

CMC Guiding Principles for Implementing Article 4 of the Convention on Cluster Munitions

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The context

The aim of every cluster munition clearance programme is to return land to the civilian population as quickly and safely as possible. States Parties have an obligation under Article 4 of the Convention on Cluster Munitions to identify and clear all areas with cluster munition remnants in the shortest possible delay. The Cluster Munition Coalition (CMC) therefore encourages States Parties to use the most efficient and effective methodologies to meet its legal obligations.¹

The general steps outlined below are based on lessons learned from both demining and battle area clearance over recent years. The steps suggested are also based on lessons learned from the Mine Ban Treaty with regards to the importance of establishing a good and concrete definition of the problem in affected countries. The CMC calls on states to review their approach to the identification and subsequent release of cluster munition-affected land of cluster munition remnants and, if necessary, adjust the methodologies employed along the lines suggested here in order to determine the most efficient system for their specific situation.

Identifying contaminated areas

A baseline assessment of the problem is a first priority for affected states, and a key lesson to be learned from the implementation of the Mine Ban Treaty. Since States Parties to the Convention on Cluster Munitions have an obligation to “make every effort” to identify cluster munition affected areas under their jurisdiction or control and to destroy all remnants within them, sufficient resources must be put into properly identifying those areas before clearance begins. Central to such an approach is focused non-technical and technical survey to define the “footprint” or the Defined Hazardous Area (DHA).

A desk assessment of available information should be conducted to establish a baseline understanding of the problem of cluster munition remnants (CMR). There is typically more data available on the problem of CMR than for landmines, so the desk assessment is a very important part of the process. The basic principle is that a desk cluster munition assessment should be conducted before any on-location survey is initiated. In many countries there is a lot of information about the use of cluster munitions, including: bombing data, studies of conflict patterns, the type(s) of cluster munitions used, victim data, and the general “footprint” of the specific cluster munition. Gathering and assessing these data sets leads to an initial understanding of the problem, helps to clean up information stored in the national database, and offers a starting point for more survey.

¹ This text is based on a recent NPA policy paper.

Non-technical survey (NTS)² should then normally be used to better identify the initial “strike footprint” estimated in the desk assessment by gathering information in the field through interviews with local population, military personnel, and other relevant stakeholders. In addition, through observation, the information garnered from the desk assessment (on weapon delivery systems, ground conditions, battlefield data, etc.) is compared with other evidence encountered in the field. Duplicate or otherwise invalid initially suspected area records can also be canceled at this point.

Technical survey (TS)³ will be used to more accurately determine the “strike footprint”. TS involves using one or more technical means to verify the exact location of the footprint by identifying the boundaries of the cluster strike. The process of TS in a cluster munition hazard environment is potentially easier, faster, and less dangerous than is the case for landmines so CMC believes that clearance personnel could and typically should enter a strike area to search for evidence in a structured way without constituting undue risk. A properly established methodology for TS, relevant to the country or conflict-specific threat, will help define the hazardous area.

Clearance

The clearance of CMR is not mine clearance and should not be regarded as such. CMC would prefer to use the basic principles laid out in IMAS 09.11 (Battle Area Clearance) to ensure that clearance is done cost-effectively and without excessive layers of measures that limit efficiency without adding safety.

When seeking to release land, however, care must be taken to ensure that certain basic principles are followed. In particular, all areas confirmed to be contaminated with CMR must be cleared, as required by the Convention on Cluster Munitions. In addition, the process of releasing land through NTS and TS must be accountable and follow applicable standards and country-specific standing operating procedures (SOPs).

CMC believes that there is no need for new international standards for cluster munition clearance or survey. There is, however, a need for a technical note (or similar document) that would provide operators and national authorities with guidelines on how to manage

² Non-technical survey is defined by the relevant IMAS as survey which involves “collecting and analysing new and/or existing information about a hazardous area. Its purpose is to confirm whether there is evidence of a hazard or not, to identify the type and extent of hazards within any hazardous area and to define, as far as is possible, the perimeter of the actual hazardous areas without physical intervention. A non-technical survey does not normally involve the use of clearance or verification assets. Exceptions occur when assets are used for the sole purpose of providing access for non-technical survey teams. The results from a non-technical survey can replace any previous data relating to the survey of an area.” UNMAS, “IMAS 08.21: Non-Technical Survey”, First Edition, New York, June 2009, pp. 1–2, www.mineactionstandards.org.

³ IMAS defines technical survey as “a detailed intervention with clearance or verification assets into a CHA [confirmed hazardous area], or part of a CHA. It should confirm the presence of mines/ERW leading to the definition of one or more DHA [defined hazardous area] and may indicate the absence of mines/ERW which could allow land to be released when combined with other evidence.” UNMAS, “IMAS 08.20: Land release”, First Edition, New York, June 2009, p. 2, www.mineactionstandards.org.

cluster munition clearance actions.⁴ States should also develop and adopt national standards specifically for cluster munitions clearance, given the obligations contained in the CCM.

Guiding principles

The CMC strongly supports the appropriate use of non-technical and technical survey as techniques to release land. We recommend, however, that to be done responsibly and to gain the full confidence of the local population, it be carried out in accordance with the principles listed below. The nature of cluster munition contamination and clearance means that there will always be some element of risk associated with land release. However, adherence to appropriate guiding principles will ensure that the dangers are reduced as much as possible.

First, undertake a systematic survey based on information gathered from a thorough/comprehensive desk assessment to establish a realistic baseline.

Second, any suspect hazardous areas found to contain cluster munition remnants must be technical surveyed and fully cleared to international and national mine action standards in accordance with a country's legal obligations.

Third, any land release methodology must be based upon an objective assessment based on fixed criteria (a *system* or framework) rather than a subjective decision made by the survey team.

Fourth, any land release methodology should be understood and accepted by the intended beneficiaries, local government representatives and their political representatives.

Fifth, the information on which decisions are made to release land other than through clearance must be carefully cross-checked with a range of key informants to minimize bias and honest mistakes.

Sixth, all activities leading to the decision to release a specific area of land must be carefully documented.

Seventh, the process of land-release must be inclusive and participatory in its approach and approved by the owner/s of the land, community representatives, national authorities and the national mine action centre based upon review of the documented methods. The handover process should include an explanation of the method/s used to release the land and the potential residual risk.

Eighth, any discovery of cluster munitions remnants on land that has been released must lead to an investigation, reassessment, and possible clearance of the area.

Finally, we encourage States Parties to include in each Article 7 report the extent of land release and methodologies employed to do so.

⁴ See NPA's internal technical note for an example of how such a document be elaborated.