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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 research 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 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 scars—
ties, creating increased pressure to control access and use of valuable, uncontained 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 conflict and competition over who owns the land. Although mine-action organizations try to help, there are 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 survey and clearance procedures and therefore do not necessarily identify 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.

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 usegrab 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. 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.

Neutralizing land. Mine-action organizations tend to be unaware 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.

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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 assessment, which also examine whether intended beneficiaries are actually the cleared-land’s occupants. Often, the NGO or donor operating with the government and local leaders in a specific district will direct what areas should be cleared prior to the community’s agreement. Sometimes, the NGO or donor operating with the government and local leaders in a specific district will direct what areas should be cleared prior to the community’s agreement. 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.

- 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.

- 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 based 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 land-mines and land rights in conflict-affected contexts, see http://bit.ly/UnruhTew. See endnotes page 82.