

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	Costa Rica	*Jordan	Saint Vincent and the Grenadines
Australia	Croatia	*Latvia	Senegal
Austria	Cyprus	Liechtenstein	Seychelles
Belarus	Czech Republic	Luxembourg	South Africa
Belgium	El Salvador	Malaysia	Spain
Belize	Estonia	Mali	Sweden
Bosnia and Herzegovina	France	Malta	Switzerland
Brazil	Germany	*Mauritania	Trinidad & Tobago
Burkina Faso	Guatemala	Mauritius	Turkey
Cambodia	Honduras	Monaco	United Kingdom
Canada	Hungary	New Zealand	Yemen
Chad	Iceland	Nicaragua	Zambia
Colombia	Italy	Niger	Zimbabwe
*Cook Islands	Japan	Norway	
		Peru	



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**27 States Parties report considering
existing laws to be sufficient to give effect
to the Convention**

* = countries are new in this category

Algeria	Mexico
Andorra	Moldova
Bulgaria	*Montenegro
Central African Republic	Netherlands
Denmark	Papua New Guinea
Greece	Portugal
Guinée-Bissau	Romania
Holy See	Samoa
*Indonesia	Slovakia
Ireland	Slovenia
Kiribati	Tajikistan
Lesotho	Tanzania
Lithuania	Tunisia
FYR Macedonia	



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**35 States Parties report being
in the process of adopting
legislation to implement the Convention**

* = countries are new in this category

Afghanistan	Chile	Malawi	Serbia
Argentina	D.R. Congo	Mozambique	Suriname
Bangladesh	R. Congo	Nigeria	Swaziland
Benin	Côte d'Ivoire	Panama	Thailand
Bolivia	Djibouti	Paraguay	Togo
Botswana	Ecuador	Philippines	Uganda
Brunei	Guinea	Rwanda	Uruguay
Burundi	Jamaica	Saint Lucia	*Vanuatu
Cameroon	Kenya		
	Madagascar		



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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

Angola	Eritrea	Qatar
Antigua and Barbuda	Ethiopia	Saint Kitts & Nevis
Bahamas	Fiji	San Marino
Barbados	Gabon	Sao Tome & Principe
Bhutan	Gambia	Sudan
Comoros	Ghana	Turkmenistan
Dominica	Grenada	Ukraine
Dominican Republic	Guyana	Vanuatu
	*Iraq	Venezuela
	Liberia	
	Maldives	
	Niue	



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5 New Member States that have not yet reported

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



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

	2005	2006	2007	Oct 2007	2008
-Legislation adopted	43	48	52	52	56
-Considering whether to adopt legislation	6	5	5	5	5
-State considers its existing					
-Legislation is adequate	25	25	25	25	27
-Legislation is in process	36	32	36	37	35
-Unclear or not reported	34	34	31	31	28
-States parties that have not yet reported		6	4	5	5
Totals	144	150	153	155	156



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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. "



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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



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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



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National legislation must:

- ▶ Apply definitions consistent with those of Article 2
- ▶ Recognize the exceptions permitted under Article 3, as required



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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.*



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

	Does your legislation prohibit and provide punishment for these violations? (Art. 9)*	Is there a prohibition for <i>assisting, encouraging and inducing</i> these violations? (Art. 1 c and Art. 9)*
Use (Art. 1 a)		
Acquisition (Art. 1 b)		
Stockpiling (Art. 1 b)		
Retention (Art. 1 b)		
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))		
Development (Art. 1 b)		
Production (Art. 1 b)		



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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?



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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*



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When implementing the Convention, each State may choose from:

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



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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



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