Article 9 legislation

Meeting of the Standing Committees to the AP mine Ban Convention
June 2008

International Committee of the Red Cross

56 States Parties report having adopted legislation to implement the Convention (of 156)
* = countries are new in this category

Albania
Australia
Austria
Belarus
Belgium
Belize
Bosnia and Herzegovina
Brazil
Burkina Faso
Cambodia
Canada
Chad
Colombia
*Cook Islands
Costa Rica
Croatia
Cyprus
Czech
Republic
El Salvador
Estonia
France
Germany
Guatemala
Honduras
Hungary
Iceland
Italy
Japan

*Jordan
*Latvia
Liechtenstein
Luxembourg
Malaysia
Mali
Malta
*Mauritania
Mauritius
Monaco
New Zealand
Nicaragua
Niger
Norway
Peru
Saint Vincent and the Grenadines
Senegal
Seychelles
South Africa
Spain
Sweden
Switzerland
Trinidad & Tobago
Turkey
United Kingdom
Yemen
Zambia
Zimbabwe
27 States Parties report considering existing laws to be sufficient to give effect to the Convention
* = countries are new in this category

Algeria  
Andorra  
Bulgaria  
Central African Republic  
Denmark  
Greece  
Guinée-Bissau  
Holy See  
*Indonesia  
Ireland  
Kiribati  
Lesotho  
Lithuania  
FYR Macedonia

Mexico  
Moldova  
*Montenegro  
Netherlands  
Papua New Guinea  
Portugal  
Romania  
Samoa  
Slovakia  
Slovenia  
Tajikistan  
Tanzania  
Tunisia

35 States Parties report being in the process of adopting legislation to implement the Convention
* = countries are new in this category

Afghanistan  
Argentina  
Bangladesh  
Benin  
Bolivia  
Botswana  
Brunei  
Burundi  
Cameroon  
Chile  
D.R. Congo  
R. Congo  
Côte d'Ivoire  
Djibouti  
Ecuador  
Guinea  
Jamaica  
Kenya  
Madagascar

Malawi  
Mozambique  
Nigeria  
Panama  
Paraguay  
Philippines  
Rwanda  
Saint Lucia

Serbia  
Suriname  
Swaziland  
Thailand  
Togo  
Uganda  
Uruguay  *

Vanuatu
5 States Parties report **assessing** whether to adopt legislation

Namibia, Nauru, Sierra Leone, Solomon Islands, Timor-Leste

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31 States Parties for which information is as yet **unavailable or unclear**

* = countries are new in this category

<table>
<thead>
<tr>
<th>Angola</th>
<th>Eritrea</th>
<th>Qatar</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antigua and Barbuda</td>
<td>Ethiopia</td>
<td>Saint Kitts &amp; Nevis</td>
</tr>
<tr>
<td>Bahamas</td>
<td>Fiji</td>
<td>San Marino</td>
</tr>
<tr>
<td>Barbados</td>
<td>Gabon</td>
<td>Sao Tome &amp; Principe</td>
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<tr>
<td>Bhutan</td>
<td>Gambia</td>
<td>Sudan</td>
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<td>Comoros</td>
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<td>Grenada</td>
<td>Ukraine</td>
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<td>Dominican Republic</td>
<td>Guyana</td>
<td>Vanuatu</td>
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<td></td>
<td><em>Iraq</em></td>
<td>Venezuela</td>
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<td></td>
<td>Liberia</td>
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<td></td>
<td>Maldives</td>
<td></td>
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<tr>
<td></td>
<td>Niue</td>
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</tbody>
</table>
5 New Member States that have not yet reported

- Cape Verde
- Equatorial Guinea
- Haiti
- Kuwait
- Palau

Changes between 2005 and 2008, number of States Parties in the following categories:

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Legislation adopted</td>
<td>43</td>
<td>48</td>
<td>52</td>
<td>52</td>
<td>56</td>
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<td>Considering whether to adopt</td>
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<td>5</td>
<td>5</td>
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<td>legislation</td>
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<tr>
<td>State considers its existing</td>
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<tr>
<td>Legislation is adequate</td>
<td>25</td>
<td>25</td>
<td>25</td>
<td>25</td>
<td>27</td>
</tr>
<tr>
<td>Legislation is in process</td>
<td>36</td>
<td>32</td>
<td>36</td>
<td>37</td>
<td>35</td>
</tr>
<tr>
<td>Unclear or not reported</td>
<td>34</td>
<td>34</td>
<td>31</td>
<td>31</td>
<td>28</td>
</tr>
<tr>
<td>States parties that have</td>
<td>6</td>
<td>4</td>
<td>5</td>
<td>5</td>
<td></td>
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<tr>
<td>not yet reported</td>
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<tr>
<td>Totals</td>
<td>144</td>
<td>150</td>
<td>153</td>
<td>155</td>
<td>156</td>
</tr>
</tbody>
</table>
Who must implement Article 9?

"Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control."

Article 9 Measures:

- Who? Each State Party must

- What? Take all appropriate measures
  - Legal, administrative and other measures
  - Including penal sanctions

- Why? To prevent and suppress any activity prohibited by the Convention

- Where? Undertaken by persons or on territory under its jurisdiction or control
National legislation must:

- Define as crimes and provide penal sanctions for all activities prohibited by Article 1(a), (b) and (c)
  (use, develop, produce, otherwise acquire, stockpile, retain or transfer – see also assist, encourage, induce)

  - i.e. hold all individuals (military and civilian) accountable for violations of the Convention
  - Not only in times of armed conflict

National legislation must:

- Apply definitions consistent with those of Article 2

- Recognize the exceptions permitted under Article 3, as required
ICRC Proposed checklist

- In order to guide States in the preparation of their Annual Article 7 reports:
  - The ICRC has distributed a checklist
  - No need to complete this checklist and return it
  - Review the answers in Form A regarding national measures (especially legislation)

- ICRC encourages States to ensure that Article 9 measures are included in Form A, not just mine action steps.

This checklist includes two parts:
Firstly, legislative measures required by Article 9

<table>
<thead>
<tr>
<th></th>
<th>Does your legislation prohibit and provide punishment for these violations? (Art. 9)*</th>
<th>Is there a prohibition for assisting, encouraging and reducing these violations? (Art. 1 c and Art. 9)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use (Art. 1 a)</td>
<td></td>
<td></td>
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<tr>
<td>Acquisition (Art. 1 b)</td>
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<td>Stockpiling (Art. 1 b)</td>
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<tr>
<td>Retention (Art. 1 b)</td>
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<tr>
<td>Transfer, including the physical movement of AP mines into or from national territory, and the transfer of title to and control over the mines (Art. 1 b, and Art. 2(4))</td>
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<tr>
<td>Development (Art. 1 b)</td>
<td></td>
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<tr>
<td>Production (Art. 1 b)</td>
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</tbody>
</table>
And, secondly:

- Other appropriate legal, administrative and other measures
  - a) How would a fact finding mission (Art. 8) be facilitated: under what law, regulation, or other measure?
  - b) Is destruction of AP mines (Art. 4 and 5) provided for by law, regulation or by other measure?
  - c) Is there legislation, regulation or other measure to assist the Ministry or Department responsible for annual Article 7 reports, for example by requiring all persons, including other government officials, to provide the necessary information?

Other appropriate national implementation measures (cont'd):

- For States Parties with **stockpiles**:
  - measures to facilitate stockpile destruction (Article 4)

- For **mine-affected** States Parties:
  - measures to facilitate implementation of Article 5 (i.e. mine clearance and other mine action) see *GICHD Guide to Developing Mine Action Legislation*
When implementing the Convention, each State may choose from:

1. Special legislation;
2. Amendment to existing legislation; or
3. Combination of 1 and 2

Tools for implementing Art. 9:

- ICRC – ICBL – Gov. of Belgium *Information Kit on the Development of National legislation to implement the Ottawa Convention* (English, French, Spanish, Russian)
- ICRC *Model Legislation for Common Law States* (English)
- ICRC Table of Article 9 National Implementation Measures, and the ICRC Article 9 Checklist (May 2006)
- ICRC's Advisory Service assists States in developing implementing legislation