



Land Rights and Mine Action Webinar 30 August 2017

TRANSCRIPT OF THE WEBINAR

BRIEF BIOS OF SPEAKERS

Mr. Mohammad Wakil Jamshidi is currently employed as Chief of Staff for UNMAS Afghanistan. Mr. Jamshidi has more than 20 years of humanitarian demining experience in Afghanistan and Somaliland in the field of mine action management and strategic planning and coordination.

Mr. Jon Unruh, PhD. is a professor in the Department of Geography at McGill University in Montreal. He has over 25 years' experience in developing and implementing research, policy and practice on war-affected land and property rights in the Middle East, Latin America, Africa, and Asia, and has published widely on these topics. His specialty is housing, land and property (HLP) restitution claims in war-affected scenarios. Most recently he has assisted the UN in a mass claims HLP restitution project in Yemen; and he is currently working on an approach for mass HLP restitution claims for Syrian refugees regarding their lands and properties in Syria. He has worked with the UN, The World Bank, USAID, DFID, and other multilateral and bilateral donors and NGOs.

Mr. Pascal Rapillard is the Head of the External Relations and Policy division at Geneva International Center for Humanitarian Demining (GICHD). His current portfolio includes communications and outreach, relations with stakeholders and partners, and coordination of GICHD's support to the development and implementation of international humanitarian law. Prior to joining the GICHD, Mr. Rapillard worked at the Swiss Department of Foreign Affairs and has also worked with the French National Commission on Anti-personnel Landmines in Paris.

Introduction: Christelle Loupforest and Shobha Rao (10 minutes)

Christelle:

- Introduction
- Ground rules/housekeeping issues:
 - Raise hand button if you wish to speak, or use chat box (send questions to the host if want everyone to see your questions/queries)
 - The FAQ and Policy Brief on Land Rights and Mine Action can be accessed through the GPC website
 - We will upload the webinar recording in the Housing, Land and Property (HLP) and Mine Action (MA) Area of Responsibility (AoR) websites and also the GPC website in due course.

Shobha:

- Objectives:

- 1- Increasing collaboration between HLP and MA AoRs
 - Maximize information sharing and joint protection analysis
- 2 – Measure the progress made after the global study, which was conducted, from 2010-2014 by GICHD. The Study involved seven countries- Angola, Cambodia, Afghanistan, Sri Lanka, Bosnia etc. and two of our speakers will shed further light on the study and its findings. The HLP and MA AoRs would like to see what progress has been made since the study was finalised and what are the developments from the recommendations of the study
 - Also Displacement Solutions and Norwegian People’s Aid conducted another excellent study on this issue in Myanmar – and we would also look at the Principles that were formulated then and how much dent that has made. We are keen to get the field perspective and engage with the field further on this.

How humanitarian mine action activities bring mine action organizations into direct contact with land rights issues? Field practitioner’s perspective: Mr. Mohammad Wakil Jamshidi (10 minutes)

HLP issues:

- Global study in 2010 run by GICHD, Afghanistan was part of that study
- Land rights: is extremely complicated in Afghanistan and landmines make these more complicated
- Current processes and recommendations
- Afghanistan is landlocked country, mainly rocky mountains and deserts (little vegetation)
- Some of the land rights issues in Afghanistan are listed here:
 - There is a general vagueness on land ownership/rights
 - Land is in short supply
 - Issue of land grabbing very high in Afghanistan
 - Institutional capacity is weak on land rights
 - Challenges include:
 - Issue of refugees and IDPs
 - Rapid population growth
 - Ethnic conflict
 - Corruption
 - Lack of irrigation infrastructure

Land rights are complicated issue in Afghanistan:

- First constitution or documentation from 1923; in 1970 major land reform; during Russian-backed government there was also a reform of land issues; in 1982, Mujahedeen drafted new constitution; in 1996, Taliban regime ignored the Constitution.
- Since 1979, there has been various conflict periods
 - Russian invasion
 - Russian backed government
 - Internal conflict
 - Taliban 1996 – refugees, IDPs, and minefields
 - Post-2001 and ongoing – IDPs and refugees moving around the country

- Major issues:
 - Absence of rule of law
 - No clear policy on land rights
 - War and conflict
 - Tribal and ethnic conflict
 - Illegal land grabbing by warlords
 - Landmines
 - Unavailability of contamination records and maps
 - Don't have proper records from warring factions
 - This has brought confusion on boundaries of mine fields
 - Lack of information on land rights
 - **Emergency mine action actors in the beginning were not aware of land rights issues**
 - **Lack of mine action policy on land rights**
 - Lack of coordination during technical surveys because no proper policy or guidance
 - **Principle of do no harm – practitioners not well aware of this principle**
 - Examples:
 - Kabul capital city, end of 1990s: started clearance in center of city, land grabbers/people were constructing their houses, cleared land was then state owned land because no proper coordination
 - East Afghanistan in Khost: land rights problems, people didn't allow clearance, delay in clearance took about one year, during that year's delay a young civilian was killed due to lack of clearance
 - Nuristan, East Afghanistan: issue between two tribes, mountainous area with limited land for agriculture, sent team to survey but were not allowed to clear, several civilian casualties since, 2007-2008 started to hire community members of tribes as mine workers (but there were problems and area is still contaminated)
 - Mechanical mining operations in Herat: deployed mechanical equipment that was equipped with flare, flat area, people in community stopped demining operations because flare was destroying land, soil was eroding and becoming like dust, had to deploy different tools
- Current Processes:
 - Land rights issues in Afghanistan mine action standards (SOPs)
 - **Non-technical survey now includes issue of land disputes:**
 - **Ask if there is any dispute and who is the owner of the land**
 - **Ask for permission to use machines**
 - **During technical survey and clearance use community liaison staff to talk with governor, locals, elders, etc. in order to have better coordination with the community**
 - **Clarified handover procedures so that mine clearance is not considered legal land ownership document but just certificate of clearance**
- Recommendations:

- Further enhance policy on land rights on mine action
- Further publicize policy
- Clearer policy globally
- Land rights awareness – still is an issue, should publicize within mine action community
- Integrate land rights issues in land release activities and into mine action work
- Identify state owned and privately owned contaminated areas
 - In Afghanistan, don't know which part of contaminated areas belong to the Government and to private owners

How can humanitarian mine action contribute to land conflicts/exacerbate land issues?
Brief overview of housing, land and property issues, which were raised in the 2010 Global study commissioned by GICHD along with HLP and Mine Action AoRs: Mr. Jon Unruh (10 minutes)

Introduction:

- Presentation draws on study from 2010 by GICHD
- Interaction between clearance efforts and land rights has always been there
- Rights to land is always political, especially after war when state occupies one side and people on other side occupy the other side --- so, hyper-political situation, but at the same time, most institutions dealing with land rights have collapsed and so cannot handle problems
 - This is the situation then that mine action inserts itself into
- Important to keep land rights in mind when moving from conflict to post-conflict to development
- 2010-2014 Study: looked into the issue of how mine action interacts with land rights in several countries, Afghanistan, Angola, Cambodia, Sri-Lanka, Yemen, then a workshop in Cambodia to discuss common patterns

Six primary problem issues identified in study on how mine action can worsen land rights problems:

1- lack of awareness on the part of demining organizations

- Frequently unaware of land rights systems moving into to conduct mine action
- Often confusion or confrontation over who has rights to what land
- Unaware of relationships between different claims to land and whoever they see first (often government) claims land
- Unaware that will cause great deal of conflict then when land is released
- Unprepared for broader ripple effect on adjacent areas to demined areas
- Can be conflict over areas
- South Sudan example: local groups have de facto control of land and after clearance government takes control.

2- removing land mines can start competition over land and land grabbing

- Mines are placed in valuable areas
- When mines are removed, valuable areas freed up
- In post-war context, without strong rule of law, great deal of land grabbing occurs

3- remaining neutral actually causes harm

- Removing mines is always political
- Mine action organizations are often attached to the Government, which is often linked to one side of the conflict.
- In Afghanistan, have developed engagement criteria

4- prioritizing which areas should be demined first

- Usually roads first, then residential areas, then finally agricultural land
- Problem that emerges is that agricultural land is not demined until years later, then people don't have land for economic resources and food, this leads to land grabbing and decreases food security in country
- Agricultural areas can be heavily mined but demined last

5- information sharing and transparency

- Best information sharing regarding sharing mine action is with the government and mine action counterparts, but mine actors not good at communicating with local inhabitants and finding beneficiaries for land to be released can be difficult
- Need to give people an idea of when land is released, if beneficiaries don't know then they don't return to their land (and others will take it)
- **Mine Action actors don't have best coordination with other humanitarian organizations**
- MA actors are mostly ex-military/service personnel and this is very different culture than most humanitarian organizations

6. women's land rights

- After war, surge of female heads of households
- Women often have reduced set of land rights, if head of households can't claim their land or don't know they can, then others take advantage of this and grab the land
- Women usually less aware of land rights and in many communities less literate – so particular outreach is needed
- Inheritance issues if male head of household is dead, land often goes to other male relatives not women and her children (e.g. Afghanistan and South Sudan).
- Customary and Statutory law: women are vulnerable.

Policy guidance on how to deal with land issues and mitigate the risks posed by humanitarian demining: Mr. Pascal Rapillard (10 minutes)

Introduction:

- Mine action first and foremost about releasing land and transforming inaccessible land into accessible land.
- Important to have most information possible about land rights before undertaking survey and clearance operations.
- Is the land given back to the people most in need?

Nine actions mine action organizations can take to mitigate issues (from 2010 GICHD policy brief):

- 1- **Mine action actors need to liaise with humanitarian and development organizations dealing with land issues**

- Land rights organizations can advise mine action organizations.
 - **Mine action sometimes disconnected from broader security framework**
 - Need to make sure mine action doesn't work in silo
 - Dialogue, interaction, and meetings need to happen
- 2- Lack of information on land rights**
- Mine action organizations need to raise issues of land rights with affected communities before and during demining
 - Inform local authorities and communities to reduce risks of land grabbing
 - If mine action actors can't raise land rights issues, should at least refer communities to the right organizations or partners
- 3- Information shared on disputed areas:**
- Avoid clearing land that is disputed in priority setting, communicate decisions, and encourage dispute resolution
- 4- Community liaison used to identify community priorities**
- Marginalized people without awareness of land rights
 - Can be a challenge with IDPs or refugees
- 5- Clearance in border areas**
- Mechanical mine assets can disrupt land and borders
 - Should switch to manual or animal demining assets
- 6- Formal land handover process and post-clearance assessment**
- Not legal documentation on land ownership
 - Post-clearance assessment is a key requirement
 - o Not done enough
 - o Mine action is not really about seeking to destroy 'N' number of mines or to clear 'N' sqm of land but aims to allow development, access, agriculture – these are the outcomes we should study/measure
- 7- Importance of gender land rights awareness**
- Women need to be included and actively participate in surveys
- 8- Include land rights in contracting processes**
- UNMAS and donors should include specific land rights provisions in the grant agreements when funding mine action activities
- 9- Reporting**
- Measure progress in terms of development, not acres cleared

Conclusion:

- Mine action is not a purely technical issue. It can be political.
- Priority Setting in Mine Action (PRISMA): information management tool developed by the GICHD to set mine action priorities based on various development factors. Land rights can be prioritized as determining factor.
- Increasing mine action work in urban environment impacts mine action operating procedures
- National ownership:
 - National organizations should decide on priorities

Discussion (50 minutes)

- Shobha: How do you prioritize demining on the ground, especially in emergency situations where funding is often provided through one-year agreements/mechanisms?
 - Wakil: priorities were set by UNMAS in 2016, but now handed over to national authority
 - Impact classification of mine fields: 14 different indicators (Civilian casualties, blockage of roads, schools, agriculture, etc.) then classify as high/medium/low impact
 - Contracting: ask implementers to physically check those mine fields so that can update the hazards
- Shobha: What are the tools used?
 - Pascal: PRISMA based on ISMA (information management system) which allows to manage and plan operations and produce maps where you can record contamination and the work done; PRISMA is additional feature that will allow multiple priorities to be set and capture in maps and then the maps help guide priority setting; Currently mainly thinking about proximity to schools and hospitals and other critical services, but other priorities could be added and mapped (like land rights)
- Shobha: Would you overlay mine contamination maps with cadastral maps to avoid land conflicts (or have a better idea of disputed land) for use to prioritize demining?
 - Wakil: haven't done yet but looking at it; did a study few years back and realized that women were very worried about mine fields close to community because didn't want children playing there ---- views of women is part of the prioritization system
- Shobha: Pascal, in countries where mapping could be a challenge it could be helpful to share detailed mine action maps with partners? Is it currently undertaken – is this a common practice?
- Shobha: Jon: the 2010 study was very rural focused; can you comment on the HLP issues from an urban perspective?
 - Jon: In Iraq, looked at returns to dense urban areas retaken from ISIL where there are many landmines, booby traps, IEDs etc. (which is done to sow fear, cleanse certain groups like in Syria as well) so demining those areas can be problematic in same way but involves many more people (ex: residences in tall buildings)
 - If a family wants to return home but think its home is mined, they go elsewhere, and then become secondary occupant of another person's home, and then that person has to go somewhere else --- domino effect in urban areas
 - Most information comes out of survey about which areas are mined and the community (where they believe mines are)
 - It was once thought as shortcut to hire actors who laid the mines to clear them, but this is difficult after conflict when everyone wants employment. It turns out to be a difficulty.
 - Moving frontlines creates waves of mine laying with no record keeping, which can be very difficult to deal with

- **This area (increase hazard risks in urban setting) is a gap that needs to be looked into further**
- Dutch mission, disarmament delegation: in what way could donor states improve their knowledge about needs and challenges of mine affected states?
 - Pascal: knowledge of donors is key, donor seminar organized in April by GICHD, Mine Action Support Group
 - Mine action are engineers, military, deminers and we cannot expect demining organizations to do everything. But donors can encourage them to interact with HLP/land experts and other organizations. This interaction and cooperation could be helpful when we deal with land disputes.
 - Shobha: Longer-term funding instead of short-term, gives actors more leverage, donors can request breakdown of women land owners / how mine action activities benefitted women.
 - Support with advocacy. In countries with weak rule of law/Governance – if the powerful elite/political class is grabbing the demined land then donors can use their leverage with the government to ensure land is not grabbed but handed over to the vulnerable populations including women. Critical role to be played by the donors there.
- Christelle: (Question from participant) on IDP and refugee return, which legal instruments can be used to lobby national, regional or international governments?
 - Jon: international legal instruments that push for housing land and property as a right and as a human right; donors can be clear that unless there is a strong return or restitution programme for IDPs and refugees, there won't be any support from international community.
- Dominic Wolsey (Gender and Mine Action Programme):
 - Land release beneficiaries: most mine action sector actors do disaggregate their data by gender and age
 - Community liaison – when speaking to representatives must think about who those people are; they usually represent patriarchal systems and so you have to be careful not to leave people out of the conversation (not just women, but communities divided between ethnicities, etc.) or out of the handover ceremony.
- Jon: agree about data
- Shobha: agree with Dominic. Sometimes there are pastoralist groups that may not have ownership rights but right of way or easement rights, and need to keep these types of groups in mind too - as these groups maybe more vulnerable and invisible in these communities.

Final Remarks:

- Wakil: issue of handover is still a challenge in countries like Afghanistan where security not very good and there is poor participation of women (not possible or not cultural norm); trying to advocate for other means like briefing children because in the past only elders were attending the handover meetings
- Dominic: example in South Sudan where noticed that it was only senior men participating even though women were invited, women were sitting in the back, so had separate meetings for men and women --- response must be context appropriate

- Jon: regarding the local community liaison, sometimes it is clear who the local community is and sometimes not, particularly when the land is contested. How to find the community can be a difficult issue
- Pascal: land rights needs to be mainstreamed further within mine action, next steps? Feedback from participants? Level of interest? Is there a demand?

Wrap up

- Shobha: great participation from various countries (Iraq, Afghanistan, Myanmar, Turkey, Nigeria). The 2010 study was conducted some time ago and it is opportune time to revisit some of the findings and recommendations and see what progress has been made and see what has been the impact on the ground; From this conversation it is clear that some of the issues were mainstreamed in Afghanistan but what happened in the other countries.
- Webinar recording will be uploaded on the GPC website under the Mine Action and HLP areas of responsibility.
- One pager will be drafted on what we can expect from donors on land rights and mine action.

MA and HLP AoR Coordinators
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