

# Volatile Landscapes: the Impact of Explosive Remnants of War on Land Rights in Conflict Affected Countries

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## Abstract

*Explosive remnants of war (ERW) <sup>1</sup> and clearance have a fundamental impact on land rights in countries recovering from war. While land, property and territorial issues are widely recognized as central features of wars and are critical to recovery of livelihoods and economies, the intersection between ERW and land rights remains unexamined. Land mine laying strategies highlight the highly spatial nature of violent conflict, particularly civil conflicts in developing countries. Used offensively in area denial, social disruption, ethnic cleansing and competition for high value land resources such as diamonds, or defensively as a deterrent to enemy incursion and protection of specific locations, or abandoned as UXO, the legacy of ERW after wars interacts with changing tenure dynamics during recovery. Mine action (identification, clearance, risk education, victim assistance, land release, etc.) can cause land conflicts, facilitate land grabbing, deflect development efforts and support one side in a war over another—all often inadvertently and without awareness on the part of mine action organizations. This article describes the important linkages between land rights and ERW in war affected contexts. It aims to deepen awareness within broad mine action, development and academic communities about these linkages and provide guidance on how to effectively mainstream land rights issues into mine action operations.*

**Keywords:** explosive remnants of war (ERW), land mines, land rights and land conflict.

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<sup>1</sup> ERW include anti-personnel and anti-vehicle land mines, cluster munitions, improvised explosive devices (IEDs), and unexploded ordinance (UXO).

## Introduction

The enormity of the explosive remnants of war (ERW) problem in war affected countries of the developing world is a primary, enduring obstacle to recovery and development. Apart from the highly visible impacts on mortality and morbidity, the presence of ERW alienates a population's access to critical agricultural, forestry and pastoral resources, which are necessary for restoring livelihoods. Explosive remnants of war also delay the return of displaced populations, thwart the reconstruction of infrastructure, and disrupt important fundamentals of peacebuilding, such as land and property restitution, investment and personal security. Land and property rights in war torn scenarios are issues of increasing concern because the recovery of livelihoods, and community and national economies, following war depend to a large degree on re-establishing rights over lands and properties, particularly where land and territorial rights and claims issues were part of the cause of war. The land rights situation becomes particularly critical in countries affected by ERW, where land access can be denied or disrupted for years or even decades. An ERW contamination problem not only leaves a profound social, economic and political footprint on the locations where they are located, but their presence also has significant repercussions on larger, adjacent areas. The removal of ERW and mine action can have equally transformative impacts on local societies, economies and political systems, particularly in areas where landscapes have been altered by the presence of ERW for a significant period of time.<sup>2</sup>

In spite of the strong link between the presence of ERW and land and property issues, mine action organizations involved in a wide variety of clearance, education, administrative, diplomatic, treaty, advocacy and community recovery work, typically avoid land rights issues in their activities.<sup>3</sup> This is due to the highly political nature of land claims after wars. Organizations are often also handicapped by their mandates, their desires to remain neutral, and a general lack of awareness regarding land and property issues.<sup>4</sup> This lack of awareness is often tied to the complexity of local tenure systems. The decision whether to clear a particular area of ERW or not inevitably involves land rights issues. To date, the intersection of ERW and land rights in conflict affected countries has not been adequately dealt with in the academic, practitioner or policy domains. This article examines this nexus and identifies 11 issues that constitute the core of the

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<sup>2</sup> Mine action refers to a range of activities including ERW identification, contamination demarcation, ERW removal, land release, risk education, victim assistance and rehabilitation, stockpile elimination, and advocacy to end the trade and use of mines.

<sup>3</sup> In the context of this paper, land rights refers to a just and legal claim to hold, use, enjoy, and convey an interest in land. Legal in this regard can refer a wide variety of customary and statutory laws that are not always compatible. Land tenure refers to the way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land. In other words, tenure reflects relationships between people and land directly, and between individuals and groups of people in their dealings in land. Black H, *Black's Law Dictionary* (St. Paul MN, West Publishing Co., 1991); UNHABITAT, *Secure Land Rights for All*, UNHABITAT Global Land Tool Network report, 2008.

<sup>4</sup> Geneva International Centre for Humanitarian Demining (GICHD), *Landmines and land rights in conflict-affected contexts*, summary report, International Workshop 20-22 October, Phnom Penh, Cambodia, 2010.

relationship between mine action and land rights. Subsequent to a brief introduction to land rights in conflict affected countries, the paper describes these 11 issues and how they might be more effectively dealt with by the broader mine action and NGO communities in ERW affected countries.

## Methodology and Conceptual Framework

Research for the study was carried out in seven country level case studies: Afghanistan, Angola, Bosnia and Herzegovina, Cambodia, Sri Lanka, South Sudan and Yemen<sup>5</sup>. A workshop in Cambodia then brought the cases together to identify and analyse patterns across the cases. The case studies set out to document examples from the ERW affected countries that illustrated the nature of the ERW contamination, how this related to the primary land tenure issues, and how this impacted on livelihoods and the activities of the mine action community. The specific methods used in the case studies included: a review of the broader and country specific relevant literature, in-country fieldwork involving interviews with experts and organizations involved in land rights, mine action and humanitarian efforts, in addition to affected communities. Care was taken to attend to the issue of gender in the research in order to take into consideration the diverse view of affected women and men.<sup>6</sup> In order to have comparability across the case studies, the same topics were pursued in each field site. These included: the origin, nature and impact of the ERW problem in the country; how the combination of land tenure insecurity and ERW contamination affected livelihoods of local communities; the nature of tenure security and how it works in ERW affected and unaffected communities; the primary land rights issues in the pre-conflict, conflict, and post-conflict phases; descriptions of the customary and statutory tenure systems; how landmines and other ERW were laid or located across the landscape (i.e. as an offensive or defensive weapon, for depopulation, area denial, to instil fear etc.); and how mine action organizations address or not the issue of land rights.

The conceptual framework under which this work can be considered is that of non-integrated peacebuilding.<sup>7</sup> In this framework different priority peacebuilding components in progress in a postwar country are isolated from each other in planning, analysis, implementation and measures for success, and as a result little is known about how they interact in reality and whether or not the aggregate effect contributes to, or detracts from durable peace. In this framework, such priorities are implemented on the same lands at the same time, and for the

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<sup>5</sup> The case studies and subsequent workshop were funded by the Geneva International Centre for Humanitarian Demining (GICHD)

<sup>6</sup> Gender data was gathered from a combination of IDP camps and return areas, mine action databases, and by analyzing pre-existing socio-economic surveys.

<sup>7</sup> JD Unruh, and M. Shalaby, "A volatile interaction between peacebuilding priorities:

road infrastructure (re)construction and land rights in Afghanistan", *Progress in Development Studies* (in press) (NEED PUBLISHER HERE in press—THIS IS A JOURNAL ARTICLE); JD Unruh "The interaction between landmine clearance and land rights in Angola: a volatile outcome of non-integrated peacebuilding", *Habitat International: A Journal for the Study of Human Settlements*, 36(2012), pp.117-125.

same people, and are regarded separately as crucial to postwar recovery, but their interaction has not been examined, and so the outcome is unpredictable and potentially negative. The current approach to peacebuilding views certain priority efforts (in this case mine action and land rights) as separate causal drivers of an array of benefits that are thought to directly contribute to economic development, peace and security for the general population. However under conditions such as those experienced in postwar scenarios, the pursuit of priority efforts separately can act to set in motion a destabilizing set of processes for a significant percentage of the general population, while benefitting the well placed, wealthy and powerful, as well as acting as a potential flashpoint. The thesis of the framework is that peacebuilding efforts now need to move beyond attention to individual priorities as separate activity streams, and toward greater integration. This need comes with the understanding that: 1) postwar scenarios are very different than stable settings; 2) the projects, policies and programs attached to specific peacebuilding priorities, while derived and implemented separately and on their own merits, do in reality interact with each other on the ground in a largely unplanned and often unpredictable manner; 3) positive achievements in one area of peacebuilding can cause difficulties in another, and; 4) there can be volatile outcomes from certain interactions between specific parts of separate peacebuilding priorities.<sup>8</sup>

## Land Rights in War Affected Countries

Land rights problems during and after war are multifaceted, often fluid, pervasive, usually contentious and confrontational, and can be long lasting. Land and property issues are often a central feature of civil wars, either as a direct or contributing cause, a pre-existing tension, or as a series of problems that emerge during conflicts.<sup>9</sup> Belligerents and non-fighting groups both place landmines in specific areas for defensive purposes so as to deter enemy incursion without maintaining a permanent human presence, such as along the disputed border between Thailand and Cambodia, or to secure tenure in the absence of the rule of law, as seen in Afghanistan and Cambodia.<sup>10</sup> Mine laying strategies can also be offensive, such as the use of IEDs by insurgents in Iraq and Afghanistan to target military convoys and patrols, or as a form of selective cleansing such as in Bosnia-Herzegovina where anti-personnel mines were placed in the homes of forcibly displaced persons of particular ethnic groups as a deterrent to return. ERW

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<sup>8</sup> JD Unruh, and M. Shalaby M (in press) A volatile interaction between peacebuilding priorities: road infrastructure (re)construction and land rights in Afghanistan. *Progress in Development Studies*.

<sup>9</sup> See for example, JD Unruh, "Toward Sustainable Livelihoods After War: Reconstituting Rural Land Tenure Systems", *Natural Resources Forum*, 32 (2008), pp.103-115; JD Unruh, "Land Tenure And Legal Pluralism In The Peace Process", *Peace and Change: A Journal of Peace Research*, 28 (2003), pp. 352-376; C. Bruch, D. Jensen, M. Nakayama, J. Unruh, R. Gruby, and R. Wolfarth, "Post-Conflict Peacebuilding And Natural Resources", *Yearbook of International Environmental Law*, 19 (2009), pp. 58-96; P. Richards, "To Fight or to Farm? Agrarian Dimensions of the Mano River Conflicts (Liberia and Sierra Leone)", *African Affairs* 105 (2005), pp. 571—590.

<sup>10</sup> M. Sediq Rashid, M. Jan and M. Wakil, *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*, (Geneva: GICHD, 2010).

contamination can also be a side effect of broad spectrum, nonspecific bombing campaigns where munitions fail to explode on impact, but can retain their lethal potency over time, such as Israel's use of cluster munitions in southern Lebanon. Population dislocation, exclusion, social disruption, competition for high value land resources such as diamonds (in a number of cases in Africa<sup>11</sup>) and timber (as in Cambodia<sup>12</sup>) and the targeted destruction of the land tenure system can also be priorities in mine laying.<sup>13</sup> Mine laying strategies therefore highlight the highly spatial nature of violent conflict.

Once violence ends, those who were displaced often seek to re-establish their homes and livelihoods, creating a surge of land and property problems, which can be exacerbated by the enduring presence of ERW. Depending on the size of the displaced population and the duration of displacement and conflict, land and property issues can quickly become one of the primary features of a post war phase. The re-establishment of ownership, use and access rights to land after a war ends is often very difficult as people try to reclaim what they lost. Failure to effectively address these problems can serve as the basis for renewed conflict and armed confrontation. Most civil institutions that regulate access and use of land are weakened or destroyed by armed conflict.<sup>14</sup> This means that the large numbers of land and property problems, which emerge at the end of a war, will take place in the absence of functioning land and property institutions. High levels of displacement during a prolonged conflict can also result in a number of individuals or groups claiming the same parcel of land uncontaminated by ERW. In areas where population density and competition for land is high, communities risk living in ERW contaminated areas out of necessity, or try to clear mines themselves without professional expertise and assistance.<sup>15</sup> Living in ERW contaminated areas can itself serve as a form of land grabbing as squatters move onto land they know the previous owners are too afraid to use. Post conflict property issues in or near urban areas are also important. The destruction of urban housing stock and displacement of the population during war quickly creates squatter camps in other urban and peri-urban locations. These camps and informal settlements attract people displaced from rural areas. In a post war phase, attempts to regularize the tenure relations of

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<sup>11</sup> D. Brooks "Private military service providers: Africa's welcome pariahs", *Nouveaux Mondes* No 10 (2002), Centre de Recherches Entreprises et Societes, pp. 69-86. 86

<sup>12</sup> C. Perowne (2003). <http://www.new-ag.info/en/country/profile.php?a=860>. Accessed on 18 Nov 2011.

<sup>13</sup> JD Unruh, NC Heynen, P Hossler, "The Political Ecology of Recovery From Armed Conflict: The Case of Landmines in Mozambique", *Political Geography* 22 (2003), pp. 841-861; W Day, "Removing Landmines - One Limb at a Time?", *Journal of Public Health Policy*, 19 (1998), pp. 261-266; R Thakur and W Maley, "The Ottawa Convention on Landmines: A Landmark Humanitarian Treaty in Arms Control?", *Global Governance*, 5 (1999), pp. 273-302.

<sup>14</sup> J Unruh, J Bailey, "Management of Spatially Extensive Natural Resources in Postwar Contexts: Working With the Peace Process", *GeoJournal*, 74 (2009), pp. 159-173.

<sup>15</sup> R Bottomley, "Balancing the Risk: Village De-Mining in Cambodia", *Third World Quarterly*, 24 (2003), pp. 823-837.

these areas can often be destabilizing due to mass evictions and aggressive attempts to establish permanent property claims by both squatters and the original owners.<sup>16</sup>

In Sri Lanka and South Sudan, land has been used as spoils of war; as a prize to be given to loyal soldiers and sympathizers in exchange for their support.<sup>17</sup> In such cases, the land granted is often the product of seizures from political opponents, suspected supporters of the losing armed group, or persons displaced by the conflict. The control of land in areas captured during military operations can be seen as having strategic value, as seen in Sri Lanka, where many parts of the north and east have been designated as *ad-hoc* security areas or high security zones. These areas are considered by the government as critical to its counter-insurgency strategy, deterring the re-emergence of Tamil rebels. This has made the return of persons displaced by the conflict to their pre-war homes and farms particularly difficult, and has slowed the process of economic recovery as the displaced remain dependent on food assistance.<sup>18</sup>

ERW in particular leave a distinct imprint on post-war land rights landscapes. By denying access to key resources, ERW contamination exacerbates land and property problems. Societies are then forced to adapt to new land scarcities, creating increased pressure to control access and use of uncontaminated land. As a result, it is virtually impossible for any activity involving change in the status of land and boundaries, such as ERW clearance, not to have a profound impact on local land relations and land rights. Removing landmines and other remnants of war from these spaces alters the local context by making previously alienated resources available and by changing the status of land. It thus creates new opportunities for wealth accumulation and competition over land. Examples drawn from the GICHD case studies and workshop with mine action organizations presented here describe some of the—often inadvertent—repercussions of mine action on land rights.

## Key Land Rights Issues in the Mine Action Context

### Practitioner Lack of Awareness

Mine action organizations have a significant track record of not adequately engaging with land tenure issues as they plan for and implement landmine clearance efforts (*i.e.* legal status, ownership, *etc.*). The case studies that informed this article indicate that mine action organizations are often unaware of the nuanced land rights effects that clearance will have on ERW contaminated and adjacent lands, and the individuals and groups that will have a variety of forms of claim to these. In some situations, they demonstrated a lack of awareness regarding

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<sup>16</sup> C Philpott , "Though the Dog is Dead, the Pig must be Killed: Finishing with Property Restitution to Bosnia-Herzegovina's IDPs and Refugees", *Journal of Refugee Studies* 18 (2005), pp. 1-24.

<sup>17</sup> B Fonseka, *Landmines and Land Rights in Sri Lanka*, (Geneva, GICHD, 2010); McMichael and A Massleberg, *Landmines and Land Rights in Southern Sudan*, (Geneva, GICHD, 2010).

<sup>18</sup> Fonseka, *Landmines and Land Rights in Sri Lanka*.

how released land would be used and why it was prioritised for clearance.<sup>19</sup> They typically appear to be unfamiliar with the broader land issues within their areas of operation, including the land issues that were part of the war, and of the land rights problems that occur once they have handed over an area to local communities or government and moved on.

There are generally two categories of land problems with regard to mine action organizations and the awareness issue: problems encountered while clearance is underway, and problems that surface once clearance is over. Mine action organizations are most unaware of the second type of problem because they are not around when they occur—even though these problems can be precipitated by mine action. While mine action organizations typically undertake pre-clearance surveys in order to determine the nature of the mine contamination problem, and in some cases post-clearance assessments, few of these surveys or assessments adequately gather information on land rights. In the cases where land rights related information is collected about ownership, disputes, etc., the information often is not acted upon or shared with other actors. Mine action organizations can also come to the conclusion that because they themselves do not encounter many land disputes during clearance, that land problems are few or minor. For example, the South Sudan case study<sup>20</sup> illustrated that there is little appreciation within the mine action community of the complexities of land rights, and hold fairly simplistic notions of what communal and customary rights are. There is also little understanding of the impact of mine action operations on land rights issues. In the Angola case,<sup>21</sup> not only is there general unawareness of any potential problems on the part of the mine action community, but there is also an assumption that since the state owns all the land, and few people have any land related documents, there can be no land disputes.

The lack of awareness and understanding regarding what to do about land issues can negatively affect the communities that mine action organizations intend to help. Several of the

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<sup>19</sup> 'Land release' is defined as "the release of formerly contaminated land through technical survey or clearance." Thus the practice of land release "is a response to [mine action] surveys that have significantly overestimated the size of suspected hazardous areas or wrongly identified other areas as contaminated". "Three new International Mine Action Standards were issued by the United Nations in June 2009 after a number of years of discussions: from now on, suspected hazardous areas should first be addressed by non-technical survey teams to ensure that they are actually contaminated. If no evidence of contamination is found, the areas can be cancelled and removed from the national mine action database. Only confirmed hazardous areas should be tackled with clearance assets. Technical survey should identify the type of contamination and the perimeters of the affected area, allowing full clearance to be conducted only on areas that are truly contaminated. Apart from the fact that not all operators have followed this procedure in the past, what is both new and significant in land release is the need for detailed documenting of and reporting on each step in the process." Landmine and Cluster Munition Monitor, Reporting on Land Release in Landmine and Cluster Munition Monitor, Landmine and Cluster Munition Monitor (2011), <http://www.the-monitor.org/index.php/LM/Press-Room/Press-Releases/Reporting-Land-Release>.

<sup>20</sup> McMichael and A Massleberg, *Landmines, Livelihoods and Post-conflict Land Rights: A Case Study of Southern Sudan*, Geneva International Centre for Humanitarian Demining, (Geneva: 2010).

<sup>21</sup> J Unruh, *Landmines and Land Tenure in Postwar Angola*, (Geneva: Geneva International Centre for Humanitarian Demining, 2010).

GICHD case studies noted that land grabbing takes place following mine clearance.<sup>22</sup> In Cambodia, land grabbing by state entities, individuals within the state bureaucracy and military officials has taken place in mine contaminated areas.<sup>23</sup> The very process of planning ERW clearance activities can attract state or elite attention on 'soon to be cleared' land, because often land values increase with the prospect of clearance. This can lead to the legal reclassification of land and the exclusion of communities and projects that were intended to occupy newly released areas, as the Angola and Cambodia cases in this study demonstrate. In Yemen, the land committees established by local governors to orchestrate clearance activities refused to sign the land over to the intended beneficiaries once mine action activities were finished.<sup>24</sup> Elites are not necessarily the only ones to seize newly cleared land when the land release process is not carefully monitored. In Afghanistan, cleared land originally intended for a tree plantation to enhance Kabul's green space was quickly settled with illegal housing.<sup>25</sup>

Land that borders contaminated areas represents a category of land issues that still elude the understanding of many mine action organisations. Although this land is not contaminated, its value and accessibility often changes once neighbouring areas are cleared and access is opened. For example, in Angola agricultural land was, and often still is, 'blocked' in many areas of the country due to mine contaminated roads.<sup>26</sup> Blocked irrigated land is also a problem in a number of Angolan provinces. While the clearance and opening of small areas does not usually present major problems specifically within those areas, opening access to larger areas that were blocked by such smaller contaminated areas can lead to numerous land disputes as a 'land rush' ensues for access, use and claim by returnees and others. As these larger areas are unlikely to be included in post-clearance assessments, mine action organisations often remain unaware of problems with this category of land. This gets at a broader issue also raised in Angola, where there are a great many land conflicts in the country. But because many of these do not specifically take place in the area being cleared of ERWs, it can be difficult to untangle the land conflicts that are due partially or exclusively to demining.

### **ERW clearance and the competition for land**

The release of formerly contaminated land generates new competition for valuable resources, especially in places where land or water resources are scarce, such as in Yemen.<sup>27</sup> One trend that emerged from the GICHD case studies was that elites can seek to capture newly cleared land—in addition to land that is to be cleared as noted in the previous section. Because

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<sup>22</sup> K Rasmussen, *Landmines and Land Rights in Cambodia*, (Geneva: GICHD, 2011); Unruh, *Landmines and Land Tenure in Angola* (Geneva: GICHD, 2010); M Sediq Rashid, M Jan and M Wakil, *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*, (Geneva: GICHD, 2010); B Fonseka, (Geneva: GICHD, 2010).

<sup>23</sup> Rasmussen, *Landmines and Land Rights in Cambodia*.

<sup>24</sup> H Thompson, *Landmines and Land Rights in Yemen*, (Geneva: GICHD, 2010).

<sup>25</sup> M Rashid, M Jan and M Wakil, *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*.

<sup>26</sup> Unruh, *Landmines and Land Tenure in Angola*.

<sup>27</sup> H. Thompson, *Landmines and Land Rights in Yemen*, (Geneva: GICHD, 2010).



the intended beneficiaries of many humanitarian demining activities are frequently marginalized people without adequate legal protection, the security of their land claims is easily threatened by more politically connected or wealthy individuals. While this problem is particularly acute in cases of on-going conflict, where armed groups often dictate control over resources, the rule of law is also weak in post war situations. Elite control can also come in more localized forms. Local government authorities can position themselves as representatives of a community and ensure that they directly obtain some of the newly cleared land, or at least position themselves to increase their political standing by deciding how the released land will be allocated to their supporters. Local civil servants can use their inside knowledge of government policy, including demining policy, to enrich themselves or seize land.

The clearing of land can also be a catalyst for the emergence of new conflicts or the reigniting of old ones. In Yemen, South Sudan, Cambodia and Afghanistan ERW contamination has helped to suppress local tensions over disputed land.<sup>28</sup> In these cases, mine presence ensured that disputed land remained in limbo as none of the disputing parties could make use of it. Clearing such land without securing sustainable and peaceful solutions between disputing parties for its management and use has led to renewed conflict and violence. In many of these instances, as the case studies commissioned for the current work have revealed, participating in dispute resolution remains beyond the scope of mine action activities. Practitioners have instead opted to try to remain neutral. The Mine Action Coordination Center of Afghanistan (MACCA) has been attuned to this particular issue for several decades, having given instructions to mine action practitioners in the early 1990s that demining cannot take place on disputed lands until the disputes have been resolved. While this approach is respected by mine action organizations, they do not necessarily take a role in resolving those disputes.<sup>29</sup>

The desire by the mine action community to remain uninvolved with the politics of land can actually open the door for post-clearance conflict, and can also expose mine action organizations to aggression from local parties. Even though mine action organizations may wish to remain neutral, their roles are often perceived as distinctly political by local actors, especially when mines are removed from disputed areas. The Yemen and Angola case studies illustrate that mine action organizations that were seen to represent elite, government, or corporate interests had their vehicles and equipment damaged or stolen.<sup>30</sup> In Yemen, in an area where tensions flared over land disputes, some mine action personnel had to withdraw for their own safety.<sup>31</sup> In Angola, a team from the national demining agency arrived to a locale in order to clear land that was to be converted into a reserve for resettlement of urban migrants and formerly displaced persons. The arrival of the deminers was the first time the local community, who were

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<sup>28</sup> Thompson, *Landmines and Land Rights in Yemen*; McMichael and Massleberg, *Landmines and Land Rights in Southern Sudan*; M Rashid, M Jan and M Wakil, *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*.

<sup>29</sup> M Rashid, M Jan and M Wakil, *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*.

<sup>30</sup> Thompson, *Landmines and Land Rights in Yemen*; Unruh, *Landmines and Land Tenure in Angola*.

<sup>31</sup> Thompson, *Landmines and Land Rights in Yemen*.

already on the land and had established claims under customary law, were informed that their land was to be converted into a government reserve. As a result members of the community assumed the demining survey was demarcating the land for expropriation, and the mine action team was faced with aggression and damaged vehicles.<sup>32</sup>

In Afghanistan, mine action organizations developed engagement criteria to take these potential risks into account. Mine action organizations in the country have insisted that 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, this ensures that tensions over land will not be inflamed because of the release of previously hazardous or suspected hazardous areas. This approach reduces the potential harm that may come from land clearance. Some local communities in Afghanistan are acutely aware of the potential impact of removing mines, and have explicitly asked mine action organizations to not remove mines from disputed land.<sup>33</sup>

### **Prioritising Areas to be Cleared**

Priority-setting decisions regarding the order in which areas are to be demined can have a significant impact on land rights.<sup>34</sup> In conflict and immediate post-conflict contexts, the priority is often to clear roads first to facilitate humanitarian and peacekeeping access, and then residential areas to support the return and resettlement of internally displaced persons (IDPs) and refugees. Agricultural land is typically cleared after roads and residential locations. Forests, rangelands, and other areas providing fuelwood, construction materials and other subsistence products are cleared last, or not cleared. However, because contaminated locations can be many and scattered across a country, agricultural land may be cleared long after residential areas, thus increasing the value of nearby uncontaminated agricultural land. This often leads to a scramble to control these lands by nearby inhabitants or more powerful interests, resulting in wider problems of land grabbing and disputes.

A variation of this problem occurs when occupants return to their residential areas or places that are ERW free or have been recently demined. Because their own agricultural land remains contaminated, they then encroach on uncontaminated land belonging to someone else to meet their agricultural and food security needs, again resulting in disputes.<sup>35</sup> Due to the prioritization of residential land over agricultural land for clearance in Sri Lanka, only 11 percent of returnees can engage in farming, revealing a significant food security problem and enormous pressure to cultivate any available land.<sup>36</sup>

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<sup>32</sup> Unruh, *Landmines and Land Tenure in Angola*.

<sup>33</sup> Rashid, Jan, Wakil, *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*.

<sup>34</sup> Vanna, Davy, *Research on Post Clearance Land Titling*, (Austcare Cambodia, Phnom Penh: AIMAD Land Titling Pilot Project 2007).

<sup>35</sup> Fonseca, *Landmines and Land Rights in Sri Lanka*.

<sup>36</sup> Fonseca, *Landmines and Land Rights in Sri Lanka*.

Different mine action organizations have different sequencing priorities. For example, some organizations may clear roads first, or only roads and related infrastructure, while other humanitarian deminers tend to focus on community lands. One humanitarian demining organisation in Angola often goes beyond their task order to also clear neighbouring community lands that they discover to be contaminated while fulfilling their initial order to clear roadways. On the other hand, commercial demining organizations in the country clear just the task order and ignore adjacent problems even when they became aware of them.<sup>37</sup> In most mine affected countries, government (who usually occupied one side in the conflict) has significant influence over the sequencing, speed, location and extent to which clearance occurs. This is especially the case in areas that are still militarized. In Sri Lanka, land has been cleared in some areas and then turned into 'high security zones' by the military, instead of being returned to its original owners.<sup>38</sup> Despite such problems, most mine action organizations in Sri Lanka do not see the connections between the land rights issues that occur in their wake. Others, however, do recognize the challenges and are partnering with local NGOs to better be able to make sense of the land rights repercussions of mine action.<sup>39</sup>

A further complication is that mine action relationships with government and the government's demining prioritisation processes can lack transparency. This may open the possibility (and suspicion on the part of affected communities) of vested interests in the clearance of land by mine action organizations that work with government or with individuals in government. An important aspect of this relationship is that governments are in a position to define and constrain both where and when ERW are cleared. Governments also often control and constrain the political space within which land rights can be discussed, as the Sri Lanka and Angola cases demonstrate.<sup>40</sup>

## Information Sharing and Transparency

Adequate communication of the status of contaminated and released land can have a significant impact on affected communities. Only a few mine action organizations systematically communicate with humanitarian and development organizations and affected communities in an effective manner. In Sri Lanka, insufficient communication by mine action organizations with IDPs about their land has created problems.<sup>41</sup> For example, land was cleared, and no information or insufficient information was provided to the relevant population regarding the status of their land, and many returned to reassert their rights, leaving the land open to be claimed by others. In the absence of accurate information, rumours quickly emerged regarding

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<sup>37</sup> Unruh, *Landmines and Land Tenure in Angola*.

<sup>38</sup> Fonseka, *Landmines and Land Rights in Sri Lanka*.

<sup>39</sup> Fonseka, *Landmines and Land Rights in Sri Lanka*.

<sup>40</sup> This is done by not allowing public discourse on the issues, punishment of those who do attempt to address such issues, and control over politics and politicians with regard to the issues.

<sup>41</sup> Such problems included not understanding the status of one's land resulting in a too early return to contaminated land, and staying away from land that has been cleared.

the status of land. which confused and mislead affected populations, leading to the prospect that some returned to contaminated land. Apart from the risks of such a return, upon discovery that their lands were still mined, returning households then occupied someone else's land out of necessity for residential and/or agricultural purposes. Such occupation then created problems for property owners, particularly if the number of such secondary occupants was large and they were from a different ethnic, religious, tribal, language, or geographic group with which problems already exist. Wartime divisions (particularly where groups were attached to different sides in the war), and lingering animosities made effective communication difficult between such groups and lead to the proliferation or aggravation of disputes.

In still another type of information problem, donor and post war governments are usually eager to move refugees and IDPs out of camps and back to home areas so that camps can be closed, thereby demonstrating progress toward recovery. However, return programmes and camp closures pushed by government and donors often lack coordination with ERW clearance activities. When insufficient information is shared about the location of cleared areas and pace of clearance, refugees and IDPs who are forced, coerced, or otherwise encouraged to return to home areas can find their land still contaminated. This not only continues their dislocation, but also causes them to encroach on other people's land and residences while waiting for their land to be cleared. Refugees can continue to trickle back from neighbouring countries years after a war is over, such as in the south of Angola.<sup>42</sup> Mine action organizations therefore need to be able to respond to these multiple sporadic returns to mined areas. However, because such a trickle can, in aggregate, involve a large number of people and take place over large and scattered areas, disseminating information effectively can be challenging.

An additional information related problem is that, because mine action organizations wish to remain 'neutral' (meaning they do not want to undermine or challenge the policies of governments) they often attempt to ensure that documents they provide to local communities demarcating and describing the areas cleared (called 'handover documents'), are not used as evidence of claim or proof of ownership of land. However, from a land rights perspective, such a priority can actually work against some of the fundamental objectives of humanitarian mine clearance, particularly that released land goes to the intended beneficiaries. The reality is that activities of mine action organizations unintentionally create a wide variety of evidence (surveys, demarcations, clearance and release documentation) helpful for local community claims to land. Mine action organizations often have little control over how these materials and tools are interpreted and used by local populations after the mine action organizations leave. Therefore, beneficiary communities would be better off if mine action organizations providing such documentation would do so in a highly transparent manner so that land grabbing by elite interests are thwarted, and community claims (and evidence for claims) are facilitated. Insufficient transparency and communication failures can result in the perception that demining actors are a threat to local interests, as was previously mentioned regarding Angola and Yemen.

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<sup>42</sup> Unruh, *Landmines and Land Tenure in Angola*.

Local community participation in the demining survey, demarcation and documentation of land clearance, release and handover processes, and community dissemination of the materials generated, can be carried out within the stated neutral intent<sup>43</sup> on the part of mine action organisations. This can occur because such use occurs outside of the intent and stated activities and mandate of mine action organisations. At the same time such materials can also be used by local communities, donors, NGOs, and relevant government agencies to provide highly relevant evidence for legitimate claims to the land in question. Allowing such evidence to be used by the intended beneficiaries would significantly increase their post-clearance tenure security. According to GICHD, of the seven broad principles for land release of areas categorized as mined,<sup>44</sup> six are directly relevant for the tenure security of intended beneficiaries, with minor adjustments:

1. A formal, well documented, recorded and publicly disseminated process of investigation into the mine/explosive remnants of war problem
2. Well defined and objective criteria for the reclassification of land, publicly disseminated
3. A high degree of community involvement and acceptance of the decision-making process, and the public dissemination of this involvement, including locating any relevant still displaced community that will likely have claims or be part of the intended beneficiaries
4. A formal publicly disseminated process regarding the handover of land prior to its release, involving local communities, intended beneficiaries, government representatives, etc.
5. An ongoing monitoring mechanism after the handover has taken place, particularly with regard to the fate of land rights, claims and disputes
6. A common set of terminology to be used when describing the process

Thus heightened transparency and public dissemination of who the intended beneficiaries are, and their connection to the materials produced from mine action activities, will have the effect of minimizing the prospect of land grabbing, because dispossession relies on the unequal access to information regarding rights, claims and options for dispute settlement. Such a process would also contribute to the accountability of national authorities regarding the land release and handover process, which is important given both their potential bias as a likely actor in a the conflict where mines were use, and their role as the legal guarantor of land rights.

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<sup>43</sup> While such stated neutrality is in reality unfounded as noted earlier in the paper, it is nevertheless worthwhile for mine action practitioners to understand that they are able to make a contribution toward solidifying land rights for beneficiaries even given the possible inability or reluctance of their organizations to change their stated neutral mandate.

<sup>44</sup> GICHD, *A Guide to Land Release: Non-technical Methods*. Geneva: Geneva International Centre for Humanitarian Demining, Publication No. 64, 2008, <http://www.gichd.org/en/gichd-publications/land-release/?0>.

The priority in terms of information sharing should therefore be to aim for maximum transparency and participation in planning, survey, clearance and subsequent 'land release' to local communities. The best objective would be that it becomes widely known (among government, local communities, NGOs, donors and civil society) who the intended, documented beneficiaries are, thus making illicit land grabbing, re-zoning, or other forms of exclusion of local communities more difficult. Such an objective is facilitated when intended beneficiaries or other communities reside near the area to be demined. Where the relevant beneficiary communities continue to be displaced far from the area, this can be more difficult. Nonetheless there are approaches, such as that of the International Organisation for Migration,<sup>45</sup> that can connect such populations with their 'to be cleared' areas of origin.

### **Shifting Responsibility**

A common position from mine action organizations in the cases covered is that land issues resulting from their actions are the responsibility of government, the local community or other relevant authorities – but not theirs because land issues fall outside of their mandate. The problem is, that if such national and local entities are non-existent, weak, crippled, corrupt or otherwise incapacitated, then with whom does responsibility reside? Mine action organizations should become more aware of the repercussions of being high capacity, highly resourced actors in a low capacity, low resource post war environment. By assuming narrow mandates, mine action organizations neglect critical social and political issues, which directly impact the outcome of their work.

### **The Explicit Use of Mines in Land Rights Issues**

Due to the widespread availability of landmines in conflict affected settings, and their ability to exert powerful control over space, mines can be intentionally used in land disputes. In Bosnia and Herzegovina, mines were laid after the end of the war to prevent or intimidate population from returning to specific areas.<sup>46</sup> Anti-personnel mines are also often viewed as guarantors of tenure. In a case from Afghanistan, land was purposefully mined because of a land dispute; in another, a community did not want its agricultural land cleared because the land might be grabbed by a powerful interest. The community thinking was that it is better to have the land mined and belong to them (to possibly be cleared later) than to have it demined and lose it permanently to a powerful outsider.<sup>47</sup> This very same phenomenon was observed in

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<sup>45</sup> The approach of the IOM in this regard is to engage in forms of community mapping, using a combination of air photos before and after the dislocation event, generalized property location exercises as opposed to precision in boundary demarcation, and an expansion of the forms of evidence for lodging claims, including testimonial evidence from neighbors, and oral history involving land and property use.

<sup>46</sup> A Alida Vračić, and S Vukovic, *Landmines and Land Rights in Bosnia and Herzegovina*. (Geneva: International Centre for Humanitarian Demining, 2010).

<sup>47</sup> Rashid, Jan, Wakil, *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*.

communities living in mine contaminated areas of Cambodia.<sup>48</sup> In another example, from Afghanistan, the loss of family or tribal land to a land grabber led to attempts to find and plant mines on the land to discourage its use by the party that seized it.<sup>49</sup> In Angola's Kwanza Sul Province, a local community believed that the land mines on their land were 'protecting' the local population from being evicted.<sup>50</sup> In both Cambodia and Afghanistan, mines retain a strategic role for the military and local actors as markers of territorial boundary. In Cambodia, long segments of land along its shared border with Thailand remain mined.<sup>51</sup> In Afghanistan, individuals have used anti-personnel mines as a replacement for markers of property like fences and walls that have been destroyed during the conflict.<sup>52</sup>

### Community Participation

While community participation and consultation in mine action can be a positive step towards addressing land rights after clearance, such participation and consultation can be challenging. The choice of whom to consult in the community regarding clearance and land release is fraught with difficulties. Since local actors can have different stakes in how the land is to be ultimately used, a mine action organization's choice of whom and how extensively they consult in the community can have political and hence land rights outcomes. Women in particular are often marginalized by mine action consultations that are addressed to local (often male) leaders.<sup>53</sup> Without extensive consultation, areas that are prioritized by underrepresented groups may not be cleared of ERW as quickly. In addition, while some communities or community members that claim the land in question are present, others will reside in IDP or refugee camps, or otherwise may not be in the area. Whomever is chosen by mine action organizations to represent the interests of the local community has a greater say in how that land will be allocated or used. This is especially a problem when control over the land is disputed, or there are other problems between groups or individuals that are present and those who are not. While failure to include all parties in the process can cause resentment over the survey and clearance process and potentially lead to land conflict, it sometimes may not be possible to locate all parties who have a claim to the land in question. There have been extensive discussions in the mine action community about the need to be more inclusive in community

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<sup>48</sup> R Bottomley, *Balancing the Risk: Village De-mining in Cambodia*, *Third World Quarterly* 24.5, 824-837 (2003).

<sup>49</sup> Rashid, Jan, Wakil, *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*.

<sup>50</sup> Unruh, *Landmines and Land Tenure in Angola*.

<sup>51</sup> Rasmussen, *Landmines and Land Rights in Cambodia*.

<sup>52</sup> Rashid, Jan, Wakil *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*.

<sup>53</sup> Nilsson, Marie Rozès Virginie and Juliane Garcia, "Gender and Land Release: The Responsibility of the Mine-action Community", *The Journal of ERW and Mine Action*, 13.2 (2009).

consultations regarding risk assessment, education and prioritizing clearance.<sup>54</sup> However, the issues of land tenure within these consultations remain critically under addressed.

## **Distrust of the Military and Government**

In some situations, mine action organizations may be perceived as biased political actors, which can stem from their association with the military or government—which again, likely were associated with one side during the war. Communities that were recently targeted through counter insurgency warfare or were victims of a repressive regime may be particularly wary of the intentions of mine action organizations affiliated with the military/government. This is a problem in Sri Lanka where the largest demining organization in the country is the Sri Lankan military, who recently defeated the LTTE rebels.<sup>55</sup> In Yemen, the main demining organization has also been associated with the military due to its use of military barracks and uniforms for their official duties. Because the Yemeni state is currently dealing with several insurgencies, popular perceptions that deminers are part of the military leads to distrust among segments of the population.<sup>56</sup> In Angola, the national demining organization is part of government, and it is clear when they arrive in an area to engage in mine action that they are doing so as part of government plans, many of which have resulted in land expropriation from local communities.<sup>57</sup> It is important to note, however, that such state demining organizations are distinct from mine action organizations that are humanitarian in nature and run by aid agencies.

## **Policy Complications**

The ability of mine action organizations to contribute to secure tenure for intended beneficiaries can be hindered by complicated and inflexible policies that limit effective interaction with local communities. In cases where the state only recognizes officially issued land titles, mine action organizations often do not have the capacity, resources or mandate to offer legal and technical property rights assistance to intended beneficiaries so that they can navigate complex and expensive bureaucratic systems. Low levels of education in local communities and legacies of oppression by state institutions can lead to a general distrust of government policies and actors or state land tenure regimes. As such, affected communities are often unaware of their legal rights within such policies or lack the means to challenge the government or powerful elites to assert their rights. Ambiguous legal classifications of land can also hinder this process. In Angola and Cambodia, while the state officially owns all the land in the country, in the rural areas local communities have *de facto* control and exercise this control,

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<sup>54</sup> Bottomley, *Balancing Risk: Village De-Mining in Cambodia*; Nilsson, Rozès and Garcia, *Gender and Land Release: The Responsibility of the Mine-action Community*; R Bottomley, "Community Participation in Mine Action: A Review and Conceptual Framework", Norwegian People's Aid (2005).

<sup>55</sup> Fonseca, *Landmines and Land Rights in Sri Lanka*.

<sup>56</sup> Thompson, *Landmines and Land Rights in Yemen*.

<sup>57</sup> Unruh, *Landmines and Land Tenure in Angola*.



except when government intervenes. As a result there can be considerable confusion over who has what rights to which lands.<sup>58</sup>

## **Multiple Tenure Regimes**

Navigating different and often conflicting land rights systems operating in the same areas can be a significant challenge for land practitioners. Determining which tenure systems to use to secure claims is pervasively an ongoing struggle that reflects a legacy of tenuous relationships between governments and local people. In several case studies, including Afghanistan, Yemen and South Sudan,<sup>59</sup> the government has never been able to establish a dominant tenure regime, leaving much authority with local customary leaders. However, customary systems are far from homogenous within the countries themselves, and their land rights systems are often shaped by local realities, traditions and norms. Without significant knowledge of local nuances, navigating these systems can prove difficult for land practitioners, and even more so for mine action organizations.

The relationships between customary systems and statutory law can also be antagonistic. In South Sudan, customary systems have in the past often come into conflict with policies issued from Khartoum.<sup>60</sup> In what was formerly South Yemen, tribal hierarchies were dismantled when the state nationalized all of the land; and many land records were destroyed in the process. Although the northern and southern parts of the country were united in 1990, the unique historical legacies of each part still plays a significant role in shaping different approaches to local land relations.<sup>61</sup>

In four countries, South Sudan, Yemen, Angola and Afghanistan, political crisis, displacement and war over long periods of time, have all contributed to the weakening of local customary land rights systems.<sup>62</sup> Therefore, the assumption by mine action organizations that 'it's their problem-they know how to resolve it' neglects the fact that local systems may no longer have the capacity or the legitimacy to effectively resolve land disputes. Customary systems in each of these four cases discriminate against women's ownership rights to land. Such that even if a mine action organization intends to hand cleared land directly over to women, without change in the way local management systems operate, the objective can be undermined.

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<sup>58</sup> Unruh, *Landmines and Land Tenure in Angola*.

<sup>59</sup> Rashid, Jan, Wakil, *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*; Thompson, *Landmines and Land Rights in Yemen*; McMichael and Mattleberg, *Landmines and Land Rights in Southern Sudan*.

<sup>60</sup> McMichael and Mattleberg, *Landmines and Land Rights in Southern Sudan*.

<sup>61</sup> Thompson, *Landmines and Land Rights in Yemen*.

<sup>62</sup> McMichael and Mattleberg, *Landmines and Land Rights in Southern Sudan*; Thompson, *Landmines and Land Rights in Yemen*; Unruh, *Landmines and Land Tenure in Angola*; Rashid et al, *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*.

## Women and Land Rights

With a higher proportion of female headed households after most wars, particular attention on women's land rights is necessary. Female headed households can be more vulnerable to land grabbing as they are more likely to be illiterate, poorer, have fewer livelihood options, and have less access to institutions of political power to secure their land rights than male headed households; hence they may be less able to defend their land claims. Customary tenure systems often deny women ownership rights to land, even as widows. In addition, due to an imbalance in access to mine action activities and to local power structures, women who may have had claims to lands that were contaminated are often dispossessed once the land has been cleared of ERW contamination.<sup>63</sup> Such patterns were identified explicitly in Afghanistan and South Sudan,<sup>64</sup> but are no doubt present, with variations, in most war torn countries affected by landmines. The processes of community participation, planning, prioritisation, land release and handover, and post clearance monitoring and evaluation all need to take into account female headed households.

Community representatives (elders, chiefs, lineage heads) often do not speak for women, or adequately represent the problems faced by female headed households. As previously mentioned, customary laws can frequently be discriminatory toward women and women's land rights. As a result, female headed households reoccupying demined land may require assistance when asserting or claiming rights with both customary and local state authorities. While not all of these are within the mandate of mine action organizations, local NGOs and others who do work with gender issues, can be contacted to assist.

## Conclusions

Mine action and the re-establishment of land rights are both about the spatial recovery of post war lands. When these two peacebuilding priorities interact on the ground over the same lands however, the outcome for local communities (and peacebuilding) can be unpredictable, negative and volatile. Unfortunately, these two priorities do not interact in the policy, planning, programming, institution building and funding domains. The intent of this article is to contribute to a greater awareness of the importance of this interaction.

Mine action organizations traditionally have not had the experience, capacity or mandate to work with land rights issues as part of their activities, and it is beyond the mandate and operational scope of mine action organizations to 'fix' land rights problems. However, there is a range of approaches that can be used to ensure mine action does no harm with regard to land rights at the least, and more effectively deal with land issues that they commonly

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<sup>63</sup> Nilsson, Marie Rozès Virginie and Juliane Garcia, "Gender and Land Release: The Responsibility of the Mine-action Community", *The Journal of ERW and Mine Action*, 13.2 (2009).

<sup>64</sup> Rashid et al, *Landmines, Livelihoods and Post-Conflict Land Rights in Afghanistan*; McMichael and Massleberg, *Landmines and Land Rights in Southern Sudan*.

encounter, or inadvertently cause or participate in. While some mine action organizations may develop this capacity over time, a quicker and more effective approach is to link with national or international land rights NGOs who do have the capacity and experience to deal with land issues. However such linkages are unlikely to occur unless the donor who provides funding to mine action organizations ensures that this is a priority, by tying such linkages to funding mine action organizations at the outset. In this regard, the donor-stated measure of success for mine action organizations is quite important as the organizations pay close attention to such measures. If 'focusing on areas with the greatest casualty count' or 'number of mines removed' is the only criteria for success, then mine action organizations will select areas where these measures can be maximized. However if livelihoods, poverty reduction, improved economic activity, or access to lands, are also a measure of success, then this would play a significant role in encouraging mine action organizations to engage more effectively with land rights issues.

An additional valuable approach is that community liaison and surveys can be used to identify community needs regarding land issues, to involve the community in priority setting with regard to which areas are to be demined in what order. This will require locating and contacting beneficiary communities before they return to demined land in order to identify their needs. This may be difficult where populations are still displaced. However, there are often a variety of NGOs and UN organizations that deal with displaced populations and these can be of assistance.

Awareness needs to be raised about land rights and land laws (both statutory and customary) at the community level when mine action organizations are interacting with communities at the planning and initial demining survey stages. Because mine action organizations interact directly with local communities and are one of the most high capacity and well resourced actors present in rural areas, informing local communities about their land rights would reduce prospects for easy land grabbing.

When conducting pre-clearance assessments, mine action organizations should collect data on what the intended post-clearance land use is intended to be and who the intended beneficiaries are. Disseminating this information as widely as possible to government, donor and civil society sectors would act to a significant degree to deter surreptitious land grabbing. Mine action organizations would be well advised to conduct post-clearance assessments that also assess if intended beneficiaries are actually the occupants of the cleared land.

A great deal of valuable work has been accomplished by mine action organizations and national demining agencies in working toward recovery of war torn societies. Much has been learned about how interconnected different aspects of post war recovery are, and the importance of a greater integration of these. While the importance of mine action in countries recovering from war should not be underestimated, it is becoming increasingly clear that mine action is inevitably connected to land rights issues and that improved tools need to be derived that will allow mine action activities to better deal with land rights issues.