



Stop investments in cluster munitions producers

Financing companies involved in the production of cluster munitions contributes to the continued production of these weapons. This paper calls on States Parties to the Convention on Cluster Munitions (CCM) to end these investments by adopting national legislation prohibiting investments in cluster munition producing companies. We also call on States Parties to express the view that financing of cluster munitions producers is prohibited.

Ending investments to end production

States Parties to the CCM have signed up to the convention to categorically ban 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. Article 1(1)c of the CCM prohibits assistance in any of the prohibited activity.¹ This prohibition to assist should be understood to include financing. Cluster Munitions producers can not survive without investments. States Parties to the CCM should therefore strive to put an end to the financing of this production.

Research shows, however, that even financial institutions from States Parties to the CCM, continue to fund cluster munition producers.² But if states banned cluster munitions because of the humanitarian harm they cause, why would they allow for investments in companies that produce them elsewhere? Financing and investing are done with the intention of making profit. Investing in a producer of cluster munitions is therefore not only a form of assistance with the production of these weapons, it also means profiting from the production of a weapon that is prohibited because of its inhumane consequences.

In recent years more and more financial institutions have taken action to prevent investments going to cluster munitions producers. Research by PAX shows that since 2009 the number of financial institutions from States Parties that invest in producers of cluster munitions has been reduced by two-thirds.³ Divestment delivers real results, preventing humanitarian harm caused by illegal weapons. A number of companies have already ended their involvement in the production of cluster munitions, including Singapore Technologies Engineering and Textron.

Adopting national legislation

In apparent recognition of the fact that prohibiting financing of prohibited weapons saves lives, the 2015 Dubrovnik Action Plan (DAP) called on States Parties “to consider enacting national legislation prohibiting investments in producers of cluster munitions.”⁴

National prohibitions on the financing of cluster munitions producers provide clear guidelines for financial institutions and are in the spirit of the CCM. As of August 2017, there are 10 countries⁵ that have adopted legislation banning (forms of) investments in cluster munitions, and draft legislation has been proposed in Canada. Some of these laws came about at the explicit request of financial institutions, seeking guidance from their governments. Legislation creates a level playing field for all financial institutions in their country and supports the frontrunners.

¹ Article 1 (1) (c) of the CCM reads: “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.”

² PAX, Worldwide Investments in Cluster Munitions (May 2017), available at www.stopexplosiveinvestments.org/report.

³ PAX, Worldwide Investments in Cluster Munitions (May 2017), available at www.stopexplosiveinvestments.org/report.

⁴ Implementation Support Unit of the Convention on Cluster Munitions, “The Dubrovnik Action Plan”, p. 25, available at <http://www.clusterconvention.org/wp-content/uploads/2016/04/The-Dubrovnik-Action-Plan.pdf>.

⁵ Belgium, Italy, Ireland, Liechtenstein, Luxembourg, New Zealand, the Netherlands, Samoa, Spain, Switzerland.

Adopting national legislation prohibiting investments has been 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.⁶

Interpretive statements to reaffirm the international norm

It is important that states 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.⁷

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 to be considered an act of assistance. It is important as a matter of consistency and principle that public funds (such as government pension and superannuation funds or sovereign wealth funds) are not invested in companies producing (key components of) cluster munitions. Applying the financing prohibition to private actors is especially important, as most investments in cluster munitions producers are made by the private financial sector.

Example statement

An example interpretive statement could be for a State to declare that it ***“understands the prohibition on assistance in the CCM also prohibits any investment in or financing of any cluster munition producer”***

As of August 2017, 38 countries have made interpretive statements that investment in cluster munitions could be seen as prohibited under the CCM or have enacted legislation that prohibits investments in cluster munitions.⁸ Interestingly, during the 2017 negotiations leading to the Treaty on the Prohibition of Nuclear Weapons (TPNW), many States reaffirmed this interpretation of assistance by making statements that they view investment in production of nuclear weapons as being part of assistance in the production.⁹

Conclusion

To end the unacceptable human suffering caused by cluster bombs, the production of cluster munitions should stop – and stopping the investment in the companies producing them is an effective way of making that happen. States Parties to the Convention on Cluster Munitions that have not yet done so should consider enacting national legislation prohibiting investments in all producers of cluster munitions. In addition to that, states should issue interpretive statements that they view financing of producers of cluster munitions as assistance in the production and therefore prohibited by the convention.

⁶ For more details please refer to the PAX paper “Banning investments in cluster munitions producers: National legislation”, available here: http://www.stopexplosiveinvestments.org/uploads/PAX_RAPPORT_Banning%20Investments.pdf

⁷ See for example: Cluster Munition Coalition, “CMC Policy Papers on the Convention on Cluster Munitions”, January 2016, available at <http://www.stopclustermunitions.org/media/2179973/English-Briefing-Paper-on-the-Convention-on-Cluster-Munitions-2016.pdf>, last viewed 1 August 2017.

⁸ PAX, “Worldwide Investments in Cluster Munitions; a Shared Responsibility”, (May 2017), available at www.stopexplosiveinvestments.org/report.

28 states issued a statement indicating investments are or can be seen as a prohibited form of assistance under the CCM: Australia, Bosnia and Herzegovina, Canada, Cameroon, Colombia, Costa Rica, the Democratic Republic of Congo (DRC), the Republic of Congo, Croatia, the Czech Republic, France, Ghana, Guatemala, the Holy See, Hungary, Lao PDR, Lebanon, Madagascar, Malawi, Malta, Mexico, Niger, Norway, Rwanda, Senegal, Slovenia, the United Kingdom and Zambia have all made interpretive statements.

¹⁰ 10 states adopted national legislation: Belgium, Italy, Ireland, Liechtenstein, Luxembourg, New Zealand, the Netherlands, Samoa, Spain, Switzerland. In Canada legislation is pending.

⁹ The full webcast of the negotiations can be found here <https://www.un.org/disarmament/ptnw/webcast.html>.