SLNMAS 04

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The Land Release Process

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Warning

This document is current with effect from the date shown on the cover page. As the Sri Lankan National Mine Action Standards (SLNMAS) are subject to regular review and revision, users should consult the Sri Lankan National Mine Action Centre.

Contents

Introduction

A principal objective of mine action is to remove the explosive hazards (landmines and explosive remnants of war (ERW)) from areas where they have been laid or abandoned. Mine action operations have typically employed demining assets to do this, such as manual clearance teams, explosive detection animals and mechanical systems, either individually or in combination. These methods have resulted in thousands of square kilometres of land being released back to communities for productive use. However, on some occasions, land has been subjected to full clearance unnecessarily. While some of the operational principles of survey and clearance have been well understood and used by many mine action operators, inadequate or inaccurate survey can exaggerate the mines/ERW problem. In addition, survey data needs to be reviewed over time as more information becomes available particularly as communities become established and land use further developed in the aftermath of conflict. An objective of mine action is to define, re-define and clear land that is contaminated by mines/ERW.

When no survey has been conducted before, the first survey should be a Non-Technical survey by following the guidelines in SLNMAS 04.10. Inaccessible areas, or areas with limited information available, should not by default be recorded as hazardous and, just because an area has been labelled suspected by an impact survey or technically unqualified source, full clearance should not be the presumed or automatic response to remove this suspicion. Sometimes it may be acceptable to remove the suspicion based on the evidence obtained, and verified, without the need for any physical intervention into the area.

Land Release is the process of applying all reasonable effort to identify or better define Confirmed Hazardous Area and remove all suspicion of mines/ERW through non technical survey, technical survey and clearance using an evidence based and documented approach.

The polygons, from an impact survey or other non-evidence based survey typically labelled SHA, are often incorrectly perceived as boundaries of mined areas and correcting these mistakes is not the same as releasing land. Governments should not seek to use impact survey data to define the geographical extent of a mine problem but rather use data from appropriate non-technical survey. Impact survey data may be useful indicators of where further investigation is required but impact surveys do not make a non-technical survey unnecessary.

Disproportionate or prolonged use of clearance resources in areas where there are subsequently found to be no hazards is often a result of a lack of guidance on how to measure and define the minimum, and therefore most appropriate, mine action approach for the release of land. The aim must be to employ clearance resources only on genuinely hazardous areas.

The Land Release process consists of three main activities, Non-Technical Survey, Technical Survey and Clearance. The different methodologies for releasing land are detailed in the following IMAS:

SLNMAS 04.10 Non-technical survey provides guidance on the principles of a non-technical survey, the conduct of a non-technical survey, including how land can be released by nontechnical survey;

SLNMAS 04.20 Technical survey provides guidance on the principles of a technical survey, the conduct of a technical survey, including how land can be released by technical survey;

SLNMAS 04.30 to 04.50 Mine/UXO clearance requirements provides the requirements for the conduct of clearance and the release of land through mine clearance; and

SLNMAS 04.60 Battle area clearance provides the requirements for the conduct of battle area clearance and the release of land through battle area clearance.

The Land Release Process

1. Scope

This document defines the process and policy of the release of land contaminated or under the suspicion of landmine/ERW contamination in Sri Lanka.

2. Terms and Definitions

The following terms and definitions are applicable to this SLNMAS and it is very important that these terms are understood and used during the implementation of the Land Release Process.

The term **"Land Release"** describes the process of applying all reasonable effort to identify or better define Confirmed Hazardous Areas (CHA) and remove all suspicion of mines/ERW through non technical survey, technical survey and/or clearance. The criteria for "all reasonable effort" is defined later in this SLNMAS.

The term **"Suspect Hazardous Area" (SHA)** refers to an area suspected of having a mine/ERW hazard. A SHA can be identified by an impact survey, other form of national survey, or a claim of presence of explosive hazard.

The term **"Confirmed Hazardous Area" (CHA)** refers to an area identified by a non-technical survey in which the necessity for further intervention through either technical survey or clearance has been confirmed.

The term **"Defined Hazardous Area" (DHA)** refers to an area, generally within a CHA, that requires full clearance. A DHA is normally identified through thorough survey.

The term **"Non-technical Survey"** describes an important survey activity 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.

The term **"Technical Survey"** describes a detailed intervention with clearance or verification assets into a CHA, or part of a CHA. It should confirm the presence of mines/ERW leading to the definition of one or more DHA and may indicate the absence of mines/ERW which could allow land to be released when combined with other evidence.

The term "**All Reasonable Effort**" describes what is considered a minimum acceptable level of effort to identify and document mined areas or to remove the presence or suspicion of mines/ERW. "All reasonable effort" has been applied when the commitment of additional resources is considered to be unreasonable in relation to the results expected.

3. Initial Information Screening

If conducted correctly, survey will normally provide accurate information on which clearance plans can be based. If conducted carelessly, or conclusions are drawn with inadequate information, a false understanding of the situation will result and may be the cause of inefficient tasking. Mine/UXO Clearance organisations conducting surveys shall apply the following principles:

a. Use fully trained staff to conduct surveys;

b. Manage data correctly by using trained staff and

c. Supervise the above, using fully trained supervisors.

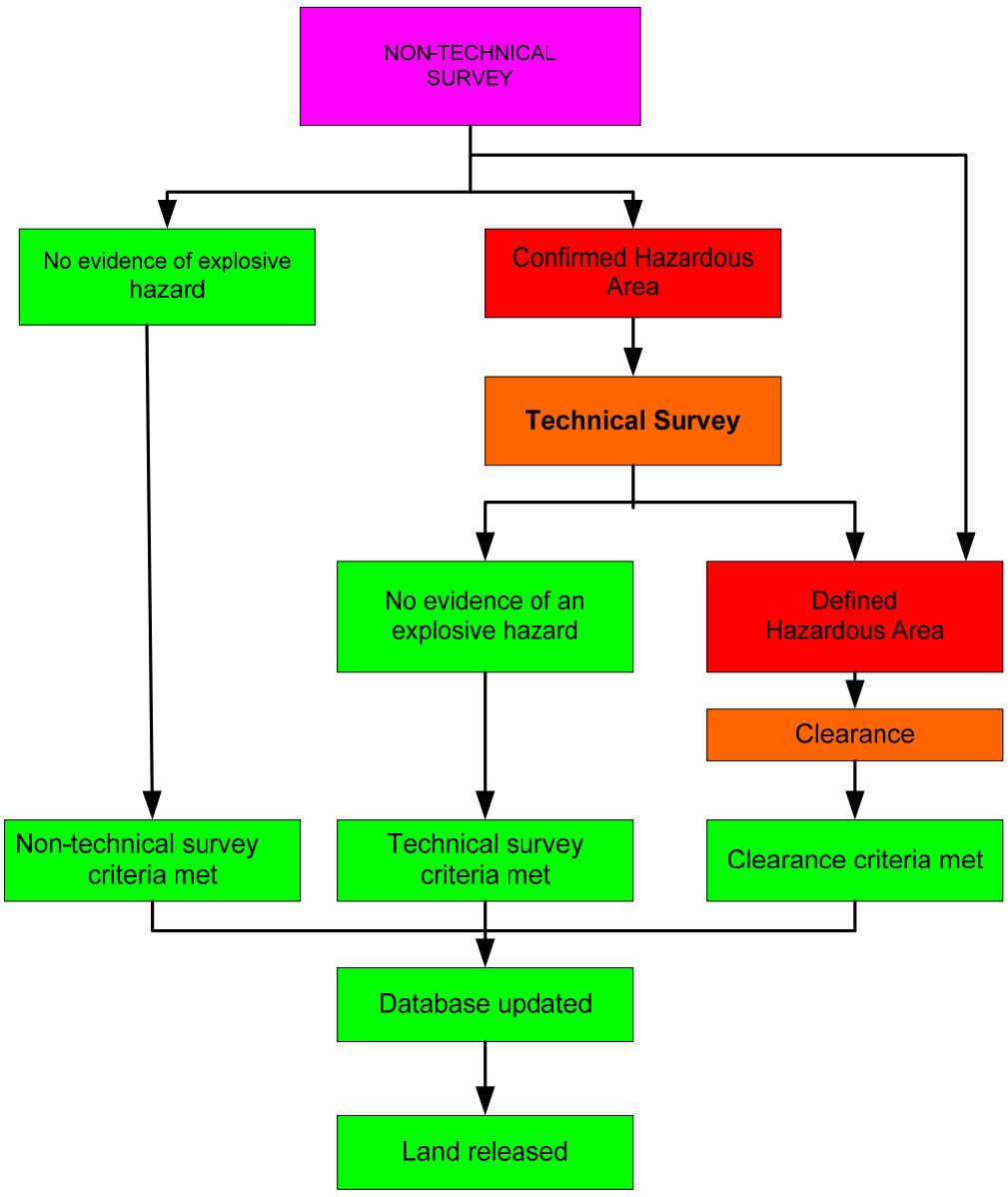
Where a task dossier is to be issued to a clearance agency the Information Management Department of the SLNMAC shall identify all available information in the IMSMA system regarding the area that needs to be surveyed. All this information shall be included in the task dossier. At the same time the Information Management Department shall analyse and scrutinise the information for incorrect database entries, duplications, redundant information, etc. and remove this from the database.

Where the IMSMA database contains information regarding SHA's in the task area the task dossier shall contain this information and it shall also request that these SHA's needs to be investigated during the non-technical survey process.

4. The Land release process

The process of releasing land in Sri Lanka is an evidence based information assessment process that can help determine with confidence which land needs to be cleared and which does not.

The flow chart below illustrates the process of applying different, but interlinked, criteria for releasing land by non-technical survey, technical survey and clearance.



5. Information gathering methodologies

Information gathering as part of the land release process shall be based on physical observations of the areas under survey without any physical intervention, obtaining of evidence through interviewing people with confirmed knowledge of the area under survey and obtaining information of the area under survey by physical intervention.

The principles of information gathering by non-technical survey are discussed in detail in SLNMAS 04.10. The principles of information gathering by technical survey are discussed in detail in SLNMAS 04.20.

It is important to keep in mind that information gathering as part of the land release process is not a once off activity. Information regarding an area should continuously be updated as new information comes available. As IDP's return to their homes, farms or villages and commence with their daily activities more and more information will come available and MA organisations conducting MA activities in these areas shall be responsible to continuously collect these information and submit it to the Information Department of the SLNMAC using the applicable reporting formats. Important information that needs to be submitted as soon as possible is the following:

a. Confirmed hazardous areas that are now occupied or being utilised by the local population without any incidents.
b. New hazardous areas identified by the local population in areas that were previously released.
c. Access routes through hazardous areas continuously utilized by the local population without any incidents.
d. Newly cultivated areas within previous CHA's.
e. Mine/UXO incidents within areas considered as safe.

6. Land release criteria

The criteria or the conditions to be met before the release of land can be considered, will vary depending on the prevailing circumstances and techniques, but the required level of confidence that the land is free from explosive hazards remains the same. As a guide, those prepared to release the land should be prepared to walk over it or traverse it in vehicles (depending on the type of hazard that was found in the area or suspected of being present).

Non-Technical Survey. SLNMAS 04.10 provides the criteria for land release through non-technical survey in Sri Lanka.

Technical Survey. SLNMAS 04.20 provides the criteria for releasing land through technical survey.

Clearance. The criteria for the release of land by clearance shall be that the land to be released as specified in the completion report shall be free from all mines/UXO and any other explosives hazards to the depth as specified in the tasking dossier issued to the clearance agency by the SLNMAC.

7. Confidence in released land

Before land can be released from suspicion, it should be established, with a sufficiently high level of confidence, that there is no longer any evidence that the area contains any explosive hazards. This confidence can only be gained after all reasonable efforts to investigate whether mines/ERW are present have been made.

7.1 All reasonable effort

The term "all reasonable effort" is widely used in many industries and legal systems. It refers to the level of effort that required to be expended to achieve a desired level of confidence in the output of a system.

"**All reasonable effort**", in mine action, in the process of deciding when land can be released from suspicion, is the level of effort required to achieve the desired level of confidence that the land is free of mines/ERW.

When suspicion exists about an area to contain landmines/ERW in Sri Lanka the initial effort shall be to conduct a non-technical survey of the suspected area. If the non-technical survey finds absolutely no evidence of landmines/ERW the area shall be released. No additional resources shall be committed to try and find additional information about the area. In this case "all reasonable effort" will only be a non-technical survey.

However, if the non-technical survey confirms some evidence of landmines, the next step shall be to determine which areas are free of landmines/ERW and which are not by conducting a technical survey. Areas determined as free from landmines/ERW (could even be the whole area) by the technical survey are then released. In this case "all reasonable effort" will only be a technical survey.

Areas identified as containing landmines/ERW (DHA) during the technical survey shall be released as safe from landmines/ERW after mine clearance or Battle Area Clearance of the area was conducted. In this case, "all reasonable effort" will mean that clearance shall be conducted.

8. The Principles of the Land Release Process in Sri Lanka

The following principles shall be applied when implementing the land release process in Sri Lanka.

a. Claim. Land can only be released from a past suspicion (or claim) of mines/ERW if there has been a legitimate claim in an area. Previously recorded SHA may not have been created from legitimate claims and a SHA is often created because there was too little evidence available to conclude definitively that there are no mines. A CHA shall only be created if there is evidence of mines/ ERW.

b. Fear. People's fear of mines/ERW shall not on its own be a legitimate, evidence-based claim of explosive hazard. Fear needs to be substantiated with other evidence.

c. Default. **Inaccessible areas, or areas with limited information available, shall not by default be recorded as CHA.** A CHA shall only be recorded in a database when there is sufficient evidence available.

d. Graduated response. To ensure efficient removal of suspicion or release of land a graduated response shall be undertaken when addressing CHA. The process that shall be followed is as in Serial 4 above and shall follow sequentially through the activities of non-technical survey, technical survey, and clearance until at some stage in the process the suspicion that the area may contain explosive hazards is removed by either obtaining sufficient information to confidently remove the suspicion, or by removing the suspicion through adequate clearance. There may be occasions where sufficient information exists to make a technical survey unnecessary and an operator may progress directly to clearance.

e. Clearance. If the process has been followed correctly, the area remaining for clearance shall be better defined, thereby resulting in more efficient use of demining resources. Clearance itself is an information gathering process which will lead to the hazardous area being fully defined.

f. Credibility/documentation. Land shall only be released when it is deemed safe to use after a credible and well-documented process has been fully implemented. The credibility of the land released process can only be obtained if the activities are conducted by well trained and qualified survey and clearance teams. Non-technical surveys shall only be conducted by personnel that are qualified and competent in the physical execution of a non-technical survey (or the previous General Survey).

g. Community involvement. Local participation should be fully incorporated where possible into the main stages of the process of releasing land in order to ensure that it will be appropriately used after release.

h. UXO. Land can be released from the suspicion of mines while there may still be a suspicion of UXO. Additional measures will be taken as UXOs are found to remove the threat as quickly as possible from the immediate vicinity of the communities.

i. New Hazardous Areas. As the returning IDP commence with their lives in the villages additional information will come available and new suspected areas could be identified. Newly identified SHAs reported to the district MAOs shall only be recorded after a non-technical survey has been conducted.

j. Low Impact. A CHA assessed as having a low impact on a community shall not be released based on a lack of impact. It should be given a low priority in terms of clearance.

k. Effective utilization of Resources. As available resources for the release of land are always restricted it is very important that MA organisations plan and organise their activities in the process of land release to ensure that the minimum resources are utilised to conduct the activity obtaining the best productivity.

l. Quality Management. The quality management of the land release process forms part of the quality management process of the Sri Lankan MA programme. Quality management in land release is the application of Quality Assurance (QA) and Quality Control (QC). QA involves the accreditation and monitoring of the survey and clearance organisations before and during the land release process. QC involves the process of inspection when land is released by clearance. Where land is released by survey, a conclusion has been made that no mines were present on that land prior to the survey. Inspection of such land would be unlikely to unveil information about the quality of the survey while increasing costs. Quality management is not only the responsibility of the SLNMAC but MA organisations shall also maintain a quality management process to ensure that land released by them through the activities of the Sri Lankan land release process is free of mines/UXO and that reports verifying the release of land are accurate and support their decision in releasing the land.

9. Risk and Liability

Resolving liability questions can be complex when non-technical survey and technical survey procedures are applied to release land. In the absence of physical verification of all released land, there is always an element of risk that explosive hazards may remain. It is also true that conducting full clearance activities will still not guarantee that an area is completely free of explosive hazards. The following IMAS definition is relevant:

> "Residual risk" is *"the risk remaining following the application of all reasonable efforts to discredit, remove, or destroy all mine or ERW hazards from a specified area to a specified depth"*.

The following principles shall apply in the determining of liability:

a. Mines and ERW are primarily and ultimately a national responsibility and, as such, the state of Sri Lanka has a responsibility to accept accountability and liability for victims in all areas affected by landmines and ERW. This includes known as well as unknown areas, areas that have been cleared and handed over to the SLNMAC or local population, as well as areas that have been released as a result of the Sri Lankan land release process.

b. The land release process as described in this SLNMAS and the criteria for the release of land by non-technical survey, technical survey and clearance as described in the

relevant SLNMAS shall be the main determining factors when liability is to be determined.

c. The appropriate application of the principles of the Sri Lankan land release process by clearance agencies and the acceptance of handover by the SLNMAC implies that the level of risk of mines or ERW in the area after survey or clearance is deemed tolerably low by the Sri Lankan government.

d. If explosive hazards are found in areas that have previously been released, liability disputes should in principle be settled based on how well organisations have implemented the Sri Lankan land release process as described in the SLNMAS. The appearance of an explosive hazard does not automatically imply that the organisation should be held liable.

e. A clearance organisation shall not be liable in cases of missed mines or accidents if an investigation shows that the Sri Lankan land release policy has been implemented appropriately and thus that the organisation has made *all reasonable effort* to ensure that the area was safe before release.

f. A clearance organisation will in principle be liable in cases of accidents caused by missed mines or ERW if an investigation shows that:

   i. the accident was caused by wilful or criminal misconduct, gross negligence, reckless misconduct or a conscious, flagrant indifference to the rights or safety of the individual(s) harmed;

   ii. the organisation was not properly licensed, certified or authorised to carry out acts leading to the erroneous land release decision;

   iii. the organisation wilfully infringed prevailing national policy or standards; and

   iv. The organisation has conducted gross procedural errors or grossly deviated from an agreed land release concept.

Residual Risk Claims. A claim on the grounds of residual liability that an organisation has failed to clear the land properly and that a party has suffered injury to a person or their property may occur once the land has been handed over. The following should be kept in mind:

- It is not possible to obtain insurance to cover organisations for residual liability where mines or UXO are found on land that is supposedly cleared.

- The best protection against a claim for residual liability is to ensure that working practices are the best possible, with a clear quality control and quality assurance programme, and handover procedures of cleared land that are established and followed, to ensure the risk is minimal. And accurate and detailed documentation of the clearance operation should be maintained.

- The legal situation for insurance can vary considerably from country to country. Organisations should obtain legal advice on all aspects of contracts and national legislation to ensure that the potential for litigation is minimised.

- Organisations should remember that in some circumstances it is possible for plaintiffs to sue in the organisation's base country in addition to the country of operation.

- The fact that organisations may be "cash poor" does not mean they cannot meet a successful claim against them. Assets of an operation, vehicles, computers, equipment could all be seized to settle a court action, depending on the legal system of the country.

- Handover documentation should be scrutinised by a legal authority to ensure that responsibility for cleared land is transferred to the receiving body, such as the government or local village and residual liability is minimal if not nil for the mine action operator.

- Post-clearance visits to cleared land, possibly including mine risk education, will help to show that an organisation has fulfilled its duty of care.

- Any legal action, even an unsuccessful one, is likely to involve significant costs for a mine action organisation.

Essentially what clearance organisations need to have, once they have completed a clearance or a marking and monitoring task, is an audit trail showing what was done, by whom, when, where and how, and who was responsible for each action. The more comprehensive their records the better their ability to argue that they exercised due care in completing the task. It is important to keep a timeline of events. Clearly date all signatures on documentation. Once they have completed a task, they should keep a record of when they notified the SLNMAC that the job was ready for quality assurance.

However, it is important to bear in mind that the mine action industry is dealing with an issue of uncertainty. Organisations do not know what will transpire, they only think they know what will happen (i.e. that there will be no accidents). Mine action experts know that nearly 100 years after the 1914-1918 War, munitions are still being regularly found in Belgium, France and Germany. Given that liability is not time limited it would be prudent to retain all records for the duration of the organisation's existence. If this is not possible, then legal advice should be sought before the disposal of records.

Amendment record

Management of SLNMAS amendments

Amendments to this document will be published periodically. An accurate record of amendments is to be maintained in the table below.

Any comments, suggestions or proposed amendments to this document should be addressed to: The National QA Coordinator, Sri Lanka National Mine Action Centre (SLNMAC), Colombo.

Serial No.	Date	Paragraph		Amendment	Remarks
		Old	New		