

# GICHD Insights

## INTEGRATING LIABILITY INTO LAND RELEASE FRAMEWORKS

### INTRODUCTION

Liability is an important consideration during land release operations and the residual contamination management (RCM) phase that follows. In the International Mine Action Standards (IMAS), liability refers to any legal responsibility, duty or obligation that a country, organization or individual may have.<sup>1</sup> Liability in relation to an adverse event, such as an accident or the discovery of a missed item in an area, is normally linked to non-compliance with an agreed policy or procedure.<sup>2</sup> The risk – or perceived risk – of facing financial claims or legal charges in case of an adverse event, such as an explosive ordnance (EO) accident in a released area, could potentially contribute to hesitance in accepting the handover of land. The effective management of liability requires a holistic integration of international and national legal frameworks, clear and up-to-date national mine action standards (NMAS), and the use of practical tools throughout the lifecycle of a mine action programme, including the residual contamination management phase.

Liability in mine action is a critical but often overlooked aspect of land release and residual contamination management. Clear legal responsibilities among national mine action authorities (NMAAs), demining organisations<sup>3</sup>, governments, donors, and local communities are essential to maintain accountability and safeguard affected populations. Unclear liability can expose demining organisations, and governments to legal and financial risks, while also leaving local communities vulnerable to accidents with limited avenues for redress. Liability concerns – such as the financial or legal consequences of EO accidents in released land – can create doubt about releasing land back to productive use and complicate long-term risk management. All reasonable effort (ARE) defines the standard for identifying, defining and addressing EO contamination. It directly shapes liability by establishing whether actions taken were sufficient and justifiable. Failure to meet ARE may result in legal and financial repercussions for demining organisations, governments and donors, particularly in cases of residual contamination or accidents.

Given each country's distinct set of international obligations and national legal frameworks, this issue brief aims to distil key responsibilities and obligations – whether coming from laws, policies, standards or guidelines – into clear, actionable steps that could reduce the possibility of future liability claims. The proposed checklists aim to convert intricate requirements into practical steps set to help NMAAs, demining organisations and other stakeholders to integrate liability considerations into the effective management of their operations. This includes cancellation, reduction and clearance of land, as well as management of residual contamination.



Visitors signing a visitors' log before entering a mine field, Ukraine 2024  
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## LIABILITY UNDER INTERNATIONAL AND NATIONAL FRAMEWORKS

The Convention on Cluster Munitions and the APMBC - two of the key international instruments relevant to mine action - do not address the question of liability. However, both Conventions stipulate the obligation and responsibility of the State to clear all anti-personnel mines and cluster munitions respectively on the territory under its jurisdiction or control within a given period of time as stipulated in Article 4.1 of the CCM<sup>4</sup> and Article 5 of the APMBC<sup>5</sup> to safeguard civilians from potential harm. Under the Convention on Certain Conventional Weapons (CCW), Amended Protocol II<sup>6</sup> and Protocol V<sup>7</sup> also include clearance obligations, respectively in Articles 10 and 3.

At the national level, the legal framework governing liability is built on a hierarchy of norms that integrate national legislation with international obligations, aligned to meet each country's specific legal requirements. For example, in countries like Albania<sup>8</sup> and Mauritania,<sup>9</sup> international legal obligations under the APMBC are embedded into national frameworks to lay out general responsibilities. Determining liability is fundamentally governed by each country's national legal system, with investigations serving as the mechanism to establish whether there was any negligence that entails liability.

Clarifying the respective responsibilities of the NMAA, demining organisations and other stakeholders is an essential aspect of liability management. This is specifically important when managing liability during the different phases of the land release process. NMAS should detail these responsibilities and clarify the transfer of liability from the demining organisations to the State upon completion of their land release tasks, provided they have applied ARE in compliance with national requirements.



The GICHD and EOD police set up IM systems and processes in the Solomon Islands, 2024 © GICHD

## LIABILITY IN NATIONAL STANDARDS, POLICIES AND OTHER GUIDANCE

Various legal instruments may address liability, with their applicability and legal status determined by their classification and recognition within the legal framework of each jurisdiction. Depending on the national legal system, liability for negligence, willful misconduct or other breaches of duty is determined through principles specific to that legal framework.<sup>10</sup> For instance, common law systems rely on judicial precedents and concepts like duty of care, while civil law systems focus on codified statutes and predefined obligations. Islamic law and other legal traditions may apply their own specific standards and interpretations.<sup>11</sup> Each system addresses liability in a unique way, shaped by its legal principles, historical context and societal priorities.

NMAS, policies and guidance frameworks could provide clarity on responsibilities and outline procedures for managing risks, which is critical for addressing liability in case of an accident or discovery of a missed item. Whether through specific provisions in NMAS, national mine action policies or organizational practices, these tools ensure that responsibilities are clearly defined and managed in alignment with international and national obligations and good practice.

Liability in mine action could be shaped by each country's NMAS, which define the responsibilities of demining organisations, national authorities and other stakeholders. The following table provides a comparative overview of how NMAS in Jordan, the Lao PDR, Lebanon and Mozambique assign and manage liability, highlighting key differences in responsibility determination, procedural safeguards and residual risk management.

## Liability in National Mine Action Standards

Aspect	Jordan <sup>12</sup>	Lao PDR <sup>13</sup>	Lebanon <sup>14</sup>	Mozambique <sup>15</sup>
<b>Assigning liability</b>	Once the National Committee for Demining and Rehabilitation (NCDR) formally accepts cleared land, the demining organization no longer holds liability for residual hazards. At handover, liability is transferred to the government.	Liability is only assigned after a formal investigation (per NMAS Chapter 23) confirms that clearance requirements were not met. This could lead to re-clearance of affected areas.	Liability is only assigned after an independent investigation determines that an implementing agency (demining organization) did not follow the land release process or engaged in misconduct. If ARE was applied correctly, no liability is assigned and residual risk is considered tolerable.	Mozambique's NMAS does not assign residual liability to the national authority (IND), meaning that demining agencies retain liability for their work. Operators must have risk management policies in place, and liability depends on national law and contractual agreements.
<b>Role of NMAS in defining liability</b>	Jordan's NMAS automates liability transfer via procedural handover. Once land is officially handed over to NCDR, the operator is absolved of any further responsibility.	Lao PDR's NMAS does not apportion compensation liability – it only mandates re-clearance of affected land if an organization is still operational. Any further liability is determined under Lao PDR's national law.	Lebanon's NMAS defines liability in relation to ARE compliance – if ARE is demonstrated through proper documentation, legal responsibility is avoided. If an implementing agency operates without accreditation, it may be held legally responsible.	Mozambique's NMAS does not place liability on the national mine action authority (IND). Instead, demining agencies are responsible for their own risk management policies in accordance with Mozambique's law.
<b>Procedural mechanisms in NMAS</b>	Jordan's NMAS mandates strict documentation, hazard marking and Internal and external Quality Assurance (QA) reports before land handover. Once land is formally handed over, operator's liability ceases.	Lao PDR's NMAS requires an investigation before assigning liability. If NMAS standards were not met, the consequence is re-clearance.	Lebanon's NMAS mandates detailed documentation of land release decisions to serve as legal protection. Investigations determine liability based on whether ARE was properly applied.	Mozambique's NMAS states that post-clearance documentation must confirm adherence to clearance standards. Operators must maintain risk management policies.
<b>Residual risk</b>	Residual risk is formally transferred to the government at handover.	Operators are only liable for re-clearance if a formal investigation confirms that they failed to meet NMAS standards. Any additional liability must be determined through national legal processes or contractual agreements.	If land is cleared in accordance with NMAS, residual risk is accepted as inevitable and tolerable. Liability is only assigned if an IA operated without accreditation.	Mozambique's NMAS requires that demining organisations assume responsibility for the quality of their clearance work. IND does not assume residual liability, meaning operators may still face legal claims depending on national law.





An NTS team reviewing a map, Thailand 2025 © TMAC

## CLARIFYING LIABILITY: HOW IS RESPONSIBILITY SHARED BETWEEN NMAAS AND DEMINING ORGANISATIONS?

As per the IMAS, addressing EO rests primarily with the relevant states represented by national authorities. States also bear the overall responsibility for victims in all areas impacted by EO in known and unknown areas, including in areas subjected to non-technical survey (NTS), technical survey (TS), or clearance.

The distinct set of legal obligations determine how liability is defined and managed in mine action programmes. NMAS, which are often guided by good practice codified in the IMAS, should reflect national and international legal obligations. NMAS play a critical role in codifying minimum requirements for demining organisations and defining responsibilities for stakeholders involved in mine action operations.

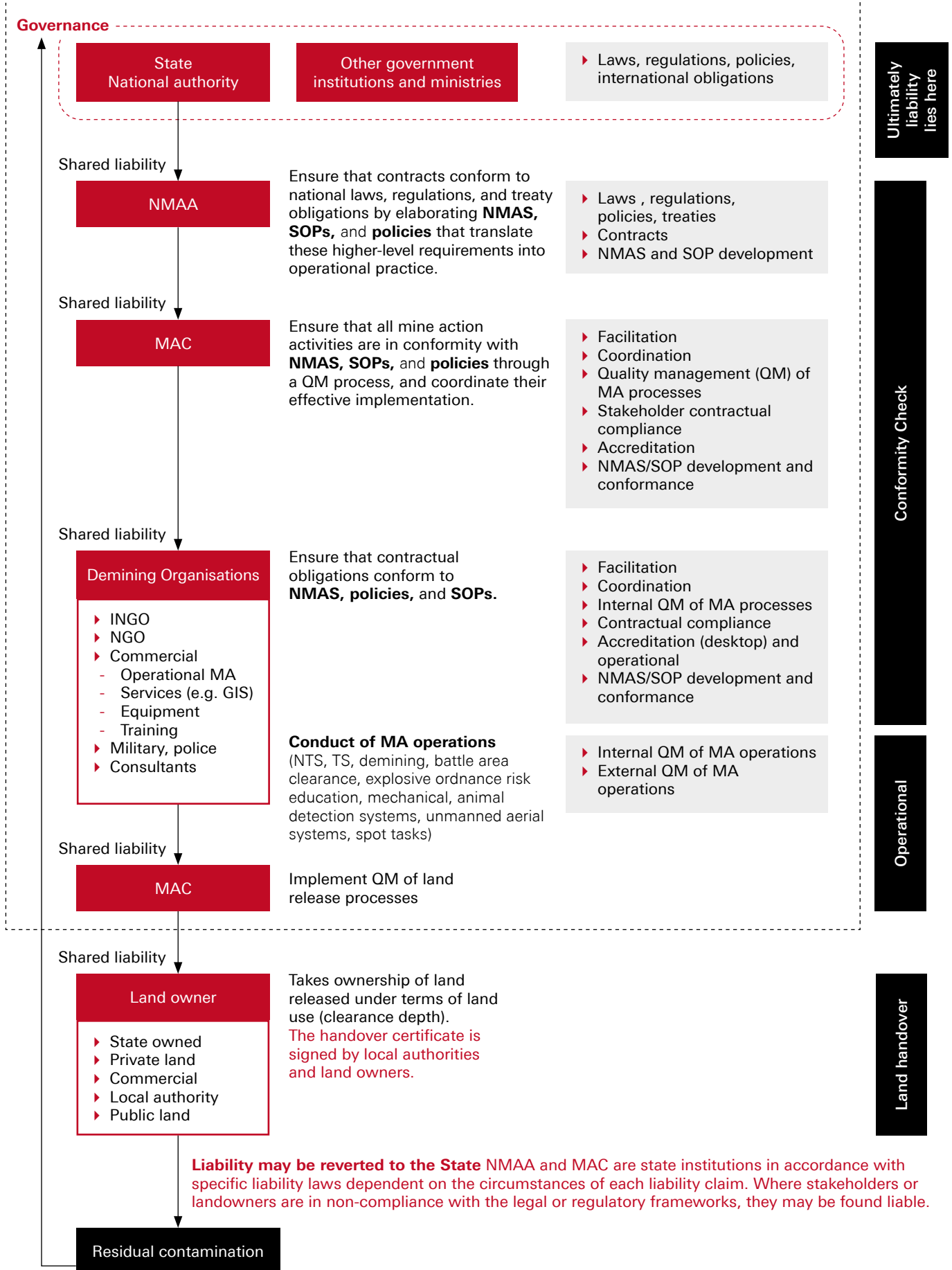
A key component of national liability frameworks is the principle of ARE. It is the responsibility of NMAAs to define and document the acceptable level of effort that must be made, according to their local context, through their NMAS and in compliance with any international obligations they may have.

Contracts between mine action authorities and demining organisations must specify the scope of work, applicable standards for land release, and the process for transferring liability after the handover of land. It is the responsibility of the demining organisations to comply with these specifications.

The following flowchart illustrates an example of the distribution of liability between the state, represented by its NMAA and mine action centre (MAC), demining organisations and other stakeholders. Various laws, regulations, NMAS and contractual agreements define and govern the responsibilities of different stakeholders throughout land release operations.

# The Liability Flowchart

## Land release process



**Liability may fall on all parties or be reverted to the State** NMAA and MAC are state institutions in accordance with specific applicable laws and policies dependent on the circumstances of each liability claim. Where stakeholders or landowners are in non-compliance with the law, they may be found liable.



## LAND RELEASE PRODUCTS: CHECKLISTS FOR CANCELLED, REDUCED AND CLEARED LAND



Whether the product of NTS is cancelled land or the identification of suspected or confirmed hazardous areas (SHA/CHA), or TS leads to land reduction, all decisions must be well documented with relevant information sources clearly identified. Gender, diversity, equality and inclusion considerations should be integrated into assessments and stakeholder engagement to ensure inclusive and representative processes. Information management systems are essential, providing a centralized and transparent framework to record, analyse and share data, ensuring accountability and facilitating informed decision-making.

To strengthen liability management in mine action, stakeholders should adopt a structured approach that clarifies responsibilities, ensures compliance and mitigates legal risks. This can be done across several work areas.



Local community and landowner begin briefed as part of hand over of cleared minefield, Cambodia © GICHD



NTS teams interviewing a local guide to find evidence of hazardous areas, Colombia © GICHD

### Updating NMAS and clarifying roles and responsibilities (responsibility: NMAAs)

- ▶ Are the NMAS regularly reviewed and updated to reflect best practices and operational realities?
- ▶ Do NMAS clearly define the roles and responsibilities of national authorities, demining organisations and other stakeholders in land release processes?

### Quality assurance and decision-making (responsibility: national authorities, demining organisations)

- ▶ Were QA and quality control (QC) measures properly applied?
- ▶ Was the decision to cancel, reduce or clear land based on thorough research, accurate data and reliable evidence?

### Stakeholder engagement and communication (responsibility: national authorities, demining organisations, local communities, landowners)

- ▶ Were local communities, landowners and authorities properly informed of land release decisions?
- ▶ Were diversity and inclusion considerations taken into account?

### Risk assessment and monitoring (responsibility: national authorities, demining organisations, local communities, landowners)

- ▶ Were potential risks, including residual contamination, identified and managed?
- ▶ Are there monitoring mechanisms in place to reassess areas if new evidence of contamination emerges?

### Proper documentation (responsibility: national authorities, demining organisations, legal entities)

- ▶ Were land release decisions clearly documented and reported?
- ▶ Are there legal protections or agreements in place for demining organisations in case of future EO discoveries or accidents?

### Post-land release mechanisms (responsibility: national authorities, demining organisations, local communities, landowners, reporting mechanisms)

- ▶ Are there mechanisms for reporting and investigating new EO findings?
- ▶ Are stakeholders and communities informed, ensuring that land remains safe for future use?





A deminer clearing in a coastal area, Sri Lanka 2024 © GICHD



A clearance site, Sri Lanka 2024 © GICHD





Site brief as part of internal quality assurance, Cambodia 2014 © GICHD

## HOW IS LIABILITY ADDRESSED IN THE RESIDUAL CONTAMINATION PHASE?

Residual contamination management (RCM) includes the strategies, processes and capacities used to manage EO risks that remain after the formal completion of LR operations. This involves the identification, documentation and response, including investigation on newly discovered EO threats, newly contaminated areas or in the event of EO-related incident or accident. RCM is closely tied to liability, as states and demining organisations must ensure that risks are minimized through the application of ARE.

The following checklist outlines practical considerations for NMAAs and relevant national stakeholders to address liability effectively during the planning and implementation of RCM:

- ▶ Ensure all survey and clearance operations were conducted in accordance with applicable standards.
- ▶ Implement and document QA/QC processes to minimize residual risks.
- ▶ Maintain comprehensive records of all cancellation, reduction and clearance activities and boundary definitions.
- ▶ Establish a system for reporting and documenting any residual contamination.
- ▶ Implement strategies for ongoing monitoring of released land to capture residual contamination information.
- ▶ Educate communities on reporting procedures if they encounter EO after land release.
- ▶ Ensure effective collaboration between NMAAs and all other relevant stakeholders.
- ▶ Check if there is any insurance coverage from demining organisations post land release.

- ▶ Develop clear RCM plans to respond to incidents.
- ▶ Ensure that emergency response units are trained and ready to handle any discovered EO post completion.

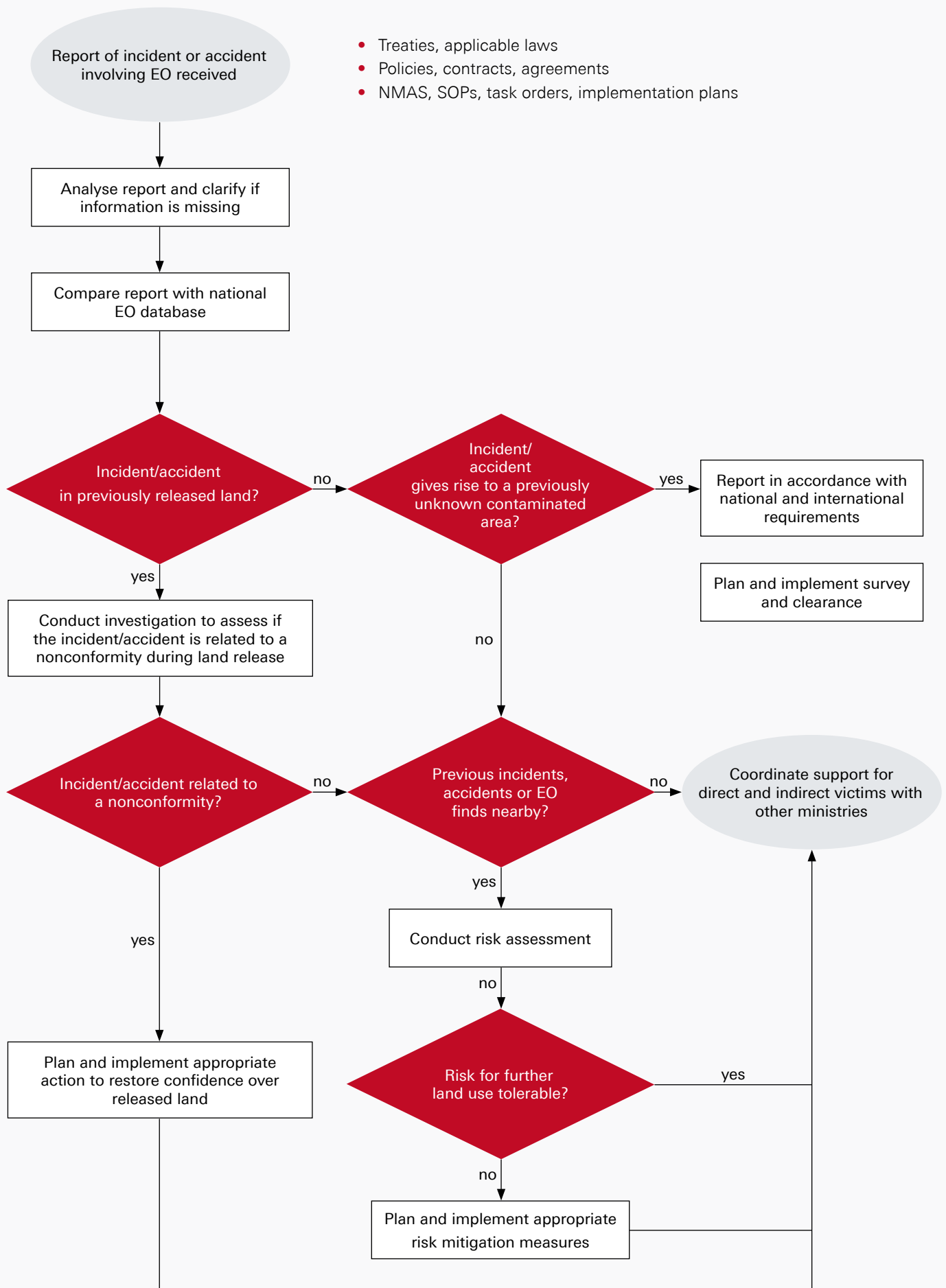
It is important to develop a country-specific, structured framework for managing EO accidents/incidents in the residual phase. This includes decision-making steps required to assess, address and mitigate risks associated with EO while ensuring compliance with national and international standards. The following flowchart outlines how incidents or accidents reports are assessed to determine whether they result from a nonconformity or new contamination. It outlines risk mitigation, investigation and victim assistance within a structured RCM approach.

Liability in mine action is not just a legal afterthought – it directly impacts the confidence of stakeholders, demining organisations, donors and communities in the land release process. If roles and responsibilities are not clearly defined, or if liability is not properly assigned, it can stall operations, create unnecessary risks and leave key actors vulnerable to legal and financial fallout.

The reality is that liability cannot always be avoided, though it can be managed. Clear documentation, a solid application of ARE and an evidence-based approach to land release ensure that, when incidents happen, they are assessed fairly and within a structured framework. The aim is not just to assign fault but to create a system where risks are minimized, decisions are evidence-based and communities can trust that released land is safe for use.



## Liability and Residual Contamination Management



## **ANNEX – KEY LIABILITY CONSIDERATIONS FOR MANAGING AND MITIGATING RISKS IN MINE ACTION OPERATIONS (NON-EXHAUSTIVE LIST)**

This annex proposes a checklist for addressing liability through a proactive approach, translating general frameworks into applicable steps to ensure safety, accountability and redress. The application of these checklists can help NMAAs, demining organisations, and other stakeholders in understanding the different frameworks that surround liability and take active steps to ensure taking all reasonable steps to minimize the risk of future incidents/accidents.

### **Guiding principles, norms and standards**

1. Which national and international legal frameworks does liability refer to, and how are these frameworks applied?
2. Are NMAS aligned with applicable laws and regulations?
3. Are duty of care obligations recognized, and what are the national legal sources for these obligations?
4. Does the liability framework include explicit references to ARE and risk management?
5. Are the rights and needs related to redress addressed? If so, how?

### **Responsibilities**

1. Which government institutions and/or ministries are involved in clarifying and formalizing responsibilities and authority?
2. Are the responsibilities of the State clearly defined ?
3. Are the responsibilities of the NMAA, NMACs and demining organisations clearly defined?
4. Are the responsibilities of local authorities clearly defined ?
5. Are the responsibilities of local communities and their members clearly defined?
6. Are the various responsibilities communicated to all parties involved, including beneficiaries and local communities, and by which bodies?

### **All reasonable effort**

1. Are the responsibilities and obligations that constitute ARE – or relevant NMAS or guidance related to ARE – clearly stated or referenced?
2. Are the relevant provisions of ARE specified in contracts and tasking, and are they formulated as responsibilities and contractual obligations?
3. Are the responsibilities related to ARE communicated to local communities, and are the roles of local communities and their leaders in implementation clearly defined?

4. Do the responsibilities associated with ARE take into account each person's identity, background, and gender within the local community?
5. Are local communities consulted in the definition of ARE for a given area or task?
6. How, and by which authority, is the implementation of ARE responsibilities verified and enforced?

### **Risk management**

1. Is there a coherent and systematic approach to risk management, and is liability consistently applied?
2. How, and by which entity, is liability for risk management obligations defined?
3. Does the approach to risk management result in measures that are reasonable, practicable and proportional, and how does liability factor into this?
4. Are risk management liabilities specified in contracts, and are roles and responsibilities clearly defined and shared among stakeholders?
5. Are people in local communities, considering each person's identity, background, and gender, consulted and able to participate in risk management to mitigate liability?
6. How, and by which authority, is liability for due risk management verified and enforced?

### **Quality management**

1. Ensure quality requirements are specified and documented in contracts, standards and SOPs. Use the IMAS and national standards as references.
2. Incorporate requirements from stakeholders (beneficiaries, government bodies, and donors) into planning and documentation.
3. Implement controls for all steps in the land release process, including NTS, TS and clearance.
4. Conduct routine and ad hoc audits as per NMAS on QM to assess compliance with requirements and manage liability.
5. Record results of QA/QC checks, audits and corrective actions in a transparent, accessible manner to increase confidence in the safety, efficiency and effectiveness of mine action services and products
6. Maintain accurate, traceable records of released land, including maps, team assignments and equipment logs.
7. Document and trace any incidents of residual contamination to assess causes and responsibilities and identify potential systemic issues.
8. Implement measures to mitigate identified risks, including clear demarcation of hazardous areas and preventive communication with affected communities.



9. Gather and securely store evidence to support decision-making and to provide documentation in cases of disputes or incidents.
10. Verify competencies of staff involved in NTS, TS, clearance and QA processes, retaining records as evidence of competence.
11. Implement post-release monitoring to track the status of released land and identify any issues of residual contamination early.
12. Regularly collect feedback from stakeholders and beneficiaries to identify any concerns about residual contamination.
13. Regularly review liability cases and risk factors to enhance QM procedures and documentation practices.

## **Authority**

1. Which authority can enforce which responsibility?
2. Is authority clarified in policies, rules and regulations, and contracts?
3. Is there an authority that has the power to enforce the implementation of risk mitigation measures and compliance with such measures?
4. Is there an authority that, when needed, has the means to impose sanctions in cases of non-compliance?
5. Has a formal state representative or an informal local representative been designated to ensure compliance by the local community?
6. Which state or non-state entities are, or should be, involved in the assignment of authority?

## **Investigation**

1. Who is responsible for conducting investigations, and how is the investigating authority determined (e.g. NMAA, demining organisation, or independent body) - see IMAS 10.60.
2. In which cases are external or third-party experts involved in the investigation, and how are their roles defined in accordance with national legal and regulatory frameworks?
3. How can a potential conflict of interest be resolved and managed?
4. Can the NMAA require an individual and/or demining organisation to provide information and facts?
5. Under which conditions are the results of an investigation initiated by the NMAA or other relevant authority can be shared, and with whom?
6. Can an individual, demining organisation or donor ask for an investigation to be conducted by the NMAA or other relevant authority? If so, what is the process?
7. Does an affected individual, or a member of the family, have access to the report of an investigation?

8. What are the criteria for the initiation of an investigation by an insurer? Are there reasons why, and/or conditions under which, an insurer would forego the investigation?
9. Can an insurer request and/or require the NMAA to share with it the report of an investigation?
10. Can an individual request or require that the NMAA share the report of an investigation in the event of civil proceedings?
11. Under what conditions, and according to what criteria, will a state authority such as the police or the judiciary initiate an investigation?
12. Is the NMAA obliged to provide the report of an investigation if asked by a state authority?
13. Can a NMAA invoke privileges that allow it to redact or refuse the sharing of such a report?
14. What type of investigation is foreseen in the case of a harmful event relating to residual risk?

## **Redress and victim assistance**

1. Does the NMAA have policies, measures and provisions in place relating to mine action incidents that affect staff or others in a contractual relationship?
2. Does the NMAA have policies, measures and provisions in place that address incidents involving EO affecting individuals outside of a contractual relationship, for example visitors or members of the local community?
3. Does the NMAA address in its policies and measures the rights and needs of victims in relation to harmful events that occur outside operations, for example following land release or in the context of residual contamination management?
4. Are there specific laws or regulations on victim assistance (VA) and a VA programme to assist victims of EO? If so, how is it administered and financed, and by whom?
5. Are there national laws and policies and general provisions, social programmes and pension schemes that compensate injuries and/or permanent disabilities? If so, which ones?
6. Are MA organization staff members, local communities and individuals affected by an EO accident covered by such provisions and do they have access to them?
7. What are the criteria for being able to file a claim for redress? Where does it need to be filed and by whom? Who takes a decision regarding the claim? What are the procedures to be followed? How is compensation managed?
8. Are there any alternative redress mechanisms?
9. Which government authorities and/or ministries should be involved in clarifying and formalizing options for redress and related measures?

*This issue brief was authored by Kinda Samra.*

## Endnotes

- 1 GICHD, [IMAS 07.11, Land release](#), 2019.
- 2 Ibid.
- 3 Demining organisation refers to any organisation (government, NGO, military or commercial entity) responsible for implementing demining projects or tasks. The demining organisation may be a prime contractor, subcontractor, consultant or agent. "International Mine Action Standards (IMAS), IMAS 04.10: Glossary of Mine Action Terms, Definitions and Abbreviations, Edition 2, Amendment 12"  
For the purpose of this issue brief, it includes organizations which conduct NTS, TS and/or clearance.
- 4 *Convention on Cluster Munitions*, <https://www.clusterconvention.org/convention-text/>.
- 5 *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, accessed 13 March 2025. [www.apminebanconvention.org/en/the-convention/history-and-text/](http://www.apminebanconvention.org/en/the-convention/history-and-text/).
- 6 ICRC, [Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as Amended on 3 May 1996 \(Protocol II to the 1980 CCW Convention as amended on 3 May 1996\)](#), 1996.
- 7 ICRC, [Protocol on Explosive Remnants of War \(Protocol V to the 1980 CCW Convention\)](#), 2003
- 8 Republic of Albania, Law No. 9092, dated 3 July 2003, for the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.
- 9 Mauritania, Loi n°2008-06 relative à l'interdiction des mines antipersonnel en Mauritanie, enacted under the framework of the Ottawa Convention of 1997. Available at <https://ihl-databases.icrc.org/en/national-practice/loi-no-2008-6-relative-linterdiction-des-mines-antipersonnel-en-mauritanie>.
- 10 GICHD, [A Guide to Mine Action](#), 2014. Available at <https://www.gichd.org/fileadmin/uploads/gichd/Media/GICHD-resources/rec-documents/Guide-to-mine-action-2014.pdf>
- 11 Ibid.
- 12 NCDR, *Jordan National Mine Action Standards, Chapter 11: Post-Clearance Procedure*, 2009.
- 13 Lao PDR, *Lao PDR National UXO/Mine Action Standards (NS), Chapter 11: Released Land Handover Procedures*, 2007.
- 14 Lebanon Mine Action Center, [NMAS 07.11: Guide for land release](#), 2020.
- 15 National Demining Institute of Mozambique, *NS 08.30: Post-Clearance Documentation*, 2002.

The GICHD works to reduce risks to communities stemming from explosive ordnance, with a focus on landmines, cluster munitions, explosive remnants of war, and unsafely and insecurely managed conventional ammunition. As an internationally recognized centre of expertise and knowledge, the GICHD helps national authorities, international and regional organisations, NGOs and operators in around 40 affected countries and territories to develop and professionalize mine action and ammunition management.

Through its work, the GICHD strives for the fulfilment of international obligations, for national targets to be reached, and communities' protection from and resilience to explosive harm to be enhanced. These efforts support sustainable livelihoods, gender equality and inclusion. They save lives, facilitate the safe return of displaced populations, and promote peace and sustainable development.



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