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### Mine Action and Land Issues in Columbia

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## Mine Action and Land Issues in Colombia

2013

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The Geneva International Centre for Humanitarian Demining (GICHD), an international expert organisation legally based in Switzerland as a non-profit foundation, works for the elimination of mines, explosive remnants of war and other explosive hazards, such as unsafe munitions stockpiles. The GICHD provides advice and capacity development support, undertakes applied research, disseminates knowledge and best practices and develops standards. In cooperation with its partners, the GICHD's work enables national and local authorities in affected countries to effectively and efficiently plan, coordinate, implement, monitor and evaluate safe mine action programmes, as well as to implement the Anti-Personnel Mine Ban Convention, the Convention on Cluster Munitions and other relevant instruments of international law. The GICHD follows the humanitarian principles of humanity, impartiality, neutrality and independence.

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## Glossary of Abbreviations

APMBC	Anti-Personnel Mine Ban Convention
BIDES	<i>Batallón de Desminado No. 60 “Coronel Gabino Gutiérrez”</i> Humanitarian Demining Battalion No. 60
CHA	Confirmed Hazardous Area
CINAMAP	National Intersectoral Commission on Antipersonnel Mine Action
DDG	Danish Demining Group
EC	European Commission
ELN	<i>Ejército de Liberación Nacional</i> National Liberation Army
ERW	Explosive Remnants of War
EXDE	Explosives and Demolition Team
FARC	<i>Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo</i> Revolutionary Armed Forces of Colombia—People’s Army
GICHD	Geneva International Centre for Humanitarian Demining
IAG	Illegal Armed Groups
IDPs	Internally Displaced Persons
IEDS	Improvised Explosive Devices
IHL	International Humanitarian Law
IMAS	International Mine Action Standards
IMSMA	Information Management System for Mine Action
INCODER	<i>Instituto Colombiano de Desarrollo Rural</i> Colombian Institute of Rural Development
Instancia	<i>Instancia Interinstitucional de Desminado Humanitario</i> Interinstitutional Instance for Humanitarian Demining
IOM	International Organisation for Migration
LRU	Land Restitution Unit
MoD	Ministry of Defence
NGO	Non-Governmental Organisation
NMAS	National Mine Action Standards
NTS	Non-Technical Survey
OAS	Organisation of American States
PAICMA	Presidential Antipersonnel Mine Action Programme
QA	Quality Assurance
QC	Quality Control
SHA	Suspected Hazardous Area
SOPs	Standard Operating Procedures
UNMAS	UN Mine Action Service

## Executive Summary

More than half of rural households in Colombia live in poverty, in part due to high inequality in land ownership. Despite agrarian reform efforts in the past, the concentration of land ownership has increased with an estimated 0.4% of landowners owning 61% of the rural land<sup>1</sup>, reinforcing the increasing marginalisation of rural, indigenous and Afro-Colombian communities, and women-headed households. Forced displacement of approximately 4.8 million people during the country's four decades of conflict has resulted in roughly 2-5 million hectares of land being grabbed by illegal armed groups.<sup>2</sup> Expanding national and international involvement in agribusiness and mining are also contributing to new conflict over land and natural resources. In 2011, the Colombian Government passed a new Victims and Land Restitution Law which provides a mechanism for returning millions of hectares of land that was forcibly abandoned or stolen. While this new law is a positive development, state capacity to deal with a high number of land restitution cases and ensuring victims are able to safely return without being intimidated or attacked remain key challenges.

Colombia's mine and ERW contamination problem is a further challenge. Data about the nature and scale of mine/ERW contamination in Colombia remains limited. The national mine action database contains information indicating that remnants from the conflict in the form of mines, ERW and IEDs remain in 31 out of 32 of Colombia's departments, often blocking safe access to roads and footpaths, schools and homes, and other infrastructure. The Colombian military has taken the lead on humanitarian demining<sup>3</sup>. However, given recognised survey and clearance staff capacity constraints, the Government of Colombia approved the start of humanitarian demining operations by HALO Trust in September 2013, the first international NGO mine/ERW operator to be accredited in Colombia. Other organisations are in the process of gaining accreditation.

Given the fact that an increasing number of international mine action organisations will potentially start working in rural areas where land issues have and continue to be key drivers of conflict, it is imperative that mine action organisations, in collaboration with the national mine action authorities, take steps to ensure their operations do not unintentionally create or exacerbate land-related tensions. The purpose of this report is to therefore examine the key links between land issues and mine action in Colombia and to provide practical 'do no harm'<sup>4</sup> guidance to mine action organisations to ensure that mine action facilitates the return of

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<sup>1</sup> San Onofre, "[Land and violence in Colombia: This is our land](#)", The Economist, 16 September, 2010

<sup>2</sup> In 2011, the Commission to Monitor Public Policies on Forced Displacement stated that between 1980 and July 2010, 6.6 million hectares of land were abandoned or usurped. (Commission to Monitor Public Policies on Forced Displacement (Comisión de Seguimiento a la Política Pública sobre Desplazamiento Forzado), Cuantificación y valoración de las tierras y los bienes abandonados o despojados a la población.) According to Social Action figures, in the project for the protection of the land and heritage of the displaced population, 2005, the figure is 6.8 million hectares, and the figure is 10 million hectares according to the National Movement of Victims of State Crimes (Movimiento Nacional de Víctimas de Crímenes de Estado – MOVICE), in the Alternative cadastre strategy against impunity tool for comprehensive reparation, 2007) in Área de Memoria Histórica, Comisión Nacional de Reparación y Reconciliación, Línea de Investigación Tierra y Conflicto, El Despojo de Tierras y Territorios. Aproximación conceptual,

julio de 2009 (Area for Historical Memory, National Commission for Reparation and Reconciliation, Land and Conflict Research, dispossession of lands and territories. Conceptual Approach), July 2009 desplazada en Colombia, Bogotá, 5 January 2011.

<sup>3</sup> Humanitarian demining is commonly defined as demining which is conducted by civilian mine clearance agencies. In Colombia however, humanitarian demining refers to the survey and clearance work undertaken by the military's demining battalion that conducts demining for humanitarian purposes.

<sup>4</sup> The Do No Harm framework is based on the belief that humanitarian actors should take steps to ensure that they do not make a situation worse through the assistance that they provide.

Internally Displaced Persons (IDPs), promotes tenure security and contributes to longer term socio-economic recovery. This is particularly relevant given the peace dialogues that are currently taking place with the Revolutionary Armed Forces of Colombia – People's Army (FARC) as land reform is a key issue on the peace agenda.

## Key findings

In July 2013, the Geneva International Centre for Humanitarian Demining (GICHD), the International Organisation for Migration (IOM) and Danish Demining Group (DDG) conducted a joint mission to Colombia on land rights and mine action. The mission identified several land related opportunities and challenges in Colombia. The following is a brief summary of the key findings from this mission.

In 2011, the Colombian Government passed a new Victims and Land Restitution Law and is now implementing a land restitution process which seeks to return land to those who were forcibly displaced from their land. While an important development, key challenges exist, including weak government capacity and continued threats to the security of returnees. The Ministry of Agriculture's Land Restitution Unit is at the forefront of managing the land restitution process. Although a survey of mine/ERW contamination has not yet been conducted in much of the country and therefore the scale and nature of mine/ERW contamination is unknown, some of the land which has been prioritised for return is suspected of being contaminated with mines/ERW.

Fortunately, there is clear recognition among land and mine action actors of the need to coordinate. While some communication takes place between land restitution officials, the Presidential Antipersonnel Mine Action Program (PAICMA), the UN Mine Action Service (UNMAS), the Organisation of American States (OAS) and operators, coordination mechanisms remain weak and require strengthening. Unfortunately there has been limited overlap to date between the areas prioritised for land restitution and those prioritised for survey/clearance i.e. only two out of 86. This is partly due to the lack of clarity regarding mine contamination. As well, land restitution is taking place in areas which do not meet the security requirements for humanitarian demining.<sup>5</sup> The slow and complex accreditation process for civilian mine/ERW operators has hampered efforts to release land for return, restitution and development. As a municipality needs to be declared safe before land restitution can take place, one incident has the effect of delaying land restitution for the entire municipality until survey teams can be deployed to investigate further. The same can be said for IDP return and development programmes.

However, formal government approval in September 2013 of the start of operations by Halo Trust, the first NGO mine/ERW operator to be accredited in Colombia, is a very positive development. The entry of international operators will help to boost Colombia's survey/clearance capacity which is needed to facilitate return, restitution and broader development processes.

While coordination mechanisms are in place, mine action actors have not yet fully considered how survey/clearance operations may affect land issues. There is a lack of consensus among mine action and land stakeholders, both within and outside Bogotá, regarding the process and criteria used to set survey and clearance priorities at the national level. Non-Technical Survey forms, designed by PAICMA and used by the Batallón de Desminado No 60 "Coronel Gabino Gutiérrez" (BIDES) and HALO Trust do not include questions on land issues, e.g. land

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<sup>5</sup> The security requirements are the result of several variables established by the Ministry of Defence, which are different from those used by the Land Restitution Unit for its own operations/staff.

ownership, pre or post clearance land conflict, or intended land use post clearance. There are no clear handover procedures in place.

Coordination is not yet systemic with broader humanitarian and development actors to ensure the provision of post clearance development support where needed. The government through the Victims Unit in the Department of Social Prosperity provides an integrated package of support to returnees to promote sustainable return and livelihoods. The OAS also provides post clearance livelihoods support in areas released by BIDES. Similarly, no system is yet in place for pre and post clearance assessment, which would help to determine the development outcomes resulting from mine action as well as signal if beneficiaries require assistance to make productive use of released land or if they are experiencing land-related problems.

Security remains a concern in some parts of the country and is the most important variable in prioritising an area/municipality. Areas deemed to be insecure by the government are not accessible to mine action organisations. While humanitarian mine action is not permitted to take place in “yellow” or “red zones” where illegal armed groups operate, there is clear humanitarian need for survey/clearance given high rates of mine/ERW-related deaths and injuries. Compared to the military, international mine/ERW operators are better equipped to access insecure areas without putting communities at risk, given their non-governmental status and mandate and experience from working in other conflict-affected countries.

Given the political dynamics in Colombia, the continued presence and operation of illegal armed groups, and on-going tensions over land, it is essential that all accredited operators be required to carry out community liaison and familiarise themselves with the broader operating context, particularly with regards to land issues. Conducting survey and clearance in areas where land tenure is unclear could pose risks to post clearance land use, create conflict and result in further victimisation of returnees.

## Recommendations

Some of the recommendations outlined below are aimed at several different organisations/actors in Colombia.

### **Colombian Government:**

- To facilitate the safe return and restitution of land to victims, speed up the accreditation process of NGO mine/ERW operators
- Widely communicate priority-setting criteria for mine action at national and local levels to ensure transparency and uniform understanding
- Given the clear need for emergency clearance in non-consolidated areas, consider sending NGO survey teams where security permits and there is no risk to communities. Survey can be used to see if clearance is in fact possible.
- Ensure mine action is also linked to other land-related policies (e.g. agrarian reform, land formalisation, etc.)

### **PAICMA, OAS, UNMAS**

- Ensure non-technical survey forms and pre/post clearance assessment forms include questions about land
- Adapt IMSMA to enable the collection and sharing of land-related data



- Ensure priority-setting criteria also reflect post clearance land use, potential for land-related conflict, rural development, legally protected groups (women, IDPs, indigenous and Afro-Colombian communities)
- Develop standardised handover procedures that are transparent, timely and inclusive
- Ensure handover takes place in association with the Land Restitution Unit (LRU)
- Develop and implement a system for post clearance assessment
- Provide mine action actors with a clear referral mechanism for land-related disputes
- Ensure coordination between land release and development support.
- Raise awareness about the work of NGO mine/ERW operators

### **Operators (NGO mine/ERW operators and BIDES):**

- Find out about land issues by interviewing both women and men in the areas where you are tasked to conduct survey/clearance
- In areas where the LRU is not working, include land questions in information gathering/social mapping techniques
- Check with municipal cadastral offices and local authorities for registry/cadastral data and maps
- Communicate the post clearance development needs of women, girls, boys and men in beneficiary communities to planning entities, particularly for those who do not have formal land title and who may not be eligible for some benefits.
- Use community liaison and non-technical survey to also gather information about land issues from men and women in the communities.
- Coordinate operations with the Land Restitution Unit when working in restitution areas
- Ensure outreach to communities after clearance and before the return process starts in order to prevent/mitigate potential disputes between neighbours and ensure neighbours understand the process.
- Refer land disputes to the LRU and PAICMA, particularly asymmetrical disputes (those where the two parties are not equal and where the dispute is due to the conflict)
- Demystify the nature and the objectives of civilian demining as well as clarify work methodologies and practices by conducting awareness raising at all levels

When tasked by PAICMA, check land type e.g. private, public, forest zone, etc. in order to be clear which institutions to involve/consult for post clearance support.

## **Introduction**

Latin America is one of the most unequal regions of the world when it comes to land. While many countries in the region have implemented agrarian reform programmes, past agrarian reform efforts in Colombia have repeatedly failed rural, indigenous and Afro-Colombian communities. Inequality with regards to land has worsened since the country's internal conflict started over forty years ago; in 2003, approximately 0.4% of landowners owned 61% of the rural land.<sup>6</sup>

The concentration of land ownership has increased in recent years with the forced displacement of approximately 4.8 million rural, indigenous and Afro-Colombian communities, due to attacks

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<sup>6</sup> Colombia's Gini coefficient<sup>6</sup> for land is a very high .89, which is worse than South Africa under the apartheid regime and is one of the highest in the world. PNUD/UNDP. Human Development Report – Colombia, 2011.

by leftist guerrillas and right-wing paramilitary groups. Approximately 2-5 million hectares has been forcibly taken by illegal armed groups (IAGs) or was subject to forced abandonment and may not be in the hands of IAGs. This, combined with expanding national and international agribusiness and mining interests in rural areas, has led to new conflict over land and natural resources.<sup>7</sup>

In 2011, President Juan Manuel Santos' Government passed a new Victims and Land Restitution Law that provides a mechanism for the restitution of millions of hectares of land abandoned or stolen as a result of conflict and human rights violations. A Land Restitution Unit, within the Ministry of Agriculture, and a Victims' Unit, within the Department of Social Prosperity, has been established at national level, along with other bodies to implement this complex but much needed process. However, state capacity to deal with the high number of restitution cases and ensuring victims are able to return without facing threats, intimidation and violence remain key challenges.

Colombia's problem with landmines and other Explosive Remnants of War (ERW), the result of decades of armed internal conflict, is another challenge. While a national survey on the extent of mine/ERW contamination has not yet been undertaken, the national mine action database indicates that 31 out of Colombia's 32 departments is mine/ERW contaminated.<sup>8</sup> Between 2007 and July 2013, 1,135 mines/ERW have been destroyed and a total of 1.19 km<sup>2</sup> of land has been released and returned to productive use.<sup>9</sup> This is important work which the military and government have demonstrated strong commitment to resolving. In September 2013, the Colombian Government also approved the accreditation of humanitarian demining operations by the first NGO mine/ERW operator, HALO Trust, to boost much needed survey and clearance capacity. Until this time, humanitarian demining had only been conducted by the military.

As an increasing number of NGOs are in the process of being granted accreditation, they will begin survey and clearance operations in rural parts of Colombia, often in areas where land issues have been and continue to be problematic. In some communities, they will work in partnership and close coordination with the Government's Land Restitution Unit, to ensure that land is safe from mines and other explosives before it is returned. Given the complexity of land issues in Colombia, it is imperative that mine action organisations are aware of the broader context in order to ensure that their operations do not unintentionally create or exacerbate land-related tensions, and that mine action reinforces efforts to facilitate the return of IDPs, and promote tenure security and longer term socio-economic recovery.

## Objectives

The political situation in Colombia is at an interesting crossroads. The government is in the process of conducting peace dialogues with the Revolutionary Armed Forces of Colombia—People's Army (FARC) since November 2012 and in September 2013 started meetings with the National Liberation Army (ELN). FARC and ELN are the two largest guerrilla groups, and land reform is one of the main issues on the peace agenda. The government is in the midst of implementing Law 1448, the land restitution and victims' law which came into effect in June

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<sup>7</sup> Antoinette R. Raquiza, "[Reflections on Colombia's Land Conflict from a Peace and Development Framework](#)", 31 August, 2010.

<sup>8</sup> ICBL. [Landmine and Cluster Munition Monitor – Colombia](#). Accessed 29 October, 2013.

<sup>9</sup> PAICMA. Situation nacional de afectacion nacional por minas antipersonal y municiones sin explotar, 1990 a Julio de 2013.

2011, and which seeks to return millions of hectares of land that was abandoned or taken illegally due to the internal armed conflict.

Within this wider context, the Government officially sanctioned in September 2013 the start of survey and clearance operations by an international humanitarian mine/ERW operator, a first for Colombia. Other NGO mine/ERW operators are in the process of seeking accreditation in order to also begin operations. While this represents a critical and very positive step forward for Colombia's mine action community, it is important that international mine action organisations are aware of the wider context, in particular in relation to land given that: parts of the country continue to be affected by internal armed conflict; land and access to natural resources remains a key flashpoint; and the government is implementing a land restitution programme. Mine action organisations therefore need to consider how their activities (i.e. priority-setting, survey, community liaison, clearance, handover, post clearance assessment) may impact on the broader land situation, take steps to mitigate conflict and ensure a 'do no harm' approach.

In July 2013, the Geneva International Centre for Humanitarian Demining (GICHD), the International Organisation for Migration (IOM) and the Danish Demining Group (DDG) visited Colombia with support from the Presidential Programme for Comprehensive Action against Anti-Personnel Mines (PAICMA), to identify key land issues, including the new land restitution and victims' law, and assess the implications for future humanitarian demining operations. The mission took place from 8-16 July 2013 and consisted of meetings in Bogotá, Medellín and San Carlos Municipality (in South-East Antioquia) with a wide range of mine action and land stakeholders (see Appendix 1 for the mission programme and the list of people met).

This report summarises the July mission's findings and provides guidance for the mine action and land communities. The report is structured as follows:

- Section 1 provides an overview of the mine action context in Colombia.
- Section 2 looks at land issues, the land restitution law and land management structures.
- Section 3 looks at the connections between mine action and land, and outlines how mine action organisations can ensure their operations adhere to 'do no harm' humanitarian principles

## **1. Mine Action in Colombia**

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

### **1.1 Mine/ERW Contamination Problem**

Over four decades of conflict with illegal armed groups has led to mine and ERW contamination in Colombia. Survey and clearance operations to date have found that contamination consists primarily of Improvised Explosive Devices (IEDs), often acting like a standard anti-personnel mine, planted along key access routes, schools and other strategic locations allegedly to frighten, confine or displace local communities, to get access to their land and natural resources as well as protect drug transport routes, illegal mining sites, plantations and processing factories. Indigenous and Afro-Colombian communities are particularly affected. Colombia's largest rebel group, the FARC, are believed to be responsible for laying many of the mines and IEDs in the country. Their use by the FARC has increased since 2000, making Colombia the only Latin American country to have a growing contamination problem over the past decade. The other key illegal armed group is the ELN, which has also been known to manufacture and laid IEDs.

Government forces also laid a relatively small number of mines around military bases to act as barriers, but all of these have been cleared.

The lack of comprehensive survey data has severely undermined efforts to obtain a clear picture of mine/ERW contamination. Approximately 60% of municipalities and 31 of Colombia's 32 departments are believed to be affected, and 10,610<sup>10</sup> Colombians are estimated to have been wounded or killed by landmines and UXO since 1990, 39% of whom are civilians.<sup>11</sup>

However, it is difficult to provide an accurate estimate of the scope of contamination in Colombia due to the irregular nature of mine-laying, the difficulty in detecting IEDs and the continued use of IEDs by IAGs.<sup>12</sup> Survey and clearance remain impossible in most suspected areas due to security reasons and the Instancia's and Ministry of Defence's policy of only conducting humanitarian survey/clearance in "consolidated" or green zones. Clearance is typically undertaken on small pieces of land, mainly roads, schools, access routes to water sources and private plots; typically places where the military may have set up a base.

Casualty numbers are likely to be under-reported due to fear of reprisals by armed groups (victims may be thought to have either been laying mines themselves or removing mines installed by the groups). Roughly 350 civilians are estimated to be killed every year, with over 87% of civilian casualties being men, many of whom are coca eradicators<sup>13</sup>, followed by boys (8%).<sup>14</sup>

## 1.2 National Mine Action Programme

### 1.2.1 National policies and structures

The Government of Colombia has signed and ratified the Anti-Personnel Mine Ban Convention (APMBC). In 2010, Colombia was granted a 10-year extension for meeting its APMBC Article 5 obligations, setting 2021 as the deadline for clearing all known anti-personnel mines. Colombia's current operational plan (2011-2013) focuses on addressing suspected and confirmed hazardous areas in 14 of the 660 municipalities suspected of contamination. An estimated 15km<sup>2</sup> is to be surveyed and cleared by the end of 2013. A new operational plan for 2014-2016 will be finalised by June 2014.

The National Intersectoral Commission on Antipersonnel Mine Action (CINAMAP) was established as the national mine action authority in 2002 to implement Colombia's APMBC obligations, develop a national plan and policies, and coordinate international assistance. The Presidential Program for Comprehensive Mine Action (PAICMA) acts as the technical secretariat for CINAMAP. It coordinates the implementation of the 2009–2019 Integrated Mine Action Plan, with the overall objective of minimising the socio-economic impact of mines, IEDs, and UXO, and implementing sustainable development programs in affected communities. It also coordinates Non-Technical Survey (NTS). As of 2011, Colombia reported that the army and HALO Trust had conducted NTS on a total of 133 hazardous areas, of which 118 were

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<sup>10</sup> As of late 2013.

<sup>11</sup> Programa Presidencial para la Acción Integral contra Minas Antipersonal. Accessible at <http://www.accioncontraminas.gov.co/Paginas/AICMA.aspx>

<sup>12</sup> ICBL, ICBL Comments on Colombia's Article 5 Extension Request, November 2010

<sup>13</sup> IEDs are used by illegal armed groups to protect illicit crops, and illicit crop eradication efforts carried out by civilians have resulted in high numbers of deaths and injuries.

<sup>14</sup> Programa Presidencial para la Acción Integral contra Minas Antipersonal. Accessible at <http://www.accioncontraminas.gov.co/Paginas/AICMA.aspx>

“confirmed” as SHAs covering 427,355m<sup>2</sup>. BIDES conducted a further 138 non-technical surveys in 2012, 56 of which were confirmed as SHAs.<sup>15</sup>

Created in 2011, the Instancia Interinstitucional de Desminado Humanitario (Instancia) is Colombia’s Mine Action Steering Committee, acting as the government’s decision-making body for humanitarian demining. It is made up of representatives of PAICMA, the Ministry of Defence (MoD), and the military Inspector General, with UNMAS as an observer. The Instancia reports to CINAMAP and is responsible for accrediting NGO mine clearance operators, and approving tasks based on national priorities and humanitarian principles. PAICMA is also the technical secretariat for the Instancia.

As part of the UN Country Team, UNMAS has been present in Colombia since 2010, assisting PAICMA in integrating civilian mine/ERW clearance operators into the national framework, specifically in terms of national standards, operational coordination, accreditation, monitoring and quality management systems. In 2013, UNMAS assisted PAICMA with the development of national standards, QA/QC and restructuring PAICMA’s management system.<sup>16</sup> Since late 2013, UNMAS is the lead agency within the UN system coordinating mine action issues, while the UN Department of Peacekeeping Operations is the focal point for Disarmament, Demobilisation and Reintegration (DDR).

Reporting to PAICMA, the Organisation of American States (OAS) is responsible for the management and implementation of a national monitoring system for humanitarian demining in Colombia, on behalf of the Instancia, accompanying the military’s Engineer Humanitarian Demining Battalion No.60 (BIDES). The OAS also:

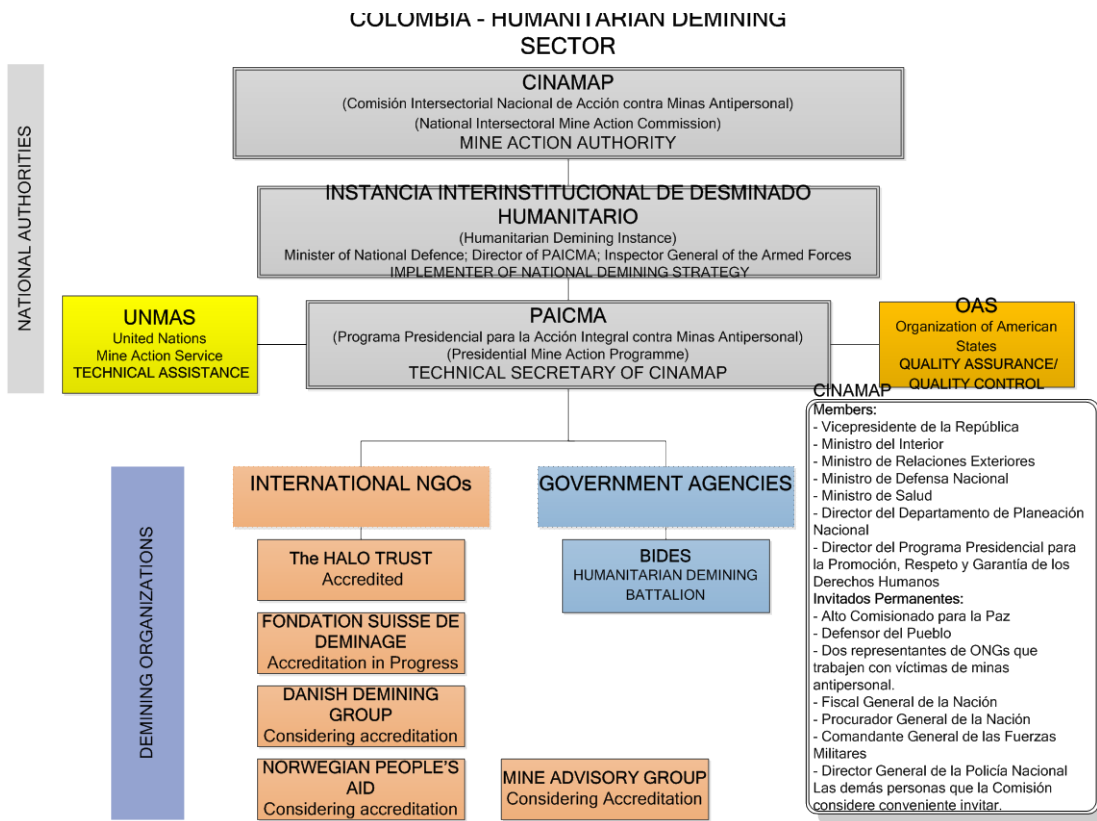
- conducts quality assurance/quality control of NTS and Community Liaison activities
- investigates demining accidents
- evaluates operational capacity of civilian organisations based on the national standards and advises the Instancia on their suitability for accreditation
- conducts Mine Risk Education (MRE) and CL, accompanying BIDES
- provides logistical support for operations and national capacity
- implements community development projects post-clearance to facilitate income generation and post clearance land use

In 2012, PAICMA, the Ministry of Defence and the Commando General (General Command) introduced the first six national standards which will regulate demining in the country. The six national standards cover tasking, non-technical survey, technical survey, quality management, accreditation, and manual clearance. A standard on community liaison was drafted but elements have been merged into the standard on tasking and the draft MRE standard.

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<sup>15</sup> Landmine Monitor, Colombia, 2013 (draft).

<sup>16</sup> “About UNMAS in Colombia”. UN, 2013. Accessible at <http://www.mineaction.org/programmes/colombia>



## 1.2.2 Military demining

Like much of Latin America, the military has traditionally had a monopoly on mine clearance in Colombia. Military demining is carried out by the Explosives and Demolition team (EXDE), and involves rapid clearance primarily of IEDs to facilitate troop movement along access routes. In 2010, a military battalion completed clearance of mines around 35 military bases; a total area of 269,756 m<sup>2</sup> of land was cleared in 20 departments.<sup>17</sup>

## 1.2.3 Humanitarian demining

In 2002, Law 739 was passed through which special military personnel were assigned to conduct humanitarian demining. A military demining company was established in 2006 which eventually grew to a battalion, and in August 2009, BIDES was created. BIDES carries out NTS, Technical Survey and destruction/clearance with nine demining squads comprised of 280 deminers (personnel adds up to 400 in total, including NTS team members who are also trained as deminers); however the number is expected to grow by 25 in order to meet survey/clearance needs across the country.<sup>18</sup>

<sup>17</sup> Standing Committee Meetings of the Anti-Personnel Mine Ban Convention. Item 11 - [Intervention of the Colombian Delegation](#), Geneva, 30 November 2010

<sup>18</sup> "Analysis of the request submitted by Colombia for an extension of the deadline for completing the destruction of anti-personnel mines in accordance with article 5 of the Convention." APLC/MSP.10/2010/WP.13. 25 November 2010. 10<sup>th</sup> Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. Geneva. Accessible at [http://www.apminebanconvention.org/fileadmin/pdf/mbc/clearing-mined-areas/art5\\_extensions/countries/10MSP-Colombia-Ext-Analysis.pdf](http://www.apminebanconvention.org/fileadmin/pdf/mbc/clearing-mined-areas/art5_extensions/countries/10MSP-Colombia-Ext-Analysis.pdf)

Given limited BIDES capacity, the estimated extent of mine/ERW contamination across the country and Colombia's 2021 deadline for clearance of all anti-personnel mines in known mined areas, the Government of Colombia announced in 2009 that it would open its doors to civilian demining organisations (herein referred to as NGO mine/ERW operators). In December 2010, the Government passed Law 1421 (which became operational in 2011 with the publication of Decree 3750), which permits civilian organisations to conduct humanitarian demining. NGO operations were delayed for over two years due to issues related to the accreditation process and insurance cover of deminers<sup>19</sup>, however in September 2013, HALO Trust was officially granted permission to start survey/clearance operations in the municipality of Nariño in the department of Antioquia. FSD passed its desk accreditation in July 2013, and is in the process of securing resources to complete the final stage of accreditation in 2014.<sup>20</sup> DDG is in the process of preparing for desk accreditation.<sup>21</sup>

There is a widespread general misconception of what civilian humanitarian demining is, including in Colombia and despite the relatively long time since the law was approved to allow civilian humanitarian demining, no official communication has been provided to affected communities. This lack of communication combined with the fact that the military (BIDES) have conducted humanitarian demining, has created confusion and made it difficult for people to distinguish between military and humanitarian activities.

**Table 1 – Recent milestones in Colombia's mine action history**

2002	Law 739 – Special military person assigned to conduct humanitarian demining
2003	Technical assistance cooperation with OAS. Start of external OAS QA/QC
2006	Demining company established within the military
2009	BIDES Battalion 60 established
2010	10 year Action Plan 2011-21 established; Law 1421 passed, Government opens doors to civilian demining organisations
2012	Procuraduría issues report stating civilian demining a violation of IHL and later reverses it urging caution with regards to civilian demining and the application of NMAS to civilian operators; HALO Trust becomes first desk accredited civilian mine/ERW operator
2013	After passing the field accreditation, HALO Trust receives official permission after passing field accreditation to begin survey/clearance operations (September)

<sup>19</sup> On 24 July, the Government issued a new decree clarifying the insurance requirements for civilian demining organisations.

<sup>20</sup> Daniel Avila, Actualización del plan de acción de desminado humanitario 2014 – 2016, Workshop presentation, November 2013.

<sup>21</sup> BIDES will not go through the same accreditation process as the mine/ERW operators. However, BIDES is submitting its Standard Operating Procedures (SOPs) for review by the same technical board that this checking the SOPs of the mine/ERW operators, and the OAS is evaluating the people trained by BIDES, in the same way that they have evaluated HALO Trust's teams.

### 1.2.4 Funding and donor priorities

The Colombian government has contributed significant financing for its national mine action programme, an indicator of strong national ownership and commitment to resolving its mine/ERW contamination problem. Government support steadily increased from USD 2.5 million in 2007 to USD 9.5 million in 2009. The Government intends to invest a further USD 92 million between 2011 and 2020 to increase its humanitarian demining capacity.<sup>22</sup>

From 2007-2011, international support for mine action in Colombia has remained steady at around USD 10 million per year. The majority of international funding has supported mine risk education and assistance for mine/ERW victims. However, in future, a greater proportion of funding could be directed towards NTS and clearance as an increasing number of NGO mine/ERW operators are accredited and commence operations.

The US is a major donor, including through the OAS. In 2011, the European Commission (EC) announced it was contributing USD 6 million for mine action in 2011–2014 as part of a larger programme on land restitution, peace-building, and rural development. This contribution supports PAICMA in monitoring and coordinating victim assistance and mine risk education, and also supports the OAS. The strategic focus of EC funding was likely based on a GICHD evaluation of EC-funded mine action programmes in 2009<sup>23</sup> which found that going forward, funding should be directed towards mine action in support of emergency relief and peace-building for IDPs.

Donors have played a key role in ensuring that NGO operators are able to work in the country<sup>24</sup>, and will likely receive a large share of future mine action funding given the already substantial international support for national mine action structures to date, as well as significant government support.

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<sup>22</sup> “Analysis of the request submitted by Colombia for an extension of the deadline for completing the destruction of anti-personnel mines in accordance with article 5 of the Convention.” APLC/MSP.10/2010/WP.13. 25 November 2010. 10<sup>th</sup> Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. Geneva. Accessible at [http://www.apminebanconvention.org/fileadmin/pdf/mbc/clearing-mined-areas/art5\\_extensions/countries/10MSP-Colombia-Ext-Analysis.pdf](http://www.apminebanconvention.org/fileadmin/pdf/mbc/clearing-mined-areas/art5_extensions/countries/10MSP-Colombia-Ext-Analysis.pdf)

<sup>23</sup> Gasser, Russell. EVALUATION OF EC FUNDED MINE ACTION PROGRAMMES IN LATIN AMERICA, 2002-2007. GICHD. August 2009. Accessible at <http://www.gichd.org/fileadmin/pdf/evaluations/database/Latin-America/EvaluationEC-LatinAmerica1-GICHD-August2009.pdf>

<sup>24</sup> Martinez, Aurora. “Liaison Visit to Colombia – Back to Office Report”. GICHD. May 2012; For example, In July 2013, the UK and US embassies reportedly issued demarches to the Colombian government to expedite the accreditation of civilian demining organisations.



**Table 2. Summary of contributions to mine action in Colombia 2007–2011<sup>25</sup> (USD)<sup>26</sup>**

Year	National Contributions	International contributions	TOTAL FUNDING
2007	2,496,000	8,785,053	11,281,053
2008	3,016,000	9,139,472	12,155,472
2009	3,196,000	10,502,603	13,698,603
2010	3,869,000	12,122,933	15,991,933
2011	9,535,200	11,088,975	20,624,175
2012			

## 2. Land Issues in Colombia

### 2.1 Context – Socio-Political Situation

Land remains a key driver of conflict in Colombia, which is unsurprising given that approximately 0.4% of landowners own 61% of rural land. This high concentration of land ownership has persisted since the Colonial era and in recent years, has increased despite land reform efforts. The following sub-sections provide a brief overview of the main forms of land-related conflict and their underlying causes.

#### 2.1.1 Historical social conflict over access to land

Historical conflicts over land have resulted from the unequal distribution of land in Colombia. Struggles for access to land property in rural areas have caused innumerable conflicts often between large land-owners and landless peasants, as well as between the State and landless populations, and also between rural and urban communities. Historically, land has been the most important asset of wealth generation in rural areas; it also has strong links to the social prestige and political power of rural elites in the country. During the Colonial era, land distribution was based on the colonial policy of the Great Property, through which land appropriation was carried out by politicians, merchants and members of the Spanish army during the Colonial era and later on by the independence army during the Republican era. This resulted in an unequal system of land distribution, which was highly concentrated and polarised. This pattern persists to a great extent in rural areas and has undermined efforts to create the conditions for more

<sup>25</sup> Confirmed funding information for 2012 is not yet available, but it is believed that UNMISS and UNAMID allocations were again in the \$40 million and \$10 million range, respectively. International contributions for 2012 are thought to exceed \$6 million because of a large contribution from Japan.

<sup>26</sup> ICBL-CMC, "Country Profile: Colombia". 17 December 2012. Accessible at [http://www.the-monitor.org/custom/index.php/region\\_profiles/print\\_profile/450#\\_ftn12](http://www.the-monitor.org/custom/index.php/region_profiles/print_profile/450#_ftn12)

equitable rural development<sup>27</sup>. By 2009, Colombia's land Gini coefficient was 0.86, indicating that the country currently holds one of the most unequal land holding systems in the world<sup>28</sup>. Although several attempts at agrarian reform<sup>29</sup> have taken place during the last century, it is fair to say that none have been successful and land tenure concentration remains critically high.

### 2.1.2 Conflicts over land tenure caused by internal armed conflict

Colombia's internal armed conflict has been labelled the worst humanitarian crisis the western hemisphere has experienced in recent decades. Internal forced displacement has been the most popular form of victimisation and in the last 20 years, some 5 million people have left everything behind, including their land.

In some cases, forced displacement was used by "interested armed agents, either for the direct realisation of megaprojects, for agriculture or the exploitation of natural resources, or to support certain companies and economic agents which develop these projects, and with which they have associated to profit from the benefits of such activities."<sup>30</sup>

The illegal seizure of land property was common throughout the country. According to Government estimates, between two and five million hectares of land was grabbed or abandoned.<sup>31</sup> According to the government's Land Protection Project, land was illegally seized through a wide variety of methods. See Table 3 for a typology of land grabbing in Colombia.

**Table 3: Typology of land grabbing**

TYPOLOGY OF LAND-GRABBING	
Forced Sale	Property rights are transferred by the use of force.
Sales under distress	Property rights are transferred during a situation of extreme necessity caused by conflict, and thus the will to sale is stale.
Sales below market prices	Property rights are transferred during a situation of extreme necessity caused by conflict, under market prices at the time of the transfer.
Forgery	Property rights are transferred using forged documents or signatures.
Administrative procedures	Property rights are deprived by administrative procedures implemented by the competent agency, due to corruption or by threatening the administrative official.
Legalising resettlements	Third parties entered the abandoned plot and requested

<sup>27</sup> Machado, Absalón. "Ensayos para la historia de la política de tierras en Colombia. De la Colonia a la creación del Frente Nacional". Bogotá: Universidad Nacional de Colombia, 2009.

<sup>28</sup> UNDP – Human Development Report. "Colombia Rural. Razones para la esperanza". Bogotá, Colombia. 2011.

<sup>29</sup> See: Machado, Absalón. "Ensayos para la historia de la política de tierras en Colombia. De la Colonia a la creación del Frente Nacional". Bogotá: Universidad Nacional de Colombia, 2009.

<sup>30</sup> Salinas, Yamile. "Colombian Legislation and the Seizure of Lands and Territories." Pg. 319. In: "Distributive Justice in Transitions." Bergsmo, Morten; Rodríguez-Garavito, César; Kalmanovitz, Pablo & Saffon, María Paula (editors). Torkel Opsahl Academic EPublisher, Oslo. 2010.

<sup>31</sup> The act by which a person, taking advantage of the situation of conflict, arbitrarily deprives another of their right to property (or other rights recognised by law) over their land.

	legalisation of the property via the judiciary, depriving other rights that existed prior to the forced displacement.
Material Land-grabbing	Once people are forced to displace, others enter the property and start exercising 'ownership'.
Land-grabbing from indigenous communities	Communities are impeded of exercising full rights over their territory
Bank repossessions	Banks taking property rights of land used as collateral by internally displaced population due to the lack of payments.

Source: Project on the Protection of Land and Assets of Internally Displaced Population

Law 1448, commonly known as the Land Restitution and Victims' Law contains a chapter describing the Government's land restitution strategy which seeks to reverse this forced seizure phenomenon and return grabbed land to victims of the conflict, thus restoring their property rights. In March 2013, over one year and a half after restitution claims started to be processed; around 35,000 people had submitted land restitution claims.

### 2.1.3 Conflicts over land use

Relative to land concentration issues, conflicts over land use have surfaced fairly recently. In Colombia, land use-related conflicts typically involve: large agribusiness vs. small scale farmers or protected areas; natural resource extraction; and forced displacement and violations committed against indigenous and Afro-Colombian communities. The following sub-sections briefly describe these types of conflict.

#### 2.1.3.1 Land acquisition by agribusiness

In the early 2000s, the Colombian government shifted its focus from agrarian reform to rural development through agribusiness, also known as corporate farming.<sup>32</sup> Due to the nature of most crops grown by large agribusinesses in Colombia, e.g. oil palm, cocoa and fruit, large tracts of land are required in order to generate maximum profit. In some areas of the country, especially in the eastern plains, investors have acquired considerable amounts of land and have joined them together although current legislation prohibits these plots of land from being aggregated. This land includes public or state-owned lands (*baldíos*) that the government has given to beneficiaries of agrarian reform. This practice has effectively reversed efforts to improve access to land for landless communities. Investors maintain that they are simply responding to incentives provided by the national government, that they were not informed of the legal restriction to aggregate land, and that they paid a fair price for the land.

Most of the public or state-owned lands given to peasants are located in remote areas with limited State presence. This makes it difficult if not impossible for small-scale farmers to generate enough income to support their families. As well, depending on the area where the land is located, market price for the land can easily be ten times higher than what the farmers are able to produce in a whole year. As a result, farmers are left with little option but to sell their land. This issue illustrates the inconsistencies in Colombia's agrarian reform efforts, which paradoxically resulted in increased concentration of land in some parts of the country.

<sup>32</sup> For example, see [Tetra Tech. Colombia: Agribusiness Partnership Program \(CAPP\)](#); US Congressional Research Service. [Drug Crop Eradication and Alternative Development in the Andes](#), November 2005; all accessed 10 October 2013

In addition to encroachment on land traditionally used for subsistence agriculture, the interests of large agribusiness also affect protected forest reserve areas in Colombia. In 1959, with the aim of protecting certain areas from private ownership and improving land use planning, the Government established forestry reserve areas, defined as territorial extensions worth protecting due to the richness of their vegetation and the strategic importance of their environmental services. Although colonisation processes claimed a large percentage of protected areas since their creation, large agribusiness, especially those involved in oil palm, now cover approximately 25% of Colombia's total forestry reserve areas<sup>33</sup>. This phenomenon is concentrated in the southern Amazonian region of the country, especially in the departments of Amazonas, Caquetá and Vaupés, which are essentially woodland.

### **2.1.3.2 Rapid expansion in mining operations**

With the aim of linking global demand for energy and minerals with national economic growth, the Colombian Government has strongly promoted direct foreign investment in the mining and hydrocarbon sectors as one of its main economic policies. For example, investment in the mining sector tripled from USD 3.8 billion between 1999-2004 to USD 11.9 billion between 2005 and 2010<sup>34</sup>. This rapid increase in mining activities has however affected efforts to promote environmental sustainability in some parts of the country, and combined with weaknesses in Colombia's land administration system, conflicts have emerged.

For example, Páramo de Santurbán, an alpine tundra ecosystem, in the Department of Santander, has water sources that serve several surrounding municipalities. Although it was recently declared as a national park, approximately 82% of the Páramo de Santurbán has been awarded to Canadian mining companies to survey the area for gold. This situation is possible due to deficiencies in the legal framework that do not clearly prohibit mining activities in protected areas, an outdated cadastre that does not clearly establish their geographical limits, and the lack of Colombian regulations to ensure that foreign companies consider the social and environmental impact of their investments and take steps to mitigate any potential negative impacts.

### **2.1.3.3 Indigenous and Afro-Colombian communities**

In some cases international trends and internal armed conflict coincide. Illegal armed groups in Colombia have formed alliances with agribusiness, mining and other private sector interests. These alliances often affect indigenous rights to territory. The case of the Communal Councils of Jiguamiandó y Curvaradó in the Department of Chocó is perhaps the most illustrative. After decades of living in these territories, members of these councils displaced by paramilitary groups and during their absence, their territorial rights were illegally transferred to a group of agribusiness companies that planted African oil palm on more than half of all of their land. Although some of the illegal transfers have been revoked, oil palm plantations remain and as a consequence, communities have not had full physical or material access to what once was the main source of their livelihood, despite the land's constitutional status as "territorios ancestrales".

In addition to the interests of agribusiness, Colombia's indigenous and Afro-Colombian communities are also being forcibly displaced as a result of domestic and international efforts to extract Colombia's rich mineral resources. Colombia has extensive mineral deposits which is having dramatic impact on land use and ownership. Emeralds, coal and gold are among the main minerals extracted. Large-scale mining in Colombia is controversial. The government has

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<sup>33</sup> Molano Bravo, Alfredo. "Conflictos por el uso del suelo". In: Instituto Nacional de Desarrollo Rural, "Pensar la tierra". Pg. 158. Bogotá, 2013.

<sup>34</sup> <http://www.semana.com/nacion/articulo/la-fiebre-minera-apodero-colombia/246055-3>

loosened restrictions in mining exploration and exploitation to attract foreign capital and is using natural resource extraction to fuel national growth. Unfortunately, most of the areas where mineral deposits are located are also areas where indigenous and Afro-Colombian communities have traditionally resided. This is compounded by lack of government presence and weak law enforcement in these vast parts of the country.

## 2.2 Land Management System

Colombia's land administration system faces enormous challenges. These include: highly outdated land information systems (property registry, cadastre, public land inventory); numerous government agencies dealing with land issues whose institutional mandates are dispersed and at times overlap; weak institutional capacity; and significant levels of corruption.

Land tenure has been traditionally informal and as a consequence, more than 50% of property registry records are out of date, particularly in rural areas, where customary forms of transactions (verbal contracts) are still very common. According to official statistics, approximately 40% of rural land does not have formal property title.<sup>35</sup> Other studies estimate that, on average, only 39.9% of land tenure is formally registered.<sup>36</sup> Cadastral information is also critically outdated. According to the National Cadastre Agency, 55% of cadastral records in rural areas are out of date, and 3% of all land lots in the country have no cadastral information whatsoever.<sup>37</sup>

The interrelation between registry and cadastral information<sup>38</sup>, although continuously progressing, is still developing in urban areas as the main focus of the strategy. Colombia has several government institutions that deal with land issues. However, they have diverse, and sometimes competing mandates, which pose efficacy challenges for land management. For example, the Ministry of Agriculture, the Colombian Institute of Rural Development (INCODER), the Land Restitution Unit, the Ministry of the Environment and Sustainable Development and the Cadastre Agency are among the main institutions that deal with land-related issues.

Corruption within land administration agencies, especially INCODER<sup>39</sup>, reached significant levels in recent years, and although strong measures are being implemented to address this, it will take time and strong political will to reverse the negative effects caused by previous dishonest administrations.

Land issues in the country are strongly interrelated with key social, political and economic dynamics, and as such, will play a key role in determining the near future of the country. Increasing domestic and international demand for land, the challenges faced by the land administration system, current peace negotiations taking place between the FARC and the Colombian Government, a recently announced National Rural Development Policy as well as strong national debates on the use of land, all have important implications for Colombia's economic and social development.

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<sup>35</sup> Restrepo 2011. "Seminario Internacional sobre Formalización de la Propiedad Rural". Speech given during the seminar on March 7th 2011. Available at: [http://www.minagricultura.gov.co/archivos/discurso\\_ministro\\_de\\_agricultura\\_07\\_03\\_11.pdf](http://www.minagricultura.gov.co/archivos/discurso_ministro_de_agricultura_07_03_11.pdf)

<sup>36</sup> Helo & Ibañez, 2011. "Los mercados y la tenencia de la tierra en las áreas rurales". In: CEDE-Universidad de los Andes. Colombia en Movimiento. Un Análisis Descriptivo Basado en la Encuesta Longitudinal Colombiana de la Universidad De Los Andes -Elca-Bogotá.

<sup>37</sup> IGAC, "Revista Análisis Geográficos: Gestión catastral: proyectos especiales de Catastro; el Catastro, herramienta para el Ordenamiento Territorial; Estadísticas Catastrales 2000 – 2012". Bogotá: Imprenta Nacional de Colombia, No. 50. 2012.

<sup>38</sup> Property Registry records contain legal property rights and legal conditions of the land, whereas cadastral information shows the geographic location of land and its boundaries.

<sup>39</sup> See, *inter alia*, <http://www.elespectador.com/noticias/politica/articulo-424680-juan-camilo-restrepo-encontre-un-incoder-cooptado-paramilitares>

## 2.3 Land Restitution Law and Process

In order to address the illegal seizure of property from those who were displaced during the conflict, the National Congress approved law 1448 in 2011 “to establish a set of judicial, administrative and economic measures in favour of victims of conflict, within a framework of transitional justice, in order to secure their rights to truth, justice, reparation and guarantee of non-recurrence, as a way to acknowledge their condition of victims of human rights violations and dignify their human essence through the materialisation of their constitutional rights.”<sup>40</sup>

Following international human rights standards<sup>41</sup>, the Government also drafted a Land Restitution strategy which was included in Law 1448 as one means for reparation of past mass human rights violations. According to the contents of the law, restitution in a broad sense is understood as the reestablishment of the situation prior to the human rights violation; and land restitution in particular means deploying actions to guarantee legal and material restitution of seized land, or providing compensation if restitution is determined to be impossible.

The legal restitution procedure, which is mixed in nature, starts with an administrative process and finishes with a judicial decision adjudicating property. The process is implemented by two government agencies specifically created for its implementation: the Administrative Unit for Land Restitution and the Land Restitution Tribunals.

The Land Restitution Unit (LRU) serves as a verifying entity. It receives the claims and after conducting groundwork to gather all the necessary evidence and contrasting social and institutional competing information, they must establish three elements:

- (i) Actual land-grabbing caused by conflict and taking place on or after 1991<sup>42</sup>,
- (ii) The individualisation of victims with the right to restitution, and
- (iii) The technical identification of the parcel of land over which the process will take place; specifying the type of land and tenure rights.

They do all of their work at the local level using methods such as social cartography. This is done collectively with the community and not at household level (because of suspicions due to local dynamics and lack of trust). This process takes approximately 8 months.

However, if the land is potentially contaminated by mines/ERW, the process is delayed until the suspicion or threat is dealt with. If the government is not able to return someone’s plot of land, they can be allocated an alternate piece of land. Current owners who will have to give their land away in order for it to be restored are eligible for monetary compensation if they can prove they bought the land in good faith.

After the verifications carried out by the LRU, the judicial procedure should be swift. It is expected that by inverting the burden of proof in favour of victims’ claims, as well as by the use of other legal presumptions, the restitution judicial procedure will take less time than other ordinary judicial processes.

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<sup>40</sup> Free translation by the author of Article 1 of Law 1448.

<sup>41</sup> See inter alia: Principles for the protection and promotion of human rights through action to combat impunity; Principles on Housing and Property Restitution for Refugees and Displaced Persons; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

<sup>42</sup> Time limit set by National Congress.

As part of the restitution process, returnees cannot sell their land within 2 years, and in some cases, this is extended to four years. Land with favourable security conditions and with formal titles is particularly at risk of being sold to private interests, hence this protection mechanism.

According to the LRU, of the approximately four million hectares of land that was grabbed or abandoned, 13,000 hectares had been returned as of July 2013.

Some argue that the Government's land restitution efforts will not succeed unless concrete steps are taken to address the human rights violations committed by the paramilitary and guerrilla armies and address impunity. For example, 510 threats have been reported against land restitution claimants between January 2012 and May 2013, none of which has led to charges or convictions.<sup>43</sup> The conditions are therefore often not in place for the safe and sustainable return of land to land claimants.

### 3. Mine Action and Land Issues: Ensuring a 'Do No Harm' Approach

The previous sections illustrate that land issues in Colombia are numerous and complex. A further layer of complexity is added when considering that some of this land which is subject to dispute and violent conflict may also be contaminated by mines, ERW and IEDs as a result of previous and current internal armed conflict between paramilitaries, guerrillas and State forces. It is therefore imperative that mine action actors have a good understanding of the context and consider the potential impact that their operations may have. For example, Box 1 illustrates some of the land-related challenges that IDPs and returnees may face either before or after clearance has taken place. It is based on experiences from IDP communities that have returned to San Carlos Municipality in the Department of Antioquia.

#### Box 1: Case study – San Carlos Municipality, Department of Antioquia

In 1998, illegal armed groups started to have disputes and kill people in San Carlos. Land was mined, in particular paths, schools, roads and other public and strategic places. This led to displacement, with up to 80% of the rural population leaving their homes and land. Approximately 20,000 people left the municipality, with most going to Medellín. When security improved, people started to voluntarily return and found their land mined. Some started to clear the mines themselves, and also collected data about the location of mines and gave this to the government. Later, the military created a group to help people return to their land by carrying out emergency demining. The military marked mines, and carried out controlled destruction, as well as clearance. BIDES then started humanitarian demining and did more systematic clearance, clearing between 500-600 mines and the last accident was in 2008. Of the 20,000 that left San Carlos, 4,000 have not returned and don't intend to. The municipality is still operating in an emergency return context, which for the returnees, is more difficult than the being displaced as many are coming back and starting over with nothing. Some of the challenges faced by returnees include the following:

- People abandoned their land instead of being displaced by the illegal armed groups. When they left, some sold their land at very low prices (and now the value of their land has risen steeply post conflict). In some cases, the paramilitary groups forced people to sign notary deeds signing away their land. The returnees now have to demonstrate that the sale was

<sup>43</sup> While left-wing guerrillas contribute to the threats, the main perpetrators are paramilitary groups. Gustavo Gallón, "[Restitución vs. impunidad](#)", El Espectador, 24 September, 2013.

forced in order to be eligible for restitution, which involves a long process in the civil courts.<sup>44</sup>

- Some are experiencing problems over boundaries, which are usually resolved through the local police station.
- Some people lent their houses out without a formal rental contract and are having difficulties either getting the tenants out, or trying to formalise this arrangement.
- The timing of mine action has not matched that of housing construction. Returnees have been ready to return and build new homes but their land remains contaminated. And so development partners are waiting for the land to be declared safe before moving in.
- Some are returning to find their land occupied by someone else.

Given the recent commencement of humanitarian demining by NGO mine/ERW operators in Colombia, the following section examines some of the key considerations in relation to land that mine action organisations should consider in the future.

### 3.1 Community Liaison

Colombia has experienced over four decades of internal armed conflict and some parts of country continue to be conflict-affected, with illegal armed groups actively using mines, IEDs and other explosives. This makes it difficult to obtain accurate and static data about the location of mines/ERW. As well, given the presence of IAGs and their continued use of threats, intimidation and violence in some areas, communities are often reluctant to provide information about the location of mines/ERW and victims. Given this context, it is vital that mine action organisations communicate clearly and transparently with communities about the role of mine action organisations, what survey and clearance processes involve, how communities can participate, the potential risks posed by contamination, etc. Community members can then make more informed decisions about the risks to them if they share information about mines/ERW. This makes community liaison a critical requirement for future mine action in Colombia.

Fortunately, community liaison is a requirement for accredited operators in Colombia. Although Colombia does not yet have a dedicated national mine action standard on community liaison, according to PAICMA, community liaison is reflected in the national standard on MRE<sup>45</sup>.

### 3.2 Information Management

The nature and scale of the contamination problem is presently unclear, which has implications for the land restitution and return processes. At present, the data contained in the Information Management System for Mine Action (IMSMA) which is used by PAICMA to manage the national mine action programme, is widely recognised as insufficient. The database contains numerous reports of accidents, incidents and items found but often these reports are not geo-referenced and only go down to municipal level, and not *vereda*<sup>46</sup> level, making it difficult to know the exact locations. Based on survey/clearance operations undertaken thus far,

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<sup>44</sup> Due to the inversion of the burden of proof included in the restitution procedure, which is applicable in these cases, it is the current owner who has to demonstrate that the land was bought through legal means, and not the victim having to demonstrate a forced sale. Also, to be eligible for restitution, they simply have to make a claim; the burden of proof is not on them.

<sup>45</sup> The national standard for MRE is not part of the humanitarian demining national standards. It has to be followed but it applies to all mine action actors.

<sup>46</sup> In Colombia, a vereda is a sub-administrative division of a municipality; so several veredas form a municipality.



contaminated areas are typically quite small and low density, and indicate that the perception of risk of mines/ERW is much higher than reality.

The lack of comprehensive data on mine/ERW contamination also has the effect of blocking off whole municipalities to the land restitution process. For example, if one accident has taken place in a *vereda*, the entire municipality will be considered contaminated until NTS can be undertaken to prove otherwise. As a municipality needs to be declared safe before land restitution can take place, one incident has the effect of delaying land restitution for the entire municipality until survey teams can be deployed to investigate further. The same can be said for IDP return and development programmes.

Much of data contained in the IMSMA database does not provide specific details regarding contamination below municipality level, making it hard for the Land Restitution Unit. There is a correlation between areas of displacement and mine/ERW contamination but there isn't sufficient technical data.

Colombia's IMSMA database collects data on infrastructure blocked, intended post-clearance land use and planned development projects. However, given the importance of land issues, it may be useful to adapt the IMSMA database by adding a few new fields which facilitate the collection and sharing of data on land ownership, land disputes (past and post-clearance), etc.<sup>47</sup> However care should also be taken to ensure that the fields added are necessary and add-value.

### 3.3 Priority-Setting

In 2011, BIDES began survey/clearance in 12 of the 14 municipalities designated as priorities in Colombia's 2011–2013 operational plan. In early 2013, 19 municipalities were prioritised and published by PAICMA for survey/clearance in the 2014–2016 period. In November 2013, the Government of Colombia announced that the "offer" of municipalities was going to be increased by identifying geographical areas (*zonas de focalización geográfica*) that had security conditions requiring intervention with humanitarian demining. Of the initial 19 municipalities prioritised, seven were assigned to BIDES, two to HALO Trust and the remaining 10 remain unassigned.<sup>48</sup> On 31 January 2014, BIDES was tasked with two additional municipalities and HALO Trust with two additional ones (for a total of four). The action plan for 2014–2016 – so far only circulated as a draft – will be formally presented in Maputo, Mozambique, at the Third Review Conference of the Anti-Personnel Mine Ban Convention in June 2014.

According to Decree 3750, national-level priorities<sup>49</sup> are based on the following criteria: (i) security (ii) contamination as determined by PAICMA (iii) information from the Ombudsman Office; and (iv) information provided by the Military Forces.

Despite this, it seems that national-level actors have different opinions regarding the main criteria used for priority-setting. For example, other actors interviewed maintained that priorities are set using the following criteria, which differ from those listed above:

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<sup>47</sup> The new version of IMSMA, IMSMA<sup>ng</sup>, includes new fields for capturing land-related data.

<sup>48</sup> Daniel Avila, Actualización del plan de acción de desminado humanitario 2014 – 2016, Workshop presentation, November 2013

<sup>49</sup> Also referred to as big-P prioritisation which refers to the processes and decisions in mine action that determine what should receive the most resources. See GICHD, [Priority-Setting in Mine Action, Introduction and Basic Concepts](#), GICHD Policy Brief 1, November 2011.

- number of victims residing in the area
- land restitution (since 2012)
- requests for clearance from Governors
- support for other government programmes (e.g. return, etc.)

Interviews outside of Bogotá also revealed that the priority-setting process and criteria are not widely understood outside of the capital.

Local-level prioritisation typically involves municipal officials, community representatives, PAICMA, and operators (BIDES and NGO). Local level prioritisation of tasks occurs at the municipal level and is based on the following criteria:

- requests for land restitution
- the number of people living in the area
- the number of people likely to return
- access, logistics, vegetation, seasonal factors, etc.
- the SHA/CHA

It is unclear to what extent the priority-setting process considers post clearance land use and the potential for land-related conflict post-clearance, particularly for returnees/land restitution claimants. Once municipalities are prioritised<sup>50</sup>, BIDES and HALO Trust are tasked by PAICMA to clear a municipality as a whole.

The Ministry of Defence plays an important role in priority-setting, which is reflected in the fact that security is a key criterion for Colombia's prioritisation process. Planning and prioritisation of survey/clearance follows a traffic-light approach that is based on the level of safety:

- Green zones are those “consolidated”<sup>51</sup> by the government, where civilian government representatives can do their work unguarded, and are therefore prioritised for survey/clearance
- Yellow zones are where violence is reduced but the likelihood remains high and they are to be consolidated in future.
- Red zones are not consolidated and are considered no-go areas for mine action.

Perceptions about whether survey/clearance is feasible in Colombia have changed under the current President. In the past, both the government and several humanitarian organisations mine action organisations believed that due to the security situation, survey/clearance operations

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<sup>50</sup> This is referred to as small-P prioritisation which is the name given to what should be done first, e.g. impacted communities, survey and clearance tasks. See GICHD, [Priority-Setting in Mine Action, Introduction and Basic Concepts](#), GICHD Policy Brief 1, November 2011.

<sup>51</sup> Consolidation refers to the government's National Territorial Consolidation Plan, a five year programme that seeks to facilitate government entry into previous no-go parts of the country with histories of illegal armed groups, violence, drug trafficking and statelessness.

would put civilians at risk of being targeted by illegal armed groups and was therefore not feasible at all regardless of the zone classification. Many organisations have since changed their position and recognise that there is scope to conduct survey/clearance; however there are still concerns that it is not possible in insecure areas which have not been “consolidated” by the government.

Given the high number of casualties related to mines/ERW in red and yellow zones, debate remains over whether these areas should be prioritised for survey/clearance. With the start of humanitarian demining by NGOs, it may be feasible for NGOs to conduct survey/clearance in cases where mines are not strategic and clearance would not put communities at risk. NGO operators are more likely to be able to gather sensitive information based on experience from other countries, and by virtue of the fact that they are not military. In addition to humanitarian need, if a Mayor and a community in a red or yellow zone make a request for clearance and this is an area also prioritised by the LRU, there should be a means of prioritising this. If an area is safe for land restitution to take place, the same should apply to mine action given that the land restitution process is moving more quickly than the clearance process.

PAICMA is in the process of adjusting the methodology used for prioritising municipalities for survey/clearance. Previously, priorities were set based on various factors including land restitution requests, the number of returnees in an area, security situation, etc. However, this limited the number of municipalities where humanitarian demining can take place. For this reason, PAICMA is amending the methodology and are working on identifying all of the municipalities within the country that has security conditions where humanitarian demining can take place. Once this list is available, PAICMA will identify geographic areas that specific operators can apply for and plan for in the long term.<sup>52</sup>

### 3.4 Non-Technical Survey

In Colombia there is a clear demand from IDPs to return to their land, particularly in areas of the country where security conditions are favourable for return. Some IDPs have and continue to return to their land before survey/clearance can take place and are living in and among possible minefields. Survey and clearance operations have thus far been limited in Colombia due to capacity constraints, as well as on-going conflict, the highly politicised nature of mines and mine action in the country<sup>53</sup> and delays in the accreditation of NGO mine/ERW operators.

Non-Technical Survey commenced in 2010, following the adoption of Standard Operating Procedures (SOPs) which are based on IMAS 08.20. According to the NMAS on NTS, the purpose of NTS is to:

1. Cancel the suspicion of contamination with mines/ERW/IEDs without employing technical means of Humanitarian Demining.
2. Specify the Hazardous Areas where there is evidence of mines/ERW/IEDs contamination
3. Clarify the type of contamination which is endangering the community.
4. To identify and analyse the social and economic factors and their risk level with the purpose of establishing priorities.

PAICMA is responsible for coordinating NTS activities and allocates NTS tasks to BIDES (and now HALO Trust *et alter*) based on the IMSMA data, while the OAS monitors NTS operations

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<sup>52</sup> Email from Maria Angelica Jaramillo Moscoso, PAICMA, 10 December, 2013.

<sup>53</sup> For example, many government officials refuse to use the terms “armed conflict” or “internal conflict”, labelling it instead as “guerilla violence,” “insurgency” and more recently “terrorist threat.”

and does QA/QC. NTS teams investigate “suspicions” to determine whether there is evidence to define a dangerous area or to cancel the “suspicion”. Once a dangerous area has been defined, it is then tasked for technical survey/clearance.<sup>54</sup> BIDES’ NTS teams collect data from the municipality and communities through community meetings. They also work with the OAS who has community liaison teams working in association with BIDES’ NTS teams.

### Box 2: Findings from HALO Trust’s Non-Technical Survey pilot in 2010

Based on a special Memorandum of Understanding with PAICMA, HALO Trust carried out a pilot NTS in the province of Antioquia in 2010, and remains the only entity aside from the army to have conducted NTS in Colombia. From March 2010-October 2011, HALO Trust investigated events<sup>55</sup> in the national IMSMA database in the municipalities of Abejorral, Argelia, Cocorná, Nariño, San Luis, San Rafael, and Sonsón, all in the department of Antioquia. However, upon investigation, it recommended 90% of the events for cancellation and started visiting all 459 communities (*veredas*) where the 779 events were located to collect more reliable data.<sup>56</sup> Out of the 459 communities visited, 359 reported that they were not contaminated. In total, 78 areas were classified as high risk and as possible minefields, nearly 10% of the total.

Overall HALO Trust found 37 SHAs and 41 CHAs and the matches with the IMSMA data were few, highlighting clear challenges with using IMSMA data to guide planning.<sup>57</sup> According to the OAS in 2010, 93 SHAs covering 997,651m<sup>2</sup> were surveyed and 82% were released without clearance, which is similar to the results of the HALO Trust NTS pilot.

The NMAS on NTS takes land issues into consideration by specifying the following:

- The NTS form must include questions about “details regarding plans or local development projects, return plans and lands reinstatement plans and actors involved in the social and economic development of the population.”
- Whenever a hazardous area is identified, it must contain information regarding the property and holding of the land and the future use of the freed land.<sup>58</sup>

The [NMAS on Tasking](#) also mentions that when allocating NTS tasks, the Instancia will consider, among other things, the following: the situation of public order and security, the organisations and partner organizations in the territory, the return policies and activities, land restitution,

<sup>54</sup> ICBL-CMC, “Country Profile: Colombia”. 17 December 2012. Accessible at [http://www.the-monitor.org/custom/index.php/region\\_profiles/print\\_profile/450#\\_ftn12](http://www.the-monitor.org/custom/index.php/region_profiles/print_profile/450#_ftn12)

<sup>55</sup> PAICMA defines an event as a previously reported suspect area, a mine accident, or a single landmine encountered and destroyed by the army.

<sup>56</sup> The Observatorio de Minas (before PAICMA) mainly used IMSMA for surveillance of ‘events’ - ie, accidents, incidents, reported hazards, military breaching and also victims and corresponding given assistance by NGOs. For the past 10 years, PAICMA has tried to gather that data through information exchange procedures with relevant actors and to have as much information as possible on the number of events and victims, including their location.

<sup>57</sup> Colombia’s IMSMA data indicates which municipalities have a problem based on previous accidents, incidents, items found, etc. but the data is not geo-referenced/does not include coordinates, and it only goes down to municipal level, not *vereda* level. There is need to plan for smaller areas than municipalities which are quite large, e.g. group of *veredas* rather than at the municipal level; In late 2011, HALO Trust discontinued its NTS work following the decision of the new PAICMA Director that HALO Trust needed further accreditation to continue surveying. In September 2013, HALO Trust was given approval by the Government to commence survey activities.

<sup>58</sup> Colombia. National Mine Action Standard on Non-Technical Survey, Version 1, 1 June 2012.

infrastructure and development agreements reached with local authorities at the departmental and municipal levels, and the will of the affected community.

The [standard NTS form](#) does not however include any specific questions in relation to return plans, land restitution or land ownership. This represents a missed opportunity for mine/ERW operators and PAICMA to collect useful data about land issues, either at the NTS or re-survey/implementation plan stage, which could be used to inform their operations, as well as those of key land actors such as the Government's Land Restitution Unit.

PAICMA also conducts Local Opinion Surveys in order to gain a better understanding of the landmine problem at the *vereda* (community) level. The survey is based on consolidated data from IMSMA reports, secondary reports within PAICMA, workshops conducted with local authorities, information from NGOs and other national agencies.<sup>59</sup>

Including questions about land issues in NTS and Local Opinion Survey forms can facilitate data collection on current/future land use, land ownership and the likelihood of land-related conflict post clearance. If land tenure/ownership is unclear in an area, this can affect clearance operations and post clearance land use. For example, in Zambrano Municipality in Bolivar Department, clearance was undertaken by BIDES for what was believed to be small-scale farmers. However, once clearance was complete and the land was handed over, it was discovered that the land actually belonged to the owner of a large agribusiness and the farmers were in fact shareholders, paid to work on his land. Asking questions about land ownership beforehand and factoring this data into the priority-setting process might have helped to ensure that clearance to facilitate IDP return and land restitution is prioritised over clearance for commercial purposes.

Sample questions for inclusion in the NTS Local Opinion Survey forms could include:

1. Who has what rights to the land? Disaggregate by sex.
2. Are there any land conflicts or historical grievances between communities?
3. What was the past land use and what is its expected future use once the land is released?
4. Will the increased value of the released land increase the risk of land grabbing?

In 2010, HALO Trust's NTS teams asked communities about boundaries and land title in order to try to establish ownership. Where available, they also checked the cadastral survey and asked the municipality for information about IDPs. In future, NGO operators and BIDES could also check the social cartography data that the LRU has, when operating in an area where land restitution is prioritised.

### 3.5 Handover

Handover refers to the process involved in handing released land (through survey and/or clearance) back to national authorities, communities, land owners, etc.<sup>60</sup> Handover can have important implications for post survey/clearance land use and land rights more generally. When handover processes are unclear, inconsistent or there is a lack of community involvement in the process, this can create opportunities for land-related disputes<sup>61</sup> and even land grabbing. As well, if handover takes place with too much of a delay after survey/clearance is complete or with

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<sup>59</sup> ICBL, Landmine Monitor, Colombia, 2013 (draft).

<sup>60</sup> For more information about handover procedures, see Gender and Mine Action Programme and GICHD. [Handover of Released Land: Common Procedures and Good Practices](#), 2013.

<sup>61</sup> See Appendix 4 for information about land-related dispute resolution mechanisms in Colombia.

limited or no community participation, this can lead to land not being used by beneficiaries, as they may not be informed in a timely manner that the land is safe to use or may not have sufficient confidence in the land release process.

Handover procedures in Colombia have typically involved the following main steps: BIDES clears an area; the OAS undertakes QA/QC of the task and sends the result to PAICMA, who then approves the task; the OAS then signs a certificate of conformity and sends a request to PAICMA to authorise the handover. Once PAICMA authorises the handover, a meeting is held with the community, local authorities and vulnerable groups where minutes of the discussion are registered and the community is shown what is cleared and marked. The community is clearly informed about what areas are safe. When the whole municipality is surveyed/cleared, a small political ceremony is organised and the municipality is declared free from the suspicion of mines. Until recently, handover ceremonies were only organised once an entire municipality was completed and officially declared free from the suspicion of mines. However, given the time it takes to complete survey/clearance operations of all high, medium and low priority tasks in one municipality, work is now being done to change the practice to be able to hand over individual tasks once they are completed, following a request to the Mayor.

Clear and transparent handover procedures can help to mitigate land grabbing. Colombia does not yet have a specific NMAS on handover procedures. With the start of operations by HALO Trust and the entry of new NGO operators in future, it is likely that PAICMA, the Instancia and others will need to review current handover procedures and develop guidelines.

The NMAS on Manual Clearance mentions that “[t]he Cleared Areas must be delivered to the community following the provisions set forth in the National Standards of Humanitarian Demining. It will then be PAICMA’s responsibility to formally communicate the results of the clearance with manual technique to the community and remaining entities and involved organizations.”<sup>62</sup> While it clearly states that PAICMA, and not operators, is responsible for handover, it does not specify the timeframe for handover, who is involved in the handover process, the need for community participation and handover documentation. As handover is very important for community confidence in the land release process, handover should take place as soon as possible. According to PAICMA, the NMAS on tasking will include guidance on handover; the current draft does not.

In areas prioritised for land restitution, the handover of released land is done through the LRU, who handle all land-related issues. However, as the LRU only deals with plots of land which will not completely coincide with much larger released areas, handover procedures even in land restitution cases will require close coordination with mine action actors.

In areas which have not been prioritised for restitution and where the LRU is not present, mine action actors may encounter difficulties. For example, once survey/clearance is done and land is handed over, without clear handover procedures in place, this could lead to disputes and land-grabbing. To avoid this, the LRU recommends that NTS teams ensure they adopt some of the social cartography/mapping techniques used by the LRU to establish land ownership, boundaries, land registry/cadastral records, etc.

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<sup>62</sup> Colombia. NMAS – Manual Clearance, June 1, 2012.

### 3.6 Post Clearance Assessment

Post clearance assessment typically involves returning to mine/ERW affected areas 6-12 months after the area has been released to collect data on the short to medium term outcomes resulting from the land release process. For example:

- Are intended beneficiaries using the land? Disaggregate by sex
- How is the land being used?
- Is the land being used as intended?
- Do beneficiaries require support to use the land productively, e.g. training, tools, seeds, etc.? What support do women/men need?
- Have male and female beneficiaries encountered any problems in regards to land use/ownership, e.g. disputes over ownership, intimidation, rising value of land, land-grabbing, etc.?
- How much land is still held by the intended beneficiaries? Are there any gender differences?

This type of data can be used to also determine whether for example, the right tasks are being prioritised for survey/clearance. If for example, the post clearance assessment finds that land is not being used once it is handed over, then perhaps the prioritisation system needs to be adjusted to ensure that tasks with a higher likelihood of post clearance land use are prioritised in future.

In Colombia, post clearance assessment has not been undertaken by BIDES to date, and funding provided through the governments of Canada and the United States has not made it a requirement. While post clearance assessment is not yet carried out, the OAS employs individuals from each community to act as a focal point in case there are further reports of mines/ERW, and to carry out risk education and livelihoods projects. This is based on the recognition that although tasks are completed, suspicions remain and the context is dynamic with the on-going return and movement of people.

With the commencement of survey/clearance by NGO operators, it would be useful for PAICMA to develop a national standard on post clearance assessment, through which each operator can use their own post clearance assessment tools/methodology in association with PAICMA. At present HALO Trust undertakes post clearance assessment, as does BIDES for some tasks. Given the Colombian context where survey/clearance operations are facilitating the return of IDPs and the land restitution process, and where land remains a key driver of conflict, a post clearance assessment system would help assess whether intended beneficiaries are using land post clearance and whether they are experiencing land-related problems. This data could also be used by land actors to protect and promote the tenure security and overall safety of returnee communities. For example, in communities in San Carlos Municipality (Antioquia Department), IDP families left or were forced to sell their land at a low price to IAGs during the conflict. Some have returned following clearance, and upon return, they have found that their land is occupied. In another community in San Carlos, clearance facilitated the return of several IDP families. However, following clearance, their land was purchased by someone. This resulted in a dispute and escalated to violence. The IDP families were forced off of the land due to lack of formal title, and the case is being addressed through the courts.

Without conducting a post clearance assessment, this type of issue would not necessarily be reported to the national mine action authorities, and as a result, could create misperceptions that land issues are not an issue in areas where survey/clearance has been completed.

Given that some tasks in Colombia are small, remote and have no humanitarian or developmental impact, post clearance assessment would not be required for all tasks but

instead should be applied to a standard percentage of tasks, and also be used based on need and type of task.

### 3.7 Coordination Between Mine Action and Land Actors

Unlike some mine/ERW-affected countries, there is clear recognition among land and mine action stakeholders in Colombia of the direct links between mine/ERW clearance and land issues, in particular land restitution, and the need to coordinate. There is an ongoing effort to establish coordination mechanisms, involving PAICMA, UNMAS, the OAS, BIDES, Halo Trust, land restitution officials and municipal government authorities. The former Minister of Agriculture for example was a strong advocate for humanitarian demining, and has participated in past meetings of the Instancia/CINAMAP.

Land restitution is a priority programme for the government and the Land Restitution Unit (LRU) has been a strong proponent and ally of the mine action community in Colombia. When the LRU was first set up, staff recognised there was a problem with illegal armed groups in restitution zones, but later also realised that mines/ERW were a problem. As part of the restitution process requires providing a guarantee to land restitution claimants of no further victimisation, the LRU and other land restitution actors are duty bound to ensure that returned land is safe to use and access.

At the moment, BIDES gets information regarding mine/ERW contamination based on IMSMA. Then BIDES checks the Suspected Hazardous Areas (SHAs) to see if there are overlaps with land restitution claims. If there is overlap, those SHAs are prioritised. The Land Restitution Unit has requested mine action support in 700 municipalities. Mine action is currently working in 7. This is unfortunate given that once government development and infrastructure improvements are far more likely to take place in municipalities which have been declared “mine-free”. Until these areas are surveyed, the LRU cannot proceed with land restitution. Unfortunately BIDES does not have sufficient NTS capacity to meet the needs of the LRU. As well, it may be difficult for BIDES NTS teams to obtain accurate data from conflict-affected and victimised communities about the location of possible mine/ERW contamination. Therefore the recent start of survey/clearance operations by HALO Trust is a welcome development.

Despite regular coordination and communication, there is limited overlap at present between the areas prioritised by the Land Restitution unit and the 14 municipalities where demining was prioritised in PAICMA’s 2011-2013 Operational Plan. Only two out of 86 of the land restitution areas currently overlap. For example, the table below lists the 14 municipalities in which survey/clearance took place between 2011 and 2013. The Land Restitution Unit, at the time of writing this report, was only working in two of the same areas in Bolivar, as highlighted below.<sup>63</sup> Previous mine action tasks have had no correlation with land restitution, partly because the priority mine action tasks have been based on mine victim needs and not on land restitution or reparations. It is also because the LRU was only established in 2011 and their prioritisation is based on different criteria. There are plans in place to harmonise action plans and improve overlap and coordination. The LRU would like to install NTS teams in areas of intervention.

At present, Colombia lacks a clear mechanism to ensure the development needs of mine/ERW affected communities are shared with relevant government agencies and humanitarian/development actors. Mine action organisations should ensure that they communicate the needs of beneficiary communities to planning entities, particularly those who

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<sup>63</sup> The Land Restitution Unit is now working in Samana and they are coordination with BIDES.



do not have formal land title as without formal title, they are not entitled to receive state benefits post clearance/return. Similarly, some people may be returned to zones where there are no services. The Victims unit is working with other agencies such as the Colombian Institute for Rural Development (INCODER) so as not to create false hopes. For example, the agricultural bank will not give credits without formal title, and so everything is suspended until titles are clarified.

**Table 4. Municipalities selected for survey/clearance by BIDES**

Municipality	Department	Area
San Vicente de Chucurí	Santander	N/A
El Carmen de Chucurí	Santander	N/A
Samaná	Caldas	N/A
Chaparral	Tolima	Cañón de las Hermosas
El Carmen de Bolívar	Bolívar	Montes de María
San Jacinto Bolívar	Bolívar	Montes de María
Zambrano	Bolívar	Montes de María
Granada	Antioquia	Oriente Antioqueño
Samaniego	Nariño	Sur Occidente colombiano
San Carlos	Antioquia	Oriente Antioqueño
San Francisco	Antioquia	Oriente Antioqueño
San Juan de Arama	Meta	Selvas del Meta y del Guaviare
Vistahermosa	Meta	Selvas del Meta y del Guaviare
El Dorado	Meta	Selvas del Meta y del Guaviare

Source: PAICMA

## Appendix 1 – List of People Met

BIDES Batallion – Henry Palomino Cano

Campaña Colombiana contra Minas: Alvaro Jimenez

Consultant: Fernando Vargas

Crudo Transparente: Sophie Dumont

FSD – Germán Cruz

HALO Trust: Grant Salisbury, Claire Renolds

ICRC – Anamaria Hernandez

IOM – Kathleen Kerr, Mario Ceballos, Valerie Dourdin Fernandez, Eduardo Medina, Olga Rebolledo

Medellín government: Alejandra Restrepo, Ivan Marulanda, Adriana Valderama, Elina D'Amato, Juan Esteban Lopine ; Handicap International: Valery Posada Ospina, Flonica Alvarz Orrego, Yanrieth Rebolledo Bertez

Mercy Corps: Diana Roa

Organisation of American States : Guillermo Leal, Lina Maria Arias

PAICMA: Pablo Parra, Fernando Jinete Solano, Diana Zorzano, Karen Tatiana Godoy

Procuraduria: Daniel Espinosa, Adriana Martinez, German Daniel Robles Espinosa, Tatiana Londono Camargo, Oscar Daria Amaza Nauas

NRC – David Garcia

UNMAS: Marc Bonnet, Christian Lara, Jean Guy Lavoie

UNDP: Veronica Rios, Absalon Machado

Unidad de Restitución de tierras: Yvonne Moreno, Danny Usma

Unidad de Víctimas: Johanna Miranola Baututa, Jairo Rivas Bellofo, Carolina Sanabria, Tatiana Santos Dukun, Nidia Viteri rojas, Sandra Veloza Morales, Alex Marieio Zorilla Ortez

Universidad de Los Andes – Prof Manuel Rodriguez

UNDSS: Guido Alberto Caamano, Luisa Fernanda, Alonso Tobon

UNHCR – Lorena Nieto

San Carlos Municipality, Antioquia Department – Mayor María Patricia Giraldo Ramírez, Gina D'Amato Herrera

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## Appendix 2 – Mission Programme

Monday, July 8

- PAICMA
- Unidad de Víctimas
- UNDP
- Campaña Colombiana contra Minas
- Crudo Transparente

Tuesday, July 9

- UNMAS
- Unidad de Restitución de tierras
- Procuraduría
- UNDSS, NRC and UNHCR (Protection Cluster)

Wednesday, July 10

- BIDES Battalion 60
- Universidad de Los Andes
- IOM
- OAS

Thursday, July 11

- San Carlos Municipality
- Mirandita vereda

Friday, July 12

- Medellín Government and HI

Saturday, July 13

- HALO Trust

Sunday, July 14

- FSD

Monday, July 15

- ICRC

Tuesday, July 16

- Debriefing meeting
- UNDSS
- UNDP

Wednesday, July 17

- Mercy Corps

## Appendix 3 – Key Land/HLP Actors

As mentioned in the main text of this report, land administration in Colombia is executed by several governmental institutions with, sometimes, competing mandates. The process is also influenced by a growing civil society which is becoming increasingly knowledgeable and engaged in land issues. The following description of key land actors seeks to provide mine action actors with background information on some of the main land-related stakeholders, both in the government and non-governmental sectors.

### **Government institutions**

#### *Ministry of Agriculture and Rural Development*

Its main function is to formulate and guide the implementation of national policies for the development of the agriculture and livestock sectors in the country, as well as stimulating rural development. In general terms it is responsible for all policies related to the rural country.

#### *Land Restitution Unit*

Recently created and with some 18 months in operation by August 2013, the Administrative Land Restitution Unit implements the land restitution strategy of land grabbed as a consequence of internal armed conflict. It is centralised and manages local offices in 20 regions of the country.

#### *Municipalities*

Municipalities are the most basic entity of the country's political-administrative division. Among other things, local governments are responsible for designing Municipal Development Plans, as well as deciding on land use planning, both in its urban and rural areas.

#### *INCODER*

The Colombian Institute for Rural Development reports to the Ministry of Agriculture, but has financial and administrative independence. Its main responsibility is to coordinate the National System of Agrarian Reform, defining and implementing strategies to encourage sustainable agriculture and livestock development. It is in charge of the administration of public land and serves an important coordinating role of institutional intra-sectorial efforts aimed at improving the conditions of the rural sector. INCODER manages land restitution cases that are not related to the internal armed conflict.

#### *Instituto Geográfico Agustín Codazzi –IGAC-*

IGAC is the national agency in charge of producing the official map and basic cartography of the country. It is also the cadastre agency and as such it is responsible for elaborating and maintaining the National Cadastre and consolidating the inventory of soil types. It carries out geographical research projects in support of the territorial development strategy.

It is important to highlight the fact that there are also several municipalities that run their own cadastre database, and such as Bogotá, Cali, Medellín and Antioquia have cadastre offices in their municipal government structure. Although they are administratively independent, they follow technical standards and regulations established by IGAC, which in turn is responsible for overseeing their compliance.

#### *Superintendencia de Notariado y Registro*

Although it enjoys financial and administrative independence, the Superintendencia reports to the Ministry of Justice. It is responsible for the administration of the Property Registry, as well as the supervision of all Notaries in the country.

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## **Non-Governmental and International Organisations/Associations**

### *Colombian Agriculture Society –SAC-*

SAC is the most salient agriculture and livestock guild association in the country. It is conformed of agriculture product growers, cattle ranchers, timber businesses and other professionals of the rural productive sector.

### *Colombian Federation of Cattle Ranchers –FEDEGAN-*

FEDEGAN is the most important association of cattle ranchers. It gathers, as affiliates, most of the regional and municipal cattle associations in the country, as well as other businesses related to the cattle ranching sector.

### *National Indigenous Organisation of Colombia –ONIC-*

It represents indigenous peoples in the country, which comprises around 2% of the national population. It promotes the participation of indigenous peoples in the national policy making processes and seeks social and institutional recognition of their ethnic identity and culture.

### *National Association of Farmers –ANUC-*

ANUC gathers small farmers in a federative structure with the aim of serving as a representative organisation, provide training and legal advice. It has representatives in 13 areas of the country.

### *National Association of Farmers' Reserve Zones –ANZORC-*

ANZORC gathers around 50 farmer organisations that share the objective of promoting the creation of Farmers' Reserve Zones<sup>64</sup> in the country.

### *DeJusticia*

DeJusticia is a legal think tank that in the recent years included land restitution within their fields of action. They are widely known for their legal activism in search for the consolidation of democratic institutions in the country.

### *Grupo Semillas*

Local Non-Governmental Organisation working with indigenous, afro-Colombian and farmer associations for the protection and administration of their lands and territories, biodiversity, natural resources and sustainable development. They have widely researched issues related to land rights and rural development.

### *UNDP*

The United Nations Development Programme uses its world network to help the United Nations system and its associates raise awareness on development issues and to verify progresses achieved. Their 2011 Human Development Report was devoted to land issues and rural development in the country and they currently implement efforts in order to advance its recommendations.

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<sup>64</sup> A legal figure that establishes restrictions on land property and its alienation in order to support the small farmer's economy.

## Appendix 4 – Dispute Resolution Mechanisms

If, as planned, mine clearance efforts are tied to the land restitution strategy, Land Restitution Tribunals will address all disputes over released land as described above. There is however, a great chance that in some cases survey/clearance will take place in areas where land restitution activities have not been deployed, or that certain conflicts over released land will not fall within the frame of competencies of the Land Restitution Unit. In such cases, there are other mechanisms that can be used in order to address conflicts over land. This appendix explores the main formal and informal land dispute resolution mechanisms in mine/ERW affected areas.

In general terms, Colombian institutions have classified conflict resolution mechanisms as formal and non-formal. Formal conflict resolution mechanisms refer to those recognised by national legislation and non-formal mechanisms derive their strength from social institutions and community cohesion.

Depending on the issue, the circumstances, the parties involved and their symmetry or asymmetry of power, one mechanism will prove better than another in order to guarantee a just settlement.

One of the most important non-formal mechanisms of conflict resolution in rural areas is that exercised by Communal Action Boards or *Juntas de Acción Comunal*. These are civic and communitarian organisations voluntarily integrated by residents of a township that share a common interest in communal harmony and sustainable development. These organisations have a legal status and although they serve other purposes within the municipal life, they are generally the first stage to which two community members attend in order to peacefully solve a conflict or dispute without having to attend judicial or administrative authorities. One of the members of the board, usually its president, will try to mediate the conflict and reach a solution, however its results are not binding to the parties and the mediator has no legal competency to enforce the proposed agreement. Thus, if one of the parties is not satisfied with the settlement, formal mechanisms must come into place.

Within the formal mechanisms, Colombian legislature distinguishes between jurisdictional mechanisms and non-jurisdictional, where the former refer to those that go through the ordinary the justice system<sup>65</sup> and the latter to those that appeal to alternative resolution mechanisms, and are also recognised by national law.

Perhaps the most important jurisdictional authority at the municipal level on property issues is the Police Inspectorate's Office; an administrative body that reports to the local Mayor's Office. Police Inspectors are elected by the Municipal Council and act as guarantors of the public order in the town. Although they are also responsible for other issues such as public space, domestic violence and environmental issues, when it comes to conflicts over property rights, they execute two very important procedures – Disruption of Possession processes and Eviction for *de facto* Occupations.

1. Disruption of Possession process: The procedures executed to address the disruption of possessions vary according to each Departmental Police Code, but in essence they all aim at avoiding violence and restoring the full exercise of property rights when these have been challenged without legal grounds. The procedure is also general and starts with a visual inspection of the land by the Police Inspectorate's Office and two experts who then produce a technical appraisal document. This document is then sent to the accused party for response. After the response, if the property rights are to be protected, orders are given to restore the situation to the way it was before the disruption took place. If not, the case is dismissed. This procedure is typically used to resolve boundary disputes.
2. Eviction for *de facto* Occupation: Processes of Eviction for *de facto* Occupations are executed when someone has been *de facto* deprived of their property rights without their consent or the

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<sup>65</sup> These deal with issues pertaining to one of its thematic jurisdictional competencies: Constitutional, Ordinary, Administrative or public law disputes, and specialised jurisdictions – Military Tribunals.

order of a competent authority. The institution gives the Police Inspectorate's Office three days to re-establish the existing conditions prior to the unlawful invasion of the property. As with the Disruption of Possession procedures, measures taken by the Police Inspectorate's Office when executing eviction procedures are provisional and can be challenged and overruled by subsequent judicial decisions.

Colombian legislation recognises different types of tenure rights and also different judicial processes to guarantee them. In contrast to the procedures described above, these follow ordinary Civil Law procedural formalities and therefore are more expensive in terms of money and time. The Proceedings for Revendication, Restitution of Tenancy and Claims for Possession are specifically designed to protect the rights to ownership, tenancy and possession respectively.<sup>66</sup>

Also at the municipal level, *Houses of Justice* represent another alternative to address conflicts over land rights. They serve as coordinating inter-institutional centres where representatives of various government and civil society institutions provide guidance and advice on conflict resolution and implement formal and informal mechanisms to settle disputes. Houses of Justice are located in all departments and municipalities that have made a request to the Ministry of Justice due to their high number of community disputes and the level of vulnerability of their communities; there are currently 65 centres located in 56 regions of the country.

Some of the institutions present at the Houses of Justice that provide guidance and implement conflict resolution mechanisms are University Law Centres, which, by law, provide legal representation at no cost; Peace Judges, popularly elected by their communities to perform Communal Justice procedures, also at no cost; and Equity Conciliators, certified and monitored by the Ministry of Justice to participate in peaceful mediation of communal conflicts.

Finally, non-jurisdictional mechanisms include the practice of Alternative Conflict Resolution Mechanisms -ACRM- which include transaction, mediation, amicable composition, conciliation and arbitration.

The nature of ACRM lays on the fact that by Constitution, ordinary citizens can transitorily exercise the faculty of administering justice, thus making decisions based on law or equity, in the terms determined by national legislation. The essence of these mechanisms is the willingness to solve a conflict shared by two competing parties on their own, by approaching a third one, or by signing a transaction contract depending on the nature of the conflict.

Transaction or direct agreement is the simplest of the ACRM. According to its contents, two or more people manage their controversy independently, without the interference of a third party. The agreement reached is deposited in a transaction contract. Like in other ACRM, there are limits to the extent of what can be agreed upon, and in turn what can be conceded, thus fundamental rights (liberty, labour rights, security) cannot be affected by the implementation of the Transaction mechanism.

In Mediation, a third party, voluntarily chosen by those involved in the disagreement, facilitates the resolution of the conflict. By listening to the parties involved and considering their interests the mediator proposes equitable ways to solve the discrepancy. The result is deposited in a document called a *Compromise*, which should be formalised with the Notary.

When applying Amicable Composition, the individuals involved in the conflict delegate on a third party the faculty to establish the criteria to guarantee the fulfilment of the legal contract that gave rise to the conflict; the decision will have binding force for the parties involved. In contrast with other ACRM, in order to use Amicable Composition, the conflict must have been triggered by differences in the interpretation of a legal contract.

According to Colombian legislation, Conciliations can be judicial if they take place within a judicial process, or extrajudicial if they are executed before or independently of a judicial process. Although

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<sup>66</sup> Colombian Constitutional Court Decisión T-423/10

very similar in essence to some mediation or amicable composition processes, extrajudicial conciliations have been subject of legal regulation, and as such have been provided with some special characteristics in terms of the process, its participants and the effects of the outcome.

For one, extrajudicial conciliations are mandatory in most of civil, public and family law procedures. Parties are summoned by the conciliator and have the duty to assist to the procedure. Conciliations can take place at specialised conciliation centres (approved by the Ministry of Justice), regional offices of the *Defensoría del Pueblo*, at *Personerías Municipales*, with Regional Agents of the Public Ministry, at a Notary's Offices, Law Faculties, and a great variety of other local authorities. The conciliator is generally a lawyer<sup>67</sup>, and they all must have been credited and be registered as such at the Ministry of Justice. When an agreement is reached its contents are included in a minute that holds legal value. If the procedure is undertaken at a Law Faculty or before a Public Official with conciliator competencies the process will be free of charge, Notaries and private conciliation centres can charge a fee depending on the value of the transaction.

Finally, judicial conciliations take place before a judge (acting as the conciliator), as part of a judicial process and are decided by a ruling or decision.

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<sup>67</sup> In cases where the procedure is carried out by a last year law student, or at a conciliation center approved by the Ministry of Justice, or when the *Personero Municipal*, or the Notary is not a professional in law, this requisite may be disregarded.