

CAMPAIGN GUIDE

(1) TARGETING GOVERNMENTS

CONTENTS

INTRODUCTION	2
GATHER INFORMATION	3
GOVERNMENTS: WHAT CAN YOU ASK FOR?	4
GOVERNMENTS: WHAT CAN YOU DO?	5
FAQ: HOW TO RESPOND?	7
WANT TO KNOW MORE?	10

Stop Explosive Investments is a successful sub-campaign of the international Cluster Munition Coalition (CMC) tackling investment in the production of cluster munitions. The campaign is led in partnership by the CMC and CMC member PAX (the Netherlands).

The goals of the campaign are to end financial investment in cluster munition producers and urge states to adopt legislation banning investment in cluster munitions. In addition to ending financial investment in cluster munitions producers, the disinvestment campaign facilitates engagement on the broader cluster munitions issue with the public, governments and the media as a way of continuous stigmatization of the weapon and promotion of the norm of the Convention on Cluster Munitions.

For more information on the campaign visit <http://www.stopexplosiveinvestments.org>

INTRODUCTION

The 2008 Convention on Cluster Munitions (CCM) was established to put an end for all time to the suffering and casualties caused by cluster munitions. By joining the convention, more than half the world has already committed to rid the world of this indiscriminate weapon and the number is growing.

Yet 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. This practice 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.¹

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.”*

The Cluster Muniton 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. 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.

A growing group of governments committed to the CCM 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.

It is vital that more states confirm that article 1(1)(c) includes a ban on investment in cluster munitions. Experience with existing legislation addressing [disinvestment from cluster munitions](#) can serve as model for ways states can prohibit investment in cluster munition producers by national law.² 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.

This documents set outs the ways in which governments can take action to ban investments in cluster munition producers and how you as a campaigner can engage with your government on this issue.

¹ For more information about the CMC’s position on disinvestment, see: Cluster Muniton Coalition, ‘Policy Papers on the Convention on Cluster Munitions’, March 2014, available on: <http://www.stopclustermunitions.org/en-gb/resources/resources-for-states/briefing-policy-papers.aspx>.

² For an overview of existing legislation that bans (types of) investments in cluster munitions, please visit www.stopexplosiveinvestments.org/legislation.

GATHER INFORMATION

The annual '[Worldwide Investments in Cluster Munitions: a shared responsibility](#)' report by PAX (formerly IKV Pax Christi)³ offers a good starting point for campaigning efforts on disinvestment.⁴ The report contains a chapter which lists states' policies and legislation with regard to investments in cluster munitions.

- 1) Take a look at the 'Countries' Best Practices' section of the report and search for your country. In the report a distinction is made between 3 levels of state policies:
 - Legislation that prohibits (certain forms of) investment in cluster munitions;
 - Interpretive statements that make clear investments are, or can be seen as, prohibited under the CCM;
 - Parliamentary action and/or draft legislation to prohibit investment in cluster munitions.
- 2) Take a look at the [Stop Explosive Investments website](#). Since the 'Worldwide Investments in Cluster Munitions: a shared responsibility' report is only updated once a year, it is advisable to check the SEI website which is updated on a more frequent basis.⁵ When in doubt, you can always double check your country's policy with any of the organizations mentioned under the "I want to know more section" of this campaigners guide.
- 3) Take a look at the different wording of existing legislation to ban investment in cluster munitions in the to inform yourself how legislation could look like and look at good examples.⁶

³ The first 'Worldwide Investments in Cluster Munitions; a shared responsibility' report by PAX (then *IKV Pax Christi*) and FairFin (then *Netwerk Vlaanderen*) was released in October 2009. Updates of the report were published in April 2010, May 2011, June 2012, December 2013 and November 2014. In 2013, FairFin and PAX ended their cooperation in producing the report entitled "Worldwide Investments in Cluster Munitions: a Shared Responsibility." The next update, published by PAX, will be presented in June 2016.

⁴ PAX (formerly IKV Pax Christi), 'Worldwide Investments in Cluster Munitions; a shared responsibility', available at www.stopexplosiveinvestments.org/report.

⁵ For an overview of states' policies on disinvestment, please visit www.stopexplosiveinvestments.org/legislation.

⁶ For more information on different disinvestment legislation, see: 'PAX, Banning Investments in Cluster Munitions producers; national legislation', available on: http://www.stopexplosiveinvestments.org/uploads/PAX_RAPPORT_Banning%20Investments.pdf.

GOVERNMENTS: WHAT CAN YOU ASK FOR?

The prohibition on assistance in Article 1(1)(c) should be read to prohibit investments in cluster munition producers. Providing financial assistance and financial services to companies producing cluster munitions is a clear example of “assistance” in the production of cluster munitions, which is banned under the convention.

We call upon governments to:

- **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 national law** - All States Parties’ national legislation to implement the convention should include a prohibition on investments in cluster munition producers. Alternatively, for instance when the CCM has already been implemented, a separate law on this issue should be established.
- **Act now with interim steps** - Until states develop such legislation, they should give interpretative statements and/or provide clear guidelines for financial institutions.

Good examples of states that have enacted legislation to ban (forms of) investments in cluster munitions as of May 2016 are:

Belgium, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Samoa, Spain and Switzerland.⁷

Good examples of states that have made interpretive statements as of February 2015 to express the view that investments in cluster munitions are or can be seen as prohibited by the Convention on Cluster Munitions are:

Australia, Bosnia and Herzegovina, Cameroon, Canada, Colombia, DR Congo, 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.

⁷ For an overview of current legislation banning investments in cluster munitions, please visit the Stop Explosive Investments website: <http://www.stopexplosiveinvestments.org/legislation>.

GOVERNMENTS: WHAT CAN YOU DO?

State Parties to the CCM: Make clear investment is banned

Ask your government to:

- Write a letter to the Cluster Munition Coalition indicating the government's position on disinvestment;
- Confirm their position in the inquiry form on interpretive issues circulated by the [Cluster Munition Monitor](#);
- Make a public statement, for example during CCM conferences such as the Intersessional Meeting, the Meeting of State Parties, or regional meetings.

You can find [a template letter](#) to send to your government asking them to clarify their view on investments in cluster munitions in the Campaign Toolkit on the [Stop Explosive Investments](#) website.⁸

Getting governments to announce they interpret investments in cluster munitions to be prohibited under the CCM can be considered a good first step. To ensure a more sustainable commitment to ending investments in cluster munitions though, states should establish national legislation to this end.

Cover investment in national laws

Encourage your government to install legislation that:

- Explicitly prohibits investments in the producers of cluster munitions and/or key components for cluster munitions or explosive submunitions, using the definition of a cluster munition as defined in the CCM;
- Includes a comprehensive definition of the term 'investment' that encompasses all of the financial institution's activities including commercial banking, investment banking and asset management, for both their own account and for third parties;
- Effectively covers all investments without any exceptions or loopholes;
- Explicitly bans investments in all of a company's activities;
- Covers investment by any financial institution within that country's jurisdiction including both public and private funding;
- Includes sanctions;
- Clearly states how the legislation will be monitored and implemented.

You can find [a template letter](#) to send to your government urging them to install national legislation in investments in cluster munitions in the Campaign Toolkit on the [Stop Explosive Investments](#) website.⁹

⁸ The template letter is available in the Campaigners Toolkit on the Stop Explosive Investments website: <http://www.stopexplosiveinvestments.org/take-action/campaign-toolkit>.

⁹ The template letter is available in the Campaigners Toolkit on the Stop Explosive Investments website: <http://www.stopexplosiveinvestments.org/take-action/campaign-toolkit>.

Act now with interim steps

The surest way for governments to end investments in companies that are involved in the production of cluster munitions is to enact national legislation banning these types of investments.

Until states develop legislation to ban investments in cluster munitions, governments should act with interim steps. This means they should give interpretative statements (see above) and/or provide clear guidelines for financial institutions. Governments can facilitate code of conducts within the financial sector for example, which deal with investment in cluster munitions. However, codes of conduct will always be voluntary by nature, and such policies should be seen as interim steps.

States not Party

The main goal with the governments of States not Party to the CCM is to urge them to accede to or ratify the convention. This is the most important step which will ensure that they ban the use, production, stockpiling and transfer of cluster munitions.

However, this is not to say that the divestment campaign is not a useful tool with States not Party. First, putting pressure on financial institutions to divest can help to get financial institutions to lead the way by divesting and contribute to end cluster munition production. Secondly, targeting financial institutions can also be an effective way of engaging the public on the issue of cluster munitions. These overall efforts can help to provide a compelling argument for States not Party to join the the Convention.

You can download [a template letter](#) from the CMC to send to states not party to the convention and urge them to join the Convention on Cluster Munitions.¹⁰

¹⁰ The template letter for States not Party is available on the Cluster Munition Coalition website: <http://www.stopclustermunitions.org/en-gb/resources/documents/template-letters.aspx><http://www.stopclustermunitions.org/take-action/government/>.

FAQ: HOW TO RESPOND?

Frequently heard responses by governments and how to reply

Although an ever growing number of states have stated they consider investments in cluster munitions to be prohibited and several states have installed national legislation to ban these types of investments, some governments will remain hesitant to prohibit investments. Below follow some arguments often heard by governments on why specific legislation banning investments in cluster munitions is not feasible and how to address these.

Please also refer to the document '[Campaign Guide: financial institutions](#)' as the process to establish legislation will involve talking to banks and other financial institutions.

- 1. “The CCM is an agreement between governments, not between individuals or companies: financial institutions are responsible for implementing a policy that bans investments in producers of cluster munitions”**

How to respond:

The CCM applies to all persons and legal entities under the jurisdiction or control of the State Party, and under Article 9 a 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. By installing national legislation governments support financial institutions that have already implemented a comprehensive policy and force other financial institutions to live up to the same standard.

In cases where governments partially own financial institutions they have an even greater responsibility to ensure that these financial institutions are not undermining a government's policy to ban cluster munitions.

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

How to respond:

It is important to have separate legislation where investment in cluster munitions is explicitly and comprehensively banned. Having general rules that could (between the lines) imply a ban on investments are not a strong legal basis to ensure that it covers a prohibition on financial support to cluster munition producers. It also does not provide clear guidelines for financial institutions.

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

How to respond:

The only way to ensure that ending the funding of companies that produce cluster munitions is enforced and punishable by law is to draw up legislation specifically prohibiting investment in cluster munition producers. Likewise, within the financial sector, a number of financial institutions have showed already that it is possible to comprehensively ban investments in cluster munition producers, create a blacklist and implement their policy accordingly. Give examples of countries that have already installed legislation: Belgium, Ireland, Italy, Liechtenstein, Luxembourg, New Zealand, the Netherlands, Samoa and Switzerland.¹¹

4. **“Our country has already drawn up national implementing legislation (i.e. it is too late)”**

How to respond:

Separate legislation can be drawn up that specifically bans investment in cluster munitions. There are different examples of states that have prohibited investment in cluster munitions outside of their CCM ratification process, for example Belgium and the Netherlands.

5. **“Our government does not want to cause ‘a situation’ with the country that is producing cluster munitions”**

How to respond:

Ensuring compliance with international humanitarian law must be prioritised. The government has signed up to ensuring an end for all time to the suffering and casualties caused by cluster munitions. Under Article 21 of the CCM, *all* States Parties have an obligation to encourage States not Party to join the convention and to promote the norm set by the convention. Encouraging countries that are still actively producing cluster munitions and urging them to adhere to the global norm against cluster munitions is a treaty obligation.

Moreover, a government should follow public opinion and the spirit of the CCM on the matter, and not that of non-signatory states. There is increasing international consensus against cluster munitions as well as on investments in their production which means making sure companies who produce cluster munitions end this activity, no matter where they are based.

6. **“There is a risk that our government will be sued by a cluster munition producing company”**

How to respond:

A reason why governments are sometimes hesitant to enact divestment legislation, is the need to know which companies are involved in the production of cluster munitions. These are the companies a government would order financial institutions not to do business with.

¹¹ For more information on different divestment legislation, see: ‘PAX, Banning Investments in Cluster Munitions producers; national legislation’, available on: http://www.stopexplosiveinvestments.org/uploads/PAX_RAPPORT_Banning%20Investments.pdf.

Governments are often concerned about falsely accusing a company of producing cluster munitions, damaging that company's image and presenting factually incorrect information that could result in being sued by that company. However, there are ways in which a government can ensure themselves of adequate information. Governments could enlist the help of Socially Responsible Investments (SRI) or rating agencies to identify cluster munition producers and keep this list updated. Governments could also contact the company in question about their involvement in the production of cluster munitions and ask for its reaction.

7. “We can regulate the use of our own public funds, but we can not prohibit private investments”

How to respond:

It is inconsistent to disinvest public funds but continue to allow private investors to breach this principle. To ensure that a ban on investments is comprehensive and far-reaching, legislation must cover all types of investments: public, private as well as that of local government including councils and municipalities.

Governments can achieve this by enforcing adequate regulations and by publishing a list of the companies that produce cluster munitions that is accessible to all investors.

Governments could draw up a black list themselves or, following the Norwegian model, establish an independent (ethical) commission to monitor cluster munition producing companies and advise on which companies are acceptable or unacceptable business partners. Give examples of states that have installed legislation that extends to private funds.¹²

¹² For more information on different divestment legislation, see: 'PAX, Banning Investments in Cluster Munitions producers; national legislation', available on: http://www.stopexplosiveinvestments.org/uploads/PAX_RAPPORT_Banning%20Investments.pdf.

WANT TO KNOW MORE?

The following organisations are able to help you out with their experiences and expertise on this topic:

- **Cluster Munition Coalition**, www.stopclustermunitions.org, Mr. Firoz Alizada, firoz@icblcmc.org, +41 (0) 22 920 03 20,
- **PAX**, www.paxforpeace.nl, Ms. Suzanne Oosterwijk, oosterwijk@paxforpeace.nl, +31 30 232 05 96,
- **Profundo**¹³, www.profundo.nl, Mr. Jan Willem van Gelder, jw@profundo.nl, +31 20 820 83 20.

¹³ Profundo (the Netherlands) is a research company, meaning they can provide you with financial information but they require payment for this service.