

these national standards is sometimes called into question owing to the manner in which they were promulgated and the clarity of the underlying legislation.

In most cases NMAS are recognised and used by elements of the mine action programme, but in a few cases NMAS are used only by the MAC and are neither known of, nor implemented by, other organisations (even including other government departments with responsibility for some aspects of mine action).

National programmes that include a wide variety of organisations and activities, especially those where there is a lot of directly contracted commercial activity in support of civil engineering, minerals and resources industries, are particularly susceptible to such uncertainty. Standards are developed to help sustain confidence in the quality of work. Different actors, apparently working to different standards, make it harder to maintain confidence across all activities. Legislation plays an important part in establishing the credibility, applicability and enforceability of NMAS.

## RELEVANCE OF INTERNATIONAL LAW AND STANDARDS TO THE PILLARS OF MINE ACTION

Laws and standards affect the work that is undertaken within each of the pillars of mine action. In particular:

- Land release (including survey and clearance)
- Stockpile destruction
- Victim assistance
- Mine risk education
- Information management in support of the different pillars

### Land release (survey and clearance)

Land release 'describes the process of applying all reasonable effort to identify, define, and remove all presence and suspicion of mines/ERW through non-technical survey, technical survey and/or clearance. The criteria for 'all reasonable effort' shall be defined by the NMAA'.<sup>31</sup>

The legal requirements affecting mines, UXO, cluster munitions and ERW are found in the CCW's Protocols II, II amended, and V, the APMB and the CCM.

## CCW Amended Protocol II

The first legal requirement to clear, remove and destroy mines, booby-traps and other similar devices is found in Amended Protocol II to the CCW signed in May 1996. Article 10 requires states to clear, remove and destroy all mines, booby-traps, and other devices at the end of hostilities in areas under their control. When these devices were laid by other parties, these parties shall provide information on their use so as to protect civilians from the effects of minefields, mined areas, booby traps and other devices. (See Article 9, CCW amended Protocol II).

## CCW Protocol V

Protocol V, Article 3(1) requires States Parties<sup>32</sup> to clear ERW from the territories it controls once active hostilities have ended. In areas it does not control a State Party must provide technical, material or financial assistance to facilitate the removal of ERW for which it is responsible.

This obligation applies to ERW that have existed since the entry into force of this Protocol. Assistance may be provided directly to the party in control of the affected territory or through a third party such as the UN, international agencies or non-governmental organisations.

The principal concern of Protocol V is the systematic and controlled clearance of ERW from former combat areas. This is termed battle area clearance (BAC)<sup>33</sup> – it normally involves either surface (visual) clearance or sub-surface clearance.

During clearance, States Parties and parties to an armed conflict are required to take international standards, including the IMAS,<sup>34</sup> into account.

## APMBC

Under the APMBC, each State Party is obliged to clear all anti-personnel mines in mined areas under its jurisdiction or control as soon as possible, but not later than 10 years after it becomes Party to the APMBC.<sup>35</sup> A mined area is defined as any area that is dangerous because of the presence or suspected presence of mines.

Each State Party is also obliged to ‘make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced’ and perimeter-mark, monitor and protect civilians from them. A clearance extension period of up to 10 years is allowed subject to approval by other states parties.

Although there has been considerable progress in land release since the treaty came into effect, the extent of the problem and the lack of knowledge of all known minefields may not have been sufficiently clear when the treaty was negotiated. One of the biggest challenges, in trying to meet treaty requirements on clearing contaminated areas, is the overestimation by certain states of their actual mine problem. The Ninth Meeting of the States Parties to the APMBC held in 2008 specifically stated that ‘for many States Parties reporting mined areas under their jurisdiction or control, imprecise identification and significant overestimation of the size of mined areas had led to inappropriate allocations of time and resources.’<sup>36</sup>

The result of this has been that States Parties have cleared areas that did not contain anti-personnel mines or other ERW and that did not require clearance. Three main actions can be undertaken to help mitigate this problem – land can be released through:

- Non-technical means
- Technical survey
- Physical clearance.

These methods can cancel or reclassify an area previously recorded as a mined area when there is sufficient confidence that the area does not present a risk from mines or other ERW.

## CCM

States Parties are required to clear within 10 years all cluster munition remnants in their territory, ie cluster munitions and explosive submunitions abandoned or left after a strike.<sup>37</sup>

Highlighting a certain responsibility for the users of these weapons, Article 4(4) ‘strongly encourage(s)’ a State Party that has used cluster munitions in another State Party’s territory to provide assistance with clearance, even if they were used before the Convention entered into force.

Because assistance comes in a variety of forms, including ‘technical, financial, material or human resources’, any user state should be able to provide some assistance. A user state that chooses to assist with clearance must provide information on the types, numbers, and locations of cluster munitions used. Such information can greatly facilitate and speed up clearance.<sup>38</sup>

In Article 4(3) of the CCM, there is specific reference to States Parties using international standards including IMAS to carry out clearance of explosive cluster munitions.

There are several IMAS which deal with the land release process (IMAS 07.11), non-technical survey (IMAS 08.10), technical survey (IMAS 08.20) and clearance (IMAS 09.10). There is also a technical note which deals with the clearance of cluster munitions.

## Liability issues

An important issue associated with land release efforts is the residual risk that exists following survey and clearance operations. It is always possible that one or more mines or ERW may remain after the handover of a released area. These mines or ERW may be missed during clearance or buried more deeply than the employed clearance methods were able to detect. Another possibility is that the area may have been incorrectly released by non-technical or technical survey when it was still contaminated. This last possibility underlines the importance of the NMAA having adequate national standards, including for land release. The issue then arises as to who bears the legal responsibility for any damage and/or injury caused.<sup>39</sup>

Liability in mine action has become increasingly important because of the formalisation of land release methods and procedures. In certain cases the question of liability in mine action has delayed states in addressing mined areas, and from meeting their international legal obligations. The IMAS cannot stipulate universally applicable conditions for liability for the consequences of explosive hazards discovered in areas released. These conditions have to be adapted to fit the conditions of each country, and be aligned with its existing legal rules, standards and laws.<sup>40</sup>

## Land rights

Land rights in conflict and post-conflict contexts are an increasing area of concern in land release. Conflict often causes significant changes to a country's land tenure regime and administration, threatening land rights even after the conflict has ended.

Often, women, internally displaced people (IDPs), returning refugees, migrants and farm labourers are especially vulnerable. The reasons for this include:

- unclear land titling procedures;
- deliberately or accidentally destroyed land records;
- inadequate state capacity to respond to a mass return of IDPs and refugees;
- a lack of, or ineffective, programmes to inform people about land rights;

- an increased demand for arable land;
- the complex, time-consuming and expensive nature of the private registration of land tenure; and
- gender inequalities in land rights.

Secure land rights are a critical issue when it comes to humanitarian response, sustainable peace-building and longer-term economic recovery, particularly in countries where a significant proportion of the population relies on agriculture as its main source of livelihood.

The situation can be even more complex in mine-affected countries, as mine/ERW contamination may cause land to be inaccessible for decades.

Some of the steps they can take to address land rights issues include:

- technical assessment of land issues;
- training of field staff; and
- a review of the national standards and SOPs.

To limit land tensions related to mine action operations mine action organisations can coordinate with humanitarian and development organisations that deal with conflict-affected populations, and national and international organisations dealing with land issues.

## **Stockpile destruction and ammunition safety management**

The legal obligations of states to destroy their stockpiles of anti-personnel mines and cluster munitions are outlined in the APMBC and the CCM. The CCW Protocol V addresses munitions management in its technical annex and the IMAS and the IATG deal with various aspects of stockpile destruction, safe storage and the transportation of explosives.

### **CCW Protocol V**

Protocol V does not require the destruction of stockpiles; although it does provide recommendations on how best to manage ERW stockpiles.<sup>41</sup>

States are encouraged to apply best practice with respect to storage, transport, field storage and handling of explosive ordnance in order to ensure its long-term reliability. Advice is also given on the proper training of personnel involved in the

handling, transporting and use of explosive ordnance and in the future production of these materials.<sup>42</sup>

## APMBC

The APMBC<sup>43</sup> requires states to destroy all stockpiles of anti-personnel mines that they own or which are in their possession or under their jurisdiction or control 'as soon as possible but not later than four years' after the state adheres to the APMBC. This deadline is not extendable.

Under Article 3, States Parties may retain and transfer 'the minimum number absolutely necessary' of anti-personnel mines for the specific purposes of 'the development of and training in mine detection, mine clearance or mine destruction techniques.' This is intended to promote the APMBC's humanitarian objectives, and does not represent a loophole, provided the provisions of Article 3 are applied in good faith.

States Parties are required to report on the conversion or decommissioning of their anti-personnel mine production facilities.

## CCM

The CCM also requires stockpile destruction as soon as possible but not later than eight years after entry into force for the state party.

In spite of the difficulty of destroying cluster munitions, there has been substantial progress as of January 2014, with the destruction of 68 per cent of cluster munitions and 60 per cent of explosive submunitions declared as stockpiled by States Parties.<sup>44</sup> Similar to the APMBC, States Parties can retain a limited of cluster munitions for purposes of training in and development of detection, clearance, destruction techniques and counter-measures. (Article 3).

## IMAS

Series 11 of the IMAS covers stockpile destruction. IMAS 11.10 to 11.30, include a guide for stockpile destruction, open burning and open detonation operations and national planning guidelines for stockpile destruction. IMAS 7.42 deals with the monitoring of stockpile destruction and IMAS 10.50 with the storage, transportation and handling of explosives.

## IATG

The IATG also address ammunition safety and disposal:

- IATG 4.10 on Explosive Facilities (storage) (field and temporary conditions);
- IATG 5.10 through 5.60 on Explosives Facilities (storage) (infrastructure and equipment);
- IATG 6.10 through 6.70 on Explosive Facilities (storage) (operations);
- IATG 7.10 on Safety and Risk Reduction;
- IATG 8.10 on Transport of Ammunition; and
- IATG 10.10 on Ammunition Demilitarization and Destruction.

## Risk education

Mine risk education (MRE) refers to educational activities that aim to reduce the risk of injury from mines and unexploded ordnance by raising awareness and promoting behavioural change through public-information campaigns, education, training and liaison with communities.

Both the APMBC and the CCM oblige all States Parties to contribute to efforts to minimise the suffering of civilians. According to Article 6 of the APMBC on International Cooperation and Assistance, each State Party must support mine awareness programmes, which reduce the risk to civilians by teaching them about the dangers of landmines. The CCM, Article 4 provides that states shall 'conduct risk reduction education to ensure awareness among civilians living in or around cluster munitions contaminated areas of the risks posed by such remnants.' CCW Amended Protocol II (Art. 9) and Protocol V (Art 5) also require precautionary measures to be taken.

IMAS have a standard for mine/ERW risk education.<sup>45</sup> In addition, UNICEF has developed international guidelines for landmine and unexploded ordnance awareness education, focusing on issues which are central to mine/UXO and ERW awareness. The guidelines cover four main areas:

- Feasibility studies
- Needs assessments
- Programme planning
- Monitoring and evaluation.

The guidelines emphasise how MRE should be treated as an integral part of overall mine action planning and implementation, not as a stand-alone activity.<sup>46</sup>

## **Victim assistance**

There are four legal documents that provide states with legal obligations to provide assistance to persons with disabilities.

### **APMBC**

The APMBC (Art. 6) – ‘States in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programmes.’

### **CCW Protocol V**

The CCW Protocol V (Article 8) – ‘Parties in a position to do so shall provide assistance for the care and rehabilitation and social and economic reintegration of victims of explosive remnants of war.’

Protocol V also has a plan of action on victim assistance which closely follows the CCM. It is not legally binding in itself but is an important reference as it outlines specific action on victim assistance.

### **CCM**

The CCM has a separate Article (Art. 5) addressing victim assistance which stipulates that States must provide ‘age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.’ States are obliged to assess the needs of cluster munition victims and develop, implement and enforce any necessary national laws and policies.

### **Convention on the Rights of Persons with Disabilities (CRPD)**

The CRPD provides an important basis for the pursuit of the victim assistance aims of the APMBC, CCM and CCW, with the parties to each of these treaties having recognised the importance of a rights-based approach to ‘victim assistance.’ The purpose of the Convention is clearly stated in Article 1, ‘to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.’<sup>47</sup>

The CRPD does not identify new rights, but provides guidance on how to ensure that persons with disabilities can exercise their existing rights without discrimination. This includes the rights of survivors of mines and ERW. In Article 4 of the Convention, states are obliged to implement legislation that guarantees the rights enumerated in the Convention and to abolish all legislation and regulations that discriminate against persons with disabilities.

The Convention also provides for states to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and promote respect for their inherent dignity. States are required to ensure that persons with disabilities have full and fair access to:

- education at all levels;
- healthcare and rehabilitation;
- vocational training;
- public facilities;
- employment opportunities and entrepreneurship; and
- a range of other social and economic rights.

The Convention also provides in Article 11 that 'States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.'

## REPORTING AND INFORMATION MANAGEMENT

Information management is an integral part of all activities in mine action, cluster munitions and ERW.

Efficient and accurate information management ensures that national authorities, mine action managers and other stakeholders have access to optimal information when making decisions.

Without accurate information for land release, stockpile destruction, victim assistance and mine risk education, it is difficult to carry out the activities required under the various treaties and conventions, and states are unable to accurately report on the progress being made.