

LAND RIGHTS



AND MINE ACTION



IN AFGHANISTAN:



FREQUENTLY ASKED QUESTIONS



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.



For more information, please contact:

Ms. Sharmala Naidoo | GICHD | Mine Action Focal Point |
Land Issues | s.naidoo@gichd.org

Mr. Szilard Friczka | UN-Habitat | Chair, Housing, Land and Property
Working Group | Global Protection Cluster | friczka.unhabitat@unog.ch

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 (ie 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 that 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?

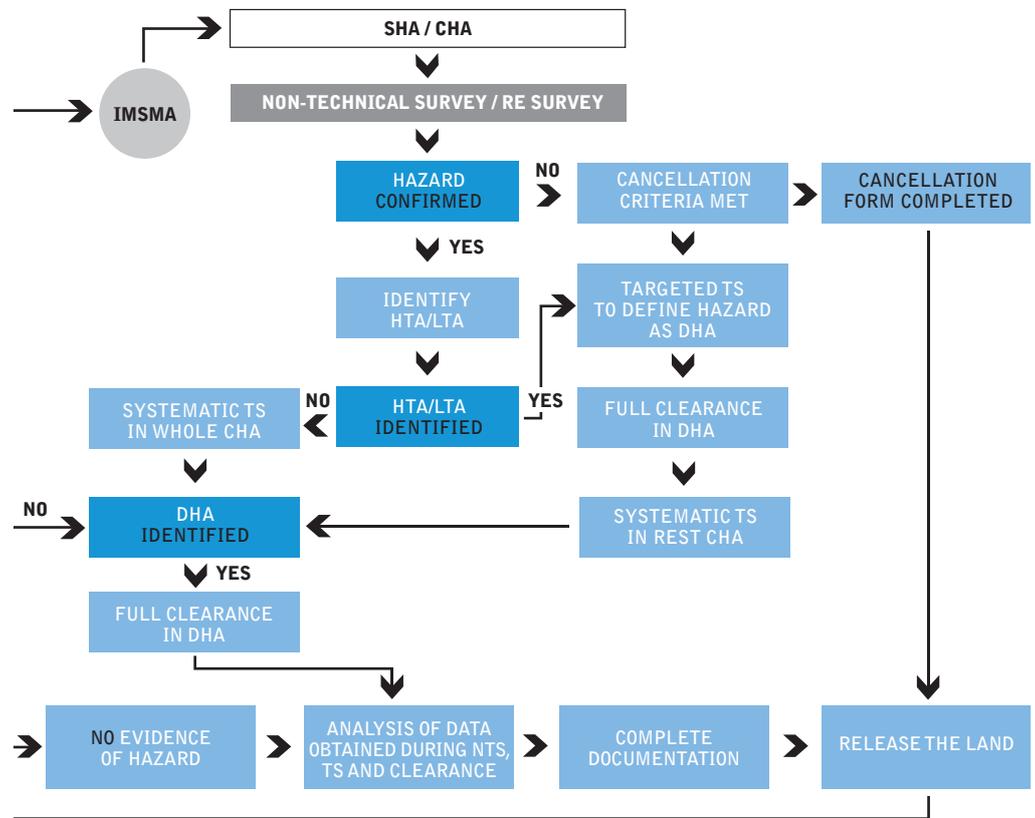
Land issues can arise throughout the mine action process:

- > **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:** uncovers 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 (eg seed, tools, fertilizer, extension services, access to markets)?

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

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.

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 the 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. 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 can be 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 the 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.

The number of conflicts globally since 1990 partially financed by natural resource revenues. **18**

The average number of years after a peace agreement when conflict can re-emerge – if the original conflict was linked to natural resources. **5**

The number of fragile states that have escaped the 'resource curse' – managed natural resources for sustained growth and poverty reduction. **0**

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.

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 Reyasat-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 | www.areu.org.af
- > MADERA (Mission d'Aide au développement 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
- > Solidarité 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.

