

Cluster Munition Coalition Statement on National Implementation Measures
Convention on Cluster Munitions Third Meeting of States Parties
Oslo, 13 September 2012



Thank you Mr. President.

Article 9 of the Convention on Cluster Munitions requires States Parties to take “all appropriate legal, administrative and other measures to implement this Convention, including the imposition of penal sanctions....” While a variety of measures can be taken, the Cluster Munition Coalition believes that the development of comprehensive national legislation is the strongest means of fulfilling this obligation. Through a national law a state can enshrine the Convention’s provisions at the domestic level and provide binding, enduring, and unequivocal rules.

As of early September, 19 states had enacted specific legislation to implement the convention¹. All but one of these are now States Parties, but most enacted legislation prior to ratifying, often combining the approval process for both legislation and ratification. At least 20 other States Parties or signatories have said that they are in the process of drafting, reviewing, or adopting national legislation.² At least another 13 states have said they intend to prepare national implementation legislation,³ while 14 states said they believe their existing laws suffice. And we do not yet have information on whether 12 States Parties have or plan to develop new laws.

To put it more succinctly, so far only 18 of 75 States Parties have fully implemented Article 9, making it one of the areas of the Convention where much more progress is needed. Despite the welcome news from Guatemala and Lao PDR heard today, national implementation measures with penal sanctions are critical for ensuring the ban on the use, production, transfer and stockpiling is enforced within a state’s jurisdiction. National measures should also include the Convention’s positive obligations, such as specifying target dates for completion of the obligations, mandating annual reporting, and requiring the state to promote universalization of the Convention.

National laws should explicitly prohibit all forms of assistance with the acts banned under the Convention. Specifically, it should ban assistance in the use of cluster munitions during joint military operations, foreign stockpiling and transit of cluster munitions, and investment of public or private funds in the development and production of cluster munitions. My colleague will speak at greater length about these issues later today. For now I would like to emphasize two cases of immense concern to the CMC: the recently passed national law in Australia and the bill under consideration in Canada.

¹ Australia, Austria, Belgium, Cook Islands, Czech Republic, Ecuador, France, Germany, Hungary, Ireland, Italy, Japan, Luxembourg, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom

² Benin, Bosnia and Herzegovina, Bulgaria, Burundi, Canada, Central African Republic, Croatia, Cyprus, Ghana, Grenada, Guatemala, Lao PDR, Lebanon, Malawi, Mali, Mexico, St. Vincent and the Grenadines, Sierra Leone, Uganda, and Zambia.

³ Botswana, Burkina Faso, Colombia, DR Congo, Republic of Congo, Liechtenstein, Niger, Senegal, Slovakia, Togo, Samoa, South Africa, and Tanzania.

On 8 September, royal assent was given to legislation that allows Australian troops to directly and actively assist in activities prohibited by the Convention during military operations with states not party to it, allowing its military personnel to help plan, give logistical support for, or provide intelligence for cluster munition attacks by states not party. It also explicitly allows states not party to stockpile cluster munitions on Australian soil and permits them to transit cluster munitions through Australian ports and airspace. As many States Parties have made clear, however, Article 1 prohibits assistance with banned activities, including during joint military operations, and – despite Australia’s claim – Article 21 does not allow for any exception to that prohibition. The aim and purpose of the Convention is to end the use of cluster munitions by all actors, and Article 21 requires States Parties to discourage any use. So the express authorization of these forms of assistance is clearly counter to the letter and the spirit of the Convention, and we were deeply disappointed that the bill was passed without changing these elements.

In addition, provisions on joint military operations in Canada’s draft implementing legislation would permit Canadian Armed Forces and public officials to “direct or authorize” an act that “may involve” a state not party performing activities prohibited under the Convention on Cluster Munitions. The bill would also permit Canadian Forces and public officials to “expressly request” use of cluster munitions by a state not party if the choice of weapons is not within the “exclusive control” of the Canadian Armed Forces. The draft law would further allow Canadians themselves to use, acquire, possess, or transfer cluster munitions if they are on secondment to the armed forces of a state not party. These acts, and others enumerated in the bill, clearly constitute assistance with use of cluster munitions, which is prohibited under Article 1 of the Convention. We therefore call on Canada in the strongest terms to revise the bill before passage.

We have heard from both Australian and Canadian officials that some of the types of assistance permitted in the laws will actually be forbidden by national policies, in effect contradicting the laws they are meant to elaborate. But we firmly believe that this is not good enough. Policies can easily be changed by a new government. And given a conflict between policy and law, the law wins. If a state believes the law needs to be corrected through a different statement of policy, it should put such provisions directly into its laws.

Many countries have developed good national laws, and we encourage those states still developing theirs to turn to them as models. For example, the New Zealand law is especially good on interoperability—it expressly allows joint military operations with states not party without creating exceptions to the prohibition on assistance. Austria, Germany, and Switzerland all have legislation that bans transit through their territories. Regarding positive obligations, Austria and Belgium have set deadlines for stockpile destruction. In addition, states should look to the ICRC’s model law for guidance, as well as the model law developed by New Zealand for states that do not possess cluster munitions and are not contaminated by them. The CMC is also ready to provide whatever assistance we can to facilitate the development of national laws. We encourage you to make use of all of these resources, and we look forward to hearing about greater progress by the next MSP.

Thank you.