



INTERNATIONAL HUMAN RIGHTS CLINIC
HUMAN RIGHTS PROGRAM AT HARVARD LAW SCHOOL

Implementing the Convention on Cluster Munitions

Components of Strong Law and Supporting Examples

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More than one-quarter of the states parties to the Convention on Cluster Munitions have adopted dedicated 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 provision in the Convention on Cluster Munitions is given in parentheses. This document also provides examples of provisions in existing implementation statutes that could be useful for states looking to incorporate the convention's obligations into their domestic law.

At the First Review Conference and meetings of states parties that followed, 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.¹

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

As the Second Review Conference begins in November 2020, 31 of the 110 states parties to the convention have adopted national legislation. In addition, the Netherlands has legislation that deals specifically with disinvestment in cluster munitions. We urge other states to follow suit in the coming year.

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

² 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.

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.
- **Colombia, Guatemala, Hungary, and Samoa** prohibit direct and indirect development, production, and acquisition, and **Italy** prohibits these activities in any way.³
- **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))

- **Colombia, 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.

³ The laws from Colombia and Honduras primarily reproduce the Convention on Cluster Munitions. As a result, while these laws cover many of the components of strong legislation, they have limitations because they are not tailored for domestic implementation.

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.
- **Cameroon, the Cook Islands, New Zealand, Samoa, and the United Kingdom** define “transfer” as meaning either physical transfer or legal transfer of title.
- **Colombia, Guatemala, Hungary, Italy, Mauritius, Saint Kitts and Nevis, 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.
- **Colombia, 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 prohibitions on use, production, transfer, and stockpiling. (Articles 1 and 9)

- **Almost 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 20 states** explicitly prohibit assistance in legislation that is specific to cluster munitions.⁴ 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 and Saint Kitts and Nevis** both prohibit assisting, encouraging, or inducing another person to engage in any prohibited activity and clarify 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.

⁴ Australia, Bulgaria, Canada, the Czech Republic, France, Germany, Guatemala, Hungary, Ireland, Italy, Liechtenstein, Mauritius, New Zealand, Norway, Saint Kitts and Nevis, 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 16 states** with existing implementation laws have issued policy statements declaring the hosting of foreign stockpiles unlawful.⁵
- 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))

- **At least 16 states** with existing implementation laws have issued policy statements declaring the transit of cluster munitions unlawful.⁶
- **Austria** and **Germany** explicitly prohibit transit of cluster munitions across national territory or through national airspace.
- **Cameroon** requires prior authorization for transit of cluster munitions from the president of the republic.

Prohibition on Investment

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

- **At least 11 states** have legislation that expressly prohibits investment in cluster munitions.⁷
- **New Zealand** and **Samoa** criminalize the intentional or knowing investment of “funds,” which they define broadly to include “assets of every kind, whether tangible or intangible, moveable or immovable, however acquired.” **Saint**

⁵ Austria, Belgium, Bulgaria, Cameroon, Colombia, the Czech Republic, Ecuador, France, Germany, Guatemala, Ireland, Luxembourg, New Zealand, Norway, Saint Kitts and Nevis, and Spain. See International Campaign to Ban Landmines-Cluster Munition Coalition (ICBL-CMC), *Cluster Munition Monitor 2019* (August 2019), http://www.the-monitor.org/media/3047840/Cluster-Munition-Monitor-2019_online.pdf, p. 31

⁶ Austria, Belgium, Bulgaria, Cameroon, Colombia, the Czech Republic, Ecuador, France, Germany, Guatemala, Ireland, Luxembourg, New Zealand, Norway, Saint Kitts and Nevis, and Spain. Ibid.

⁷ Belgium, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Saint Kitts and Nevis, Samoa, Spain, and Switzerland.

Kitts and Nevis similarly prohibits investment of “funds” but does not define the term.

- **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.
- **Italy** criminalizes financially assisting the development, production, acquisition, storage, or transfer of “cluster munitions or parts thereof.”
- In its disinvestment 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 munition 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 destruction 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, Colombia, the Czech Republic, France, Guatemala, Hungary, Italy, and Spain** require stockpile destruction.
- **Austria and Belgium** set three-year deadlines for stockpile destruction.
- **Afghanistan** lists stockpile destruction as an objective of its legislation and establishes permitting rules related to the destruction of stockpiles.

Clearance

Legislation should **establish a process for the identification and destruction of all cluster munitions in contaminated areas** under the state party's jurisdiction or control. Legislation should set a clearance 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.
- **Afghanistan** lists clearance as an objective of its legislation and establishes permitting rules related to clearance.
- **Cameroon** assigns responsibility for clearance and risk reduction education to the Ministry of Defense.

Victim Assistance

Legislation should **designate a government 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, Colombia, 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)

- **Colombia, 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)

- **Afghanistan, Bulgaria, Colombia, Hungary, and Italy** affirm their obligations to report on implementation.
- **Afghanistan, Bulgaria, the Cook Islands, Japan, Mauritius, and New Zealand** empower a minister or government agency 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, Colombia, 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))

- **Colombia** and **Hungary** adopt 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 of 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 17 states** clarify that their laws apply, as a whole or in part, to both cluster munitions and explosive bomblets.⁸
- **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 17 states** permit liability to attach to corporations.⁹
- **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.

⁸ Australia, Canada, Colombia, the Cook Islands, France, Guatemala, Hungary, Ireland, Liechtenstein, Mauritius, New Zealand, Samoa, Spain, Sweden, Switzerland, Togo, and the United Kingdom.

⁹ Austria, Bulgaria, Canada, the Cook Islands, the Czech Republic, France, Guatemala, Hungary, Iceland, Ireland, Japan, Luxembourg, Mauritius, New Zealand, Saint Kitts and Nevis, Samoa, and the United Kingdom.

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 14 states** provide for extraterritorial application.¹⁰
- **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, Saint Kitts and Nevis, 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.”

¹⁰ Australia, the Cook Islands, France, Guatemala, Hungary, Iceland, Ireland, Mauritius, New Zealand, Norway, Saint Kitts and Nevis, Samoa, Sweden, and the United Kingdom.

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