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Mine Action and Land Rights in South Sudan: Key Findings and Recommendations

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Mine Action and Land Rights in South Sudan:

Key findings and recommendations



Sharmala Naidoo, GICHD
Francesca Marzatico and Lisa Monaghan, NRC
2013

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ABBREVIATIONS

ARD	Associates for Rural Development
CMC	Cluster Munition Coalition
CPA	Comprehensive Peace Agreement
DCA	DanChurchAid
DDG	Danish Demining Group
EOD	Explosive Ordnance Disposal
ERW	Explosive Remnants of War
GoS	Government of Sudan
GoSS	Government of South Sudan
ICBL	International Campaign to Ban Landmines
IMAS	International Mine Action Standards
IDPs	Internally Displaced Persons
MRE	Mine Risk Education
MOHPP	Ministry of Housing and Physical Planning
MTI	MineTech International
NMAA	National Mine Action Authority
NPA	Norwegian People's Aid
NRC	Norwegian Refugee Council
NTS	Non-Technical Survey
NTSG	National Technical Standards and Guidelines
ROSS	Republic of South Sudan
SAF	Sudanese Armed Forces
SOP	Standard Operating Procedures
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
SSDP	South Sudan Development Plan
SSLC	South Sudan Land Commission
SSRMAC	Southern Sudan Regional Mine Action Centre
SSLS	South Sudan Law Society
TCSS	Transition Constitution of South Sudan
TDI	the Development Initiative
UNMAS	UN Mine Action Service
UNMIS	UN Mission in Sudan
UNMISS	UN Mission in the Republic of South Sudan

EXECUTIVE SUMMARY

Land, and issues surrounding land, have played a prominent role in the narrative of the independence of South Sudan. Access to, and control of, land and natural resources was one of the core issues driving the conflict between the Sudanese People's Liberation Movement/Army (SPLM/A) and the Government of Sudan (GoS). Addressing land issues will therefore be critical to South Sudan's future. Some of the country's main land-related issues include: accommodating returnees,¹ resolving complex border disputes with the GoS, increasing the productive capacity of land for agricultural and urban development and addressing the tide of what continues to be a very high level of internal displacement. Within this, mine action actors have been integral in returning land to the safe use of the people of South Sudan.

In 2010, the Geneva International Centre for Humanitarian Demining (GICHD) published a case study on 'Landmines and Land Rights in Southern Sudan'² which noted that 'the complexity of addressing land rights issues in the country should not be underestimated'. This statement holds true today. While there have been considerable changes since the drafting of that report, not least independence and the strengthening of Government structures and legislation, challenges unquestionably remain.

Land issues in South Sudan are complicated by the fact that all ten states are contaminated with mines and other Explosive Remnants of War (ERW), which continue to kill and impede the delivery of humanitarian assistance, threaten food security and agriculture, delay reconstruction and development efforts, and pose risks to the safe return of Internally Displaced People (IDPs), returnees and refugees. A first step to addressing land rights has been to clear land to: facilitate access for peacekeeping forces and humanitarian assistance; make land safe for the millions of people displaced during the conflict with Sudan; and return it to productive use. Since becoming an independent state in 2011, the Government of South Sudan (GoSS), along with humanitarian actors, has continued the task of removing landmines/ERW and enormous strides forward have been made. Since 2004, a total area of 1,099 km² of land and over 21,000 km of roads have been released³ in South Sudan.⁴ The strengthening of national capacity to address mine issues, coordinate activities and create national strategies to connect humanitarian response to development objectives have linked mine action to productive and communal land use.

Recognising that mine action actors are but one piece of the jigsaw puzzle in land rights, the experiences of mine action actors is an important indicator of the challenges of providing humanitarian assistance in a complex land tenure system. This experience can also be illustrative and point the way forward for other actors. Prior to independence, the 2010 GICHD

¹ Office for the Coordination of Humanitarian Affairs, 'Sudan Quarterly Update' 3rd Quarter Update 2012 reports that 2 million people have returned from Sudan into South Sudan between July 2005 and September 2012. International Organisation for Migration, 'ERS Weekly Statistical Report,' 9 August to 15 August, 2013 reports 1,925,741 people have returned from Sudan to South Sudan since 2007.

² McMichael, Gabrielle and Massleberg, Asa, '[Landmines and Land Rights in Southern Sudan](#).' Geneva International Centre for Humanitarian Demining, November 2010.

³ In accordance with the IMAS 'Glossary of Mine Action terms, definitions and abbreviations,' 1 January 2003, the term release(d) is used to 'describes the process of applying all reasonable effort to identify, or better define, Confirmed Hazardous Areas and remove all suspicion of mines/ERW through non-technical survey, technical survey and/or clearance.'

⁴ Lance Malin, presentation, 16th Annual National Mine Action Programme Directors Meeting, Geneva, April 2013.

report put forward concrete actions that could be taken by the GoSS, land and mine action actors, and donor governments to improve capacity, partnerships, data collection and sharing, and responsible donorship. This report aims to assess progress made towards these recommendations, support mine action actors by providing further information on land-related issues and disputes in South Sudan and draw lessons from how mine action actors interact with and address land issues.

KEY FINDINGS

In March 2013, GICHD and the Norwegian Refugee Council (NRC) undertook a joint mission to South Sudan on land rights and mine action. The mission identified a number of key land-related challenges in South Sudan. Local awareness of land rights continues to be very low, including knowledge over legal processes and authorities. Insecurity of tenure continues to be high for the people of South Sudan placing many at risk of displacement. As demands increase for urban land and commercialisation of land, tensions are increasing between the government and its citizens on how land is to be used. These challenges can affect mine action operations and vice versa.

Overall, mine action actors have taken steps to reflect 'do no harm' principles in their activities, including those relating to land issues. The 2010 GICHD report found that mine action actors had generally not addressed land rights issues as part of their response to humanitarian situations and post-conflict recovery. Three years later, several mine action actors have taken steps to incorporate community based responses into their activities, which include land rights, and improve coordination.

One of the largest challenges relates to the lack of standardised approaches. There continues to be a structural separation between land and mine action actors. At the time of the March mission, a diversity of approaches existed in terms of non-technical survey (NTS), post-clearance assessment survey, handover, and information collection and sharing, which undermines the consistency of interventions. Many of the 2010 GICHD recommendations have been adopted in part by some agencies, and some positive developments in the areas of NTS and post clearance assessment have taken place recently. This however does not apply across the board.

There is a strong perception among mine action actors that they do not face the same land issues in South Sudan that is evident in other countries. Despite this, it is **positive that many of the mine action actors surveyed were aware that land issues exist in mine-affected communities and were eager to mitigate this.** NGO operators in particular were supportive of the need to take a 'do no harm' approach to safeguard against unintended consequences of operations. Actors were concerned though that operational constraints, funding modalities and mandate limited the ability of some to follow up land use and other issues post clearance.

At the time of the March mission, **the mine action National Technical Standards and Guidelines (NTSG) did not require operators to ask questions about land issues** during non-technical survey. Of the mine action actors that conduct non-technical surveys, only a few ask questions relating to land. However, following the March 2013 mission and the circulation of the draft

version of this report in May, the NTSG have been amended⁵ and now require operators conducting NTS to ask land-related questions.

While the process for handing surveyed/cleared land back to communities is a critical step for ensuring community confidence in the land release process and ensuring post-clearance land use, **handover procedures vary according to operator**. Given tenure insecurity and related issues in South Sudan, which will be explored in more detail below, a lack of uniform and transparent procedures can make communities and individuals vulnerable to land grabbing or land confiscation.

Post-clearance assessment can be used to determine the medium to longer term impact on land use resulting from mine action. It is also useful for feeding information back into the prioritisation system, in order to help improve the prioritisation of tasks for survey and clearance. At the time of the mission, **post-clearance assessments were not a requirement** for operators, and of the organisations that do conduct post clearance assessment, only a few ask land-related questions. Developing a few standard questions about land is one simple step towards standardising operations and developing common knowledge. Fortunately, as of mid-2013, UNMAS has put in place a **new impact monitoring system which requires all operators to gather post clearance data**. The standard post clearance survey form includes questions on land issues which include land value post clearance, whether the land is being used and for what purpose, and whether beneficiaries encountered problems as a result of clearance, including land disputes.

Some of those interviewed raised concerns about outreach and information sharing between mine action organisations, including between UN agencies, key government institutions and other humanitarian agencies and the extent to which land actors relate to mine action actors. Mine action continues to participate in wider humanitarian coordination, with mine action actors represented on the South Sudan Protection Cluster and the inter-cluster forum. There are limited formal linkages between mine action and land actors. While there have been efforts made towards better coordination, these have had mixed results. Gaps in coordination and information raise challenges at two levels: priority-setting and post-clearance. Those interviewed had conflicting interpretations of why priority setting is not as robust as it could be.

RECOMMENDATIONS

The following recommendations seek to strengthen mine action interventions, build on previous successes and standardise activities between actors towards common good practice.

Priority setting

1. NMAA/UNMAS should review the priority-setting process in consultation with partners to develop clear criteria which include development considerations and the potential for land-related conflict. Priority-setting criteria should include the likelihood that humanitarian and development actors are available to provide support to facilitate socio-economic recovery and post clearance land use.
2. Land related issues, including clarity on systems of land tenure and rights should be factored

⁵ As a living document, the NTSG are constantly being amended and updated.

into priority setting. Where there is a potential land conflict, operators should engage with local authorities and land actors to develop conflict mitigation measures.

3. Mine/ERW operators should de-prioritise tasks (when possible) or ask UNMAS for different tasks if there are indications that it is unclear who the land will be handed over to, whether it will be used post clearance or if land-related disputes are likely post clearance.

Survey

4. In addition to the land-related questions now included in the new Survey and Hazard form (which is used for Non-Technical Survey), the Mid Task Evaluation form and the Post Clearance Survey form, include a question about land ownership.
5. In the new Survey and Hazard form, include a question on past land use and expected future use once the land is released, to enable comparison against data collected through the new Post Clearance Survey form.
6. Once tasked by UNMAS, operators should use survey activities as an opportunity to check whether there is potential for land-related disputes or other land issues.

Handover procedures:

7. In conjunction with partners, NMAA/UNMAS should develop clear handover procedures and reflect them in the National Technical Standards and Guidelines (NTSG) to ensure they apply to all operators and tasks.
8. Ensure community representatives participate in handover procedures, to promote community confidence in the safety of released land as well as mitigate opportunities for land grabbing.

Post-clearance assessment

9. UNMAS/NMAA to raise the awareness of donors regarding the importance of post clearance assessment and the need for greater flexibility with funding timeframes

Information sharing and outreach:

10. NMAA, UNMAS and operators to strengthen outreach to humanitarian and development actors and communities in contaminated areas by sharing information on operations and also encourage follow up support to communities by providing complimentary assistance e.g. livelihood support, conflict mitigation, urban planning.
11. NMAA/UNMAS should continue to ensure mine action representatives participate in Protection cluster and Land Coordination Forum/Housing, Land and Property sub-cluster meetings regularly to facilitate information-sharing, promote cooperation with government authorities and humanitarian/development organisations and ensure follow up.
12. Housing, Land and Property actors should similarly improve engagement with mine action coordination bodies.
13. NMAA/UNMAS should continue to carry out systematic and regular outreach to relevant government ministries and departments at national and state levels, to continue to advocate on issues relating to mine action and promote better involvement in prioritisation.

Coordination

14. Building on cluster coordination, NMAA/UNMAS should establish and schedule an information-sharing mechanism through which land actors, and in particular the South Sudan Land Commission and CSOs/NGOs/INGOs, regularly meet with NMAA/UNMAS to

receive information of cleared areas and planned work, and to monitor for potential conflicts e.g. through the Land Coordination Forum.

15. A referral mechanism should be developed in collaboration with the South Sudan Land Commission and other actors working on land dispute resolution in order to agree modalities and responsibility for handling land disputes which arise in the course of demining work (See Appendix 3 for a proposed referral process)
16. NMAA/UNMAS when setting priorities, should appropriately reflect the existence of land disputes or uncertainties regarding ownership, use and handover which could result in land-related conflict, to promote early engagement of supporting humanitarian and development actors.

INTRODUCTION

Land use is critical to a country that has experienced decades of conflict with Sudan. The ability to return home, to a secure living environment, is a key component to those affected by conflict achieving durable solutions. In addition to trying to find land to settle over 2 million additional people who have returned from Sudan and elsewhere, South Sudan also has to address issues of the productivity of its land. In 2012, the World Food Programme questioned whether ‘arguably the most fundamental concern facing the new nation is how to feed its people?’⁶ In a country where 84% of the population is rural, yet only 4% of the land is put to agricultural use, 60% of the South Sudanese do not consume sufficient food to provide them with a nutritious diet.⁷ Social inequality, inequity and access to natural resources, including land, continue to be key drivers of conflict and insecurity for the people of South Sudan post-independence. South Sudan continues to experience high levels of displacement, due to conflict and natural disaster, as well as secondary displacement of returnees who are unable to achieve durable solutions.

Mine action has had a positive impact on land in South Sudan, returning land contaminated by mines/ERW to productive use. While land is an abundant commodity, its use is complicated by the legacy of conflict, with both GoS and SPLA responsible for laying mines across the 10 states of South Sudan. Landmines/ERW continue to affect the people of South Sudan to this day, with people critically injured and land lying dormant while it waits to be cleared.

Between 1964 and 2011, almost 5,000 people have been reported killed or injured by mines/ERW. The real figure is likely to be much higher. Mine action actors along with the GoSS, including during the Comprehensive Peace Agreement period,⁸ have cleared a total area of 1,099 km² of land and over 21,000 km of roads have been released.⁹ These efforts have had an incalculable impact in promoting the protection of the civilian population of South Sudan and allowing people to pursue livelihoods in greater security.

By taking unsafe land and returning it to productive use, mine action actors directly interact with land issues mostly to the significant benefit of the people of South Sudan. However, these activities change the accessibility and value of land. While this is generally a very positive experience, in conflict-affected contexts, particularly those with insecurity of land tenure, this can create or exacerbate land-related disputes. Therefore it is important that mine action organisations, as well as other humanitarian organisations, fully consider the implications of their operations on land issues and vice versa. Land issues have the potential to affect mine action programmes at several important stages, including priority-setting, survey, handover, and post-clearance assessment.

OBJECTIVES

The central objective of this report is to explore the inter-linkages between land and mine

⁶ VAM Food Security Analysis, ‘How a New Country Can Feed Itself,’ WFP, FAO et al, November 2012.

⁷ VAM Food Security Analysis, ‘How a New Country Can Feed Itself,’ WFP, FAO et al, November 2012.

⁸ The Comprehensive Peace Agreement (CPA) was a set of agreements between the Government of Sudan and the Sudan People’s Liberation Movement (SPLM), fighting for independence of the south of Sudan. These agreements culminated in a referendum on independence, with South Sudan acceding from Sudan in July 2011.

⁹ Lance Malin, presentation, 16th Annual National Mine Action Programme Directors Meeting, Geneva, April 2013.

action to improve interventions for the benefit of the people of South Sudan. Realising the contextual changes and efforts made by the Government and mine action actors to strengthen and improve practices; this document aims to explore positive changes made thus far and put forward concrete recommendations to address gaps. These recommendations are aimed at all mine action actors, including the government of South Sudan and the National Mine Action Authority, UN Agencies and NGOs, as well as commercial operators.

This report is structured as follows:

- Section 1 explores mine action in South Sudan, including changes since the 2010 case study published by GICHD on Landmines and Land Rights in Southern Sudan;
- Section 2 reviews land and conflict issues in South Sudan, including common forms of land-related conflict;
- Section 3 explores how land and mine action interlink with each other and reviews the approaches mine action actors have taken to address these issues;
- Section 4 outlines key land management structures, processes and legislation in order to assist mine action actors and other non-land actors.

METHODOLOGY

This report is based on research carried out in South Sudan from May-June 2013. It builds on the operational presence of Norwegian Refugee Council (NRC) in South Sudan since 2004, and GICHD's previous experience from working with mine action actors in South Sudan and elsewhere.

NRC and GICHD conducted 28 interviews with mine action and land practitioners, mine action beneficiaries and government officials. This includes semi-structured interviews and a focus group exercise on the preliminary findings of the report on 22 March, 2013. The authors shared initial drafts of the report with key stakeholders and incorporated relevant feedback.

NRC and GICHD also conducted a joint visit to a former minefield on the outskirts of Juba, formerly Battalion 107. This land was cleared in 2012, and there have been reports of violent disputes between community members over land since the clearance occurred. While this case may be atypical of the broader pattern of mine/ERW clearance, it is indicative of the potential land-related problems that can occur in mine/ERW-affected areas.

See Appendices 1 and 2 for the mission programme and the list of stakeholders the mission met with.

1. MINE ACTION IN SOUTH SUDAN

1.1. OVERVIEW OF THE MINE ACTION SECTOR

The following section provides a brief overview of the mine/ERW contamination problem in South Sudan, and the response by national and international actors.

1.1.1. MINE/ERW CONTAMINATION PROBLEM

During the decades of Sudan's civil war, landmines were used by all parties to defend their positions and to disrupt the movement and operations of opposing forces.¹⁰ Mines/ERW continue to produce many casualties, impeding, in some cases, the delivery of humanitarian assistance in parts of the country. Contamination threatens food security and agriculture, delays reconstruction and development efforts and poses risks to the safe return and reintegration of those who have been displaced.

In terms of scope, all ten of South Sudan's states have been contaminated with mines/ERW. Since 2004, a total area of 1,099 km² of land and over 21,000 km of roads have been released.¹¹ This represents an enormous commitment by the Government of South Sudan and the international community to clear these areas. The work though is yet to be completed, and mine action actors continue to deal with the remnants of conflict. At present, there are 804 known threats. While this may not appear to be a large number, the potential impact is very high. There are 572 dangerous sites, covering 173 km², including 56 mined areas and 176 suspected hazardous areas. The highest levels of contamination have been reported in Central Equatoria, Eastern Equatoria, Upper Nile and Jonglei States.¹²

The people of South Sudan pay the cost in more ways than being unable to access land. Between 1964-2011, 1,340 people were killed and 3,451 people were injured by mines/ERW. In reality, given poor infrastructure and communications to report casualties, and limited health care facilities, the number is likely to be much higher.

As well as addressing old threats, mine action actors also have to face the task of dealing with new dangers to communities in South Sudan. Re-mining and the use of cluster munitions and other explosives are always a concern in the on-going border conflict between Sudan and South Sudan.¹³ In 2011, 81% of all casualties in South Sudan were in Unity State, where there were reports of re-mining.¹⁴ The conflict between South Sudan and Sudan, and within South Sudan, results in significant displacement of populations. In Abyei, a contested area between Sudan and South Sudan, 100,000 people were displaced in June 2011 from Abyei into South Sudan.¹⁵ In

¹⁰ International Campaign to Ban Landmines (ICBL), Landmine and Cluster Munitions Monitor, Country Profile – last updated 17 December 2012.

¹¹ Lance Malin, presentation, 16th Annual National Mine Action Programme Directors Meeting, Geneva, April 2013.

¹² Office of the President and National Mine Action Authority. South Sudan National Mine Action Strategic Plan 2012-2016, Juba, February 2012.

¹³ According to the [Landmine and Cluster Munition Monitor 2013](#), the SPLA reported that new mines were laid by rebel forces in Unity state and in the areas of Khorflus and Khorwai in Jonglei state in 2013. UNMAS has not yet been able to verify these claims due to the security situation.

¹⁴ 206 casualties were reported in 2011, 167 of these occurred in Unity State.

¹⁵ More than 100,000 people were displaced following an incursion by the Sudanese Armed Forces in June 2011. Of these, between 48,000 and 65,000 people remain displaced (OCHA May 2013)

Jonglei State, a population of 120,000 have been displaced or affected as a result of conflict between the Government of South Sudan and non-state armed actors.¹⁶

These populations are forced to move between areas, where they are vulnerable to being caught in the cross-fire between armed actors, into areas which are potentially mined or are in danger of re-mining. Mine action actors are integral in supporting humanitarian assistance to these vulnerable populations, often in remote locations.

1.1.2. NATIONAL MINE ACTION PROGRAMME

Following the signing of the Comprehensive Peace Agreement (CPA) between the Government of Sudan (GoS) and the Sudan People's Liberation Movement/Army (SPLM/A) in 2005, the GoS ratified the Anti-Personnel Mine Ban Convention and established Sudan's National Mine Action Authority in 2005. This laid the basis for mine action in South Sudan to address the problems highlighted above. The CPA provided for a National Mine Action Authority of the Republic of Sudan based in Khartoum, along with a southern Sudan Regional Mine Action Centre (RMAC) based in Juba. The RMAC has since become the National Mine Action Authority (NMAA), and is responsible for coordinating, planning and monitoring all mine action activities in South Sudan.

Mine action activities are regulated by the 2011 National Technical Standards and Guidelines (NTSG). The NTSG outline the minimum standards and acceptable methods for conducting humanitarian demining in South Sudan. All mine/ERW operators are required to conform to the standards and guidelines in order to be accredited to work in South Sudan. See figure 1 below for a diagram of the demining process in South Sudan, featured in the NTSG.

South Sudan has developed a national mine action strategy (2012-2016), which represents a huge step forward in attempting to address some of the challenges in undertaking demining operations. The strategy outlines a clear plan for how South Sudan will address its mine and ERW contamination problem. Its overall purpose is to ensure that:

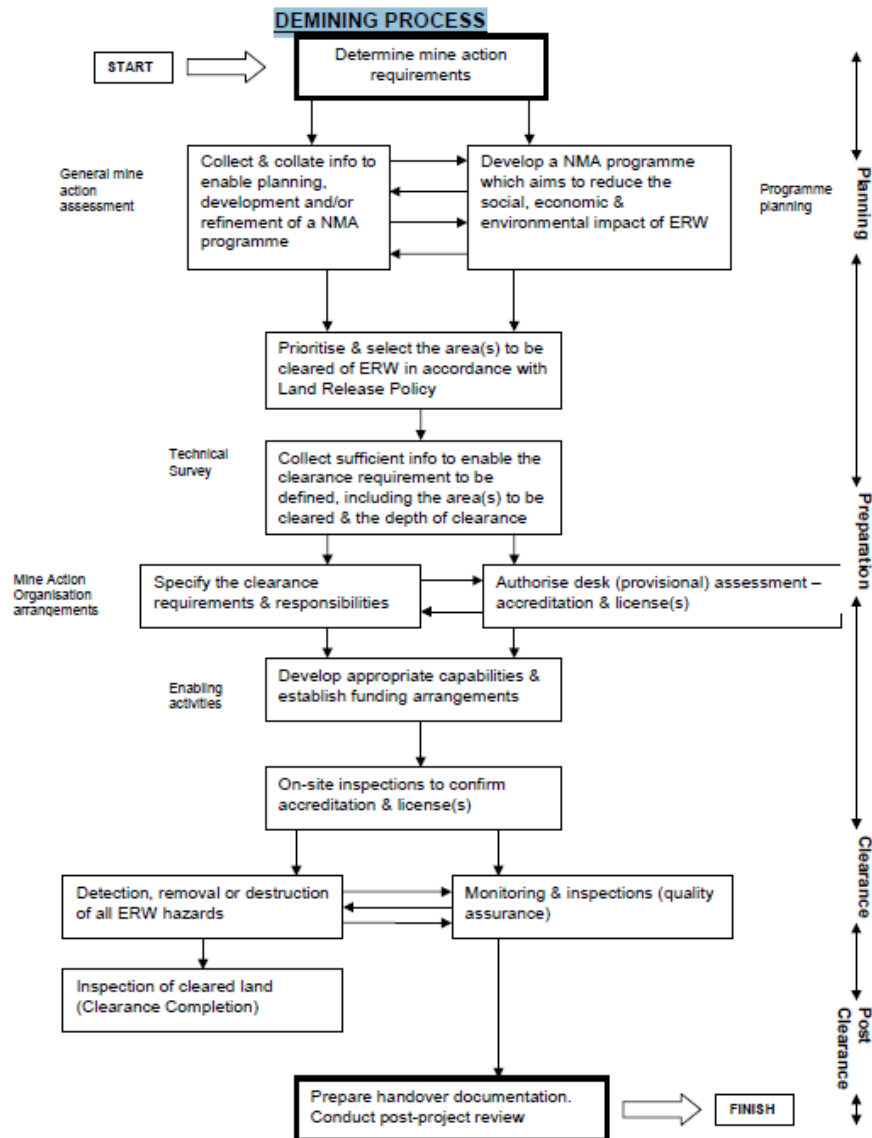
- South Sudan is in a position to comply with all international instruments related to landmines and ERW, and has the capacity to conduct and manage the national mine action programme.
- The scope and location of the landmine and ERW contamination are fully recorded, and all high impact contaminated areas are identified, prioritised, cleared and released.
- The national mine action programme actively contributes to achieving the Millennium Development Goals (MDGs), reducing poverty and increasing socio-economic development, through mainstreaming mine action activities into development programmes.¹⁷

¹⁶ Medecin San Frontieres, 'South Sudan: Hundreds Wounded, Tens Of Thousands Without Medical Care In Jonglei State,' 17 July 2013.

¹⁷ Office Of The President and National Mine Action Authority. South Sudan National Mine Action Strategic Plan 2012-2016, Juba, February 2012.

Figure 1: Demining process in South Sudan

The following flowchart, taken from the NTSG, illustrates the mine/ERW survey and clearance process in South Sudan.



There is a welcome cohort of actors available to assist the Government of South Sudan, in particular the NMAA, to fulfil this strategy. The UN Mine Action Service (UNMAS) is responsible for supporting the Government of the Republic of South Sudan in conducting demining activities and in strengthening the capacity of the NMAA to conduct mine action in accordance with International Mine Action Standards (IMAS).

UNMAS is also responsible for other coordination functions, including ensuring that mine action contributes to the achievement of the UN Development Assistance Framework and the South Sudan Development Plan (SSDP), which is an important step in linking humanitarian

assistance to long term development goals.¹⁸ It is important to note that while many actors perceive mine action to be a humanitarian task, this plan emphasises the linkages between mine action and development, and conflict reduction.¹⁹

There are nine accredited mine/ERW operators in South Sudan, five of which are NGOs: DanChurchAid, Danish Demining Group, Mines Advisory Group, NPA and SIMAS. Four commercial mine/ERW operators also conduct humanitarian mine/ERW clearance in South Sudan: G4S, Mechem, Minetech International and The Development Initiative (TDI). The United Nations Mine Action Service (UNMAS) contracts mine/ERW operators and tasks them on behalf of the NMAA.

1.2. FUNDING AND DONOR PRIORITIES

The funding for mine action is provided through various channels. In addition to the UNMAS Voluntary Trust Fund and the UN Peacekeeping Assessed Budget; the main donors to mine action in South Sudan include the United States of America, Norway, the European Union, the Netherlands and Japan. Canada, Australia, Italy, Luxembourg, Spain, Switzerland, Sweden and the United Kingdom have also contributed funding. A 2008 evaluation of EC-funded mine action in South Sudan, conducted by GICHD, noted that the approach of donor assistance was to:

- Consolidate peace and stability in the region through developing national mine action capacity, and:
- Identify and clear the most heavily contaminated areas.²⁰

Table 1. Summary of contributions to mine action in Sudan/South Sudan form 2007–2012 (USD)²¹

Year	National Contributions	International contributions	UNMIS/UNMISS ²² assessed mine action budget	UNAMID assessed mine action budget	TOTAL FUNDING
2007	6'792'139	29'201'406	39'122'908	11'263'328	86'379'781
2008	4'927'019	39'077'807	40'328'600	11'761'000	96'094'426
2009	5'000'000	25'250'222	43'015'032	10'806'650	84'071'904
2010	1'200'000	27'021'318	44'865'600	9'855'600	82'942'518
2011	1'200'000	6'049'921	42'034'669	10'286'950	59'571'540
2012		18'928'146	37'300'000		56'228'146

Despite previous high support for demining activities, 2011 saw a sharp decrease in donor funding, dropping by 29% from the previous year. International donor contributions have fallen by almost 80% since 2007. This is coupled with steadily decreasing national contributions, in part affected by the 94% drop in national revenue with the decision of the Government of South

¹⁸ Lance Malin, presentation, 16th Annual National Mine Action Programme Directors Meeting, Geneva, April 2013.

¹⁹ The plan also states that "... by encouraging cooperation among all segments of the society and by improving human security in the contaminated areas, mine action will also make important contributions to reducing social tensions and preventing conflictsOffice of the President and National Mine Action Authority. South Sudan National Mine Action Strategic Plan 2012-2016, Juba, February 2012.

²⁰ Ted Paterson, Vera Bohle, Leonie Barnes, Mohamed Ahmed & Pamela Rebelo. 2008. EC-Funded Mine Action in Africa: Volume 2 – Country Reports, GICHD. http://eeas.europa.eu/anti_landmines/docs/evaluation_ec_africa2_gichd_0308_en.pdf

²¹ ICBL-CMC, "Country Profile: Sudan: Support for Mine Action," 26 November 2013.

²² After the UN Mission in Sudan (UNMIS) ended in June 2011 as South Sudan became an independent state, the UN Mission in South Sudan (UNMISS) was created.

Sudan to switch off the oil pipelines.

As with many other sectors, mine action actors are being asked to do more with less. This includes addressing new needs in conflict-affected areas or confirmed mined areas. It is important though that mine action actors are provided support that allows for a holistic intervention which emphasises community needs and long term development as land is critical to both these questions. Mine action actors are often the first humanitarian agencies to interact with land, and fundamentally change its accessibility and value for affected communities. It is therefore important to support their engagement in land issues to get this right from the start, and reduce the potential for land-related conflict.

2. LAND RIGHTS IN SOUTH SUDAN

2.1 CONTEXT

As noted above, while the experience of mine action actors has largely been positive in terms of clearing and handing over formerly contaminated land, mine action actors continue to work in a difficult environment due to challenges relating to land rights. Current relatively smooth relationships do not guarantee that there will not be challenges in the future. This section outlines key issues relating to land rights in South Sudan and the steps taken to address them.

South Sudan is one of the world's newest nations, with an estimated population of approximately 8.26 million people in 2008.²³ Approximately 84% of its residents live in rural areas and rely on small-scale farming and animal husbandry.²⁴ The population continues to increase rapidly, due to the return of those who left the country during the civil war. It is estimated that since 2005 more than 2 million people have returned to South Sudan.²⁵

While there is technically an abundance of land to accommodate returnees, there have been significant challenges for reintegration and durable solutions, as well as providing equitable land access for the population of South Sudan in general. A major issue was the policy to encourage people to return to their original rural areas without sufficient consideration for planning and service provision. This resulted in many people gravitating to urban and peri-urban areas without regulated access to land, which has led to conflict and poor guarantees in relation to Housing, Land and Property (HLP) rights. While the new Government has attempted to regulate land use through the formal legal structure; customary law has regulated the use of land in South Sudan for centuries²⁶ and is an expression of the strong link between communities and their land. Each ethnic group applies its own customary land laws within its own geographic setting. Land therefore represents a critical resource for people in South Sudan, not only

²³ South Sudan National Bureau of Statistics (NBS) Population and Housing Census of 2008. The population of South Sudan is now estimated to be much higher than 8.26 million.

²⁴ South Sudan National Bureau of Statistics (NBS) Population and Housing Census of 2008

²⁵ Office for the Coordination of Humanitarian Affairs, 'Sudan Quarterly Update' 3rd Quarter Update 2012 reports that 2 million people have returned from Sudan into South Sudan between July 2005 and September 2012. International Organisation for Migration, 'ERS Weekly Statistical Report,' 9 August to 15 August, 2013 reports 1,925,741 people have returned from Sudan to South Sudan since 2007.

²⁶ "Dinka customary rules regulating personal property have so far developed to cover the same legal sectors as recognized in Common Law and also include general principles regulating the transfer of title to personal property (Fadlalla 2009 p.51)

because it is considered to be a means for livelihoods and basic survival, but also because it has deep cultural and socio-political dimensions, and is regarded as a place of belonging for individuals and communities.

2.1.1 LAND AND CONFLICT IN SOUTH SUDAN

Attempts to regulate land use in South Sudan should be understood within the context of historical attempts to control Sudan/South Sudan through requisition of land. The Anglo-Egyptian Land Ordinance of 1906 made all land in Sudan the property of the government, while the Land Settlement and Registration Ordinance of 1925 required that any one claiming land titles should submit a claim for settlement and registration to address issues of ownership.²⁷ These laws were ‘introduced with the aim of confiscating large areas of land for commercial farming (notably cotton production) and regulating who was able to reside in towns (in order to guarantee the security of the colonial regime).’²⁸ At this time, the laws did not have a significant impact on the land tenure system in Southern Sudan, which remained under the control of communities through their customary practices.

Post-independence in 1956, the State of Sudan did not recognise the customary land rights in the southern part of the country, and used legislation to expropriate land from communities in favour of the elite or investors. The Unregistered Land Act of 1970 provided that any land not registered in accordance with the 1925 Land Settlement and Registration Ordinance was considered to belong to the government. This enabled the Government of Sudan to strengthen its control over the Nuba Mountains and Darfur,²⁹ areas of high conflict to this day. It also enabled the construction of the Jonglei Canal in the Sudd wetlands, which diverted water to northern Sudan and provide land for oil exploration. Such unilateral decisions to exploit the natural resources of the South without any regard for local communities,³⁰ coupled with the introduction of Shari’ah law,³¹ contributed to the outbreak of the second civil war in Sudan in 1983.

A core element of the SPLM/A movement was that land belonged to communities and that the state could only be the custodian of this land.³² The South Sudanese considered land at the heart of their struggle for a New Sudan while the Government of Sudan wanted free use of land and resources located in the South. The concept of “land belongs to people” was inserted in the

²⁷ This only applied to the land on both sides of the Nile from Khartoum to the Sudanese-Egyptian border and urban centres. In “Land Tenure Issues in Southern Sudan, Key Findings and Recommendations for Southern Sudan Land Policy”, USAID, 2010 p.12

²⁸ Suleiman Rahhal and A. H. Abdel Salam (contr), (Committee of the Civil Project Issue Paper E-2 Land Rights, Natural Resources Tenure and Land Reform)

²⁹ Pantuliano, Sara. 2007. The land question: Sudan’s peace nemesis. HPG Working Paper, ODI, p. 1

³⁰ Shanmugaratnam N., Post-War Development and the Land Question in South Sudan, 2008: 4 explains why work on the Canal came to a halt in 1984 when the excavating machine was severely damaged by an attack from the SPLA. “The commencement of construction of the controversial Jonglei Canal in 1978 as a joint Sudanese-Egyptian project in collaboration with a French company posed a major threat to the livelihoods of large populations belonging to the Dinka, Shilluk, Nuer, Anuak, Murle and other communities in the South. The project was expected to drain the Sudd marshes of the White Nile at Jonglei and supply water for commercial farming downstream in N. Sudan and Egypt while converting the swamps into cultivable lands. [...] the Sudd is one of the largest tropical wetlands in the world. [...] It is a source of drinking water and fish for the local people. So it was no surprise that there was popular opposition to the Jonglei Canal project in the south.”

³¹ Under Shari’ah law ownership of all property ultimately rests with God; while individual property rights are upheld, there is a corresponding obligation to share, particularly with those in need (Sait Siraj and Lim Hilary (2006) “Land, Law and Islam. Property and Human Rights in the Muslim World”, Zed Books, London

³² Shanmugaratnam N., *ibidem* p.4

Wealth Sharing Protocol that mandated the establishment of the South(ern) Sudan Land Commission (SSLC).

While community based approaches to land tenure and rights exist, the new State is also developing a formal legal structure to regulate these issues. One of the major functions of the SSLC was to develop policies to resolve land issues at both the horizontal and vertical levels of government and with communities in Southern Sudan. In a first step towards this, the SSLC developed the Southern Sudan Land Bill, which was passed into an Act by the Southern Sudan Legislative Assembly (SSLA) in January 2009. A land policy was also drafted in 2011 following wide consultation with different stakeholders, and was approved by the South Sudan Council of Ministers in February 2013 but is yet to be approved by the parliament and therefore remains a draft policy. In the absence of a finalized Land Policy and Land Regulations, **the Land Act (2009) is the main legal framework for land-related issues in South Sudan today. (See Section 3.1)**

2.1.2 COMMON TYPES OF LAND-RELATED DISPUTES/CONFLICT

The new legislative framework was intended to complement customary systems of land management and rights. However, in South Sudan there are many examples of competing and overlapping claims to land use and rights. In addition there are overlapping /competing systems of land rights authorities and the line between these systems are unclear. Given that there are many examples of competing land claims, this is further compounded by the history of movement and displacement of populations. The following is a non-exhaustive overview of the main types of land disputes in South Sudan that the State is attempting to find mechanisms to address:

Conflicts among pastoralist groups and between pastoralists and agriculturalists: The movement of herds in search of water and grazing land, the availability of which varies from place to place seasonally, can result in conflict among pastoralist groups, and between pastoralists and agriculturalists. Farmers complain that pastoralists destroy their crops by moving animals through cultivated areas, while pastoralists complain about farmers expanding into areas traditionally used for grazing or transit. It is important to understand, from a land rights perspective, that pastoralists can also have ancestral secondary rights to the land they travel through as well as in relation to that they use for water usage and grazing. This needs to be taken into account when we consider competing and overlapping rights by different groups over the same land. The increased urbanisation of South Sudan, including efforts to industrialise agriculture, is likely to increase this type of conflict.

Access to water points by communities: Access to limited resources, such as water, especially in rural areas, generates conflicts between communities. This creates tension for example between returnee populations from Sudan and other neighbouring countries, and the host communities in which they settle as the host communities' resources are stretched and they are being excluded from assistance. Over-extraction of resources remains an issue in managing community relationships over 'communal' land.³³

³³ Communal or collective land tenure is "rights held jointly by a group of people generally on the basis of on-going use such as cultivation, clearance or access (i.e. each member of the community may use the land and resources of the community). Members from other communities may be excluded. For definitions on types of land tenure

Disagreements regarding boundaries: Without clear demarcation and land documentation, it is difficult to establish boundaries between different communities' lands and also between individuals within communities.

Conflict between communities and government over land allocation/use in urban and peri-urban areas: Urban development and sprawl is creating tension between rural and urban communities, and between communities and the authorities, particularly due to the lack of clarity in terms of land tenure systems and the power of relevant authorities in governing those systems. Under the Land Act, 2009, it is stated that all land in South Sudan is owned collectively by the people of South Sudan and its usage is regulated by the government. The government is required to consult with communities in a number of circumstances, for instance, where community land is to be expropriated (Section 74 Land Act, 2009); however, there have been many instances where this has not happened, resulting in mistrust on the part of communities, in particular in relation to land issues. This often results in a stalemate situation where the government want to regulate the use of land, for example, through expropriation in the public interest (this might happen, for instance, in order that land can be secured for returnees) but there can be no progress as communities will not agree to the authorities' requests.

Conflict between communities and returnees in urban/peri-urban areas: The return of those displaced as a consequence of the conflict has placed a pressure on urban and peri-urban land, with many returnees preferring to live in urban areas having returned from urban areas such as Khartoum. The tension/conflict is further exacerbated if persons returning to urban areas are from a different tribe or ethnic groups than those originally living there.

Occupation of abandoned property by IDPs or other people: Returnees coming back to South Sudan after the civil war find their land occupied by other individuals, IDPs or other members of the community. Due to the absence of land documents, returnees often face difficulties in establishing claims to land with those who remained or who have occupied land claiming custodianship. This can also be exacerbated by the lack of records for demarcated land where they may previously have existed but have since been damaged, destroyed or lost during conflict and displacement.

Plots occupied by the military or other powerful members of the community: In some cases land is forcibly occupied by soldiers or former combatants, and residents are obliged to leave their land. Even if in possession of land documents, there is limited chance to re-claim their land or receive compensation.

Multiple issuing of leases or registration for a single plot: During the war and after the signing of the CPA with urban planning (primarily in Juba), land titles were issued out to different individuals without taking into account the existence of a previous owners with title, who may have been displaced. Pre-war owners find it difficult to claim these plots especially because in many cases they lack appropriate documentation to support their claims. Alternatively the land

(private; communal or collective; open access; and state or public) see: Norwegian Refugee Council, 'Training Manual on Housing Land and Property,' March 2013, p.17.

may be registered under several people's names. A further problem may lie in that in some communities, people were entrusted to stay and care for plots while the legitimate owner left and upon the owner's return those entrusted with the plot claim legitimate ownership.

2.2. WHAT IS THE CONNECTION BETWEEN MINE ACTION AND LAND ISSUES?

The following section of this report seeks to: link together information on land rights and mine action, as perceived and identified by mine action actors; capture progress made by mine action actors in meeting the recommendations outlined in the 2010 GICHD report; and promote the incorporation of land issues in mine action operations. It is based on qualitative research with mine action and land actors on issues arising from mine action.

2.2.1 PERCEPTIONS AND CHALLENGES

Perceptions vary among mine action organisations in South Sudan on whether land rights and land-related conflict are major issues in mine/ERW-affected areas. Interviews with key mine action stakeholders identified several differences of opinion on the level of conflict, the role of mine action actors and whether a 'do no harm' approach is warranted.

One clear perception is that South Sudan is a different operating environment than other heavily mine/ERW- contaminated countries e.g. those in South East Asia. As South Sudan does not have the same pressure on available land, some mine action actors noted that they did not experience the same scale of issues evident in other countries, and therefore land conflict was not a significant issue.

Despite this, many mine action actors felt that they were responsible for assessing the potential implications of their operations and taking steps to ensure they do not have a negative impact on the population/communities living in areas where their activities are implemented. While some actors did not feel that it was their mandate to address local issues beyond identifying, removing and destroying mines/ERW, it is a positive step that some actors have incorporated processes to address land issues despite the perception that this is not a significant issue in South Sudan. This approach to operations has better prepared these actors for addressing potential land disputes in the future.

While the majority of mine/ERW operators have stated that they typically do not come across land-related issues during the course of their operations (i.e. survey, MRE, EOD spot tasks, clearance) in South Sudan, there are a few illustrative examples which demonstrates the potential for land-related conflict. Each example illustrates that simple mitigation efforts, such as incorporating a land perspective, could have helped prevent or address these issues.

Clearance along the South Sudan-Uganda border: The need for community involvement

Between January and August 2012, one operator in South Sudan was involved in an activity to clear land bordering South Sudan and Uganda (Kimba Payam) in a disputed area between the two countries. This was coordinated with Uganda's Office of the Prime Minister and the Ugandan Mine Action Centre (UMAC). The UMAC requested a technical survey and clearance using two MineWolf machines and with support from a quality assurance team based in Uganda. When mechanical clearance of the areas was completed in August 2012, the NGO operator was involved in marking the land with pickets to prepare for the inspection of the

cleared land by the UMAC. However, community members on the South Sudanese side, when seeing the NGO operator marking the perimeter, assumed that the land was going to be handed over to the Ugandans. This resulted in a dispute.

The NMAA in South Sudan intervened, establishing a dialogue with the Governor of Eastern Equatoria and the County Commissioner in Morobo and obtained permission for the NGO operator to proceed. A Senior Superintendent of the Uganda Police Force visited the site, discussing the challenge with the District Chairman, and liaising with the Uganda People's Defence Force local military units. The Governor advised that the handover to the community of the cleared land be postponed until the demarcation was completed by both sides. By March 2013, the area had not been officially handed-over to the communities and the dispute remained unresolved.

According to the NMAA, a different approach could have helped prevent the dispute from occurring. For example, the NGO operator, the NMAA and the UMAC could have informed the communities on both sides of the border before clearance took place about the clearance process and the objectives, and to reassure them that it would not result in land grabbing. They also could have clarified beforehand to whom the land would be handed-over. The sensitisation and hand over processes did not appear relevant to UMAC before the operations commenced mainly because the map of the area put the disputed land clearly on the Ugandan side of the borders.

Clearance along the South Sudan-DRC border: The importance of community liaison and handover

A commercial operator was tasked in early 2012 to clear an area along the South Sudan border with the Democratic Republic of Congo. The Congolese authorities were alerted as they received reports about illegal military or para-military South Sudanese activities taking place in the border area, which is a contested area. The misunderstanding was believed to have originated due to the colour of the uniforms worn by the operator which was similar to those worn by the SPLA. The mine/ERW operator was forced to leave the site and moved to Morobo County in Western Equatoria State to conduct clearance while waiting for NMAA/UNMAS to resolve this issue with the Congolese authorities. Once NMAA/UNMAS informed the Congolese authorities about the clearance operation, the operator was allowed to finish its task in the area. The area was handed over by the operator to the NMAA and the NMAA handed it over to the community with no handover ceremony after clearance. Issues over the contested border between the two countries still remain. Informing the communities in advance about the role and activities of the mine action operator could have helped to dispel confusion. Similarly, a clear and transparent handover ceremony could have promoted community awareness and confidence on both sides of the border that the land is safe.

Lanya county: The importance of post-clearance assessment

In 2011, one NGO operator was tasked to clear an area of land in Lanya county, Central Equatoria State, following a mine accident that resulted in a fatality. While conducting Task Impact Assessment, the NGO operator's pre-clearance assessment survey team asked about how the land would be used post clearance. The Lanya County Authorities indicated that the

land would be allocated to local communities and that they were in the process of developing an urban plan to demarcate plots of land for use by local communities. The NGO operator proceeded to clear the area using mechanical assets. The entire operation lasted one year. Given that the land lay within Lanya town, the NGO operator had full expectations that it would be used productively, as indicated by the authorities. However, once clearance was complete, the NGO operator found the land was not being used as a dispute had arisen between the local community over the County authorities' decision to gazette a larger portion of the land than had been agreed with the community. (The process of gazetting land involves the division into plots and registration of land by individuals allocated the plots). Following clearance, the value of the land increased significantly. The County authorities offered a compensation package that was not satisfactory to the community. The dispute remained unresolved and the land unused as of May 2013. The facts in this case suggest that the State authorities did not meet the commitments made to the local community to allocate land to them post clearance. While the operator, through its pre-task assessment, may not have foreseen the dispute which occurred post clearance, asking questions of both the County authorities and the community (but not just the chiefs of the community) about land ownership and land use post clearance could have revealed potential problems and conducting a post clearance assessment could have identified that the community was encountering problems. While it would not be the role of the mine/ERW operator to follow up cases of this nature, which could potentially be quite a lengthy process, operator could pass on information about land-related problems in mine/ERW-affected areas to land-related authorities and/or relevant NGO/Community Based Organisations (CBOs) for immediate follow-up.

Kemuri Luri (near former battalion 107), Munuki Payam (Juba outskirts): The importance of dispute resolution

Prior to the CPA, the main road between Kemuri Luri in Munuki payam was the base for the auxiliary police. During the war, Battalion 107 of the Sudanese Armed Forces (SAF) took control of the area and established barracks. The army later moved to its main barracks but some of the soldiers' families stayed in the old barracks. Following the CPA, the new government of South Sudan brought in the Presidential Guard, which started to set-up tukuls in the area. The Sudan Armed Forces (SAF), (who were part of the Joint Integrated Units comprised of the SAF and SPLA) bought tukuls from them and the army withdrew. Individual soldiers started to encroach into nearby villages starting in 2006, taking advantage of their position to acquire plots for their own personal gain, sometimes, with force. This became a lucrative business – grabbing land to sell it for profit.

A high profile political figure who received land in this area from the community leaders before the CPA, started work on his land with the stated purpose of building an orphanage and a school. During the work, a landmine exploded, killing one of his workers. UNMAS received a request for clearance and tasked mine/ERW operators to conduct non-technical survey and clearance of the land.

The non-technical survey conducted by one of the mine action operators revealed that there were additional landmines in the areas and, for this reason, the NMAA/UNMAS extended the task of the mine action operator to cover this area; however, when the operator started clearance activities in the area, the communities residing on the land refused clearance, partly

due to fears that the land would be grabbed from them post-clearance. They also feared that the machines used by the mine/ERW operator would destroy all the trees on the land.

The mine/ERW operator proceeded clearing the land of the high profile political figure as initially tasked by the NMAA/UNMAS. Once it finished the task, it handed the land over to the NMAA/UNMAS. No land-related problems were identified during the clearance. The community accepted having the operator work on the land during an eight week period. Problems over the land started after clearance when some community members, allegedly from the same tribe as the high profile political figure, settled in the area and started grabbing cleared land, sometimes using force. This resulted in up to seven deaths post-clearance, some as recent as January 2013.

While the high profile political figure renounced a claim to the land and has left the area, the communities residing there are unable to divide the land and allocate plots because past attempts have resulted in disputes and violence, and the postponement of the allocation of plots. According to NMAA and UNMAS, a proper handover ceremony/procedure following clearance was not conducted. Some mine action operators highlighted that, if questions had been asked during NTS about land use and ownership pre- and post-clearance, the task might have been treated differently given the high potential for land-related disputes.

The challenge of this particular case is that issues over land and killings happened right after clearance, but no signs of conflict had been detected before. Even if the post clearance assessment was conducted, this could not help in preventing the conflicts or in detecting them, since post clearance assessments are normally conducted six to twelve months after clearance and the disputes and killings over the land happened soon after the clearance. However, the land conflict would have been identified in the post clearance assessment, and this information could have been referred to the relevant land authorities and NGOs/CBOs for urgent follow up, if they had not yet been informed. See Appendix 3 for a proposed referral mechanism which mine action organisations could use if/when they come across land-related issues.

Unused land post clearance: Terekeka County, Tindilo payam: Potential land use and prioritisation

A commercial operator was first tasked to clear an area in Tindilo Payam, Terekeka County in 2011. The organisation was subsequently tasked to clear additional areas in the same payam in 2012 and 2013. Following clearance, the operator showed the elders in the village the exact perimeters of the cleared area, and the NMAA and the commercial operator informed them of what to do if anyone in the community found any dangerous items in future. After clearing a total of 271, 000 sq. m. between 2011 and 2013, the operator was disappointed to find that the land remained unused, despite clearance having resulted in safe, easily cultivatable land. As the operator was not tasked to undertake post clearance assessment, it remains unclear as to why the land has not been used.

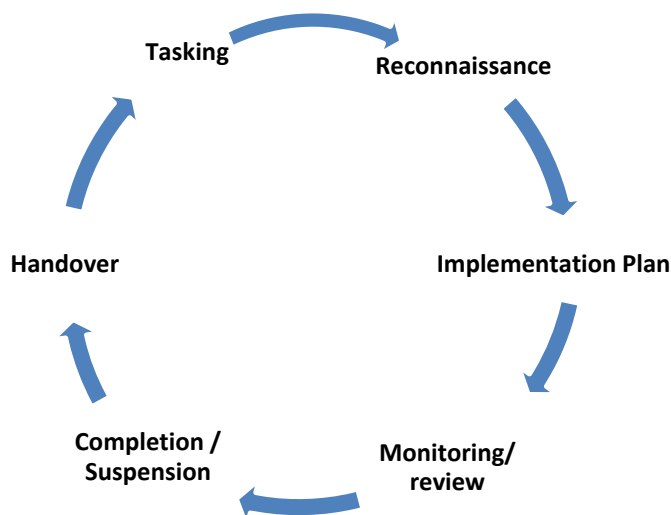
The question of whether addressing post clearance land use and land issues fall within the mandate of mine action organisations may relate to the overall values and missions of specific mine/ERW operators. NGO operators typically differ from commercial operators in this regard, and are generally more interested in the developmental outcomes resulting from mine action, such as improved livelihoods and secure land tenure, and ensuring that mine action operations do not result in unintended negative consequences. Some take practical steps to try and ensure

that their operations facilitate development. For example, one NGO operator is involved in community liaison, baseline assessment and post clearance impact assessment. This includes asking community members about land ownership, post clearance land use and the likelihood of land-related disputes. This operator stated that if their team encounters a dispute over land, they first consult local authorities and potentially conflicting segments of the community to see if agreement can be reached at the local level, witnessed by local authorities. If not, and in the absence of a referral mechanism to deal with land disputes, they would ask UNMAS for a different task, to mitigate the potential for clearance operations to unintentionally exacerbate land-related conflict.

It is also welcome that there is interest among some commercial operators in post clearance land use and prevention of land-related conflict. Some commercial operators openly discussed and shared examples where land issues have come up in their past tasks. For example, some cited instances where cleared land has remained unused, which raises questions about why these tasks were prioritised over others and whether beneficiaries are encountering problems using cleared land.

There are clearly positive examples of mine action actors incorporating sensitivity to land conflict within their approaches but there is a lack of standardised approach to these issues. Ultimately, NMAA/UNMAS should ensure that all operators take steps to ensure their operations do not create or contribute to land-related conflict, and try to facilitate opportunities for post clearance land use.

Figure 3: Life cycle of a task, South Sudan mine action programme (NTSG, Edition 1, Version 1)



2.2.3. SURVEY AND POST CLEARANCE ASSESSMENT

Asking land-related questions before commencing clearance operations in a community could help to prevent/minimise disputes and other potential problems post-clearance. In South

Sudan, over 70% of Non-Technical Survey tasks are conducted by commercial operators. In mid-2013, NMAA/UNMAS developed a new Survey and Hazard form³⁴ which is now used at the beginning of each project task, and to generate new tasks. The form is used as a baseline economic assessment of an area, and now includes basic land-related questions such as the value of contaminated land and whether there have been any disputes over the land. All operators conducting non-technical survey are required to use this form.

There are also good working examples of agencies that have voluntarily incorporated land questions into their assessments in South Sudan. Since March 2011, one NGO operator has included land-specific questions in its baseline assessment and impact assessment forms. The NGO's staff facilitate focus group discussions³⁵ and community consultations based on the questions in the forms, to understand who will benefit from clearance and why, and ensure there is consensus about post clearance land use with local leaders. While ideally mine action actors should gather this information themselves, if they do not have the capacity to ask land-related questions, they could partner with (or refer to) organisations that have the relevant expertise.

Post clearance assessments can be used by mine action actors to: determine the real benefits that result from clearance; ensure that cleared land was used as originally intended; identify problems that communities may have in using cleared land productively e.g. land grab, disputes over use/ownership, lack of development support, etc; and strengthen accountability to communities, mine-affected states and donors in terms of reporting on development outcomes and the proper use of funds³⁶.

At the time of March 2013 mission, post clearance was not a requirement in the NTSG and it was only carried out by some operators. Interviews reported a variation in methodology. For example:

- 1) Agency 1: NGO conducts post clearance assessments 6-12 months after clearance, using a sampling of beneficiary households. The assessment forms include questions about land use, ownership and land-related disputes. Although there is a 6-12 month window post-handover of released land within which impact assessment needs to be implemented donor funding timeframes were flagged as affecting the ability and resources to conduct impact assessments. As a result, the NGO is looking into the possibility of trying to negotiate greater flexibility with its donors for this purpose.
- 2) Agency 2: For the same reason another agency reports that impact assessment is carried out immediately once the Explosive Ordinance Disposal spot task is complete as opposed to waiting 6-12 months. They acknowledge that this does not allow sufficient time to measure the medium to longer term impact of the Explosive Ordinance Disposal tasks. As with the

³⁴ See Appendix 4 for the new Survey and Hazard form.

³⁵ Focus groups consist of participants representative of the demographics that constitute the community e.g. different genders, ages, classes, tribes and local leaders.

³⁶ GICHD. Linking Mine Action and Development: Guidelines for Mine/ERW Operators – Guidelines for Policy and Programme Development. November 2009. http://www.gichd.org/fileadmin/pdf/ma_development/Guidelines/Guidelines-LMAD-Operators-Feb2010.pdf

agency above, institutional impact monitoring approaches have been adjusted to explore long term assessments.

- 3) Agency 3: A third agency conducts non-technical survey and Explosive Ordnance Disposal (EOD) spot tasks but not post-clearance assessments. Their non-technical survey questionnaire asks about land ownership and projected impact/land use, and once EOD tasks are completed, their survey teams ask about projected impact. They do not, however, return and conduct an impact assessment.

As with the use of non-technical survey, the lack of uniform approach to post-clearance assessment undermines the potential to contribute to discussions on how priorities are set for survey/clearance, in particular the criteria to be used to make decisions about priority tasks, and who provides input, if land use is not assessed.³⁷

A recent and positive development is the decision by UNMAS to develop an impact monitoring system, which was put in place in mid-2013 for the start of the clearance season. NMAA/UNMAS introduced a new post-clearance survey form in mid-2013 which they will use to conduct post clearance assessment 3-6 months after land is released. Post clearance assessment will be conducted on a sample of 10-20% of tasks. The questions included in the form are intended to measure the broader socio-economic impact of mine action and assess whether the cleared land/area has been put to use by the local community following land release. The system will reinforce UNMAS' broader objective of ensuring that mine action activities do not unintentionally cause harm in communities where clearance tasks are being undertaken.

One NGO noted land management as an important lesson learnt from impact assessment studies implemented in their South Sudan programme in 2008, particularly given the context of tenure insecurity and lack of transparency which characterise the land governance system in South Sudan. This is aggravated by the return of South Sudanese who left the country during the civil war and who claim restitution of their land. The NGO's community liaison teams try to get consensus from the community on how land will be used post clearance and to check if there are any potential conflicts of interest that could escalate to a dispute, or if the community is likely to experience problems post clearance. This is typically done by organising separate focus group discussions with the authorities, women and youth. The NGO's community liaison staff have in some instances played a facilitation role - for example with regards to discussing how land will be partitioned into plots post clearance, and encouraging community members to think through how they will use the cleared land. This has helped to flag areas where development support may be required.

2.2.2. PRIORITY-SETTING

Priority setting was a clearly identified challenge for mine action actors. In South Sudan, UNMAS, with input from the NMAA, is responsible for priority-setting and tasking operators. UNMAS maintains that it is difficult to get good quality data on the extent of mine/ERW

³⁷ Alongside tasking by UNMAS/NMAA, some organisations like MAG have their own assessment of needs in the field and can request UNMAS to assign a particular task. This makes the process a bit more community driven.

contamination. Despite efforts to obtain input from humanitarian actors and national authorities about clearance priorities, UNMAS states that it typically receives limited input, including from State-level authorities. For example, in 2012, out of the 10 state governors consulted, only two provided their priorities to UNMAS, and when organising a meeting with key government ministries only the Ministry of Wildlife participated. As a result, UNMAS and NMAA set priorities based on the limited information at hand (eg tasks, logistics, security implications, humanitarian impact, and seasonal factors). UNMAS regularly consults all humanitarian partners through a prioritisation process that takes place every summer, where relevant actors in South Sudan are requested to submit their priority tasking list to UNMAS following a consultative process. Unfortunately, in past years UNMAS reports very little feedback has been received through this process.

UNMAS also receives information through the UN country support bases, and different UN agencies and NGOs typically provide information about priority areas. UNMAS is currently part of the Protection Cluster as mine action sub-cluster lead, the Inter Sector Working Group, as well as part of relevant UN coordination mechanisms. Through these mechanisms, different agencies make sporadic requests to UNMAS to clear particular areas, for example to clear ERW in proximity to refugee camps or route verification in support of humanitarian aid delivery. These requests are considered as part of the priority-setting process. While the main concern driving priority-setting in the past was the need to facilitate access for peacekeepers and humanitarian agencies, UNMAS maintains that the focus is now shifting towards support for reconstruction and development efforts.

In addition to the factors mentioned above, there is no consistency in understanding the extent to which the priority setting process takes the following criteria into account:

- Potential value of contaminated or blocked land and other assets;
- Likelihood that the cleared or unblocked land/assets will be used productively;
- Likelihood that humanitarian/development actors will assist affected communities in using the land productively;
- Likelihood that land-related conflict will take place during survey/clearance or once land has been handed over

2.2.4. HANDOVER

Handover is an important part of the land release process, signalling to communities that land has been returned for safe use. Formal handover ceremonies were previously a typical occurrence in South Sudan, though this was left to the discretion of mine/ERW operators. This involved a ceremony with the local chief, community members, the NMAA and the operator to explain that clearance is complete, that land is safe to use and to formally hand it back to the local authorities/land owners. Handover in South Sudan typically involves the following steps though this may differ according to the operator and type of task involved:

1. Prior to handover, areas are surveyed and marked by the operator, and external Quality Assurance and Quality Control is conducted by NMAA and UNMAS, according to the NTSG and each operator's Standard Operating Procedures (SOPs). If satisfied, the NMAA/UNMAS recommend to the local authorities to accept the handover documentation provided by the operator.

2. The operator then informs the chief/local authority that the area has been cleared. Some operators also organise community exit meetings with the wider community to explain that the area is safe.
3. The local chief is responsible for informing the rest of the community that the land is safe and available to use but the extent to which this happens varies and there is no procedure in place to verify that it does.
4. The handover documentation is signed by the local chief (or local authority if in an urban/peri-urban area), operator and the NMAA/UNMAS and the chief typically keeps a copy of the documentation. If the area is cleared for a public infrastructure project, then the operators sign the handover documents with the relevant government authorities, eg Ministry of Roads.
5. Communities receive handover certificates and completion reports with details on the area(s) cleared, clearance methods, type of items discovered (and destroyed) during the clearance. The polygon of the cleared areas are shown to the community representatives as well.

Despite the sequence of steps listed above, the NTSG only make limited reference to handover. For example:

- Chapter 18, section 13.2 of the NTSG (Part 1, Edition 1, Version 1) covers post clearance procedures and stipulates that “[p]rior to the handover of cleared land, the area shall be surveyed and marked, and all necessary documentation shall be prepared, including a formal handover certificate.”
- Chapter 20, section 11.2 of the NTSG on external QA/QC states that “NMAA/UNMACSS [NMAA/UNMAS] shall implement an external quality management system to satisfy its own need to ensure that approved processes are followed, since it is responsible for recommending to the local authorities to accept Handover/Completion Certificates when they are submitted by mine action organisations.”

The NTSG also stipulate that upon completion of a clearance task, UNMAS provides a handover and declaration certificate to the State authority (NMAA) who is then expected to present the certificate to the local community.

The lack of clear and standardised handover procedures can have direct negative implications for land issues post clearance.³⁸ For example, if it is unclear who the cleared land will be handed over to, this risks the potential of land grabbing or disputes over land ownership/use. It is also unclear to what extent community participation in the handover process takes place, and the extent to which the wider community is made aware through local authorities/leaders that land is safe to use.

³⁸ For a more detailed examination of handover procedures, please see the report published in 2013 by the Gender and Mine Action Programme (GMAP) and GICHD, Handover of released land: Common procedures and good practices. <http://www.gichd.org/fileadmin/pdf/publications/Handover-of-released-land-2013.pdf>

2.2.5. INFORMATION-SHARING AND OUTREACH TO HUMANITARIAN/DEVELOPMENT ACTORS

Since the GICHD's 2010 report, **significant steps have been taken by mine action actors in reaching out to the wider humanitarian community.** For example, mine action operators in South Sudan (commercial and NGO), together with the NMAA and UNMAS, meet once a month to discuss operational issues. In addition, coordination issues are discussed between all mine action partners in the context of the mine action sub-cluster meeting regularly (this includes the NMAA). UNMAS and Handicap International represent the mine action sub-cluster every two weeks during the Protection Cluster meeting and the Inter-Sector Working Group. All of the above are important information-sharing mechanisms. In addition, all available mine action related information is shared with humanitarian and development actors to provide relevant information about the the threat of mines/ERW, mine action achievements, accidents and victims.

This said, those surveyed supported a more systematic outreach and coordination with humanitarian and development actors. This would help to ensure that mine action operations not only focus on efficiency targets, i.e. achieving the maximum number of km² cleared, but also facilitate post clearance land use and the achievement of broader developmental outcomes.

Although UNMAS and some operators have made efforts to coordinate clearance with humanitarian and development actors, and ask for input on clearance priorities, the results have been mixed. Challenges cited include different donor funding channels and project timeframes, limited direct links and changing assistance priorities. While UNMAS is responsible for overall coordination and outreach, some operators share information and try to establish direct links with humanitarian/development actors as a means of facilitating post-clearance land use. There are examples of coordination at different levels which are positive examples:

- One mine action actor meets with the Ministry of Agriculture to discuss how to coordinate agricultural extension services with the provision of Mine Risk Education in an effort to ensure cleared land is used productively and avoid situations where communities do not have the training, seeds, tools, etc. required to use cleared land productively.
- UNMAS and mine action partners regularly participate in protection cluster meetings and cluster coordination meetings to inform humanitarian/development actors about mine/ERW-affected areas in need of assistance and which areas are cleared and safe.

One mine actor is in the process of trying to strengthen coordination with its own humanitarian arm, and is planning a pilot integrated mine action/livelihoods programme.

3. LAND MANAGEMENT IN SOUTH SUDAN

Building on the above, this section provides an overview of relevant land management and systems in South Sudan. Its purpose is to assist mine action actors and others dealing with land issues to better understand the overall framework for land management in South Sudan, including key pieces of legislation, institutions and actors who can provide support on issues relating to land rights. The Government's interpretation of these components of legislation will affect how they interact with issues such as the prioritisation of land for clearances, linkages

with communities and land tenure. It is important therefore that actors are aware of both the strengths and limitations of these legislative and management frameworks.

According to the Land Act of 2009, there are three broad types of land tenure in South Sudan: public, private and community. Under the Land Act, it is stated that: ‘All land in Southern Sudan is owned by the people of Southern Sudan and its usage shall be regulated by the Government’ (Section 7(1)). It is further stated that public land is ‘owned collectively by all the people of Southern Sudan and held in trust by the appropriate level of government’. (Section 10(1)). Under the Transitional Constitution of South Sudan it is stated that public land shall include ‘all land owned, held or otherwise acquired by any level of government as defined by law’ (Article 171 (3)). . Private land is owned by individuals typically in freehold (full-fledged ownership) or leasehold (for a specified duration of time). Community land is held jointly by the ‘communities identified on the basis of ethnicity, residence or interest’ (Section 11(1) Land Act, 2009) and traditional authorities within these communities, such as community chiefs, leaders or kings ‘may allocate customary land rights for residential, agricultural, forestry and grazing purposes’. (Section 15, Land Act, 2009)

There are four principal ways of accessing land under customary law: allocation, inheritance, gift, and purchase (or exchange of cows or other livestock). Rules for access and use of communal land are established by customary law and administered, interpreted and enforced by community leaders to protect the land from outsiders and secure the rights of individuals in the community to access and use the land. Although customary procedures vary from tribe to tribe, land tenure is largely uniform. Land is considered common property with no individual ownership and usufruct rights³⁹ passed down through generations. Chiefs are supposed to regulate the use of land to ensure that it conforms to the common good and to prevent conflicts over land.⁴⁰ Members of the community have the right to use the land for their livelihoods, usually either for farming or cattle rearing. The community retains control of land and resources meant for common use such as water holes and cattle camps.

The sub-sections below provide an overview of the main bodies of law regulating land rights in South Sudan: the Land Act 2009, South Sudan Transitional Constitution 2011 and the Draft Land Policy 2013 which has been passed by the Council of Ministers. The principles of these laws/ draft laws should be considered by actors whose activities relate to land rights issues.

3.1 LEGAL FRAMEWORK FOR LAND

3.1.1 THE LAND ACT 2009

In an attempt to solve issues related to land tenure and property rights in South Sudan, the Southern Sudan Land Commission developed the Southern Sudan Land Bill, which was passed as an Act by the Southern Sudan Legislative Assembly in January 2009. The Land Act classifies land as public, private and communal, and recognises customary, freehold and leasehold tenure systems. Section (S.) 7 assigns to “[c]ustomary land rights [...] equal force and effect in law with freehold or leasehold rights”. It also reinforces the rights of traditional authorities “within a

³⁹ Usufruct rights refer to the right of use and enjoyment of a property (land or resources) that belong to another, including public and community owned land. A person may derive profit from the use but cannot gain legal title.

⁴⁰ NRC report on Customary Law on Land in South Sudan, 2013.

specific community” to “allocate customary land rights for residential, agricultural, forestry, and grazing purposes” (S. 15 (1)) based on community consultation. It includes provisions for the registration of communal land, and sets broad parameters for defining community land.⁴¹ Most importantly, S. 63 of the Land Act requires the government to consult with concerned communities and to take their views into consideration on decisions related to the use of community land by investors. In addition, S. 67 recognises the right of pastoralists over land, stating that: “[N]o person shall without permission [...] carry out any activity on the communal grazing land which may prevent or restrict the residents of the traditional communities concerned from exercising their grazing rights”⁴².

As indicated previously, Section 10 of the Land Act defines public land as land “owned collectively by all people of Southern Sudan and held in trust by the appropriate level of government” and reaffirms the Government’s principle of custodianship and management of natural resources (S. 6 (6)), recognising, in S. 6 (7), the right of “communities and persons enjoying rights in land” to be consulted “in decisions to develop subterranean natural resources” and to “share in the benefits of that development”. The Act also includes provisions for the exercise of the “eminent domain” of the government for purposes of public interests (Chapter XII) establishing basic principles for expropriation procedures (S. 74) and compensation (S.75) for affected communities or individuals.

The Land Act affirms the right of IDPs and returnees displaced as a consequence of the civil war to claim the land lost “after an involuntary displacement as a result of the civil war starting from May 16, 1983” (S. 78 (1)), “regardless of whether the right in land referred to was taken over by an individual or the government” (S. 78(2)).

Despite these provisions, it is important to note that the Land Act has several shortcomings. Firstly, it was created in the absence of a land policy to instruct its implementation. This has resulted in a lack of common awareness of the provisions of the legislation between different layers of government and traditional authorities. In addition to the lack of an accompanying land policy, the necessary subsidiary laws and regulations to enable the full enforcement of its provisions are lacking. While these have been drafted, they have yet to be approved.

The law has also not sufficiently incorporated protective mechanisms for vulnerable populations, including women, returnees and IDPs (particularly on the issues of resettlement and restitution of land and property). Lack of procedures for surveying and acquiring land can result in conflict over land if other actors do not recognise or respect land rights. Similarly, it is not clear on distinguishing between communal rights and individual rights over land—particularly in urban and peri-urban areas. Gaps in legislation make vulnerable communities and individuals largely dependent upon customary systems of land governance, with clarity

⁴¹ According to S. 11(2) community land includes:

- (a) Land lawfully registered in the name of group representatives under section 57 of this Act or any other law for the time being in force;
- (b) Land lawfully held, managed or used by specific community as community forests, cultivation, grazing areas, shrines and any other purposes recognized by Law;
- (c) Land lawfully transferred to a specific community by any process of law; and
- (d) Any other land declared to be community land by law.

⁴² S. 67(2)

regarding the overlap between customary and statutory systems lacking.

3.1.2. THE SOUTH SUDAN TRANSITIONAL CONSTITUTION (2011)

The South Sudan Transitional Constitution (TCSS) of 2011 affirms the principles enshrined in the Land Act, recognising customary land rights and calling for their incorporation in the legal framework.⁴³ At the same time, the TCSS brings an important change to the concept of “land belongs to people”. In shifting land tenure to the government, it states that public land shall include “all land which are not otherwise classified as community or private”.⁴⁴ This shift can create tensions with communities and legalise land grabbing by government officials for economic purposes. It also exposes pastoral land and land used for shifting cultivation which might appear unoccupied to abuse.

3.1.3 THE DRAFT LAND POLICY (2013)

The policy seeks to promote the “security of property rights to the greatest number of South Sudanese, regardless of their social or economic status”⁴⁵. It includes provisions aimed at supporting communities by recommending “greater statutory protection for land held under customary tenure arrangements through enactment of a Community Land Act”⁴⁶. It also specifically identifies the risks associated with “land grabbing,” which it defines as “the acquisition of land without regard for the interests of existing land rights holders”.

The draft policy promotes the efficient and transparent operation of land markets, subject to appropriate forms of public oversight and regulation, in urban and rural areas. It also seeks to facilitate the return of IDPs and refugees to communities from which they were displaced during the civil war, due to natural disaster, or to where ever appropriate. It encourages the sustainable management of land-based resources used in common and the orderly growth of towns and urban areas, through strengthened urban planning laws and capacity. It also recognises the important role of independent civil society in representing citizens with land-related grievances and in educating citizens on how to better secure their land and property rights.

The draft land policy outlines several priorities for strengthening land governance in South Sudan, summarised below, which will be needed to address issues of land related conflict:

- Promotion of security of tenure
- Restitution of land rights
- Building capacity to mediate land disputes
- Strengthening land registration and land records
- Developing of land markets and promotion of private investment
- Enhancing land use planning and management

⁴³ Article 170 (8) states that “All levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary rights and practices, and local heritage”.

⁴⁴ Article 170 (3)

⁴⁵ South Sudan draft land policy p. 4

⁴⁶ South Sudan draft land policy p. 4

- Recognising community rights to natural resources
- Developing efficient and transparent land administration
- Developing fiscal aspects of land administration
- Promoting agricultural development
- Promoting equality of men and women in the exercise of land rights

3.2 INSTITUTIONAL FRAMEWORK

When working on land related issues in South Sudan, actors have to interact with several layers of administration. In keeping with the community based approach to land, land administration and management is based on a principle of decentralisation,⁴⁷ according to which each state should manage and administer the land within its jurisdiction.⁴⁸ As such, actors who work on land issues face a complex task, given the need to ensure familiarity with local contexts and relationships.

The Land Act 2009 creates three overall layers of administrative control:

- County Land Authority with the power to “[h]old and allocate public lands vested in it with the approval of the Concerned State Ministry in the State subject to town and municipal planning in the County.”⁴⁹
- Payam Land Councils responsible for “the management and administration of land in the different Bomas composing the Payam”.⁵⁰
- Land Registry to be established within the Ministry of Housing and Physical Planning (MOHPP) at national level and within the concerned ministries at state level.⁵¹

However, the effectiveness and efficiency of these institutions is problematic. For example, in Northern Bahr el Ghazal, four out of five County Land Authorities were established and are functioning, but very few Payam Land Councils have been established and/or are functioning. The statutorily required representation of women in these bodies is non-existent. As well, the Land Registry has been established but is widely perceived to be dysfunctional. Land-related record keeping is in disarray, which contributes to problems of secondary displacement.

3.3 DISPUTE RESOLUTION MECHANISMS

For communities who experience land conflicts, the current system of dispute resolution is a hybrid system with an unclear division of roles between customary and statutory authorities. According to the law, there are essentially four main mechanisms for land dispute resolution:

1. Alternative Dispute Resolution/ traditional dispute resolution, including dispute resolution by government (non-judicial) bodies, which can result in appeals through the statutory court system
2. Dispute resolution initiated in the customary courts (for customary land disputes) which can result in appeals through the statutory court system
3. Dispute resolution initiated in the statutory courts
4. Dispute resolution initiated with the South Sudan Land Commission

⁴⁷ S. 41 (2)

⁴⁸ S.41(4)

⁴⁹ S. 46 (a)

⁵⁰ S. 48

⁵¹ S. 54

Each of these mechanisms is described in further detail below:

1. Alternative Dispute Resolution

According to the Land Act, when resolving disputes over land, priority should be given to alternative dispute resolution (ADR) and traditional dispute resolution mechanisms (S. 91) using mediation (S. 92) or arbitration (S. 94). The Land Act outlines that Payam Land Councils (S. 48) are responsible for solving disputes over land through arbitration and mediation (S. 50(g)). Appeal against a decision of a Payam Land Council can be lodged with the County Land Authority (S. 51(1)). Appeals against the latter are dealt with by the “concerned Ministry” at state level (S. 47 (2) and S. 51(2)). In case of appeal against the ministry decision, the individual(s) concerned can institute court proceedings in the High Court. Land regulations are expected to further flesh out how the resolution of disputes using ADR will operate in practice; however, they have not yet been finalized.

2. Customary courts

South Sudan’s judicial systems have been largely based on customary practice, especially when regulating access to rural land and dealing with land-related problems. . It is important to understand the difference between the customary courts and statutory courts, i.e. the County Court and higher courts (the High Court, the Court of Appeal and the Supreme Court) in terms of land disputes, at least in theory according to the laws of South Sudan which are not always implemented as they should be in practice.

Customary courts only have jurisdiction to deal with customary land disputes, which means that they cannot deal with disputes regarding private (registered) or public land. It is possible to appeal decisions of the customary courts to the statutory courts once appeal rights have been exhausted in the customary courts (the process for which is set out in the Local Government Act, 2009). The reality, however, is that customary courts often deal with matters outside of their jurisdiction and not all of the institutions envisioned in the law exist and function in accordance with the law.

The Local Government Act of 2009 establishes Customary Law Councils as “the highest Customary Law authority in the County” (S. 93) with the function to protect, promote and preserve the traditions, customs, cultures, values and norms of the communities (S. 95(1)) and to regulate, maintain, monitor and ensure proper administration of the customary law (S. 95(2)). It also establishes Customary Courts (S. 97) with the “competence to adjudicate on customary disputes and make judgments in accordance with the customs, traditions, norms and ethics of the communities” (S. 98(1)). Customary courts are established at boma, payam and county level, and in addition to this, S. 97 of the Local Government Act also establishes town bench courts. As stated above, appeal against customary court decisions can be made through the statutory courts once appeal possibilities have been exhausted in the customary courts.

While Customary Councils exist, very few are functional, and typically none have female representation; and while customary courts generally exist at the local level (as their existence pre-dates the Local Government Act, 2009), they often do not function in accordance with the Local Government Act; are unfamiliar with their role/jurisdiction as specified in the Local Government Act or with the Land Act; do not document the cases they resolve (which impedes

appeals to statutory courts); and there is little opportunity for women to participate in the processes undertaken in customary courts.

The reality is that in many areas, disputes that cannot be handled at the family level, are dealt with by elders or chiefs outside of the customary court structure envisioned by the Local Government Act, 2009 and the customary courts do sometimes deal with private (titled) land which is beyond their jurisdiction.

Given that the institutions envisioned in the law do not always exist, or do not exist as envisioned, at the local level, it is very important to be familiar with the law (in particular, the Land Act 2009 and the Local Government Act 2009) and also to find out how different types of land dispute are dealt with in each area.

3. Statutory courts

State-level High Courts and the State Courts of Appeal are the key statutory institutions that deal with land disputes initiated in the statutory system (although the County Courts also have jurisdiction to deal with appeals regarding customary land disputes on appeal from the customary courts).⁵² According to the Land Act (2009), all land cases initiated in the statutory system are to be dealt with by a special Land Division of the High Court in every state; however, these divisions are yet to be established in each state and in their absence the High Court deals with land cases or delegates its power to lower courts to do so.

4. South Sudan Land Commission

With regards to claims dealing with land restitution and compensation for individuals who have lost their property as a result of displacement caused by the civil war, the Land Act, 2009 recognises traditional procedures and customary law as long as these are in compliance with “equity, natural justice, morality and public order” (S. 79(1)). It also gives the SSLC the authority to decide on such cases (S.79(2)).

Table 2 summarises the main dispute resolution mechanisms related to conflicts over land in South Sudan.

Table 2: Land-related dispute resolution mechanisms in South Sudan

	Under S. 91 Land Act priority shall be given to resolving disputes outside the court system		Customary Land Disputes	Land Disputes Involving Private or Public Land	Disputes Involving Compensation for Land to be Expropriated in the Public Interest (S.75(6) Land Act 2009)/ Restitution Claims (S. 79 Land Act 2009) ⁵³
	Alternative Dispute Resolution (ADR) initiated with statutory authorities S.91(1)(a) Land	Traditional Dispute Resolution S.91(1)(b) Land Act 2009			

⁵² NRC Report on women’s access to land in South Sudan, 2013

⁵³ Note that whilst the South Sudan Land Commission has jurisdiction to deal with these matters, other institutions also have jurisdiction. Under Section 99 of the Land Act, 2009, the Land Division of the High Court has jurisdiction to deal with ‘Litigation related to expropriation for public purposes and compensation’. Restitution claims can be initiated in the High Court and, under

	Act 2009				
First Level	Payam Land Council (S. 50 Land Act 2009)	Traditional Authority	B Court/ Regional Court (S. 100 Local Government Act 2009) OR Cases can be initiated with the Town Bench Court	Land Division of the High Court (S. 99 Land Act 2009) - in practice, this does not exist and the High Court has jurisdiction unless it has delegated powers to a lower court	South Sudan Land Commission
Second Level	Appeal to the County Land Authority (S.51(1) Land Act 2009)		In the case of B Courts - Appeal to C Court (S.99 Local Government Act 2009) In the case of Town Bench Court - Appeal to County Court Judge of the First Grade (S.102 Local Government Act 2009)	Appeal to Court of Appeal (S.188 Code of Civil Procedure Act 2007)	
Third Level	Appeal to the concerned state Ministry (S.47(1) Land Act 2009)		In the case of C Court - Appeal to County Court Judge of the First Grade (S.99 Local Government Act 2009)	Appeal to Court of Appeal (S.188 Code of Civil Procedure Act 2007)	
Fourth Level	Appeal to the High Court (S.47(2) Land Act 2009)		Appeal to High Court (S.188 Code of Civil Procedure Act 2007)	Appeal to Supreme Court (S.188 CCPA 2007)	
Fifth Level	Appeal to Court of Appeal (Article 130(2) Transitional Constitution of South Sudan)		Appeal to Court of Appeal (S.188 Code of Civil Procedure Act 2007)		
Sixth Level	Appeal to Supreme Court (Article 129(2) Transitional Constitution of South Sudan)		Appeal to Supreme Court (S.188 Code of Civil Procedure Act 2007)		

Attempts have been made to define subject matter jurisdiction, but there is an overlap of functions and jurisdiction. Individual chiefs often exceed their jurisdiction and adjudicate as they see fit rather than applying customary or statutory law principles.

Customary law largely embraces reconciliation and community harmony as principal tenets. Customary institutions remain a strong force in the justice sector of South Sudan, particularly in vast, rural segments of the country where the state has little reach. They are well-adapted to handling local disputes over land arising from returning populations - emphasising win-win resolutions as much as possible. At the same time customary authorities encounter challenges

Section 79(2), 'Traditional authority and any designated community representative may receive land restitution claims from members of the community or people from outside of the community.'

in the recognition of women's rights to own land and this is a significant problem given the high proportion of female headed households amongst the returnee population (estimated by some to be 45-50 %).⁵⁴ According to statutory provisions, women have equal access to land as men, but this principle is rarely applied by customary authorities which typically perceive women as guardians of land for their male children, who will gain the right to own property once they become adults, rather than rights holders in their own right.

The overlap between dispute resolution mechanisms and the lack of clarity regarding the role of different authorities contributes to insecure tenure.

3.3. KEY LAND-RELATED CHALLENGES AND OPPORTUNITIES IN SOUTH SUDAN

Given the nature of land disputes illustrated above and the mechanisms in place to address these, the below is intended to identify the key challenges but also opportunities for addressing land rights issues. While mine action actors do not have primary responsibility for addressing these, their activities directly interact with land rights issues and therefore offer the opportunity to promote interventions that have a positive impact on land rights.

A key issue is that many **communities are not aware of their land rights**, which are enshrined in the Transitional Constitution of South Sudan and the Land Act. **Tenure insecurity** continues in a political and economic environment which is characterised by weak institutions, continuing violence and inter-tribal and inter-ethnic conflicts, inconsistent governance and lack of adequate protection of rights. It is a key impediment to peace and security. Despite the existence of legal provisions recognising the equal **rights of women to land**, the reality is that women are often discriminated against in access to land and do not enjoy security of tenure.⁵⁵

This is exacerbated by a **lack of clarity** on the authority, roles, policies and procedures at various levels between government and traditional authorities regarding land administration. Land management by the Government continues to be characterised by the **limited capacity of and poor management by land administration officials**. There is confusion over land ownership, due, for instance, to the issuance of duplicate titles, loss of important data and records and a lack of reliable information on which to base new land allocations and transfers or secure tenure rights. There is a risk that cadastral and land registry data may disappear in areas where local authorities are complicit in land speculations and sale. In some cases, documentation is already poor, or absent altogether which could spark a series of land and property disputes.

Despite positive legislative frameworks, the land sector continues to be poorly governed, due to a lack of transparency and accountability, gender bias and discrimination. Similarly, despite efforts to clarify land governance between the customary and State systems, there remains a conflict between the **two positions held on land tenure**: (a) public/state tenure favoured by government officials and (b) communal tenure favoured by rural communities, traditional authorities, and legal and land tenure experts of South Sudanese origin. The **Transitional**

⁵⁴ Odhiambo, M., 2009, *Southern Sudan Land and Property Study and Workshops: A Synthesis of Policy and Legal Issues*, Southern Sudan Land Commission, Norwegian Refugee Council, Food and Agriculture Organization and UNHCR, p.9.

<http://kk.convdocs.org/docs/index-35600.html>

⁵⁵ NRC Report on women's access to land 2013

Constitution enabled a shift in land tenure from communities to government, which increases concerns related to large-scale land acquisitions. Private investment in commercial agriculture in South Sudan, especially in the absence of a legal framework, has become a resource conflict between central and state governments and the communities involved. **Land grabbing** by Government, military, private investors etc is a growing concern with the commercialisation of land.

This is being experienced at a time when urban centres around South Sudan are growing rapidly as people want access to schools, health facilities, and employment. This trend is generating considerable growth in the **demand for land in urban areas**. Unplanned informal settlement expansion in peri-urban areas is **causing conflicts with communities** that claim customary rights on the land, and insecurity of land tenure for those on the fringes of urban sprawl or acquiring urban land, meaning that many people are at risk of displacement.

Returnees from Sudan and other neighbouring countries are a highly vulnerable category of people given weak links with their 'original' communities due to the length of displacement. They are living in a situation where land rights and governance systems are rapidly changing and they are often vulnerable stakeholders in this.

While these of course create challenges, there are positive factors in promoting land rights. The recent approval of the Draft Land Policy in February 2013 (after almost two years since its presentation to the Council of Ministers) which conforms with international standards on land rights, along with the creation of a Deputy Minister of Land within the Ministry of Housing and Physical Planning (MOHPP) provides a structure for working with communities facing or at risk of land disputes. This is complemented by the presence of civil society and international actors in South Sudan with longstanding experience on land related issues, creating new possibilities for a more transparent, coherent and efficient land-governance system

3.4. KEY LAND/HLP ACTORS IN SOUTH SUDAN

In order to assist organisations who work on issues that touch upon land rights and conflict, such as mine action actors, a brief overview of the main institutions and organisations within government, civil society and the UN system that deal with housing, land and property issues in South Sudan is provided below. This list is not exhaustive but is a sample of the actors engaged.

3.4.1 GOVERNMENT INSTITUTIONS

The **South Sudan Land Commission (SSLC)**: is required to set guidelines for the resolution of conflicts. It has played a critical role in drafting land related legislation and policy. The SSLC provides advice and information, increases the representation of courts in the legal process, conducts research on land issues, is involved in community engagement, and is also trying to formalise customary rights/tenure.

The Ministry of Housing and Physical Planning (MOHPP): the newly created Deputy Ministry of Land will represent land related issues in the Council of Ministers. The MOHPP has responsibility for the national land registry and is also involved in the resolution of land conflicts.

The Ministry of Agriculture and Forestry at both the national and state-levels are the main

actors in large-scale land investments in South Sudan, promoting the allocation of large areas for private investment.

The Ministry of Commerce, Industry, and Investment has the mandate to design the investment framework and regulate private sector activities in South Sudan. It has the primary role of facilitating the business activities of the private sector, rather than strictly enforcing social and environmental protections.

3.4.2 UN AGENCIES AND NGOS

The UN Mission in South Sudan (UNMISS) addresses land issues although UNMISS' civil affairs section and has a mandate to deal with conflict resolution, including conflict over land. **The United Nations Development Programme (UNDP)** supports activities aimed at promoting recognition of customary law, including customary land law. **The United Nations High Commissioner for Refugees (UNHCR)** funds projects to assist returnees in accessing land in the framework of protection and durable solutions for returnees. **The Food and Agriculture Organisation (FAO)** through its Land Tenure Unit is supporting the Ministry of Agriculture to implement the Voluntary Guidelines on the responsible Governance of Tenure of Land, Fisheries and Forests (VGGT). **UN-HABITAT** has also historically supported the MOHPP and the SSLC.

National and international NGOs also play an important role in documenting customary land traditions and examining key land related-issues in South Sudan. For example:

The South Sudan Law Society (SSLS) is a national NGO, founded in 1994 by South Sudanese lawyers, and now has 90 members from all of the marginalised areas of South Sudan. In addition to its main offices in Juba, the SSLS has branch offices in Yei, Torit, Yambio, Rumbek and Malakal. It manages projects in a number of areas, including legal aid clinics and paralegal training centres, human rights awareness raising, and capacity-building for traditional authorities. The SSLS is currently conducting a land governance framework (LGAF) assessment for the World Bank (WB). The SSLS is also implementing a legal aid project in Western Equatoria and is developing advocacy strategies/tools for legal aid clinics.

The Generation Agency for Development and Transformation-Pentagon (GADET-Pentagon) is a South Sudanese NGO based in Juba. It implements projects in a variety of areas, ranging from civic education, election monitoring and capacity-building for the youth, to mediation of land disputes, promotion of human rights and the development of rule of law.

Associates for Rural Development (ARD) TetraTech is currently implementing a USAID land governance pilot project in Western Equatoria and Jonglei to build the capacity of county land authorities, and to strengthen systems for land governance. It is also carrying out a new study on resource allocation to assist State governments in land planning. **Norwegian People's Aid (NPA)** is implementing a civil society development programme funded by the Norwegian Ministry of Foreign Affairs (NMFA) that involves securing rural land rights in areas at risk of large-scale land investment. It supported the creation of the South Sudan Land Alliance (SSuLA)) at the State level, which consists of civil society networks working on land issues and public awareness. The SSLAs disseminate information, document issues and identify the right institutions to resolve issues. NPA is also conducting a study on oil for development/common good and delivering training to investigative journalists on reporting on natural resource-related

issues. **The Norwegian Refugee Council (NRC)** is currently implementing an Information, Counselling and Legal Assistance (ICLA) Programme, that provides assistance to returnees and IDPs on access to land in Central Equatoria, North Bahr el Ghazal and Warrap State. The programme includes public information, awareness-raising activities, legal advice and assistance and training on access to land for returnees, IDPs and host communities. It also includes training on Land and Property for land authorities, both customary and statutory.

The Land Coordination Forum (LCF) coordinates land-related activities and is part of the Humanitarian Cluster System as a sub-cluster on Housing, Land and Property. The initial objective of the forum was to share information, coordinate technical and financial assistance to the SSLC and create links with government institutions and non-state actors working in the land sector. With the enactment of the Land Act and the on-going land policy development process, the LCF updated its mandate to support land policy development and dissemination. The LCF is currently co-chaired by the NRC.

The main land-related donors in South Sudan are USAID, the Norwegian Ministry of Foreign Affairs (NMFA), UNHCR, the Common Humanitarian Fund (CHF), and the World Bank. The UK Department for International Development (DfID) is funding several food security projects and is interested in issues related to land governance, while the Canadian Government and DANIDA have funded projects to promote land governance and access to land. The European Union contributed to the drafting of the Land Act through technical assistance and is planning to fund a project aimed at strengthening land governance, expected to start in 2014.

BIBLIOGRAPHY

Deng, David K.

-- [‘Land belongs to the community’: Demystifying the ‘global land grab’ in Southern Sudan](#), The Land Deal Politics Initiative, 2011.

-- [The New Frontier: A Baseline Survey of Large-scale Land-based Investment in Southern Sudan](#). Norwegian People’s Aid, March 2011.

De Wit, Paul. Land policy development in post-conflict Sudan: Dealing with delicate balances in a fluid environment. Communication to the World Bank Conference on New Challenges for Land Policy and Administration: Session ‘Land administration in post disaster and conflict environments,’ Washington, 2008.

Global Witness. [Blueprint for Prosperity: How South Sudan’s new laws hold the key to a transparent and accountable oil sector](#), 2012.

International Alert, [Peace and Conflict Assessment of South Sudan 2012](#), 2012.

International Crisis Group.

-- [China’s New Courtship in South Sudan](#), 2012.

-- [South Sudan: Compounding Instability in Unity State](#). 2012.

International Organisation for Migration (IOM). [Emergency Return Sector \(ERS\) weekly statistical report \(add date\)3-9 May 2013](#)

IS Academy on Land Governance for Equitable and Sustainable Development. [South Sudan: Food Security and Land Governance Factsheet](#). 2012.

Oakland Institute, [Understanding Land Investment Deals in Africa. Country Report: South Sudan](#). 2011.

Pantuliano, Sara.

-- The land question: Sudan’s peace nemesis. HPG Working Paper, ODI. 2007. <http://www.unhcr.org/refworld/docid/4a5b32c75.html>

-- (ed.). Uncharted Territory. Land, conflict and Humanitarian Action, ODI, 2009,

Rahhal, Suleiman and A.H. Abdel Salam. 2006. Land Rights, Natural Resources Tenure and Land Reform. A paper for the Committee of the Civil Project. Issue Paper E-2. http://www.justiceafrica.org/wp-content/uploads/2006/07/CivilProject_IssuePaperE2_Land.pdf

Sait, Siraj and Lim Hilary (2006) “Land, Law and Islam. Property and Human Rights in the Muslim World”, Zed Books, London

Shanmugaratnam, N. [Post-War Development and the Land Question in South Sudan](#), Norwegian University of Life Sciences, 2008.

South Sudan Land Commission. Draft Land Policy February 2011.

USAID, [Land Tenure Issues in Southern Sudan: Key Findings and Recommendations for Southern Sudan Land Policy](#). 2010.

APPENDIX 1 – MISSION PROGRAMME

17-23 March 2013

Sunday 17 March

Assessment team meeting

Monday 18 March

Meetings with:

- Jurkuch Barach Jurkuch, NMAA; Lance Malin, John Dingley and Piu Bose, UNMAS; and John Sorbo, NPA
- Jonas Anuar, SIMAS
- Allan Stokes, TDI
- Roger Gagen and Simon Lovell, MineTech

Tuesday 19 March

Meetings with:

- Mike Storey, Rebecca Roberts and Justin Green, DDG
- Jurkuch Barach Jurkuch and Mike Rashid, NMAA
- David Deng, South Sudan Law Society
- Protection cluster
- Julia Akul, Ministry of Petroleum and Mining

Wednesday 20 March

Meetings with:

- Emily Akalu and Salim Mohamed, MAG
- Hannah Bryce and Marysia Zapasnik, DanChurchAid
- Gregory Norton, NRC
- Charles Chavunduka and John Matata, ARD TetraTech

Thursday 21 March

Field Visit to Munuki Payam with NMAA and NPA

Presentation to an NRC Land and Property Training Workshop for the Central Equatoria State

Ministry for Planning and Infrastructure

Robert Ladu Luki, South Sudan Law Commission

Friday 22 March

Assessment team meeting

Debriefing on preliminary findings of mission with key mine action and land stakeholders

Saturday 23 March

Assessment team meeting

APPENDIX 2 – LIST OF ORGANISATIONS MET

(Please note that the mission met with more than one staff member for key operational agencies)

ARD Tetra Tech

Charles Chavunduka, Deputy Chief of Party, ARD Tetra Tech,
Tel: +211(0) 955 864 065; email - charles.chavunduka@srlg-ard.com

Danish Church Aid

Hannah Bryce, Country Director, DCA (no longer in position)

Danish Demining Group

Michael Storey, Head of Programme, DDG South Sudan
Tel: +211(0)927727937; +211(0) 956953448 - email: pmddgsudan@drc.dk
Rebecca Roberts, Head of Armed Violent Reduction, DDG South Sudan (no longer in position)

G4S

Tony Elliot, Logistics and Procurement Manager, GS4
Tel: +211(0)955546644 – email: tony.elliott@uk.g4s.com

Mechem

Jaco Crots, Country Manager, Mechem
Tel: +211(0)912432573 – email: jacocrots@yahoo.com

Mines Advisory Group

Emily Akalu, Global Impact Monitoring Advisor, Mine Advisory Group (MAG)
Tel: +254(0)716403097 – email: Emily.akalu@maginternational.org
Muhammad Salim, Programme Officer Mine Advisory Group (MAG) - South Sudan
Tel: +211(0)912147984 – email: PO.SouthSudan@maginternational.org

Mine Tech International

Roger Gagen, Programme Manager, MineTech International
Tel: +211(0)927033514 – email: programmrgsouth@mtisudan.co.uk
Simon Lovell, Operations Manager, MineTech International (no longer in position)

Ministry Of Housing

Silvas Clark Amozay, Director General of Housing and Urban Development, MOHPP
Tel: +211(0)914803286; email: silvas.clerk@yahoo.com

Ministry Of Mine And Petroleum

Julia Akur, Legal Advisor, Ministry of Mine and Petroleum,
Tel: +211 (0) 955 111128; email: juliaakurm@gmail.com

Norwegian Peoples Aid

Batali Gabriel Modi, Operations Advisor, Capacity Development Project to the NMAA, NPA
Tel: +211(0)955031275 – email: batalig@npaid.org
Jamus Joseph, Land and Resource Rights Advisor, NPA
Tel: +211(0)955100068 – email: jamusj@npaid.org
Ade Jackson Moses, Project Officer, Land and Resource Rights, NPA
Tel: +211(0)955061896; email: ademoses@npaid.org

John Sorbo, Programme Manager, Capacity Development Project NMAA, NPA (no longer in position)

Norwegian Refugee Council

Gregory Norton, Country Director, Norwegian Refugee Council, South Sudan (no longer in position)

Security Risk Management Services

Paul Davies, Director, www.ad-idem.org - Security Risk Management Services-

Tel: + 44 (0) 7779 168670 – email: pad1002@gmail.com

SIMAS

Jonas Anuar, Director SIMAS

Tel: +211(0)955113358; email: director@simas-sudan.org

South Sudan Land Commission

Robert Land Luki (Lwoki), Chairman SSLC

Tel: +211(0)955246191; email: robertluki@yahoo.com

South Sudan Law Society

David K. Deng, Research Director. SLS

Tel: +211(0)955518206 -email: kwoldit@gmail.com

National Mine Action Authority

Jurkuch Barach Jurkuch, Chairperson NMAA

Tel: +211(0)926494938 – email: debarach@NMAA.net

Mike Rashid Fulla, Director for Operations, NMAA

Tel:+211(0)955634470 - email: mike.rashid@NMAA.net

TDI

Allan Stokes, QA Manager, TDI

Tel: +211(0)956334115; email: astokes@thedevelopmentinitiative.com

United Nations Mine Action Service

Lance Malin, Programme Manager, UNMAS - South Sudan

Tel : +211 (0) 920 011 102 ; +211 (0) 959 002 – email: lance.malin@unmas.org

Robert Thompson, Chief of Operations , UNMAS

Tel: +211(0)920011101 – email: robert.thompson@unmas.org

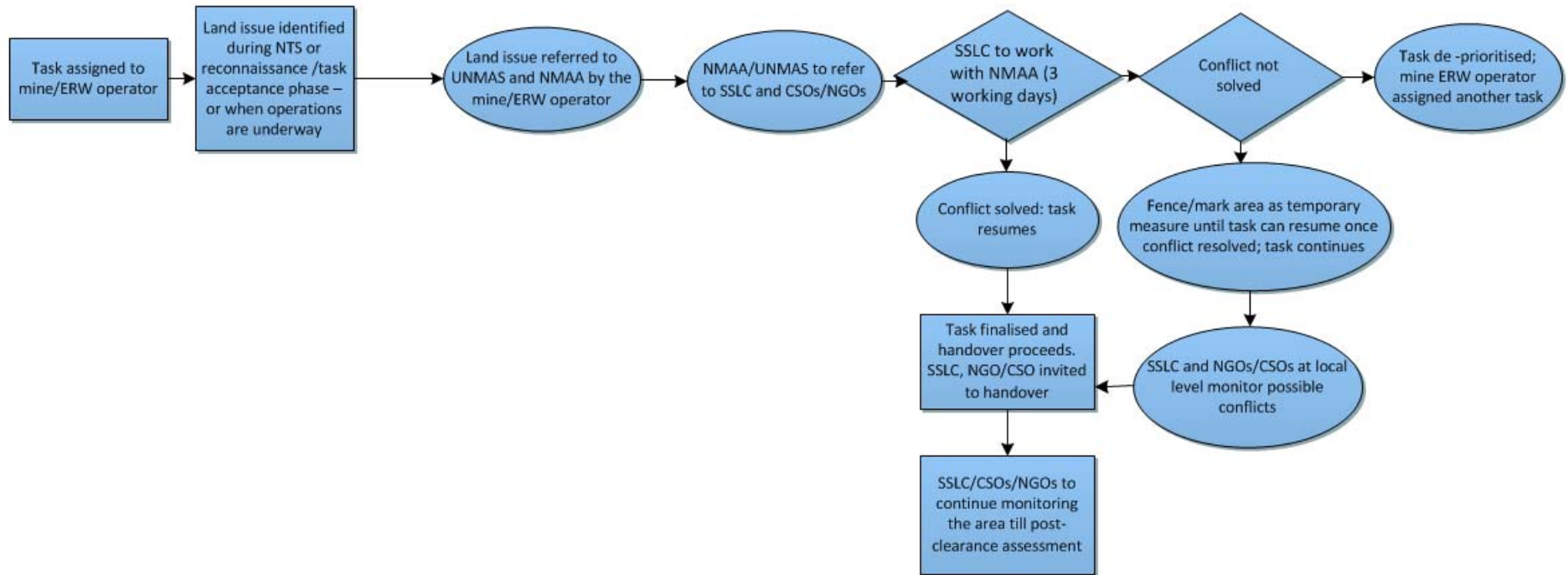
Piu Bose, Monitoring and Evaluation Officer, UNMAS

Tel: +211(0)920011104 – email: piu.bose@unmas.org

John Dingley, Deputy Programme Manager & Capacity Development Senior Technical Advisor, UNMAS

South Sudan (no longer in position)

APPENDIX 3 – REFERRAL MECHANISM (PROCESS MAP)



APPENDIX 4 – SURVEY AND HAZARD REPORT FORM (UNMAS/NMAA)



Survey and Hazard report Form



¹ General information:

1.1 Survey ID:	1.2 Date or report:
1.3 State:	1.4 Payam:
1.5 County:	1.6 Boma:
1.7 Boma Longitude:	1.8 Boma Latitude
1.9 Nearest Location:	
1.10 Nearest Location Longitude:	1.11 Boma Latitude
1.2 Organization: None If other Specify:	1.13 Team ID:
1.14 Reported by: (Name, Telephone)	1.15 Reported by Position:

² Habitation

	Current
2.1 Number of Tukuls	
2.2 Population	
2.3 Returnees	

³ Socio Economic Condition:

3.1 Nearest medical facility: Name	Distance	Type: <input type="checkbox"/> Basic health facility <input type="checkbox"/> Hospital <input type="checkbox"/> Other
3.2 Distance to nearest water point:		
3.3 Number of primary schools:		
3.4 Number of secondary schools:		
3.5 Presence of higher education institutions: <input type="checkbox"/> Yes <input type="checkbox"/> No		
3.6 Presence of telephone/mobile connection: <input type="checkbox"/> Yes <input type="checkbox"/> No		
3.7 Economic Base: <input type="checkbox"/> Agriculture <input type="checkbox"/> Industry <input type="checkbox"/> Tourism <input type="checkbox"/> Government <input type="checkbox"/> Other		
3.8 What other?		

⁴ General comments:

^{4.1} Conflict History: <input type="checkbox"/> Fighting in the Area <input type="checkbox"/> Army/Military Base <input type="checkbox"/> Occupation of Sites <input type="checkbox"/> None
^{4.2} Comments if Conflict Area (please skip if there was no conflict in the area)
^{4.3} Previous Mine Action: <input type="checkbox"/> Yes (please add comments below) <input type="checkbox"/> No (please skip and goto question 5)
^{4.4} Comments (type of mine action and who was the implementing partner)

⁵ MRE Received:

^{5.1} <input type="checkbox"/> In the last 6 Months <input type="checkbox"/> In the last 12 Months: <input type="checkbox"/> None:
^{5.2} If yes what has been the benefits of MRE for the community.



Survey and Hazard report Form



5.3 Has there been separate MRE sessions delivered to females and males: Yes No

5.4 Has there been separate MRE sessions delivered to children: Yes No (If yes, please explain how MRE is being delivered eg. through School plays, Puppet Theaters, Interactive Peer Education Workshops, etc.)

5.5 Is MRE integrated in school curriculums: Yes No

6 Presence of landmines or UXO contamination in the area:

Yes No

6.1 Information source: Mine acc. Involving animals Minefield record Civilians
 Military person Mine accident report Other What other: _____

6.2 Informant gender: Child Girl Women Men
 Boy

6.3 Living in the area: 0 to 6 months 6 months to 1 year 1 to 3 years More than 3 years

	Killed				Injured				Total
	Boys	Girls	Men	Women	Boys	Girls	Men	Women	
7.1 Victim Totals:									
7.2 Number of Recent Victims									
7.3 Number of Victims more than 24 months ago									

7.4 Victims by Age: 0 < 8 Years: 15 – 29 Years: 30 – 44 Years:
 9 – 14 Years: 45 – 59 Years: 60 Years and Older:

7.5 Victim Assistance during past 24 months: Yes No Unknown

7.8 Please provide details on the type of victim assistance provided:

8 Information about the interviewees and how to get to the village

Proceed with the next set of questions only if there is contamination in the area



Survey and Hazard report Form



⁹ Hazard Information:

^{9.1} Hazard ID:	^{1.3} Referenced Tasked ID (Hazard Reduction):	
^{9.2} Name of Hazard:	^{1.4} Date Received:	
^{9.5} Status: <input type="checkbox"/> Open <input type="checkbox"/> Closed	^{1.6} If Closed Reasons:	^{9.7} Date Closed:
^{9.8} Category of hazard based on NTS: <input type="checkbox"/> Confirmed Hazardous Area (CHA) <input type="checkbox"/> Suspected Hazardous Area (SHA) <input type="checkbox"/> ERW Threat <input type="checkbox"/> No Threat		
^{9.9} Type of Hazard: <input type="checkbox"/> Minefield <input type="checkbox"/> Battle Area <input type="checkbox"/> UXO Spot <input type="checkbox"/> Stock Pile		

¹⁰ Reference Point/Bench Mark

^{10.1} Longitude: <input type="text"/> (hdd.ddddddd)	^{10.2} Latitude: <input type="text"/> (hdd dddddd)
---	---

^{10.3} Description of the Location and Reference Point / Benchmark and location:

<input type="text"/>

¹¹ Description of the Hazard perimeter

From Point	To Point	Bearing (Degrees)	Distance (Metres)	X/ East/ Long (dd.ddddddd)	Y/ North/ Lat (dd.dccddd)

¹² Actual Area Size: <input type="text"/> sqm
--

¹³ Marking: <input type="checkbox"/> Official signs <input type="checkbox"/> Local signs <input type="checkbox"/> fenced <input type="checkbox"/> Combination <input type="checkbox"/> None
--



Survey and Hazard report Form



14 Distance of Hazard from Community 1 Km 2 Km 5 Km Other Describe:

15 Value of land (contaminated)?

16 Any disputes over the hazard land/area?

17 Access Restrictions due to SHAs

	Estimated Area (sqm)	Direct Beneficiaries	Description/Remarks
17.1 Agriculture Area			
17.2 Grazing Area			
17.3 Housing Areas			
17.4 Water Points			
17.5 Educational Facility			
17.6 Medical Facility			
17.7 Dam/Canal			
17.8 Oil Field/Natural Resources			
17.9 Firewood Collection			
17.10 Blocked Roads			
17.11 Other			
17.12 Upcoming Development projects in the area.			

18 Hazardous Area Vegetation and Terrain

18.1 Vegetation:	<input type="checkbox"/> Grass	<input type="checkbox"/> Bushes	<input type="checkbox"/> Tree	<input type="checkbox"/> None		
18.2 Density Vegetation:	<input type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High			
18.3 Vegetation Removed by	<input type="checkbox"/> Burning	<input type="checkbox"/> Mechanical	<input type="checkbox"/> Manual			
18.4 Ground Profile:	<input type="checkbox"/> Hillside/Mountain	<input type="checkbox"/> Flat	<input type="checkbox"/> Gully	Other:		
18.5 Category:	<input type="checkbox"/> Soft	<input type="checkbox"/> Medium	<input type="checkbox"/> Hard	<input type="checkbox"/> Wet/Mud		
18.6 Suitable for:	<input type="checkbox"/> Dog	<input type="checkbox"/> Detector	<input type="checkbox"/> Prodding	<input type="checkbox"/> Mechanical		
18.7 Slope:	<input type="checkbox"/> None	<input type="checkbox"/> Little (0-10%)	<input type="checkbox"/> Moderate (10-25%)	<input type="checkbox"/> High (25%+)		
18.8 Water Feature:	<input type="checkbox"/> Canal	<input type="checkbox"/> River	<input type="checkbox"/> Lake	<input type="checkbox"/> Other		
18.9 Soil Type	<input type="checkbox"/> Rocky	<input type="checkbox"/> Sandy	<input type="checkbox"/> Chalk	<input type="checkbox"/> Clay	<input type="checkbox"/> Swamp	<input type="checkbox"/> Ploughed
18.10 Metal Contamination:	<input type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High	<input type="checkbox"/> Not known		

19 Suspected devices in the Hazard:

Device Type (Ap,AT etc.)	Model	Quantity	Anit-Lift	Booby Trap	Longitude (dd.dddd)	Latitude (dd.dddd)
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		



Survey and Hazard report Form



			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		

²⁰ **Comment about Mine/UXO location and access?** (Description of location/area/minefield record)
(Warring fraction, designer (name & address), date laid, amount & type of mines/UXO)

--

²¹ **In case the hazard is UXO spot and is cleared then please provide the following**

^{21.1} Confirmed Clear:	^{21.2} Confirmed Clear Date:
^{21.3} Confirmed Clear by: None If other Specify: <input type="text"/>	
^{21.4} Comments of the clearance of UXO Spot:	

APPENDIX 5 – POST CLEARANCE ASSESSMENT FORM (UNMAS/NMAA)



Post Clearance Survey

Hazard Completion ID :

General Information:

State:	Payam:
County:	Village:
Longitude:	Latitude:
Any Remaining Hazards: Yes <input type="checkbox"/>	No <input type="checkbox"/>
When were the hazard removed/Cleared:	

Type of Mine Action Intervention:

Type of Land Used	Organization	Description of their work
Clearance		
Mine Risk Education		
Victim Assistance		
Other		

Description of the how the hazards are removed:

Population

At the start of demining operation <input type="checkbox"/>	Currently <input type="checkbox"/>
---	------------------------------------

Were there any disputes over the land after clearance?

Yes <input type="checkbox"/>	No <input type="checkbox"/>
------------------------------	-----------------------------

Explain:

--

Habitation:

	Pre-Clearance	Post Clearance
Number of Tukuls		
Population		
Returnees		

How did the mine clearance activities change the life of the population in the area?

Less/no accidents since clearance <input type="checkbox"/>	Better economic status (more schools, health facilities, etc.) <input type="checkbox"/>	Provided shelter Other Benefits <input type="checkbox"/>
--	---	--

Comments:

--

Any problems incurred as a result of clearance?

--

What is the value of land after clearance?

--

How is the land being used post clearance?

	Estimated Area	Number of Beneficiaries	Usage
Land prepared for cultivation or construction			
Crops Planted (specify)			
Crops Matured			
Crops Harvested			
Housing Construction Commenced (type/nos)			
Housing Construction Completed (type/nos)			
Other Construction Commenced (Specify)			
Other Construction Completed (Specify)			
Firewood Collection			
Livestock Grazing			
Schools			
Hospitals			
Recreational Activities			
Other Purposes			
Land not Utilized			

If land is not being used post clearance please tell us the reason

Type of Land Used	Description
Further hazards discovered	
Remining	
Land reserved for future use	
Ownership/Land rights issues	
Armed conflict in the area	
Other (please specify)	

Has there been any incident of landmine/UXO related injury in the area since clearance:

Yes <input type="checkbox"/> (If yes, please provide details on the accident)	No <input type="checkbox"/>
---	-----------------------------

If a landmine/UXO was discovered in the area would you know who to report the incident to:

Yes <input type="checkbox"/> (If yes, please provide details on the reporting mechanism)	No <input type="checkbox"/>
--	-----------------------------

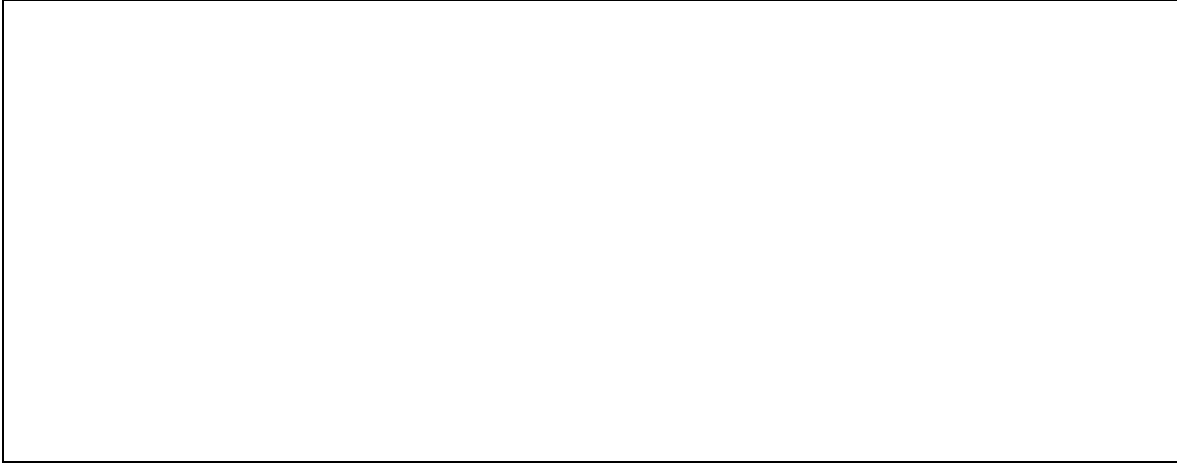
Have there been any new hazards discovered since clearance:

Yes <input type="checkbox"/> (If yes, please provide details on the type of hazard)	No <input type="checkbox"/>
---	-----------------------------

Interview group data:

	Position	Age	Sex
1			
2			
3			
4			
5			

General comments:



Sketch of the Area: Please clearly show the area which was suspected by mines and currently in use. The interviewee should take photograph of the land currently in use.