



# ICRC

**ICRC Statement on National Implementation**  
**Fifth Meeting of States Parties to the Convention on Cluster Munitions**  
**San Jose, Costa Rica, 2-5 September 2014**

As we highlighted in our statement made at the opening of this meeting, the ICRC believes that the full implementation of the Convention at the national level is of critical importance. Fulfilling the Convention's goals depends on action being taken domestically by all States Parties. The San Jose Progress report and the Cluster Munitions Monitor show that there has been some progress in the implementation of Article 9 and the adoption of national legislation. We now have a better picture of the extent to which States have adopted national legislation or whether they believe that their existing laws are adequate to meet the Convention's objectives. The San Jose Progress report outlines information for more than half of the States Parties, but we would like the remaining States to share or update their views on where they stand with regard to the adoption of national legislation.

This progress is a result of the work done in recent years by the Coordinator on national implementation, Ghana, CMC, the ICRC and others promote the adoption of national laws. The most recent example of these efforts was the workshop on for African States which took place here on Monday as well as the regional working on ratification for Spanish speaking countries that was mentioned by the Coordinator.

While it is important to adopt national legislation to implement the Convention, it is equally essential that such laws be consistent with the goals of the treaty. Legislation must cover the broad prohibitions of the Convention and establish penal sanctions for their violation. It is also important for such legislation allow for the fulfillment of the Convention's positive obligations, such as stockpile destruction and the clearance of cluster munitions remnants, if relevant for that State. Other elements of the Convention should also be considered. A good overview of the various components of national legislation can be found in the model law developed by the ICRC, the model prepared by New Zealand and the report on national legislation published by Human Rights Watch and released at this meeting.

An additional and related issue in the discussion about national legislation is the implementation the Convention's provisions on interoperability. In previous meetings we have expressed concern about the exceptions allowed in some national laws that would, in our view, permit members of the armed forces to be directly involved in the use, possession, stockpiling and transit of cluster munitions or allow foreign stockpiles in their territories. Allowing such actions could in our view undermine the object and purpose of the Convention and its goal "to put an end for all time to the suffering and casualties caused by cluster munitions".

Most of the States that have adopted national legislation have not included such exceptions in their national laws. This is the approach that we encourage. Nevertheless, if States are preparing legislation and considering exceptions for joint military operations with non-party States, we urge them draft such provisions narrowly so as to take into account the goals of the Convention and to avoid any contravention of the obligations it contains.