

## **2012 Inter-sessional Meeting of the Convention on Cluster Munitions**

### **Statement of the International Committee of the Red Cross on National Implementation of the Convention (Article 9)**

**18 April 2012**

It goes without saying that the elimination of cluster munitions and the consequences they cause depend on action being taken at the national level. Of course, the important role of national measures to implement the Convention is stressed in Article 9. It is also affirmed in the Vientiane Action Plan, where States Parties urge those States, that have not already done so, to develop and adopt the necessary legislative and administrative measures as a matter of urgency. Only when this is done can it be assured that the responsibilities outlined in the Convention will be understood and undertaken at the national level and local levels.

Like other aspects of this Convention, States are making progress in the area of national implementing measures, but that progress, in our view, remains slow. The Convention is, in some respects, still rather young, but it is maturing and as the Convention becomes more and more operational for more and more States, it seems important to us that we continue to stress the need for States Parties to take the national measures necessary to ensure full implementation of this important humanitarian convention. It is equally important that States report on these measures in their Article 7 reports.

An analysis of Article 7 reports and other sources such as the Cluster Munition Monitor show that 23 States Parties have adopted national legislation to implement the Convention or have indicated that they consider their existing legislation to be sufficient. Eleven of these States have promulgated specific laws on cluster munitions and a further 10 States, including 2 signatory States, have reported that they are in the process of adopting legislation.

This is a slight improvement over last year but there remain a further 37 States for which we have no information, although this may improve as some of these States will soon submit their initial annual reports. We certainly welcome the information and updates that have been provided by States this afternoon.

The ICRC believes that it is crucial that legislation and other necessary regulations be adopted by each and every State Party, regardless of whether or not they are affected by or have stockpiles of cluster munitions.

One important reason for adopting legislation is that States Parties are obliged to ensure that domestic law is capable of providing penal sanctions for activity prohibited by the Convention. Without adequate domestic legislation, States are not in a position to prosecute offenders for violations of the Convention. The rationale for this requirement is to ensure that the norm prohibiting cluster munitions is enforceable everywhere.

We urge those States that have reported being in the process of adopting legislation to finalise their work and those that have not initiated a legislative process to do so as a priority.

The ICRC continues to provide assistance for the development of national implementing legislation to States Parties. Legal advisers of the ICRC's Advisory Service both here in Geneva and in 10 of our delegations around the world, stand ready to assist more States in developing national legislation. The ICRC has developed a number of tools to assist States in the development of their national implementing legislation, including a model law, which outlines what we consider to be the most essential elements of national legislation.

A final point that we would like to highlight before ending is the growing concern of the ICRC - and we hope of concern to all States Parties – about the widening ambit of interoperability clauses in national law. Specifically, clauses in national legislation that would permit members of the armed forces to be directly involved in the use, stockpiling and transit of cluster munitions and clauses that would allow a State that is not a party to the Convention to stockpile cluster munitions on a State Party's territory. Such acts are generally justified on the grounds that they are permitted by Article 21 of the Convention.

In the view of the ICRC, excessively broad exceptions or defences in national legislation undermine the goal of the Convention “to put an end for all time to the suffering and casualties caused by cluster munitions. “ Such clauses also seemingly conflict with the purposes of paragraph 2 of Article 21, which obligates a States Party to make its best efforts to discourage States from using cluster munitions. In addition, in some circumstances broad exceptions under national law could be interpreted as constituting encouraging or inducing the to use cluster munitions contrary to Article 1. The ICRC believes that any exceptions or defences under national law must be construed very narrowly so as not to contravene the purposes of the Convention and its corresponding obligations.