

CMC Statement on National Measures
Convention on Cluster Munitions Intersessional Meetings
Geneva, 16 April 2013



The Convention on Cluster Munitions (CCM) establishes powerful international law, but it is law that depends on national measures for its proper implementation and enforcement. This is why the development of national implementation measures was included as a legal requirement under Article 9. And this is why it is critical for states to fulfill this obligation. Such steps need to be taken in each and every State Party, not just those that have stockpiled or used them in the past.

As we have stressed repeatedly, the CMC believes that the adoption of a new law – as opposed to other measures or previous legislation – is the best way to implement this article. Only a law will lay out binding, enduring, and unequivocal rules that leave less room for interpretation. All such laws can, of course, be supplemented with regulations and policies that provide more details.

And what should be in such laws? Article 9 requires the imposition of penal sanctions to “prevent and suppress” any prohibited activity. Such activities are laid out clearly in Article 1 – no use, production, acquisition, stockpiling or transferring of cluster munitions. In addition, Article 1 bans any direct and indirect assistance with any prohibited activity, under any circumstances, and this also should be included in national laws. The types of assistance that should be explicitly banned include the transit of cluster munitions through or over national territory, the hosting of stockpiles owned by a state not party, and investment of both public and private funds in the development or manufacture of cluster munitions. While a State Party is not prohibited from participating in joint military operations with a state not party, the law should note that such operations do not allow an exception to the law’s strong and comprehensive prohibitions.

Yet some states – like Australia and Canada - have instead taken the opposite approach and actually included in draft or final law provisions that permit such assistance under certain circumstances. We simply do not see how such measures can be seen as consistent with Article 1’s prohibition on any and all assistance with banned activities. We commented extensively on such laws, and sincerely hope that Canada will amend its deeply flawed bill before enacting it.

On the other hand, there are some good examples of states that have explicitly included a ban on assistance in their national laws, including my own state, Guatemala and New Zealand. Nine states have enacted legislation that explicitly prohibits investment in cluster munitions. Such laws can serve as an excellent model for those that are still drafting theirs. The CMC is also happy to provide suggested language for each of these types of prohibitions.

In addition to barring prohibited activities, legislation must also “implement the convention,” meaning it must codify the convention’s positive obligations. For example, the law could set deadlines for stockpile destruction or clearance, set up or adapt appropriate victim assistance mechanisms, or require the promotion of universalization and the active discouragement of use.

While the convention's requirements are clear, we are not seeing much progress on Article 9 to date. So far only 20 States Parties – one quarter of the total – have passed national laws, which is completely insufficient. So we would like to ask states why is it taking so long to do something that is so essential for the convention's well-being? What are the challenges you face? As you well know, the ICRC, civil society, UN agencies, and other States Parties are ready to lend whatever support you might need in the drafting of such laws. And of course, two types of model legislation have been proposed by the ICRC and New Zealand. Good experiences from countries like my own show it is feasible to pass good laws without much trouble.

We look forward to working with you in the future on your national implementation laws and hearing good news about their passage.

Thank you.