



**PRESS RELEASE**

**Anti-Cluster Munitions Campaigners Call on Biden White House to Answer Basic Questions Regarding Recent U.S. Transfers of Indiscriminate Cluster Munitions to Ukraine**

*For Immediate Release: Sept. 11, 2023*

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(Washington, D.C.) The steering committee of the U.S. Cluster Munition Coalition sent a letter to the Biden administration reiterating questions sent back in August, regarding the terms and parameters established for its controversial decision on July 7 to [transfer](#) significant quantities of globally banned cluster munitions (also known as "dual purpose improved conventional munition" or DPICM) to Ukraine, which is fighting to defend its territory and sovereignty against an ongoing Russian invasion.

Members of the U.S. Cluster Munition Coalition (USCMC), other civil society, humanitarian, and demining organizations working in Ukraine, along with many journalists, have sought transparency from the National Security Council (NSC), the Department of Defense, and the Department of State around several basic questions regarding the Biden administration's policy and its implementation. In numerous briefings by these agencies, administration officials have so far been unable or unwilling to answer the USCMC's questions and have failed to provide information to support their key claims.

"Officials at State and the NSC questions have acknowledged receipt of our coalition's questions, which we appreciate, but to date, they have not been substantially responsive to our specific inquiries," noted Sera Koulabdara, Chair, U.S. Cluster Munition Coalition and CEO, Legacies of War.

These questions deserve serious answers because cluster munitions are among the most harmful weapons to civilians, as they are designed to disperse indiscriminately across a wide area and often fail to explode on initial use, littering communities with unstable unexploded ordnance and causing devastating harm to civilians, and especially children, years after a conflict ends.

"We understand and recognize Ukraine's efforts to defend its sovereign territory and its people against an illegal, brutal invasion by Russia, but we believe there is no justifiable rationale for increasing the use of one of the most deadly and indiscriminate forms of conventional weapons in the war: cluster munitions," added Daryl G. Kimball, a member of the Steering Committee of the U.S. Cluster Munitions Coalition and the executive director of the Arms Control Association.

Cluster munitions have been used repeatedly and indiscriminately by the Russian military since its full-scale invasion in February of 2022, with devastating impacts on civilians and civilian objects, including homes, hospitals, and schools, according to Human Rights Watch. Prior to the U.S. transfer, the Ukrainian military had also used cluster munitions on limited occasions.

As the USCMC noted in [our June 14, 2023 letter to President Biden](#), "Any claims of potential tactical benefits of the transfer and subsequent use of cluster munitions by Ukraine in the defense of its territory, dismisses both the substantial danger that cluster munitions pose to civilians, and the international consensus on their prohibition."

The steering committee of the USCMC reiterates that "the United States decision to transfer these prohibited weapons, runs counter to the global consensus, embodied in the 123 countries who are signatories or states parties to the 2008 Convention on Cluster Munitions, which bans the use, production, transfer, and stockpiling of these weapons because they pose particular harm to noncombatants."

As our colleagues with the International Campaign to Ban Landmines and Cluster Munitions and at Human Rights Watch [have written](#), the decision by the United States to transfer cluster munitions to Ukraine has prompted criticism from more than 20 world leaders and top officials.

"We deeply regret that the United States will not be attending the 11th meeting of state parties to the Convention on Cluster Munitions in Geneva from Sept. 11-14 and stress the importance of greater transparency and accountability regarding the Biden administration's regrettable decision to send cluster munitions into a major European conflict," said Anna Phommachanthone with Legacies of War, who is attending the Cluster Munitions Convention meeting in Geneva.

Especially with a policy decision as controversial as this one, the American people, as well as U.S. allies and partners, deserve greater transparency from the U.S. government. The USCMC urgently requests that the Biden administration finally answer, in a public form, the following questions:

1. The administration claims the dud rate of the cluster munitions it has transferred is no higher than 2.35% and based on 5 tests conducted between 1998 and 2020, but it is well known that operational conditions in Ukraine [may](#) lead to much higher dud rates, which, in turn, will increase the risks to civilians and increase the burden on post-conflict munitions clearance work. To back up its claims, we call upon the Biden administration to provide:

- detailed information regarding the testing methodology for each type of cluster munition being transferred or that it plans to transfer, including how the tests were conducted,

under what conditions and on what terrain, with what sample size, and how many times they were tested.

- an explanation of how the Biden administration decided to select certain types of cluster munitions, each with specific dud rates and military characteristics, out of the U.S. stockpile.

2. Which specific types of U.S.-origin cluster munitions have been transferred to Ukraine thus far?

- In what year(s) were these cluster munitions produced?
- What is their estimated shelf life?
- What is the estimated dud rate for each type?

3. Regarding the timing and schedule of transfers of U.S. cluster munitions to Ukraine:

- What is the total estimated number of cluster munitions that the United States plans to transfer to Ukraine as "a bridge" until such time as additional unitary 155mm artillery rounds or other forms of unitary; regular, and/or precision munitions are available in greater numbers?
- How long does the administration intend to transfer additional cluster munitions to Ukraine? How and who will determine when such transfers should end on the basis of what criteria?
- Since the U.S. announcement of the decision to transfer cluster munitions, the State Department has announced four additional drawdown military assistance packages to Ukraine dated on Jul. [25](#), Aug. [14](#), Aug. [29](#), and Sep. [6](#), all of these listing 155mm artillery rounds as part of the transfer. Have each of these packages included cluster munitions, or not? If the United States has been able to send additional unitary 155mm artillery rounds, what is the justification for continuing to transfer cluster munitions, which clearly pose a greater risk to civilians in the war?
- Through which country or countries did the U.S.-supplied DPICMs transit *en route* to Ukraine? If the United States is committed to respecting the treaty obligations of European allies that are party to the 2008 Convention on Cluster Munitions, it will at least need to publicly clarify that it is not asking any CCM state party to allow its territory to be used as a transit point or to allow U.S. aircraft with suppliers of cluster munitions to overfly its territory. Will the U.S. government confirm it will respect the legal obligations of CCM states parties?

4. Regarding the conditions and restrictions set for by the U.S. on its supply of cluster munitions to Ukraine:

- What is the exact language of the commitment that Ukraine has made in terms of its use of U.S.-supplied cluster munitions? (References to [Tweets](#) from Ukrainian government officials do not provide adequate assurances on this matter.) Have these restrictions and understanding been formally agreed to through some bilateral, binding written agreement or understanding? When will that agreement be made public?
- Per a 2011 policy, past U.S. transfers of cluster munitions required a written agreement from the receiver confirming that the cluster munitions [“will only be used against clearly](#)

defined military targets and will not be used where civilians are known to be present or in areas normally inhabited by civilians.” This is more comprehensive than the statement issued by the Biden administration in July 2023 regarding claims that Ukraine has agreed to refrain from using U.S.-supplied cluster munitions in populated urban areas. Is the agreement/understanding with Ukraine consistent with the 2011 policy or is it different, and if so, how?

- U.S. officials claim that the use and location of U.S. cluster munitions by the Ukrainian government will be recorded. Has this been agreed to in writing and have Ukrainian officials provided documentation to the United States government that shows that meaningful records are being kept? Who will have access to these records? Will there be a system for an appropriate independent entity to also receive this information in order to help protect civilian protection and aid workers and mine clearance teams to reduce civilian harm?
- It has been reported that the Ukrainian Government indicated that it might disassemble the U.S.-supplied DPICMs the Ukrainian military intended to disassemble the DPICMs and mount individual bomblets on drones for deployment or booby traps. Is this repurposing or other modifications of U.S.-supplied DPICMs allowed under the terms of the U.S. transfer?
- Are there any provisions to have Ukraine return the U.S.-supplied cluster munitions if they are not used? If not, then why not?

5. Regarding the legal justification for the transfer of the cluster munitions to Ukraine, what is the wording of the language in the waiver/determination that the President is using to override Congress' ban on transferring cluster munitions with a failure rate of greater than 1%?

6. Regarding U.S. assistance for demining and related assistance to reduce civilian harm:

- Is the United States committed to fund military and humanitarian demining only? What about victim assistance and mine risk education, especially for those Ukrainians who are endangered by the U.S.-supplied cluster munitions?
- Unfortunately, demining organizations do not currently have the permissions needed to move freely within Ukraine and to import necessary equipment for their work. What assurances has Ukraine shared around facilitating access to deminers, both to remove unexploded ordnance and to monitor real-world dud rates?
- What services are in place or will be put in place in light of this decision to bring assistance to affected civilians, especially age-, gender-, and disability-sensitive services for children in areas affected by conflict?
- How will child protection be prioritized to ensure that the impacts of this decision on children are adequately accounted for, mitigated, prevented, and addressed? Will there be training for relevant personnel on children's distinct needs related to explosive weapons with wide-area impacts? Will there be dedicated child protection staff on relevant DoD teams?
- How will the mental health and psycho-social support needs of affected civilians, especially children, be addressed in light of this decision?
- How will the United States government work to ensure accountability to children in light of this decision? Will the U.S. ensure resources for monitoring and documentation of

grave violations of children's rights in armed conflict, given the links between the use of explosive weapons and laws of war violations such as the denial of humanitarian access, and attacks on schools and hospitals?

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*The U.S. Cluster Munition Coalition (CMC) works to ban cluster munitions worldwide and achieve U.S. accession to the 2008 Convention on Cluster Munitions, which 121 nations have joined. The coalition also calls for sustained U.S. government financial support for the clearance of cluster munition remnants and assistance for victims of the weapons. The CMC is coordinated by [Legacies of War](#); other members of the Steering Committee include senior representatives from [Amnesty International USA](#) \* [Arms Control Association](#) \* [Center for Civilians in Conflict](#) \* [Friends Committee on National Legislation](#) \* [Human Rights Watch](#) \* [Humanity & Inclusion](#) \* [Physicians for Human Rights](#) \* [West Virginia Campaign to Ban Landmines and Cluster Munitions](#) / [Proud Students Against Landmines](#)*