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***HOW TO IMPROVE CANADA'S LEGISLATION ON  
THE CLUSTER MUNITION CONVENTION***

Mines Action Canada believes that Canada can have the best implementation legislation in the world regarding the Convention on Cluster Munitions (CCM). The current draft legislation contains a number of loopholes that go against the spirit and the letter of the CCM. The legislation needs to make it clear that **no Canadian should ever be involved in the use of cluster munitions for any reason, anywhere, at any time, for anyone.**

Canada's draft legislation should be revised to explicitly ban direct and indirect assistance to anyone with any prohibited activity including use, transit of cluster munitions through Canada's territory, stockpiling of cluster munitions by a state not party on Canada's territory, and investment of both private and public funds in the manufacture of cluster munitions or their components under any circumstances. "Under any circumstances" includes during joint military operations.

The legislation should also include the positive obligations under the CCM such as setting deadlines for stockpile destruction and working to universalize the convention and promote its norms.

Other states who have already drafted and passed their legislation can offer some good models for Canada particularly on topics of interoperability, transit, disinvestment and the treaty's positive obligations.

**Interoperability**

One of the most important elements of Canada's legislation would be to fix the bill to ensure that the convention's prohibition on assistance with prohibited acts (Article 1) is not overridden by the "interoperability" provisions on relations with states not party during joint military operations (Article 21). Currently, there are

too many loopholes in Canada's draft legislation. Ideally Canada should aim for language close to the New Zealand model.

New Zealand criminalizes all activities listed (including assistance) in Article 1 of the Convention on Cluster Munitions as well as expressly requesting the use of cluster munitions. It also includes an interesting provision (section 11.6) that explicitly permits "merely...engaging" in joint military operations. It reads:

A member of the Armed Forces does not commit an offence against section 10(1) [which lays out the prohibitions] merely by engaging, in the course of his or her duties, in operations, exercises, or other military activities with the armed forces of a State that is not a party to the Convention and that has the capability to engage in conduct prohibited by section 10(1).

New Zealand explicitly permits joint military operations. At the same time, it does not create a blanket defense that excuses prohibited activities, notably assistance, when they are committed during such operations. Canada should strive for a similar or stronger legislation.

Upon the adoption of the text of the convention, Iceland noted that Article 21(3) of the CCM which deals with joint operations "should not be read as entitling States Parties to avoid their specific obligations under the Convention for this limited purpose," that is, for joint military operations.

Article 21(3) and (4) should not be understood to permit states parties to assist with any action prohibited by Article 1(1)(c). Canada's legislation needs to have the Convention's humanitarian purpose at its core and state clearly that **no**

**Canadian should ever be involved in the use of cluster munitions for any reason, anywhere, at any time, for anyone.**

## **Transit**

While not every country mentions a prohibition on transit in their legislation, Bulgaria, Burkina Faso, Colombia, Ecuador, Ghana, Guatemala, Lebanon, FYR Macedonia, Malawi, Malta, Mexico, Slovenia, South Africa, and Zambia have

made statements explaining that they believe the convention bans transit. Austria and Germany have explicitly banned transit in their legislation. To have the strongest legislation in the world, Canada should follow their lead and add in a prohibition on transit into the draft legislation.

*Austria:* “Section 2. The development, production, acquisition, transfer, procurement, import, export, transit, use, and possession of cluster munition is prohibited.”

*Germany:* Germany bans transit by declaring it is prohibited to ‘transport [cluster munitions] through or otherwise bring them into or out of a federal territory’.

## **Disinvestment**

Canadian financial institutions expect clarification from the government on investment in the manufacture of cluster munitions and their components. Mines Action Canada and the Cluster Munition Coalition support an explicit ban on direct and indirect investment in cluster munitions and their parts because investment is considered a form of assistance which is prohibited under Article 1(1)c of the treaty. Speeches in the Senate have implied that the Canadian government also views investment as a form of assistance but it would be preferable to have that prohibition in the legislation. 17 States have issued interpretive statements that investments are considered as a forbidden form of assistance under the convention: Bosnia and Herzegovina, Cameroon, Colombia, Croatia, France, Guatemala, the Holy See, Hungary, Lao PDR, Lebanon, Madagascar, Malta, Mexico, Rwanda, Senegal, the United Kingdom and Zambia. A number of countries have banned investment of public and/or private funds through legislation including Belgium, Ireland, Italy, Luxemburg and New Zealand. Additionally, legislation to ban investments has been announced in the Netherlands and Switzerland. Belgium’s pre-CCM prohibition on investment and New Zealand’s CCM legislation provide examples which Canada can strengthen and adapt to our national context:

*New Zealand:*

“(2) A person commits an offence who provides or invests funds with the intention that the funds be used, or knowing that they are to be used, in the development or production of cluster munitions.”

*Belgium:*

« Est également interdit le financement d’une entreprise de droit belge ou de droit étranger dont l’activité consiste en la fabrication, l’utilisation, la réparation, l’exposition en vente, la vente, la distribution, l’importation ou l’exportation, l’entreposage ou le transport de mines antipersonnel et/ou de sous-munitions au sens de la présente loi en vue de leur propagation.... »<sup>1</sup>

The draft Canadian legislation should be revised to explicitly prohibit investments in companies that produce cluster munitions or parts thereof.

## **Positive Obligations**

The Convention on Cluster Munitions contains many positive obligations on states. Article 1(1) outlines Canada’s positive obligations to not use, develop, produce or otherwise acquire, stockpile, retain or transfer cluster munitions and to not assist, encourage or induce anyone to engage in any activity prohibited by the Convention.

Article 3(2) of the CCM outlines Canada’s obligations to destroy our stockpile of cluster munitions within eight years of the treaty’s entry into force for us. Austria and other states parties have included a deadline for stockpile destruction in their legislation. Section 4 of Austria’s legislation gives a three year deadline for stockpile destruction. Canada’s draft legislation should be amended to include a deadline for stockpile destruction prior to the eight years mandated by the treaty. Since Canada has already begun to destroy our stockpile, an early deadline should not cause Canada any hardship.

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<sup>1</sup> “Also prohibited is the financing of a company under Belgian law or under the law of another country, which is involved in the manufacture, use, repair, marketing, sale, distribution, import, export, stockpiling or transportation of anti-personnel mines and or sub-munitions within the sense of this act, and with a view to distribution thereof...” translated by IKV Pax Christi

Under Article 6(2) of the Convention on Cluster Munitions, Canada has the obligation to assist States Parties affected by cluster munitions. Strong Canadian legislation would provide the legislative authority to CIDA, as well as DFAIT and

DND to deal with these lethal barriers to development.

Canada has set a strong precedent as being the first country to voluntarily submit two Article 7 annual transparency reports prior to ratification. Canada's initiative should be encouraged and good Canadian legislation will support Canada's continued commitment to transparency and leadership within the Convention on Cluster Munitions.

Finally, Article 21 of the CCM gives Canada the obligation to encourage states not party to the Convention to join the Convention and the obligation to notify governments of states not party of our obligations under the Convention. These obligations apply within Joint Operations as well. Canadian legislation should make clear that under the Convention on Cluster Munitions Canadians have the obligation to share the norms of the treaty and to inform our allies, partners and friends of our decision to ban this indiscriminate weapon.

## **Conclusion**

Mines Action Canada, the Cluster Munition Coalition and Canadians across our country believe that any legislation passed by Canada should meet the spirit and letter of the Convention. Good legislation will ensure that Canadians have clear direction that they should not assist or use cluster munitions at anytime in any place. The current draft legislation creates uncertainty or loopholes and runs counter to the spirit and letter of the treaty. We're really proud of the Canadian Forces and their tradition of protecting innocent civilians during conflict, but we're worried that this draft text could put our troops in a position where they could assist someone else's use of a banned weapon. The Convention on Cluster Munitions is a comprehensive ban on the weapon; anything less than that in Canada's legislation will cause Canada's reputation as a global leader on humanitarian issues to suffer. Canada can and should have the best legislation in the world to protect innocent civilians; we owe it to the survivors and communities affected by cluster munitions.