

Banning investments in cluster munitions

States' best practices

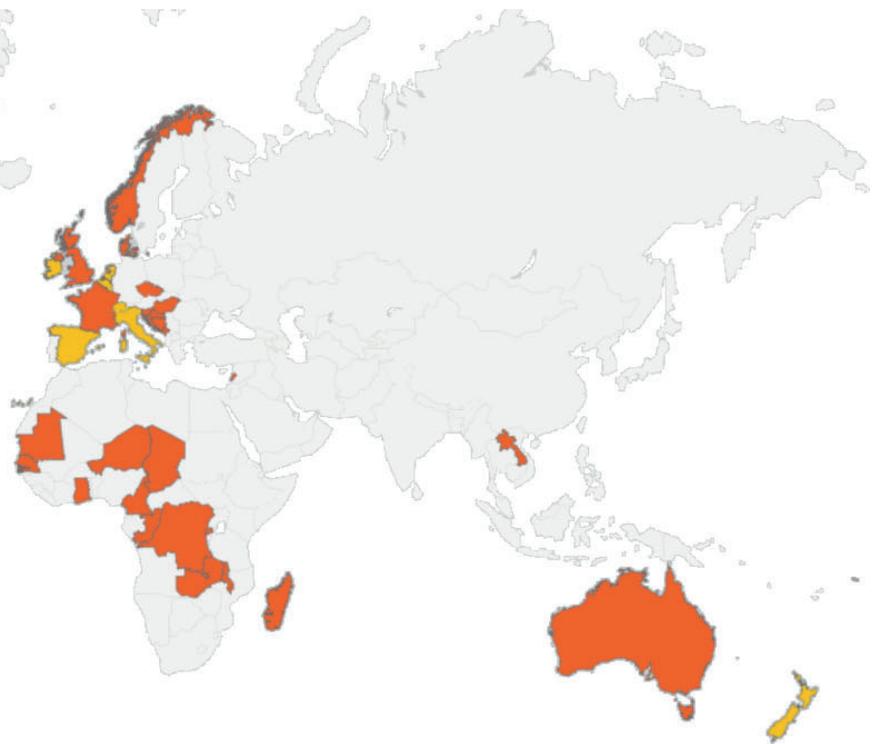
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States with legislation



35

States with interpretive statements



States Parties to the Convention on Cluster Munitions (CCM) have prohibited cluster munitions because of the humanitarian harm they cause. However, cluster munitions continue to be produced in some states that have not yet joined the convention. Financing the companies producing cluster munitions contributes to the continued production of these weapons. States Parties to the CCM should therefore strive to put an end to the financing of this production.

Divestment, on the other hand, delivers real results and broadens the stigma against cluster munitions even beyond the states party to the CCM. Citing pressure from financial institutions, several producers of cluster munitions have

stopped their production, despite the fact that they were all from states not party to the CCM.

PAX and the Cluster Munition Coalition call on all states to publicly state that they view financing of cluster munitions as prohibited under Article 1(1)c of the Convention and to adopt legislation that prohibits investments in cluster munition producers.

This factsheet provides an overview of the states that have already adopted such legislation, or that have made interpretive statements that they consider investments in cluster munitions to be prohibited under the CCM's prohibition on assistance.

Legislation

National prohibitions on the financing of cluster munitions producers provide clear guidelines for financial institutions and are in the spirit of the CCM. Legislation creates a level playing field for all financial institutions in their country and supports the frontrunners. Adopting national legislation prohibiting investments has proven to be effective in many states.

To be as effective as possible, national legislation should prohibit investments in all producers of cluster munitions, apply to all types of investment and provide for monitoring and enforcement mechanisms.

Belgium	“[...] The financing of a company under Belgian law or under the law of another country, which is involved in the manufacture, use, marketing, sale, distribution, import, export, stockpiling or transportation of anti-personnel mines or sub-munitions [...]” Act Prohibiting the Financing of the Production, Use and Possession of Anti-personnel Mines and Submunitions, 8 June 2006.
Ireland	“[...] The investment of public moneys.” “[...] Any investment, direct or indirect, in a munitions company “munitions company” means a company involved in the manufacture of prohibited munitions or components; “prohibited munition” means a cluster munitions, explosive bomblet or anti-personnel mine.” Cluster Munitions and Anti-Personnel Mines Act, 22 October 2008
Italy	“[...] Whoever uses, subject to the provisions of Article 3, paragraph 3, develops, produces, acquires in any way, stores, retains, or transfers, directly or indirectly, cluster munitions or parts thereof, or financially assists, encourages or induces others to engage in such activity, is punished with imprisonment from three to twelve years and a fine of 258.228 euros to 516.456 euros.” Law on the Ratification and Implementation of the Oslo Convention on the ban on cluster munitions (Law No. 95), 4 July 2011.
Liechtenstein	“[...] The direct financing of the development, manufacture or acquisition of prohibited war material is prohibited. [...] The indirect financing of the development, manufacture or acquisition of prohibited war material is prohibited where the prohibition of direct financing is circumvented thereby.” Law amending the War Material Act, 2013.
Luxembourg	“All persons, businesses and corporate entities are prohibited from knowingly financing cluster munitions or explosive submunitions.” Bill approving the Convention on Cluster Munitions, article 3, approved 7 May 2009
The Netherlands	“An enterprise [...] will take adequate measures in order to ensure that it does not: a. carry out transactions or has transactions carried out with a view to acquiring or offering a financial instrument that has been issued by an enterprise that produces, sells or distributes cluster munitions [...] or essential parts thereof; b. provide loans to an enterprise as referred to in [...] (a) above; or c. acquire non-marketable holdings in the capital of any enterprise described under (a) above.” Market Abuse (Financial Supervision Act) decree, 2012.
New Zealand	“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.” Cluster Munitions Prohibition Act, 17 December 2009.
Saint Kitts & Nevis	“[...] A person shall not provide or invest funds with the intention that those funds are to be used, or knowing that they are to be used, in the development or production of cluster munitions.” Cluster Munitions Prohibition Act, 2014.
Samoa	“[...] a person who directly or indirectly does one or more of the following commits an offence: invest 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.” Cluster Munitions Prohibition Act, 27 April 2012.
Spain	“[...] a person who directly or indirectly does one or more of the following commits an offence: invest 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.” Cluster Munitions Prohibition Act, 27 April 2012.
Switzerland	“[...] The direct financing of the development, manufacture or acquisition of prohibited war material is itself prohibited. [...] The indirect financing of the development, manufacture or acquisition of prohibited war material is itself prohibited where the prohibition of direct financing is circumvented thereby.” Federal Law on War Material, art 8b and art 8c, approved 16 March 2012.

Interpretive statements

Assisting anyone to make, have, get, or use cluster munitions in any way is prohibited by the CCM. Providing financial resources to companies involved in these actions is increasingly understood to be prohibited under the CCM's prohibition on assistance in article 1(1)c. In order to build on this growing international norm, it is important that states repeatedly express their understanding that the financing cluster munitions producers is prohibited under Article 1(1)c of the CCM.

PAX and the Cluster Munition Coalition (CMC) encourage States Parties to the CCM to make interpretive statements that they view financing of cluster munitions as prohibited under Article 1(1)c of the Convention. An example interpretive statement could be for a State to declare:

"Investing in or financing cluster munitions producers undermines the CCM's legal framework, which is aimed at ending the unacceptable harm posed by these indiscriminate weapons. We therefore understand that investment in the producers of these weapons contravenes article 1(1)c of the CCM."

Australia	"[...] The intentional provision of financial assistance to an entity so that the entity can develop or produce cluster munitions will amount to an offence."
Bosnia and Herzegovina	"[...] We consider investment in the production of cluster munitions to be prohibited."
Cameroon	"Cameroon [...] approves therefore [...] the prohibition on investments in cluster munitions."
Canada	"[...] under the bill it is prohibited to assist, encourage or induce anyone to engage in any prohibited activity including knowingly and directly investing in the production of cluster munitions."
Chad	"Investing in or financing of the production of prohibited weapons undermines the international legal framework that governs their prohibition. We therefore consider investments in the production of cluster munitions are in violation with Article 1 of the CCM."
Colombia	"[...] Colombia views investment by any government in the production of cluster munitions as prohibited under article 1(1)c of the CCM."
Congo, DR	"[...] the provisions of the convention forbid the [...] investment in the production of cluster munitions"
Congo, Republic of	"[...] the Republic of Congo agrees with the views of a number of States Parties to the convention and the Cluster Munition Coalition that investment in the production of cluster munitions is also prohibited by the convention."
Costa Rica	"[...] investment in the production of cluster munitions [...] as a form of assistance that is prohibited by the convention."
Croatia	"Investment in the production of cluster munitions is prohibited."
The Czech Republic	"[...] We agree that investment in the production of cluster munitions is prohibited."
Denmark	"[...] responsible investment according to PRI and the Danish Guide to responsible investment would demand all investors to respect international norms and conventions including e.g. the CCM."
France	"[...] Any knowingly financial assistance, directly or indirectly, in the production or trading of cluster munitions would be considered as assistance, encouragement or inducement falling within the scope of the law under criminal complicity or commission of offenses under this bill."
The Gambia	"The production, sale and use of cluster munitions should stop and states could do more by stopping the investment in companies either state or non-state, that produce cluster munitions."
Ghana	"[...] Ghana considers investments in the production of cluster munitions a form of assistance that is banned by the Convention."
Guatemala	"[...] According to the interpretation of the government of Guatemala, the Convention also includes a prohibition on investments in companies that manufacture cluster munitions."
The Holy See	"[...] It is important for the integrity of the Convention and its implementation to include those investments in the list of prohibitions."
Hungary	"[...] Hungary believes that investment into the production of cluster munitions is prohibited by the Convention."
Lao PDR	"We strongly support the full prohibition of cluster munitions, including those activities during the joint military operations, transiting, foreign stockpiling and investment in the production of cluster munitions."

Lebanon	"[...] It is the understanding of the government of Lebanon that Article /1/ Paragraph (c) of the Convention prohibits the investment in entities engaged in the production or transfer of cluster munitions or investment in any company that provides financing to such entities. In the view of Lebanon, "assistance" as stipulated in Article /1/ paragraph (c) includes investment in entities engaged in the production or transfer of cluster munitions and is thus prohibited under the Convention."
Madagascar	"[...] The Convention, in the opinion of Madagascar, also precludes investments in companies that produce cluster munitions"; and "[...] any investment in cluster munitions should indeed be prohibited."
Malawi	"Malawi is of the opinion that the Convention constitutes a prohibition on the investment in producers of cluster munitions."
Malta	"Malta believes that the assistance prohibition under Article 1 (c) of the Convention precludes financing and investment in corporations linked with the production of cluster munitions."
Mauritania	"I would like to use this opportunity to work together with other states against the financing of or assistance to companies for cluster bombs (companies that produce these bombs). These bombs, that kill hundreds of innocent people every day, are an obstacle to development, peace and security."
Mexico	"[...] Also, it is Mexico's opinion that investment for the production of cluster munitions is also prohibited by the Convention."
Montenegro	"We would like to express our support for the Dubrovnik Action Plan, as a valuable guideline for further implementation of the CCM. We emphasize that investing in or financing prohibited weapons production undermines the international legal framework that governs their ban. Therefore Montenegro understands that any investment in producers of cluster munitions is a contravention of Article 1 (1) c of the CCM."
Niger	"Niger considers [...] investment in the production of cluster munitions to be banned by the convention."
Norway	"The Ministry agrees that investment, for example, in companies that develop or produce cluster munitions may fall within the scope of the Convention's prohibition of aiding and abetting. [...] [...] it cannot be excluded that private investment [...] in companies that develop or produce cluster munitions, may be incompatible with the Convention."
Peru	"Peru (...) understands the interpretation of Article [1]1.c of the Convention (...) includes a prohibition in the investments in cluster munitions, that is to say, provide financial assistance to producers of such weapons."
Rwanda	"Any investment in the production of cluster munitions is prohibited."
Senegal	"Senegal considers the transfer and foreign stockpiling of cluster munitions, and investment in cluster munitions to constitute a violation of the CCM."
Slovenia	"Slovenia understands that the Convention does not permit investment in production of cluster munitions, and therefore will not allow investments in Slovenia in the production of cluster munitions abroad."
Trinidad & Tobago	"It is unambiguously clear that investing in or financing prohibited weapons undermines the international legal framework that governs their prohibition. My country's accession to the CCM demonstrates our continued commitment to join efforts to end the terrible harm posed by these indiscriminate weapons. We therefore share the perspective that investment in the production of these weapons are a contravention of the CCM."
United Kingdom	"[...] Under the current provisions of the Bill, which have been modeled upon the definitions and requirements of the convention, the direct financing of cluster munitions would be prohibited."
Zambia	"[...] The Convention on Cluster Munitions includes a prohibition on investments in companies that manufacture cluster munitions."