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Land Rights in Mine-affected Countries

Land rights in conflict and post-conflict environments is an increasing area of concern within humanitarian and development communities. When conflicts end, land rights may be threatened, especially for women, subsistence farmers and other marginalized populations. Secure land rights are, therefore, a critical issue for humanitarian response, sustainable peace-building and longer-term economic recovery, particularly in countries where agriculture is key to livelihoods. While mine-action activities such as priority-setting, survey and clearance bring mine-action organizations into direct contact with land-rights issues, most tend to avoid these issues. This article looks at how mine-action organizations can better address land issues.

by Jon Unruh [McGill University], Gabrielle Chaizy [DRC United Nations Mine Action Centre] and Sharmala Naidoo [GICHD]

In 2010, the Geneva International Centre for Humanitarian Demining commissioned research to examine land-rights issues in several mine-affected countries, including Afghanistan, Angola, Bosnia and Herzegovina, Cambodia, Sri Lanka, South Sudan and Yemen, and how mine-action organizations handle these issues. This article describes the findings of GICHD's research¹ and provides practical guidance for mine-action organizations on how to “do no harm” and address the land issues they commonly encounter.

This study utilized various methodologies for collecting qualitative data, such as interviewing land-rights and mine-action experts, and studying relevant literature about land-rights issues. As such, it did not collect statistical data and reports no quantitative data. The study's purpose was instead to determine practical ways to engage in land-rights issues by examining specific cases in the field.

Land Rights in Conflict-affected Contexts

Land and property issues are often a central feature of civil wars. Violence, displacement, property destruction, 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 and population patterns. During a war, the state's land and property-administration system can be crippled and rules can become unenforceable.

Once the violence ends, displaced persons often seek to reestablish 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



Mother and child beneficiaries, Iraq.
Photo courtesy of Vera Bohle.

conflict, these issues can quickly become critical in post-war recovery. The reestablishment of ownership and the use-and-access rights to land after a war ends is often very difficult when people try to reclaim what they lost. Failure to effectively address these problems can set the scene for renewed armed confrontation.

Land-rights Issues and Mine-action Organizations

Landmines and explosive remnants of war leave a distinct imprint on post-war landscapes. Because they deny access to key resources, mines/ERW tend to exacerbate land and property issues. Communities are forced to adapt to new scarci-



Minefield near Phnom Penh, Cambodia.
Photo Courtesy of Kerry Brinkert.

ties, creating increased pressure to control access and use of valuable, uncontaminated land.

Every time a mine-action organization works in a conflict-affected country, its work is likely to impact land rights. Conflict-affected countries typically have weak or non-existent property enforcement in place to deal with land conflicts and this can lead to instability and land grabbing. Humanitarian and development organizations cannot use neutrality as an excuse to avoid dealing with land issues. Removing landmines changes the local context by making previously unavailable land available. Newly cleared land can provide opportunities for community wealth, but it can also prompt competition and even violence over who owns the land. Although mine-action organizations try to help, there is the potential of reversing the progress made by humanitarian and development organizations by releasing land haphazardly.

Let's look at some of the issues involved in the land-release process that mine-action organizations encounter.

Lack of awareness. Mine-action organizations tend to be unaware of the exact status of contaminated land (i.e., legal status, ownership, etc.) before commencing work in an area. They also generally do not know how survey and clearance will affect adjacent land and land rights once they have handed over an area to a community. Some believe that because they do not encounter many land disputes during survey and clearance, land problems are therefore few or minor. Many mine-action organizations hire local staff members who are not aware of communal and customary land rights and this can create problems. The South Sudanese mine-action community, for example, has limited awareness of the complexities of land rights. Yet, given the contentious nature of land in

South Sudan, a basic understanding of land-related challenges would enable mine-action organizations to improve the socioeconomic impact of mine action and ensure that interventions do not exacerbate already existing tensions. While some organizations collect data on land-rights issues, there are very few guidelines to recommend the correct way in dealing with land disputes.²

There is also little understanding of the impact of mine-action operations on land-rights issues. Not only is the Angolan mine-action community generally unaware of any potential land problems, 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. Despite this perception, conflict between citizens and government demining organizations in Angola is common, since very little land is released to the community or to individuals. The government often re-appropriates land for commercial interests, and the rights of local communities are frequently ignored. As a result, conflict (sometimes violent) can occur between the government and local communities.

Removing mines/ERW can spark resource competition and land grabbing. The release of formerly contaminated land makes valuable resources available. Unfortunately, mine-action and nongovernmental organizations cannot control who receives the released land since, in the majority of instances, the government and local leaders already predetermine land ownership. In places where land or water resources are scarce, such as Yemen, this land release can create conflicts. The upper classes often try to take newly released land for their own purposes, leaving intended beneficiaries marginalized and without adequate legal protection. A donor or

an NGO can direct which areas they believe a mine-action organization should focus on clearing first, i.e., communities that are the most vulnerable and have the worst contaminated land. However, when the land is released, the demining group has little power over who receives the land.

One way governments, such as Afghanistan, South Sudan and Yemen, handle disputed land is to continue to list it as inaccessible to all disputing parties following clearance. Many individuals who find this land valuable and indispensable to their livelihood will wait indefinitely for its release. Others may knowingly take risks and use the land prior to approval. Some may even use/grab land that doesn't belong to them.

Yet releasing this land, without securing sustainable and peaceful solutions between the disputing parties on its management and use, can quickly lead to renewed conflict and violence.

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Neutrality versus "do no harm." In many instances, mine-action organizations have refused to play a role in the resolution of land disputes, claiming neutrality. However, this desire to remain disengaged from land politics can open the door for post-clearance conflict and can expose mine-action organizations to aggression from local parties. Local actors often perceive mine-action organizations as distinctly political, especially when mines/ERW are cleared from disputed areas. In response to these potential risks, mine-action organizations in Afghanistan have developed engagement criteria which stipulate that land disputes must be adequately resolved before they begin to clear contaminated land. While they

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 increase because of the release of previously hazardous or suspected-hazardous areas. This approach reduces the potential harm that may come from land released through survey and clearance.

Prioritizing which areas to clear first can be a "minefield." Priority-setting can affect land rights and land disputes. In conflict and immediate post-conflict contexts, the first priority is road clearance in order to facilitate humanitarian and peacekeeping access. Another priority is access to residential areas, in order to support the return and resettlement of internally displaced persons 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. As a result, in countries like Sri Lanka, few civilians who return are able to farm and instead rely on humanitarian support or encroach on uncontaminated land belonging to someone else to meet their agricultural and food-security needs.

Information sharing and transparency. Adequate communication about the status of contaminated and released land can have a significant impact on affected communities. If land is released, and insufficient information is provided to local communities about the status of their land, many civilians are unlikely to return to reassert their rights. This leaves the land open for others to claim. On the other hand, with limited information, rumors can emerge regarding the land's status, which can mislead affected communities and encourage some to return to contaminated land. For instance, the Sri Lanka

case study found that information sharing was problematic. The return and resettlement of IDPs in 2009 and 2010 took place without sufficient information provided to the IDPs regarding the status of their homes, land and the mine-action operations. In a workshop that GICHD organized, the study's author, Bhavani Fonseka, mentioned that in the Sri Lanka context, there were cases where rumors spread quickly within IDP camps about the return/resettlement process in part because the government did not provide IDPs with any information about the return process and access to land.³ As a result, some IDPs returned to find that while their residential areas had been released, their agricultural land remained contaminated, forcing many to either rely on food aid or to farm uncontaminated land belonging to someone else. Improved information sharing with IDPs and between mine-action and humanitarian and development organizations would improve coordination between return, resettlement and mine-action operations and facilitate durable solutions for IDPs.

Mine-action organizations do not always have well-established links and coordination with the wider humanitarian and development sector for several reasons. In the past, they have tended to view mine contamination as a disarmament or humanitarian issue, but in many countries, it is also a development issue. Most mine-action programs were established in response to humanitarian emergencies or conflict, and mine-action actors have had problems changing focus from humanitarian mine action (designed to save lives and limbs) to the provision of mine-clearance services in support of reconstruction and development. Also, mine-action practitioners were understandably preoccupied with the technical



Small boy from a mine-affected community in Pailin district, Cambodia.
Photo courtesy of Sharmala Naidoo.

aspects of demining, in particular safety and efficiency considerations, and gave less attention to broader issues of livelihoods and the developmental outcomes resulting from mine clearance.

The individuals working for mine-action organizations, particularly at an operational level, typically have ex-military backgrounds and may not be accustomed to sharing information and coordinating their work with humanitarian/development NGOs, which usually have a very different organizational culture. Mine-action organizations are just beginning to recognize the need to ensure their work supports wider humanitarian/development work and are trying to establish better coordination.

As mentioned previously, mine-action organizations often try to remain neutral (i.e., not undermine or challenge government policies) in the face of land-rights problems, and try to ensure that handover documents are not used as proof of land ownership. However, from a land-rights perspective, such efforts can work against attempts to ensure that released land goes to intended beneficiaries. Mine-action activities (survey, marking, clearance and handover of released land) unintentionally create a wide variety of evidence that can help a community's claim to land. Mine-action organizations often have little control over how local communities interpret and use these documents. Providing handover documents in a highly transparent manner would obstruct potential land grabbers and facilitate land claims.

Women's land rights. Female-headed households can be more vulnerable to land grabbing as they are often less aware of their land rights than male-headed households, and are more likely to be illiterate, poorer and have fewer livelihood options.⁴ They may also have limited or no land-inheritance rights under customary or even statutory law in many mine-

affected countries, such as in Afghanistan and South Sudan. Therefore, they may be less able to defend their land claims.

Recommendations

The decision to survey and clear particular land areas inevitably involves land-rights issues. Avoiding these issues can seriously compromise the return of displaced populations, and limit mine-action effectiveness and developmental outcomes. However, mine-action organizations can take several actions to ensure they do no harm and respond to the land issues they encounter, such as the following:

- **Coordinate with humanitarian and development organizations** that deal with conflict-affected populations, and national and international organizations dealing with land issues. These organizations can provide advice or take on the land-rights issues that surface as a result of survey and clearance operations. Mine-action organizations should establish links with the international and national housing, land and property networks, local NGOs, and other resources.⁵
- **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 clearance. Communicate with local communities, NGOs and authorities that the reason an area is not being cleared is because it is in dispute. This decision to postpone clearance will likely encourage civilians to resolve land disputes.
- **Promote community participation in priority-setting.** Use community liaisons 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 rezoning

of areas following clearance. This knowledge will also improve the alignment between mine action and local processes of return, reintegration and livelihood recovery.

- **Recognize the special needs and vulnerabilities in relation to women and their land rights.** Promote the active inclusion and participation of women, particularly female-headed households, throughout the mine-action process (i.e., planning and prioritization) implementation, handover procedures, and post-clearance monitoring and evaluation. Collect and analyze all relevant data in a sex- and age-disaggregated manner, enabling the identification of gender-specific patterns and concerns.
- When conducting surveys, **collect data on post-clearance land use and intended beneficiaries.** Conduct post-clearance assessments that also examine whether intended beneficiaries are actually the cleared-land's occupants. Oftentimes, the NGO or donor operating with the government and local leaders in a specific district will direct what areas should be clearance priorities based on the area's vulnerability and contamination level.
- **Ensure a formal land-handover process** which involves local communities, intended beneficiaries, government representatives, etc. Ensure the land release is widely communicated to those unable to participate in handover events.
- **Put in place a post-clearance monitoring process** once handover takes place, particularly regarding land rights, claims and disputes.
- **When developing contracts, include the need to partner with land-rights organizations in the contract documents and con-**

tractual obligations where applicable. Responsibilities regarding land-rights 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.

- **Raise awareness about community-level land rights and laws.** When interacting with affected communities at the planning and initial survey stages. Informing local communities about their land rights would reduce the likelihood of easy land grabbing. Where there are concerns of maintaining neutrality, partner with NGOs that can engage in this community work or simply refer communities to the proper organization.
- **Seek alignment with and minimize contradictions among various land-rights policies** and mine action in order to protect the rights of intended beneficiaries and minimize land-seizure opportunities.
- **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 organization is biased in the prioritization, survey and clearance of land. Such a balance can also mitigate, to a degree, the notion of a tight alignment with the government.

For additional information on landmines and land rights in conflict-affected contexts, see <http://bit.ly/hUOTew>. ◊

See endnotes page 82



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