

Key Elements of Effective National Legislation to Implement the Convention on Cluster Munitions

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As laid out in "Fulfilling the Ban: Guidelines for Effective National Legislation to Implement the Convention on Cluster Munitions," (<http://www.hrw.org/node/90721>), a legal briefing paper prepared by Human Rights Watch and the International Human Rights Clinic at Harvard Law School, **national implementation legislation should:**

I. Prohibit Use, Production, Transfer, and Stockpiling

- Prohibit the **use** of cluster munitions under all circumstances. [Art. 1(1)(a)]
- Prohibit the direct and indirect **development, production, and acquisition in other forms** of cluster munitions, including by requiring the conversion or decommissioning of production facilities for cluster munitions. [Art. 1(1)(b); Art. 7(1)(2)]
- Prohibit the direct and indirect **transfer** of cluster munitions to anyone, and specify that transfer encompasses **transit**. [Art. 1(1)(b)]
- Prohibit the direct and indirect **stockpiling** of cluster munitions. [Art. 1(1)(b)]

II. Prohibit Assistance

- Prohibit in any way **assisting, encouraging, or inducing** anyone to engage in any activity prohibited by the convention. In particular, this element should include a prohibition on assistance in the form of **transit** of cluster munitions, **stockpiling by a state not party on its territory**, and **investment** of public and private funds in companies that manufacture cluster munitions or components intended for use in cluster munitions. [Art. 1(1)(c)]
- Specify that the prohibitions enumerated in the convention, notably those regarding assistance, apply under all circumstances, including during **joint military operations** with a state that is not party to the convention. [Art. 1(1)(c); Art. 21(3)]
 - Require that the government give **notice of its obligations** under the convention through both political and military channels before and during joint operations with a state not party. [Art. 21(2)]
 - Require that the government **discourage use** of cluster munitions through both political and military channels in all circumstances, including before and during joint operations with a state not party. [Art. 21(2)]

III. Clarify Definitions

- State that **definitions have the same meaning** used in the Convention on Cluster Munitions. [Art. 2]
- **Define a person** as both a natural person (human being) and a legal person (corporation).
- Clarify that the definition of **transfer incorporates transit**. [Art. 2(8)]
- Apply all obligations equally to cluster munitions and **explosive bomblets**. [Art. 2(13-14); Art. 1(2)]

IV. Implement Disarmament Obligations

- Require the **separation and destruction of all stockpiles** of cluster munitions within the state party's territory or under its control, with a deadline for the completion of stockpile destruction as soon as possible, but no more than eight years after entry into force of the Convention on Cluster Munitions for that state party. [Art. 3(1-2)]
- Not include provisions for the extension of the destruction deadline or retention of cluster munitions for training or the development of counter-measures unless deemed absolutely necessary. [Art. 3(3-5)]

V. Implement Humanitarian Obligations

- Establish a process for the identification and destruction of all cluster munitions in contaminated areas under the state party's jurisdiction or control, with a deadline for the completion of **clearance** that is as soon as possible, but no later than 10 years after entry into force of the Convention on Cluster Munitions for that state party. [Art. 4(1-2)]
- Mandate the creation of **risk reduction education** programs to inform civilians of the dangers presented by cluster munitions remnants. [Art. 4(2)(e)]
- For **user states**, require the provision of assistance to those states it contaminated with cluster munition remnants. [Art. 4(4)]
- Designate a government focal point to develop, coordinate, and implement a national **victim assistance** plan and budget in consultation with victims. [Art. 5(2)]
 - Provide victims with medical, rehabilitation, and psychological support that is age and gender sensitive, and with assurance that the victim assistance plan is non-discriminatory. [Art. 5(1); Art. 5(2)(e)]

VI. Promote Compliance

- Establish, where necessary or advantageous, an administrative framework to facilitate the provision of at least some form of **technical, material, and financial assistance** to other states parties for stockpile destruction, clearance, victim assistance, emergency situations, and economic and social recovery. [Art. 6(4-8)]
 - Require the facilitation of the fullest exchange of equipment and scientific and technological information. [Art. 6(3)]
 - Require the facilitation of the entry and exit of personnel, material, and equipment from donor states. [Art. 6(10)]
- Require **transparent reporting** on the status and progress of the implementation of the government's obligations. Reports should address, but not be limited to, the 14 subjects identified in Article 7 of the convention and the retention of cluster munitions under Article 3. [Art. 7]
- Establish a mechanism for responding expeditiously to another state party's request for clarification on matters relating to treaty **compliance**. [Art. 8]
- Require the government to encourage states that have not joined the convention to become states parties in order to achieve **universal adherence**. [Art. 21(1)]
 - Require that the government promote the convention's norms to all states, and designate a government agency responsible for coordinating these activities. [Art. 21(2)]

VII. Implement Procedural Obligations

- Impose **penal sanctions** on all natural and legal persons who violate the legislation. Penalties should be at least as strong as those imposed for violations of the Mine Ban Treaty. [Art. 9]
- Specify that the state party's jurisdiction extends **extra-territorially** to all its citizens and to all legal persons incorporated in the state.

Implementation Legislation Tools for Campaigners

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- *Fulfilling the Ban: Guidelines for Effective National Legislation to Implement the Convention on Cluster Munitions* (June 2010) (Human Rights Watch) – <http://www.hrw.org/node/90721>
- *Staying True to the Ban on Cluster Munitions: Understanding the Prohibition on Assistance in the Convention on Cluster Munitions* (June 2009) (Human Rights Watch) – <http://www.hrw.org/node/83975>
- *Cluster Munition Coalition Policy Papers*, released at the Convention on Cluster Munitions Global Conference in Santiago, Chile (June 2010)
- *Model Law, Convention on Cluster Munitions: Legislation for Common Law States on the 2008 Convention on Cluster Munitions*, (International Committee of the Red Cross) – [http://icrc.org/Web/eng/siteeng0.nsf/htmlall/cluster-munitions-model-law-010109/\\$File/Model%20Law%20Clusters%20Munitions.pdf](http://icrc.org/Web/eng/siteeng0.nsf/htmlall/cluster-munitions-model-law-010109/$File/Model%20Law%20Clusters%20Munitions.pdf)
- Additional information on existing implementing laws and regulations related to the Convention on Cluster Munitions and the Mine Ban Treaty may be found on the ICRC website by either convention (<http://icrc.org/ihl-nat.nsf/WebLAW2!OpenView>) or by state (<http://icrc.org/ihl-nat.nsf/WebLAW!OpenView>).
- For advice on legal questions related to implementation measures, contact CMC's legislation listserv at legislation@stopclustermunitions.org.