



# **Landmines and Land Rights in Southern Sudan**

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## LIST OF ABBREVIATIONS

AP	Anti personnel landmine
AV	Anti vehicle landmine
CPA	Comprehensive Peace Agreement
DDG	Danish Demining Group
EOD	Explosive Ordnance Disposal
ERW	Explosive Remnants of War
FAO	Food and Agriculture Organisation of the United Nations
FSD	Swiss Foundation for Mine Action
Gos	Government of Sudan
GoSS	Government of Southern Sudan
IA	Impact Assessment
ICSS	Interim Constitution of Southern Sudan
IDP	Internally Displaced Persons
IMAS	International Mine Action Standards
IMSMA	Information Management System Mine Action
LCF	Land Coordination Forum
LIS	Landmine Impact Survey
NPA	Norwegian People's Aid
SAF	Sudan Armed Forces
SADD	Sex and Age Disaggregated Data
SHA	Suspected Hazardous Area
SPLA/M	Sudan People Liberation Army/Movement
SSDA/C	Southern Sudan Demining Authority/Commission
SSLC	Southern Sudan Land Commission
SSRRC	Southern Sudan Relief and Rehabilitation Commission
UNDAF	United Nations Development Assistance Framework
UNDP	United Nation Development Programme
UNMAO	United Nations Mine Action Office
UNMAS	United Nations Mine Action Service
UNMIS	United Nations Mission in Sudan
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOPS	United Nations Office for Project Service
USAID	United States Agency for International Development
WFP	World Food Programme

## A NOTE ON TERMINOLOGY

**Mine action actors** include United Nations Mine Action Office (UNMAO), Southern Sudan Demining Authority (SSDA), United Nations Office for Project Services (UNOPS) contractors and international and national humanitarian mine action non-governmental organisations (mine action NGO).

**Mine action NGOs** comprise all international and national mine action NGOs.

**Mine action practitioner** refers to any individual who works for either a mine action actor or a international or national mine action NGO

The term **returnee** encompasses two broad categories of people; refugees and IDPs. According to cf. Geneva Refugee Convention, 1951, a refugee is a person who, ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, or membership of a particular social group or political opinion, is outside the country of his nationality and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country’<sup>1</sup>. IDPs are ‘persons or groups of persons who have been forced or obliged to leave their homes or places of habitual residence, in particular as a result of or an order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border’ (Guiding Principles on Internal Displacement, Introduction, paragraph 2).

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<sup>1</sup> UNHCR. The State of the Worlds Refugees: A Humanitarian Agenda. Oxford: Oxford University Press; 1997.



## EXECUTIVE SUMMARY

Southern Sudan provides a number of distinct perspectives from which to explore the connections between humanitarian mine action, post-conflict land rights and livelihoods. It represents a case in the initial stages of the transition from war to peace and a comparatively young mine action programme. A region with significant land and rich natural resources, it has experienced a number of land and natural-resourced based conflicts. These have been primarily between the Government of Sudan (GoS) and the Sudan Peoples Liberation Army/Movement (SPLA/M), but also between other groups in the region. Often becoming highly politicised, such conflicts are ongoing in many areas.

Additionally, new land issues are arising since the signing of the Comprehensive Peace Agreement (CPA). This is mainly as a result of the increasing commercial value of land and the fact that a weak policy environment is creating a situation prone to exploitation by various actors. Such land issues do not so much result in violence. Instead they arise between communities and ex-military, the local elite, government officials and investors, but are experienced firsthand by poor households through the loss of their land and livelihoods.

It is broadly acknowledged that an understanding of land-rights is key to improving the socio-economic impact of mine action and to ensuring that interventions do not exacerbate already existing tensions. However, the land question in Southern Sudan is particularly contentious and complex. Southern Sudan has societies regarded as some of the most traditional in Africa. With the slogan ‘the land belongs to the people’, the new Government of Southern Sudan (GoSS) opposes the system of state ownership of land that had been introduced during colonial times. Instead, they base land laws and policy on existing customary structures.

Customary rights to land are diverse however, and different views exist in regard to their legitimacy, the definition of community and the role of government. This is compounded by low institutional capacity at all levels of government, a lack of land policy and the fact that the land law was only enacted in 2009 and has not yet been disseminated. Within this context, mine action actors operate in support of a huge international humanitarian effort which has been heavily criticised for its lack of attention to land rights issues, and with an extensive, but still emerging landmine/explosive remnants of war (ERW) contamination problem.

Mine action actors in Southern Sudan have generally not addressed land rights issues as part of their response to humanitarian situations and post-conflict recovery. This is because of both the difficult context and the predominantly technical and output-focused approach of the sector. The complexity of addressing land rights issues in the country should not be underestimated, particularly given the limited government capacity. It will take time for mine action actors to be able to build a more holistic approach that incorporates land rights into their programming. Such initiatives should include building capacity, building partnerships, improving coordination and improving socio-economic impact assessment (IA), as well as updating handover procedures and prioritisation processes.



## 1. INTRODUCTION

After two civil wars spanning almost fifty years, Southern Sudan is the recently created autonomous region of the Republic of Sudan. The ten states forming Southern Sudan cover a vast, generally sparsely populated area<sup>2</sup>. While there are no reliable statistics to examine demographic and socio-economic trends, those that are available indicate that the region is one of the least developed in the world<sup>3</sup>.

Although more than 90 per cent of the region is suitable for agriculture, it remains heavily dependent on food-importation and international food aid. Basic infrastructure is generally absent and many regions are remote from markets and services. Around 70 per cent of the population live mainly off subsistence agriculture<sup>4</sup>, a fundamental economic activity in a country with a small industrial sector (excluding oil) and which, in the absence of safety nets, is an important key to poverty alleviation and food security.

The newly named Southern Sudan is the product of a Comprehensive Peace Agreement (CPA) that ended the 22 year long second civil war (1983-2005). The Southern referendum for independence is planned for early 2011 and is providing uncertainty. The conflict between the Government of Sudan (GoS) and non-state armed groups in the South, principally the Sudan People's Liberation Army (SPLA), resulted in an estimated two million deaths and the long term displacement of around 4.5 million people<sup>5</sup>. Like many other post-conflict situations, the signing of the CPA has been characterised by the return of a massive number of the displaced population.

The level of suspected mine/Explosive Remnants of War (ERW) contamination is regarded by many as a key obstacle to the reconstruction and development of Southern Sudan. In particular, it has severely affected the road network and the revival of agricultural activities. It complicates access to land and undercuts food production in large areas which are suspected to be unsafe. The clearance of mines/ERW in the region is therefore regarded as an essential part of larger humanitarian and recovery efforts.

## 2. LANDMINE/ERW CONTAMINATION IN SOUTHERN SUDAN

All ten states in Southern Sudan are contaminated with mines/ERW mainly as a result of the second civil war<sup>4</sup>. The earlier years of the war were characterised by small clashes between the Sudan People Liberation Army/Movement (SPLA) and the Sudan Armed Forces (SAF). By the late 1980s, the SPLA/M had come to control most of the rural areas in the South and a varying number of towns<sup>6 5</sup>. The Government of Sudan (GOS) held a few garrison towns, including Juba, Malakal and Wau and surrounding outposts. This pattern largely continued throughout the war but with both the SAF and the SPLA claiming and reclaiming different towns and areas of land. They left many

<sup>2</sup> The contested 5th Sudan Housing and Population Census put the population at 8.26 million

<sup>3</sup> According to information from the UN on the Millennium Development Goals in Southern Sudan, chronic hunger has been reduced from 48 to 33% between 1995 and 2006. However more than 90% of the population in Southern Sudan currently live on less than USD 1 dollar a day. It has the highest maternal mortality rate in the world – 2,054 per 100,000 live births. Girls make up only 27% of primary school enrolment and more than 90% of women are illiterate. Although there is limited information on HIV/AIDS, reports show yearly increases in the prevalence rate and limited knowledge among the population about prevention. Malaria is considered hyper-endemic. ([www.unsudanig.org/.../MDGs%20in%20Southern%20Sudan%20-%20Cleared.doc](http://www.unsudanig.org/.../MDGs%20in%20Southern%20Sudan%20-%20Cleared.doc)).

<sup>4</sup> USAID. Expanding Agriculture and Food Security Activities in Southern Sudan. Assessment Report for Economic Growth Team. June 2009: USAID; 2009

<sup>5</sup> De Wit P, Hatcher J. Sudan's Comprehensive Peace Agreement: An Opportunity for Coherently Addressing Housing, Land and Property Issues? In: Leakey S, editor. Housing, Land and Property Rights in Post-Conflict United Nations and Other Peace Operations A Comparative Survey and Proposal for Reform. New York: Cambridge University Press; 2009.

<sup>6</sup> HI. Circle of Impact: the Fatal Footprint of Cluster Munitions on People and Communities. Preliminary Report. November 2006.: Handicap International; 2007.

locations along the former front-lines contaminated with landmines/ERW, necessitating landmine and battle area clearance and explosive ordnance disposal.

Besides the SAF, the GoS used tribal militias to fight the SPLA, and is also reported to have supported rebel forces operating from neighbouring states, particularly the Lords Resistance Army. The GoS used cluster munitions by aerial bombing throughout the South between 1995 and 2000. This included dropping cluster munitions on non-military targets such as cultivated land, internally displaced persons (IDP) camps, NGO compounds, villages and hospitals<sup>6</sup>.

In a bid to control the oil-rich territory in the South, the GoS used military means such as landmines/ERW to depopulate areas. Weapons were hidden by both sides in garrison towns and in locations for restocking the armies<sup>6-8</sup>. Antipersonnel (AP) and anti-vehicle (AV) landmines were used by both sides on a wide range of areas, including major roads, urban centres and rural communities, around water sources and across arable land. AV mines were mainly used on roads by the SPLA/M to restrict the movement of GOS forces, and to limit access to towns. The GoS used AP mines defensively to protect its garrison towns and to prohibit the movement of SPLA/M forces. The distribution of landmines was largely unmapped<sup>7</sup>.

The UN (United Nations) and Survey Action Centre have subsequently attempted to map the areas of landmine/ERW contamination. A Landmine Impact Survey (LIS) was implemented in 2006 in Southern Sudan. It identified the largest amount of contamination in the three Equatoria states (Eastern, Central and Western). In total, 183 communities in Southern Sudan were impacted, 136 of which were in Equatoria<sup>8</sup>.

### **3. THE LAND QUESTION AND SOUTHERN SUDAN'S HISTORY OF LAND LEGISLATION**

Although there are a number of causes for the two civil wars, the issue of land was one of the most critical. Successive post-independence governments in Khartoum took a statist position<sup>9</sup> over land ownership. This allowed them, for example, to appropriate land in the South for large scale agricultural, mining and oil drilling projects. However, due to the limited reach of the Khartoum government, in Southern Sudan customary ownership of land has largely been *de facto*<sup>10 11</sup>. The phenomenon of legal pluralism, where land in some parts of the country is administered under statutory law and while in other parts it remains administered under customary or informal tenure rules, is common in sub-Saharan Africa. In Southern Sudan, customary law is particularly important as being symbolic of the cultural identity that underpinned the civil wars. In Southern Sudan, communal ownership has largely been the rule.

The system of legal pluralism that underlies the land question exists as a result of Sudan's colonial past and the many tribes that live in the region. As in other parts of Africa, the land in Southern Sudan traditionally belongs to communities. There is a wide range of customary laws reflecting the diversity of ethnicity, geography and livelihoods. Generally, the land of a given ethnic group is divided into chieftainships, clans, villages or families, administered by a chief or elder. Customary land tenure allows for communal access but also limited individual ownership. Communal access to natural resources such as grazing lands, water and forests is managed locally with some regarded as

<sup>7</sup> LandmineMonitor. Sudan Report.; 2009.

<sup>8</sup> LIS. Landmine Impact Survey for the Republic of Sudan. Survey Action Centre; 2009.

<sup>9</sup> The principle or policy of concentrating extensive economic, political, and related controls in the state at the cost of individual liberty

<sup>10</sup> *De facto* land rights refer to what is in fact practiced although not formally established. In contrast *de jure* refers to land rights according to the law.

<sup>11</sup> Mennen T. Legal Pluralism in Southern Sudan: Can the Rest of Africa Show the Way? Africa Policy Journal 2007;13(3):54.



primary users and others who can use a resource by seeking permission<sup>12</sup>. Individual rights to land exist for housing and for cultivating crops, although these rights can be forfeited when the land is not used. Customary land rights act as security insofar as people can return to their original rural area and work on family land<sup>13</sup>.

The influence of British rule on the ownership and management of rural land can be traced back to ordinances that were enacted during the Anglo-Egyptian Condominium<sup>14</sup>. These assumed that all land and associated resources were owned by the state, supplemented with leases<sup>15</sup>. However, at the time, these ordinances had little impact beyond the North. The British then implemented a policy of indirect rule from the early 1920s in the South. The 'Southern Policy' in 1930 stressed that the South should be developed along 'African' lines using the original indigenous governance structures, laws and customs<sup>16</sup>. Chiefs' courts were empowered to try criminal and civil cases involving the natives of the territory, according to the customary law prevailing in that territory. This system of native administration became an important institution for regulating land and managing conflicts in Southern Sudan after independence<sup>17</sup>.

After the reversal of the Southern Policy by the British in 1946, the South was left open to the encroachment of its land resources by governments in the North. The region became more marginalised politically and economically. Soon after Sudan's independence in 1956<sup>18</sup>, the first civil war started. This meant that the GoS was unable to enforce its statist land legislation. The people of Southern Sudan continued to follow customary laws and the structures of native administration that had been implemented by the British in 1920s<sup>19</sup>.

In 1970, the Unregistered Land Act was passed which further undermined those in the South. Ownership of all unregistered lands was transferred to the state in accordance with the Land Settlement and Registration Ordinance of 1925, enabling the government to appropriate unregistered communal land and allocate or sell it. Also, the system of native administration that had been implemented by the British was abolished in the 1970s. The GoS then implemented a development policy based on the expansion of the agricultural sector and oil exploration. A 1990 amendment to the law further consolidated state ownership of land resources<sup>20</sup>. As a result more than 90 per cent of Southern Sudan belonged to the state.

In 1972, the first civil war ended with the signing of the Addis Ababa agreement, which gave Southern Sudan limited autonomy. This peace agreement was broken by the North. Troops were

<sup>12</sup> See for example 11. Johnson DH. Why Abyei matters: the breaking point of Sudan's Comprehensive Peace Agreement? *African Affairs* 2008;107:1-19.(Johnson, 2008).

<sup>13</sup> Mennen T. Legal Pluralism in Southern Sudan: Can the Rest of Africa Show the Way? *Africa Policy Journal* 2007;13(3):54

<sup>14</sup> The Anglo-Egyptian condominium covered the period from January 1899 to 1956 during which Britain and Egypt shared sovereignty in Sudan, Sudan was administered by a Governor-General appointed by the Khedive in Egypt, but on the advice of the British government. In effect the British controlled Sudan during the period through British Governor-Generals and the British officers that were in turn appointed. Sudan was not in fact a colony but a sovereign state in which the Governor-General had more influence than a Colonial Governor. In Collins R. A history of modern Sudan. Cambridge: Cambridge University Press; 2008.

<sup>15</sup> This was enacted in 1906 when a Land Ordinance was passed that made all land in Sudan the property of the government. In 1925 the Land Settlement and Registration Ordinance was passed that required anyone claiming title to land to submit a claim for settlement and registration. In 1928 the Prescription and Limitation Ordinance provided that anyone who had occupied a piece of land uninterrupted for a period of ten or more years became entitled to the land by prescription and limitation.

<sup>16</sup> The situation was different in towns where leases were issued.

<sup>17</sup> Johnson DH. Root Causes of Sudan's Civil Wars London: James Currey; 2003

<sup>18</sup> The start of the first civil war is debated. Even before Sudan became independent, civil war was brewing and some place its start in August 1955 when the Southern Defence Force mutinied in Torit. However, for several years rebel activities by the mutineers were sporadic. The start of the conflict is often coded in the literature as the early 1960s with the rise of the Anyanya movement. In Johnson DH. Root Causes of Sudan's Civil Wars London: James Currey; 2003.

<sup>19</sup> Shanmugaratnam N. Post-War Development and the Land Question in South Sudan. International Symposium on Resources Under Stress organised by the Afrasian Centre for Peace and Development, 23-24 February 2008. Ryukoku University, Kyoto, Japan; 2008.

<sup>20</sup> This included a provision that stated that no court of law or authority should consider any plea, petition or procedure concerning state-owned land that was established by the Act.



deployed to oil-rich Bentiu in Southern Sudan, and conflict resumed in 1983. The North declared a state of emergency and applied Shari'a law in the region<sup>21</sup>. During the second civil war, customary tenure was enforced and practiced by local institutions through the Civil Authority of New Sudan (CANS) which the SPLM created in the 1990s in the areas that came under the control of the SPLM (De Wit, 2004). The administrative hierarchy of this was a version of what existed under British rule. However, traditional authority was much weakened by the pervasive dominance of the military resulting from the conflict<sup>22</sup>.

At the time of the CPA, there were two parallel systems of land rights in Southern Sudan. The legal statutory system, and a system of tenure based on customary rights. The SPLM/A's position was that the 'land belongs to the people' with the state being 'a custodian of the land'. The recognition of customary rights became a key issue in negotiations between the SPLA/M and the GoS, leading to the signing of the CPA<sup>23</sup>. The current challenge is to create land legislation based on customary laws, but that addresses their deficiencies. This is especially the case with regards to the denial of land rights of women and children. Also, particular groups may be excluded under customary laws from rights to land, which are accessible through inclusion in a particular ethnic group. Basing land legislation on customary laws, that also allows for investment and support to broader economic growth and development, is also a key challenge.

## 4. THE NEW LEGAL FRAMEWORK AND THE LAND LAW OF 2009

The Interim Constitution of Southern Sudan (ICSS), the Interim National Constitution and the CPA are the basis of the legal framework of Southern Sudan during the interim period leading up to the referendum in 2011. The CPA allows customary land law to apply in Southern Sudan. However, both it and ICSS do not address the ownership or the administration of land. The ICSS provides for the establishment of land commissions<sup>24</sup> to address the detail. The Southern Sudan Land Commission (SSLC) was established in July 2006 by presidential decree.<sup>25</sup> However, this did not clarify its mandate and its powers remain undefined in the new Land Act 2009<sup>26</sup>.

### Land Act

A major step was the passing of the Land Act in February 2009, although its dissemination so far has been limited. The Act embraces the SPLM policy declaration of the 'land belonging to the people'<sup>27</sup> and creates a new regime of land legislation for the region<sup>28</sup>. It recognises customary, freehold and leasehold tenure systems<sup>29</sup> and also public land<sup>30</sup>. It stipulates that land in rural areas is owned by communities and is to be managed traditionally<sup>31</sup>. It contains provisions for the

<sup>21</sup> Shanmugaratnam N. Post-War Development and the Land Question in South Sudan. International Symposium on Resources Under Stress organised by the Afrasian Centre for Peace and Development, 23-24 February 2008. Ryukoku University, Kyoto, Japan; 2008.

<sup>22</sup> Johnson DH. Root Causes of Sudan's Civil Wars London: James Currey; 2003

<sup>23</sup> De Wit P, Hatcher J. Sudan's Comprehensive Peace Agreement: An Opportunity for Coherently Addressing Housing, Land and Property Issues? In: Leakie S, editor. Housing, Land and Property Rights in Post-Conflict United Nations and Other Peace Operations A Comparative Survey and Proposal for Reform. New York: Cambridge University Press; 2009.

<sup>24</sup> Article 181 ICSS

<sup>25</sup> Presidential Decree no. 52/2006.

<sup>26</sup> The SSLC has been given wide powers to do any other function assigned to it by law. The Section 52 of the Land Act 2009 states that the SSLC shall exercise its functions as stipulated by the ICSS (Article 181) and without prejudice to the jurisdiction of the Courts. Section 101 allows the Commission to issue rules and regulations to implement the Land Act. However, legislation and policy enactment are the roles of GoSS. .

<sup>27</sup> Land Act ch. II , s.7

<sup>28</sup> The Act provides that upon its coming into effect 'any national law addressing issues under this Act shall cease to operate in Southern Sudan provided that all proceedings, orders and regulations taken or made thereunder, except to the extent they are repealed by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect until they are repealed or amended in accordance with the provisions of this Act' (Ch. I, s.2).

<sup>29</sup> Land Act ch II, s.7

<sup>30</sup> Id ch III, s.10

<sup>31</sup> Id ch II, s. 6

registration of communal land<sup>32</sup>. Subterranean resources remain under the ownership of the regional government<sup>33</sup>. It includes provisions for the government to acquire land in order to provide basic social services and develop infrastructure<sup>34</sup>. This is subject to equitable compensation to the community, to be determined by a committee that includes community representatives<sup>35</sup>.

Traditional authorities can allocate substantial areas of land, for example for commercial, agricultural or forestry purposes, but this must be approved by the concerned State ministry<sup>36</sup>. In addition, foreign entities cannot own land, but may lease it for a period up to 99 years<sup>37</sup>. It makes provision for restitution of rights in land if an individual lost their right after involuntary displacement as a result of the second civil war<sup>38</sup>. Claims for restitution of land must be made within three years of the 2009 commencement of the act<sup>39</sup>. It also gives women the right to own and inherit land<sup>40</sup>.

The Land Act 2009 has a number of major shortcomings. It was created in the absence of a land policy and is criticised for its general nature, lack of subsidiary laws and regulations and terms that are not clearly defined<sup>41</sup>. For example, there are no clear laws governing the three different tenure systems and the relations between different levels of government (GoSS, State and Local Governments) and traditional authorities<sup>42</sup>. It is unclear how communal ownership is distinguished from claims made by individuals. This is a particular problem in peri-urban areas. The Act requires that the government acquires land and property through consultation with communities and that it pays appropriate compensation. The extent to which owners of communal land may influence decisions related to expropriation of their land is not defined. It is criticised for not adequately addressing returnees' and IDPs access to land, including resettlement and restitution of land and property. In particular, the ICSS allows every Southern Sudanese the right to residence anywhere in Southern Sudan, but this is contradicted by the application of customary laws, which tend not to recognise the right of people to settle outside the community. Women's land rights, conflict management and dispute resolution are also not adequately addressed.

The lack of land policy and weak land legislation are compounded by a general lack of awareness of the law, varying interpretations of the policy of the 'land belongs to the people' and eroded traditional structures<sup>43</sup>. After over twenty years of martial law, the military at the local and regional level have significant power. There is continued military interference in systems of customary law, and in judicial processes at the level of the county courts. Moreover, low administrative capacity at all levels of government, unclear procedures for surveying and acquiring land and under-resourced survey departments at state level make it difficult for communities to register their land. Hardly any progress has been made in this regard. These problems not only make it difficult for individuals and communities to exercise their land rights, but also create an atmosphere wherein corruption in land administration can flourish.

<sup>32</sup> *Id* ch VIII

<sup>33</sup> *Id* ch II, s. 6

<sup>34</sup> *Id* ch XII, s. 73

<sup>35</sup> *Id* ch XII, s. 75, s. 76.

<sup>36</sup> *Id* ch V, s. 15

<sup>37</sup> *Id* ch IV, s. 14, ch VI, s. 19

<sup>38</sup> *Id* ch XIII, s. 78

<sup>39</sup> *Id* ch XIII, s. 78

<sup>40</sup> *Id* ch IV, s. 13

<sup>41</sup> Pantuliano S. Going Home: Land, return and reintegration in Southern Sudan and the Three Areas. In: Pantuliano S, editor. Unchartered Territory Land, Conflict and Humanitarian Action. Rugby: Practical Action Publishing; 2009. pp 153-170, 15. Rolandsen, O. Land, Security and Peace Building in the Southern Sudan. Oslo: International Peace Research Institute; 2009.

<sup>42</sup> NISPDS. Scoping Paper: Land Tenure and Property Rights in Southern Sudan. Juba: Nile Institute of Strategic Policy and Development Studies; 2010

<sup>43</sup> Pantuliano S. Going Home: Land, return and reintegration in Southern Sudan and the Three Areas. In: Pantuliano S, editor. Unchartered Territory Land, Conflict and Humanitarian Action. Rugby: Practical Action Publishing; 2009. pp 153-170.

### **International support in regard to land right issues**

Although the international organisations in Southern Sudan broadly recognised that land rights issues would arise after the signing of the CPA, the international support offered to the government to address land rights issues and to develop land policies and legislation has been lacking. To outline:

- There are no specific provisions within the UN Mission in Sudan (UNMIS) to deal with land issues.
- Although UN agencies and donors, including the European Union, the United States Agency for International Development (USAID) and the Japan International Cooperation Agency, have provided technical assistance related to land law and policy, there has been a general lack of coordination<sup>44</sup>.
- UNHabitat has a lead role within the Humanitarian Cluster System on housing, land and property rights, under both the Protection and Recovery sub-clusters. However, UNHabitat currently has a minimal presence in Southern Sudan, (although this should increase in the near future.).

The development of the land policy has now become a priority for some international agencies:

- USAID, through its Southern Sudan Property Rights Programme, is funding research and is supporting the SSLC in drafting the policy.
- A number of agencies, working closely with the SSLC, established a Land Coordination Forum (LCF) in February 2007<sup>45</sup>.

The initial objective of the forum was to share information, coordinate technical and financial assistance to the SSLC and create links with government institutions and non-state actors working in the land sector. With the enactment of the Land Act and the ongoing land policy development process, the LCF updated its mandate to support land policy development and dissemination.

Initially this forum met infrequently, but it now meets fortnightly. It is not being regularly attended by representatives of the SSLC.

At the community level, there are some organisations who attempt to address land rights issues, through providing legal assistance to returnees and supporting community based land and natural resource management, for example. However, organisations report that it is difficult to engage in land rights, given the lack of land legislation and guidance. It is also difficult to provide support in cases involving military actors.

## **5. OVERVIEW OF MAIN LAND ISSUES IN THE POST-CONFLICT PERIOD**

A number of studies have been carried out to investigate the land issues that are arising since the signing of the CPA in 2005<sup>46</sup>.

<sup>44</sup> Pantuliano S. Going Home: Land, return and reintegration in Southern Sudan and the Three Areas. In: Pantuliano S, editor. Unchartered Territory Land, Conflict and Humanitarian Action. Rugby: Practical Action Publishing; 2009. pp 153-170.

<sup>45</sup> Including FAO, NPA, the Norwegian Refugee Council (NRC), United States Department of Agriculture (USDA), the European Commission (EC), UNHCR and the ARD Sudan Property Rights Program.

<sup>46</sup> Studies include: De Wit P. Land and Property Study in Southern Sudan: Assignment Summary Report. October 2004.: UN High Commissioner for Refugees & Food and Agriculture Organisation of the United Nations.; 2004. Odhiambo MO. Southern Sudan Land and Property Study and Workshops: A Synthesis of Policy and Legal Issues: Southern Sudan Land Commission with support provided by NRC, FAO & UNHCR; 2009. Pantuliano S. The Land Question: Sudan's Peace Nemesis. Briefing Paper prepared for the Social Science Research



These studies all outline several key issues which include:

- land conflicts arising from the return and/or resettlement of IDPs and refugees
- pressure on host communities due to increased competition for land
- urban expansion
- land-grabbing
- the re-integration of ex-combatants
- women's insecure rights to land
- low institutional capacity within all levels of government

### **Returnees and IDPs**

The successful resettlement and reintegration of returnees has been a key component of peace-building<sup>47</sup>. International agencies, including mine action organisations, have focused on providing support in areas of anticipated high return. Land issues in rural areas related to returnees have proved to be less problematic than expected. This partly reflects the fact that customary land management is widely accepted as legitimate.

In addition, the return process has been slower than anticipated. Many family members have remained in their places of exile. Where disputes have occurred, it has often been in urban areas and has resulted from occupation of property abandoned during the conflict or competing claims over the same plot of land. Resolution has generally been sought through chiefs, community leaders in urban areas or the court system. In rural areas, solutions often involve the sub-division of land between claimants.

Nevertheless, there have been conflicts and tensions over land that has commercial value. Although no studies have been carried out, with the end of the war anecdotal evidence suggests that the commercial value of land has increased particularly around towns. There are many instances where a number of actors seek access to the same land and natural resources. A direct result of this is that land grabbing or enclosure by powerful individuals is becoming common<sup>48</sup>. There are reports of companies by-passing local government and communities to obtain land. Land disputes have also arisen as a result of land being forcibly occupied by the military or local elites. This issue concerns both returnees and those that stayed during the conflict<sup>49</sup>.

During the conflict a large number of people settled in urban areas to escape the fighting. Many do not have formal land rights but wish to remain. In 2009, the GoS in Khartoum adopted a national policy on IDPs<sup>50</sup>. This recognises the Guiding Principles on Internal Displacement and promotes the three durable solutions<sup>51</sup>. However, the GoSS advocates return to area of origin. The Southern

Council. London: Overseas Development Institute; 2007. Pantuliano S, Buchanan-Smith M, Murphy P, Mosel I. The Long Road Home. Opportunities and obstacles to the reintegration of IDPs and refugees returning to Southern Sudan and the Three Areas. Report of Phase II. Conflict, Urbanisation and Land. HPG Commissioned Paper. London: Overseas Development Institute; 2008. Rolandsen, O. Land, Security and Peace Building in the Southern Sudan. Oslo: International Peace Research Institute; 2009.

<sup>47</sup> UN Security Council Resolution 1590 states that UNMIS is 'to facilitate and coordinate the voluntary return of refugees and internally displaced persons by helping to establish necessary security conditions'.

<sup>48</sup> Land grabbing refers to acquisition of land through illegal or illegitimate means. Enclosure refers to the process of transforming the ownership of a communal resource to private, individual ownership. Although enclosure may not violate domestic legal systems, the customary rights of landholders may be ignored.

<sup>49</sup> IDMC. Sudan: rising inter-tribal violence in the South and renewed clashes in Darfur cause new waves. A profile of the internal displacement situation. 28 May 2010. Geneva: Internal Displacement Monitoring Centre.; 2010.

<sup>50</sup> [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/1D313FB8223D139DC12575C500349C8C/\\$file/GoS+National+Policy+on+IDPs.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/1D313FB8223D139DC12575C500349C8C/$file/GoS+National+Policy+on+IDPs.pdf)

<sup>51</sup> The Guiding Principles on Internal Displacement state three durable solutions to address the needs and human rights of IDPs. These include sustainable return, sustainable resettlement or sustainable integration in place of displacement.



Sudan Relief and Rehabilitation Commission (SSRRC), the body responsible for supporting the reintegration of returnees and IDPs, has focussed on return to home areas<sup>52</sup>. Solutions are not being provided for IDPs from the conflict, who wish to settle in their places of displacement. In some towns, this has resulted in their eviction and many have subsequently settled on the edges of towns. In addition, a substantial number of returnees, and others who lived in rural areas during the war, have chosen to move to urban areas where opportunities and access to services are perceived to be better. So far, state governments have failed to make new leasehold plots available in urban areas. As a result, poorer households have been forced to squat in surrounding urban areas. Pressure on the outskirts of towns such as Juba, is resulting in growing informal settlements where residents have no security of tenure.

Displacement continues to occur since the signing of the CPA, as a result of ongoing conflicts in the region and food insecurity. In 2009, it was estimated that 390,000 new IDPs had resulted<sup>53</sup>. They have been found to be particularly vulnerable. The 2009/2010 Annual Needs and Livelihood Assessment for Southern Sudan found that IDPs are much worse off<sup>54</sup>. Insecurity of tenure in places where IDPs settle, including in and around towns, along with the potential for further displacement, prevents the establishment of livelihoods.

### **Ex-combatants**

Access to land remains a challenge for the reintegration of ex-combatants. In Southern Sudan, disarmament, demobilisation and reintegration (DDR) is focusing on Special Needs Groups in the first phase. These include child soldiers, female combatants, women associated with armed groups, the elderly and people with disabilities. Many ex-combatants prefer to return to their places of origin. They are likely to have the same issues as returnees as they have not been home for many years. Others prefer to remain where they are or move to towns. Weaknesses in the DDR process mean that ex-combatants are not receiving the necessary support, especially with regards to reintegration solutions. This is putting pressure on receiving communities. Given their military backgrounds, there is concern that the lack of support to ex-combatants may lead to political and criminal violence<sup>55</sup>.

### **Women's rights to land**

It is estimated that women head 45 to 50 per cent of returnee households. This reflects the fact that the number of female-headed households in a conflict and post conflict situation tends to increase dramatically as men join armies and fighting factions. Women are typically left to take on the responsibilities of looking after and supporting their families.

Land rights have clear gender dimensions. In a post-conflict context, it is generally recognised that female-headed households are particularly vulnerable in terms of their access to, and ownership of land and housing<sup>56</sup>. In Southern Sudan, although the ICSS provides equal rights for women and men, customary land laws are not aligned to it and are generally discriminatory toward women. Women's rights to land are generally mediated through their male relatives. This means that a significant proportion of both women who stayed during the war and returnees have insecure land tenure.

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<sup>52</sup> Article 152(2) of the ICSS states that the functions of the SSRRC include repatriation, relief, resettlement, rehabilitation and reintegration of returnees and IDPs and facilitation of reconstruction in conflict affected areas.

<sup>53</sup> [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/0026B2F86813855FC1257570006185A0?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/0026B2F86813855FC1257570006185A0?OpenDocument)

<sup>54</sup> ANLA. Annual Needs and Livelihood Assessment 2009-2010. South Sudan.: World Food Programme; 2010

<sup>55</sup> Brethfeld J. Unrealistic expectations: current challenges to reintegration in Southern Sudan. Geneva: Small Arms Survey; 2010.

<sup>56</sup> USAID. Gender and Property Rights Within Post-conflict Situations. Issue Paper No. 12. April 2005. 2005



These and other land issues not only require appropriate policy, legal and institutional response, but should also inform humanitarian responses, including mine action.

## 6. MINE ACTION IN SOUTHERN SUDAN

In 2001, the SPLM/A signed Geneva Call's *Deed of Commitment for Adherence to a Total Ban of Anti-Personnel Mines and for Cooperation in Mine Action*. The GoSS is also obligated by the Republic of Sudan's 2004 ratification of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction 1997*. At the request of the GoS and the SPLM, the UN Emergency Mine Action Programme was established in September 2002. In 2004, the GoS, the SPLM and the UN signed the first versions of the Sudan National Mine Action Strategic Framework and the Sudan National Mine Action Policy Framework. These stated that mine action in Sudan would have a 'one country approach'<sup>57</sup> (see GICHD, 2008). These documents were revised in 2006 as a result of political developments and the signature of the CPA in 2005. The National Mine Action Strategic Framework for 2006 to 2011 now serves as the key strategic planning document and sets out eleven strategic goals<sup>58</sup>.

In the run up to the signing of the CPA, the Swiss Foundation for Mine Action (FSD) began operations in February 2004, in collaboration with the World Food Programme (WFP) and the UN Mine Action Service (UNMAS), to survey priority routes for reconstruction. One study conducted by the WFP outlines how its combined demining and road rehabilitation programme yielded significant socio-economic benefits. It reduced travel time by 50% and the cost of transportation by 40%. In one location, the WFP noted a 65% increase in the number of businesses following the opening of a road (cited in Landmine Monitor, 2009). Additionally, Mechem, under contract with the UN Office for Project Services (UNOPS), also began survey and clearance of routes in March 2004. Norwegian People's Aid (NPA), which had been working in southern Sudan since 1986, expanded its humanitarian programme to include mine action in 2004.

Since the signing of the CPA, mine action efforts have expanded significantly:

- The UN Mine Action Office (UNMAO) was established by UNMAS in 2005. It is mandated by both the CPA and UN Security Resolution 1590 to assist the parties to the CPA by providing humanitarian demining assistance, technical advice and coordination.
- Technical assistance is provided by UN agencies under UNMAO (UNMAS, UN Development Programme (UNDP), UN Children's Fund and UNOPS).

Mine action is primarily carried out by a number of international mine action NGOs, UN military demining troops and a number of different companies contracted by UNMAO (through UNOPS) and commercial enterprises. The bulk of international funding for mine action has been channelled through the UN Department of Peacekeeping Operation's (DPKO) assessed budget. In addition funding has also been channelled through the UN Voluntary Trust Fund (VTF) for Mine Action<sup>59</sup>.

### South Sudan Demining Commission

<sup>57</sup> The 'one country approach' anticipated provisions in the 2005 Comprehensive Peace Agreement that provided for a 'one country, two systems' approach until the 2011 referendum. It essentially means unified national planning, coordination and implementation across North and Southern Sudan.

<sup>58</sup> [http://www.mineaction.org/downloads/1/The%20Sudan%20National%20Mine%20action%20Strategic%20and%20Policy%20Framework%20\(English\).pdf](http://www.mineaction.org/downloads/1/The%20Sudan%20National%20Mine%20action%20Strategic%20and%20Policy%20Framework%20(English).pdf)

<sup>59</sup> The assessed budgets of UN DPKO missions are determined by UN Security Council Resolutions and are to cover the costs of core peacekeeping functions. They do not cover all the costs within peacekeeping mandates. In Southern Sudan, the UN assessed budget is used for mine action activities in support of the UNMIS peacekeeping forces and humanitarian assistance. Funding from the VTF is used for mine clearance in support of humanitarian assistance and also includes mine risk education and victim assistance. See: [http://www.mineaction.org/projects\\_funding.asp?c=25&pillar=1&pillar=2&pillar=3&pillar=4&pillar=5&pillar=6&sh=%2C&aa=](http://www.mineaction.org/projects_funding.asp?c=25&pillar=1&pillar=2&pillar=3&pillar=4&pillar=5&pillar=6&sh=%2C&aa=)



The capacity of the GoSS to support mine action is low and a key focus of UNMIS and UNDP has been to build this capacity. Like the SSLC, the South Sudan Demining Commission was established by presidential decree in 2006<sup>60</sup>, to act as the main government authority for mine action. The SSDC later changed its name to the South Sudan Demining Authority (SSDA). In line with the CPA, UNMAO has developed a plan to transfer ownership of the mine action programme to the SSDA by 2011, when it plans to withdraw. UNDP provides support to develop legislation outlining the SSDA's powers.

Data relating to landmine/ERW contamination is maintained on the Information Management System Mine Action (IMSMA)<sup>61</sup>, which is based on the results of the LIS and is continually updated with information from approximately forty other sources. This includes UN monitors, commercial mine action companies and mine action NGOs. The data on IMSMA is used by UNMAO in order to support it in prioritising clearance operations.

### Prioritisation

In the initial post-conflict phase, UNMAO has prioritised tasks that focus on opening key transport routes to allow peacekeepers and humanitarian aid to access many parts of the region, and in clearing areas for the resettlement of returnees. Bi-weekly meetings involve the Southern Sudan Relief and Rehabilitation Commission (SSRRC), UN High Commissioner for Refugees (UNHCR) and other humanitarian actors to ensure contamination is addressed in areas of high return. In addition, coordination involves the Transport and Demining Steering Committee established in 2006.

Under the National Strategic Framework 2006-2011, and in the run up to handing over control of mine action to the SSDA, the mine action sector has committed to clear all threats to high and medium impacted communities identified by the LIS by 2011<sup>62</sup>. However, the LIS's 'measure' of areas is not an estimate of areas contaminated by landmines/ERW, but rather refers to areas blocked for community usage as a result of contamination or fears of contamination. Although it attempts to rank community needs by the severity of the socio-economic impact caused, the emphasis is placed on reducing casualties before other considerations.

Therefore, areas assessed as high and medium impact give little sense of the potential socio-economic impact<sup>63</sup> and as a result, a number of mine action practitioners report that socio-economic impact may be sacrificed for efficiency and to meet quantitative targets (eg number of square metres of land cleared, number of mines collected and destroyed, etc).

LIS data is less useful over time as it only gives a snapshot of contamination and its impact on a community. Priorities change and communities may themselves remove the contamination. Much of the original data has also been found to be inaccurate. Subsequent non-technical and technical surveys often result in significant reductions or cancellations of suspected hazardous areas (SHAs). Mine action NGOs also report that the majority of their spot tasks are generated through community liaison and mine risk education, and are not in the LIS/ Information Management System Mine Action (IMSMA).

UNMAO is now working with the SSDA to establish a process for prioritising land for clearance and will draw on lessons learnt from other countries. This will include developing clear criteria upon

<sup>60</sup> Presidential decree number 45/2006

<sup>61</sup> IMSMA is intended for use by national headquarters and operators in countries affected by mines, UXO or other ERW. IMSMA can be used to plan, manage, report and map the results of survey and field data collection; report on and map mine, UXO and other ERW threats; and record, report on, and map clearance activities

<sup>62</sup> Sudan Mine Action Sector Multi Year Plan: pp.10. Available at: [http://www.gichd.org/fileadmin/pdf/ma\\_development/nma-strat/NMAS-Sudan-2006-2011.pdf](http://www.gichd.org/fileadmin/pdf/ma_development/nma-strat/NMAS-Sudan-2006-2011.pdf)

<sup>63</sup> See Annex IX of LIS, 2009.



which to base priorities and encourage the increased involvement of representatives for the ten states. Currently, priority lists have input from all ten states. However, priority-setting meetings have low representation from state authorities, and concerns that clearance activities may be directed to the benefit of elites exist. UNMAO has also integrated mine action with relief, reconstruction and development efforts through identified strategic priorities and benchmarks within the United Nations Development Assistance Framework (UNDAF). The UNDAF covers development programming from 2009 to 2012, and mine action is included within the Peace-building Working Group.

In addition to funding received through the UN, there is also significant bilateral funding for mine action in Southern Sudan. Currently, three international and one national mine action NGO carry out clearance operations in the region and also provide capacity building support to the SSDA<sup>64</sup>.

Mine action NGOs do not necessarily have the same priorities as UNMAO or the SSDA, as they are accountable to their donors. Priorities are based on geographic area of focus, the provision of task dossiers from UNMAO and, in the case of some mine action NGOs, pre-clearance data as part of their IA.

## 7. SOCIO-ECONOMIC IMPACT OF LANDMINES/ERW

The need to measure the socio-economic impact of landmines/ERW is increasingly being recognised by UNMAO. However, they have never carried out a formal socio-economic IA of landmines/ERW in Southern Sudan.

IMSMA is not used to provide and analyse socio-economic data for communities. Post-clearance data is generally not collected and there is no monitoring of outputs in terms of reach ((e.g. has land gone to the intended beneficiaries) and outcomes (e.g. is the land being used for intended purposes). Additionally, UNMAO does not incorporate development indicators and outcomes into its clearance contracts, or evaluate the socio-economic impact of its interventions. UNMAO states that it is considering the development and implementation of an IA tool that targets all clearance activities in Southern Sudan in order to gain a better understanding of the socio-economic impacts of these activities.

On the other hand, mine action NGOs operating in Southern Sudan have developed, and to various degrees implemented IA tools<sup>65</sup> which have some similarities. They involve the collection of both pre- and post-clearance data, and draw mainly on the sustainable livelihoods framework, although methodologies vary across organisations. Mine action NGOs have noted some weaknesses in their tools and have highlighted some constraints, in particular low national staff capacity and high turnover of international staff with loss of institutional knowledge. Based on lessons learnt, these tools will be updated to reflect the Southern Sudan context.

Currently some pre-clearance data is available, although it only covers a limited geographical area. This data is analysed to a limited extent. Post-clearance data is available to an even lesser extent.

Through its pre-clearance household surveys in Central Equatoria, one mine action NGO identified four key areas to be the most severely impacted by mine contamination: fertile agricultural land, access to water, housing and education (school buildings). Other mine action practitioners also highlighted anxiety over safety and security, and roads/access.

<sup>64</sup> These are the Danish Demining Group (DDG), Mines Advisory Group (MAG), NPA and Sudan Integrated Mine Action Services (SIMAS).

<sup>65</sup> DDG's Impact Monitoring Manual was developed and launched in 2009, MAG developed its South Sudan Impact Assessment Manual in 2008 and NPA's Task Impact Assessment Handbook was developed in 2005.

Due to the limited availability of sex and age disaggregated pre and post-clearance data, it is not possible to carry out a deep analysis of how women, girls, boys and men may experience the different impacts of mine/ERW contamination. However, data from pre-clearance household surveys generated by one mine action NGO in Central Equatoria does clearly indicate that women's level of anxiety is considerably higher than that of men.

In terms of accidents and activities undertaken by victims at the time of accidents, IMSMA sex and age disaggregated data (SADD) for landmine/ERW victims (as of June 2010) in Southern Sudan clearly indicates a gendered pattern. Data collected from the ten states shows that out of a total number of 2,762 mine and unexploded ordnance (UXO) victims, 2,240 were male, 419 were female and 103 were "unknown". This supports the general perception of mine action actors, ie, that most landmine/ERW victims are male.

SADD from IMSMA indicates a relationship between gender and age specific activities and accidents, where different groups are affected differently. This is due to the distinct gender activities, responsibilities and roles of different groups in their communities. Data shows that the majority of women have accidents when collecting food, firewood and water (traditional female responsibilities in Southern Sudan).

To compare, most men have accidents while in the army, and when carrying out traditional male activities such as farming, fishing and hunting. A very small number of women's accidents occurred from tampering and/or playing with UXO, but this is more common with men. Travelling is the second most common activity at the time of accidents for both women and men. The most common activities of girls and boys at the time of accidents are the same: playing and recreation, followed by tampering and 'passing/standing nearby'.

## **8. MINE ACTION AND LAND RIGHTS ISSUES**

Due to the limited availability of pre- and post-clearance socio-economic data, it is difficult to ascertain the extent to which the presence of landmines/ERW fuel or alleviate issues over land. It is also difficult to assess the extent to which it impacts on land access and livelihoods for different (vulnerable<sup>66</sup>) groups, including women, pastoralists, returnees, demobilised soldiers and IDPs. Although IA tools do consider land ownership issues, this is without giving consideration to the context specific to Southern Sudan or the type of area under consideration (urban, peri-urban, rural etc.). In addition, mine action actors do not appear to analyse any land rights-related data they obtain during the IA process. More broadly, mine action actors generally do not attempt to address land rights issues. Within organisations there exists no guidance or procedures for dealing with land issues. Simplified notions of communal land access exist and there appears to be little appreciation of the complexities of land rights.

Anecdotal information provided by mine action practitioners pointed to some of the land rights issues that contaminated communities face and the potential impact on livelihoods. In particular, land grabbing or enclosure by powerful individuals has taken place, particularly near towns (such as Juba, Kapoeta and Yei). UNMAO and mine action organisations do not respond to instances of land grabbing or other land rights abuses.

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<sup>66</sup> Vulnerable groups in terms of land access can be understood as those that are dependent particularly dependent on institutions or others in supporting their rights and access to land.



In the absence of data, the case studies carried out for this research have attempted to pay particular attention to land rights issues:

- Case study one examines the situation of poor squatters, living in an area in peri-urban Juba, close to land released through technical survey and clearance activities, who are threatened with eviction. The study considers what mine action operators might do in such a situation, and points to some of the difficulties, but also to the importance of establishing land ownership and its intended use in such a context. Moreover, it demonstrates how an understanding of land rights issues and land related disputes is important for understanding impact.
- Case study two examines the situation of a returnee female-headed household living near an SPLA camp. It highlights the particular vulnerability of women but also returnees.

In both case studies, land grabbing by powerful actors takes place, which emphasises how weak government, lack of law enforcement and clarity in the law make it difficult for mine action actors to address land rights. The procedures mine action organisations follow to hand released land over to beneficiaries are of particular concern as highlighted in Case Study 1. In Southern Sudan, handover procedures are inconsistent across mine action actors. No common procedures exist to ensure community inclusion, for example. This is also the case when it comes to ensuring that adequate information is provided to communities and future land users about cleared areas, remaining contaminated areas and the timeline of clearance.

The three International Mine Action Standards (IMAS) on Land Release and Post-clearance Documentation<sup>67</sup> do provide some guidance on handover procedures. For example:

- they highlight the importance of gender representative community involvement
- they highlight that handover documents should include signatures by the local community authorities and the future users of the land
- they emphasise the importance of briefing the local community and the beneficiaries of the released land on the task when it is complete. Limited or a complete lack of community involvement, in combination with no formal handover of released land, may result in the land not being used due to a lack of confidence in the safety of the land. However, handover to the presumed future users of the land, which does not pay attention to land rights and intended use, may also give a false sense of tenure security. It may encourage poor people and communities to use their scarce resources on developments that might later be destroyed.

## 9. CHALLENGES TO ADDRESSING LAND RIGHTS ISSUES

The mine action community's shortcomings in dealing with land issues in Southern Sudan stem from a variety of factors. These include:

### **Undefined land rights framework**

The lack of a legal framework, limited awareness of the Land Act (2009), and the lack of functioning institutions make it difficult for mine action practitioners, as well as other humanitarian/development organisations working at the community level, to address land rights issues. In addition, although international assistance to developing a land rights framework has been provided to the GoSS, little support has reached the states, including at county and payam level. Therefore, mine action NGOs maintain they lack the internal capacity to address land rights issues in such a complex context and with such low government capacity.

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<sup>67</sup> IMAS 08.20 Land Release, 10 June 2009, IMAS 08.21, Non-technical Survey, 10 June 2009, and IMAS 08.30 Post-Clearance Documentation, 1 January 2003



### **Operational environment**

Southern Sudan represents a particularly difficult operational environment because of continuing insecurity in many areas, tremendous humanitarian need, poor infrastructure and limited government capacity. In response to the urgency of the situation and funding requirements, mine action practitioners focus on shorter-term priorities and the reduction of accidents.

In addition, mine action practitioners state the focus of mine action has until recently been on road clearance, which has not always necessitated an attention to land rights issues. Roads are generally already established, and do not require additional land from communities.

### **Apparent Large Availability of Land**

An apparent large availability of uncontaminated land has meant that mine action actors have not been compelled to consider land rights issues. According to one development NGO, 60 to 70 per cent of the land in Southern Sudan is not used, although the Ministry of Agriculture and Fisheries is planning an expansion of mechanised agriculture.

Another international NGO which had focused activities on Sudanese refugees in Uganda, said in 2005 that many returnees feared landmines. However, as time has progressed, and given the limited number of accidents, many refugees have more trust in the land being uncontaminated. This reflects previous findings that suggest that mine contamination in Sudan is modest, but rather the fear of landmines constrain recovery and development efforts<sup>68</sup>. According to a number of humanitarian/development NGOs who are operating in rural areas in Greater Equatoria, mines/ERW are not an immediate problem as fertile land is widely available.

### **Poor Coordination with regards to Land Rights**

While coordination within the mine action sector is comparatively strong, there has been little coordinated support by the UN to both government and NGOs in regard to land rights. There is no process for referral when issues over land arise, making it difficult for mine action actors to engage in land rights.

Moreover, at the GoSS level, the SSLC and SSDA do not coordinate in detail. Links with key regional and state-level ministries remain undeveloped. In addition, the SSLC and the SSDA have a limited presence in the regions, with offices in the regional capital (and in the case of the SSDA also Yei, Malakal and Wau), but in no other states.

In general, there is little coordination between mine action actors and other humanitarian/development agencies. With the exception of the bi-weekly meetings with the SSRRRC and the main UN agencies, this lack of coordination has resulted in a situation in which mine action prioritisation is carried out with little or no interaction with humanitarian/development organisations.

Humanitarian/development NGOs do not liaise with UNMAO regarding contaminated land and are in fact unsure of whom to inform of contamination. One organisation indicated that where landmine/ERW contamination prevents it from implementing its activities, it targets non-contaminated communities instead, because it is easier and safer for their staff. There is the obvious concern that this might lead to the marginalisation of communities that are either contaminated, or suspected of being contaminated from development benefits.

### **Compromising ‘neutrality’**

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<sup>68</sup> GICHD. Evaluation of the UNDP Sudan Mine Action Capacity Building and Development Project. February 2008. Geneva: Geneva Institute for Humanitarian Demining; 2008.



Mine action practitioners are concerned that becoming involved with land rights issues will compromise the ‘neutrality’ of mine action and jeopardise relationships with government authorities. Mine action activities are generally seen as ‘concrete’ and ‘non-political’, focusing on removing the threats of landmines/ERW from affected communities. Some mine action practitioners maintain that land rights issues are too political, and that it is not their role to become involved in these issues. Concerns have been raised that involvement in land rights issues, which are often complex and take time to understand, could jeopardise the efficiency and effectiveness of mine action activities, as mine action operators might be seen as taking sides in sensitive, highly political issues. Mine action practitioners point out that mine action actors have to limit themselves and it is up to individuals and communities themselves to address their land rights. Other mine action practitioners maintain that it is up to donors and the UN to put pressure on the GoSS to deal with land rights issues, particularly land grabbing by powerful elites.

#### **Perception of and within mine action as a narrow specialised sector**

Although there should be an understanding of common goals across reconstruction and development programmes, mine action still tends to be regarded as a specialised, technical sector by many actors both within and outside the sector rather than as part of broader reconstruction and development. For many mine action practitioners, in particular commercial operators, the focus remains on quantitative outputs such as square metres cleared rather than on development outcomes. Such perceptions can affect the degree to which mine action is integrated into broader reconstruction initiatives within Southern Sudan, including those concerned with the remit of government institutions and development agencies.

#### **Lack of donor guidance on impact assessment tools incorporating land rights**

With the increasing emphasis on linking mine action to development, many donors are exerting pressure on mine action actors to provide tangible evidence demonstrating impact in terms of developmental outcomes. However, a number of mine action practitioners highlight that there is limited guidance, including with regards to addressing land rights, on how to achieve this. Instead there exists a perception that there are direct links between land release, either through clearance and/or surveys and development outcomes. However, measuring socio-economic impact of clearance and survey activities is complex. Although donors may require mine action organisations to demonstrate impact in terms of development outcomes, it is not always a simple case of attributing livelihood changes to mine action activities. Other external factors such as the opening of roads, access to markets, (in)security and lack of agricultural inputs can significantly affect livelihood changes. In addition in the Southern Sudan context, low human resource capacity requires an approach where IA tools are kept as simple as possible, whilst being sophisticated enough to enable the collection of the necessary data.

#### **Donor funding streams**

A number of mine action practitioners emphasise that it is important to target clearance activities in order to enable development investments to proceed in other sectors. However, some mention that at field level, donors tend to view mine action as separate from other humanitarian/development activities.

Decisions to allocate funding are generally made centrally and donor aid for mine action tends to flow from separate funding streams. Consequently, the level of interaction between mine action and more mainstream humanitarian/development activities tends to be limited. This impedes the integration of land rights issues into mine action programming, both at donor and implementing partner levels.

## 10. RECOMMENDATIONS

The lack of effort by mine action actors, including UNMAO to address land rights in Southern Sudan reflects a predominantly technical and output focused approach. Therefore efforts are now being made by UNMAO and mine action NGOs in Southern Sudan to link mine action and development. However, there is still a tendency to focus on quantitative outputs rather than on the socio-economic impact. Recognising the links between post-conflict mine action, livelihoods and land rights should be seen as a necessary precondition for linking mine action to development. Prioritisation and distribution of released land are precursors to this and, as the Case Studies attempt to demonstrate, without attention to land rights there is a risk of land grabbing, disputes within communities, exclusion of women and vulnerable groups from the benefits of clearance and mine action not meeting overall development priorities, for example under UNDAF<sup>69</sup>.

In contexts like Southern Sudan, the problems are complex. The land issues that mine action actors should consider when planning and implementing their programmes will shift with the principal outputs of mine action during the post conflict phases, from emergency recovery/rehabilitation to development. Given that the immediate post-conflict period is over and risk reduction in many areas is becoming less crucial. A combination of short and long term measures is required, that focus on preventing injuries, improving access and supporting long term development. In particular, with rapid urbanisation underway in Southern Sudan, and plans to mechanise agriculture, certain areas that are currently unused may become high priority for clearance.

### **Recommendations for mine action actors:**

#### **Build capacity:**

- Continue to build the capacity of the SSDA, including after the planned withdrawal of UNMAO in 2011. Strengthen links between the SSLC and other relevant ministries
- Provide the SSDA with training on land rights
- Ensure that mine action staff and local counterparts, including national mine action organisations, have an understanding of land rights by incorporating land rights into training.

This will help to ensure that mine action actors ‘do no harm’ when carrying out clearance activities and handover. Given low government capacity when it comes to land rights, other development/humanitarian organisations working on land-rights could provide training.

#### **Improve coordination**

With the growing realisation that mine action constitutes part of broader reconstruction and development, it is recommended that coordinating mechanisms between mine action and other humanitarian/development efforts are put in place.

As part of its broad coordinating role, the SSDA should bring together actors from mine action and the humanitarian/development sector, ensuring representation by those actors specifically dealing in land rights, including the SSLC. This will not only help develop mine action practitioners’ knowledge of land rights, but will also encourage information sharing. Improving coordination

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<sup>69</sup> According to the Joint Donor Team, currently there is no public GoSS Development Strategy. However, GoSS provides six top expenditure priorities (articulated in the 2010 GoSS budget) for the period 2008 – 2011: 1. Security; to develop an efficient and effective armed forces, to safeguard security & implement the CPA; 2. Roads; to rehabilitate road infrastructure, to promote socio-economic & private sector development; 3. Primary health care; to provide primary health care to improve the health status of the people of Southern Sudan; 4. Basic education; to provide equitable access to basic education; 5. Water; to increase access to safe water & sanitation; 6. Production; to improve rural livelihoods and income.



should be encouraged by the SSDA, supported by UNMAO, through a combination of training and capacity building, as well as regular scheduled meetings with relevant actors.

Within peacekeeping operations, there are several ways in which coordination between mine action and land rights actors can be strengthened. In April 2010, the Humanitarian Country Team (Juba satellite) agreed to ask for the activation of the UN cluster system in Southern Sudan to better address the complex humanitarian situation<sup>70</sup>. Mine action will fall within the protection sub-cluster, and the cluster system will hopefully improve coordination between mine action and land rights actors, such as UNHabitat.

The UNDAF also provides a mechanism to improve coordination between development agencies and mine action. While mine action is included within the Peace-building Working Group, there should also be links with other working groups, particularly the Livelihoods and Productive Sectors Working Group (see also GICHD, 2008).

Overall, the prioritisation of clearance activities should involve greater consultation with humanitarian/development organisations and contaminated communities themselves. Greater coordination with these actors could prevent the concentration of development in communities that have experienced no contamination. This would also facilitate attention being given to contaminated communities or those who are believed to be contaminated, who are marginalised from development assistance.

### **Develop partnerships**

Given limited capacity to address land rights issues in the Southern Sudan context, it is recommended partnerships are developed with organisations working on land rights at international and national levels where possible. Some mine action NGOs have already developed partnerships with other humanitarian/development organisations, but the focus has largely been on achieving outputs, eg road construction and drilling boreholes. This will not only help to improve socio-economic impact, but will also:

- empower communities and support the broader development of civil society in the longer term.
- support dissemination of information in relation to land rights at local government level (county, payam, boma).
- support training of traditional leaders, particularly those involved in the allocation of released land
- support legal literacy training on land rights for impacted communities. This should ensure the inclusion of women and vulnerable groups.

That such initiatives should be carried out in a transparent and collaborative manner.

### **Incorporate land rights into priority-setting and impact assessments**

To do this, it is recommended that:

- Questions about land rights and ownership, based on the Southern Sudan context are incorporated into the prioritisation process. At the community level, this should be in consultation with payams, bomas (local government officials and leaders) and communities.

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<sup>70</sup> UNOCHA. Humanitarian Update Southern Sudan. March and April 2010. Issue 2. Juba: United Nations Office for the Coordination of Humanitarian Affairs; 2010.

- Ensure pre- and post- clearance surveys and impact assessment tools also take into account land rights. Prior to clearing land, try to establish whether land is state-owned, communally owned or leased to an individual or company, and its intended use post-clearance.
- Promote a transparent, inclusive and collaborative prioritisation process;
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Where relevant, collect and analyse data in a sex and age-disaggregated manner, enabling the identification of age and/or gender-specific patterns.

This will help ensure cleared land goes to the intended recipients and/or is used for the intended purposes, without any land disputes<sup>71</sup>.

#### **Develop handover procedures consistent with the Southern Sudan context**

The SSDA, with the support of UNMAO, should develop handover procedures that take the Land Act 2009 and Southern Sudan context into consideration, and that are in line with the IMAS. All gender groups should be involved in handover. Vulnerable groups, such as female-headed households, should also be represented.

#### **Improve data collection and sharing**

Ideally, a standard approach should be implemented for data collection and management. However, there are a number of challenges involved. Because of the size and difficulties of operating in Southern Sudan, mine action NGOs may not wish to radically alter their IA tools and sampling procedures. Therefore, the SSDA, with the support of UNMAO, should work with mine action actors to encourage and support the collection of consistent, gender representative information.

Mine action actors may fear that becoming involved in sensitive land rights issues will compromise their ability to carry out activities. However, they can share the information they gather at the community level to support both local and international organisations working at an advocacy level.

#### **Learn from other country programmes**

Draw on the experiences of other countries for guidance on how to address land-rights issues. UNMAO and the SSDA should collect lessons learnt and best practices from counterparts in other countries. Similarly, international mine action NGOs in Southern Sudan are in a position to learn from their organisational experience.

#### **Recommendations for mine action donors:**

##### **Donor support for linking mine action to development**

Donors have a role to play in facilitating and supporting partnerships between different actors involved in mine action and land rights. Recognising mine action as a development activity and

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<sup>71</sup> It was not within the scope of this study to review the IMAS and the Sudan National Mine Action Standards, but it is understood that the IMAS do not take account of land-rights related issues more generally, and that the NMAS do not take into consideration land legislation in either North or Southern Sudan. The NMAS could be amended to take into consideration land rights-related issues, tailoring them specifically to the Sudanese context. Relevant IMAS (IMAS 08.10, General Mine Action Assessment, IMAS 08.20, Land Release, IMAS 08.21, Non-technical survey, IMAS 08.22, Technical Survey, IMAS 08.30 Post-clearance Documentation and IMAS 09.10 Clearance Requirements are examples of relevant IMAS) could be reviewed and amended to reflect the importance of taking land rights issues into consideration during operational activities more generally.



including it within broader development funding can support this. Although there is a move by some donors, for example the European Commission and Canadian International Development Agency to integrate mine action into broader humanitarian/development funding, in reality this presents a number of fundamental challenges. A key example is the decline in funding for mine action experienced in recent years as mine action funding has been merged with more traditional development funding. In the event that funding for mine action is integrated into broader development funding streams, dedicated funding for mine action should be maintained, not least because of State Parties' obligations under the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*.

#### **Donor support in impact assessment**

Land rights related issues should be regarded as an integral part of IA activities. Support implementing partners in incorporating land rights into their IA tools. Ensure that implementing partners have procedures in place to understand land rights such as land ownership and land use in their prioritisation, implementation and post-clearance activities and provide guidance where necessary. This can be done through calls for proposals, scopes of work etc.

At the same time, more broadly recognise that IA, the incorporation of land rights and demonstration of development outcomes, is a complex process that requires the participation of all stakeholders to ensure both efficiency and effectiveness. Support implementation of IA, particularly in contexts such as Southern Sudan where government capacities are weak. Carry out robust and frequent evaluations of implementing partner IA approaches with the aim of harnessing key lessons learnt to improve future work. In particular evaluation of IA, and specifically the practical constraints of IA implementation, should take place regularly with the view to incorporating key lessons learnt into future approaches that best meet country specific requirements. Lead the dissemination of best practices approaches from different countries. Provide support for research and development of IA tools that pay proper attention to land rights.

Whilst UNMAO states that it is considering the development and implementation of a standardised IA tool that targets all clearance activities in Southern Sudan, government capacity to coordinate and support this is weak. Acknowledge this by providing additional support for building the capacity of local government in IA.

#### **Improving coordination**

Ensure the presence of coordinating mechanisms for programmes in which they are engaged. Increase coordination with development organisations and relevant government authorities to facilitate information sharing, including with regards to land rights issues, as well as linking mine action to development. Processes for highlighting critical issues such as land-grabbing or potential conflict over released land, should be established to enable donors and the UN to engage at a senior government level where necessary.

#### **11. Conclusions**

Respect for rights is an integral part of all humanitarian action and the violation of land rights is a key current and future cause of poverty. One of the most important aspects of mine clearance is ensuring vulnerable people are able to benefit from and use cleared land productively.

Mine action organisations have an important role to play in expanding land rights awareness and empowering communities. Understanding the main land rights issues when designing and implementing mine action programmes is critical. This understanding has the potential to improve the positive, long term impact of clearance activities, to the extent that the context allows, and to avoid perpetuating land rights problems.



Mine action organisations cannot address land rights on their own. However, they can contribute to land rights awareness as part of broader development efforts. In the long-term, strengthening land tenure rights in landmine/ERW-affected areas will promote social stability and reduce the vulnerability of Southern Sudan's poorest communities.



## Annex 1: CASE STUDY 1 - LAND TENURE AND IMPACT OF CLEARANCE IN A PERI-URBAN CONTAMINATED AREA

This case study examines the land rights issues that can arise in contaminated peri-urban areas. It focuses on an area situated approximately 9 km from Juba, the capital of Southern Sudan, which is close to Jebel Kujur/Korok in Northern Bari Payam. .

This area was mine contaminated as a result of the second civil war. It became a high priority for clearance when road construction activities were commenced. A commercial company, under contract from UNMAO through UNOPS, started clearance activities in October 2009.

Approximately 64 AP mines and 25 POM-Zs were destroyed, as well as other ERW, and in total 186,600 square metres of land were released . Land was released through clearance and technical surveys. Land release activities were completed by the end of June 2010.

Five households interviewed in the area make a living from multiple livelihood activities, mostly through the informal economy. These include artisanal quarrying, beer selling and hotel work. They also have small plots of land for cultivation. Before the land was cleared, some contaminated areas were used by the community for cultivation and quarrying. Some households also squatted on the land. In addition, one section of the cleared land is now being used for a primary school which the community built and which is attended by over two hundred children.

It was therefore anticipated by mine action organisations involved in the clearance that some of the released land would be used for similar purposes post-clearance. However, according to UNMAO, based on information received from some members of the community, the cleared area may be reclaimed for settlement by approximately 5,000 IDPs<sup>72</sup>. In addition, one section of the cleared land is now being used for a primary school which the community built and which is attended by over two hundred children.

### **Land ownership in the area**

The land rights situation in the areas under investigation is particularly complex. The area around Juba traditionally falls under the customary ownership of the Bari. During the war, peri-urban Juba was virtually uninhabited. Today, Juba is surrounded by new housing settlements of various standards in different stages of construction. Many poorer newcomers to Juba, including returnees and rural and urban migrants have squatted around Juba. They have no customary rights to the land, as they are not indigenous to the area. Other people living in the area include those forcibly evicted in the last two years from informal settlements within the town, many of whom were IDPs to Juba during the war. These people form small communities.

Generally, a longer-term settler will act as a chief. Although these chiefs are not the customary owners of the land, they handle day-to-day issues, including in some instances, the adjudication of land disputes. Some also sell plots of land to newcomers in an informal land market that has evolved. Therefore, land is being sold without formal land title and no security of tenure. Other newcomers simply identify a free area and agree with people close by whether they can live there.

Close to Juba, the boundary between two chieftainships has come under dispute. According to some Bari sub-chiefs, this is due to the rising value of the land. The released area falls within the disputed area.

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<sup>72</sup> See also 27. UNOCHA. Humanitarian Update Southern Sudan. March and April 2010. Issue 2. Juba: United Nations Office for the Coordination of Humanitarian Affairs; 2010.(UNOCHA, 2010)



In addition, it is reported that The GoSS has acquired an area of 5.5km<sup>2</sup>, from the Bari, for the creation of a new city, Liberty City although plans appear to be on hold partly as a result of the dispute between the chiefs. Over the next 10 years, the GoSS had intended to build 15,000 housing units to accommodate over 100,000 people<sup>73</sup>. The planned area goes to the base of Jebel Kujur/Korok. Residential areas are mainly for housing Government employees, embassies and for embassy employees and not low-income households. Road-building to the west leading into the released area, is already leading to forced evictions.

Near to the released area, the Bari community has negotiated demarcation of land by the State Ministry of Physical Infrastructure and will receive compensation in the form of around half the plots. These will be allocated to Bari from a number of clans within the Payam. Plans regarding how the remainder of the plots will be allocated are vague. It is not clear that people residing in the released area who will be displaced as a result of road-building and other developments, IDPs residing within informal settlements within Juba or IDPs from elsewhere will be prioritised.

### **Tenure Security of Current Inhabitants**

A number of mine action practitioners assumed that the community residing in the area would benefit from the clearance, whether through the school, cultivation or other livelihood activities. However, the people currently living in the area are considered by the government as squatters and have no security of tenure.

Already a number of households near the released land have been forcibly evicted, and had their homes demolished as a result of an initial phase of road construction. In addition, it is not clear whether or not the school is located on land that is allocated by the government for other purposes. The headmaster believes he has the necessary permission but is unaware of government plans for the area. The school is therefore at risk of demolition. In addition, while community members acknowledge that some houses are at risk of demolition 'when the roads come', they believe other households' shelters will not be destroyed.

### **Use of Released Land**

The released land was handed over shortly before July 2010 to one of the settler chiefs residing in the area. The commercial mine action operator informed some households near the released land that the land is safe to use. However, other households and the other chiefs were not informed about the status of the land. As a result, many community members still feel the land is unsafe and avoid crossing portions of it.

One Bari chief has informed one community that it can continue to use the land for artisanal quarrying. However, it should not use it to grow crops, as the crops will be destroyed when the land is later developed. Several community members are cultivating land regardless. One community member also identified an area of the cleared land that the Bari chief has reportedly allocated to a commercial quarrying company. One of the settler chiefs explained that members of the community who carry out artisanal quarrying were already complaining about this, as the price of their stones has started to fall.

While plans exist for the area to be formally demarcated and developed, another householder indicated that 'land grabbers' were already demarcating the area and that she felt unable to use the land. A chance interview with two 'land grabbers' and the land broker revealed that much of the cleared land has already been sold informally. The two individuals making a claim to plots said they worked in a GoSS Ministry. One said that some people pay up to US\$ 10,000 for plots of land in the area. However, he would only pay around US\$ 2,500 as he recognised the risk of eviction

<sup>73</sup> See <http://www.libertycityjuba.com/default.html>



without a formal leasehold. At a later date it was reported that one of the Bari chiefs has in fact agreed to provide land to a very powerful member of the GoSS to establish a barracks in part of the released area.

### Conclusions

The complexities of such a situation highlight the challenges that mine action practitioners face in addressing land rights issues. Determining the intended use of cleared land by liaising with local communities is important for determining clearance priorities and developmental outcomes. However, as this case study demonstrates, affected communities may not necessarily own, or be fully aware of plans for the land on which they reside. Mine action actors therefore need to interview with a broader range of actors in order to establish land ownership and whether or not disputes over the land exist. It is also important to clarify intended land use with boma administrators, payam leaders, and where appropriate, relevant government ministries.

This case study also demonstrates how an understanding of land rights issues can help avoid raising community expectations. Handover of cleared land is approved by both the UN and the SSDA, and may give a false sense of tenure security to people residing in an area. Poor households may use their already scarce resources to develop released land, which might later be destroyed.

The case also outlines the importance of handover procedures to maximise the developmental outcomes resulting from mine action. Handover procedures should not only take into account land rights, but also ensure that as many potential users of the land as possible are informed that it is now safe.

Establishing ownership and intended use might not necessarily change whether contaminated land is prioritised for clearance, particularly where contaminated land is in a highly populated area. However, understanding land ownership strengthens understanding about impact. In this case, UNMAO indicated that the building of the school and the resettlement of approximately 5,000 IDPs were positive impacts of the clearance.

This case also draws attention to the difficulties that mine action organisations might face when promoting land rights, whether directly or in partnership with other humanitarian agencies. The ICSS guarantees residence for every Southern Sudanese person in any part of Southern Sudan. However, the people living in this area are considered as only having temporary land rights under customary law and the State government regards them as squatters. As a result, they are considered unlawful occupants with no rights to compensation if their homes are destroyed and they are evicted. The view of Government is that they should simply return to their areas of origin. Despite the fact that such actions are inconsistent with Southern Sudanese law and international law, forced evictions continue in and around Juba. Lobbying by various UN agencies, donors and international NGOs has proved largely ineffective.

## Annex 2: CASE STUDY 2 – A RETURNEE FEMALE-HEADED HOUSEHOLD, SOLDIERS AND RURAL LAND TENURE

Yei, in Central Equatoria, was a frontline town during the second civil war. Consequently, the area around it remains heavily contaminated with mines/ERW. Due to its close proximity to Uganda, many families fled there during the war and have returned to Yei since the peace. In addition, the community hosts an SPLA camp and numerous SPLA soldiers, the majority of which are not from the area. The SPLA soldiers have brought their returnee families to the area. In 2007 and 2008, this resulted in settlements around the camp expanding significantly into the community.

An interview with a female-headed returnee from the community highlights a number of key issues relating to land, and the particular challenges that female-headed households face. Her husband died during the war and upon returning from Uganda to her land in early 2009, she found part of it occupied by SPLA soldiers. Most of the remainder of her land was suspected to be contaminated by AP landmines, with part of the land marked with “danger – landmines” signs. Despite this, the woman cultivates the land, included areas marked as dangerous, together with her son. When asked about the risks involved in cultivating a potentially mined area, she stated that she had ‘no choice’, it was the only piece of land that she could use. Her family relies heavily on the crops produced, and sells excess food in the Yei market. This provides her with limited cash earnings. She cannot afford to send her children to school.

She expressed grave concern about the fact that numerous households, headed by SPLA soldiers, were moving onto her land, and constructing houses without her approval. The woman said she felt helpless because of the ‘more powerful’ SPLA soldiers. She felt she had no-one to assist her and was unsure who to ask for assistance in solving the dispute. She also believed that she would have been in a better situation if her husband had been alive.

When speaking to a number of the SPLA-headed households living in the disputed area, which also formed part of the SHA, they said that “they have the right to construct houses and live in the area, since the land is just next to the SPLA camp.” They consider themselves to have the right to live there because they “work for the country,” even though they are not originally from the area. They emphasised that they relied on cultivation of the land to feed their families. It was further stressed that they had not received their salaries from the SPLA for many months<sup>74</sup>.

### Conclusions

This case points to a number of complexities regarding land rights issues. It highlights the vulnerable situation of local communities, especially at the hands of soldiers, who are perceived as more powerful. Individuals frequently expose themselves to risks because they believe they have no other alternative. Both the SPLA-headed households and the female-headed household were aware that the land was possibly mine-contaminated. However, since they had no alternative land for cultivation, they were cultivating the suspected land.

The Land Act 2009 does, to some extent, address the restitution of land and property to returnees. However it also adds confusion by establishing a system of legal pluralism. Female headed households remain vulnerable.

Institutions such as the SSRRRC, SSLC as well as international agencies, recommend that traditional methods are used to trace ancestral lands for negotiation with those who are occupying such lands. Although the ICSS provides equal rights to women and to men, customary laws are not aligned to statutory laws, and are generally discriminatory towards women whose rights to land are mediated

<sup>74</sup> Interviews were only carried out at the community level and did not include senior SPLA, boma or payam authorities etc.

through their relationship with their husbands or other male relatives. The lack of a comprehensive policy and legal framework to guide restitution, make it difficult to offer support to households in such a situation. In addition, if soldiers and their families are to be evicted to support restitution then they need to be provided with alternative land.

The Land Act 2009 also provides for resettlement (alternative land), and the ICSS guarantees residence for every Southern Sudanese person in any part of Southern Sudan. However, the issue of alternative land is not straightforward, as it may undermine the livelihoods of poor households (in this case access to fertile land and the market) and disrupt safety nets. In addition, resettlement to a different community often results in a situation where land is only provided on a temporary basis, as those resettled do not belong to that community.

Underlying the problem are the weak local judiciary and law enforcement structures. Customary authorities lack support in terms of law enforcement. The occupation by powerful people, or those perceived as powerful, such as ex-military/military adds a further dimension. Customary authorities have generally not had the power to address issues of land-grabbing, as in this case.

The involvement of SPLA soldiers makes this case particularly problematic and sensitive. Legal literacy training can be provided to community members and soldiers and their families living in the area. However, legal rights are often ignored, particularly by powerful actors. Consultation at a more senior level, targeting SPLA commanders, commissioners and payam directors may be required instead, in order to come to an agreement. This is generally considered not within the remit of mine action actors.