

CMC POLICY PAPERS ON THE CONVENTION ON CLUSTER MUNITIONS

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www.stopclustermunitions.org



The following policy papers outline the Cluster Munition Coalition's views on various aspects of the work to implement the 2008 Convention on Cluster Munitions and promote universal adherence to it by states around the world. In the spirit of dialogue, the CMC seeks comments, clarifications and corrections regarding these papers.

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Universalisation of the Convention on Cluster Munitions

The capacity of the Convention on Cluster Munitions (CCM) to put an end for all time to the suffering and casualties caused by cluster munitions hinges on states' wide acceptance of it as a legal standard and global norm. The CMC believes that every country in the world should be able to join the CCM. It is a question of political will and placing a priority on the protection of civilians over outdated and indiscriminate weapons.

Under Article 21 of the CCM, States Parties have a legally binding obligation to “encourage States not party to this convention to ratify, accept, approve or accede to this convention, with the goal of attracting the adherence of all States to this convention.” They must also “promote the norms it establishes.” Under this obligation, messages should be delivered at the political and military levels and repeatedly before and during military operations. States should coordinate their work on universalisation amongst each other and with the CMC, UN and ICRC.

The CMC will monitor States Parties' fulfilment of these obligations in the same way as any other of the CCM's obligations, with an expectation of reporting by states on their activities to promote universal adherence to the convention.

Key messages from CMC:

- **Strength in numbers** – The more countries that join the CCM, the greater the protection for civilians will be.
- **All states must get on board** – Sound arguments exist to overcome all objections to the CCM.
- **Spread the word** – States Parties have an obligation to reach out to states not party to urge them to join, and civil society will be watching their efforts.

Perceived obstacles to joining the CCM

There are three main areas where governments have identified obstacles to joining the Convention on Cluster Munitions¹:

- Concerns over **capacity** to implement the convention's obligations, given cost and time;
- Concerns over **national security** issues and perceived military necessity of cluster munitions; and
- A general **lack of priority** for the issue of cluster munitions amidst other pressing concerns.

Capacity for implementation

“How would we fulfil the obligations we would assume if we signed the convention? Right now, we do not think we have the resources to do so.”

- The convention places the ultimate responsibility for clearance and the provision of victim assistance on affected states because of their duty to protect and care for their own people.
- The convention requires all states “in a position to do so” to provide technical, material, and financial assistance to affected states. Affected states will therefore not have to meet their obligations alone.
- The convention should not be seen as a burden, but rather an opportunity for affected

¹ This section is drawn from material produced by Human Rights Watch <http://www.hrw.org/en/news/2009/04/14/twelve-facts-and-fallacies-about-convention-cluster-munitions>

states to get support for work that they would otherwise have to undertake anyway in the course of exercising their fundamental duties as states towards their citizens.

- User states have a special responsibility to assist affected states with clearance. Article 4(4) strongly encourages user states to provide assistance for clearance of submunitions they left before the convention enters into force. This assistance includes information on types, quantities, and location of cluster munition remnants, all of which can facilitate clearance.
- States facing exceptional circumstances, such as very high levels of contamination, can request one or more extension(s) of up to five years each.

“What about destroying stockpiles?”

- The convention gives States Parties eight years to destroy their stockpiles of cluster munitions. If a State Party cannot meet that deadline due to exceptional circumstances, it can request one or more extension(s) of up to four years each.
- The Mine Ban Treaty allows States Parties only four years, with no extensions, to destroy their stocks of antipersonnel landmines. Very few States Parties have failed to meet that deadline. Those that did, missed the deadline mainly because they failed to start planning and destruction early enough. While landmines are easier to destroy than cluster munitions, parties to the Convention on Cluster Munitions have at least twice as long to finish destruction.
- The obligations for cooperation and assistance also apply to stockpile destruction, meaning that by joining the convention, countries with stockpiles have the right to request and receive technical, material and financial assistance from other States Parties.

National security and military necessity

“Banning cluster munitions would undermine our national security, especially when our neighbours have not joined.”

- The military utility of cluster munitions is limited in modern warfare. The weapons were designed for Cold War-era operations with large formations of tanks or troops. Today’s combat often takes place in urban environments, where the humanitarian harm of cluster munitions is magnified.
- Using cluster munitions is often counterproductive for modern militaries. They interfere with military operations and endanger friendly troops and civilians. Continued use of the weapons would increase civilian hostility towards the users.
- Many cluster munitions are already reaching the end of their shelf life and will soon be unsafe to use.
- Alternatives to cluster munitions exist and most defence companies and armed forces are moving away from cluster munitions anyway.
- Cluster munitions are poor defensive weapons. It does not make sense to use them on one’s own soil because the large numbers of duds they leave behind endanger civilians.
- Using this stigmatised weapon will attract international condemnation, which is counter to a state’s national interests. The political cost of using cluster munitions would be high.
- By joining the convention, a state will help increase the stigmatisation of cluster munitions. A State Party’s enemies will find it particularly difficult to use cluster munitions in any conflict involving a State Party given the potential for a public and media backlash.

“Article 21 allows countries that work with allies outside the convention to assist them with use of cluster munitions, fundamentally undermining the ban.”

- The CMC opposed Article 21 as it is poorly drafted, open to interpretation, and

politically motivated rather than based on humanitarian concerns. However, it is unlikely to have a negative humanitarian effect by promoting or facilitating ongoing use of cluster munitions.

- Under Article 1(1)(c), States Parties shall not assist states not party with activities prohibited by the convention. Article 21 does not change this rule, which should be read broadly to encompass a wide range of assistance.
- All countries concerned about Article 21 as a potential loophole should join the CCM in order to promote a strict reading of the article and hold to account States Parties engaged in joint operations with allies outside the convention. Standing outside and criticizing Article 21 will not help strengthen the prohibition on assistance.

“The convention contains a loophole for wealthy countries to continue using, producing and trading in certain types of high-tech cluster munitions.”

- The CCM places a categorical prohibition on cluster munitions. No clear definition of a cluster munition existed at the time of the negotiations. The method used to reach a definition of ‘cluster munition’ was to consider the effects of the weapons that have caused the problem. The resulting definition captures all weapons with submunitions that cause either an ‘indiscriminate area effect’ or pose risks of unexploded ordnance.
- Through five technical safeguards, the definition clarifies which weapons with submunitions should not cause the effects of cluster munitions and excludes them from the ban.
- The CCM considers that any weapons excluded based on the technical characteristics listed at Article 2(2)(c) should be monitored to ensure that they comply with the humanitarian requirements of the chapeau language of Article 2(2)(c). States Parties to the CCM should promote this approach at meetings of the convention.

CCM as a priority

“The CCM is just not a priority for us right now given so many other pressing matters facing our government. It is also not relevant since we are not affected and do not have stockpiles.”

- With every new country that joins the CCM, the global norm rejecting this weapon and requiring assistance to those affected is strengthened. It does not matter whether a country is big or small; affected, stockpiler or neither. By joining the CCM each state gives one more voice in favour of the ban.
- By joining the CCM, states that may not be affected by cluster munitions today will strengthen the global stigmatisation of the weapon and therefore help prevent further use which could affect them in the future.
- The CCM is part of the overall fabric of international humanitarian law and the global effort to promote human security and address armed violence. Some countries suffer from cluster munitions; some suffer more from gun violence. By joining the range of international instruments on the protection of civilians, states show solidarity with and help to strengthen each others’ efforts to promote peace and security for all.
- Joining the CCM should not be an onerous process, in particular for states with no stockpiles or affected communities. For these states, accession should involve a straightforward procedure, with which the CMC, ICRC and UN all stand ready to provide support.

***Prepared by CMC staff
May 2010***

A comprehensive ban

The Convention on Cluster Munitions (CCM) requires a comprehensive ban on all weapons that contain explosive submunitions, have a wide-area effect, and leave behind unexploded ordnance that pose dangers to civilian populations. It defines these weapons as cluster munitions and places a categorical prohibition on them. Use, production, transfer, and stockpiling are banned in all circumstances, as is assisting anyone with those activities.

Like all conventions, the CCM has some provisions that may be open to interpretation, and may therefore result in varying state practise in implementation. This paper identifies some of those provisions, and elaborates the Cluster Munition Coalition's (CMC) views on the best way to interpret and implement them, in keeping with the purpose of the convention: a comprehensive ban on cluster munitions that puts an end to the suffering that they cause.

Key messages from CMC:

- **A comprehensive and categorical ban** – The convention is a comprehensive and categorical prohibition on cluster munitions, and States Parties should interpret and implement all of its provisions in such a way as to ensure the strongest ban possible with the greatest protections for civilians.
- **No assistance** – The convention bans any assistance with all prohibited activities, including during joint military operations with states not party.
- **No transit** – The convention bans the transit of cluster munitions through the national territory of a State Party.
- **No investment** – The convention bans investment in the development or production of cluster munitions by foreign companies or entities in states not party.
- **No foreign stockpiling** – The convention bans any stockpiling of cluster munitions by states not party on territory under the jurisdiction or control of a State Party.
- **No retention** – While the convention permits the retention of a minimum number of cluster munitions for certain non-operational purposes, few if any States Parties have an absolute need for such retention. The best practise is to destroy all stockpiles of cluster munitions, and not to keep any for any purpose.
- **Common understandings** – States Parties should seek to establish common understandings and uniform state practises regarding provisions that may be open to varying interpretation and implementation.

Ensure the most comprehensive ban

The convention bans all cluster munitions, as defined [see policy paper on definitions]. A very small number of existing weapons with submunitions are not defined as cluster munitions, because they do not have the objectionable features of cluster munitions: wide-area effect and the risk of large amounts of unexploded ordnance. This is analogous to the 1997 Antipersonnel Mine Ban Treaty, which does not prohibit all devices previously commonly labeled as antipersonnel mines, most notably command-detonated devices such as Claymore mines, which do not have the inherent indiscriminate qualities of antipersonnel mines. States Parties to the convention must monitor existing systems containing submunitions, as well as any future systems, to ensure that they do not have the negative effects of cluster munitions.

Ban all assistance in all circumstances

Article 1 prohibits States Parties under any circumstances from assisting, encouraging, or inducing anyone to engage in any activity prohibited under the convention. Some believe that Article 21 on relations with states not party introduces ambiguity to that comprehensive prohibition. The CMC and many states share the view that, while Article 21 permits joint military operations with states not party, it does not permit any form of assistance with prohibited acts during those operations. The most important aspects of Article 21 are its requirements that States Parties promote the norms the convention establishes, encourage states not party to join, discourage states not party from using cluster munitions, and notify states not party of their obligations during joint operations [see policy paper on universalisation]. Permitting assistance with prohibited acts would clearly be inconsistent with all of these requirements.

Ban transit

Although the word “transit” does not appear in the convention, the CMC believes that both the Article 1 prohibition on assistance and the Article 2 definition of transfer mean that the transit by a state not party of cluster munitions through the national territory, airspace, or waters of a State Party is banned [see policy paper on definitions]. States Parties should make declarative statements indicating that transit is banned, and should include such a prohibition in national legislation to implement the convention. Many signatories to the convention have already expressed this view, and it is the widely shared view of States Parties to the Mine Ban Treaty, which employs the same language on transfer.

Ban investment

Although the word “investment” does not appear in the convention, the CMC believes that the Article 1 prohibition on assistance means that investment in the development or production of cluster munitions by foreign companies or entities in states not party is prohibited [see policy paper on disinvestment]. States Parties should make declarative statements indicating that investment is banned, and should include such a prohibition in national legislation to implement the convention, as several states have already done.

Ban foreign stockpiling

Some states that have not joined the convention have maintained stockpiles of cluster munitions on the territory of states that have signed and will soon become States Parties. If those foreign stocks are under the “jurisdiction and control” of the State Party, they must under the terms of Article 3 be destroyed [see policy paper on stockpile destruction]. Even if the foreign stocks are not under the jurisdiction or control of the State Party, the State Party should insist on their removal in order to avoid running afoul of the prohibition on assistance and to be consistent with the spirit of the convention and its obligation under Article 21(2) to make its best efforts to discourage others from using cluster munitions. The United Kingdom has made statements consistent with this approach. States Parties should make declarative statements indicating that foreign stockpiling is banned, and should include such a prohibition in national legislation to implement the convention.

Ban retention

Although Article 3 allows for the retention and acquisition of a minimal number of cluster munitions and submunitions for the development of and training in detection, clearance techniques, or counter-measures, few if any States Parties will have an absolute need to do so. The CMC and many states believe that live cluster munitions

and submunitions are not required, and/or should no longer be justified, for those purposes.

Develop common understandings and practises

States Parties should develop common understandings on these interpretive matters in order to ensure uniform state practise and therefore the most effective implementation of the convention. Contradictory interpretations and practises will undermine both the credibility and humanitarian impact of the convention.

*Prepared by Human Rights Watch
May 2010*

Definitions within the Convention on Cluster Munitions

Article 2 of the Convention on Cluster Munitions (CCM) contains definitions that are vital to the effective implementation of the convention, including most crucially the definition of a cluster munition. Cluster munitions are defined and prohibited as an entire category of weapons. This categorical prohibition is important for the stigmatisation of cluster munitions amongst all states. The Cluster Munition Coalition (CMC) considers that there are certain points that are very important in terms of a proper understanding of the definitions and in terms of ensuring the maximum humanitarian protection and benefit from the convention.

Key messages from CMC:

- **A clear, comprehensive definition** – The definition of a cluster munition is clear, comprehensive and captures all those weapons with submunitions that have a wide area effect and/or pose a risk of unexploded ordnance.
- **Vigilance required on 2(2)(c)** – Any munitions excluded in line with the technical characteristics listed at Article 2(2)(c) (i-v) should be monitored to ensure that they comply with the humanitarian requirements of the chapeau language of Article 2(2)(c).
- **Clarity on air defence role** – The phrase “designed exclusively for an air defence role” means a weapon designed exclusively for use against targets in the air, not on the ground.
- **Abandoned dispensers and bomblets are covered** – “Abandoned cluster munitions” should be read to include abandoned bomblets and their dispensers, including where the bomblets are still inside the dispensers.
- **Transit is banned with transfer** – The definition of “transfer” should also cover “transit”.

Clarification of certain elements of the definition of a “cluster munition”

The definition of “cluster munition” is a central element of the convention’s strength. No internationally accepted definition of a cluster munition existed at the time of the negotiations of the CCM. In considering the definition, negotiating states wanted to capture all those weapons that contain submunitions and that cause the problematic effects of cluster munitions: 1) a wide area effect; and 2) a risk of unexploded ordnance. As a result, the definition applies a very broad prohibition on weapons with submunitions. It also clarifies which submunition systems are not expected to cause the same humanitarian effects as cluster munitions either at the time of their use or afterwards and it excludes such systems from the definition.

Within this definition, the following two elements need to be given particular attention:

Exclusions under Article 2(2)(c)(i-v)

Any munition excluded from prohibition in line with the technical characteristics listed at Article 2(2)(c) (i-v) should be monitored to ensure that it complies with the definition’s humanitarian requirements “to avoid indiscriminate area effects and the risks posed by unexploded submunitions.” The intention of Article 2(2)(c) was to create a comprehensive list of all technical safeguards that, put together, would ensure the weapon could not function like a cluster munition and cause unacceptable harm to civilians.

Each of these technical safeguards relates to a specific element of the broader set of problems caused by cluster munitions. Any weapons that are considered to comply with

these technical characteristics should therefore be closely monitored by States Parties and civil society to ensure that they do not have the same effects that make cluster munitions illegal. Indeed it was for this reason that the negotiators included an approach based not only on technical criteria but also on the problematic effects of the weapon: states recognised they could not foresee all future weapons developments and the impact their use might have on civilians.

Air defence exclusion

Under Article 2(2)(a), munitions designed exclusively for an air defence role are excluded from the prohibition. The term “air defence role” is not defined within the convention, but the record of negotiations makes it clear that this means a weapon designed exclusively for use against targets in the air, not on the ground. “Designed exclusively” also indicates that such systems should not have been developed to have utility against both aerial and ground-based targets. Clearly, States Parties must not use submunition-based weapons designed for an air defence role against targets on the ground.

Transfer = transit

The definition of “transfer” should be read as covering also “transit” – where transit means the movement of cluster munitions into, from or across national territory without there being any change in the ownership of the weapons. The main issue is whether a state not party’s aircraft, ships, or vehicles carrying cluster munitions can pass through (and presumably depart from, refuel in, restock in) a State Party, including on their way to a conflict in which those weapons might be used.

The definition of “transfer” in the CCM is the same formulation as in the Mine Ban Treaty, which regrettably is insufficiently clear as to whether the “transit” of prohibited weapons is prohibited. The CMC considers that this definition does indeed cover “transit”, as does the ICRC. With a few exceptions, States Parties have agreed that the Mine Ban Treaty prohibits the “transit” of antipersonnel landmines through a State Party’s territory.

Because these definitions are formulated in the same way, it would be problematic for states to offer a different interpretation under the CCM than they have already expressed in the MBT.

Abandoned bomblets and dispensers

“Abandoned cluster munitions” should be read to include abandoned “bomblets” and their dispensers, including where the bomblets are still inside the dispensers. The definition of “cluster munition remnants” includes “failed cluster munitions, abandoned cluster munitions, unexploded submunitions and unexploded bomblets.” This inadvertently fails to cover bomblets and their dispensers where these have been abandoned (either as part of stockpiles, or potentially where aircraft carrying such systems have crashed in territory now controlled by another state).

This oversight would be solved by states recognising that the term “abandoned cluster munitions” should be read to also include abandoned “bomblets” and their dispensers, including where the bomblets are still inside the dispensers.

***Prepared by Action on Armed Violence (formerly known as Landmine Action)
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Stockpile destruction

The destruction of stockpiles is a central obligation in the Convention on Cluster Munitions (CCM), a convention that is in large part about prevention. The vast majority of the world's cluster munitions have never been used, so most of the cluster munition problem is still in stock. At least 87 countries have stockpiled cluster munitions, with an estimated total of several billion submunitions. If proliferation and use had been allowed to continue, the result could have been tens of millions of lethal duds and a humanitarian crisis even worse than the plague caused by landmines. The only way to be sure that no cluster munitions are ever used again is to ensure the destruction of each and every cluster munition in stockpiles.

Key messages from CMC:

- **Start now** – The obligation is “as soon as possible,” not simply within eight years, so make plans now!
- **This can be done** – Countries are already showing the way, and cooperation and assistance will help states that need it.
- **Be transparent** – Not enough is known about stockpiles, and information is needed to make plans.

“Start now!”

The CCM obliges States Parties to destroy stockpiles “as soon as possible”, but within *eight years* of joining the convention. The most important thing that states can do is to start now!

Strong political will is the key to the timely destruction of stockpiles. States Parties should plan to accomplish destruction in the near term, not shortly before their deadline. Within the Mine Ban Treaty, 86 States Parties were able to destroy their stockpiles within their four-year deadline, and often well ahead of it. All of the states that have joined the CCM thus far should be able to complete stockpile destruction well in advance of the eight-year deadline as long as they make a good plan and begin the work early on.

As a matter of best practise, all states with stockpiles should, at a minimum, within one year or less of entry into force have a plan in place for the destruction of stocks that includes a timeline and budget. Physical destruction should begin within two years or less.

This can be done

During the Oslo Process, undue emphasis was placed on the complexity and cost of the destruction of cluster munitions. The need for large-scale industrial solutions to destroy stockpiles was also exaggerated. This caused some states, particularly in the developing part of the world, to be concerned about their commitments under Article 3, fearing that destruction of their cluster munition stocks would be too onerous and expensive for them. At least one country (Thailand) has cited concerns about stockpile destruction as an obstacle to its signature.

However, destruction of cluster munitions – although more technically demanding than the destruction of most landmines – is a perfectly feasible task for all states, no matter what their level of industrial development. There is already a solid body of knowledge

and practical experience to draw from. It is a routine part of the destruction and demilitarization of old munitions in many countries.

For some states, the established industrial destruction facilities, which are mainly located in Europe, are the best recourse. For other states, in particular those with small stockpiles of cluster munitions, it is possible with expert advice to develop small-scale national destruction programmes that are affordable, safe, practical and environmentally friendly. Whether transfer to an industrial facility or development of a national programme is the best solution depends on a range of factors, including the complexity, size, condition and location of the stockpiles, as well as country-specific factors.

The CCM does not create new costs for destruction; it simply accelerates the destruction timetable.² Every state would have incurred the cost to destroy its cluster munition stocks at some point in the future, after the weapons exceeded their shelf-life (assuming that the cluster munitions were not used in combat). Some savings will also be realized by no longer having to pay for continued storage and maintenance of the cluster munition stocks. Other savings can occur through resource recovery and recycling during the destruction process.

Cooperation and assistance are vital

Cooperation and assistance among States Parties will be vital in ensuring that they collectively succeed in destroying their stockpiles. In the context of the Mine Ban Treaty, only a small number of donors prioritised stockpile destruction assistance and had well-developed programmes for providing such aid. Given the large amount of stockpiled cluster munitions and the preventative focus of the CCM, donor states should make assistance for stockpile destruction an integral part of their overall assistance under the CCM.

States Parties in need have the right to request international assistance for stockpile destruction, and others have an obligation to provide it. Those that require assistance should make their specific needs known within the first year of entry into force of the convention to ensure that on-time destruction is possible. Donor states should strive to organise assistance programmes as soon as possible, given the often time-consuming nature of such undertakings. States should avoid a situation where bureaucratic delays could lead to missed destruction deadlines.

In addition to financial assistance and specific technical assistance during the destruction process, States Parties, UN agencies, international organisations, and non-governmental organisations with stockpile destruction experience can provide valuable advice and guidance regarding various methods and technologies of destruction. Transparency and information-sharing in the early stages of implementing the convention are greatly needed.

Examples of countries with completed or ongoing destruction

Several signatories to the CCM have set a good example by starting stockpile destruction efforts even before entry into force, including:

- **Austria** set a three-year deadline to destroy its stock of 798,336 submunitions and plans to finish in less than two years. It has indicated cost would be EUR 1 million.
- **Moldova** began planning stockpile destruction even before ratifying the CCM and started destruction in May 2010. It is set to finish well in advance of the 1MSP.
- **Norway** will have destroyed in one year its stockpile of approximately 52,000 155mm cluster munitions containing some 3.1 million submunitions (due to be

² It should also be noted that for instance the USA, even though not party to the Convention, is routinely destroying stockpiles of cluster munitions.

completed in mid-2010). The estimated cost is EUR 40 per projectile, or about EUR 2.1 million in total.

- **Spain** became the first signatory to complete destruction in March 2009. It destroyed its stockpile of 233,261 submunitions in a matter of a few months, at a cost of EUR 4.9 million.
- **United Kingdom** began destruction of 123,958 cluster munitions with a total of 32,573,628 submunitions, of which the majority are M77 submunitions (27,800,000) delivered with MLRS M26 rockets. It announced in 2008 it would cost EUR 45 million to destroy its stockpile of M26 rockets.
- Others that have started destruction include **Belgium, Colombia, Germany**, and the **Netherlands**.

The deadline extension

Based on available information about the stockpiles of those that have joined the convention thus far, the CMC believes that **no State Party should need to ask for an extension**. States Parties to the CCM should make clear from the outset their expectation that there be no extension requests, and that if the extension provision is used, it would only be for the most exceptional cases. States Parties should also make clear early on that extension requests from States Parties that have not made a good faith effort to meet the deadline will not be looked upon favourably.

The CMC opposed the provision allowing for an extension of the stockpile destruction deadline, on the basis that it may encourage states that do not truly need extra time to utilize it nevertheless. The Mine Ban Treaty does not provide for an extension, and numerous states finished just barely ahead of their deadlines; many would no doubt have asked for an extension had the option existed.

Transparency

With some exceptions, the states that have signed the CCM have not yet shared much official information about the number of cluster munitions and submunitions in their stockpiles. The CCM requires transparency about quantities, types, and technical characteristics of stockpiled cluster munitions and on the status and progress of programmes to destroy them. Even before entry into force, states should provide and share such information, in order to build confidence, help understand the scope of the task of stockpile destruction, and facilitate future assistance with destruction. In their transparency reports, States Parties should report on stocks destroyed earlier, and not just those possessed at and destroyed after entry into force. Once destruction begins, States Parties should routinely invite observers to witness destruction events, including civil society and the media.

Some States Parties may discover additional stockpiles after having declared completion of their stockpile destruction programme. In such cases, states must report on them as well as plans for their destruction. States should also always make it clear when reports on destruction refer to stocks of unused cluster munitions held in depots versus the destruction of remnants collected through clearance.

Foreign stockpiling

States Parties are required to destroy all stockpiles of cluster munitions under their “jurisdiction and control”. If, under a bilateral or multilateral agreement, a foreign country maintains stocks of cluster munitions that fall under the jurisdiction and control of the State Party, it is obligated to ensure their destruction. If a foreign country maintains stocks on the territory of a State Party, but those stocks are not under the

jurisdiction and control of the State Party, the State Party would still be in violation of the CCM if it assists with the foreign stockpiling.

In the case of foreign stockpiles that are not under the jurisdiction and control of the State Party, the State Party should – to be consistent with the spirit of the convention and its obligation under Article 21(2) to make its best efforts to discourage others from using cluster munitions – insist on the removal of those foreign stockpiles as soon as possible, and certainly no later than the eight-year deadline for the destruction of national stocks. The United Kingdom has already indicated that it is taking this approach. Continued acquiescence to foreign stockpiling of cluster munitions is difficult to reconcile with the obligation to discourage stockpiling and use.

***Prepared by Human Rights Watch and Norwegian People's Aid
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Retention of cluster munitions

Article 3(6) of the Convention on Cluster Munitions (CCM) permits the retention or acquisition “of a limited number of cluster munitions and explosive submunitions for the development of and training in cluster munition and explosive submunition detection, clearance or destruction techniques, or for the development of cluster munition counter-measures.” This exception is limited by the requirement that “the amount of explosive submunitions retained or acquired shall not exceed the minimum number absolutely necessary for these purposes.”

Additionally, Article 3(8) requires the submission to the UN Secretary General of an annual report concerning the retention or acquisition of cluster munitions or explosive submunitions. The report must provide details of the planned and actual use of the retained cluster munitions or explosive submunitions; their type, quantity, and lot numbers; and the identity of the receiving party if they are transferred to another State Party.

During convention negotiations, the Cluster Munition Coalition (CMC) opposed the provision allowing for the retention of cluster munitions and submunitions for training, development, and military counter-measures. States have not demonstrated that any of these three purposes are essential so as to justify an exception to the prohibition on stockpiling. To our knowledge, no clearance organisation accredited to the UN uses live submunitions for training. Adequate technologies already exist to detect unexploded submunitions.

Key messages from CMC:

- **Retention is not needed** – There are no compelling arguments for retention. Most if not all states should determine that the minimum number of cluster munitions necessary is zero.
- **Reach a common understanding** – States that retain cluster munitions should reach a general understanding on what they believe the appropriate range would be for the minimum number of cluster munitions and explosive submunitions that is absolutely necessary.
- **Use them or lose them** – The number of cluster munitions retained should be decreasing every year as they are used for permitted purposes, and there must be detailed reporting on this, as required by Article 3.8. Cluster munitions not being used over time for permitted purposes should be destroyed as excess to needs.

Retention for detection or clearance

The high metal content of most existing submunitions (designed for fragmentation) eliminates the need for retaining live samples for detection purposes. In addition, no specific justification has been provided for retaining live submunitions as clearance training aids for either humanitarian or military clearance personnel. The introduction of live items of ordnance into training environments would contravene the standard operating procedures of experienced clearance organisations. The use of high quality models or casings certified “free from explosive” (FFE) meet all the requirements for recognition and other training, a fact supported by those states that agree that retained units would not be detonated during training.

Retention for counter-measures

The need for the retention, acquisition and transfer of live submunitions and cluster

munitions for the development of military counter-measures is not established. If it were a vital requirement, states (including those without stockpiles) would have already acquired and tested samples, as nearly all submunition types have been available for many years. In addition, this provision could be interpreted so widely and differently by individual states that it might constitute a substantial loophole in the convention. The procurement by States Parties of cluster munitions from user and producer states that are not party to the convention would undermine the spirit and purpose of the convention.

Planned and actual use

The retention provision in the Mine Ban Treaty has been problematic, with many states keeping mines even though they have no discernable need for them, and many simply keeping them in store year after year without ever providing a justification for why they are needed or showing how they are being used for permitted purposes. In order to avoid the same problem in the CCM, during the negotiations, states emphasized the need for a high degree of transparency on planned and actual use and required annual reports with this information. The CMC will track in detail the number of cluster munitions and submunitions States Parties report as retained as well as the planned and actual uses of these munitions from year to year.

States Parties should provide clear justification for the original number of cluster munitions and submunitions retained based on rigorous estimates of actual use. States Parties should also regularly evaluate the numbers being retained to ensure that it is the minimum number strictly necessary. They should destroy any cluster munitions and submunitions in excess of this amount, with the goal of reducing the number to zero.

To build a foundation for States Parties' understanding of what acceptable uses are, and what "the minimum number absolutely necessary" entails, states that intend to retain cluster munitions and submunitions should be explicit now about how they have used them in the past, over how many years, for what precise purposes (e.g. training, testing, counter-measures).

Examples of state practise

Spain, which has announced the completion of its programme for the destruction of stockpiles, intends to retain 836 cluster munitions (containing 28,615 submunitions) for the purposes of training and testing counter-measures. This is an excessively large number in the view of the CMC.

Both **Austria** and **Norway** have stated their intention to retain no cluster munitions at all upon completion of their stockpile destruction programmes.

*Prepared by Norwegian People's Aid and Human Rights Watch
May 2010*

Clearance of cluster munition contaminated areas

The Convention on Cluster Munitions' (CCM) requirement to clear and destroy cluster munition remnants in all contaminated areas is a core obligation, and its full implementation is essential to achieving the humanitarian objectives of the convention. Article 4 requires affected States Parties to free contaminated land of cluster munition remnants within ten years of becoming a State Party to the convention.

The use of cluster munitions can deliver thousands of individual explosive submunitions over very large areas, leaving extensive contamination when submunitions fail to function as designed. The clearance of the contaminated areas is usually made even more difficult by overlapping “footprints” from different cluster munition strikes.

Cluster munition contamination has severe consequences for the population that is living in close proximity. While the primary threat is that of children, women, and men getting maimed or killed by cluster munition remnants, cluster munition remnants also pose impediments to economic and social development. Farmers lose livelihoods because their land is contaminated, remnants prevent the safe use of land around homes and community buildings, and infrastructure must be rebuilt.

Key messages from CMC:

- **As soon as possible** – The obligation is to clear all contaminated areas “as soon as possible,” not simply within ten years. So start clearance now! Most of the countries affected by cluster munitions should be able to meet their clearance obligations within the first five years of joining the treaty, provided that they identify the extent of the problem and start clearance as soon as possible. Very few States Parties should need to ask for a deadline extension.
- **The first ten years must make a great difference** – For the small number of heavily affected States Parties that may need an extension of the clearance deadline, the first ten years of clearance activities must make a significant and visible difference to the affected population on the ground and bring new casualties close to, if not actually, zero.
- **Do not reinvent the wheel** – Clearance of cluster munition remnants has been taking place for many years alongside clearance of landmines and other explosive remnants of war. States Parties already engaged in clearance activities should not establish new structures and/or systems to meet their new obligations. States beginning clearance activities should learn lessons on survey and land release from the Mine Ban Treaty experience.
- **Clear reporting is key** – Affected States Parties must give precise reports on areas containing cluster munition remnants, plus how much land is cleared every year. Such information is essential for monitoring if each state is on track to meet its national plan and treaty deadline.

“As soon as possible”

The CCM obliges States Parties to clear its contaminated areas “as soon as possible”, but within *ten years* of entry into force. The threat that cluster munition contamination poses needs to be removed without any delay so that the humanitarian purpose of the CCM can be achieved.

The vast majority of affected states in the world today should be able to clear all areas contaminated with cluster munition remnants in less than ten years. Indeed, with

sufficient resources, most affected countries that join the convention should be able to clear their land within five years. The CMC therefore believes that use of the extension deadline provision in Article 4 should be a rare exception, used only by the most heavily affected countries. The ability of affected States Parties to meet their ten-year deadline will be one of the key measures of the convention's success.

In order to achieve this goal, States Parties must first gather reliable information on the extent of the contamination and then develop a clear plan based on this information. As the parties with the primary responsibility for clearing contaminated areas, affected States Parties must show clear political will and commitment for the clearance to start as soon as possible, including by ensuring that sufficient national material and financial means are allocated.

Other States Parties should provide financial and other assistance for clearance activities as soon as possible, preferably by committing funding in multi-year cycles, which will enable the affected states to do better planning of their clearance activities. States Parties that have used cluster munitions in the past should provide clearance assistance to States Parties that they contaminated, as laid out in Article 4.4. In addition to providing financial, material, or human resources assistance, they should hand over records of cluster strikes that include information on the types, quantities, and locations of cluster munitions used. Reliable contamination data is crucial for effective planning and carrying out of clearance. The CMC believes that in the spirit of a treaty aimed at addressing the humanitarian impact of cluster munitions, States Parties should make it a policy to provide such information to all states – party to the treaty or not – where they have used cluster munitions in the past.

The first ten years must greatly reduce the impact in heavily contaminated states

Some heavily affected countries, such as Lao PDR, are unlikely to finish clearance in ten years, and will need to request a deadline extension. For countries that suffer the worst contamination, it is crucial that clearance in this first ten year period makes a significant and measurable impact for the population. Such progress will be facilitated by clearly linking and prioritizing clearance with development efforts.

Other States Parties have a role to play in ensuring major progress is made in the early years. Countries with predominant cluster munition contamination should see an increase in funding for these efforts, and not at the expense of a decrease in funding in support of the Mine Ban Treaty obligations of other countries.

Do not reinvent the wheel

Clearance and destruction of cluster munition remnants has been taking place for many years alongside clearance of landmines and other explosive remnants of war. While the CCM now provides clear obligations and should also increase focus on countries with predominantly cluster munitions contamination, it should not be the reason for wasting resources on establishing new structures and/or systems in countries where clearance of explosive remnants of war and mines is already ongoing. Avoiding duplication of efforts and structures on the ground, while at the same time finding country-appropriate solutions, is the key for successful implementation of this obligation.

In states where clearance has not been previously undertaken, lessons should be drawn from the experience of implementing the Mine Ban Treaty, while taking into account each state's specific circumstances. For example, it is important that the survey of contaminated areas be done using technical staff and with the goal of producing precise information that can effectively contribute to detailed clearance

plans. Lessons should also be learned on best practises for implementation of land release through non-technical and technical survey.

Past clearance activities have also shown that marking and fencing should mainly be done in connection with clearance activities to prevent people from entering into the clearance operation area. Marking and fencing on a country-wide level is generally not an efficient use of limited resources, nor is it a permanent solution to the contamination according to the treaty obligations. Similarly, past experience has shown that risk reduction education is most effective when integrated into, or coordinated with, clearance activities. One approach is to include a community liaison component in survey and battle area clearance teams. Apart from immediate post-conflict situations, risk reduction education should normally focus on changing risk-taking behaviour instead of large-scale awareness-raising.

Clear reporting is key

The convention requires affected states to provide precise reports on the size and location of areas containing cluster munition remnants. As noted above, such information should be done by trained technical staff to ensure it is as precise as possible. States reporting on contamination before reliable data is available should refrain from reporting on the exact size of the suspected contamination to avoid magnification or exaggeration of the problem. In instances where general or impact survey data is used to report on square meters of land suspected, states should clearly state the method by which the calculation of the suspected area reported was conducted and what steps will be taken to obtain a more precise account of the contamination.

States are also required to report on the status and progress of clearance programmes. States Parties should begin by clearly presenting their plans for clearance activities at First Meeting of the States Parties and in their initial transparency report. They should then regularly report on how much land has been released every year, disaggregated by release through clearance, technical survey and non-technical survey. Clear and reliable information on the initial level of contamination and the annual amount of land released is essential to monitoring if states are on track to meet their national plans and treaty deadline.

States Parties providing assistance should require transparency about, and accountability for, funds used to ensure clearance is conducted in a cost-efficient and cost-effective manner.

*Prepared by DanChurchAid
May 2010*

Victim assistance

Victim assistance is one of the key obligations in the Convention on Cluster Munitions (CCM) and a central component of the treaty's humanitarian goals. The treaty recognizes that victimization by cluster munitions extends beyond the individual killed or injured, and thus defines victims to include those killed or injured by the weapon, as well as affected families and communities. The CCM ensures the full realization of rights of all cluster munition victims by obligating states, in accordance with applicable humanitarian and human rights law, to adequately provide assistance, including medical care, rehabilitation and psychological support, and provide for their economic and social inclusion.

The CCM gives guidance to States Parties for national-level implementation of victim assistance obligations, which includes developing a national plan, budget, and timeframe for implementation. It requires States Parties to collect data on cluster munition victims and to develop their plans based on assessed needs. It also increases accountability by requiring that States Parties report on progress in implementing their victim assistance obligations. Besides elaborating on each State Party's obligations toward its own cluster munition victims, the convention reaffirms the importance of international cooperation and assistance for implementation of victim assistance.

Key messages from CMC:

- Victim assistance is a legal obligation under the CCM both for States Parties with victims and States Parties in a position to give international assistance.
- The CCM requires victim assistance to be provided in accordance with international humanitarian and human rights law, including the principle of non-discrimination.
- Progressive implementation and inclusive development will help States Parties achieve their duties.
- Cluster munition victims were key in the development of the CCM and must continue to be consulted and actively involved throughout its implementation.

Rights-based victim assistance

The CCM requires that victim assistance be implemented in accordance with applicable international humanitarian and human rights law. The Convention on the Rights of Persons with Disabilities (CRPD), ratified by close to 100 countries, provides the applicable human rights standard. It highlights respect for dignity, autonomy, full and effective participation and inclusion in society, accessibility, and equality between men and women, and should inform the way victim assistance is provided in the context of the CCM. In support of the fundamental human rights principle of non-discrimination, the CCM prohibits discrimination against or among cluster munitions victims, or between them and other persons with disabilities. States Parties should also ensure that cluster munition victims are made aware of their rights and are thereby empowered, along with their representative organisations, to advocate for their full respect.

Inclusive development and victim assistance

The CCM's victim assistance provisions are positive obligations that require a long-term effort, including the investment of both human and financial resources. At the same time, the treaty reaffirms the importance of inclusive development, in that victim assistance does not require the creation of separate mechanisms only for cluster

munition victims. Instead, it requires that victim assistance be implemented with a view to its incorporation into existing mechanisms for disability, development and human rights, while ensuring that cluster munition victims can take full advantage of these services. This approach requires States Parties to develop specific measures to ensure that existing services are accessible to, and inclusive of, all cluster munition victims, especially women, children and particularly vulnerable populations. In cases where existing services do not suffice to meet the special needs of cluster munition victims, States Parties must develop new, inclusive services to address those gaps.

“Nothing about us without us”

The active participation of cluster munition victims and other victim assistance experts was key in the development of the CCM and must continue during its implementation. The CCM requires states to “closely consult with and actively involve cluster munition victims and their representative organisations” in the development, implementation, monitoring and reporting of victim assistance. Such engagement should take place at both national and international levels.

A legal and achievable obligation

The need for victim assistance is widely supported among states. Yet the claim is often made that resources do not suffice to provide it as required, particularly in countries where the need is great and resources few. The following points help counter these claims:

- **Legal obligation** – Victim assistance is a core legal obligation of each state under international law. Additional resources for assistance to victims must be mobilized on both the national and international levels.
- **International cooperation and assistance** – All states in a position to do so have the obligation to assist in implementation of victim assistance obligations. Donor engagement and increased coordination can help maximize resource availability. States Parties should develop a coherent approach to incorporating victim assistance into existing funding mechanisms.
- **Implementation plan with milestones** – International human rights law foresees the possibility that some rights that are social or economic by nature may have to be implemented gradually, utilizing the maximum available resources. Creating a national plan, with a timeframe and milestones that can be monitored, can help guarantee effective implementation.
- **Ensuring accessibility now** – Within the framework of progressive realization, States Parties should proceed to make all services in affected communities accessible. This work can start at once and create concrete improvements in the lives of victims while ensuring sustainability of services to all.

Reporting and monitoring

States Parties’ initial and annual transparency report must include the status and progress of implementation of the full scope of their victim assistance obligations. Clear reporting formats, requiring that states show benchmarks and indicators of progress in victim assistance, are necessary. Moreover, States Parties will maximize efficiency in reporting by aligning their reports with information gathered and presented in the context of related conventions such as the CRPD and the Mine Ban Treaty.

The CMC recommends that each State Party with cluster munition victims begin to inform the international community about their efforts by reporting at the 1MSP on:

- A review of relevant domestic legislation and the extent to which it is in accordance with the obligations under the CCM;

- Their victim assistance national plan with an implementation timeline and identified sources of funding;
- Measures undertaken to coordinate victim assistance implementation with other relevant domestic mechanisms, including where applicable, CRPD and Mine Ban Treaty coordinating mechanisms; and
- Steps taken to consult with and actively include cluster munition victims and their representative organisations.

All states providing assistance for implementation of victim assistance should present reports on how they are promoting participation and inclusion of victims in their activities related to victim assistance, including in cooperation and assistance efforts.

*Prepared by Survivor Corps
May 2010*

International cooperation and assistance

The Convention on Cluster Munitions (CCM) not only seeks to prevent future humanitarian suffering through the destruction of existing stockpiles and the legal obligation not to use, produce, and transfer them, but it also seeks to redress the negative consequences of past use through the obligations to clear land contaminated by cluster bombs and to provide assistance to victims of cluster bombs. Yet some States Parties may not have sufficient resources or capacity of their own to meet these life-saving obligations. Article 6 of the CCM therefore obliges all States Parties “in a position to do so”³ to provide cooperation and assistance to other States Parties.

Many states have already spent many years clearing their land of cluster munitions or providing assistance to victims. For such states, Article 6 is designed to facilitate, accelerate and enhance these efforts.

Key messages from CMC:

- **All States Parties are “in a position to do so”** – Assistance is not only a question of financial resources from traditional donors; affected countries have a leadership role to play in sharing good practises, skills, expertise and experience, with south-south cooperation key to successful results.
- **We need to see results** – New commitments of funding are also needed; showing results in terms of funding, technical assistance and other new projects is essential to implementation and will in addition promote universalisation of the convention.
- **This can be done** – Globally, the existing cluster munition problem is relatively limited in scope and can be addressed in a short period of time. However, for a small number of heavily affected countries like Lao PDR where it will take longer, a substantial increase in funds would bring impressive results on the ground within a decade.

All States Parties are “in a position” to provide assistance

The international cooperation and assistance provisions in Article 6 represent a shared obligation and reciprocal process between affected and other states. Financial assistance is a key component and this will likely come from nations that have the greatest financial resources. However, the CMC believes that all States Parties are in a position to contribute in some way given the wide range of assistance that can be given. Cooperation and assistance can take many forms, from providing technical assistance and sharing expertise, to funding specific activities like clearance, victim assistance and destruction of stockpiles. South-south cooperation needs to be encouraged and recognised as a valuable and essential aspect of this work. The good practises, skills, expertise and experience of affected states represent in themselves a contribution to cooperation and assistance, which should be promoted and shared. Just as the Mine Ban Treaty established a practical forum for addressing national, regional and global work to deal with the landmine problem, so the CCM should establish a practical forum to address the cluster munition problem.

New commitments of funding needed

Funding for the mine and UXO sector has been significant, but with new legal obligations that require an acceleration of the work, there will need to be further contributions to

³ Article 6(2), Article 6(4) to 6(9).

support the additional commitments States Parties have taken on through the CCM. State Parties should come to the First Meeting of the States Parties with specific and multi-annual funding pledges for the activities needed to fulfil the CCM obligations, including clearance, stockpile destruction, victim assistance, and risk-reduction education.

States should prioritise support to heavily impacted countries, where the humanitarian and developmental impact is greatest and the need for immediate action most urgent. Some of these countries (like Lao PDR) have not received funding commensurate with their level of contamination, in part because they have not yet joined the Mine Ban Treaty. States Parties providing financial assistance should continue to favour those states that have made the legal commitment to banning the weapon above those that have not yet joined the CCM. However, cooperation amongst affected states and between affected states and donor countries should not be limited to a dialogue amongst States Parties to the CCM.

Efficient and effective assistance

Cluster munition affected States Parties seeking international assistance should assert national leadership by clearly demonstrating their needs, including producing a time-bound and appropriately costed national plan on how to solve their cluster munition problem. They should also show their commitment to implementation of the convention through the dedication of national capacity and resources as well as a commitment to be full partners in the efficient use of external resources. Cooperation and assistance must also involve the sharing of best practises for supporting and further developing national capacities and authorities responsible for coordinating, implementing and monitoring the practical work of clearance, risk reduction education and victim assistance.

As noted above, States Parties should establish a forum within the context of the CCM where they can have regular discussions and exchange information on methods, procedures and processes for the efficient and effective implementation of the CCM obligation to cooperate and provide assistance. States Parties should also coordinate their assistance to ensure that all states that have communicated their needs receive the assistance they require.

States Parties should keep a strong focus on measuring implementation results, through the establishment of baseline values, indicators, targets and milestones for efficiency, effectiveness and impact. They should also monitor and regularly evaluate how the assistance is being used in terms of meeting such goals. States Parties should discuss different forms and models of cooperation and assistance, as well as the south-south transfer of expertise and knowledge.

The problem can be solved

Contrary to some previous projections, the problem of cluster munitions can be solved in most countries within a short period of time if increased resources are made available [see policy paper on clearance]. Indeed, it is possible for most of the world's cluster munition affected states to clear their territory of cluster munition remnants in less than ten years. Civil society has developed and tested good survey methodology in the field (e.g. in Serbia) that can map the problem accurately, and clearance methodologies have been proven in the field to secure a cost-efficient and effective release of land (e.g. Lebanon, Albania, Georgia). Even in heavily contaminated areas, ten years of clearance can provide impressive results, provided the levels of focus and resources are sufficient [see policy paper on clearance].

Stockpile destruction also does not have to be as expensive and technologically difficult a task as some have suggested [see policy paper on stockpile destruction]. Organisations have researched and developed technologically relevant and cost-efficient alternatives to industrial destruction that would be appropriate for many developing states, especially those with limited stockpiles.

Special calls for assistance

The CMC believes that the growing stigma attached to cluster munitions will prevent those states remaining outside the convention from using them in the future, just as the Mine Ban Treaty has prevented the use of antipersonnel landmines by almost all states not party to it. However, as a precaution, Article 6(6) specifically calls on States Parties to “urgently provide emergency assistance” to any State Party where cluster munitions are used after the convention enters into force. Such assistance can mean life or death for civilians in affected areas when they are returning to their homes after conflict and may not yet be aware of the threat. The CMC urges states to have a budget that allows for rapid provision of assistance for clearance should it be needed.

Article 4(4) also lays out a special duty for States Parties that have previously used cluster munitions in another State Party to provide “technical, financial, material or human resources assistance,” including information on what types and quantities of cluster munitions were used and where. Reliable contamination data is crucial for effective planning and carrying out of clearance. The CMC believes that in the spirit of a convention aimed at addressing the humanitarian impact of cluster munitions, States Parties should make it a policy to provide such information to all states – party to the treaty or not – where they have used cluster munitions in the past.

*Prepared by Norwegian People's Aid
May 2010*

Transparency measures

Articles 3 and 7 of the Convention on Cluster Munitions (CCM) contain robust transparency measures designed to ensure States Parties respect the full range of their duties under the convention, to facilitate effective implementation and assistance, and to allow states and civil society to monitor progress. Under Article 7, States Parties must report on progress in implementing the convention's positive obligations, including destruction of stockpiles, clearance of contaminated areas, risk education, victim assistance, international cooperation and assistance, and national implementation measures. States retaining or acquiring cluster munitions or explosive submunitions under Article 3 must also provide a report on planned and actual use of these munitions [see policy paper on retention of cluster munitions].

The reports establish the State Party's baseline status vis-à-vis its convention obligations and provide regular updates on the status of its implementation efforts, as well as any new information that becomes available on stocks, affected areas, or victims. Transparency measures help build confidence within the international community that States Parties are respecting their convention obligations. Such assurance is also supported by the independent monitoring of the Cluster Munition Monitor, which relies on detailed submissions for full and accurate reporting. At the same time, reporting serves the State Party's interests by communicating information on its accomplishments and signaling to the international community any areas for which it might need external assistance.

Key messages from CMC:

- **Report on time** – Every State Party must submit an initial report within 180 days of entry into force and provide annual updates each year by 30 April.
- **Use similar information for different treaty reports** – States can increase efficiency by using similar data to fulfil reporting requirements of related treaties, though the CCM generally has the highest reporting standard.
- **Report in depth** – States should provide the big picture of progress and challenges, plus detailed information as described in Article 7. Comprehensive reporting forms should be agreed at the 1MSP.

Timely and publicly available reports

The CMC expects States Parties to provide timely reports as required by CCM Articles 3 and 7. Article 7 requires both an initial transparency report, due to the UN Secretary-General no later than 180 days after the convention enters into force for it, and annual updates on the full previous calendar year (i.e., 1 January through 31 December), due by 30 April of each year. Reports on retained or acquired cluster munitions under Article 3 are also due by 30 April every year. These reports should be made publicly available on the UN website in a manner similar to the reports submitted on the Mine Ban Treaty and the Convention on Conventional Weapons.

Synergies

Finding synergies with reporting requirements in related conventions may help States Parties to fulfil their reporting requirements more efficiently. For instance, states providing assistance to both landmine and cluster munition victims should not need to develop separate accounts of their efforts for different types of victims. As well, a state

clearing both landmines and cluster munition remnants could report on all types of clearance as long as the information was disaggregated by the type of munition suspected to be in each area. At the same time, the CCM provides the highest reporting standard in almost all areas where there is overlap with other conventions' reporting requirements.⁴ Therefore where relevant, and in line with each convention's specific reporting requirements, States Parties should draw on the more comprehensive information they must provide for the CCM to report on other conventions' obligations. Likewise, if there is to be a harmonisation of reporting formats, the work will need to be done in other fora to enhance those forms to the level of the CCM reports.

In-depth reporting is key

States Parties must provide comprehensive information on each obligation they are in the process of implementing, as described in Article 3(8) and Article 7(1). At the 1MSP, States Parties should approve a set of standard reporting forms that are both user-friendly and designed to collect comprehensive data. In addition to detailed information, there should be a clear place for states to report on the "big picture," i.e., a state's work plans, in putting them in place, and obstacles it is facing, especially areas for which it requires international cooperation and assistance. The CMC's recommendations for comprehensive reporting in line with the convention's requirements are outlined below.

So far there is little public information on **stockpiles**, so the initial reports will provide essential information on the extent of states' obligations under this provision. Annual updates on the "status and progress of programmes" of stockpile destruction should provide details on the state's plans for destruction, including a timeline with the expected end-date. They should also provide details on the amount of stocks destroyed vis-à-vis the planned rate of destruction so that progress can be effectively gauged. States Parties should report on stocks destroyed earlier, and not just those possessed at and destroyed after entry into force. Early information about technical, financial or other challenges in achieving plans could help engender responses from other actors that in turn could help prevent the need for an extension. Detailed information on states' progress in the **conversion and decommissioning of production facilities** for cluster munitions is also required.

Some States Parties may "**discover**" (find, seize, receive from ex-combatants, etc.) **additional stockpiles** after having declared completion of their stockpile destruction programme. In such cases, they must report on what was discovered as well as plans for their destruction. States Parties should also always make it clear when reports on destruction refer to stocks of unused cluster munitions held in depots versus the destruction of remnants collected through clearance.

States Parties **retaining cluster munitions** or explosive submunitions under Article 3 of the CCM [see policy paper on retention of cluster munitions] must submit an annual report with detailed information on their planned and actual use. This transparency requirement was highlighted during negotiations of the CCM as a way to maintain confidence that states retaining cluster munitions are keeping them for permitted purposes only. States Parties should also provide clear justification for the original number of cluster munitions and submunitions retained based on rigorous estimates of actual use as a way to show they are the "minimum number absolutely necessary."

States Parties affected by cluster munition remnants must provide information on their progress in implementing **Article 4 on clearance and risk education**. First they need to report on the size and location of contaminated areas which, as a reference point for measuring progress on clearance, should favour precise locations of confirmed affected

⁴ The main exception is the victim assistance reporting requirements, which are strongest in the Convention on the Rights of Persons with Disabilities. States Parties to both conventions should draw on their CRPD reports for their CCM reports.

areas over broad estimates of suspected areas. States Parties affected by cluster munition remnants must also provide annual updates on their progress in clearing and destroying these remnants, including the size and location of the areas released. They should specify whether the areas being released were done so through clearance, technical survey or non-technical survey. Early and accurate progress reports will help States Parties communicate in precise terms how much progress they have made, any challenges they are facing in implementing their plans, and requirements for international assistance so that the need for extensions can be reduced as much as possible.

The CCM requires reporting on all elements of **victim assistance** included in Article 5, including data collection, national laws and policies, national plans, resource mobilisation and coordination, all carried out with the active involvement of victims and their representative organisations. Reporting should cover all the thematic areas of victim assistance, including medical care, rehabilitation and psychological support, as well as social and economic inclusion of cluster munition victims. States should consider how to harmonize reporting on victim assistance in the context of the CCM with reporting requirements under the Mine Ban Treaty and the Convention on the Rights of Persons with Disabilities for those states that are party to one or more of these instruments.

States Parties' commitment to implementing their CCM obligations can be measured in part by the **national resources** they have dedicated to fulfilling those obligations, which is why Article 7(1)(m) requires information on national resources allocated to the implementation of Articles 3, 4 and 5. Such information will also show to the international community what contribution the state is making relative to any requests for international assistance it might also be requesting. States Parties' must also report on the timely development of **national implementation measures**, including all legal, administrative, or other measures adopted to implement the convention.

Article 6 on **international cooperation and assistance** is central to many States Parties' ability to implement their convention obligations, and as such, transparency on its implementation is critical to understanding how they are managing to attract the necessary support. Reports that show how specific States Parties are faring or that demonstrate overall trends in allocations can also help guide discussions on international cooperation [see paper on international cooperation]. Those engaged in monitoring implementation can find it quite difficult to track such information since budget allocations may come from a variety of thematic or bilateral budgets within a state. Yet each State Party should be able to measure its own contributions, not only because the provision of and reporting on such assistance are legal duties, but also because many donor states' policy goals include support to CCM implementation, and as such, a mechanism for measuring such support should therefore be in place.

*Prepared by the International Campaign to Ban Landmines
May 2010*

National implementation legislation

While the Convention on Cluster Munitions (CCM) establishes powerful international law, national implementation legislation will help it meet its full potential. Legislation is the strongest way to fulfil Article 9's obligation to implement the convention. It creates duties for States Parties at the national as well as international level. It tailors the convention's provisions to national legal systems while reinforcing its overarching purpose. States Parties can supplement legislation with regulations and policies that provide more details; however, national legislation is crucial to the effectiveness of the convention because it lays out binding, enduring, and unequivocal rules that leave less room for interpretation.

Key messages from CMC:

- **Criminalise prohibitions** – Legislation should ban use, production, transfer, and stockpiling in order to implement the convention's core obligations and deter activities that could lead to future use.
- **Prohibit assistance under all circumstances** – While participation in joint military operations is not prohibited, legislation should state clearly that it does not excuse prohibited activities, especially assistance.
- **Implement positive obligations** – Legislation should codify the convention's positive obligations as keys to advancing the humanitarian aims of the convention; they include stockpile destruction, clearance, victim assistance, international cooperation and assistance, transparency measures, and promotion of universalisation.

Criminalise the convention's prohibitions

To implement the convention comprehensively, national legislation should encompass all of its substantive elements. Most obviously, in accordance with Article 1, implementation legislation should prohibit and establish penal sanctions for use, production, transfer, and stockpiling of cluster munitions. To eliminate any doubt, it should clarify – in either the definition of transfer or the prohibition on assistance – that it prohibits transit, i.e., the movement of cluster munitions across, above, or through the territory and/or territorial waters of a State Party [see policy papers on the ban and on definitions].

Prohibit assistance under all circumstances

Legislation should also ban direct and indirect assistance with any prohibited activity. In particular, it should prohibit transit, the hosting of stockpiles owned by a state not party, and investment of both public and private funds in the development of manufacture of cluster munitions or their components [see policy paper on the ban and on disinvestment]. To uphold the object and purpose of the convention, implementation legislation should specify that the prohibitions enumerated in the convention, notably that on assistance, apply under all circumstances. While a State Party is not prohibited from participating in joint military operations with a state not party, such operations should not allow an exception to the law's strong and comprehensive prohibitions. Furthermore, the State Party must notify its allies of its obligations repeatedly, both at the political and military levels.

Implement all positive obligations

Fully implementing the CCM requires codifying the convention's positive as well as negative obligations. With regard to stockpile destruction, national legislation should seek to set a higher standard than Article 3 and shorten the eight-year deadline for destruction.

Although the convention allows for deadline extensions and retention of a minimal number of cluster munitions for training purposes, most states should exclude these provisions from their legislation because they are unnecessary for most. If included, they should be accompanied by rigorous safeguards, such as reporting, to avoid abuse.

In order to implement the convention's remedial measures, legislation should articulate clearance and victim assistance obligations. To accord with Article 4, it should set the deadline for clearance at no more than 10 years and in most cases at even less. The provisions implementing Article 4 should also establish a clearance process, mandate risk-reduction education programmes, and require past user States Parties to assist with clearance of territory they previously contaminated with cluster munitions.

With regard to victim assistance, States Parties with cluster munition victims in their jurisdiction or control should develop implementation legislation that designates a government focal point to coordinate assistance efforts, mandates creation of a national plan, and requires that the government consult with victims on the development and realization of that plan. States Parties should ensure that no discrimination against victims specifically, and persons with disabilities in general, is embedded in law or practise. States Parties should also enact provisions that guarantee adequate medical care, rehabilitation and psychological support for victims, as well as provide for their economic and social inclusion. Such provisions should be incorporated within the existing national disability, development and human rights frameworks.

National legislation should address three other positive obligations. First, to help other States Parties meet their obligations, legislation should require international cooperation and assistance, including for stockpile destruction, clearance, victim assistance, and emergency assistance. As outlined in Article 6, assistance could take a variety of forms, such as technical, material, and financial, which means that virtually all States Parties could contribute something. Second, legislation should mandate reporting on the status and progress of the implementation of a State Party's obligations as laid out in Article 7. Third, as required by Article 21, legislation should obligate a state party to work for universalisation of the convention, promote its norms, and discourage use [see policy paper on universalisation]. Legislation should identify a government agency to coordinate the relations with states not party and to advance these aims at the political and military level before and during joint operations.

Ensure breadth and clarity

National legislation should:

- establish extra-territorial jurisdiction and jurisdiction over individuals and corporations;
- clarify that the legislation applies to explosive bomblets as well as cluster munitions; and
- specify that its definitions are the same as those in the convention in order to avoid confusion.

Summing up

In conclusion, states should prioritise not only joining the Convention on Cluster Munitions but also adopting national legislation to implement it. Covering all of the elements laid out above and adapting them to domestic legal systems would ensure that legislation is strong and comprehensive. While regulations and policies should be adopted to elaborate on the elements, legislation should create a foundation that encompasses each substantive provision of the convention and is binding, clear, and long-lasting.

*Prepared by Human Rights Watch
May 2010*

Banning investment in companies involved with cluster munitions

The Cluster Munition Coalition (CMC) believes that the Convention on Cluster Munitions' (CCM) prohibition on assistance in the development and production of cluster munitions includes a prohibition on investments in cluster munitions.⁵ Financing and investing are active choices, based on a clear assessment of a company and its plans. Investing in a cluster munitions producer therefore is a choice to support the development and production of these weapons that cause unacceptable harm. States should explicitly acknowledge that the treaty prohibits investments in producers of cluster munitions and should install legislation that prohibits investments in companies that develop and/or produce cluster munitions or key components thereof.

Cluster munitions continue to be produced in some states that have not yet outlawed these weapons. Although States Parties to the CCM must stop producing cluster munitions, some banks and other financial institutions in or from these states may continue to fund their production by investing in corporations that manufacture them elsewhere.⁶ This practise undermines the commitment these states have made to ban these weapons and runs counter to their obligations under international law. To ban a weapon because of the humanitarian harm they cause, but to still allow for investments in their production is not morally acceptable, and the CMC considers it is not legally permissible either.

Article 1(1)(c) of the Convention on Cluster Munitions states: *“Each State Party undertakes never under any circumstances to assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.”* Several CCM signatories have already made interpretive statements that identify investment in cluster munitions as prohibited under the CCM and/or have implemented laws that prohibit investments in cluster munitions.⁷

Key messages from CMC:

- **Make it clear investment is banned** – States Parties to the CCM should make clear that Article 1(1)(c) of the convention's prohibition on assistance includes a prohibition on the investment in cluster munition producers.
- **Cover investment in your national law** – All States Parties' national legislation to implement the convention should include a prohibition on investments in cluster munitions producers.
- **Act now with interim steps** – Until states develop such legislation, they should give interpretative statements and/or provide clear guidelines for financial institutions.

Stated arguments against legislation on disinvestment

Some states have argued against the creation of legislation on disinvestment. Their arguments and the CMC's responses are outlined overleaf.

⁵ “Investment in Civilian Suffering To Be Halted by future Cluster Munitions Convention”, CMC policy paper, available at www.stopclustermunitions.org/wp/wp-content/uploads/2009/09/disinvestment-policy-paper.pdf.

⁶ A publication by IKV Pax Christi and Netwerk Vlaanderen launched in April 2010 revealed that 145 companies from 16 different states invested in 7 companies identified as cluster munitions producers. Among these 145 financial institutions were financial institutions from 10 different CCM signatory states. Update Worldwide Investments in Cluster Munitions; a shared responsibility, IKV Pax Christi and Netwerk Vlaanderen (April 2010), available at www.stopexplosiveinvestments.org/report

⁷ These countries include: Ireland, Lebanon, Luxembourg, Mexico, New Zealand, Norway, Rwanda, and the United Kingdom. Belgium enacted legislation already in 2007, Ireland, Luxembourg, New Zealand and the United Kingdom followed their example and in several countries, including The Netherlands and Switzerland, parliamentary action is underway to ban investments in cluster munitions. Update Worldwide Investments in Cluster Munitions; a shared responsibility, IKV Pax Christi and Netwerk Vlaanderen (April 2010), available at www.stopexplosiveinvestments.org.

“The Convention on Cluster Munitions is an agreement between governments, not between individuals or companies: financial institutions are responsible for implementing their own policy that bans investments in producers of cluster munitions; this is not a job for governments.”

The convention applies to all persons and legal entities under the jurisdiction or control of the State Party, and the government is required to adopt “all appropriate legal, administrative and other measures to implement this Convention ... to prevent and suppress any activity prohibited to a State Party... undertaken by persons or on territory under its jurisdiction or control.” Therefore it is logical to have legislation that expressly lays out the ban on investment as part of the prohibition on assistance. Furthermore, several financial institutions have expressed their need for a clarified position from their government on this issue, to make sure they are not implementing prohibited activities and to ensure a level playing field for all financial institutions in their country.

“Funding the production of cluster munitions is covered by other general rules and criminal law”

It is important to have legislation where investment in cluster munitions is explicitly and comprehensively banned. Having general rules that could imply a ban on investments is not a strong legal basis to ensure that it covers a prohibition on financial support to cluster munitions producers.

“We will do our best to ensure that we do not invest in cluster munitions but it cannot be enshrined in legislation”

The only way to ensure that funding the production of cluster munitions ceases is to make it punishable by law and draw up legislation specifically prohibiting investment in cluster munitions producers. Belgium, Ireland, Luxembourg, New Zealand and the United Kingdom have already taken this step, as should all States Parties to the Convention on Cluster Munitions. Likewise, within the financial sector, a number of financial institutions have showed already that it is possible to create a blacklist and implement their policy accordingly.

“Deciding whether investment in a cluster munitions producer constitutes ‘assistance’ and contravenes the law will be established on a case-by-case basis”

In addition to national legislation, governments should set clear guidelines for financial institutions to follow and implement, which means they do not need to check every new case. Clear guidelines make implementation of the law far more efficient. To publish a blacklist is a useful tool in implementing a divestment law. It provides clear guidelines so that all financial institutions abide by the law. Moreover, a blacklist is a highly effective way for private investors to know whether or not their money is used for the production of cluster munitions. Finally, establishing a blacklist puts transparency into practise: it makes it clear to everyone which companies are investing in cluster munitions so that they can cease their involvement with them.

***Prepared by IKV Pax Christi
May 2010***

CMC views on implementation structures for the Convention on Cluster Munitions

The Cluster Munition Coalition (CMC) believes the following elements and principles should be reflected in the work programme and implementation support structure for the Convention on Cluster Munitions (CCM):

Intersessional work programme

- Thematic committees, led by representatives of both affected and other states, should be established to ensure informal discussions on universalisation and implementation regularly occur. Committees should include the following subjects:
 - **Universalisation and operation of the convention** (including efforts to promote universal adherence, transparency reporting under Article 7, national implementation measures, compliance issues, interpretive issues, implementation structures and mechanisms, and other overarching issues of importance to the convention);
 - **Stockpile destruction** (including progress on destruction of stocks, reporting under Article 3, retention under Article 3, and international cooperation and assistance)
 - **Clearance** (including progress on identifying and clearing contaminated areas, risk education, and international cooperation and assistance)
 - **Victim assistance** (including progress on implementing Article 5, the relationship between victim assistance in the CCM and the Mine Ban Treaty and the Convention on the Rights of Persons with Disabilities, and international cooperation and assistance);
- These committees should meet together once or twice a year⁸ in meetings open to all states, CMC and other members of civil society, UN agencies, and other interested actors. Where practical the meetings should be scheduled to take advantage of the activities of other international instruments with similar objectives. The agenda should include reports by States Parties on concrete progress and challenges in meeting treaty obligations, opportunities for States Parties to voice views on interpretation of treaty, and thematic discussions on challenges facing States Parties in general.
- The committee leaders should hold other bilateral or multilateral meetings as needed during the course of the year to ensure regular follow-up on their thematic issues.
- The States Parties leading the committees should be elected based on their experience with the subject matter, their capacity to take on the work, and a history of leadership on and respect for the convention. Leadership should seek to reflect the diversity of the States Parties and rotate on a regular basis.
- It is essential that there be a proactive coordination body to enable committee leaders to prepare for intersessional committee meetings and the MSPs. The coordination meetings should also provide an opportunity for the leaders to discuss matters of substance related to the implementation and universalisation of the convention, including identifying significant problems and suggesting ways forward to other States Parties. The coordination body meetings should be chaired by the MSP president and should include the participation of close partners such as the CMC, ICRC and the UN.
- States should consider developing other informal bodies to work in a more intensive and flexible manner on specific subjects, such as the coordination of universalisation

⁸ Twice-yearly meetings proved to be useful in the context of the Mine Ban Treaty.

work and the facilitation of transparency reporting under Article 7, which would complement and feed into the work of the committee on the universalisation and operation of the convention.

- To ensure any matters of compliance that might arise are dealt with in a timely manner, and in accordance with Article 8.1, States Parties should task the MSP/Review Conference President to take the lead in addressing such matters. The President should conduct this work in close collaboration with leaders of the committee on the universalisation and operation of the convention, other relevant committee leaders, plus other interested states and parties. Together they should seek to clarify the situation, discuss the matter with the concerned state(s), and suggest appropriate responses to other States Parties.
- A sponsorship programme should be established to ensure broad participation by affected states in convention meetings, both the formal Meetings of the States Parties/Review Conferences and the informal intersessional meetings.
- For greater efficiency and cross-fertilization of ideas, States Parties should explore how to coordinate meetings of the CCM with meetings of the Mine Ban Treaty. This could mean, at some point, holding joint meetings of certain thematic committees and/or scheduling intersessional meetings or MSPs sequentially so that participants could reduce time and costs associated with travel. Co-chairs, coordinators, and other leaders of thematic committees across related conventions, along with other interested parties, could also meet throughout the year to coordinate efforts.
- In order to avoid duplication of efforts, States Parties should be encouraged to harmonize national planning and reporting activities with those carried out in the context of related instruments like the Mine Ban Treaty, while ensuring respect for the specific requirements of the individual treaties.

Meetings of States Parties

- When possible Meetings of the States Parties should be held in a country affected by cluster munitions to remind States Parties why the work they are discussing is so urgent.
- The MSPs should allow sufficient time for the formal discussions needed for the successful implementation of the treaty. In addition to the time needed for decisions to be taken (such as on eventual Article 3 and Article 4 extension requests, the timing and venue of future meetings, and approving documents of the MSP), there also needs to be time allocated for official statements on policy matters and for discussion on key challenges, including addressing cases of known or alleged non-compliance.
- The rules of procedure should allow observer participation in all CCM meetings of members of the CMC and other members of civil society, technical experts, and others working in the field.

Implementation support structure

An implementation support office (ISO for short in this text) should be created that:

- is exclusively focused on the CCM;
- is an impartial and independent entity with financial and political autonomy over its operations;
- is responsible to all States Parties equally;
- is free to put forward reliable, independent information that might differ from information provided by one or more States Parties;
- places full implementation and universalisation of the CCM ahead of the interests of, or pressures from, any individual States Parties or organisations;
- is free of heavy institutional bureaucracy and is run in a cost-efficient manner, with appropriate monitoring and evaluation of its effectiveness; and
- works within a framework that values and encourages the active inclusion of civil

society as partners in the universalisation, implementation and monitoring of the CCM and therefore invites contributions by and cooperation with civil society.

General principles

- An ethic of compliance with all convention provisions should be established from the onset, meaning:
 - An expectation that States Parties will implement their treaty obligations as soon as possible and that extensions for stockpile destruction and clearance will not be needed (except for extreme cases such as Lao PDR on clearance);
 - An expectation that all prohibitions will be respected without States Parties seeking to use different interpretations as a way of creating loopholes;
 - A clear indication that States Parties will tackle any allegations of non-compliance in a proactive and consistent manner;
 - An expectation that the President will report to each MSP on compliance issues and related actions;
 - Regular, thorough reporting on implementation through annual reports and convention meetings.
- States Parties should strive to ensure that a spirit of cooperation among and between States Parties becomes a hallmark of the convention.
- States Parties should help create a culture that values and encourages the active inclusion of civil society as partners in the universalisation, implementation and monitoring of the CCM.
- The work of the convention should be carried out in the same vein in which the convention was developed: using creative and innovative ways of conducting diplomacy, not relying on traditional institutions to conduct activities, focusing on positive change, and emphasising partnership with committed stakeholders (e.g., the CMC, ICRC and UN). The convention's work should also be conducted whenever possible in an informal manner and should avoid over-institutionalisation where unnecessary focus on procedures and structures risks detracting from the swift achievement of the substantive aims of the convention.

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