



Landmines and Land Rights in Conflict Affected Contexts



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KEY MESSAGES

- > Land and property are often central issues in the build up to conflict, in the strategies pursued by combatants and in post-conflict recovery
- > Mine action organisations are not neutral when it comes to land rights. Releasing land which was previously contaminated with landmines and explosive remnants of war (ERW) and making it accessible changes its status. This inevitably involves land rights issues, even if the intent is to avoid them.
- > Trying to avoid land rights issues can seriously compromise the return of displaced populations and affect the effectiveness and developmental outcomes of mine action.
- > Be proactive and take these issues into consideration. There are a range of actions that mine action organisations can take to ensure they do no harm and respond to the land issues they encounter.
- > Coordinate with humanitarian and development organisations that deal with conflict affected populations, and national and international organisations dealing with land issues, as this can limit land tensions related to mine action operations.

1. INTRODUCTION

This policy brief¹ describes the important linkages between land rights and landmines in conflict-affected contexts. Its purpose is to deepen awareness within the broader mine action and development communities about these linkages, and provide guidance on how to effectively mainstream land rights² issues into mine action operations.

Land rights in conflict-affected situations are a topic of increasing concern for the humanitarian and development community. The recovery of households, communities and countries following war depend to a large degree on re-establishing clear rights over

land resources which are the basis of livelihoods. The land rights situation becomes particularly critical in mine-affected countries, where land access can be denied for years or decades. Mine action organisations (i.e. National Mine Action Authorities, National Mine Action Centres, mine/ERW operators and mine action donors) typically avoid land rights issues in their activities, due to considerations of neutrality, mandate, complexity, awareness and political sensitivity. However the decision to survey³ and clear (or not) particular areas inevitably involves land rights issues.

This policy brief is based on a series of country case studies (Afghanistan, Angola, Bosnia and Herzegovina, Cambodia, Sri Lanka, South Sudan and Yemen) commissioned by the Geneva International Centre for Humanitarian Demining (GICHD), as well as presentations and discussions that took place at an international workshop organised by the GICHD in October 2010.⁴ It also draws on the extensive land and conflict related research and policy work carried out by the Overseas Development Institute, UN-HABITAT, academics and others.

2. LAND RIGHTS IN CONFLICT-AFFECTED CONTEXTS

Land and property issues are often a central feature of civil wars, either as a pre-existing tension or emerging during conflicts.

Any pre-war unhappiness among a population about the way the state dealt with land rights can be an important force in rejecting the statutory⁵ land and property rights system before, during and after conflict, by either non-compliance or outright rejection. This can be based on historical animosities between particular groups of people and the state, with such groups distrusting the ability or willingness of the state to handle land and property issues in an unbiased manner. Perceptions of the state as an enemy can be especially powerful if there has been a history of mass evictions, land alienation, land and property related discrimination, corruption, state intervention in agricultural production, dislocating agricultural and/or population programmes, or heavy-handed approaches to enforcement of state land and property laws and policy. If these grievances are added to others, even if not related to land, the perceived injustices can be used to undermine the influence of the statutory tenure system.

Armed conflict and its repercussions transform the network of social relations upon which all land and property rights systems depend. Violence, displacement, the destruction of property, the military capture and loss of territory, pervasive food insecurity, and the breakdown of land and property administration systems significantly change relationships between people, land use, production systems, shelter, and population patterns. During a war, the state's land and property administration system can be crippled and rules can become unenforceable. This situation can be the result of general insecurity, the occupation of territory by opposition groups, and the often intentional destruction of local land registries and other critical land and property records.

For many who find themselves in a conflict situation, identity can be intricately bound up in perceived rights to specific lands in very powerful ways. The sense of belonging to ethnic, religious, or geographic groups is often based on connections to particular territories, or homelands. During an armed conflict, some groups seize the opportunity to advance the goals of group self-determination, especially with regard to land. These actors can view conflict as an opportunity to regain land from which they have been historically dispossessed or deprived, prior to the solidification of peace. Competition with other groups over land can then become a prominent feature in the conflict and subsequent peace process. In such a scenario, approaches to land and property employed by one group in a conflict can be purposefully rejected by another.

Once violence ends, those who were displaced often seek to re-establish their homes and livelihoods, creating a surge of land and property problems. Depending on the size of the displaced population, and the duration of displacement and conflict, these issues can quickly become one of the primary features of a post-war phase. The re-establishment of ownership, use, and access rights to land after a war ends is often very difficult as people try to reclaim what they lost. Failure to effectively address these problems can set the scene for renewed armed confrontation.

Most civil institutions that regulate access and use of land are weakened or destroyed by armed conflict. This means that the surge of land and property problems, which always occurs at the end of a war, will take place in the absence of functioning land and property institutions. This can occur at the individual, household, community, commercial and national levels. **Even conflicts that did not initially have a land or property component can experience problems in a peace process, due to competition over valuable, land-based resources such as agricultural land, oil, diamonds or timber.**

High levels of displacement during conflict can also result in a number of individuals claiming the same parcel of land. Such displacement alters pre-existing rights and obligations among people about land. This is particularly true in customary land systems where the actual occupation of land or an individual's social position forms the basis of claims to land. With no institutional way to resolve conflicting claims after a war, the result can be an abandonment of important features of land and property rights

systems (statutory and customary). This disruption can be the first and most dramatic step toward the development of a changed approach to land and property rights after a war.

Figure | Conflict cycle - Connections between conflict and land



Source: Peter van der Auweraert, Reparations and Land Unit, International Organization for Migration (IOM) 29 November 2010

When a conflict ends, lack of confidence in the state can be seen in the development of alternative ways people use to deal with land and property. These alternative ways are easily created by drawing on wartime ideologies, loyalties, and expectations. In instances of on-going conflict, with no peace accord or clear winner, the near complete reduction of state power in certain parts of a country can lead to a search for order and some form of stability. This was seen with the emergence of Shari'a courts in Somalia and the Taliban in Afghanistan. Both built up their support among sections of the public by implementing their own mechanisms of enforcement for a variety of institutions, including land and property rights. Legislative change deserves particular mention in a post-war context. Peace accords and international pressure often push for legal reforms for land and property. However such reforms can be out of touch with local realities for land and property issues. Drafting and implementing such laws is a slow process, which is rapidly outpaced by the development of informal relations to regulate land and property issues. The laws of a weak post-conflict state can

therefore overlap with existing informal legal systems, which are much stronger. This is a particularly acute challenge where mechanisms for disseminating and enforcing new laws among a semi-literate and conflict-affected population are weak or non-existent. Even though legislative reform is necessary, it is insufficient in the short to medium term.

Post-conflict property issues in or near urban areas are also important. The destruction of urban housing and displacement of the population during war quickly creates large squatter camps in other urban and peri-urban locations. These camps and informal settlements also attract people displaced from rural areas. In a post-conflict phase, attempts to regularise these areas can often be destabilising, due to mass evictions and attempts to establish permanent property claims by both squatters and the original owners.

3. KEY LAND RIGHTS ISSUES FOR MINE ACTION ORGANISATIONS

Land rights problems during and after conflict are multi-faceted, often very fluid, frequently contentious, and can be long-lasting.

Landmines and ERW in particular leave a distinct imprint on post-war landscapes. By closing off access to key resources, they tend to exacerbate the land and property issues described in the above section. Societies are forced to adapt to new scarcities, creating increased pressure to control access and use of valuable uncontaminated land. As a result, it is virtually impossible for any activity involving change in the status of land and boundaries not to have an influence on land rights. Removing landmines and ERW from these spaces alters the local context, by making previously alienated resources available and changing the status of land. New opportunities for wealth accumulation and competition over land are created.

Examples drawn from the GICHD case studies and workshop describe some of the, often inadvertent, repercussions of mine action and land rights. What follows is a summary of the main land rights related challenges that mine action organisations typically encounter.

Lack of awareness

Mine action organisations tend to be unaware of the exact status of contaminated land before commencing work in an area (i.e. legal status, ownership, etc.), and how clearance will affect adjacent lands. In some situations, they may also be unaware of how released land will be used and why it is prioritised for clearance. As well, they are typically unfamiliar with the broader land issues within their areas of operation and of the land rights problems that occur once they have handed over an area and moved on.

There are generally two categories of land problems with regard to mine action organisations: problems encountered as clearance is underway, and problems which surface once clearance is over.

Mine action organisations are frequently unaware of the second type of problem because they are not around when these problems occur. A wide variety of land issues can emerge after land is released through survey and/or clearance, sometimes several years later. While mine action organisations typically undertake pre-clearance surveys and, in some cases, post-clearance assessments, few of these surveys gather information on land rights issues. In the rare cases where information is collected about land ownership, disputes, etc., the information often is not acted upon or shared with other actors.

Mine action organisations can also come to the conclusion that because they themselves do not encounter many land disputes during clearance, land problems are therefore few or minor. For example, the South Sudan case study illustrates that there is little appreciation within the mine action community of the complexities of land rights, and fairly simple notions of what communal and customary rights are. There is also little understanding of the impact of mine action operations on land rights issues. In Angola, not only is there general unawareness of any potential problems on the part of the mine action community, but there is also an assumption that since the state owns all the land, and very few people have any land related documents, there is no conflict.

Lack of awareness and understanding about what to do about land issues can negatively affect the communities that mine action organisations intend to help. Several of the GICHD case studies referred to instances of land grabbing following the release of land. In Cambodia, land grabbing by state entities, individuals within the state bureaucracy, and military officials has taken place in contaminated areas. Even the survey and clearance planning process can attract the attention of the state or powerful elites

on 'soon to be released' land, as land values often increase with the prospect of clearance. This can lead to their legal reclassification and the exclusion of those communities who were to occupy newly released areas.

Land that borders contaminated areas represents a further category of land issues. Many mine action organisations are unaware of these issues. Although this land is not contaminated, its status often changes once neighbouring areas are released and access is opened up. For example, in Angola agricultural land was, and often still is, 'blocked' in many areas of the country, due to contaminated roads. Blocked irrigated land is also a problem in a number of provinces. The opening of small areas does not usually present any major problems. However, opening access to larger plots of land, that border previously contaminated areas, can result in a 'land rush' for access, use, and claim. As these areas are unlikely to be included in post-clearance assessments, mine action organisations often remain unaware of problems that occur on this category of land. Because these problems do not specifically take place in the area being released, it can be difficult to untangle the land conflicts connected explicitly to this, as is the case in Angola.

The removal of explosives hazards can spark competition for resources and land grabbing

The release of formerly contaminated land generates new, valuable resources, especially in places where land or water resources are scarce, such as in Yemen. One trend that emerged from all of the GICHD case studies was that elites often try to take newly released land for their own purposes. The intended beneficiaries of many humanitarian demining activities are frequently marginalised peoples without adequate legal protection. As a result, the security of their claims is easily threatened by more politically connected or wealthy individuals.

Elite control can also come in more localised forms. Local government authorities can position themselves as representatives of a community and obtain some of the newly released land, or decide how the land will be allocated to their supporters. In addition, local civil servants can use their knowledge of government policy to enrich themselves or seize land.

The clearing of land can also be a catalyst for the emergence of new conflicts or the reigniting of old ones. In Yemen, South Sudan and Afghanistan, mine/ERW contamination has helped to suppress local tensions over disputed land. Due to contamination, disputed land is held in limbo, as neither party can make use of it. Clearing this land, without securing

sustainable and peaceful solutions between the disputing parties for its management and use, can quickly lead to renewed conflict and violence. In many of these instances, mine action organisations have refused to play a role in the resolution of disputes, opting to try to remain neutral.



Before Mine-contaminated village in Kohsan District | Herat Province | Afghanistan. Most villagers had fled due to the conflict.
© Mine Action Coordination Centre of Afghanistan

However, this desire to remain disengaged from land politics can open the door for post-clearance conflict, and can also expose mine action organisations to aggression from local parties. Even though mine action organisations wish to remain neutral, their roles are often perceived as distinctly political by local actors, especially when mines/ERW are cleared from disputed areas.

The Yemen and Angola case studies illustrate that mine action organisations, that were seen to represent elite, government, or corporate interests, had their vehicles and equipment damaged or stolen. In Yemen, in an area where tensions flared over land disputes, some mine action personnel had to withdraw for their own safety. In Angola, a team from the national demining agency were surveying land to be cleared for the resettlement of urban migrants and formerly displaced persons. The arrival of the deminers was the first time the local community had been informed that their land was to be used for this purpose. It assumed the survey team was demarcating the land for expropriation. As a consequence, community members damaged the vehicles belonging to the survey team.

In response to these potential risks, mine action organisations in Afghanistan have developed engagement criteria which stipulate that land disputes

must be adequately resolved before they begin to clear contaminated land. While these organisations do not take an active role in the resolution of the disputes, or the development of new land management systems, they try to ensure that tensions will not be inflamed because of the release of previously



After Demining machine, in the same village, inspecting hazardous debris and, in the process, destroying physical borders between properties, which resulted in land disputes, due to the absence of owners and written land records.

hazardous or suspected hazardous areas. This approach reduces the potential harm that may come from land released through survey and clearance.

Prioritising which areas to clear first can be a “mine-field”

In several of the cases, priority-setting decisions can have a significant impact on land rights and land disputes. In conflict and immediate post-conflict contexts, the priority is to clear roads to facilitate humanitarian and peacekeeping access, as well as residential areas, to support the return and resettlement of internally displaced people (IDPs) and refugees.

Agricultural land is typically cleared after roads and residential locations. However, because land may be contaminated in different parts of a country, the focus on clearing residential land first may mean that agricultural land is cleared long after residential areas. This can increase the value of nearby uncontaminated land and result in a scramble for these lands by local inhabitants or more powerful interests.

With residential and other land prioritised over agricultural land, the surrounding uncontaminated land will be quickly reoccupied, as is the case in Sri Lanka. Due to the prioritisation of residential land over agricultural land for clearance in Sri Lanka, only eleven

percent of returnees can engage in farming. While occupants return to residential areas that are cleared, because their own agricultural land remains contaminated, they then encroach on uncontaminated land belonging to someone else to meet their agricultural and food security needs.

Government officials often have significant influence over the sequencing, speed, location, and extent to which survey and clearance occurs. This is especially the case in areas that are still militarised. In Sri Lanka, land has been cleared in areas which were then turned into 'high security zones' by the military, instead of being returned to its original owners. Despite such problems, most mine action organisations in Sri Lanka do not see the connection between the release of land and land rights issues that occur once they have left an area.

with humanitarian and development organisations and affected communities in an effective manner.

In Sri Lanka, insufficient communication by mine action organisations with IDPs about their land has created problems. If land is released, and insufficient information is provided to local communities about the status of their land, many are unlikely to return to reassert their rights. This leaves the land open to be claimed by others. With limited information, rumours can emerge, regarding the status of land, which can mislead affected communities, and encourage some to return to contaminated land. Apart from the risks of such a return, upon discovery that their land is still contaminated, vulnerable households are then likely to occupy someone else's land. This can be out of necessity for residential



A further complication is that relationships between mine action organisations, governments and the government's clearance prioritisation processes may lack transparency. This may open the possibility (and suspicion on the part of affected communities) of vested interests in the release of land by mine action organisations that work with government or with individuals in government. An important aspect of this relationship is that governments are in a position to define and constrain, both where and when, clearance takes place. Governments also often control the political space within which land rights can be discussed, as the Sri Lanka and Angola cases demonstrate.

Information-sharing and transparency

Adequate communication about the status of contaminated and released land can have a significant impact on affected communities. Only a few mine action organisations systematically communicate

and/or agricultural purposes. Such occupation then creates problems for property owners, particularly if the number of secondary occupants is large, and if these occupants are from a different ethnic, religious, tribal, language, or geographic group. War-time divisions can make effective communication between these groups difficult and can lead to additional disputes.

In still another information-related problem, post-war governments (and often donors) are usually very eager to move IDPs out of camps and back to home areas, so that camps can be closed. However, return programmes and camp closures pushed by government and donors often lack coordination with survey and clearance activities.

If insufficient information is shared about the location and pace of surveyed and cleared areas, returnees can find their land still contaminated. This not

only prolongs their displacement but again, causes them to encroach on other people's land and residences while waiting for their land to be cleared. In addition, refugees can continue to trickle back from neighbouring countries years after a war is over, such as in the south of Angola. Mine action organisations therefore need to be able to respond to these multiple sporadic returns and deal with contamination problems in resettlement areas. However, because such a trickle can involve a large number of people, and take place over large areas, disseminating information effectively is challenging.

Because mine action organisations wish to remain neutral (i.e. they do not want to undermine or challenge the policies of governments) they often attempt to ensure that handover documents are not used as proof of ownership of land. However, from a land rights perspective, such priorities can actually work against some of the fundamental objectives of survey and clearance activities, particularly that released land goes to the intended beneficiaries. The activities of mine action organisations (survey, marking, clearance and handover of released land) unintentionally create a wide variety of forms of evidence helpful for local community claims to land. Mine action organisations often have little control over how these tools are interpreted and used by local populations after the organisations leave. Therefore, beneficiary communities would benefit if organisations, that provide handover documents, would do so in a highly transparent manner. Potential land grabbers are then obstructed and community claims (and evidence for claims) are facilitated. In addition, as the Angola case illustrates, poor communication during survey and/or marking can lead to the communities becoming suspicious that the government plans to expropriate land.

Inclusive community participation in land release activities and handover processes of released land is vital, and the documents generated should be shared publicly. At the same time, such materials can also be used by local communities, donors, NGOs, and relevant government agencies to provide highly relevant evidence for legitimate claims to the land in question. Providing such evidence to intended beneficiaries would significantly increase their post-clearance tenure security, and minimise the prospect of land grabbing.

Increasing information to beneficiaries can deter the process of dispossession, which relies on unequal access to information regarding rights, claims, options for dispute settlement, law, etc. Such a process also contributes to the accountability of national authori-

ties regarding the land release and handover processes, which is important given their role in being the legal guarantor of land rights.

Shifting responsibility

A common refrain from mine action organisations is that land issues resulting from their actions are the responsibility of government, the local community, or other relevant authorities – but not theirs, as land issues fall outside of their mandate.

However, if such entities are non-existent, weak, crippled, corrupt, or otherwise incapacitated, then with whom does real responsibility reside? Mine action organisations are high-capacity, high-resource actors in a very low-capacity, low-resource environment. By assuming very narrow mandates, they neglect critical social and political issues which can directly affect their work and their overall effectiveness and impact.

The explicit use of mines in land rights issues

Due to the widespread availability of landmines in conflict settings, and their ability to exert powerful control over space, mines can be intentionally used in land disputes.

In Bosnia and Herzegovina, mines were laid after the end of the war to prevent the return of specific ethnic groups to certain areas, or to intimidate them. In one case from Afghanistan, land was deliberately mined because of a land dispute. In another, a community did not want its agricultural land cleared because the land might be grabbed by a powerful interest, with the rationale being that it is better to have it mined and belong to them (to possibly be cleared later), than to have it demined and lose it permanently to a powerful outsider. In Angola's Kwanza Sul Province, a local community believed that the mines on their land were 'protecting' the local population from being evicted.

Community participation

While community participation and consultation in mine action can be a positive step towards addressing land rights after the release of land, such participation and consultation can be challenging.

The choice of whom to consult in the community regarding clearance can have political and land rights outcomes.

While some communities making claim to an area of land are present, others will reside in IDP or refugee camps, or otherwise not be in the area. Thus, whoever is chosen by mine action organisations to represent the interests of the local community, has a greater say in how that land will

be allocated or used. This is especially a problem when control over the land is disputed, or when there are other problems between a group that is present and others who are not. While failure to include all parties in the process can cause resentment over the survey and clearance process and potentially lead to land conflict, it sometimes may not be possible to locate all parties who may have a claim to the land in question.

Women's land rights

With a higher proportion of female headed households after most wars, particular attention to women's land rights is necessary.

Female headed households can be more vulnerable to land grabbing as they are more likely to be illiterate, poorer, have fewer livelihood options, and are often less knowledgeable about their land rights than male headed households. They may also have limited or no land inheritance rights under customary or even statutory law. Therefore, they may be less able to defend their land claims. Such patterns were identified explicitly in Afghanistan and South Sudan, but are no doubt present, with variations, in most war-torn countries affected by mines and ERW. The processes of community participation, planning, prioritisation, land release and handover, and post clearance monitoring and evaluation all need to take into account female headed households' specific needs and vulnerabilities.

There needs to be awareness among mine action organisations and donors that community representatives (elders, chiefs, lineage heads) often do not speak on behalf of women, and do not adequately represent the problems faced by female headed households.

As previously mentioned, customary laws can frequently be discriminatory toward women and women's land rights. As a result, female headed households may require assistance when asserting or claiming rights with both customary and local state authorities. While not all of these challenges can be dealt with within the mandate of mine action organisations, local NGOs and others who do work on women's rights can be contacted to assist.

Land as a spoil of war

In Sri Lanka and South Sudan, land has been used as a spoil of war, i.e. as a prize given to loyal soldiers and sympathisers in exchange for their support. Frequently, the land granted is the product of seizures from political opponents, suspected supporters of the losing armed group, or persons displaced by the conflict. Also, the control of land in newly conquered areas can be seen as having strategic value, as seen in Sri Lanka, where many parts of the North and East have been designated as ad-hoc security areas and High Security Zones. These areas are considered by the government as critical to its counter-insurgency strategy, deterring the re-emergence of Tamil rebels. This has made the return of persons displaced by the conflict to their pre-war homes particularly difficult, and has slowed the process of economic recovery, as the displaced remain dependent on food assistance.

Even when a war is over, mines can still retain a strategic role for the military and local actors as markers of territorial boundary. In Cambodia, long segments of land along its shared border with Thailand remain mined. In Afghanistan, individuals have used mines as a replacement for markers of property, like fences and walls, that had been destroyed during the conflict.



Recently returned refugee cultivating her land, suspected to be contaminated, in Yei, Southern Sudan. © Asa Massleberg, 2009.

Distrust of the military

In some situations, mine action organisations may be perceived as biased political actors, which can stem from their association with the military or government.

Communities that were recently targeted through counter-insurgency warfare, or victims of a repressive regime, may be particularly wary of the intentions of mine action organisations affiliated with the military/government. This is particularly problematic in Sri Lanka where the largest demining organisation is the Sri Lankan military, who recently defeated the Liberation Tigers of Tamil Eelam rebels. In Yemen, the main demining organisation, a national body, has also been associated with the military due to its use of military barracks and uniforms for official duties. As Yemen is also dealing with several insurgencies, distrust of military actors among segments of the population is possible. In Angola the national mine action organisation is part of the government, and it is clear that when it arrives in an area to engage in mine action, it does so as part of government plans.

Policy complications

The ability of mine action organisations to provide secure tenure for intended beneficiaries can be hindered by complicated and inflexible policies that limit effective intervention.

In cases where the state only recognises officially issued titles, mine action organisations often do not have the capacity, resources, or mandate to offer legal and technical assistance to intended beneficiaries, to help them navigate complex and expensive bureaucratic systems. Low levels of education and legacies of oppression by state institutions can lead to a general distrust of government actors or state tenure regimes. As such, affected communities are often unaware of their legal rights, or lack the means to challenge the government or powerful elites to assert their rights. Ambiguous legal classifications of land can also hinder this process. In Angola, the state officially owns all land. However, in the interior, local communities have de facto control and exercise this control, except when government intervenes. As a result there can be considerable confusion over who has what rights to which land.

Multiple tenure regimes

Navigating different and often conflicting land rights systems operating in the same areas can be a significant obstacle for land practitioners. Determining which systems to use to secure claims is an on-going struggle that reflects a legacy of tenuous relationships between governments and local people.

In several case studies, including Afghanistan, Yemen and South Sudan, the government has never been able to establish a dominant tenure regime, leaving much authority with local customary leaders. However customary systems are far from homogenous within the countries themselves and their land rights systems are often shaped by local realities, traditions and norms. Without significant knowledge of local nuances, navigating these systems can prove difficult for land practitioners, and even more so for mine action organisations.

4. RECOMMENDATIONS FOR MAINSTREAMING LAND RIGHTS IN MINE ACTION

For Mine Action Organisations

It is beyond the mandate and operational scope of mine action organisations to fix land problems. However, mine action organisations can use a range of actions and approaches to ensure they “do no harm” and address the land issues that they commonly encounter.

1. **Establish links with humanitarian and development organisations that deal with conflict affected populations, and national and international organisations dealing with land issues.** Such organisations (government or NGO) can advise mine action organisations, or take on the land rights issues that can be connected to mine action. For example, humanitarian organisations (such as the United Nations High Commission for Refugees) can advise on land issues with regards to displaced populations. This way mine action organisations would be able to maintain a statement of neutrality, particularly with regard to relationships with government, and not get overly involved in specific land issues. At the same time, they can receive advice from and work with a land rights organisation that can assist with transparency, handover of surveyed and cleared land, post-clearance land use and follow-up surveys and assessments. Establish links with the international and national housing, land and property (HLP) networks, local NGOs and other resources.⁸

2. **Promote community participation in priority-setting.** Use community liaison and surveys to identify community priorities for survey and clearance, concerns regarding post clearance land use, and perceptions of tenure security. Obtaining this information prior to any survey and clearance will decrease the risks of, or preempt, illegal land grabs and the surprise re-zoning of areas once cleared, and improve the alignment between mine action and local processes of return, reintegration, and livelihood recovery. This will require locating and contacting beneficiary communities before they return to released land to identify their needs, which may be difficult where populations are still displaced. Contact the wide range of NGOs and UN organisations that deal with displaced populations for assistance.
3. **Recognise the special needs and vulnerabilities in relation to women and their land rights.** Promote the active inclusion and participation of women throughout the mine action process, i.e. planning and prioritisation, implementation, handover procedures and post-clearance monitoring and evaluation. Collect and analyse all relevant data in a sex and age disaggregated manner, enabling the identification of gender-specific patterns and concerns. Pay particular attention to female-headed households, and ensure they are included and actively participate in surveys and consultations, in order to take into account their specific needs and priorities.
4. **Ensure a formal land handover process** which involves local communities, intended beneficiaries, government representatives, etc. Make sure the release of land is widely communicated to those unable to participate in handover events.
5. **Put in place a post-clearance monitoring process** once handover takes place, particularly with regards to land rights, claims and disputes.
6. **Consider land rights when setting mine action priorities.** Do not clear land that is disputed if there is equally high-priority undisputed land that needs to be cleared. At the same time, communicate with local communities, NGOs and authorities that the reason an area is not being cleared is because it is in dispute. This will encourage dispute resolution to move forward on such land.
7. When conducting surveys, **collect data on post-clearance land use and intended beneficiaries.** Conduct post-clearance assessments that also examine if intended beneficiaries are actually the occupants of cleared land.
8. **When developing contracts, include the need to partner with land rights organisations in the contract documents** and contractual obligations where applicable. Responsibilities regarding land right considerations and actions should be included as a part of the division of responsibilities in contract documents. The question of land rights and related liability issues should be considered for inclusion as a part of terms and conditions for contracts by contracting agencies. Land right considerations should also be included when contracting agencies are preparing site visits and pre bid meetings for potential contractors.
9. **Raise awareness about land rights and laws at the community level** when interacting with affected communities at the planning and initial survey stages. Mine action organisations interact directly with local communities and are one of the most high capacity and well-resourced actors present in rural areas. Informing local communities about their land rights would reduce prospects for easy land grabbing. Where there are concerns of maintaining neutrality, partner with NGOs who are able to engage in this community work, or simply refer communities to the right organisation.
10. **Seek alignment with and minimise contradictions among various policies on land rights** on the one hand, and mine action on the other, in order to protect the rights of intended beneficiaries and minimise opportunities for land seizure. Find out about the prevailing land law and what it provides for local communities. Identifying and obtaining the correct land law is important because such laws are often reformed after war.
11. **Promote balanced local recruitment** (gender, ethnicity, alignment to different sides in the conflict, religion, clan, survivors, etc.) in mine action activities, in order to avoid a perception that a mine action organisation is biased in the prioritisation and survey and clearance of land. Such a balance can also mitigate, to a degree, being seen as too closely aligned with government.

For Donors

12. **Encourage mine action organisations to link and partner with land rights organisations.** Mine action organisations usually do not have the experience, capacity or mandate to work with land rights issues. Some may develop this capacity over time. However, a quicker and more effective approach would be for mine action organisations to link with national or international NGOs who have the capacity to deal with land rights problems. Such linkages are unlikely to occur unless donors promote them.
13. **Encourage mine action organisations to report on the developmental outcomes of mine action,** not just in terms of operational efficiency. The donor-stated measure of success for mine action organisations is quite important and mine action organisations pay very close attention to such measures. If ‘number of square metres released or ‘number of mines removed’ is the criteria for success, then mine action organisations will select areas where these measures are maximised. However if livelihoods, poverty reduction, improved economic activity, or access to additional land, are the focus or partial focus of a measure of success, then this would play a significant role in encouraging mine action organisations to engage more effectively with land rights issues.

ENDNOTES

- ¹ This policy brief was drafted by Professor Jon Unruh, land tenure expert from McGill University (Canada) with assistance from Alexandre Corriveau-Bourque, McGill University and GICHD’s Policy Research and Evaluation Section.
- ² See glossary on page 11 for definition of land rights and land tenure.
- ³ See glossary on page 11 for definition of survey.
- ⁴ For additional information on landmines and land rights in conflict affected contexts, see www.gichd.org/operational-assistance-research/linking-mine-action-and-development/update-on-activities/landmines-and-land-rights-in-conflict-affected-countries/
- ⁵ See glossary on page 11 for definitions of statutory and customary law.
- ⁶ See glossary on page 11 for definition of clearance.
- ⁷ See glossary on page 11 for definition of released land.
- ⁸ Organisations such as the International Organisation for Migration (IOM), the Norwegian Refugee Council (NRC), UN-HABITAT, the World Bank, the Centre on Housing Rights and Eviction (COHRE) and others work on land related matters. See the following link for contact information: http://www.gichd.org/fileadmin/pdf/ma_development/wk-landrights-oct2010/LMAD-LR-list-organisations-Nov2010.pdf

For additional information on landmines and land rights in conflict affected contexts, see www.gichd.org/operational-assistance-research/linking-mine-action-and-development/update-on-activities/landmines-and-land-rights-in-conflict-affected-countries/



Commonly used terms* in this Policy Brief

Clearance: tasks or actions to ensure the removal and/or the destruction of all mine and ERW hazards from a specified area to the specified depth.

Customary law: the past and present body of indigenous laws, conventions, and norms which govern localised societies. Also often called 'informal', 'unwritten', 'traditional' or 'indigenous' law; customary law can either be based on tradition and custom, or not. Essentially customary law evolves to meet contemporary needs regarding land tenure, based on the priorities of day to day life.

Land rights: a just and legal claim to hold, use, enjoy, and convey an interest in land. Legal in this regard can refer a wide variety of customary and statutory laws that are not always compatible.

Land tenure: the way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land. In other words, tenure reflects relationships between people and land directly, and between individuals and groups of people in their dealings in land.

Released land: land previously suspected to be contaminated by mines/ERW and where the suspicion of hazard has been removed through non technical survey, technical survey and clearance.

Statutory law: legislated law derived, enacted and enforced by the state. Also called 'formal' or 'documented' law, it can include policies, laws, acts, implementing regulations and enforcement rules, along with sanctions, penalties and punishments. While statutory laws can be derived in a variety of ways, generally it can be either drawn from the general population or otherwise seek the public's participation and/or consultation in law-making, or imposed on a population with little participation.

Survey: the gathering of information of an area suspected to be contaminated by mines/ERW. There are 3 main types of survey. **Impact Survey** looks at the impact of mines/ERW on the affected population. **Non-Technical Survey** involves collecting and analysing new and/or existing information about a suspected hazardous area in order to confirm whether there is evidence of a hazard or not and to define the perimeter of the actual hazardous areas without physical intervention. **Technical Survey** is a detailed intervention with clearance or verification assets into a Hazardous Area. It should confirm the presence of mines/ERW leading to clearance and identify area with no indication of mines/ERW which could allow for land to be released.

* Black H (1991) Black's Law Dictionary. West Publishing Co., St. Paul MN; UN-HABITAT Global Land Tool Network, Secure Land Rights for All, (2008).

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