



**IHRC**

INTERNATIONAL HUMAN RIGHTS CLINIC  
HUMAN RIGHTS PROGRAM AT HARVARD LAW SCHOOL

## **Implementing the Convention on Cluster Munitions**

### **Components of Strong Law and Supporting Examples**

#### **Updated September 2016**

More than one-quarter of the states parties to the Convention on Cluster Munitions have adopted national implementation legislation, but much work remains to be done in this area. Article 9 obliges states parties to implement the convention domestically 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. Strong laws also help bolster the norm against cluster munitions.

This reference document seeks to promote and facilitate the passage of strong legislation by presenting essential components, 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. This document also provides examples of provisions in existing statutes that will be useful for states looking to incorporate the convention's obligations into their domestic law.

At the First Review Conference and Fifth Meeting of States Parties, the convention's coordinator for national implementation measures described the list of components discussed in this document as "comprehensive." She also recognized it as one of three key models for states wishing to adopt cluster munition legislation.<sup>1</sup>

To date, 27 of the 100 states parties to the convention have adopted national legislation. In addition, the Netherlands has legislation that deals specifically with disinvestment in cluster munitions. Three countries—Bulgaria, Mauritius, and Togo—

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<sup>1</sup> The other models she highlighted were the International Committee of the Red Cross's model legislation for common law states and New Zealand's model law for states that do not possess and are not affected by cluster munitions.

have passed implementation legislation since the 2015 Review Conference. We urge other states to follow suit in the coming year.

The three new statutes not only prohibit and impose penal sanctions for activities banned by the convention, but also encompass other components of strong legislation. Bulgaria incorporates several of the treaty's positive obligations, such as those related to clearance and victim assistance. Bulgaria and Mauritius enumerate requirements dealing with transparency reporting and compliance. Mauritius and Togo explicitly apply their statutes to explosive bomblets, while Mauritius establishes broad extra-territorial jurisdiction. Although none of the three statutes is comprehensive, they each provide examples of positive precedent in certain areas.

More information on the components of strong legislation, the reasons for them, and exemplary existing provisions, is contained in a September 2014 report by Human Rights Watch and the Harvard Law School International Human Rights Clinic, *Staying Strong: Key Components and Positive Precedent for Convention on Cluster Munitions Legislation*.<sup>2</sup>

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<sup>2</sup> Human Rights Watch and Harvard Law School International Human Rights Clinic, *Staying Strong: Key Components and Positive Precedent for Convention on Cluster Munitions Legislation* (2014), [https://www.hrw.org/sites/default/files/reports/cluster0914\\_ForUpload\\_0.pdf](https://www.hrw.org/sites/default/files/reports/cluster0914_ForUpload_0.pdf).

## 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, Hungary, and Spain* require reporting on conversion and decommissioning.
- *Austria* permits courts to order owners to destroy or modify equipment and facilities used to manufacture cluster munitions.
- *Bulgaria* specifies that destruction of production facilities must comply with national environmental laws.

### 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, Italy, Mauritius, Samoa, Spain, and Togo* 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, Samoa, and Spain* 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.
- *Bulgaria* imposes penal sanctions that are generally greater than those for unlawful acts involving other weapons.

# 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 19 states* explicitly prohibit assistance in legislation that is specific to cluster munitions.<sup>3</sup> Other states establish prohibitions and create penalties for assistance in general codes.
- *Samoa* prohibits direct or indirect assistance.

## 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.

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<sup>3</sup> Australia, Bulgaria, Canada, the Czech Republic, France, Germany, Guatemala, Hungary, Ireland, Italy, Liechtenstein, Mauritius, New Zealand, Norway, Samoa, Spain, Switzerland, Togo, and the United Kingdom.

## Prohibition on Foreign Stockpiles

*Legislation should prohibit assistance in the form of hosting foreign stockpiles.*

*(Article 1(1)(c))*

- *At least 13 states* with existing implementation laws have issued policy statements declaring the hosting of foreign stockpiles unlawful.<sup>4</sup>
- The *United Kingdom* has eliminated all foreign stockpiles of cluster munitions from its territory.

## 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 13 states* with existing implementation laws have issued policy statements declaring the transit of cluster munitions unlawful.<sup>5</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* and *Samoa* criminalize the investment of “funds,” which they define 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 forms of both direct and indirect investment.
- *Spain* prohibits the financing and advertising of cluster munitions.
- *Belgium* prohibits investment in foreign as well as domestic companies.

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<sup>4</sup> Austria, Belgium, Bulgaria, 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 2016* (September 2016), <http://www.the-monitor.org/en-gb/our-research/cluster-munition-monitor.aspx>.

<sup>5</sup> Austria, Belgium, Bulgaria, the Czech Republic, Ecuador, France, Germany, Guatemala, Ireland, Luxembourg, New Zealand, Norway, and Spain. *Ibid.*

- *Italy* criminalizes financially assisting the development, production, acquisition, storage, or transfer of “cluster munitions or parts thereof.”
- In its divestment legislation, the *Netherlands* prohibits investment in companies that produce, sell, or distribute “essential parts” of cluster munitions or have subsidiaries that do so.
- *Ireland* requires divestment if 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.

# 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, Italy, and Spain* 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)*

- *Bulgaria, 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)*

- *Bulgaria, 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, Italy, and Spain* 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)*

- *Bulgaria, Hungary, and Italy* affirm their obligations to report on implementation.
- *Bulgaria, the Cook Islands, Japan, Mauritius, 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)*

- *Bulgaria, the Cook Islands, Hungary, Italy, and Mauritius* address Article 8 compliance requests in their legislation.
- *Bulgaria and Italy* designate specific ministers to serve as the authority to make and receive requests pursuant to Article 8 of the convention.
- *Bulgaria, the Cook Islands, and Mauritius* empower a government minister to require or request that persons 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.
- *Spain* requires its government to encourage universalization and implementation of the convention, promote the convention's norms, and discourage use of cluster munitions by states not party.

## 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 16 states* clarify that their laws apply, as a whole or in part, to both cluster munitions and explosive bomblets.<sup>6</sup>
- *The majority of states* include provisions specifying that their statutes apply to explosive bomblets.
- The *Cook Islands, Ireland, Guatemala, and Mauritius* 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.

### 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 16 states* permit liability to attach to corporations.<sup>7</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)*

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<sup>6</sup> Australia, Canada, the Cook Islands, France, Guatemala, Hungary, Ireland, Liechtenstein, Mauritius, New Zealand, Samoa, Spain, Sweden, Switzerland, Togo, and the United Kingdom.

<sup>7</sup> Austria, Bulgaria, Canada, the Cook Islands, the Czech Republic, France, Guatemala, Hungary, Iceland, Ireland, Japan, Luxembourg, Mauritius, New Zealand, Samoa, and the United Kingdom.

- *At least 13 states* provide for extraterritorial application.<sup>8</sup>
- *Norway, Mauritius, and Sweden* impose extraterritorial liability on citizens and resident aliens.
- *France and Mauritius* attach criminal liability to the conduct of their citizens abroad, even where such conduct is not illegal in the territory in which it occurs.
- The *Cook Islands, Mauritius, New Zealand, Samoa, and the United Kingdom* impose liability for the extraterritorial activities of both residents and resident corporations.
- *Mauritius* considers an act outside its territory to be a criminal offense if the act affects “a public body, a business or any other person in Mauritius.”

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<sup>8</sup> Australia, the Cook Islands, France, Guatemala, Hungary, Iceland, Ireland, Mauritius, New Zealand, Norway, Samoa, Sweden, and the United Kingdom.

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