Preventing and Suppressing Prohibited Activities: Implementation of the Convention's Article 9

International Committee of the Red Cross

Article 9 – National Implementation Measures

"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 – what does it require?

▶ 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

Minimum requirement of 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."
National legislation must:

- Define as crimes and provide penal sanctions for all activities prohibited under:
  - Article 1(a), (b): use, develop, produce, otherwise acquire, stockpile, retain or transfer
  - Article 1(c) – 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
Minimum requirement of Article 9:

Many States are now reconsidering their current legislation and realising that law that existed prior to their ratification of the Convention is not sufficient to fulfil their obligations under the Convention.

ICRC checklist:

I. Legislative measures required by Article 9

<table>
<thead>
<tr>
<th>Activity</th>
<th>Does your legislation prohibit and provide punishment for these violations? (Art. 9)*</th>
<th>Is there a prohibition for assisting, encouraging and inducing these violations? (Art. 1 c and Art. 9)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use (Art. 1 a)</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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<td>Retention (Art. 1 b)</td>
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<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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<td>Development (Art. 1 b)</td>
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<td>Production (Art. 1 b)</td>
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</tbody>
</table>
ICRC checklist:
II. Other appropriate legal, administrative and other measures

- For States Parties with stockpiles:
  - Is destruction of AP mines (Art. 4 and 5) provided for by law, regulation or by other measure?
- For mine-affected States Parties:
  - Is mine clearance and other mine action to facilitate implementation of Article 5 provided for by law, regulation or by other measure? *see GICHD Guide to Developing Mine Action Legislation*
- How would a fact finding mission (Art. 8) be facilitated: under what law, regulation, or other measure?
- 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?
- Are military doctrine and manuals and training adapted to the provisions of the Convention?

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

61 States Parties report having adopted legislation to implement the Convention (of 156)

- Albania
- Australia
- Austria
- Belarus
- Belgium
- Belize
- Bosnia and Herzegovina
- Brazil
- Burkina Faso
- Burundi
- Cambodia
- Canada
- Chad
- Colombia
- Cook Islands
- Costa Rica
- Croatia
- Cyprus
- Czech
- Republic
- Djibouti
- El Salvador
- France
- Germany
- Guatemala
- Honduras
- Hungary
- Iceland
- Ireland
- Italy
- Japan
- Jordan
- Kiribati
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malaysia
- Mali
- Malta
- Mauritania
- Mauritius
- Monaco
- New Zealand
- Nicaragua
- Niger
- Norway
- Peru
- St. Vincent and the Grenadines
- Senegal
- Serbia
- Seychelles
- South Africa
- Spain
- Sweden
- Switzerland
- Trinidad & Tobago
- Turkey
- United Kingdom
- Yemen
- Zambia
- Zimbabwe
28 States Parties report considering existing laws to be sufficient to give effect to the Convention

Algeria
Andorra
Argentina
Bulgaria
Central African Republic
Denmark
Estonia
Greece
Guinée-Bissau
Holy See
Indonesia
Lesotho
Mexico
Moldova (Rep. of)
Montenegro
Netherlands
Papua New Guinea
Portugal
Romania
Samoa
Slovakia
Slovenia
Tajikistan
Tanzania
The FYR of Macedonia
Tunisia
Ukraine
Venezuela

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

Bolivia
Brunei
Chile
D.R. Congo
Ecuador
Jamaica
Kenya
Kuwait
Madagascar
Malawi
Mozambique
Nigeria
Palau
Panama
Paraguay
Philippines
Rwanda
Saint Lucia
Sudan
Suriname
Thailand
Uganda
Vanuatu
### 18 States Parties for which no progress has been reported in implementation

- Afghanistan
- Bangladesh
- Benin
- Botswana
- Cameroon
- Congo
- Côte d’Ivoire
- Gabon
- Guinea
- Haiti
- Namibia
- Nauru
- Sierra Leone
- Solomon Islands
- Swaziland
- Timor-Leste
- Togo
- Uruguay

### 26 States for which there is no information, or the information is unclear

- Angola
- Antigua and Barbuda
- Bahamas
- Barbados
- Bhutan
- Cape Verde
- Comoros
- Dominica
- Dominican Republic
- Equatorial Guinea
- Eritrea
- Ethiopia
- Fiji
- Gambia
- Ghana
- Grenada
- Guyana
- Iraq
- Liberia
- Maldives
- Niue
- Qatar
- Saint Kitts & Nevis
- San Marino
- Sao Tome & Principe
- Turkmenistan