



# Landmines and Land Rights in Afghanistan

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**LIST OF ACRONYMS**

AIHRC	Afghanistan Independent Human Rights Commission
AAR Japan	Association for Aid and Relief Japan
ACL	Afghan Campaign for Landmines
ADC	Asadbrothers Demining Company
AMAC	Area Mine Action Centre
ARCS	Afghan Red Crescent Society
AREU	Afghanistan Research and Evaluation Unit
ATC	Afghan Technical Consultants
CMCC	Country Mine Clearance Company
DAFA	Demining Agency for Afghanistan
DAO	Development & Ability Organization
DDG	Danish Demining Group
EODT	EOD Technology Inc
ERW	Explosive Remnants of War
FAO	Food and Agriculture Organization
G4S	Ordnance Management Afghanistan (previous Armor Group)
GDP	Gross Domestic Product
GGDC	Gold Global Demining Company
GS	Green Step
GTZ	German Technical Cooperation
HDI	Hemayatbrothers Demining International
HI	Handicap international
HT	Halo Trust
IBA	International Bar Association
KMCC	Kabul Mine Clearance Company
LIAT	Landmine Impact Assessment Team
LTERA	Land Titling and Economic Restructuring Activity Project
MAIL	Ministry of Agriculture, Irrigation and Livestock
MAPA	Mine Action Programme of Afghanistan
MCPA	Mine Clearance Planning Agency
MDC	Mine Detection and Dog Centre
MMCC	Mobile Mini Circus for Children
MTI	Mine Tech International
NDSS	National Demining Support Services
NRC	Norwegian Refugee Council
OMAR	Organization for Mine Clearance and Afghan Rehabilitation
OMAR Int	OMAR International
PM/WRA/DynCorp	Weapons Removal & Abatement
PPP	Purchasing Power Parity
PSS	Professional Service Solutions
SDG	Safi Demining Group
TDC	Trust Demining Company
TDG	Titan Demining Group
UADC	United Asia Demining Company
UNAMA	United Nations Assistance Mission in Afghanistan
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development

## 1. Introduction

This case study explores the links between landmine contamination and post-conflict land rights issues in Afghanistan.<sup>1</sup>

Afghanistan is a landlocked country located in south-western Asia, bordered by Iran, Pakistan, China and the three central Asian countries. Rocky mountains and deserts with little vegetation make up most of the country. The population is estimated at 26.8 million people<sup>2</sup> and the country is ethnically diverse and sparsely populated. Afghanistan faces serious political instability and a dire humanitarian emergency.

Over three decades of widespread and devastating armed conflict has left Afghanistan with some of the worst social indicators. The Afghanistan Human Development Report 2007 indicates that the country's Human Development Index is far behind its neighbouring countries and ahead of only four countries in the world. Annual Gross Domestic Product per capita in terms of purchasing power parity (PPP) is \$964 USD, the adult literacy rate is at 23.5 per cent and life expectancy is among the lowest in the world, at 43.1 years. Skilled workers are hard to find, therefore the human resource base is depleted and state institutions have not yet been fully revived.<sup>3</sup>

Health indicators for children and women are low, which is linked to education. Gross education enrolment ratio is only 59.3 per cent, with the number of girl students well below that of boys. The Afghan Human Development Report 2007 shows that an estimated 12.6 per cent of women can read and write. To compare, the literacy rate among the Afghan men is estimated at 32.4 per cent. The female school enrolment rate is almost half of male enrolment, at 41.8 per cent compared to 73.7 per cent. These figures clearly show that Afghan women are to a great extent deprived of an adequate education. They are also disadvantaged when it comes to employment and health care services.

The country has a long way to go in order to improve its social indicators. Better coordination and joined-up efforts by the state, civil society and the private sector are necessary to achieve the "freedom of people to exercise real choices and enhance their capability to live healthy, long and meaningful lives"<sup>4</sup>.

### 1.1 Landmines and Explosive Remnants of War (ERW)

Landmines and ERW are among the worst legacies of the wars in Afghanistan and remain a threat to over two thousand communities<sup>5</sup>. The contamination of agricultural land, pastoral lands, roads and access ways to water sources, puts the lives and livelihoods of many Afghans at risk. In 2009, an average of more than 40 people each month were injured or killed by landmines and explosive remnants of war (boys 48 per cent, men 37 per cent, girls 8 per cent and women 7 per cent). Overall, of approximately 2.7 per cent of all severely disabled Afghans (41 per cent female and 59 per cent male), 8.6 per cent are this way because of landmine and ERW related injuries<sup>6</sup>. The male population constitutes 92 percent of this total and 55 percent of all these victims are below twenty years of age.<sup>7</sup>

<sup>1</sup> This document has been produced as a result of landmine and land rights literature review as well as structured and semi-structured interviews with a number of both mine action and land rights stakeholders in Afghanistan.

<sup>2</sup> U.S. Census Bureau, 2001; *Strategy World*. <http://www.strategypage.com/articles/opertionenduringfreedom/chap3.asp> (accessed July 18, 2010).

<sup>3</sup> World Bank. *AFGHANISTAN WORLD BANK APPROACH PAPER*. Approach Paper, Kabul: World Bank, 2001.

<sup>4</sup> Ali Wardak, Daud Saba, and Halima Kazem. *Afghanistan Human Development Report, Bridging Modernity and Tradition: Rule of Law and the Search for Justice*. Human Development, Islamabad: Army Press, 2007.

<sup>5</sup> MACCA. *MACCA Fast Facts*. Kabul: Mine Action Coordination Centre of Afghanistan, 2010.

<sup>6</sup> Ibid

<sup>7</sup> Afghanistan National Mine Action Database as in August 2010

Mines were used indiscriminately in Afghanistan by most of the warring factions. Russians and the Russian-backed Afghan military forces used mines for the protection of their military instalments. Mujahideen<sup>8</sup> forces used anti-vehicle mines in order to block the movement of Russian and government forces. Armed conflicts among Mujahideen factions, and then between the Taliban and their opposition, led to widespread contamination of vital land. However there is a lack of records or maps indicating where the mines were laid and this has further exacerbated the negative impact of landmines.

After 9/11 in 2001, American military operations against Taliban forces resulted in cluster munitions and other ERW contamination. According to the national mine action database, mine and ERW contamination have blocked the use of approximately 161 km<sup>2</sup> of agricultural land as well as an estimated 6.4 km<sup>2</sup> of water sources, and approximately 48 km<sup>2</sup> of residential land.<sup>9</sup> As of June 2010, the overall estimated total landmine and ERW contamination in Afghanistan is 654 km<sup>2</sup>, affecting approximately 2,127 communities in 33 out of the 34 provinces. Most of the land affected is pastoral land and so a vital source of livelihood for many Afghans living in rural areas. According to the UN Environment Programme, the ownership of pastoral land is one of the reasons for the continuation of conflicts in various parts of the country.<sup>10</sup>

The knock-on effects of Mines/ERW reach well beyond the continuous deaths and injuries of innocent people. They also threaten the safety of communities, impede the return of refugees and internally displaced persons, limit access to essential social services, and prevent access to resources that are necessary for sustainable livelihoods.<sup>11</sup>

## 2. MAIN LAND RIGHTS ISSUES

### 2.1 History of land rights

Since 1923, most of the Afghanistan constitutions have covered land-related issues. In practice however, private property holders have not benefited sufficiently from property protection<sup>12</sup>. In recent Afghan history, land reform and property rights have been major issues however, and to overcome these now, it would be necessary to create a national land-registry mechanism and the collation of various types of documents for proving land ownership.

Historically, private property ownership in Afghanistan has been vulnerable due to the lack of formal protection. For example, people subject to banishment could face their land being confiscated. As an effort to address this problem and achieve fair land distribution for eradicating poverty, President Daud initiated a major land reform effort in the 1970s. The Russian-backed communist regime then went further in the 1980s, when the government rigorously took land from those in possession of more than six hectares (30 Jeribs),<sup>13</sup> without providing compensation. The constitution limited private ownership and made it subject to state control, and those who failed to register their land faced its confiscation. This resulted in considerable backlash and revolt against the regime.

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<sup>8</sup> Mujahideens refers to the forces that were fighting Russians and their supported regime during the Russian occupation era in Afghanistan

<sup>9</sup> Mine Action Coordination Centre of Afghanistan. 1389 Integrated Operational Framework. <http://www.macca.org.af> (accessed July 2010)

<sup>10</sup> UNEP (United Nations Environment Programme). *Recommended Strategy for Conflict Resolution of Competing High Pasture Claims of Settled and Nomadic Communities in Afghanistan*. Kabul: UNEP, 2009.

<sup>11</sup> Sharmala Naidoo, Ted Paterson, Nara Weigel. *Linking Mine Action With Development, National Mine Action Centres*. Geneva: Geneva Centre for Humanitarian Demining, 2009.

<sup>12</sup> Foley, Conor. *A Guide to Property Law in Afghanistan*. Peshawar: Khyber Mail, Norwegian Refugee Council, 2005.

<sup>13</sup> One Jerib land is equal to 2000 square meters.

Although President Najibullah<sup>14</sup> abandoned this land reform policy in 1987, his government was unable to take further action due to war.<sup>15</sup> In 1992, Mujahideen forces seized control of Kabul and the government, and taking into consideration land rights issues, drafted a new constitution. However it remained valid only on paper because of armed conflict and widespread anarchy. Many Afghans were forced to leave their land, and land usurpation, ie, land seized unjustly by someone else, prevailed and still continues. Many land ownership documents have been forged and based on recent studies, it is estimated that approximately 800,000 hectares of land has been illegally occupied during the last three decades of conflict in Afghanistan.<sup>16</sup>

In 1996, the Taliban regime came to power. The Taliban ignored the Constitution and the civil law of the country, and instead established Islamic courts for the direct application of Sharia law in relation to land issues.<sup>17</sup> They attempted to resolve some long-standing land-related disputes and issues,<sup>18</sup> but in doing so, and by supporting certain groups, they deeply disturbed the land rights domain. War continued during the Taliban regime, resulting in substantial population displacement that further complicated land ownership.

In September 2000, the law on land under decree number 57 (issue number 795) was issued. This law created a commission for land clarifications and operated under the Department of Land Classification in the Ministry of Agriculture.<sup>19</sup> The commission's main tasks were to:

- register land and legal documents
- categorise farmland areas
- define boundaries between private lands
- identify government-owned land, common lands, religious lands and barren lands
- restore the confiscated land to its original owners
- refer disputes to the courts
- distribute the ownership documents

Foley (2005) refers to this law as one of the most comprehensive laws for addressing the proof of ownership documents. It specifies the following documents as proof of ownership:

- Official documents issued and validated by the courts that indicate ownership, purchase, gift, exchange, surrender, or another form of transfer
- Officially authorised purchase documents issued by an authorised government department
- Officially registered tax payment documents
- Water rights documents where there is no evidence against their authenticity and the land concerned is shown in the book of ownership and taxation
- Customary documents prepared before 1975, properly witnessed and submitted to an authorised government department before 1978

## 2.2 Steps taken towards resolving problems with land rights

Land reform and secure land rights are a formidable challenge in Afghanistan. This is due to the devastation that long, widespread and bitter armed conflicts have caused; the return of millions of Afghan refugees coupled with land-shortage, and the lack of institutional capacity for managing land-related issues.<sup>20</sup> The development of a land allocation policy and the role of urban master plans are issues that need to be addressed by the current government.

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<sup>14</sup> President Najibullah was the last president of the Russian backed regime in Afghanistan.

<sup>15</sup> Ibid.

<sup>16</sup> Zarif, Haroon, interview by Mohammad Sediq Rashid. *Land Lease Enforcement Director, Islamic Republic of Afghanistan, Ministry of Agriculture, Irrigation and Livestock* (July 22, 2010).

<sup>17</sup> Foley, Conor. *A Guide to Property Law in Afghanistan*. (Peshawar: Khyber Mail, Norwegian Refugee Council, 2005), 30.

<sup>18</sup> Ibid.

<sup>19</sup> Foley, Conor. *A Guide to Property Law in Afghanistan*. (Peshawar: Khyber Mail, Norwegian Refugee Council, 2005), 42.

<sup>20</sup> Ibid.

The government has made some progress on establishing a legal framework, but several grey areas remain. Afghanistan lacks a capable and responsive institutional set-up, skilled and empowered human resources, a nationwide survey of land for a credible land-registry and stakeholder coordination. To be successful, a considered and coordinated response is required on a range of issues. These include: increasing the number of qualified lawyers; strengthening public awareness of land rights; eliminating corruption in the judicial system; minimising the interference of local authorities based on discrimination; establishing a compensation system; and addressing gaps and contradictions in the legal framework and land reform policies.<sup>21</sup> A very high illiteracy rate in the country, with women especially being far behind the men when it comes to literacy, further complicates land rights issues. This reality increases the demand for some special programmes of awareness-raising on land rights.

According to the Afghanistan Research and Evaluation Unit (AREU), “securing peace without securing peaceful and fair land-relations will not bring lasting socio-political order.” Problematic areas that need to be well understood and resolved include: widespread instability in land relations; minimal rule of law; inadequate legal and procedural guidance; poor legal definitions; competing claims over government land; pastoral land use; and confusion in land administration.<sup>22</sup>

Additional land rights challenges include:

- inequities in land ownership, (eg, few owners; many tenants. A survey conducted in 1967 shows that the vast majority of farmers possess less than one hectare of irrigated land, and there is unequal distribution of farm production between the landlord and the peasants<sup>23</sup>)
- ethnic conflict over land access
- landlessness and indebtedness in the farming sector
- lack of land rights policies that favour the poor
- varying legal bases (eg customary, religious and state law)
- a general vagueness in the land tenure system<sup>24</sup>

### 2.3 Women and land

Women’s inheritance rights are one of the main gender issues in regard to land rights in Afghanistan. When there are male heirs, female family members are usually deprived of their inheritance rights. Widows are normally allowed to stay on property provided that they marry the brother of their deceased husband.<sup>25</sup> This customary practice violates Islamic Sharia law, and the Afghanistan civil code, constitution and relevant international treaties.<sup>26</sup> Generally, female headed families are more vulnerable because of land ownership problems.

An estimated 87.4 per cent of women cannot read and write. This being an extremely high illiteracy rate can be a major contributing factor for women’s inability to raise their voices and concerns in relation to their land rights. It is particularly difficult for female clients to pursue dispute resolution in the courts. To do this they must have the approval of their family members that they can rarely obtain. Women are normally not allowed to go outside their communities for dispute resolution because this is considered a significant insult for the family or the community honour.

<sup>21</sup> Misbah, Abdul Subhan, interview by Mohammad Sediq Rashid. *Deputy Director Afghanistan Legal Aid Organization* (June 17, 2010). (Power Point presentation presented during the interview)

<sup>22</sup> Wily, Liz Alden. *Land and Constitution, Current Land Issues in Afghanistan*. Kabul: Afghanistan Research and Evaluation Unit (AREU), 2003.

<sup>23</sup> Wily, Liz Alden. *Land Rights in Crisis*. Issues Paper Series, (Kabul: Afghanistan Research and Evaluation Unit, 2003), 85.

<sup>24</sup> Wily, Liz Alden. *Land Rights in Crisis*. Issues Paper Series, Kabul: Afghanistan Research and Evaluation Unit, 2003. page 9

<sup>25</sup> Foley, Conor. *A Guide to Property Law in Afghanistan*. Peshawar: Khyber Mail, Norwegian Refugee Council, 2005.

<sup>26</sup> Foley, Conor. *A Guide to Property Law in Afghanistan*. Peshawar: Khyber Mail, Norwegian Refugee Council, 2005.



In Afghanistan very few women own land and only some widowed women own livestock. Afghans being largely relying on agriculture and livestock both these assets are therefore vital for livelihoods in rural areas. To examine women's access to land and livestock a study was conducted by Afghanistan Research and Evaluation Unit in 2005 in three provinces of Afghanistan namely Kabul, Badakhshan and Bamyan. This study found that women have a great deal of involvement in agriculture but few of them own land or livestock. It was also found that the women who owned and had some sort of control on these assets were able to use them productively. Women can greatly suffer from the lack of improved access to land and livestock: for example this can affect woman's decision-making power; it will affect women's ability to control the income gained from the sale of livestock produce; the lack of land and livestock ownership can affect the level of care required for elderly women because these assets can be useful for bargaining for better care from the relatives in old age. Women can generate more income by owning and having access to land and livestock compared to many other activities in which women are currently involved. This in turn can empower women to support a family or enable some young widows if they want to remarry. There are few other than the livestock and agriculture income generating options for women in rural areas that can be done inside the village. Women unlike men cannot work outside their villages.

In Afghanistan majority of landmine and ERW contamination is in agriculture and pastoral lands. For example an estimated 161 square kilometres of agricultural land is contaminated by mines and ERW. Most of the remaining landmines and ERW contamination is in pastoral land. These factors in the context of significant cultural restrictions for girls and women have specific implications for women. For example women cannot travel long distances to take their livestock for herding or bring drinking water to their houses. The blockage of pastoral land, agricultural land or water sources can have serious impact on women specially the female-headed households.

#### **2.4 Land rights and inequality**

Land rights-related inequalities based on ethnicity, language and tribal origin is another devastating consequence of three decades of armed conflict in Afghanistan. It is one of the main things that have prevented sustainable peace. Minorities in various parts of the country have been deprived of their land and forced to settle elsewhere.<sup>27</sup> For example, the Pashtoon minorities in the north were forced by the local indigenous population to leave their land. Also, the recent tensions between Pashtoon nomads and Hazara ethnic groups in Bamyan province indicate some serious issues of land ownership. These problems are due to how the land was distributed unfairly in the past, which was influenced by discrimination against certain minority groups.

#### **2.5 Current land titling and registration system**

The Ministry of Agriculture, Irrigation and Livestock (MAIL) is the leading ministry for managing land affairs.<sup>28</sup> The July 2008 law on managing land affairs is the latest reference document that regulates land titling and registration, in addition to other aspects of land management in Afghanistan. The third chapter of this legislation sets out a process for "land clarification" that refers to the process of identifying the legitimacy of land ownership. This process should soon be implemented by the Ministry of Agriculture, Irrigation and Livestock; the Supreme Court of the Islamic Republic of Afghanistan; the Ministry of Finance; the Ministry of Energy and Water; the General Department of Geodesy and Cartography and other relevant local government departments.

The Government of Afghanistan has established a Land Clearance Commission in 2010 under the leadership of the Land Management Department of the MAIL. Land titling and registration is one of the key responsibilities of this commission, as well as:

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<sup>27</sup> Waheed, Abdul, interview by Mohammad Sediq Rashid. *Project Officer, Norwegian Refugee Council (NRC)* (July 14, 2010).

<sup>28</sup> Justice, Ministry. "Official Gazette." *Law on Managing Land Affairs*. Kabul: Islamic Republic of Afghanistan's Ministry of Justice, July 31, 2008. Article 4.

1. Clearing land, distributing documents of land ownership
2. Determining the boundaries, category and water rights and taxes of the land
3. Determining and differentiating between individual, government, pasture, endowed, virgin, arid, forest and other types of lands
4. Referring land related disputes and claims to the relevant authority
5. Registration of results<sup>29</sup> after clearance in the relevant book
6. Referring results of land clearance to be registered in the property and tax books for the preparation of Sharia<sup>30</sup> documents (deeds) in the relevant court
7. Restitution to the owner or to his/her Sharia inheritors of lands that were distributed against Islamic Sharia and legislation.
8. Sending activity reports to the relevant provincial land management offices and to the central land management office<sup>31</sup>.

Due to the lack of a reliable and effective formal land tenure system in the country, customary and informal land titling prevails. The majority of the land-related transactions are done outside the court-based system.<sup>32</sup> Affordability, accessibility and widespread distrust of the formal court-based land tenure system are some of the reasons for the customary system being opted for over the formal system.<sup>33</sup> In relation to this, women have the right to own land based on customary law, but Afghan society is dominated by men, which results in fewer women owning property.

Very often, land rights-related disputes are resolved at local level, through local elders and leaders, or if not solved, are referred to the municipalities and courts for a decision. There are also some traditional laws at community levels where land issues are referred to and resolved. However, given the current insecurity in some parts of the country, government and other agencies are unable to operate properly. This creates difficulties for people in terms of being able to access assistance to resolve land rights issues. Generally, local people are not fully aware of their rights in relation to land use and ownership.

## 2.6 Land rights actors in Afghanistan

Several governmental and civil society organisations work on land-related issues and land management in Afghanistan. These are:

- The Ministry of Agriculture, Irrigation and Livestock, which is charged with the responsibility of technical and administrative leadership on land affairs.<sup>34</sup> The Ministry leads a project called Land Lease and Management One Stop Window which tries to make land available for productive investment.
- The Ministry of Finance, which addresses the taxation aspect of land management.
- The Supreme Court, which sorts out the official land ownership documentation and resolves disputes on land ownership.
- The Ministry of Energy and Water which deals with irrigation water rights-related issues
- The Department of Geodesy and Cartography which deals with survey and mapping
- The Ministry of Justice which engages in resolving land rights issues between governmental organisations and also deals with land issues from a reconciliation perspective
- The municipalities, which are responsible for land management in urban areas.

<sup>29</sup> This is the translation of article 15 bullet point 5 of the Afghanistan Land Management Law.

<sup>30</sup> Sharia is referred to the the sacred law of Islam.

<sup>31</sup> Justice, Ministry. "Official Gazette." *Law on Managing Land Affairs*. (Kabul: Islamic Republic of Afghanistan's Ministry of Justice, July 31, 2008), article 15.

<sup>32</sup> J. David Stanfield, Terra Institute. "Land Administration in (Post) Conflict Conditions: The Case of Afghanistan." *Conference on Land Policies & Legal Empowerment of the Poor*. Washington D.C.: World Bank, 2006. 21. Page 13.

<sup>33</sup> Ibid

<sup>34</sup> Justice, Ministry. "Official Gazette." *Law on Managing Land Affairs*. Kabul: Islamic Republic of Afghanistan's Ministry of Justice, July 31, 2008. Article 4.

Other organisations involved in land rights issues include: Afghanistan Independent Human Rights Commission (AIHRC); Afghanistan Research and Evaluation Unit (AREU); German Technical Cooperation (GTZ); International Bar Association (IBA); Norwegian Refugee Council (NRC); Terra Institute; The World Bank; United Nations Assistance Mission in Afghanistan (UNAMA)/Rule-of-Law Project; United Nations High Commissioner for Refugees (UNHCR); United States Agency for International Development (USAID)/Land Titling and Economic Restructuring Activity Project (LTERA).<sup>35</sup>

Land rights actors in the informal and customary domains are:

- community elders
- *Mirabs* (Irrigation water coordinators)
- village councils
- some ex *Mujahideen* commanders

### 3. SOCIO-ECONOMIC IMPACT OF LANDMINES/ERW CONTAMINATION IN AFGHANISTAN

Seventy per cent of the Afghan labour force is estimated to be engaged in agricultural activities, and almost 90 per cent of all cultivatable land is made up of irrigated agricultural land. Before 1978, 16 per cent of GDP came from livestock products. As a land-locked country, roads constituted the backbone of the Afghan transportation network.<sup>36</sup> The presence of mines/ERW has severely affected Afghanistan.

Mine contamination has meant loss of livestock and restricted access to land and has exacerbated food insecurity. Lack of access to shelter, water and sanitation has exacerbated health and hygiene problems and the lack of essential infrastructure has meant hardship for many people. Reduced crop production, increased transportation costs, obstacles to repatriation and rehabilitation, loss of lives, disability, lack of employment, displacement, depression, psychological problems and family life break-up are all noticeable.

Landmines and ERW create blocks to local and national economic recovery and development, and undermine fundamental human rights to peace, security, and self-determination<sup>37</sup>. The National Disability Survey of Afghanistan (2005) highlights mental health as a significant challenge, in particular for females. A number of factors have led to this, for example, disability caused by mine/ERW-related accidents can act as an obstacle to marriage. In rural communities, a women's worth is often closely linked to being married, and disability can result in their lowered self-esteem. Also, migration to the cities is changing the status of women in Afghan society – a number of women are obliged to work outside of the home to earn a living.<sup>38</sup>

#### 3.1 Gender dimensions of the impact of mines/ERW

In general, mine/ERW contamination impacts men more than women in Afghanistan, where men are considered the 'bread-winners' of the family. However, in the case of nomadic tribes for instance, women are usually heavily involved in different types of livelihood activities and are impacted more than men.

The Landmines/ERW casualty data for IMSMA (the mine action national database) records that 18,807 males and 1,586 females were injured or killed by mines/ERW from when records began

<sup>35</sup> Afghanistan Research and Evaluation Unit (AREU). "Proceedings of the Land Conflict Workshop 8 April 2009." *Land Conflict Workshop*. Kabul: Afghanistan Research and Evaluation Unit, 2009. 1-12.

<sup>36</sup> Gildestad, W. A. (2001). *The Socio-Economic Impact of Mine Action in Afghanistan*. Kabul: World Bank and Nordic Consulting Group.

<sup>37</sup> MCPA. (1998). *Socio Economic Impact Survey*. Kabul, Afghanistan : Mine Clearance Planning Agency (MCPA).

<sup>38</sup> Bakhshi, Jean Francois Trani and Parul. *National Disability Survey in Afghanistan, Understanding the Challenge Ahead, Executive Summary*. (Lyon: Handicap International, 2005), p.26.

almost twenty years ago to the end of July 2010. It also shows that 43.9 per cent of the victims involved in landmine accidents are boys under the age of eighteen, 4.8 per cent are girls under the age of eighteen, 46 per cent are men, 2.8 per cent are women and 2.5 per cent are victims with unknown/no age record<sup>39</sup>.

The available mine and ERW-related casualty data in the Afghan national mine action database from 1979 to 2010 shows the status of casualties from the gender and activities perspective as follows:

- a) During food, water and wood collection there were 244 females and 2,130 males either injured or killed, working out as about ten per cent female versus 90 per cent male
- b) While farming, there were 55 female casualties and 1,526 male casualties, working out as about 3.5 per cent female versus 96.5 per cent male
- c) During household related activities, 63 women and 109 men were injured, equalling to 37 per cent female versus 63 per cent male injuries
- d) 153 females and 3,280 males were injured tending animals, or four per cent versus 96 per cent
- e) While travelling, 331 women and 2,648 males were hurt, or 11 per cent versus 89 per cent

However, the mine action programme of Afghanistan still lacks adequately reliable information with regard to the impact of mines and ERW on women. The Landmine Impact Survey that was implemented during 2003 and 2005 did not consider women's perspective. However, in order to address this gap, in 2009, the Mine Action Coordination Centre of Afghanistan (MACCA) and the Department of Mine Clearance (DMC) conducted a survey entitled "Knowledge, Attitude, Belief and Practice" (KAPB+). Its overall purpose was to assess the knowledge, attitudes, practice and beliefs of Afghans who live and work in areas impacted by landmine and ERW. This survey paid particular attention to the perspective of women.

The numbers of those interviewed were equal from a gender perspective – the balance was 50 per cent men and 50 per cent women. The survey highlighted a number of findings in relation to women:

- Women wanted more female MRE teams and wanted to visit them at their homes because many are not allowed to go outside and mix with men
- People with social and economic problems, such as women, the old and the unemployed considered mines/ERW to be a problem more than others who were interviewed.
- Women take more risks when it comes to household tasks, such as fetching water.<sup>40</sup> More than two thirds of those interviewed in Bamyan said that the priority of deminers should be "water sources", and most of the interviewees who replied "water sources" were women
- Women receive more MRE before the age of 19 than after

A key livelihood resource in the mountainous eastern and south-eastern parts of Afghanistan is firewood, but the impact of landmines/ERW has forced the male population to look for firewood and seek alternate livelihoods in the neighbouring country. This has pushed women to work in the field, which has in turn made them more vulnerable to the risks of landmines and ERW.

### 3.2 Children and landmines

A mine blast is much more likely to kill a child than an adult, and a child who survives is less likely to have access to rehabilitation, and school, and almost certain to be vulnerable into adulthood.

<sup>39</sup> Data extracted from Information Management System for Mine Action (IMSMA) on 11 August 2010.

<sup>40</sup> Fabienne Goutille . *Mine Action Activities KAPB+ survey 2009-2010 Mine Clearance & Mine Risk Education Impact Monitoring in Afghanistan*. Survey, Kabul: Mine Action Coordination Centre of Afghanistan and Handicap International, 2010.

Children's natural curiosity and desire to play, touch, seek and explore is risky in a landmine and ERW contaminated environment. Children sometimes even seek ERW to sell their metal contents as a means of earning money. Disabled children are limited in having access to rehabilitation and schools. This is for several reasons, including distance, lack of appropriate transportation means, poverty, buildings' inaccessibility for people with disability, and lack of assistive devices. Insecurity in some parts of the country is also a major reason for depriving the disabled population from using care and rehabilitation centres.

In regard to women and girls, irrespective of being disabled or not, all of these issues, together with the lack of adequate female workers, as well as beliefs and culture, make access to education and rehabilitation extremely challenging.

### 3.3 Key mine action actors

The Department for Mine Clearance (DMC) is the mine action focal point within the Afghan government system. The coordination, planning & fundraising responsibility to date has rested with the Mine Action Coordination Centre of Afghanistan (MACCA), which coordinates the Mine Action Programme of Afghanistan, and which is funded through a UN modality. MACCA is an UNMAS project administered by UNOPS. The MACCA has sub-offices which are known as Area Mine Action Centres (AMAC).

DMC & MACCA are now collocated and jointly coordinate, regulate and manage mine action operations in Afghanistan. There are eight national and international humanitarian mine clearance agencies<sup>41</sup>, 20 commercial demining companies<sup>42</sup> and seven Mine Risk Education/Victim Assistance agencies.<sup>43</sup> The number of national and international demining companies is steadily increasing. Approximately 14,000 employees constitute the Mine Action Programme of Afghanistan (MAPA) workforce.<sup>44</sup>

## 4. CONTAMINATION, LAND RIGHTS AND THE RESPONSE OF MINE ACTION ORGANISATIONS

The combination of mine/ERW contamination and insecure land rights has affected the livelihoods of mine/ERW contaminated communities. However, while mine action organisations are affected by land related disputes, they have not become directly involved in land rights issues.

In the early 1990s, MACCA issued a policy, which applies to all national and international mine action operators, which states that demining cannot take place on disputed land until the dispute is resolved. This policy is not reflected in the current national mine action standards. However the policy has been well communicated and most of the demining organisations are adhering to it. Therefore, in situations where operators become aware that the land they are about to clear or are in the process of clearing is the subject of a dispute, they immediately suspend operations. Mine action organisations typically conduct detailed studies of land which look at the nature of mine contamination prior to mine action operations. If land is contaminated, but there is tension or a dispute regarding ownership, mine action organisations will not take any action because of the sensitivity of the issue and instead wait until the dispute is resolved.

<sup>41</sup> Halo Trust, Danish Demining Group, ATC, OMAR, DAFA, MCPA, MDC and PM/WRA/DynCorp

<sup>42</sup> OMAR International, G4S, MTI, GS, SDG, UADC, GGDC, RELYANT, TDG, HDI, RONCO, NDSS, KMCC, EODT, ACL, TDC, ADC, CMCC, PSS, and UXB, MAPA Teams Allocation Plan for 1389

<sup>43</sup> ARCS, HI, MMCC, AAR Japan, BBC-AEP, & DAO

<sup>44</sup> MAPA Workforce Matrix 1389

#### 4.1 Guidelines on dealing with land rights

There are no clearly written guidelines or procedures on how to deal with land rights issues during different phases of mine action, such as survey, disposal, and clearance. The existing land handover certificate, provided to post-clearance beneficiaries, does not clarify how to address land rights issues either. The responsibility for ensuring that the necessary task handover documentation is completed as required, lies with the demining organisation. Individuals who request clearance are all referred to as the “Responsible authority/landowner”. The handover certificates include a footnote which stipulates that: “This document is only a certificate of clearance of land from threat of mine/ERW and can never be considered a document for land ownership”. Clearance requests are processed through the local authorities and community elders and during the mine clearance/survey the information in terms of the land and the history of landmines are provided by the landowners. According to the Afghan national mine action standards, a ‘Cleared Area Completion and Acceptance Certificate’ is then prepared by the demining organisation. This certificate is attached to a ‘Task Completion Report’ and forwarded to the relevant AMAC.

Land is considered to have been handed-over by the demining organisation once the AMAC has signed the ‘Cleared Area Completion and Acceptance Certificate’. Responsibility for the custody and maintenance of all task completion and handover documentation rests with the MACCA. Generally Afghan land law and documents such as handover certificates are not linked. Therefore, revising the national mine action standards in light of the land law, would be a good step towards mainstreaming land rights issues in mine action.

The mechanism of coordination and collaboration for provincial development, and to a degree at the community level, through the community development councils, functions well. However, addressing land rights problems is yet to become one of the top priorities for this coordination mechanism.

The government department dealing with refugees and the UN High Commission for Refugees (UNHCR) are engaged in facilitating the resettlement and safe return of Afghan refugees to their villages. The Food and Agriculture Organisation (FAO) and other related organisations are involved in providing agriculture and irrigation systems. The departments of rural rehabilitation and development, and construction organisations facilitate the provision of shelters for returnees. Mine action organisations in Afghanistan provide assistance in support of humanitarian and development assistance. However, the MAPA has not become directly involved in land rights issues.

#### 4.2 Disputes

Land and water ownership among families and tribes can cause disputes and is one underlying cause of armed conflict in Afghanistan. These conflicts typically arise as a result of several factors which include:

- the unauthorised occupation of land
- overlapping claims on private, public, state or community land
- problematic procedures for the purchase and sale of private land
- the lack of an agreed procedure for community based land management<sup>45</sup>

The severity of disputes is further complicated in mine affected communities. The availability of landmines in the impacted communities has led to families and tribal members attempting to source landmines and plant them on disputed land. Landmines are normally sourced from ex-Mujahideen fighters, or from individuals who have obtained the mines by defusing them from the minefields.

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<sup>45</sup> Roe, Colin Deschamps and Alan. *Land Conflict in Afghanistan, Building Capacity to Address Vulnerability*. Issues Paper Series, Kabul: Afghanistan Research and Evaluation Unit, 2010. Page 6

This problem not only affects the involved families. It also poses major security risks for other community members and the environment. In situations where families and or tribal members are in conflict over land, community members not involved in the conflict have come to mine action organisations asking for assistance. This has placed mine action organisations in a difficult position. This typically happens in remote areas where the rule of law is weak.

During past armed conflicts, some armed groups occupied public buildings and private residential houses and used them as military bases. The armed groups planted landmines around the buildings to protect themselves and consequently many houses were damaged due to heavy ammunition fire and landmine accidents. Contamination has also resulted in the deaths and injuries of civilians and has prevented property owners from accessing their houses. Very often, there are no records of where the mines were planted to assist demining operations.

Mine action operators mapped and recorded multiple houses as one minefield. During demining operations, entering locked houses on contaminated land required permission from the house owners. In the absence of the owners, and the inability to get their permission, the minefields were therefore only partially cleared, thus causing a problem for mine or ERW clearance operations.

#### 4.3 Land-related issues encountered by mine action organisations

The following are a series of examples of the type of land-related issues that mine action organisations commonly encounter during demining operations, and how they address them:

- **Gurbuz district, Khost province:** Clearance operations in a number of known minefields are pending. This is as a result of conflicting claims over land ownership between local residents and nomads.<sup>46</sup> Due to these conflicting claims, and the decision of the MACCA/DMC to not clear land which is subject to dispute, the land remains inaccessible to neighbouring communities, depriving them of potential livelihoods.
- **Mandozi district, Khost province:** A contaminated site was part of the 2009 MAPA operational work plan for clearance. However, due to a land rights-related problem between two ethnic groups, clearance was not permitted until the dispute was resolved. While waiting for the dispute to be addressed, a young boy was killed in early 2010 due to a mine accident.<sup>47</sup>
- **Shindand district, Hirat province:** A parcel of cultivated agricultural land, belonging to an influential local Mujahideen commander was deliberately mined by the personal enemies of the commander, due to an internal dispute between the commander and his oppositions in 2002. Three people were injured by anti-personnel mines on the land, which exploded while they were harvesting crops. The commander wanted the locally available demining teams to suspend their existing tasks and urgently clear the land. At that time, it was very difficult for the demining teams to explain mine action procedures to the commander and they therefore had to risk being attacked by the opponents of the commander by clearing the land. Not clearing the land could have resulted in major problems for the teams and the demining organisation concerned such as being threatened or abducted.<sup>48</sup>
- **Surkhroad district, Nangarhar province, 2010:** A powerful person wanted to construct a small town. When he discovered the site was contaminated with mines/ERW, he submitted a request for mine clearance to AMAC. During mine clearance operations on the site, the demining team received a warning not to clear the land from another person who claimed that it was in fact his

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<sup>46</sup> MACCA Policy

<sup>47</sup> Wakil, M. (2010, July 15). Plans Officer. (S. Ahmadzai, Interviewer)

<sup>48</sup> Mullah Jan, Area Manager for Area Mine Action Centre Jalalabad, Afghansitan. July 2010.

land. Demining operations were suspended. The person who initially requested clearance insisted the teams complete the task, and promised he would provide security in terms of protecting the demining teams from the possible retaliation of the other person. The requester was informed by the mine action operator that he first had to resolve the dispute over land ownership. In the end, both parties accepted that the demining operator should not be forced to clear land which is subject to a dispute over ownership. The two conflicting parties have since resolved their issues and reconciled and the land is being demined now<sup>49</sup>. This is an improvement over the past where conflict parties have insisted on clearance of disputed land.

- **Kandahar province, 2007:** A Landmine Impact Assessment Team (LIAT) was deployed to Nagahan village to map and record the reported landmine hazardous areas. The members of the community expressed their disagreement with the clearance of minefields, because they were afraid that illegal land occupiers would grab their land as soon it was cleared. The Area Mine Action Centre (AMAC), a decentralised office of MACCA, advised the LIAT to explain to the community members, that the area would not be cleared in the immediate future. The LIAT also clarified that the land had to be registered as a hazardous area in the national database for future clearance operations.<sup>50</sup>
- **Kandahar province 2009:** During the clearance of a minefield in an orchard, a demining team was asked by the neighbouring landowner not to demine a boundary wall separating the two orchards. The wall had collapsed during the war. The neighbouring landowner was concerned about the disappearance of the actual boundary line and the possibility of a dispute between the two owners. As a result, the demining team did not clear the boundary between the two gardens. From the perspective of the landowner, contaminated land was preferable to mine-free land due to the greater likelihood of conflict post-clearance.<sup>51</sup>
- **Kandahar province:** A bomb buried beneath a house was reported to the Area Mine Action Centre (AMAC) in Panjwai district. An emergency response team was tasked with the disposal of the buried bomb. As part of the operator's community liaison and safety efforts, the community was informed about the teams' work and of the possible risks to the house and the neighbourhood in general, as the bomb could be detonated unintentionally during the excavation process. In the end, the owners of the neighbouring houses did not agree to undertake the work, because they were concerned that the bomb would explode and destroy their houses. To date the bomb disposal has not taken place and the task is still pending.<sup>52</sup>
- **Kandahar province, 2009:** The AMAC in Kandahar received a request for clearing of a piece of private land from a local person. When the LIAT was deployed to conduct an impact assessment and a polygon survey of the contaminated land, a division of the Afghan National Army (ANA) assisted. However, the ANA informed the LIAT that they were opposed to the clearance operations because the ANA was unsure if the person was the actual owner of the land. In response, the AMAC asked the person who had requested clearance to obtain a letter from the Ministry of Defence agreeing to the clearance. He failed to obtain permission and as a result, clearance of this minefield is still pending.<sup>53</sup>
- **Kandahar province 2009:** In Ziarat village, community members were unhappy with the clearance of areas surrounding their village, due to the fear that people would grab their pasture

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<sup>49</sup> Ibid.

<sup>50</sup> Samy, Abdul, Area Manager for Area Mine Action Centre Kandahar, Afghansitan, July 2010.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.



land and privatise it. After some convincing, the demining teams obtained agreement from the community members to proceed with the clearance operations. They explained that the cleared land is their pasture land, the benefits of clearance to community members and that they had already lost community members and animals as a result of mine accidents. The land was eventually cleared,<sup>54</sup> and so far, land-grabbing cases have not been reported in this particular community.

- **Khost province:** In 1997, someone deliberately mined a cultivated piece of land with a mature corn crop due to a dispute over land ownership in Ibrahim Khil village of Khost province. Three members of the same family, including a woman, were injured as a result of landmine detonation. They were not aware about the landmine problem on their land. In addition to injuries to the family members, more than ten Jeribs (two hectares) of arable land were blocked. The land was not only dangerous for the family but it posed a new mine risk for the entire village. Family members got together with the community elders, and asked the mine action organisation, through the provincial government (Taliban) to clear the land. This would enable the family to harvest their crops, which was their main source income. In response to the request, the mine action organisation referred the issue to MACCA (the ex UNMACA) for guidance. The MACCA raised the issue with the provincial government authorities and managed to convince them that prior to clearing this land, the dispute had to be sorted out. As a result, removing mines from this piece of land was considerably delayed.<sup>55</sup>
- **Nuristan province:** This is one of the provinces where there are major tensions due to land and water ownership between two tribes. These problems have been ongoing for decades. A dispute between the two tribes resulted in mines being planted by the opposing tribes. Contamination became a major issue, and resulted in the deaths and injuries of several villagers, especially women who in this particular area of the country are involved in agricultural work. The MAPA managed to conduct a non-technical survey and registered the landmine problem for the area in the national mine action database but no clearance was able to take place because the dispute was not resolved. The provincial government then got involved in the reconciliation process, and according to sources, the dispute was resolved. MACCA proposed establishing a community-based demining project for these communities that would involve hiring members from the opposing tribes who could be hired as deminers to work together. This would help address both landmine and land ownership problems simultaneously and contribute to bringing about lasting peace in the area. However due to a volatile security situation and the land ownership problems the programme has not yet been able to establish the proposed community based demining project in this area.

These examples illustrate the different types of land-related issues that mine action organisations typically encounter and the challenges they face in trying to address them. They also demonstrate the positive and negative impact that mine action can have on land rights issues.

Mine action that releases productive land in full coordination with key land rights institutions, can prevent conflicts over land rights or land grabbing by illegal land occupiers. However, mine clearance without coordination with land management authorities and landowners, can have unintended negative consequences, such as the cleared land being illegally grabbed and occupied. In Kabul, several parts of the city were heavily contaminated by landmines, eg Maranjan hill, Brishna Kot, Shuhadai Saliheen, Kohe Ali Abad, Tapai Qawala, and Kohe Chelstone. According to the Kabul

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<sup>54</sup> Ibid.

<sup>55</sup> Mullah Jan, Area Manager for Area Mine Action Centre Jalalabad, Afghansitan. July 2010.

city master plan, most of these areas were dedicated for tree plantation to make the city greener. However, many were rapidly developed with illegally-built residential housing soon after clearance.<sup>56</sup>

#### 4.4 Difficulties that mine action organisations face

If mine action organisations ignore land rights-related issues and continue working in disputed areas, they risk being perceived to be involved in the dispute or as taking the side of a particular group. This may pose a direct threat to the safety of mine action personnel and equipment and raises the risk of mines being re-planted on already cleared land. This risk can be lessened if greater consideration of land rights issues is paid by mine action organisations.

In doing this, an important first step would be to raise the awareness of mine action practitioners on land issues. It is important for mine action organisations to be aware that land-related disputes can exacerbate wider conflict. For example, in the context of Afghanistan, traditional mechanisms for resolving and regulating conflicts have been weakened over time as village elders and the traditions which they represent and uphold have lost credibility. The availability of weapons can also make land-related conflicts more violent and difficult to resolve. .

Given increasing recognition of the important role mine action plays in supporting post-conflict reconstruction and development, there are opportunities for mine action organisations to engage in land rights issues. As Deschamps and Roe argue, “effective management of land tenure is inextricably linked to other sectors.”<sup>57</sup>

## 5. CONCLUSIONS AND RECOMMENDATIONS

Managing land has been an acutely complicated issue in the recent history of Afghanistan. Limited capacity in the justice sector, inadequate technical and administrative capacity, corruption, lack of coordination, weak or non-existent rule of law, lack of public awareness about land rights, the return of millions of refugees and population growth have together created a difficult challenge. It illustrates the need for joined-up and coordinated efforts by civil society organisations, the state and the private sector.

The Mine Action Programme of Afghanistan also has a role to play in addressing these issues. Afghanistan is still one of the most mine/ERW contaminated countries, and most of the contamination affects pastoral land, agriculture, residential areas and roads which in turn undermine people’s ability to form livelihoods, and impede socio-economic development.

A positive result of dealing with landmine contamination is that it helps address landlessness and indebtedness in the farming sector, frees up residential areas and opens up access to previously contaminated land. However a negative side-effect of this is that mine action organisations can also worsen land-rights related issues if mine action is undertaken in isolation from land rights and land management actors.

In order for mine action organisations to positively contribute to addressing land issues, the following steps are recommended:

- Develop guidelines for mine action organisations on land issues
- Raise the awareness of land rights issues among key mine action personnel
- Encourage the use of landmine/ERW information by land rights and land management actors

<sup>56</sup> Akbar, Mohammad, Area Manager for Area Mine Action Centre Kabul. July 2010.

<sup>57</sup> Roe, Colin Deschamps and Alan. *Land Conflict in Afghanistan, Building Capacity to Address Vulnerability*. Issues Paper Series, Kabul: Afghanistan Research and Evaluation Unit, 2010. Page 9.

- Revise national mine action standards and the standing operating procedures (SOPs) of implementing organisations from a land management and land rights perspective
- Equip community liaison teams with land-dispute resolution skills
- Use community-based demining initiatives as a means of contributing to resolving land-disputes. For example, deminers can be recruited from opposing sides, providing them with an opportunity to work together
- Include information about land-ownership in a non-technical survey which will enable mine action organisations to identify prior to clearance whether there are land rights-related issues
- Mechanical demining operations, when removing the soil or rubble of destroyed houses, can cause land disputes by disturbing the boundaries of houses or lands owned by different people. To avoid this, all minefield clearance plans should include a land ownership section in order to explain the needed and appropriate actions of the demining teams in relation to land ownership.