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# **Doing no harm? Mine action and land issues in Cambodia**

Geneva, September 2014

The Geneva International Centre for Humanitarian Demining (GICHD), an international expert organisation legally based in Switzerland as a non-profit foundation, works for the elimination of mines, explosive remnants of war and other explosive hazards, such as unsafe munitions stockpiles. The GICHD provides advice and capacity development support, undertakes applied research, disseminates knowledge and best practices and develops standards. In cooperation with its partners, the GICHD's work enables national and local authorities in affected countries to effectively and efficiently plan, coordinate, implement, monitor and evaluate safe mine action programmes, as well as to implement the Anti-Personnel Mine Ban Convention, the Convention on Cluster Munitions and other relevant instruments of international law. The GICHD follows the humanitarian principles of humanity, impartiality, neutrality and independence.

Special thanks to Natalie Bugalski of Inclusive Development International for her contribution to this report.

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## Executive summary

Land conflict, tenure insecurity and an inequitable distribution of land are among the most pressing challenges facing Cambodia today. In a country in which most people depend on agriculture, livestock rearing, fishing and forest products for their livelihoods, secure access to safe and productive land is crucial. Yet, over the past decade land conflict has increased dramatically, with one NGO reporting having recorded disputes involving 700,000 people between 2000 and 2012. Land distribution is highly unequal: In 2010 it was estimated that just one percent of the population owned 30 percent of Cambodia's land.

In addition to land-related disputes, landlessness and insecure tenure, Cambodia also has a significant mine and ERW contamination problem, which stems from 30 years of conflict that ended in the late 1990s. It also has a significant cluster munition contamination problem in the north-east resulting from aerial bombardment by U.S. forces between 1965 and 1975. Mine/ERW operators have been working in Cambodia since the late 1990s to safely remove and destroy mines and ERW and make land available for agriculture, housing and infrastructure development.

Land release is inherently beneficial: it saves lives and frees up land for housing, agriculture and other uses. However, mine action actors – authorities, operators, the UN and donors – should nonetheless be concerned about the land rights implications of their activities in order to ensure that intended beneficiaries do in fact benefit in the short, medium and long-term and that land release does not instigate conflict or land-grabbing. Some of the specific land issues that are present in mine/ERW affected areas of Cambodia include: the lack of formal land tenure documentation over released land; land classification problems; land-related conflict; and released land remaining unused.

In some respects, Cambodia's mine action sector stands out for its decentralised, participatory and systematised approaches for ensuring intended beneficiaries are those most in need and actually benefit from released land. And several good practice lessons can be learned from Cambodia's mine action actors in a range of areas, from national policy and standards to operations. However, while most recognise that land is an issue and have put in place some measures to try to prevent land-related disputes, more could be done to promote land use and tenure security by intended beneficiaries.

This report includes recommendations that seek to build upon good practice and strengthen systems and processes to ensure mine action efforts not only do no harm, but also bring the maximum possible benefits to beneficiary households and the socio-economic development of Cambodia as a whole. The recommendations, described in detail in the report, include the following:

- improving coordination between mine action and land actors, and their respective prioritisation processes;
- providing land rights training for mine action actors;
- strengthening post clearance monitoring and evaluation; and
- improving the flexibility of current funding modalities.

## Introduction

Land conflict, tenure insecurity and an inequitable distribution of land are among the most pressing challenges facing Cambodia today. In a country in which most people depend on agriculture, livestock rearing, fishing and forest products for their livelihoods,<sup>1</sup> secure access to safe and productive land is crucial. Yet, over the past decade land conflict has increased dramatically, with one NGO reporting having recorded disputes involving 700,000 people between 2000 and 2012.<sup>2</sup> One of the major causes of land conflict is the grant of large swaths of land to investors through Economic Land Concessions (ELCs) over areas already occupied and used by rural households or over territories belonging to indigenous communities.<sup>3</sup> Transparency around the issuance of ELCs is low, making it difficult to calculate precise figures; however by some estimates over three million hectares, of a total landmass of 17.7 million hectares – approximately 4 million of which is arable - have been granted under ELCs, mainly for agro-industrial plantations.<sup>4</sup> Meanwhile, although approximately one quarter of rural households are land poor (owning less than half a hectare) and some 20 percent are landless,<sup>5</sup> less than 7,000 hectares have been allocated to such households through a formal social land concession (SLC) process.<sup>6</sup> Land distribution is, indeed, highly unequal: In 2010 it was estimated that just one percent of the population owned 30 percent of Cambodia's land.<sup>7</sup>

Even for households that have ownership claims to land, tenure status is usually not formally registered. The foundational legislative framework for land registration has been in place since 2001, and over two million titles have been issued under the Systematic Land Registration (SLR) process that commenced soon afterwards. Yet, with the number of land plots throughout the country put at roughly 10 million,<sup>8</sup> it will take many more years to complete initial registrations. Further complicating matters, rates of subsequent registration (ie. upon sale or transfer of parcels) is alarmingly low: only about 12 percent of land transfers are officially recorded, meaning that the emerging land registry is already becoming out-dated.<sup>9</sup> There is also anecdotal evidence that a formal land title does not necessarily equate with de facto tenure security in the face of an ELC or other types of competing claims to the land by powerful interests. Households with other forms of land tenure, such as those occupying State property or renting, remain largely unprotected from forced eviction both in law and in practice.

In addition to land-related disputes, landlessness and insecure land tenure, Cambodia also has a significant mine and ERW contamination problem, which stems from 30 years of conflict that ended in the late 1990s. It also has a significant cluster munition contamination problem in the north-east resulting from aerial bombardment by US forces between 1965 and 1975. Mine/ERW operators have been working in Cambodia since the late 1990s to safely remove and destroy mines and ERW and make land available for agriculture, housing and infrastructure development.

Mine action organisations deal directly with land through their operations. They survey, clear and handover land, and in doing so, they interact directly with local communities and local authorities

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<sup>1</sup>United Nations Food and Agriculture Organization, Foreign Agriculture Investment Country Profile: Cambodia, 2001, p. 7.

<sup>2</sup>Paul Vreize and KuchNaren, Carving up Cambodia, *The Cambodia Daily*, 10-11 March 2012.

<sup>3</sup> See, Licadho, The Great Cambodian Giveaway: Visualizing Land Concessions over Time website, [http://www.licadho-cambodia.org/concession\\_timelapse/](http://www.licadho-cambodia.org/concession_timelapse/)

<sup>4</sup> Cambodian Center for Human Rights, Cambodia: Land Conflict - An Overview of the Land Situation, December 2013, p. 4

<sup>5</sup>United Nations Food and Agriculture Organization, Foreign Agriculture Investment Country Profile: Cambodia, 2001, p. 7.

<sup>6</sup>AnreasNeef et al., The Politics and Ethics of Land Concessions in Rural Cambodia, *Journal of Agricultural and Environmental Ethics* (2013) 26:1085-1103.

<sup>7</sup>AnreasNeef et al., citing United Nations Capital Development Fund (UNCDF), Local development outlook Cambodia: Trends, policies, governance. Phnom Penh., 2010.

<sup>8</sup> Council for Land Policy, Land Policy White Paper, Royal Government of Cambodia, 28 August 2012, p. 19.

<sup>9</sup> Unpublished GIZ study, 2014

with land-related responsibilities. Returning land that was previously inaccessible and/or unsafe can change its value and status, which can lead to disputes over ownership, use and access and in some cases, misallocation and land grabbing. Given increasing tensions and conflict over land and natural resources in Cambodia, to what extent do mine action organisations encounter land issues in mine/ERW contaminated areas and how do they respond? Do mine action organisations take any steps to help prevent or mitigate land-related conflict, and to help promote secure land tenure within affected communities?

## Background

In 2010, the Geneva International Centre for Humanitarian Demining (GICHD) initiated a project on land rights in conflict affected contexts. The purpose of the project was to examine whether land issues were a problem in mine/ERW affected communities, and how mine action organisations respond to these issues. As part of the project, GICHD commissioned several country case studies, including one on Cambodia.<sup>10</sup> The case study documented several lessons learned by mine action organisations, based on long-standing experience dealing with the intersection of land issues with mine/ERW survey and clearance operations. The case study also made several recommendations on strengthening consideration of land use and land rights issues.

Since 2010, several changes have taken place in Cambodia with regards to land. For example, in June 2012, Prime Minister Hun Sen introduced an accelerated land titling programme, known as Directive 001, to make half a million families official land owners by issuing land titles. The Government has also granted economic and mining concessions at an alarming rate to private companies for large-scale agriculture, mining, infrastructure development, eco-tourism, and special economic zones. According to the UN Special Rapporteur for human rights in Cambodia, “insecure land tenure, ineffective systems (court and cadastral) to handle claims related to land and other obstacles to access to justice, and widespread land disputes continue to be a challenge.”<sup>11</sup>

Given the broader context with regards to land tenure and land rights in Cambodia, GICHD carried out a technical support mission in November/December 2013 to:

- identify the main land-related problems that mine action organisations encounter during the course of their operations;
- examine how these issues should and are being addressed to ensure mine action operations adhere to ‘do no harm’ humanitarian principles<sup>12</sup>, and do not create or worsen land-related conflict;
- document good practice and lessons learned; and
- strengthen the links between mine action and land stakeholders in Cambodia.

Releasing land that was previously unsafe and inaccessible due to mines/ERW is not a neutral activity. In many contexts, it results in a change in the land’s value, which can affect land rights and land use. A ‘do no harm’ approach in the mine action context therefore requires that mine action organisations understand their operational legal, social and economic context: For example, how is the land used by different groups and who has what legal rights to the land?

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<sup>10</sup> GICHD (Kristen Rasmussen). [Landmines and Land Rights in Cambodia](#), Geneva, 2010.

<sup>11</sup> UN Human Rights Council, Report of the Secretary General, Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights, A/HRC/18/47, 21 September 2011.

<sup>12</sup> The Do No Harm framework is based on the belief that humanitarian actors should take steps to ensure that they do not make a situation worse through the assistance that they provide.

What is the potential positive and negative impact of land release on that context, such as new competing claims to the cleared land, including by powerful individuals or the State?

## Objectives

The purpose of this report is to examine in greater detail how mine action organisations respond to land issues in Cambodia, highlight good practice and lessons learned, and propose recommendations on how to promote secure land tenure through land prioritisation and release processes. For example, are land issues identified in the priority-setting process? Do mine action organisations share information and have formal links with land actors? Is security of tenure ensured during handover processes? Do survey and post clearance monitoring teams collect sex and age disaggregated data from women and men about land tenure, land use and land-related problems that communities may face before, during and after land has been released, and if so, what is done with this data? Are there functioning systems in place to determine whether intended male and female beneficiaries are encountering land problems? If mine/ERW-affected communities encounter land-related problems, is there a clear process in place for affected communities and mine action organisations to refer these issues to the relevant land authorities and organisations?

This report is based on desk-based research and interviews with key mine action and land stakeholders in Phnom Penh, Siem Reap, Battambang and Pailin. Research was carried out by Sharmala Naidoo (GICHD), Natalie Bugalski (Inclusive Development International), and Chan Vicheth (national consultant). The report is structured as follows:

Section 1 provides a brief overview of mine action in Cambodia, examining the nature of the country's mine/ERW contamination problem, the response by the international community, and key policies, structures and actors governing the sector.

Section 2 describes the main land issues that arise, or have the potential to arise, in mine and ERW-affected areas of Cambodia.

Section 3 describes how mine action actors typically prevent and respond to land issues in mine/ERW affected communities.

Section 4 identifies the challenges and gaps in the current mine action response to land issues.

Section 5 contains conclusions and recommendations.



# 1. Mine action in Cambodia

In Cambodia, mines and ERW threaten lives and livelihoods, denying safe access and use of land and other natural resources. Land release<sup>13</sup> is typically undertaken to reduce the risk of casualties, as well as to support livelihoods and wider socio-economic development at local and national levels. This section provides a brief overview of the mine/ERW contamination problem in Cambodia and the response by national and international actors.

## 1.1 Mine/ERW contamination problem

Thirty years of conflict that ended in the 1990s left Cambodia badly affected by mines and ERW. Following the aerial bombardment by U.S. forces and some mine contamination between the mid-1960s and mid-1970s, the first significant mine-laying occurred under the Vietnamese occupation between 1979 and 1989. Since 1979, over 64,000 landmine and ERW casualties have been recorded in Cambodia. Despite a considerable reduction in casualty numbers over recent years, Cambodia's mine and ERW problem continues to pose a significant safety risk and impede social and economic development.

Cambodia's anti-personnel mine problem is concentrated, but not limited to, 21 north-western districts along the border with Thailand. This includes the 1,046 km-long K5 belt, installed in the mid-1980s by the Vietnamese-backed government to impede the return of the insurgent Khmer Rouge. Reportedly, the K5 ranks among the densest contamination in the world, with up to 2,400 mines per linear kilometre.<sup>14</sup> The precise extent of mine contamination in Cambodia is not fully known. In July 2012, data collected through the Baseline Survey (BLS), a process led by the Cambodian Mine Action and Victim Assistance Authority (CMAA) to quantify the remaining mine threat in the country, indicated that over 1,005 km<sup>2</sup> of land was affected to some degree by anti-personnel mines –including 650 km<sup>2</sup> affected by scattered mines. A further 66 km<sup>2</sup> was identified as contaminated only by anti-vehicle mines.<sup>15</sup>



In addition to anti-personnel and anti-vehicle mines, Cambodia is estimated to have between 1.9 and 5.8 million cluster munition remnants in the eastern and north-eastern parts of the country, along the borders with Lao PDR and Vietnam. The BLS has identified an area of 489 km<sup>2</sup>, especially in south-eastern Kratie province (bordering Vietnam), north-eastern Stung Treng province and northern Prey Vihear province. However, this estimate is likely to increase as a

<sup>13</sup> Land release is the process involved in returning land suspected of being contaminated by mines and ERW to productive and safe use. The land release involves non-technical survey, technical survey and clearance activities.

<sup>14</sup> International Campaign to Ban Landmines and Cluster Munition Coalition. Landmine & Cluster Munition Monitor – Cambodia: Mine Action (2013a). Accessible at [http://www.the-monitor.org/index.php/cp/display/region\\_profiles/theme/2495#\\_ftn1](http://www.the-monitor.org/index.php/cp/display/region_profiles/theme/2495#_ftn1)

<sup>15</sup> Landmine & Cluster Munition Monitor (2013a).

result of additional survey and the inclusion of data on sub-munition contamination following Thailand's cross-border shelling of Cambodia in April 2011.<sup>16</sup>

## 1.2 National mine action programme

Humanitarian mine action has taken place in Cambodia since the late 1990s. Significant gains have been made, particularly in recent years. The number of mine/UXO related casualties has fallen, from 271 in 2008 to 186 in 2012<sup>17</sup>. Over 530 square kilometres of land was cleared from 2008-2012<sup>18</sup>, with steadily increasing clearance rates since 2008<sup>19</sup>.

### National policies, structures and actors

Humanitarian mine action in Cambodia is guided by the National Mine Action Strategy 2010-2019, which has four main goals:<sup>20</sup>

1. **Reduce mine/ERW casualties and other negative impacts** by allocating demining assets to the most affected communities and promoting risk education.
2. **Contribute to economic growth and poverty reduction** by supporting local, subnational, and national development priorities, supporting access to care for survivors and *securing the land rights of intended beneficiaries of clearance*; (emphasis added).
3. **Promote international and regional disarmament and stability** by supporting the Mine Ban Treaty and adhering to the Convention on Conventional Weapons Protocol V on explosive remnants of war.
4. **Ensure sustainable national capacities to adequately address the residual mine/ERW contamination** by reviewing the institutional framework to address the residual problem, plugging gaps, and maintaining sustainable capacity.

In addition to its National Mine Action Strategy, Cambodia also has national standards which guide mine action operations and which accredited agencies are obligated to follow.

### Cambodia Mine Action and Victim Assistance Authority (CMAA)

The national regulatory and coordination agency for mine action is CMAA, which was established in 2000. CMAA's responsibilities include: regulation and accreditation of all operators, strategic planning, information management, quality management and coordinating mine/ERW risk education and victim assistance.

### Provincial Mine Action Committees and Mine Action Planning Units

At a sub-national level, Provincial Mine Action Committees (PMACs) and Mine Action Planning Units (MAPUs) are responsible for coordinating mine action operations. PMACs are inter-department committees chaired by a Provincial Governor or a Deputy Provincial Governor. MAPUs are the technical assistants of the PMACs, and they work in cooperation with affected communities and local authorities to identify community priorities. In consultation with mine/ERW operators, they prepare annual clearance task lists. MAPUs and PMACs were established since 2004 following the introduction of the 2005 Socio Economic Management Guidelines on Mine

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<sup>16</sup> Landmine & Cluster Munition Monitor (2013a).

<sup>17</sup> Landmine & Cluster Munition Monitor (2009, 2013a).

<sup>18</sup> Royal Kingdom of Cambodia. The National Strategic Development Plan 2009-2013.

<sup>19</sup> Landmine & Cluster Munition Monitor (2013a).

<sup>20</sup> National Mine Action Strategy (NMA) 2010-2019, Cambodia. Accessible at

[http://www.gichd.org/fileadmin/pdf/ma\\_development/nma-strat/NMAS-Cambodia-2010-2019.pdf](http://www.gichd.org/fileadmin/pdf/ma_development/nma-strat/NMAS-Cambodia-2010-2019.pdf)

Clearance Operations. They were established partly in response to several land-related scandals in the mine action sector in the late 1990s and early 2000s, where cleared land intended for landless households was taken by high-ranking officials, including military officials.<sup>21</sup>

**Table 1: Key mine action institutions and operators in Cambodia<sup>22</sup>**

| Body  | Situation on 1 January 2012  |
|---|--|
| <b>National Mine Action Authority</b>         | Cambodia Mine Action and Victim Assistance Authority (CMAA)  |
| <b>Mine Action Centre</b>                     | CMAA   |
| <b>International demining operators</b>       | NGO: HALO Trust, Mines Advisory Group (MAG), Norwegian People's Aid (NPA)  |
| <b>National demining operators</b>            | NGO: Cambodia Mine Action Centre (CMAC), Cambodia Self-Help Demining (CSHD)<br>Government: National Centre for Peace Keeping Forces of the RCAF (Royal Cambodian Armed Forces), Mine and ERW Clearance (NPMEC), CSHD |
| <b>International risk education operators</b> | MAG, Spirit of Soccer  |
| <b>National risk education operators</b>      | National Police, Ministry of Education, World Vision Cambodia, Cambodian Red Cross, CMAC, NPMEC  |

### Humanitarian mine/ERW operators

Land release for humanitarian purposes started in the early 1990s in Cambodia. The principal civilian mine/ERW operators are CMAC, Cambodia Self-Help Demining (CSHD), the HALO Trust and Mines Advisory Group (MAG). Norwegian Peoples Aid is no longer involved in land release but provides capacity building support to CMAA and is carrying out Baseline Survey in the north-east.<sup>23</sup>

The Royal Cambodia Armed Forces (RCAF) have been involved in demining for many years, initially to support military operations and to clear land for military purposes. However, since 1998, RCAF also clears mines/ERW for non-military purposes<sup>24</sup> through its National Centre for Peace Keeping Forces, Mine and ERW Clearance (NPMEC). NPMEC's main function is twofold: urgent demining in support of government priority projects; and demining in support of UN Peacekeeping Operations abroad.

<sup>21</sup> GICHD (Rasmussen), 2010; These post clearance land issues led to the formation of pilot Land Use Planning Units (LUPUs) in selected provinces to ensure beneficiaries were able to access and use land after clearance. The LUPUs were replaced several years later by PMACs and MAPUs.

<sup>22</sup> Landmine & Cluster Munition Monitor – Cambodia, (2013a). Accessible at [http://www.the-monitor.org/index.php/cp/display/region\\_profiles/theme/2495#\\_ftn1](http://www.the-monitor.org/index.php/cp/display/region_profiles/theme/2495#_ftn1)

<sup>23</sup> Norwegian People's Aid – Mine Action in Cambodia. Accessible at <http://www.npaid.org/Our-work/Countries/Asia/Cambodia/Mine-Action-in-Cambodia>

<sup>24</sup> GICHD, The Role of the Military in Mine Action, Geneva, 2003, p. 66.

## 2. Land issues in mine/ERW affected areas

Insecure land tenure, land conflict and land seizures are a country-wide problem in Cambodia, including in mine/ERW affected areas. This section describes a number of interlinked key land-related issues that impact, or have the potential to impact, on humanitarian mine action efforts and pose challenges to the ability for mine action actors to meet sectoral goals.

### 2.1 Lack of formal land tenure documentation over released land

While a systematic land registration programme has been underway for over a decade, the majority of Cambodians still do not have land title or other forms of secure land tenure. Households that have benefitted from land release therefore typically do not have formal land tenure documentation, despite many having legitimate claims to the land under Cambodian law.

The Land Law states that people who occupied certain types of property before 31 August 2001, and meet a number of other conditions<sup>25</sup>, have exclusive rights to the property, which can be transferred to full ownership.<sup>26</sup> Such rights are known as “possession rights” and form the legal basis for the grant of titles under the land registration programme. According to mine actors interviewed, the majority of their intended beneficiaries have been using the contaminated land for residential or agricultural purposes, while attempting to avoid mines/ERW, and are presumed by mine actors to have possession/ownership rights. While such households will be eligible to receive title once the systematic registration programme reaches them, until that time - perhaps years away - they do not have a high degree of tenure security over the released land. It is possible for households claiming possession rights to independently apply for title instead of waiting for the systematic registration programme to reach them; however the high cost of sporadic titling makes it inaccessible to the vast majority of Cambodian households.

The absence of land titles or other formal documentation can mean that land release activities do not ultimately benefit intended beneficiaries who face tenure insecurity that manifests in forced evictions.<sup>27</sup> The lack of tenure documentation is particularly problematic in areas where land disputes are common, and areas where companies have been allocated land through ELCs, which may overlap or adjoin newly released land (see below).

In other cases, landless households – rather than owners – are the intended beneficiaries of clearance activities. Failure to provide such households with clear land tenure documentation, such as a lease or social land concession,<sup>28</sup> prior to the land being cleared can lead to the intended beneficiaries being denied allocated land, as the case study in Box 1 illustrates.

#### **Box 1: Ou Ro’el village, Pailin province<sup>29</sup>**

In 2006, approximately 296 landless households living in OuRo’el village made a request to an operator to clear contaminated land in their village. The land was unoccupied at the time and they required the land for housing and agriculture purposes. The local authorities agreed that

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<sup>25</sup> These conditions include: the possession of the land must have started before the Land Law was passed on August 30, 2001; the possession must be continuous; the possession must be peaceful; the occupier must have taken possession in good faith (honestly); the possession must be unambiguous (clear); and the possession must be known to the public.

<sup>26</sup> Land Law (2001), Article 38.

<sup>27</sup> According to the 2006 Policy Guidelines and Operational Guidelines on Socio-Economic Management of Mine Clearance Operations, intended beneficiaries are supposed to receive ownership certificates at handover; however according to interviewees, formal land titles are not provided during this process.

<sup>28</sup> Land Law (2001), article 17; and Sub-decree 19 on Social Land Concessions (2003).

<sup>29</sup> OuRo’el village is in StuengKach commune, Sala Krau district, Pailin province.

the land, once cleared, would be allocated to them. In 2007, the villagers visited the land to observe the clearance process and were surprised to find that other people were starting to farm parts of the land that the operator had finished clearing and that the local authorities did nothing to stop them. The representatives of the 296 households contacted the Deputy Provincial Governor (Chair of the PMAC) who reassured them that they would receive the land once clearance was completed. However, following clearance the land was allocated by commune and district officials to households from outside their village. The village representatives believe the Commune and District officials may have benefited personally from the misallocation of the land in some way, such as through unofficial payment. Although the OuRo'el villagers submitted a formal complaint to the Provincial Governor, the PMAC and the MAPU, the case remains unresolved and the families remain landless.

## 2.2 Land classification problems

There are cases where landless families have settled on State property that is contaminated. They reside on and/or cultivate the land despite knowing the risk of mine/ERW contamination, in order to meet their socio-economic needs. People who have settled on State private property after the legislative cut-off date (i.e. August 2001) cannot claim possession/ownership rights. In other cases, people have settled on contaminated land that is classified under the Land Law as State public property, such as forests or riverbanks, which means it cannot be privately owned.<sup>30</sup> Mine actors continue to encounter problems in releasing this type of land only to find it cannot be officially allocated to intended beneficiaries during the handover process. The beneficiaries thus remain highly insecure and vulnerable to forced eviction despite the considerable survey/clearance assets used to provide them with safe land for their housing and/or livelihood needs.

In rare instances, State property has been allocated to landless households through a Social Land Concession (SLC).<sup>31</sup> For State public property, it is necessary to first reclassify the land as State private property – an additional slow administrative step. While CMAA has intervened in a small number of cases to have State property reclassified and allocated as an SLC to intended beneficiaries of clearance, this mechanism has been used only in exceptional circumstances and is not standard practice. Indeed, few SLCs have been granted in Cambodia to date due to lack of political will and the high cost of supporting poor families to productively use newly allocated land. SLCs could, however, be granted more systematically to provide tenure security post clearance for households already using the land in question, as it is unlikely to require the same level of developmental support as would be necessary for families newly resettled on allocated land.

## 2.3 Land conflict

Land conflicts between a variety of actors are common across the country. Conflict exists between households, between households or communities and the State and /or powerful individuals, including government and military officials, and between households and domestic and foreign companies. Land release can instigate or exacerbate conflict by increasing the value of the land, which may induce disputes among neighbours, land grabbing or pressure to sell land. Land release can therefore unwittingly lead to tenure insecurity and related harmful impacts on intended beneficiaries.

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<sup>30</sup>Land Law (2001), article 15 and 16.

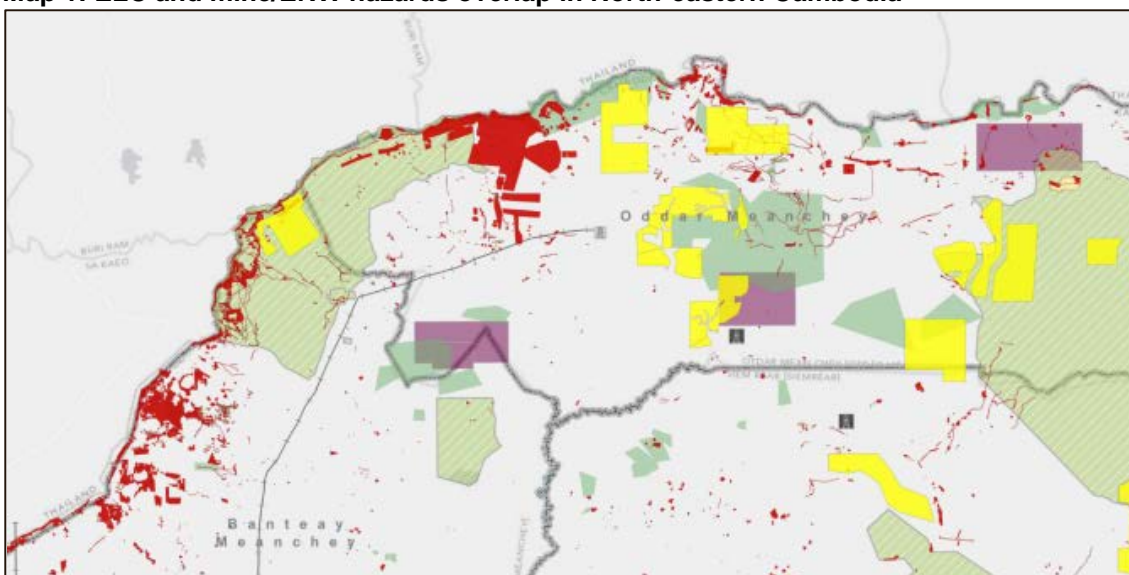
<sup>31</sup> Social Land Concessions are a mechanism to grant state private land to poor landless families for residential and farming purposes. Land Law (2001), article 17; and Sub-decree 19 on Social Land Concessions (2003).



In recent years, the government has granted large numbers of ELCs and mining concessions across a significant proportion of the country, including over existing residential and agricultural villages. An alarming number of concessions have been granted in the north east, home to many of Cambodia's indigenous peoples, resulting in the loss of their ancestral lands and natural resources. Some of the areas under concession overlap with areas that are contaminated by mines and ERW.<sup>32</sup> This raises some important questions: is humanitarian mine action funding being used to clear land which will be issued to companies under economic land concessions, rather than being used by poor households over the long-term? What steps are mine action actors, including the national mine action authority, taking to ensure that intended beneficiaries have secure land tenure, and are not vulnerable to land grabbing?

The map below illustrates the overlap between mine/ERW hazards based on Baseline Survey (areas highlighted in red), ELCs (areas highlighted in yellow) and mining concessions (areas highlighted in purple in north-west provinces of Oddar Meanchey and Banteay Meanchey).

**Map 1: ELC and mine/ERW hazards overlap in North-eastern Cambodia**



**Legend:** Areas shaded red = suspected hazardous areas (Baseline survey); areas shaded yellow: Economic Land Concessions (as at 2012); areas shaded purple: mining concessions (as at 2012)

Scarce Official Development Assistance (ODA) resources used to release land may ultimately benefit business investors, including concessionaires or well-connected individuals. The following case study examines the case of households living in Bos village in Oddar Meanchey province, where several years post clearance, land intended for landless households was granted by the government as an Economic Land Concession to Angkor Sugar Company.

<sup>32</sup>See [thetimelapsemap](#) produced by LICADHO (Cambodian League for the Defence and Promotion of Human Rights) which visualises the granting of Economic Land Concessions in Cambodia over time.

### **Box 2: Bos village, OddarMeanchey province<sup>33</sup>**

An operator cleared land in Bos village and released it for use in 1998. There were 47 households living in the area at the time. By 2003, the village had grown to over 200 households and land was allocated for residential and farming plots by the village chief and local officials. In 2007, villagers heard that the government had granted three economic land concessions to various sugar companies on adjoining land. In 2009, 119 households were forcibly evicted by a group of security forces, officials and others believed to be company workers, to make way for an economic land concession granted to Angkor Sugar Company. Their homes were burnt down and they lost all of their belongings and farmland.<sup>34</sup> While clearance took place well before the creation of CMAA and the MAPUs, and well before the land grab, this case illustrates the need to ensure that intended beneficiaries have secure land tenure post clearance. If the families had received secure tenure documentation as a part of the handover process, in the form of, for example, a social land concession, this may have prevented their forced eviction and displacement several years later.

## **2.4 Released land not always used**

There are instances where land is released but remains unused despite handover to poor and/or landless beneficiaries. In some cases, beneficiaries engage in seasonal labour migration, leaving the land temporarily due to, for example, a lack of irrigation or developmental support, and then return when weather conditions are more conducive to cultivation. In other cases, households opt to move permanently due to the lack of infrastructure or other agricultural support in place, post-land release. These households are simply too poor to cultivate or otherwise use the released land to sustain their livelihoods. The vacated land is left vulnerable to seizure or competing claims by the State or third parties

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<sup>33</sup>Bos village is located in Koun Kriel commune, Samraong district, Oddar Meanchey province

<sup>34</sup>This case was documented by: Amnesty International, [Eviction and Resistance in Cambodia: Five women tell their stories](#), 2011

## 3. Mine action response to land issues

This section examines how mine action organisations prevent and respond to land issues during land release operations. It examines national policy and structures in place, as well as key activities from prioritisation to handover and post clearance assessment.

### 3.1 National policy

On paper, Cambodia has a range of policies that signal the role that mine action can and should play to promote poverty reduction and secure land tenure. For example:

- The **National Strategic Development Plan 2009-2013** states that mine/UXO clearance will remain a government priority “especially in remote areas, areas with landless farmers and areas with high potential for agricultural and infrastructure development. Moreover, the clearance of mines and UXO should be linked to the principles of equitable distribution of cleared land to landless farmers.” The Plan also states that one of the objectives of CMAA is to “monitor [the] allocation of demined land to the right beneficiaries.”<sup>35</sup>
- Goal 2 of the **National Mine Action Strategy** (NMAS) focuses on ensuring mine action contributes to economic growth and poverty reduction, and a sub-goal refers to the need to “support land administration processes to secure the rights of intended beneficiaries on demined land.”<sup>36</sup>
- The 2006 **Policy Guidelines and Operational Guidelines on Socio-Economic Management of Mine Clearance Operations** (herein referred to as the Guidelines) outline specific roles for national authorities in allocating and monitoring the use of land once it has been released.

### 3.2 Role of authorities

As mentioned above, the Guidelines clarify which national authorities are responsible for dealing with land issues in mine/ERW affected areas. For example:

- CMAA is responsible for monitoring the use of cleared land to ensure that it is reaching intended beneficiaries. CMAA is also responsible for monitoring the MAPU’s coordination with relevant institutions in issuing legal documents and awarding ownership certificates.<sup>37</sup>
- PMACs are responsible for follow up and coordination on the use and distribution of cleared land for beneficiaries and handle land-related disputes.
- District/Municipality mine action working groups are responsible for overseeing the use and distribution of cleared land to the intended beneficiaries. They are also supposed to participate in handling disputes related to cleared land.
- MAPUs coordinate land dispute resolution during the mine action planning process. They also coordinate the resolution of disputes that are identified during the post clearance monitoring process.
- Local authorities (Commune Council/Sangkat) are responsible for ensuring that cleared land is used according to the original requests. They are also involved in dispute resolution with

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<sup>35</sup>Royal Government of Cambodia. [National Strategic Development Plan 2009-2013](#).

<sup>36</sup>Royal Government of Cambodia/CMAA. National Mine Action Strategy, 2009-2019.

<sup>37</sup>According to interviews, in practice formal titles are not awarded.



regards to cleared land and report on unresolved disputes to the district or provincial authorities as necessary.

No evaluation has as yet examined the extent to which national authorities carry out these roles and how effective they are in preventing and mediating land disputes that arise. There is anecdotal evidence, however, which indicates that CMAA has intervened to assist beneficiary communities with achieving secure land tenure. For example, in Kamrieng village, Battambang province<sup>38</sup>, the local authorities allegedly tried to grab cleared land following handover. The operator informed CMAA that only some of the intended beneficiaries received land. Following CMAA's intervention, all intended beneficiaries were provided land. Mine/ERW affected households, such as those in Kamrieng village typically have limited or no knowledge about their land rights, and often lack access to effective grievance mechanisms in situations where their land rights are being violated. This case illustrates that land grabbing by local authorities post clearance does occur; that a formal grievance channel between communities and the CMAA is required; and that intervention by CMAA can be effective.

### 3.3 Priority-setting

Cambodia has a bottom-up prioritisation process where the coordination of mine action planning is decentralised to provincial level PMACs and MAPUs. These bodies coordinate with affected communities, operators and development partners to develop annual land release plans. This involves gathering information from affected young and adult men and women in the communities about their preferences to determine how best to allocate available resources for specific land release tasks. This bottom-up approach was established in part to help mitigate some of the land-related problems that mine action organisations encountered in the 1990s and early 2000s.

**Chart 1: Mine Clearance Planning and Prioritisation Process in Cambodia<sup>39</sup>**



Since 2012, the prioritisation process has consisted of the following two phases:<sup>40</sup>

1. CMAA facilitates the selection of priority communes. This takes place in the 15 provinces where MAPUs have been established. The priority communes are selected based on the BLS data, with casualty-rate data also taken into account. For a proportion of communes, there is some flexibility. For example, the selection of priority communes may also be based

<sup>38</sup>Kamrieng village, Kamrieng Commune, Kamrieng district, Battambang

<sup>39</sup>Source: CMAA. Post Clearance Monitoring Consolidated Report, MAPUs, October 2011-February 2012.

<sup>40</sup>Interview with CMAA on 26 February 2014.

on donor requirements and practical factors such as the existence of a development project that can continue if the area is cleared. At least 75% of priority communes are identified based on BLS and casualty data alone. About 25% of communes are selected based on other factors such as donor requirements.

2. The next step involves the selection of minefields, which is facilitated by the MAPUs. The MAPUs select minefields in association with the operators and based on meetings with affected communities, district and provincial level governments and development partners. Priority minefields are typically selected based on local village and commune needs, e.g. desire to build a school or road. This local level prioritisation is integrated with the commune investment planning process.

During the minefield prioritisation and survey and clearance planning process, MAPU staff verify land classification status before land is prioritised for clearance, to help reduce the possibility of issues arising post clearance. For example, State public land might be excluded from prioritisation if it cannot be converted to a Social Land Concession and made available for private use with secure tenure.<sup>41</sup> The MAPUs also take into account issues regarding land ownership and conflict during the second stage of prioritisation. If there is a land dispute in a particular area, it is not prioritised until the conflict is resolved by local authorities. A minefield with unclear ownership of the land will also be excluded from the work plan.

### 3.4 Baseline/non-technical survey

In 2009, Cambodia commenced a Baseline Non-Technical Survey in order to improve the identification of suspected hazardous areas and enable improved integration into land use planning initiatives based on credible evidence. The baseline survey of areas west of the Mekong was completed at the end of 2012. NPA is the only operator carrying out baseline survey in the north-eastern provinces to identify the extent of ERW contamination.

A review of the standard IMSMA forms used for the baseline survey reveals that little consideration is given to land issues, which was a missed opportunity to collect data that could be used to inform prioritisation and operational planning. For example:

- Baseline Survey Report Form I: Village Information does not include any land-related fields
- Baseline Survey Report Form II: Mine Area/Residual Threat Land (Polygon) Information includes one question about the potential future use of land. However, the form does not include questions about the type of land (eg forest, agriculture, etc.), current land use, land tenure/rights, previous land-related disputes, future potential for land-related conflict, intended beneficiaries, land value, etc.

In addition to the standard BLS forms generated through IMSMA, some mine/ERW operators use their own survey forms that include additional fields, enabling them to collect supplementary data prior to survey/clearance, which informs their operations and report on results. For example, one operator uses the following forms:

- Baseline Focus Group Discussion Form
- Baseline Household Questionnaire
- Direct Beneficiary List
- Suspected Hazardous Area (SHA) Assessment

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<sup>41</sup> GICHD (Kristen Rassmussen), 2010.

- Mid Clearance Assessment Report
- Impact Assessment Household Questionnaire

The Baseline Household Questionnaire includes the following questions:

- How much land does your household have?
- Does your household have a land title(s) for the land the operator will return?
- In your estimation, how much land does your household own?
- What is the intended land use once the SHA has been returned?
- Is there a development partner to support land use after land has been returned?
- Are there any problems foreseen in the beneficiaries being able to use the returned land?

The Baseline Focus Group Discussion Form includes questions such as:

- Do you use the land the operator has returned?
- If you don't use some/all of the released land, why not?

### **Box 3: Good practice in a complex province**

Ratanakiri, in the north-east of Cambodia, has one of the worst rates of land conflict and land grabbing, with economic land concessions and mining concessions covering a large proportion of the province. It is also home to many indigenous communities with customary land tenure governance systems that cover their ancestral lands and access to resources. There is significant overlap between land that is subject to concessions and land owned by indigenous communities according to their customary tenure system. Ratanakiri is also the second most heavily bombed province in the country and consequently has a serious ERW contamination problem.

One operator working in the north-east has a comprehensive process in place for gathering information about land issues, including Economic Land Concessions, in the villages where it is working. The operator spends time in the village, finding out the community's problems needs and plans. The operator communicates with local NGOs working on development, land rights and indigenous peoples issues in the province. It also obtains information from local government officials, including development plans and information about planned economic land concessions in the area.

If the operator discovers that a concession is planned or has already been granted, staff inform the affected village(s) and local NGOs. It will not carry out subsurface clearance in an area owned by or concessioned to a company or wealthy outsider.

The operator also includes the following questions in its survey forms:

- Type of land ownership?
- Expected benefits from clearance?
- Will use of land change?
- Will ownership change?
- Will clearance create any discussion or conflict?
- Has any conflict occurred before because of land issues or CM or ERW in the village?

Six to twelve months after clearance, the operator conducts a post-clearance survey. If any land issues are identified, the operator alerts relevant NGOs and MAPU.

### 3.5 Handover

Handover refers to the process involved in handing released land (through survey and/or clearance) back to local authorities, communities and land owners/users.<sup>42</sup> Handover can have important implications for land use and tenure security more generally. When handover processes are unclear, inconsistent or lack community involvement, this can create opportunities for land-related disputes and even land grabbing. In addition, if handover takes place with too much of a delay after land release with limited or no community participation, this can lead to land not being used by beneficiaries, as they may not be informed in a timely manner that the land is safe to use or may not have sufficient confidence in the land release process.

Cambodia is one of only a few mine/ERW-affected countries that have clear and transparent procedures in place for handover. Handover procedures are formally standardised and outlined in the Policy Guidelines and Operational Guidelines on Socio-economic Management of Mine Clearance Operations, which were developed in 2006 and last updated in 2011.<sup>43</sup> According to the Guidelines, MAPUs are responsible for coordinating with local authorities, mine/ERW operators and development agencies regarding handover of demined areas, and for coordinating with relevant provincial departments regarding the allocation of demined land to beneficiaries. Furthermore, the Guidelines provide detailed guidance regarding the handover process under Operational Guideline 9 – “Handover of Demined Land to Local Authority” and Operational Guideline 12 – “Handover of Plot Plans to Beneficiaries”.<sup>44</sup>

Handover takes place in two stages – first released land is handed over to local authorities, and then plots of land are issued to beneficiary households. Handover ceremonies are held, usually for one day, and typically on the cleared land or in the village, involving representatives from the mine/ERW operator, MAPU, Provincial Department of Land Management, Urban Planning and Construction (PDLMUPC), and concerned partner organisations, as well as the village chief, commune chief and the District Governor. Although the time-frame in which handover takes place is not stipulated in the Guidelines, mine/ERW operators in Cambodia typically undertake handover within one day to a month after land release is complete.

According to the Guidelines, during the ceremony, a representative from the PDLMUPC provides information about land laws, social land concessions, the land registration process and follow up activities. Once the handover ceremony is held, plot plans are issued to beneficiaries during a ceremony which involves the MAPU, the Department of Land Management, development agencies working in the area, village chiefs and beneficiary communities. During this meeting, the Department of Land Management explains the purpose of the plot plan and the land use conditions. If relevant, development agencies discuss development projects planned in the area. Plots of land are then issued to beneficiaries. The MAPU takes note of which released land has been issued to beneficiaries and this is shared with CMAA and the PMAC.

### 3.6 Post-clearance monitoring

Post clearance assessment typically involves returning to mine/ERW affected areas 6-12 months after the area has been released to collect data on the short to medium term outcomes resulting from the land release process. For example, data on the following is collected:

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<sup>42</sup> For more information about handover procedures, see Gender and Mine Action Programme (GMAP) and GICHD. [Handover of Released Land: Common Procedures and Good Practices](#), 2013.

<sup>43</sup> GMAP/GICHD, 2012.

<sup>44</sup> Royal Government of Cambodia, CMAA. Socio-economic Guidelines on Mine Clearance Operations, 2006.

- Are intended beneficiaries using the land?
- How is the land being used?
- Is the land being used as intended?
- Do beneficiaries require support to use the land productively, eg training, tools, seeds, etc.?
- Have beneficiaries encountered any problems in regards to land use/ownership, eg disputes over ownership, intimidation, rising value of land, land-grabbing, etc.?
- How much land is still held by the intended beneficiaries?

This type of data can be used to also determine whether for example, the right tasks are being prioritised for survey/clearance. If for example, the post clearance assessment finds that land is not being used once it is handed over, then consideration should be given to adjusting the prioritisation system to ensure that tasks with a higher likelihood of post clearance land use are prioritised in future.

The stated purpose of PCM is to check that “cleared land is being used by the intended beneficiaries (men, women, boys and girls) for the proposed purpose as defined during the planning process.”<sup>45</sup> However, the PCM form used by MAPUs does not disaggregate data by sex and age, which represents a missed opportunity to enhance data accuracy and to obtain a comprehensive picture of the impact of land release on male and female beneficiaries.

CMAA started conducting PCM in 2006 using two in-house Phnom Penh-based socio-economic teams. In 2009, CMAA delegated the PCM function to the MAPUs. The MAPUs are required to monitor all tasks in their provinces, identify lessons learned and provide CMAA with completed PCM forms. The findings of the PCM should be shared with development partners, mine action organisations and local authorities to resolve land issues and improve mine clearance planning.<sup>46</sup> Not all clearance tasks are subject to PCM because in some cases, there is no functioning MAPU or because the MAPU does not have the capacity to conduct PCM, such as in the north-east. PCM is currently conducted in eight provinces.

### **Are the right questions being asked?**

MAPUs are responsible for conducting PCM approximately six months following handover, using a standard form. In addition to the land-related questions already included in the PCM form, which are listed above, additional questions could also be included in order to enable MAPUs and mine action actors more generally to prevent land-related disputes and promote tenure security, such as:

- Do beneficiaries feel secure on their land (ie. do they have confidence in their tenure status?) If not, why not? Are they under the threat of eviction?
- Has the beneficiary had an opportunity to gain formal land tenure documentation?

Notably, land-related questions corresponding to those included in the PCM form are not included in the Baseline Survey forms or the Land Release form. This makes it difficult to assess the impacts of land release over time. Collecting corresponding data before and after land release would facilitate the tracking of land issues and the assessment of impact on tenure security and land use. It is also important to make sure that both men and women are asked these questions, as answers might be quite different, and to ensure that beneficiary data is disaggregated by sex and age.

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<sup>45</sup>CMAA. Post Clearance Monitoring Consolidated Report, MAPUs, October 2011 - February 2012.

<sup>46</sup>CMAA. Post Clearance Monitoring Consolidated Report, MAPUs, October 2011 - February 2012.

In addition to the post clearance monitoring undertaken by the MAPUs, some operators conduct their own post clearance assessment, including on the potential for land disputes and land grabbing post clearance. For example, one operator conducts pre and post clearance assessment for each task, and the survey forms used include specific land related questions, such as:

- What is the intended land use once the Suspected Hazardous Area (SHA) has been returned?
- Is there a development partner (NGO, government agency or commercial company) to support land use after land has been returned?
- Are there any problems foreseen in the beneficiaries being able to use returned land?
- In your estimation, how much land does your household own?
- Does your household have a land title(s) for the land that will be returned?
- Has the returned land had any positive effect on you and/or your family life?
- Any negative effect on you/your family? (eg disputes about land use, disputes about land ownership)

### **Is the PCM process transparent?**

The data collected from the PCM forms is analysed by CMAA's Socio Economic Planning and Database management department. The findings are then summarised into an annual consolidated post clearance monitoring report. The reports produced for 2011 and 2012 provide data on the:

- Number of sites cleared by different organisations
- Location of areas cleared and their size
- Use of cleared land
- Beneficiaries of cleared land, by sex

While the PCM form includes land-related questions, it is noteworthy that the 2011 and 2012 PCM reports make no reference at all to land issues. This gives the impression that intended beneficiaries have not encountered problems with land tenure or disputes post clearance, which is surprising given the scale of land-related disputes and insecure land tenure in Cambodia. This also contradicts interviews undertaken during the GICHD assessment mission with national and community-based land actors which indicated that some land issues do arise in mine/ERW affected areas, and raises several questions about the PCM process:

- If land issues are a problem in mine/ERW affected areas, why is this not reflected in the consolidated PCM reports?
- If MAPUs are aware of these issues, to what extent do they record this information in the PCM forms and share this data with CMAA?
- Given that MAPUs fall under the authority of the PMAC/Provincial Governor, are MAPUs able to freely report land issues to CMAA?
- Do MAPUs have sufficient capacity and knowledge to handle and/or refer land-related disputes to the relevant authorities and organisations in a timely manner?

Due to capacity constraints, CMAA monitors PCM through random spot checks of about 10% of all released fields. The CMAA reports that this monitoring system indicates that PCM is done accurately and that land issues are rare. However, without a more comprehensive independent verification and evaluation process, these conclusions may be called into question.



## 4. Gaps and opportunities in response to land issues

The purpose of this section is to outline the main gaps and opportunities identified with regard to how mine action actors respond to land issues in affected contexts. Section 5 concludes with a corresponding list of recommendations to address these challenges and strengthen the response by mine action actors to land rights issues.

### 4.1 Priority-setting

Currently, according to CMAA, land subject to dispute is excluded from the work plan until such time as the dispute is resolved by local authorities. While there is validity to ensuring that clearance does not occur on disputed land and does not exacerbate land disputes, caution should be exercised to ensure that land-poor households are not denied the benefits of clearance, purely because of a conflicting claim, that may or may not be legitimate.

According to the CMAA, land that is not owned is also excluded from the workplan. Households that do not have possession/ownership rights to land are often the poorest and most vulnerable and should not be further disadvantaged by being excluded from the work plan and denied the benefits of clearance. Instead, MAPUs and other relevant actors are recommended to work with the provincial department of land management to identify an appropriate tenure form to secure the rights of households to released land, which may include, for example, use rights, rental or a social land concession.

Only one operator currently systematically investigates whether identified land falls within an actual or planned economic land concession or mining concession. Obtaining information about planned concessions, including maps, is essential during the prioritisation process in order to ensure that scarce humanitarian resources are not being used to clear land for the benefit of a company.

### 4.2 Weak coordination between land and mine action authorities and processes

Related to the above, there is a lack of coordination between mine action priority setting and land administration systems, such as systematic land registration and social land concession processes. When prioritisation takes place at national and local levels, there is no engagement of land authorities to see how to coordinate this process with the selection of systematic land registration adjudication areas. This poses a risk as well as a missed opportunity since priorities for both clearance and adjudication areas for land registration are set through provincial and district authorities. Moreover, unclaimed cleared land could be made available to landless households through Social Land Concessions, helping the government to meet objectives for a more equitable distribution of land.

#### Box 4: Households receive title over released land

In May 2012, the Prime Minister issued an instruction known as Directive 01BB, which ordered a review of economic land concessions. As part of the implementation of the directive, the Prime Minister announced a land titling campaign involving the rapid measurement of plots and issuance of land titles to households whose land is located inside economic land concessions (ELCs). As the programme was implemented, it was expanded to households not situated inside ELCs. Some of these households had recently had their land cleared of mines.

One village that benefited from both Directive 01BB and mine action is Kanhchang in Sung Commune, Samlot district, Battambang. Eleven hectares of land was released and distributed to 15 families, who, in the same year, also received land documentation through the directive.

Families reported feeling more secure with the land receipts and were eagerly anticipating the distribution of titles, promised to arrive after harvesting season. They felt that the land tenure documentation was important because they had heard about land disputes in other parts of Samlot, which had engendered some nervousness about their tenure security. Titles, they felt, would help ensure that the released land could be used productively and with confidence that it would not be taken from them by a company or powerful individual.

While the positive experience of Kanhchang village was coincidental, the issuance of title or other secure tenure documentation over released land could be systematised with better coordination between mine action authorities and land administration authorities.

### 4.3 Survey

Standard IMSMA forms for Baseline/Non-Technical Survey, Land Release and Post Clearance Monitoring do not systematically include key land-related questions. While some operators use their own forms that do include relevant questions, these are not widely shared or systematised. Importantly, this data is not systematically shared with CMAA. Therefore, the ability of mine action actors to identify and prevent their operations from worsening a land dispute or increasing tenure insecurity is generally weak. Some operators do ask the right questions and have mitigation processes in place, which is good practice that others can learn from. For example, one operator explained that when staff members collect data about land-related issues that require follow-up, for example with regards to an ELC in a mine/ERW-affected area, this information is shared with community representatives, local authorities and NGOs working in the area.

### 4.4 Post-clearance monitoring

The extent to which land problems are widespread in mine/ERW affected areas is unclear. The PCM reports for 2011 and 2012 do not indicate any analysis of the positive or negative impact of land release on tenure security in mine/ERW affected areas. The reports include no reference to land issues or tenure security despite the proliferation of ELCs and mining concessions over occupied land and land conflicts throughout the country. This raises questions about the efficacy and effectiveness of the PCM process. For example, if MAPUs fall under the responsibility of Provincial Governors, and if Provincial Governors or high ranking officials close to the Provincial Governor are involved in land grabbing/disputes, are MAPUs able to freely report to CMAA about land issues? What incentives or disincentives exist that may influence transparent, open and accurate PCM?

Furthermore, PCM is typically carried out only 6-12 months after land release, with no additional assessment beyond this period. In a context where tenure security is weak, and where land access, use and ownership are frequently contested, how can mine action actors be sure that the beneficiaries they are trying to assist are actually benefiting in the mid to longer term?

Only some operators conduct their own additional post clearance assessment, which is also often within a twelve month period. This is partly due to short term funding modalities, which do not facilitate post clearance assessment beyond the length of the funding period. No assessment of who is benefitting from cleared land two to five years later has been conducted since mine action began in Cambodia in the early 1990s, despite the proliferation of land conflict since that time. It is therefore difficult to conclude what outcomes have been achieved in terms of development and land tenure. Without a clear idea of how land is being used post clearance in the medium to long-term, there is a real risk that humanitarian mine action funding could be facilitating the allocation of released land to powerful individuals or companies, through, for example, ELCs.



## **4.5 Current funding modalities**

The current funding modalities in place for mine action in Cambodia act as a disincentive for the adoption of risk mitigation strategies such as verification of priority setting; pre-clearance assessments of tenure security; comprehensive PCM; support for land use development; and support to obtain tenure documentation. For example, Phase II of UNDP's multi-donor trust fund, Clearing for Results, encourages operators to perform based on efficiency outputs. The Request for Proposals for CFR II, issued in February 2014, for mine clearance projects in Banteay Meanchey, Battambang and Pailin provinces, lists a number of criteria against which mine/ERW operators will be evaluated. The emphasis is on clearing the maximum number of square meters in the shortest timeframe possible for the lowest cost, as opposed to also promoting post clearance land use and tenure security for vulnerable and landless households. If donors do not also value and place an emphasis on land use and tenure security post land release, this means there are no incentives in place to promote secure land tenure when land is released. The consequence of the current efficiency-focused funding modality is the significant risk that funds are ultimately being used to benefit powerful actors and companies that seize or illegitimately acquire released land, displacing intended beneficiaries.

## **4.6 Lack of checks and balances**

MAPU and PMAC processes have many positive attributes but are of little support to households or communities that find themselves in a land conflict with local authorities, powerful actors or the State. MAPUs, operating under the auspices Provincial Governor, may be manipulated or rendered powerless in the case of certain types land conflict. MAPU's should have a stronger link to CMAA, and be able to report problems directly to CMAA without being vetted by the Provincial Governor. Also, bottom-up MAPU planning processes, while widely recognised as participatory, may be open to corruption and diverted by the priorities of local powerful actors.

## **4.7 Lack of land law and land rights awareness**

Despite the fact that MAPUs and other mine action actors inherently affect land use, access and tenure through their work, very few mine action actors interviewed appeared to have a good understanding of Land Law basics, including who is eligible for title under the land law, and what other tenure forms are available. While dispute resolution mechanisms do exist within the land sector (eg. the Administrative Committee and Cadastral Commission), awareness about these mechanisms also appears to be lacking.

The lack of land law and rights awareness amongst mine action actors means that not only is there a risk that some activities are not fully consistent with the law, but also that mine action actors are unable to raise awareness amongst beneficiaries about their land rights and opportunities for strengthening their land tenure status or resolving disputes. This lack of legal awareness is a major missed opportunity that is easily rectified through land law training of MAPUs, operators and other key actors.

## 5. Conclusions and recommendations

Land release is inherently beneficial: it saves lives and frees up land for housing, agriculture and other uses. However, mine action actors – authorities, operators and donors – should nonetheless be concerned about the land rights implications of their activities in order to ensure that intended beneficiaries do in fact benefit in the short, medium and long-term and that land release does not instigate conflict or land-grabbing.

One of the stated objectives of mine action in Cambodia is to promote development and the equitable distribution of land to landless households. At a minimum, mine action actors have a responsibility to ensure the assistance they provide is not making intended beneficiaries worse off. Humanitarian mine action funding is supposed to release land for productive use. It should not be used to facilitate ELCs. Mine action actors should therefore have rigorous procedures in place to facilitate and promote tenure security and demonstrate the development outcomes resulting from their operations.

In some respects, Cambodia's mine action sector stands out for its decentralised, participatory and systematised approaches for ensuring intended beneficiaries are those most in need and actually receive released land. And several good practice lessons can be learned from Cambodia's mine action actors in a range of areas, from national policy and standards to operations.

The following recommendations are intended to build upon these good practices and strengthen systems and processes to ensure mine action efforts not only do no harm, but also bring the maximum possible benefits to beneficiary households and the socio-economic development of Cambodia as a whole.

### CMAA

#### Improve coordination to promote tenure security

- Strengthen links between CMAA and the MAPUs in terms of information sharing on land issues.
- Improve coordination with the Ministry of Land Management to seek out opportunities for alignment between the Systematic Land Registration process and the annual mine action planning process. In particular, opportunities for aligning prioritisation for mine clearance and the selection of SLR adjudication areas should be explored.
- For landless households occupying State land for their housing and livelihood needs, coordinate with the Ministry of Land Management and other relevant actors to identify an appropriate secure form of tenure, such as rental, use rights or social land concession.
- As a part of the annual priority-setting process, include the identification of available contaminated land that could be allocated to landless households once released through a Social Land Concession. Communicate possibilities to the Ministry of Land and coordinate agreed upon efforts to clear and allocate land.
- Provide mine/ERW affected communities with information about existing grievance mechanisms. Where communities may be at risk of land grabbing, mine action actors should link them to land rights organisations and institutions, including organisations that can provide them with education about their land rights and advocacy support.

## **Provide MAPUs with land law training and offer training to other actors including operators**

### **Strengthen post-clearance monitoring**

- Strengthen the post clearance monitoring system:
  - Include specific questions about land in non-technical survey and PCM forms in order to capture data about land use and land tenure pre and post clearance. Ensure this data is disaggregated by sex and age.
  - Expand the timeframe for PCM beyond 6-12 months in order to monitor longer-term development and land tenure outcomes resulting from clearance, eg 2-3 years.
  - Raise the awareness of donors regarding the importance of PCM assessment and the need for greater flexibility with funding timeframes.

### **Conduct an evaluation on post clearance development outcomes**

- In order to determine the prevalence of land issues in areas that were previously contaminated with mines/ERW, conduct an evaluation on how land is being used, and who has access to and control over the land several years post clearance. The evaluation could cover a set time period of between 2006 - 2010, since the Guidelines on the Socio Economic Management of Mine Action were adopted in 2006. This assessment should include mine and ERW contaminated areas.
- The findings should be shared with mine action actors, as well as development partners and land authorities, and lessons learned should be used to strengthen response to land issues.

## **Operators (NGO mine/ERW operators and NPMEC)**

- Use community liaison and non-technical survey as an opportunity to check whether there is potential for land-related disputes or other land issues. Gather information from women and men about land issues in the communities where you are tasked to do survey/clearance.
- Refer land disputes to local authorities, MAPUs or where appropriate to NGOs able to provide land rights training and advocacy support.
- Raise the awareness of donors regarding the importance of post clearance assessment and the need for greater flexibility with funding timeframes.

## **Donors**

### **Funding modalities**

- Donors need to provide multi-year funding, which facilitates post clearance assessment beyond the timeframe of the funds provided.
- Donors should request that their implementing agencies demonstrate how their operations contribute to development and secure land tenure, and what measures they have in place to ensure their operations do not create or exacerbate land-related conflict.
- Given that there is some overlap in the remaining mine/ERW contaminated areas to be cleared and existing Economic Land Concessions mine action actors including donors need to consider the implications of using humanitarian mine action funding to release land that may be used for an Economic Land Concession, as opposed to benefiting poor households.

## Appendix 1 – Documents consulted

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## Appendix 2 – Mission schedule

Nov 24 – Phnom Penh - Assessment team preparatory meeting

Nov 25 – Phnom Penh

CMAA: Chan Rotha, Chhiv Lim (and team), Prom PopheakMongkol

CMAC: HengRatana and PrakSokhonn

NPMEC (RCAF): Major General Ken Sosaveou, Director of Information and ERW Department

Nov 26 - Siem Reap

HALO Trust: Adam Jasinski, Leng Saren

Cambodia Self Help Demining: Aki Ra and Bill Morse

MAPU and PMAC Siem Reap

Provincial Department of Land Management (Siem Reap)

Jesuit Refugee Service: Denise Coughlan

Nov 27 - Pailin

Interviews in:

- Ou Ro'el Village, Sala Krau district, Pailin
- Tom Noup and Phnom Kreing Villages, SteungTeung Commune, Pailin

Nov 28 – Battambang

MAG: Kong Chivin, Community Liaison Coordinator; Khan Thavireak, Community Liaison Officer

Observed two MAG post clearance assessment meetings:

- Kanhehang Village, Sung Commune, Samlot District, Battambang
- Ta Sanh Cheung Village, Ta Sanh Commune, Samlot District, Battambang

Nov 29 – Battambang

MAPU and PMAC Battambang

Provincial Department of Agriculture

CMAC: PringPanharith

Provincial Department of Land Management

Nov 30 – Phnom Penh

Golden West Humanitarian Foundation: Allen Tan

BACTEC: PhalkunPich

Dec 1

Former Austcare: Davy Srin

CMAA: Eang Kamrang

Former BHP Billington: Dave McCracken (via skype)

Dec 2

MAG: Alistair Moir, Clare O'Reilly; CARE: Jan Noorlander

Former MAG/NPA Ruth Bottomley; Kristen Rassmussen, DCA

Ministry of Industry, Mines and Energy: Cheap Sour, DG for Energy

AusAID/DFAT: Nicholas Wolf

Dec 3

NPA: Tang Sun Hao, Jan Erik Stoa

DfID: Bryony Mathew

UNDP: Tong Try

Dec 4

OHCHR: Benjamin Rutledge, Tem Pharath

Ministry of Land Management, Urban Planning and Construction: H.E. SarSovann, Secretary of State

GIZ/LASED: Andreas Groetchel

Dec 5

Japanese Embassy: Shinichi Tamamitsu, KazujiroUzawa

Cambodian Human Rights and Development Association (ADHOC): Chan Soveth

Japanese Mine Action Service: Hiromi Fuchikami, TakakuraFumitoshi, Touch Bora