

Article 9 legislation

International Committee of the Red Cross



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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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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. "



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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



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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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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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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
 - » Please 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 assisting, encouraging and inducing 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:

- ▶ **2. 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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61 States Parties report having **adopted legislation** to implement the Convention (of 156)

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



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

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



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

Bolivia	Kenya	Nigeria	Saint Lucia
Brunei	Kuwait	Palau	Sudan
Chile	Madagascar	Panama	Suriname
D.R. Congo	Malawi	Paraguay	Thailand
Ecuador	Mozambique	Philippines	Uganda
Jamaica		Rwanda	Vanuatu



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18 States Parties for which no progress
has been reported in implementation

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



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

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



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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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