

**Land Rights and Mine Action
in Afghanistan:
Analysis and Programming Entry-points for
Mine Action Organisations**

Final Report

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ABBREVIATIONS

ALIS	Afghanistan Landmine Impact Survey
AMAC	Area Mine Action Centres
ANDMA	Afghanistan National Disaster Management Authority
ATC	Afghan Technical Consultants
DDG	Danish Demining Group
DMC	Department of Mine Clearance
FAQ	Frequently Asked Questions
MACCA	Mine Action Coordination Center of Afghanistan
MAPA	Mine Action Programme in Afghanistan
MCPA	Mine Clearing Planning Agency
MDG	Mine Dog Group
OMAR	Organisation for Mine Clearance and Afghan Rehabilitation

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1. BACKGROUND

In 2010, GICHD initiated a project on landmines and land rights in conflict affected contexts. The purpose of the project is to strengthen the capacity of mine action organisations to prevent and respond to land-related conflict before, during and after mine action operations. Since 2011, GICHD has been partnering with UN-HABITAT to undertake a series of land assessment and support missions in key countries to provide mine action organisations with analyses of land related conflicts and practical guidance on how they can ensure their mine action operations “do no harm” and take land issues into consideration.

This report summarizes the main findings and recommendations from the Afghanistan land rights and mine action mission that took place between 02 and 10 February 2012 in Kabul. The mission’s objectives, methodology and deliverables are summarised below.

Subsequent sections provide an overview of the mine action and land rights context in Afghanistan. Specific opportunities for intervention are then outlined, based on the work flow used by mine action operators in Afghanistan.

1.1 OBJECTIVES AND EXPECTED OUTPUTS OF MISSION

The objectives of the mission were to:

- Raise awareness about the links between land and conflict in Afghanistan, and to understand the possible implications for mine-action programming
- Identify the main land-related challenges that mine action organisations encounter during the course of their operations in Afghanistan
- Examine how these issues have been addressed and assess whether the response can be strengthened
- Discuss options and provide guidance on how mine action organisations can better respond to and potentially prevent land-related conflict
- Strengthen the link between mine action organisations and the land rights community in Afghanistan

The expected outputs of the mission included:

- Awareness-raising/training for mine action organisation staff on the connections between land rights and mine action operations
- Half-day workshop for mine/ERW operators and the Mine Action Coordination Center of Afghanistan (MACCA) to discuss how land rights can be mainstreamed into operations, based on the findings from the mission
- A short Frequently Asked Questions (FAQ) document on why land matters for mine action in Afghanistan - aimed at field staff

1.2 METHODOLOGY

Prior to the field mission, GICHD contracted a national consultant with experience on land issues to undertake a desk-based study on land and conflict issues in Afghanistan which provided background information on the main types of land-related conflicts in Afghanistan, key institutions involved, the legal

framework and areas where gaps exist. This report draws on the findings of the desk-based study, the research of other organisations and in-country interviews and meetings.

The Afghanistan mission took place from 02-12 February 2012.¹ The mission consisted of meetings in Kabul with the Directors from selected mine action organisations (Afghan Technical Consultants (ATC), Danish Demining Group (DDG), the HALO Trust, Mine Clearing Planning Agency (MCPA), Mine Dog Group (MDG), Organisation for Mine Clearance and Afghan Rehabilitation (OMAR) and MACCA), as well as key land sector actors (see Annex 1 for list of people met and Annex 2 for a list of key land rights organisations).

Prior to these meetings, the consultants were briefed extensively on the land release process of mine-action programming in Afghanistan. This process served as the basis for identifying practical ways of ensuring mine action operations are conflict-sensitive with regards to land issues.

A field visit to a mine-affected community in Kabul had to be cancelled due to extremely heavy snowfall in Kabul.

A half-day workshop was organised at the MACCA offices on 10 February 2012 bringing together senior operational staff from mine action organisations – those that were met during the mission and additional organisations such as G4S, a commercial mine/ERW operator. The main findings and recommendations from the mission were presented at the workshop and it was agreed that a simple “Frequently Asked Questions” document should be prepared to support mine action organisations in Afghanistan (see Annex 5 for the final but not yet laid out version).

In addition to this report, GICHD and UN-HABITAT have developed a global version of the Frequently Asked Questions (FAQ) for mine action organisations on why land matters for their programming. The global version of the FAQ was presented and discussed at the Annual Mine Action Directors meeting on 27 March 2012.

2. CONTEXT – MINE ACTION AND LAND RIGHTS IN AFGHANISTAN

2.1 MINE ACTION CONTEXT

This section first reviews the institutional arrangements for mine action in Afghanistan, and then examines the broader context, followed by a summary of the work flow for land release in Afghanistan as prescribed in the Afghanistan Mine Action Standards (AMAS). A short conclusion highlights some of the main contextual factors that frame potential interventions on land rights.

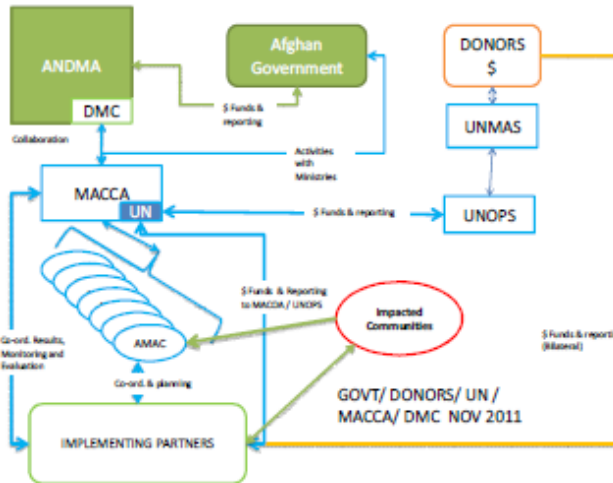
2.1.1 INSTITUTIONAL ARRANGEMENTS

The institutional arrangements for mine action are presented in Figure 1 below.² The MACCA works in partnership with the Department of Mine Clearance (DMC) and reports to the Afghanistan National Disaster Management Authority (ANDMA). Core institutional support for MACCA has been provided by UNMAS, with contracting arrangements for implementing partners carried out through UNOPS. Some of the main mine/ERW operators include ATC, DDG, HALO Trust, MCPA, MDG, and OMAR.

¹ The mission had to be postponed from the originally planned dates after severe weather in Istanbul resulted in the cancellation of flights out of Istanbul.

² Government of Afghanistan (2012) Ottawa Treaty Extension Request, op cit, p. 60.

Figure 1: Institutional Arrangements for mine action in Afghanistan



In terms of institutional trends shaping the mine/ERW context, two are significant. First, the MACCA has recently transitioned to a fully nationally-managed organisation within the Disaster Management Authority’s Department for Mine Clearance. Also part of this transition is the reduction of regional Area Mine Action Centres (AMACs) that exist in various locations throughout the country. Existing capacity, therefore, will be stretched in meeting a more geographically dispersed mine/ERW challenge. The second important trend is the increasing presence of commercial operators engaging in mine action. Commercial operators have proven effective in mine/ERW clearance, but following some limited discussions during the mission, do not seem to have significant capacity or interest in addressing land rights or land use questions.

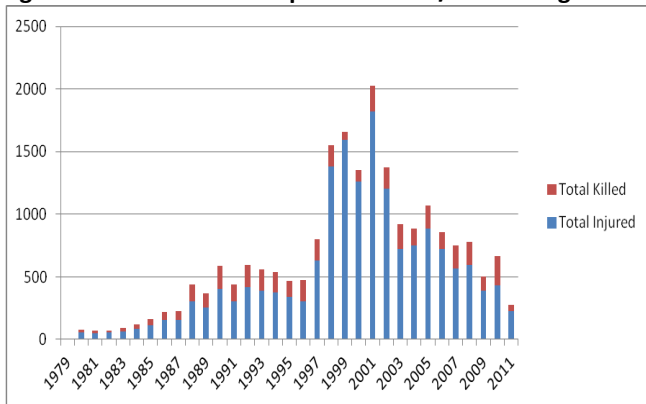
2.1.2 CONTEXT

Landmine/UXO contamination in Afghanistan has resulted from all of the different phases of conflict.³ Over 20 years of civil conflict have left Afghanistan heavily contaminated with land mines and ERW. The Afghanistan Landmine Impact Survey (ALIS), conducted between 2003 and 2004, identified 2,571 landmine/ERW affected communities (8% of Afghan communities), with an overall estimate of 716 km² of impacted land.

Significant progress has been made in addressing the mine/UXO challenge in Afghanistan. Figure 2 shows the evolution of the human impact of mine/ERW contamination, revealing that while the numbers of people who died or were injured peaked in 2001, the number has steadily decreased since then.

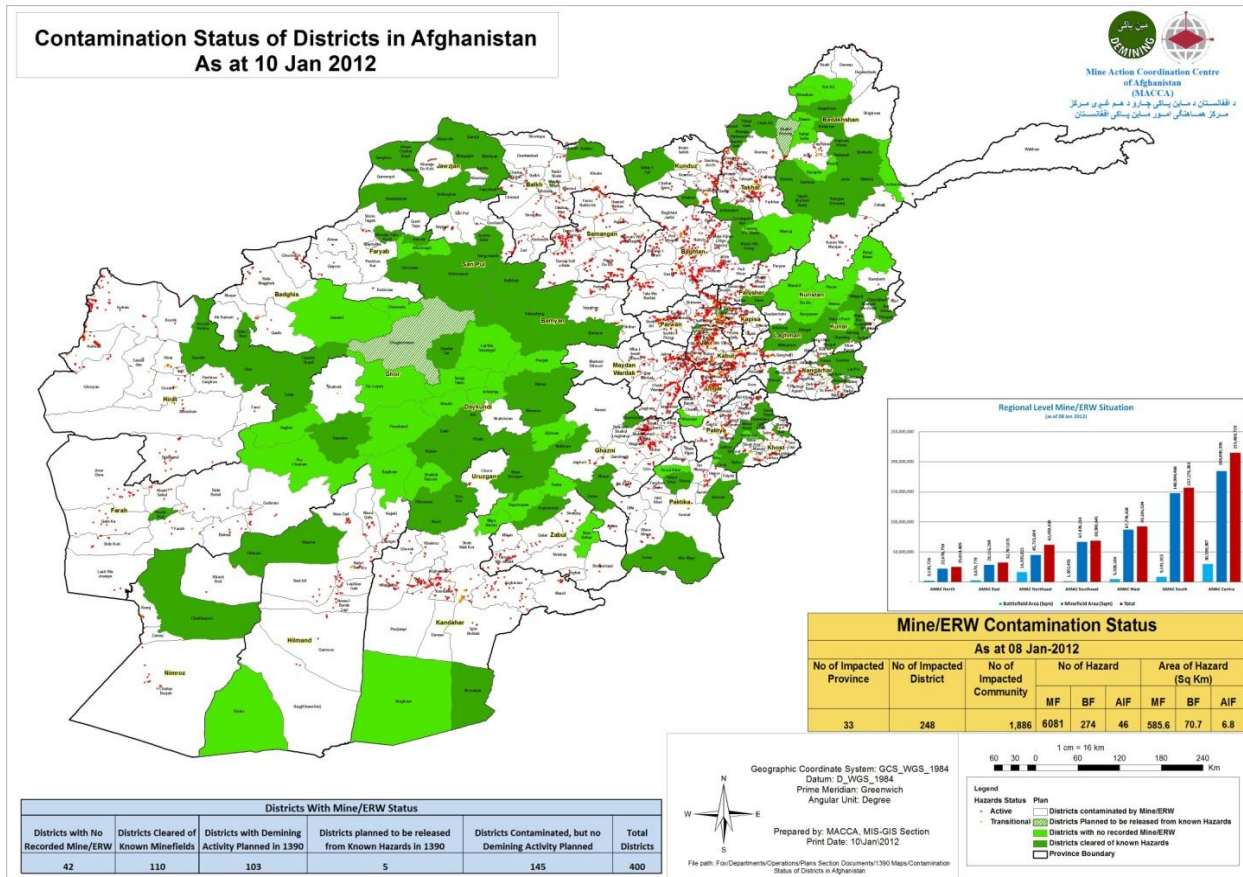
³ Government of Afghanistan (2012) The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction: Request for an extension of the deadline for completing the destruction of anti-personnel mines in mined areas in accordance with Article 5, Draft 31 January 2012, p. 9. Hereinafter Ottawa Treaty Extension Request.

Figure 2: Humanitarian impact of mines/UXO in Afghanistan



Source: MACCA

Figure 3: Geographic distribution of mines/UXO in Afghanistan (as of January 2012)



Source: MACCA

In June 2012, MACCA estimated that there were 5,489 hazardous areas remaining in Afghanistan, affecting 563 sq. km and 1,847 communities.⁴ Some of the main achievements of the Mine Action Programme in Afghanistan (MAPA) are highlighted below:⁵

⁴ MACCA (2012) Mine Action Programme for Afghanistan (MAPA) Fast Facts, June 2012.

⁵ MACCA (2012) *ibid.*

- Since the beginning of the programme 22 years ago, the implementers of mine action have cleared 16,950 hazards, covering 1,445 sq km and cancelled 1,756 hazards, covering an area of 210 sq km throughout the country. This covers 114 Districts and 2,013 communities.
- The Anti-Personnel Mine Ban Convention requires total clearance of all anti personnel mines by 2013. To date, the MAPA has progressed 57.68% in terms of area and 54.03% in terms of number of hazards towards this goal.⁶

Consultations in Afghanistan with MACCA highlighted the following important trends shaping the mine/ERW challenge in Afghanistan:

- There are fewer deaths due to landmines/ERW, with 7 deaths in 2011. The human impact of landmine/ERW contamination is decreasing, possibly requiring that the rationale for future clearance may have to change.
- Funding for mine action is also declining. This may also require stronger justifications for allocating scarce donor and, increasingly, Government resources for mine action. Land-use and land rights issues may have a role to play here.
- The changing nature of suspected hazardous areas (SHAs). The last large minefield was cleared in 2011, with the result that the remaining SHAs will be smaller and scattered. Some of these may be remote from settlements.
- The remaining SHAs have been grouped into a total of 308 projects. These areas will be re-surveyed beginning in April 2012, creating an opportunity to incorporate land issues into the non-technical survey.

2.2 LAND RIGHTS IN AFGHANISTAN

This section provides a brief overview of land rights, land use and land institutions in Afghanistan, and then summarises the main types of land conflicts prevalent in Afghanistan today and the hierarchy of documentary evidence for land rights.

Land rights in Afghanistan are regulated by three main systems: (i) customary law and practice, which itself varies from community to community; (ii) Sharia, which primarily addresses inheritance issues and any issues not addressed in the Civil Code; (iii) secular law, which includes both the Civil Code as well as State laws and decrees.⁷ Customary land rights have much more validity in rural areas, while high-value urban and rural land tends to be regulated under the secular system through a deeds registry.⁸ The lack of clarity regarding the relationships between these regimes has caused confusion and insecurity among poorer populations, while creating opportunities for powerful elites to consolidate and expand their land holdings.

Land rights in Afghanistan are a combination of ownership and use-rights. The main types of 'ownership' rights include:⁹

⁶ Afghanistan submitted a 10-year Article 5 extension request in March 2012. The request is currently being analysed, and will be reviewed at the 12th Meeting of States Parties in Geneva in Dec 2012. If approved, the new clearance deadline will be 1 March 2023.

⁷ USAID (2007) Land Tenure and Property Rights Regional Report: Vol 2.6: South Asia, Washington, DC, p. 9.

⁸ IS Academy (2011) Afghanistan: Food Security and Land Governance Fact Sheet, LANDac, Netherlands, p. 1.

⁹ McEwen and Whitty (2006) Land Tenure Case Study, Applied Thematic Research into Water Management, Livestock and the Opium Economy Series, AREU, DACCAR and Welt Hunger Hilfe; Kabul, AREU, June 2006, p. 3.

- Private ownership: land is vested in a private individual or other legal entity such as a business;
- Government ownership: land is vested in the Government;
- Public ownership: State land that is held for 'public use,' that is, in trust, with fairly strict limits on how the land can be used or transferred;
- Common ownership: pasture land or grazing land (*maraha*) is not owned by any individual or group, but neighbouring communities or pastoral groups with agreed use rights have access rights to graze and use the resources of the land;
- *Waqf*: land that is gifted for religious or charitable purposes and no other use is possible.

In addition, there are a range of other use rights including:¹⁰

- Lease rights, including *heker*, with a term of up to 50 years for construction or plantation purposes and a second type of contract for agricultural purposes, which includes strict obligations on the lessee and regulates production, water access and risk of crop loss;
- Sharecropping, a form of lease, which specifies the rights and obligations on both lessor and lessee, with the lessee providing a portion of the crop to the lessor in return for use rights;
- Mortgage, which can be a debt against property or a use right to land.

It was estimated that some 30% of rural population in the 1990s was landless, meaning that they had only use rights – not private ownership rights – to land.¹¹ On the other hand, according to a 2002 study by RDI, land concentration is very high, with 2.2% of the population controlling 19% of the arable land in Afghanistan.¹² Use rights tend to be weaker and holders may be vulnerable to more powerful land owners. It should also be recognised, however, that common property rights have also been increasingly privatized by powerful individuals without the agreement of the broader community – that is, converted into private ownership rights - while both Government and public ownership rights have also proved vulnerable to illegal allocation and privatization. In general, this has produced a land rights context that is highly insecure.

Special mention should also be made of women's land rights. While the 2004 Constitution enshrines women's right to own property, and, under Sharia, women have clear rights to inherit land ($1/8^{\text{th}}$ of husband's share and $1/3^{\text{rd}}$ for daughters), only some 2% of Afghan women formally own land.¹³ Inherited land rights are often transferred to brothers at marriage and inherited rights are transferred into the names of sons.¹⁴ Women, therefore, may be particularly vulnerable to the loss or unauthorized transfer of their land rights.

2.2.1 LAND USE IN AFGHANISTAN

There is no current reliable data regarding different land uses in Afghanistan. Table 1 below, based on Wiley (2003) summarizes land use patterns immediately after the fall of the Taliban, with a focus on rural land-holdings. The table indicates that the vast majority of valuable agricultural land is held privately and is used for irrigated agriculture. It also indicates that the most valuable land – ie, irrigated agricultural land – is most likely to be surveyed for land registration purposes. This demonstrates a phenomena common to many developing countries and emerging economies: registration of land rights

¹⁰ McEwen and Whitty (2006) *ibid*, pp: 4-5.

¹¹ USAID (2007) *op cit.*, p. 10

¹² Nijssen (2011) *From Dispute to Resolution: Managing Land in Afghanistan*, Civil Military Fusion Centre, October 2011, p. 2.

¹³ IS Academy (2011) *op cit.*, p. 3

¹⁴ IS Academy (2011) *op cit.*, p. 3

tends to be most important for powerful people who wish to protect their land.

Table 1: Land use patterns

ITEM	Surveyed Area		Total Area	
	Jeribs (000)	Hectares (000)	Hectares (000)	Surveyed area as % of Total
Private Agricultural Land	10,432	2,086	6,058	34.4%
<i>Irrigated land</i>	6,840	1,368	2,892	47.3
<i>Rain-fed land</i>	3,592	718	3,166	22.7
Government Agricultural Land	2,503	501	1,762	28.4
<i>Irrigated land</i>	968	194	410	47.3
<i>Rain-fed land</i>	1,535	307	1,352	22.7
Total Agricultural Land	12,935	2,587	7,820	33.1
<i>Irrigated</i>		1562	3,302*	47.3
<i>Rain-fed</i>		1025	4,518*	22.7
Total Non-Agricultural Land	13,041	2,609	57,102	4.6
<i>Barren / desert</i>	4,718	944	24,067	3.9
<i>Range land</i>	8,323	1,665	29,177	5.7
<i>Forests and woodlands</i>			1,700	0
<i>Other (urban, marsh, water, snow covered)</i>			2,158	0
Total Land	25,976	5,196	64,922	8

Source: AGCHO, FAO Web Site, Wiley (2003); *These figures are from Wiley, 2003,

2.2.2 LAND MANAGEMENT INSTITUTIONS

The institutional responsibilities for land rights and land use are divided between secular (State) institutions, customary authorities and Sharia authorities. The customary institutions are briefly summarised below, followed by a description of the main state institutions responsible for land management.

In terms of **customary authorities**, community elders are responsible for land allocation, land management and dispute resolution, often with guidance from religious leaders. The 2004 Constitution does not address the status of customary law, however, the Civil Code does recognize the application of customary law.¹⁵

The main **secular institutions** include the Cadastral Survey Department, the Land Office (Amlak) within the Ministry of Agriculture, and the Kabul Municipality, which has a special responsibility for land management within the capital city.

Cadastral Survey

¹⁵ Nijssen (2011) op cit, p. 4

Cadastral Survey Vocational School was established in 1963 in Afghanistan, by the Ministry of Finance in collaboration with USAID to educate the Cadastral Surveyors to manage the land property for taxation purpose.¹⁶ Surveyors play an important role in clarifying private property boundaries, though in most developing countries, their role outside urban areas is quite limited. A total of 646 surveyors graduated from the School in six rounds. The main activity of the Cadastral Survey Vocational School of Afghanistan was land survey, land registration and land classification for taxation purpose. The following Cadastral documents were provided:

- Cadastral original maps on 1:2, 000 and 1:4,000 scales;
- List of probable ownership;
- Ownership compiled cards;
- Compiled maps on 1: 4,000 to 1: 100,000 according to the size of the land parcels.

The original copies were kept in a Regional Cadastral Office archive, the second copies were sent to the central Cadastral Survey archive and the third copies were sent to provincial Land Offices (*Amlak*) for land clarification and registration. This provides an indication of where different sources of evidence regarding registered land rights might be found in Afghanistan, noting that the number of registered land rights is quite limited.

It is worth mentioning that from 1965 to 1978 only 30 percent of irrigated agricultural lands was surveyed by Cadastral Survey of Afghanistan (see Table 2 below). Moreover, most of the provincial Cadastral Survey documents were destroyed during the past 23 years. Fortunately, the Cadastral Survey documents in the central Cadastral Archive are safe and could be used for land and property dispute resolution.

Table 2: Summary of Surveyed Lands by Cadastral Survey Department (1965 – 1978)

Province	Surveyed Lands			
	Private Arable Land (<i>Jirib</i>) ¹⁷	Government Arable Land (<i>Jirib</i>)	Barren Land (<i>Jirib</i>)	Total (<i>Jirib</i>)
Kabul	456640	153728	303249	913617
Kandahar	882486	575917	434669	1893072
Helmand	657609	269088	453672	1380369
Herat	2691136	161694	7933077	10785907
Balkh	2012696	305008	1084600	3402304
Jawzjan	138935	37327	30177	206439
Baghlan	185353	78719	50787	314859
Nangarhar	83354	6229	71101	160684
Paktiya	31191	8351	55772	95314

¹⁶ In the original 1964 survey, land holdings were significantly under-reported to avoid tax payment. In the 1979 Soviet-backed land reforms, the under-reporting was used to redistribute land from powerful families. The backlash against the land reforms contributed to the mobilization of the opposition against the Government.

¹⁷ Note 1 *Jirib* equals 2000m² or 1/5th of 1 hectare



Faryab	102795	114824	57854	275473
Farah	169685	58772	397493	625950
Ghazni	231459	82157	473764	787380
Parwan	151588	59084	31648	242320
Badakhshan	66376	4315	60494	131185
Ghor	57104	332	226749	284185
Bamyan	3524	1750	2579	7853
Urozgan	63233	29279	47147	139659
Takhar	520741	190016	160581	871338
Logar	39799	9282	5933	55014
Maidan-Wardak	64190	29940	90935	185065
Zabul	144889	97626	105984	348499
Badghis	73060	8035	2333	83428
Samangan	196059	36847	208584	441490
Kunduz	505803	98684	312746	917233
Laghman	22527	2882	23881	49290
Kunar	27743	1853	27162	56758
Nimroz	670590	70652	304021	1045263
Kapisa	2884	90	831	3805
Paktika	1242	2334	765	4341
Grand Total	10,254,691 [2,050,938] Hectare	2,494,815 [498,963] Hec.	12,958,588 [2,591,718] Hec.	25,708,094 [5,141,619]

Source Cadastral Survey Department (3/05/2004)

At present there are 16 regional cadastral directorates in 16 provinces. Each directorate is responsible for surveying responsibilities in at least one neighbouring province. The 16 regional directorates are led by the Cadastral Survey Director in Kabul.

The National Cadastral Survey was suspended shortly after the fall of the Taliban due to land grabbing and land occupation by powerful people. However, following requests from the provincial governors, and a State Presidential Decree, cadastral land surveying was carried out locally between 2008- 2011 (see Table 3 below for details).

With 30 percent of irrigated agricultural land surveyed from 1965 to 1978, combined with the ad hoc surveying done between 2008 and 2011, the total surveyed land in Afghanistan is 36%, which is quite good for a country that has faced over 25 years of civil conflict. It should be noted, however, that in most countries initial surveys are rarely updated due to the complicated, expensive and time-consuming procedures. Thus, accurate land ownership information is difficult to obtain even in non-conflict contexts.

Table 3: Summary of Surveyed Land by Cadastral Survey Department according to Government Decree (2008-11)

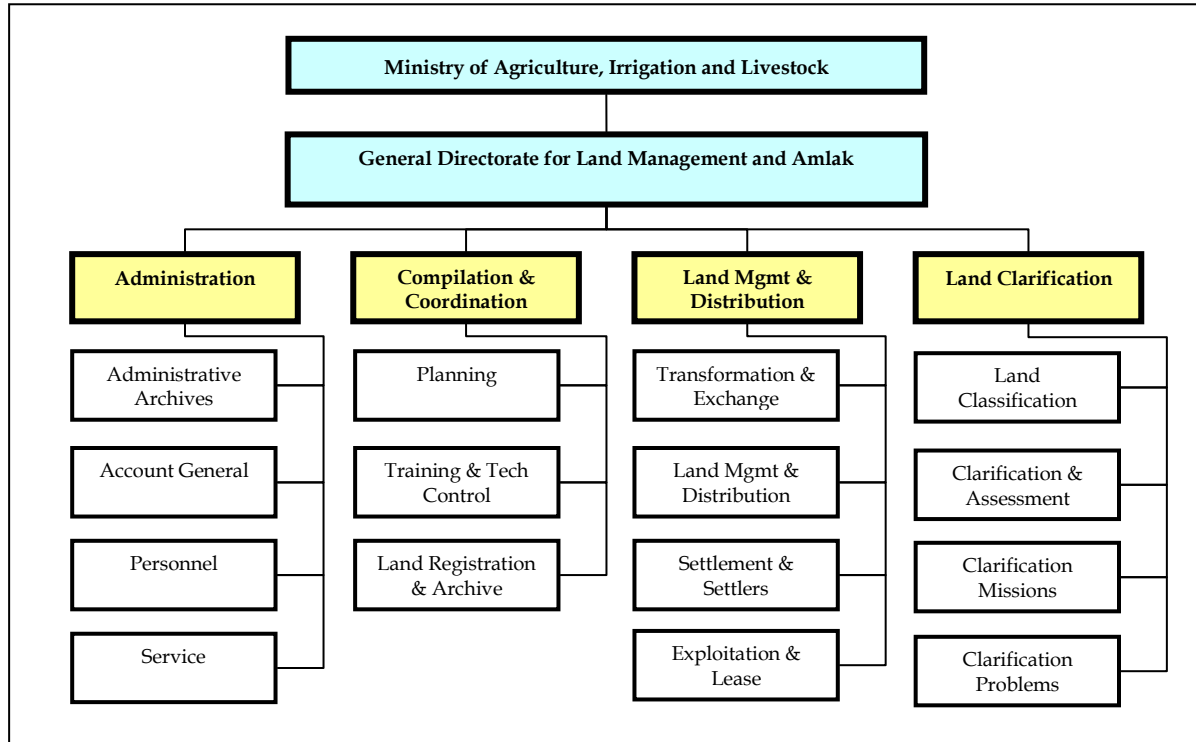
Surveyed Lands (2008-11)						
No.	Province	2008 (jirib)	2009 (jirib)	2010 (jirib)	2011 (jirib)	Total (jirib)
1	Panjsher	5787	8300	13000	18813	45900
2	Herat	23986	33550	56644	43145	157325
3	Nangarhar	5215	15000	3820	20800	44835
4	Baghlan	3215	-	1550	-	4765
5	Kapisa	3000	5250	4400	3490	16140
6	Kunduz	101744	69022	-	-	170766
7	Bamyam	3250	6270	13335	87	22942
8	Maidan-Wardak	-	4300	-	4611	8911
9	Logar		51742	20123	58361	130226
10	Balkh	-	-	17000	-	17000
11	Faryab	-	-	823	-	823
12	Parwan	-	-	-	400	400
Grand Total (jirib)		146197	193434	130695	149707	620033

Source: Cadastral Survey Department (05/02/2012)

The Ministry of Agriculture, Irrigation and Livestock's Land Office (*Amlak*)

Once the lands have been surveyed and officially approved by the cadastral survey director, a copy of the records and the compiled maps are officially send to the *Amlak* department for registration. The *Amlak* Department has directorates in all 34 provinces as well as numerous district offices (*Woluswalies*). Figure 4 below summarizes the structure of *Amlak*.

Figure 4: Structure of *Amlak* within the Ministry of Agriculture, Irrigation and Livestock



Today, the Amlak's information archive of private land ownership records, although incomplete and out-of-date in many cases, comprises the most recent inventory of rural land ownership claims. This archive is used to resolve disputes involving State land and to confirm the ownership claims of people who want to sell rural land, prior to the preparation and recording of a transfer deed at the Primary Court. The inventory of self declared owners also provides the Ministry of Finance with information for assessing land taxes.

The Amlak has during all these years been the main information source for judges to verify the ownership of agricultural land whose owners wish to sell or otherwise transfer to another person, through reference to the *Amlak* ledgers of land owners in villages created from the declarations of 1354-6 (1975-6). The data from the Cadastral Survey has not been referenced in this transaction process, although that data is used to investigate ownership and boundaries in cases of conflict over those aspects of land relations.

Land conflict is a major challenge for the *Amlak*, particularly land grabbing. Since 2007, the new land law has been revised twice and many presidential decrees signed to deal with land grabbing but unfortunately land grabbing by powerful people in collaboration with higher government authorities, is on the rise. Land grabbing for different purposes, such as the development of new townships, remains a significant concern for landowners and farmers

Kabul Municipality

Land acquisition and distribution has always been a major problem in urban areas. The municipality is the public juridical entity which serves the needs of urban residents, based on laws and other legal documents. While the acquisition of land in urban areas is the responsibility of the Municipality's property department, it is estimated that 85% of all property transactions are informal and as much as

70% of urban property is unregistered.¹⁸

2.2.3 LAND DISPUTES: CHALLENGES AND DISPUTE RESOLUTION MECHANISMS

Some of Afghanistan's main land-related disputes and challenges include the following:

- Landlessness, with returnees and displaced families not having secure access to arable land for livelihoods; or with traditional sharecroppers finding themselves without access to land under traditional agricultural leases/mortgages;
- Secondary occupation of IDP/refugee land by people who did not flee the conflict;
- Land-grabbing by powerful elites, warlords or businesspeople;
- Inter-community boundary disputes, sometimes resulting in either renewed mine/UXO contamination; or the refusal to allow land release activities to take place for fear that the released land will be grabbed by other more powerful individuals or groups;
- Land Allocation Schemes infringe upon community rights
- Pastoralist and agriculturalist disputes over grazing land and water access;
- New investments that impact community land rights;
- Privatisation of common grazing land by powerful individuals;
- Weak coordination and communication between the government entities and those active in community based management such as *shuras* and *jirgas*;
- Multiple documents supporting different claims for the same piece of land – multiple deeds, allocation certificates or simply documents issued by different authorities, some at different times
- Lack of capacity in the courts, and land related offices i.e. *Amlak* and Cadastre;
- Lack of awareness among disputants as to their legal rights and required steps to formalise or claim those rights, including a limited ability to read and understand documents relative to a land claim;
- Delays in resolution due to beliefs by one or multiple parties that delaying the proceedings will be advantageous or due to failure of officials to impose a procedure as instructed by law;

In terms of dispute resolution options, individuals have recourse to customary, Sharia and secular institutions. While Sharia law is mainly used to address inheritance issues, customary dispute systems regulate most land and natural resource-related issues.

Under the statutory system, the civil law procedure is fairly straightforward.¹⁹ The plaintiff submits a complaint to the Law Department of the Ministry of Justice, who requests the local police to meet with the defendant. Even in the State system, the courts will try to settle the dispute through mediation or other informal mechanisms. If the case cannot be resolved, it is referred to the appropriate municipal, sub-district or district court.

In the customary system, the process involves consultations with elders of the same ethnic group or between elders of different ethnic groups, depending on the case. In the south and east, largely Pashtun areas, the customary practice is based on *Pashtunwali*, the customary law and practices of the Pashtu-speaking population predominantly in the south and east of the country, which has quite detailed rules regarding land and resource access and use.²⁰ The strength of the customary system lies, as in other countries with plural legal systems, in its social legitimacy, its relative ease of access and relatively quick decision-making process. As in other countries affected by conflict, the traditional systems for dispute

¹⁸ Nijssen (2011) op cit, p. 5

¹⁹ Nijssen (2011) op cit, p. 3

²⁰ Nijssen (2011) op cit, p. 4

resolution may have lost some legitimacy and may not have adapted fully to the requirements of demographic, environmental and social changes.

Outside the three main systems, there is also the Special Land Dispute Court, which was a requirement under the Bonn Agreement to resolve outstanding land disputes. It focuses rather narrowly on issues related to refugee return and remains somewhat outside the mainstream justice system. It is based in Kabul, with no presence outside the capital. It has been criticised for being slow to reach a decision and lacking any meaningful enforcement powers.²¹

In terms of the **evidence used to resolve disputes**, there are many different documentary forms of evidence. According to Article 5 of Law on Managing Land Affairs, Dated 31st July 2008, Official Gazette # 958 the hierarchy of land rights evidence is as follows:

1. *Title Deeds* include a deed issued by a court in respect of purchase, ownership, gift, inheritance, division, land exchange, letter of quittance, letter of correction as well as document of the final decision issued on the basis of former property deeds and containing the following conditions:

- Its registration with a judicial court.
- A superseding deed shall not exist.
- The land under legal deed, if subject to taxation, shall be recorded in the tax book.

2. *State decree, government decree* (prime minister's) decree and a deed in respect of purchasing land from the State with the following conditions:

- To have been issued by a competent organisation.
- The superseding deed shall not exist.
- To have been recorded in the tax book if the land is subject to tax payment.

3. The *tax payment receipt* having the following conditions:

- The superseding deed shall not exist.
- To have been registered in the principal books of properties (Amlak) and shall have a tax payment ticket dated before 15th of Asad (1354) (6th of Aug 1975).

4. The *water rights document* having the following conditions:

- Its superseding document shall not exist.
- To have been registered in the principal books of properties (Amlak) and tax.

5. A *customary deed* shall be legally valid under the following conditions:

- The land seller should have a valid deed.
- The strongest claim to ownership would require that the deed has been prepared before 6 August 1975, and the buyer having filled the declaration form before the year 1978 and submitted it to the relevant Government office (after his claim has been confirmed by neighbouring farmers).
- An even more complicated situation exists for those claims coming after 1978 and this requires very specialized skills and local knowledge to reconstruct.

6. A *formal title deed* having the following conditions:

- The legal title deed shall exist.

²¹ Nijssen (2011) op cit, p. 4

- To have been issued after legal settlement.
- To have been registered in the principal books of properties (Amlak) and tax.
- No claim to the land shall exist.

7. *Land ownership document* (the title deed) having the following conditions:

- To have been prepared and issued by the relevant court after legal settlement of the land.
- To have been registered in the principal books of properties (Amlak) and tax.

The result is that within the statutory system, there is a very complicated hierarchy of evidence that requires detailed knowledge to administer. With the prevalence of forgery and multiple allocations, the hierarchy is difficult to operationalise at national scale. It makes it almost impossible for an individual who is not an expert to assess the relative strength of their case in a dispute.

3. OPTIONS FOR ADDRESSING LAND RIGHTS IN MINE ACTION IN AFGHANISTAN

The following section outlines specific recommendations for incorporating land issues in mine action operations. They are aimed at mine action organisations in Afghanistan according different stages of the mine action process.

3.1 PRIORITY SETTING

Findings:

- A flexible approach to priority setting has historically been taken, responding to a broader development context;
- There is an established policy of avoiding working in areas where there are land-related conflicts; there is no referral mechanism; Not clear how viable this is in the long-term
- It is not clear what criteria will shape the selection of sites for clearance for 308 new projects

Recommendations:

Strengthen Land Release-Development links by:

- Prioritising micro-level development linkages – that is, selecting those minefields, which, if released would have the biggest development impact or create opportunities for development actors to engage and support communities with livelihoods interventions;
- Strengthening links to District planning; prioritise those minefields that are development priorities for Government;
- Explore the potential peace-building role of land release – ie, where land or natural resource dispute resolution processes are in process, ensure that once agreements are reached, clearance of the disputed land follows quickly to help secure the peace
- Link land release to significant refugee returns – identify areas where refugee/IDP returns are expected to be significant and ensure that arable land is clear. One of the major barriers to refugee return has been the lack of land for livelihoods.

3.2 SURVEY AND CL

Findings:

- Operators felt that land issues mostly come up during handover of the cleared land, but did not clarify whether this indicated weak non-technical survey;
- MACCA feels that non-technical survey and community liaison (CL) in general is weak in Afghanistan;

- c) There are some good anecdotes of operators asking a variety of stakeholders different questions regarding land ownership/conflicts.

Recommendations:

- a) Include land issues in survey questionnaires and IMSMA forms (need to formulate specific questions regarding land use plans, land rights, land conflicts);
- b) Triangulate information, for example by surveying men and women separately as was done for the Herat livelihoods study;
- c) Develop Standard Operating Procedures (SOPs) for reporting land disputes/issues more systematically, including to Govt

3.3 COORDINATION

Findings:

- a) There are acknowledged weak links to development actors in the Government, which may be further inhibited by the reduced number of AMACs;
- b) The Government lacks capacity to effectively engage with the mine action community;
- c) The mine action community has weak links to NGOs – land, development and dispute resolution;
- d) There are some good practices, eg the government requested the clearance of public land to build a park and the land was not grabbed or occupied by squatters; there are linkages between DDG’s mine action programme and Danish Refugee Council’s development programming.

Recommendations:

- a) Strengthen development and dispute resolution linkages with NGO coordination bodies – eg. AKBAR and its Afghan NGO counterpart;
- b) Strengthen links with the National Solidarity Programme;
- c) Strengthen engagement at the District level;
- d) Participate in quarterly or six-monthly protection cluster meetings.

3.4 MINE RISK EDUCATION

Findings:

- a) The risk profile is changing, with reduced deaths/injuries;
- b) MRE is not seen as an appropriate place for land rights outreach by MACCA MRE focal point;
- c) Operators have mixed views; some see MRE as important; others are concerned that poorly communicated land rights information could complicate the situation

Recommendations:

- a) Broaden the notion of MRE to include the ability to recognise and report potential land conflicts observed in field;
- b) Ensure transparency and community participation in hand-over to mitigate the risks of land grabbing;
- c) Include a broader discussion on land grabbing/dispute risks in outreach material and radio programming, including where to go for assistance and further information.

3.5 LAND RELEASE

Findings:

- a) There are some good examples of practical measures to ensure boundaries are not harmed in both residential and agricultural contexts , eg use of string, mixed clearance (mechanized and dog/manual);

- b) There are some difficult scenarios – people refusing to have ordnance cleared creates risks for future buyers of the land/property (eg HALO Trust indemnity)²²;
- c) Many cases were reported of clearance teams arriving to encounter suspicious communities, which raises questions regarding the quality of non-technical survey and community liaison;
- d) There is limited awareness/interest regarding the impact of mechanical demining on soil quality, though several cases were reported of disputes arising, including those causing harm to villagers and deminers;
- e) The potential peace-building impact of community-based demining is clear, but there is a risk that jobs created through community-based demining will create perverse incentives, ie, that land will not be declared safe as it will mean that those employed in clearance will become unemployed. There were even concerns that false reports of mine/ERW contamination would be made deliberately.

Recommendations:

- a) Increase awareness of these issues among operators, particularly Team Leaders (including collection and exchange of other good practices);
- b) Review and document peace-building experience of community-based demining

3.6 HANDOVER

Findings:

- a) There is good practice of involving many actors, including shura, the Government and the community in hand-over; However, “community” in this context typically refers to male community members (usually more powerful men), since women are never really included in handover procedures in Afghanistan.
- b) Some operators are very concerned about getting caught in the middle of disputes and want clear language that indicates that a handover certificate is not ownership evidence;

Recommendations:

- a) QA departments should be sensitive to potential land conflicts arising as well as potential divergence from stated pre-clearance land use;
- b) There is potential scope for recording disputes on QA forms;
- c) Link operators to District land officials where there is land ownership tension so they can be present at handover to confirm that there is no impact on land rights;

3.7 POST-DEMINEING IMPACT ASSESSMENT

Findings:

- a) Very few operators appear to conduct this systematically;
- b) Yet there is strong potential to demonstrate broader impact of land release to donors, both on development and peace-building,
- c) The PDIA form allows for collecting community member information in a sex and age disaggregated manner (attached a copy of the form to the e-mail). In reality however, no PDIA data is collected from female community members. The lack of female PDIA surveyors

²² During the mission, an example was given of a house owner that refused to allow HALO Trust to clear a UXO in the foundation of the structure. HALO’s procedure is to have the owner confirm in writing that he is aware of the risk, chose not to have the UXO cleared, and that he undertakes to inform potential future buyers of the risk.

means that female community members cannot be accessed. Male PDIA surveyors collect PDIA data from male community members, usually elders.

- d) The Mine Clearance Planning Agency (MCPA)'s land mine impact assessment teams (LIAT) are tasked by MACCA to implement the PDIA. In terms of which tasks the PDIA should be implemented, MACCA determines where the PDIA should be implemented through random selection, ensuring that all implementing partners are covered. The PDIA is implemented at least six months after completion of clearance.

Recommendations:

- a) Consider including a requirement in future contracts that post demining impact assessment (PDIA) is done for at least a handful of sites, chosen according to criteria that would illustrate the biggest potential post-clearance development benefits – as well as 1 or 2 random sites for control;
- b) Introduce standard economic impact calculations;
- c) Compare pre and post-clearance impact on land-use, land rights and land disputes.

3.8 AMAS STANDARDS

Findings:

- a) AMAS standards have been submitted to Afghanistan Standards Bureau. Once reviewed, they will be endorsed by the high level commission headed by the second vice president
- b) Limited appetite in MACCA for revising AMAS to incorporate land rights

Recommendations:

- a) There are several standards where AMAS could include a few sentences related to land rights/land use/ land disputes, including:
 - 5.04 Community Liaison
 - 6.04 House Clearance
 - 6.05 Mechanical De-mining
 - 6.09 Task Handover
 - 9.01 MRE

ANNEX 1 – LIST OF PEOPLE MET

No.	Name	Title	Organization
1	Alan Macdonald	Project Director	MACCA
2	Mohammad Sediq Rashid	Chief of Operations	MACCA
3	Mullah Jan	Senior Operations Manager	MACCA
4	Mohammad Qasim Samandari	Director	DMC
5	Shamsulla Yousufzai	Deputy Chief Information Officer	MACCA
6	Kefayatullah Eblagh	Director	ATC
7	Fazl Karim Fazl	Director	OMAR
8	Shah Wali Ayubi	Executive Operation Manager	MDC
9	Abdul Hakim Noorzai	Head of Operations	DDG
10	Ghulam Eshan Sultani	Director	Cadastral Survey Department
11	Haji Atiqullah	Chairman	MCPA
12	Haji Amir Mohammad	Operation Manager	MCPA
13	Dr. Rabani	Program Manager	MCPA
14	Dr. Farid Homayoun	Country Director	Halo Trust
15	Haroon Zareef	Policy and Planning Director	Amlak, MAIL


ANNEX 2 – KEY LAND-RELATED ORGANISATIONS IN AFGHANISTAN

No.	Organisation Name	Expertise	Email	Website
1	AGCHO (Edara-e-Omomi Geodesy and Cartography)	Cadastral Survey Department for surveying expertise	Karimi_agcho@yahoo.com	www.agcho.org
2	AKDN (Aga Khan Development Network)	Natural Resources management	Info.info@akdn.org	www.akdn.org
3	ACBAR (Agency Coordination Body for Afghan Relief)	Contacts of land-related national NGOs in Afghanistan	Deputy.director@acbar.org	www.acbar.org
4	ALCO (Afghan Land Consulting Organisation)	Property Disputes	zia.astana@afghan-land.org	www.afghan-land.org/
5	ANDS (Afghanistan National Development Strategy)	Linking mine action to development	naheedsarabi@gmail.com	www.Thekabulprocess.gov.af
6	ARAZI (formerly Reyasat-e- Amlak)	Land Management Authority	Haroon.zareef@arazi.gov.af	www.mail.gov.af
7	AREU (Afghanistan Research and Evaluation Unit)	Research & Studies on land issues	areu@areu.org.af	http://www.areu.org.af/
8	FAO (Food and Agriculture Organisation of the United Nations)	Agriculture, irrigation, natural resources management	Tekeste.tekie@fao.org	www.fao.org
9	IDLG (Independent Directorate of Local Governance)	Local government contacts	obaid.ekhlas@idlg.gov.af	www.idlg.gov.af
11	MAIL (Ministry of Irrigation and	Issues related to grazing land, livestock, irrigation canals and natural	Info@mail.gov.af and hashim_barikzai@hotmail.com	www.mail.gov.af

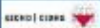


	Livestock)	resources)	mail.com	
12	MADERA (Mission d'Aide au de'veloppement des EconomiesRurales en Afghanistan)	Range land management	Contact.kbl@madera-afgha.org	www.madera.asso.org
14	Norwegian Refugee Council (NRC)	Information, counselling and legal advice (ICLA) – land and property disputes	Simon.worrall@afg.nrc.no	www.nrc.no
15	Solidarite' International	Natural resources and rangeland	Afg.cdm@solidarites-afghanistan.org	www.solidarites.org
16	TLO (The Liaison Office)	Land Disputes	info@tlo.afghanistan.org	www.tlo-afghanistan.org
17	UNEP (United Nations Environment Programme)	Natural resource management/ community based management	Andrew.scanlon@unep.org	www.unep.org
18	UN-Habitat	Land disputes and urban land	Jan.Turkstra@unhabit.at.org	www.unhabitat-afg.org
19	Housing, land and property task force	Land and property issues working group of international and national NGOs	KETABCHI@unhcr.org	

ANNEX 3 – PRESENTATION AT MINE ACTION OPERATORS WORKSHOP

Land Rights and Mine Action



Summary of Findings and Recommendations
Kabul 10 Feb 2012

  Mine Action Co-ordination Centre of Afghanistan 

Presentation Structure

- Workshop objectives
- AFG Mine Action Context
- Land Rights Challenges
- Do No Harm and Mine Action
- Mainstreaming Land Rights - Options
- The Short List for 2012 onward

  Mine Action Co-ordination Centre of Afghanistan 

Workshop Objectives

- Validate findings from review
- Review opportunities to mainstream a land rights perspective in Mine Action
- Identify *most appropriate* ways to address land rights in Mine Action programming from 2012 onward

  Mine Action Co-ordination Centre of Afghanistan 

Mine Action Context 2012

- Less deaths and victims
- Changing SHA (no more large minefields: smaller, scattered end-game)
- Declining mine action funding?
- Leaner MACCA
- Ottawa renewal
- Humanitarian to development
- 315 Projects for 1391
- Clean districts



  Mine Action Co-ordination Centre of Afghanistan 

Land Rights Challenges

1.1 Land Grabbing

- **Kabul:** Bibi Maru, Tapai Maranjan, Brishna Kot, Shuhadai Saliheen, Kohe Ali Abad, Tapai Qawala, Kohe Chelstone
- **New TownS:** Surkhrood District Nangarhar, (also Mazar South, Anomina Kandahar)
- **Jobrail, Herat:** returnees from Iran occupy known hazardous land
- **Bage Mumtaz:** mined front line; land cleared and sold by commander to individuals

  Mine Action Co-ordination Centre of Afghanistan 

Land Rights Challenges

1.2 Land Disputes

- **Mandozi, Khost:** two groups in land dispute; clearance suspended; boy dies
- **Gurbuzi, Khost:** nomads and local community dispute. No clearance. Livelihood impacts.
- **Shindand, Herat:** commander forces de-mining team to clear disputed land after 3 villagers die.
- **Herat Mosque:** two groups dispute ownership
- **Nuristan:** communities in dispute over land and water rights. Deliberate mining. No solution to date.
- **Jan Kadam:** community dispute; one side lays land mine. De-miner loses leg

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Land Rights Challenges

1.3 Impact of Mine Clearance

- Jorian District, Herat: villagers upset that top soil blown away by Mine Wolf; four de-miners killed
- Kandahar: mine clearance denied (hard soil)
- Kandahar: fear boundary wall would be destroyed; no demining
- Ziarat, Kandahar: fear of pasture land being grabbed delays clearance
- Herat: Entire family killed; possible land grab?






Land Rights Challenges - Discussion

- Are these the types of issues you face?
- Do you have other examples?
- How big is the land rights challenge?
- How important are land rights issues?






Do No Harm








Do No Harm

Humanitarian actors should ensure they do not make a situation worse through the assistance they provide.








Do No Harm, Land Rights and Mine Action

1. **Understand your context** – who has what rights to the land; how is land used by different groups;
2. **Assess the potential positive and negative impact of mine action** on that context, including for the powerful and the poor; (M/T)
3. **Take practical steps** to ensure that mine action contributes to positive outcomes as well as positive outputs.








Summary: The Risks of Ignoring Land Rights in Mine Action

- Re-ignite or create land conflicts
- Put staff at risk (re-mining, conflicts)
- Damage to expensive equipment
- Delays while land rights are clarified
- Contribute to land grabbing
- Contribute to food insecurity
- Contribute to poppy cultivation








Opportunities to Mainstream Land Rights in Mine Action

- Implementing Partners & MACCA
- Use the MACCA and IP project cycles to identify opportunities
- Build on existing good practice
- Long-list first, then narrowed



Survey and CL

- Include land rights, land dispute and land use issues in questionnaires (eg MCPA, DDG)
- Triangulate questions regarding potential disputes (shura, mullah, local govt, teachers, farmers [and women – Herat])
- Dispute referral mechanism (AMAC, local and natl govt)



Priority Setting for 315 Projects

- Disqualify areas in dispute, but refer to local government
- More explicit link to micro-development benefits
- Consider peace-building potential of clearance, with additional development investment
- Refugee returns?



Coordination

- District Level will be important
- AKBAR, NSP, HLP Task Force
- Capacity of Government to engage? Or for MACCA to follow up?
- Govt confirms development plans, land released, plan implemented (Kabul tree planting avoids grabbing)



Mine Risk Education

- Broaden idea of 'risk' to include 'do no harm' approach to land rights and MA
- Include 'do no harm' MA messages in outreach material
- MRE staff report back on any potential disputes related to land rights or changed land values in communities



(MRE activities) seek to reduce the risk of injury from mines and ERW by raising awareness and promoting behavioural change amongst 'at risk' groups within communities

AMAS 9.01



Clearance

- Awareness prior to arrival of team
- Respect for boundaries and shared walls
- Mechanical inside, manual on boundary
- Minimize potential damage to soil
- Peace-building potential of CBDM





Handover

- Involve local govt, shura, villagers to witness – be aware of potential disputes
- Attach indemnity to customary deed (Herat)
- Quality Assurance forms examine impact on land rights
- Role of land department?



Post-Demining Impact Assessment

- Requirement for CHA where clearance brings high positive impact
- Introduce standard economic analysis
- Compare pre- and post clearance land use, disputes, occupancy



Afghanistan Mine Action Standards

- 5.04 Community Liaison
- 6.04 House Clearance
- 6.05 Mechanical De-mining
- 6.09 Task Handover
- 9.01 MRE



A potential short list?

- Frequently Asked Questions + referrals
- Training of Trainers for IPs and MACCA|DMC QA teams (w NRC?)
- Survey + PDIA to include land issues
- Update IMSMA forms
- Coordination with development actors to support prioritization

Thank You!

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ANNEX 4 – READING LIST

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ANNEX 5 – FREQUENTLY ASKED QUESTIONS

LAND RIGHTS AND MINE ACTION IN AFGHANISTAN: Frequently Asked Questions (FAQ)

This document provides simple practical guidance on land issues for mine action organisations in Afghanistan. It covers the following topics: why land matters for mine action; land rights and land release; what mine action organisations can do; and where to get additional information and support.

WHY LAND MATTERS FOR MINE ACTION

1. What are the land-related risks for mine action?

Whether intentionally or not, mine action can:

Re-ignite or create land conflicts. Old grievances may exist between individuals and communities regarding boundaries or 'ownership'. Land release increases the value of cleared land and can lead to disputes.

Contribute to land grabbing. Land may be seized from poor women and men or from the State, including by powerful individuals, eg hills around Kabul.

Contribute to the use of land for illicit purposes. Land release may contribute to the cultivation of illicit crops (eg. poppy) or the illegal extraction of natural resources (eg. illegal logging).

Put mine action staff or communities at risk. Operators may find themselves in the middle of a dispute. Re-mining of disputed land can result in civilian or operator staff injuries.

Delay operations while 'ownership' of hazardous land is clarified. Operators should not expect all land to be centrally registered. Globally, only some 20-30% of land is registered; the figure is even lower for developing countries.

Maintain or exacerbate gender inequalities in access to land. In Afghanistan, women's access to land is regulated through Shari'a. Nevertheless, male relatives may try to "reclaim" family land from widows.

Undermine food security. Some clearance methods or the timing of their use (i.e. seasons) can result in a loss of topsoil and reduced food security.

Lead to intentional expensive equipment damage due to lack of community consultation or dissatisfaction with the clearance process or land-release outcomes (changes in land access, land rights, land use or land values).

2. What does "Do No Harm" mean for Mine Action?

Humanitarian actors should ensure they do not make a situation worse through the assistance they provide. The release of land through survey and clearance is not neutral. Removing mines/ERW changes land values and can impact land rights and land use. Specifically for mine action, Do No Harm means three things:

1. Understanding your operational context – who has what rights to the land; how is land used by different groups.
2. Assessing the potential positive and negative impact of land release on that context, including for the powerful and the poor, men and women.

3. Taking practical steps to ensure that mine action contributes to positive outcomes as well as positive outputs.

LAND RIGHTS AND LAND RELEASE

3. Where can land issues arise in mine action operations?

Land issues can arise throughout the mine action operations:

Recruitment: recruiting from specific ethnic, clan, religious, political or gender groups could create perceptions that mine action favours one group over another

Non-technical survey: discovers land conflicts or potential risks due to the increased value of released land

Priority-setting: if an existing or potential land conflict is identified, what happens? Is clearance postponed? When will that hazardous area be cleared in the future?

Contracting: mine action contracts often make no mention of land rights or the need for post clearance assessment to confirm what really has happened with the land

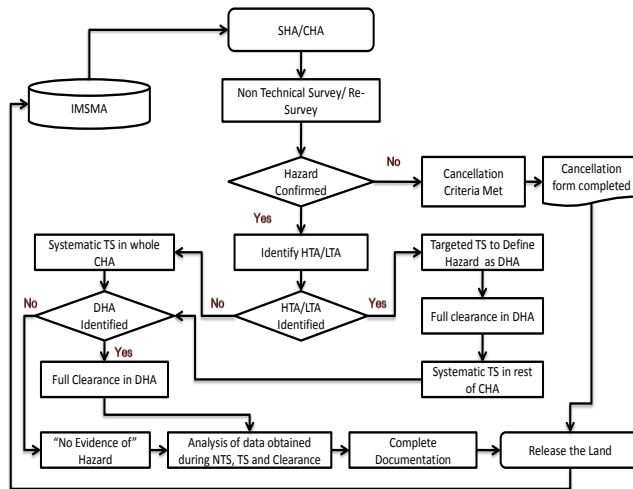
Community Liaison and Mine Risk Education: existing or potential conflicts are discovered, but what is the follow-up procedure?

Clearance: either plot boundary markers or shared walls in buildings are destroyed through mechanical processes. Topsoil can also be lost if clearance is not well-timed with respect to harvest seasons. Mine/ERW operators can be called in to do spot clearance by Government or private interests on land that is regarded as community owned which can put survey and clearance operations, and mine action staff, at risk.

Hand-over: mine action increases the value of the released land and this can lead to land grabbing or conflicts. Women's land rights can often be ignored.

Post Demining Impact Assessment: do the intended beneficiaries from land release actually gain rights to the land once it is released? Has land been grabbed from beneficiaries? If there is a conflict, cleared areas can be re-mined. Do the beneficiaries of released land have access to additional inputs to make the land productive (seed, tools, fertilizer, extension services, access to markets...)?

Figure 1. Land Release Process Map



The process map shows the steps involved in Land Release process, where NTS, TS and full clearance operations have been considered. All of the above steps are subject to internal and external QA/QC.

4. What types of land issues can affect mine action?

- Lack of documentation for land or property rights
- Land grabbing, both Government land and private land
- History of forced displacement
- Secondary occupation of land left behind by refugees/IDPs
- Family disputes over inherited land
- Boundary disputes between communities
- Land kept mined to prevent land grabbing
- Conflicts between pastoralists and agriculturalists
- Disputes over water, irrigation canals (karez), forests, irrigated land

WHAT CAN MINE ACTION ORGANISATIONS DO?

5. What issues should I address in non-technical survey?

Hazard forms can be used to record land-related issues. These include:

- First, who has what rights to the land? Statutory, customary and informal rights often co-exist and overlap. At any time, more than one group may have legitimate use rights over the same piece of land (eg. pastoralists move through agricultural land).
- Second, are there any land conflicts or historical grievances between communities?
- Third, what was the past land use and what is expected future land use once the land is released?
- Finally, will the value of the released land increase the risk of land grabbing?

Consult widely including the local Shura, mullahs, mirab, local government, teachers and farmers. Both women's and men's perspectives should be sought. Consider including female MRE staff to obtain women's perspectives.

6. What do I do with land information collected through mine action operations?

Survey, clearance and community liaison produces a wealth of data about communities. Some of this information may be useful to land organisations such as government land administration, GIS/cadastral agencies and planning departments, Central Statistics Office, foreign investors, development banks, etc. Sharing information contributes to broader development outcomes.

7. How can I integrate land issues into priority setting?

Involve women and men from communities in priority setting. The first priority for survey and clearance remains saving lives and reducing injuries. When mine/ERW operators develop project proposals, they should consult the community development plans of Community Development Councils (CDC). Consideration should be given to how the land release process can support: economic growth, livelihoods, conservation of protected areas, the return and integration of refugees, and the peaceful resolution of disputes.

8. What do I do if I discover a land dispute?

Mine/ERW operators should not become mediators. Clearance should stop if a dispute is discovered that threatens civilians or staff. The issue should first be reported to the Area Mine Action Centres (AMACs). If appropriate, AMACs can refer the dispute to the local shura and local government. If disputes are not resolved, the issue should be reported to the Woluswal, the head of AMLAK (Department of Land), and the primary court. In urban areas, disputes should be reported to Wakil-e-Gozar, the community shura and the head of the municipal district (Rais-e-Nahiya). Refer disputes to local NGOs or the UN as appropriate.

9. How can land rights be included in the tendering process?

Statements of Works (SOWs) should clearly include land rights considerations and actions to be taken by bidders and contractors. Reporting requirements regarding land issues should also be specified. Liability issues, including third party liability, should also be included in the tendering process, and possibly in the contracting process.

10. How can I incorporate land issues in implementation planning?

Decisions about the use of survey and clearance assets should take into consideration the expected future use of the land. Female and male community members should be involved in decisions regarding which assets are used and during what season. Include women in interview teams. From a liability perspective, proper records should be kept regarding which assets were used for different areas in the same site.

11. How can I minimize the risk of disturbing boundaries during clearance?

On agricultural land, mechanical assets can be used up to boundaries with manual asset teams or mine detection dogs to clear the boundary. If mechanical assets are used on the boundary, string is being used

to mark the boundary above the ground. In residential areas, mechanical excavation may be used inside the structure, while manual assets and dogs can be used on walls.

12. How can I help secure land rights during handover?

Ensure that the handover ceremony is widely publicised and involves influential and concerned people including women and men. Clearly communicate to communities that the handover document is NOT legal evidence of land 'ownership'. Involve local AMLAK (land administration) officers if additional clarification is needed.

13. What questions should I include in my Post Demining Impact Assessment?

Post Demining Impact assessment should examine how land use has changed prior to and after land release. Have land values changed? Has any land been sold or grabbed? Have any conflicts emerged? What value has the released land produced?

14. How can I incorporate land issues into Standard Operating Procedures (SOPs) and national standards?

Mine/ERW operators should review, as appropriate, their SOPs to ensure land issues are adequately addressed. MACCA/DMC are reviewing the Afghanistan Mine Action Standards (AMAS) to ensure land issues are addressed.

LAND, RESOURCES AND CONFLICT: THE EVIDENCE

563 km² the remaining suspected hazardous land to be released, as of 2012. **1,847** communities in 2012 still affected by landmines/ERW in Afghanistan. **30%** The estimated percent of land globally that is formally registered; **10%** the estimate for Afghanistan. **2%** The estimated percentage of land globally that is formally registered in women's names; **<1%** the equivalent estimate for Afghanistan. **1979 and 1992** the years between which all cadastral maps and records were completely destroyed in regional offices. **646 vs 200** the number of professional cadastral surveyors employed by the Afghan Government in the 1970s vs 2012. **250** average number of days required to register property In Afghanistan in 2011. **18** The number of conflicts globally since 1990 partially financed by natural resource revenues. **1.4 billion USD** the estimated value of poppy production in Afghanistan in 2011. **1,310 km²** the total cultivated land producing poppy in Afghanistan in 2011. **5** The average number of years after a peace agreement when conflict can re-emerge – if the original conflict was linked to natural resources. **0** The number of fragile states that have escaped the 'resource curse' – managed natural resources for sustained growth and poverty reduction. (Sources: MACCA, UN-Habitat, UNEP, UNODC, World Bank).

Where can I get additional land rights support?

Government

- AGCHO (Edara-e-Omomi Geodesy and Cartography) Cadastral Survey Department for surveying expertise. Karimi_agcho@yahoo.com www.agcho.org
- ARAZI (formerly Rezasat-e-Amlak) Land Management Authority Haroon.zareef@arazi.gov.af www.mail.gov.af
- MAIL (Ministry of Irrigation and Livestock) Grazing land, livestock, irrigation canals and natural resources) Info@mail.gov.af and hashim_barikzai@hotmail.com www.mail.gov.af
- IDLG (Independent Directorate of Local Governance) Local government contacts

obaid.ekhlas@idlg.gov.af www.idlg.gov.af

United Nations

- Housing, Land and Property (HLP) Task Force Land and property issues working group
KETABCHI@unhcr.org
- UN-Habitat Land disputes and urban land Jan.Turkstra@unhabitat.org www.unhabitat-afg.org
- UNEP (United Nations Environment Programme) Natural resource management/ community based management Andrew.scanlon@unep.org www.unep.org
- FAO (Food and Agriculture Organisation of the United Nations) Agriculture, irrigation, natural resources management Tekeste.tekie@fao.org www.fao.org

Non-Governmental Organisations

- ALCO (Afghan Land Consulting Organisation) Property disputes expertise zia.astana@afghan-land.org www.afghan-land.org
- AREU (Afghanistan Research and Evaluation Unit) Research & Studies on land issues
areu@areu.org.af <http://www.areu.org.af/>
- MADERA (Mission d'Aide au de'veloppement des Economies Rurales en Afghanistan) Range land management kbl@madera-afgha.org www.madera.asso.org
- Norwegian Refugee Council (NRC) Information, counselling and legal advice (ICLA) – land and property disputes Simon.worrall@afg.nrc.no www.nrc.no
- Solidarite' International Natural resources and rangeland Afg.cdm@solidarites-afghanistan.org
www.solidarites.org
- TLO (The Liaison Office) Land Disputes info@tlo.afghanistan.org www.tlo-afghanistan.org

MINE ACTION & LAND RIGHTS COLLABORATION

In 2010, GICHD commissioned research on the links between land rights and mine action in seven countries (Afghanistan, Angola, Bosnia, Cambodia, Sudan, Sri Lanka, Yemen). GICHD, IOM, UN-Habitat and the Housing, Land and Property (HLP) working group are collaborating to provide practical guidance to mine action organizations on how to deal with land issues.

For more information, please contact:

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