive bomblets.<sup>4</sup>
- *Australia* and *New Zealand* include special provisions specifying that their statutes apply to explosive bomblets.
- The *Cook Islands* and *Guatemala* refer to “explosive bomblets” each time they refer to cluster munitions.
- The *United Kingdom* employs the term “prohibited munition,” which is statutorily defined to include cluster munitions and explosive bomblets.

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<sup>4</sup> Australia, the Cook Islands, France, Guatemala, Hungary, Ireland, Liechtenstein, New Zealand, Samoa, Sweden, Switzerland, and the United Kingdom.



## Application to Corporations and Other Legal Entities

*Legislation should specify that all prohibitions apply equally to natural persons (human beings) and legal persons (e.g., corporations). (Article 9)*

- *At least 12 states* permit liability to attach to corporations.<sup>5</sup>
- The *Czech Republic, Guatemala, and Luxembourg* specify that their statutory prohibitions apply equally to natural and legal persons.
- The *Cook Islands, France, and Japan* impose penal sanctions on corporate offenders distinct from those imposed on human offenders.
- The *Cook Islands, Ireland, Samoa, and the United Kingdom* have provisions providing for the individual liability of corporate officers under certain circumstances.

## Extraterritorial Application

*Legislation should stipulate that the state party's jurisdiction extends extraterritorially to all its citizens and to all legal persons incorporated in the state. (Article 9)*

- *At least 11 states* provide for extraterritorial application.<sup>6</sup>
- *Norway and Sweden* impose extraterritorial liability on citizens and resident aliens.
- *France* attaches criminal liability to the conduct of its citizens abroad, even where such conduct is not illegal in the territory in which it occurs.
- The *Cook Islands, New Zealand, Samoa, and the United Kingdom* impose liability for the extraterritorial activities of both residents and resident corporations.

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<sup>5</sup> Austria, the Cook Islands, the Czech Republic, France, Guatemala, Hungary, Ireland, Japan, Luxembourg, New Zealand, Samoa, and the United Kingdom.

<sup>6</sup> Australia, the Cook Islands, France, Guatemala, Hungary, Ireland, New Zealand, Norway, Samoa, Sweden, and the United Kingdom.

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