

**CMC Statement on National Implementation Measures**  
**Second Meeting of States Parties, Convention on Cluster Munitions**  
**Beirut, Lebanon**  
**15 September 2011**



**Delivered by Mary Wareham of Human Rights Watch**

Mr. President,

Article 9 of the convention requires that States Parties take “all appropriate legal, administrative and other measures to implement this Convention, including the imposition of penal sanctions....” The Cluster Munition Coalition (CMC) views national legislation as the strongest means of fulfilling this obligation as it enshrines the convention’s provisions at the domestic level and provides binding, enduring, and unequivocal rules that leave less room for interpretation. In addition to legislation, clear directives on the convention’s prohibitions should be developed and disseminated within the armed forces.

According to Cluster Munition Monitor, a total of 14 states have enacted legislation to implement the convention: Austria, Belgium, France, Germany, Ireland, Japan, Luxembourg, New Zealand, Norway, Spain, UK, and, in 2011, Cook Islands, Czech Republic, and Italy. We appreciate the update from Ecuador on its legislative measures. CMC members have been working to ensure strong and comprehensive legislation and we welcome these states’ actions to legislate the ban on cluster munitions.

The CMC urges all States Parties to adopt new, convention-specific legislation to implement the core prohibitions of the convention and criminalize the use, production, transfer, and stockpiling of cluster munitions. New Zealand has prepared model legislation and a checklist to guide states that do not produce, stockpile, or transfer cluster munitions and those that have not been contaminated by cluster munition remnants or unexploded bomblets. These are helpful additions to the toolbox of resources available from the International Committee of the Red Cross (ICRC), Human Rights Watch, and others.<sup>1</sup>

The CMC believes that legislation should also explicitly ban direct and indirect assistance to anyone with any prohibited activity, including 1) transit of cluster munitions through the State Party’s territory, 2) stockpiling of cluster munitions by a state not party

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<sup>1</sup> For recommendations of best practice in this field, see: Human Rights Watch and Harvard Law School’s International Human Rights Clinic, “Fulfilling the Ban: Guidelines for Effective National Legislation to Implement the Convention on Cluster Munitions,” June 2010; ICRC, “Model Law, Convention on Cluster Munitions: Legislation for Common Law States on the 2008 Convention on Cluster Munitions.”

on the State Party's territory, and 3) investment of both public and private funds in the manufacture of cluster munitions or their components. The ban on assistance should apply “under any circumstances,” including during joint military operations.

The convention also requires that national measures ensure implementation of the positive obligations of the convention. For example, national legislation should set deadlines for stockpile destruction and clearance and designate a government focal point for victim assistance. In addition, it should encompass the positive obligations of Article 21, which require states parties to work to universalize the convention, promote its norms, and discourage use.

We understand that at least ten other countries are in the process of drafting, considering, or adopting national legislation: Australia, Bulgaria, Canada, Croatia, Malawi, Mali, Slovenia, Sweden, Switzerland, and, as we heard this week Ghana and Guatemala. We welcome information from other states that are undertaking national legislation for the Convention on Cluster Munitions.

Mr. President, it is crucial that legislation meet the spirit and the letter of the convention. One of the most challenging aspects of interpretation of the convention has been ensuring that the convention's Article 1 prohibition on assistance with prohibited acts is not overridden by the Article 21 “interoperability” provisions on relations with states not party during joint military operations. We understand that in Canada, internal disagreement over the interoperability content of draft implementing legislation is an apparent reason for the ratification delay.

In Australia, the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010 has reached its final stages, but has not yet been adopted due to concerns that the proposed provisions would allow assistance with use of cluster munitions during joint military operations. For example, if the bill is passed unchanged, Australian military personnel could, during joint military operations, help plan, provide intelligence for, and/or contribute logistical support to an operation, even where cluster munitions are used. The bill also explicitly allows for the transit and hosting of foreign stockpiles on Australian territory, measures that are inconsistent with the Convention.

Several of the strong laws that have been enacted provide useful models for how to implement certain provisions. For example, New Zealand and Norway allow for participation in joint military operations yet preserve the convention's prohibitions. Austria and Germany explicitly ban transit, and Austria set a deadline of just three years for stockpile destruction. Laws by Belgium, Ireland, Luxembourg, New Zealand, and, most recently, Italy prohibit certain forms of investment.

The CMC urges all states to adopt comprehensive national implementation measures as soon as possible to ensure that they meet their obligations under Article 9 and their commitments under the Vientiane Action Plan.

Thank you.