



Landmines and Land Rights in Bosnia and Herzegovina

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November 2010**

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ACRONYMS

BHMAC	Bosnia and Herzegovina Mine Action Centre
BiH	Bosnia and Herzegovina
FBiH	Federation of Bosnia and Herzegovina
HLP	Housing, Land and Property
IEBL	Inter-Entity Boundary Line
LIS	Landmine Impact Survey
OHR	Office of the High Representative
OSCE	Organisation for Security and Co-operation in Europe
RS	Republika Srpska
SFRY	Socialist Federal Republic of Yugoslavia
SOE	Socially Owned Enterprises
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNMAC	UN Mine Action Centre
UXO	Unexploded Ordnance

INTRODUCTION

Bosnia and Herzegovina (BiH) is located in southeast Europe and has a population of approximately four million people. Following the break-up of the Socialist Federal Republic of Yugoslavia in the early 1990s, a three-year inter-ethnic conflict ensued. This ended in 1995 upon the signing of the Dayton Agreement which led to the establishment of a joint multi-ethnic government.

The Dayton agreement¹ divided BiH in two entities, the Federation of Bosnia and Herzegovina (FBiH) with a Bosniak majority and a significant Croat minority, and the Republika Srpska (RS), with a Serb majority. Each entity has its own government and constitution. In addition, there is a self-governing administrative unit, District Brčko.

The legacy of the 1992-1995 war makes BiH the most heavily mined country in Europe. Up to 220,000 mines², mostly anti-personnel, and many types of UXO still take their toll on innocent victims. Most minefields are in the zone of separation between FBiH and RS which is 1,100km long and up to 4km wide. However, mines were also placed throughout the country in every type of soil and vegetation.³ Although the parties to the conflict placed mines extensively along confrontation lines to block troop movements or around strategic facilities, the lines moved frequently, leaving contamination that is extensive and generally low density.⁴

In southern and central BiH in particular, mines were often used randomly, with few records kept. Some of the affected territory is mountainous or heavily forested, but the fertile agricultural belt in Brčko district is one of the most heavily contaminated areas. There is also a significant but unquantified problem with UXO, including a small residual threat of remnants from cluster munitions.⁵ However, despite the mine threat being present, it is no longer a major impediment to the return of refugees and displaced persons.

In a general sense, mines and UXO inhibit freedom of movement, but they more specifically restrain access to housing and farmland, and are a barrier to economic recovery. Besides blocking the development of tourism and agricultural activities that stimulate job production, they obstruct environmental rehabilitation projects. However, few land rights-related problems exist in mine/ERW-affected areas and none of the issues have delayed the demining process or had any direct influence on it.

2. MAIN LAND RIGHTS ISSUES

2.1 Pre conflict situation: The concept of social property

Socially owned property such as enterprises, land, apartments and business premises was one of the ideological cornerstones of Yugoslav socialism. Until the reforms of the late 1980s, the vast majority of economic activity (other than small-scale agriculture) took place within socially owned enterprises, using social capital, assets, buildings and land.

¹ The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement, was formally signed in Paris on December 14, 1995. These accords put an end to the three and a half year long war in Bosnia, one of the armed conflicts in the former Socialist Federative Republic of Yugoslavia. The

² "By the start of 2009, BHMIC estimated some 220,000 mines remained to be cleared, far fewer than the estimate of over one million mines that resulted from a general assessment completed by BHMIC in 2008 to prepare the request for an extension of BiH's Article 5 deadline for clearance." Source: Landmine and Cluster Munitions Monitor 2010; interview with Tarik Serak, BHMIC

³ Article 5 deadline Extension Request (Revised version), 27 June 2008, p. 4.

⁴ Article 5 deadline Extension Request (Revised version), 27 June 2008, p. 4.

⁵ See *Landmine Monitor Report 2008*, p. 174.

State farms

Between the two World Wars, the Kingdom of Yugoslavia undertook the first systematic land reform in Bosnia and Herzegovina, redistributing more than a million hectares of *agalik*⁶ and *beglik*⁷ lands, mainly in favour of Serb tenants in small grants of three to 8.5 ha.⁸ After World War II, the communists introduced laws breaking up large private agricultural estates, setting a maximum parcel size of 45 ha per family in 1945, and reducing it to ten ha in 1953.⁹ Large families and inheritance laws, which encouraged the division of farms among heirs, further fragmented the land. The total number of private plots grew from 412,000 in 1949 to 497,000 in 1969, while the average plot size declined from eight ha in 1900 to 3.9 ha in 1969.

State farms (*poljoprivredne dobre*), agricultural combines (*agrokombinati*) and collectives (*zemljoradnicke zadruge*) were created from land nationalised or expropriated under various legal regimes. However, they incorporated less than ten percent of all agricultural land. The amount of land that could be held by private smallholders was limited by law to approximately ten hectares per family.

As a result, the economic viability of private farms steadily declined, particularly in the highland regions. Average incomes in the highland areas were 43 percent below the SFRY average, while the *per capita* value of infrastructure was nearly 70 per cent lower than in the rest of the country. Price controls on food stuffs reduced the incentive to sell produce. Small farms increasingly became subsistence oriented, with nearly half producing no marketable surplus at all.

Social property rights

Rights over social property are divided into ‘user rights’ (*pravo na koriscenje*) and ‘allocation rights’ (*pravo na raspolaganje*). User rights may be held by individuals or legal entities, and can be temporary or permanent. Permanent user rights to land or apartments may be inherited, but cannot be bought and sold. As the name suggests, they confer a right to use the property according to the legal regime governing each type of property – business space, urban construction land, agricultural land or apartment.

User rights to social property also entail an *obligation on use* which means that those who fail to use the property for the purpose it was allocated can lose it. In the case of socially owned apartments, rights of use could be cancelled if the occupants failed to use the apartment for more than six months without a lawful excuse (Art. 47, Law on Housing Relations). During and after the war, many thousands of court decisions were issued cancelling the occupancy rights of absent refugees and displaced persons, but were subsequently overturned by a decision of the High Representative¹⁰.

⁶ An *agalik*, or *agaluk* (Turkish: Ağalık) was a feudal unit of the Ottoman empire governed by an Aga, (or lord). In Bosnian history, an *agaluk* may often refer to land owned by an Aga - lower ranking feudal nobility whose land was cultivated by kmets or peasants.

⁷ A *beglik*, or *begluk* was, during the Ottoman empire, a piece of land owned *beg* (bey) – a feudal nobility ranked higher than an *aga*. There were no kmets cultivating his land, instead he was renting it to other nobilities, or cultivating it on his own.

⁸ Allcock 111.

⁹ These figures applied to the highest grade of agricultural land. Larger plots were permitted in the less productive highland areas.

¹⁰ The Office of the High Representative (OHR) is an *ad hoc* international institution responsible for overseeing implementation of civilian aspects of the accord ending the war in Bosnia and Herzegovina. The position of High Representative was created under the General Framework Agreement for Peace in Bosnia and Herzegovina, usually referred to as the Dayton Peace Agreement, that was negotiated in Dayton, Ohio, and signed in Paris on 14 December 1995. The High Representative, who is also EU Special Representative (EUSR) in Bosnia and Herzegovina, is working with the people and institutions of Bosnia and Herzegovina and the international community to ensure that Bosnia and Herzegovina evolves into a peaceful and viable democracy on course for integration into Euro-Atlantic institutions. The High Representative has supreme legislative and administrative powers.

The allocation right holder was the social institution authorised to grant user rights. In the case of apartments, it was a socially owned enterprise or other public institution, that allocated apartments constructed with social capital, to its own employees based on predetermined criteria. In the case of socially owned land and small business premises, the allocation right holder was the municipality.

User rights

Some land attached to socially-owned enterprises (SOEs) has been privatised together with the companies. According to laws in place since 1958, any land falling within the urban perimeter, as defined by the urban plan, is automatically socialised, without any further expropriation procedure. However, the owner of the land is left in possession of the property, with a user right which continues, unless and until the municipality chooses to reallocate the property to another party.

If there is a private building on the land, the individual retains ownership of the building (unless it was specifically nationalised), and obtains a permanent user right to the land. This separation of the legal status of the land, and the buildings standing on it, is one of the curious features of the system that comes from the old Roman law that was used throughout Europe. For most practical purposes, the user right to land under a private building is equivalent to ownership. The individual can sell the building, and the user right then transfers automatically to the purchaser.

Socialising of undeveloped land

The previous owners gain only a temporary user right when undeveloped land is socialised. They have the priority right to construct on the land, and if they do, their user right becomes permanent. Socialisation of urban land is therefore a two-stage operation. During the first stage, there is formal loss of the ownership right. In the second stage, there is possible loss of possession through a decision of the municipality.

Compensation is paid only if, and when, the municipality decides to reallocate the land. Because many former owners remain in possession of their land, the institution of social ownership co-exists with a strong subjective sense of ownership among the population. This generates strong pressures for restitution¹¹, already a prominent issue in the first democratic elections in 1991.

In socialist Bosnia and Herzegovina, there were many signs of cracks in the system well before the outbreak of war. The problem was not, by and large, a lack of technical capacity, as every municipality had its urbanism department staffed with trained geodetic engineers. However, the system failed to respond adequately to social pressures in various respects.

For example, there was no tradition of development planning for rural communities. Also, the system of socially owned property applied to all urban land, which required municipalities to be involved in the acquisition of building land. Private individuals had incentives to by-pass this bureaucratic procedure and transact informally, increasing illegal construction and adding to the breakdown of the property registration system. The extent of the gap between law and reality in this field is a classic symptom of a weak state, and that tradition is one of the governance challenges to be overcome.

2.2 Land as territory during the war

During the Bosnian war, the military conflict was accompanied by brutal campaigns against civilian populations, as the armies of Republika Srpska (VRS) and Herzeg-Bosna (HVO) fought to divide the

¹¹ The law of restitution is the law of gains-based recovery. It is to be contrasted with the law of compensation, which is the law of loss-based recovery. Obligations to make restitution and obligations to pay compensation are each a type of *legal response* to events in the real world. When a court orders restitution, it orders the defendant to give up their gains to the claimant. When a court orders compensation it orders the defendant to compensate the claimant for his or her loss.

country. Land was treated as strategic territory, rather than as an economic resource or an asset subject to individual property rights. Through the practice of ethnic cleansing, the forced displacement of people became inextricably linked with territorial control.

The notion of land as territory, controlled exclusively by one ethnic group or another continued to shape the political environment in the post-Dayton era.¹² The nationalist regimes sought to secure their control over territory through the resettlement of supportive ethnic groups into contested areas. For example, the Herzeg-Bosna authorities encouraged Croats from across the country to resettle throughout their territory, from Drvar in the north, down to Stolac in the south. In Republika Srpska, the authorities settled displaced persons and demobilised soldiers in sensitive areas, like Prijedor, Srebrenica, Brcko, and along the Inter-Entity Boundary Line (IEBL). The conflict resulted in the massive and deliberate destruction of property of those who had been displaced, as a means to conduct ethnic cleansing. In most cases, destroyed property remained empty. If the property was intact, then in most of cases it was *de jure* declared abandoned and allocated, on a temporary or permanent basis, to persons, in some cases IDPs, belonging to the majority ethnic group. This practice was consistently applied by all three ethnic groups, and it was based on a series of war times decrees, which were eventually taken over by specific “laws on abandoned property”. While the declared aim of those laws was to accommodate those who had been displaced by the conflict, in reality, one of the primary purposes was to prevent the return of members of the minority ethnic group and as such, those laws were in contradiction with the provision of Annex VII of the Dayton Peace Agreement.¹³

2.3 Post-conflict land issues

In post-Dayton Bosnia, international programmes promoting the return of refugees and displaced persons to rural areas encountered the same pressures. The ‘sustainability’ of many highland/rural communities had been questioned for decades, due to declining population figures across various Bosnian villages. Mass population displacement, as a result of the war, accelerated the urbanisation process. Many families that were able to secure urban housing during their displacement, were reluctant to return to isolated and underdeveloped areas, where local communities are dispersed and economic prospects bleak. Jobs in socially-owned factories are gone or inaccessible to minorities, and so there is little prospect of restoring pre-war livelihoods, and opportunities in the new private sector are extremely limited. As a result, elderly people have been the most willing to return, living off pensions supplemented by subsistence agriculture. Young people have begun new lives in urban centres, or remain as refugees abroad¹⁴.

Local legislation on IDPs and refugees, drafted in cooperation with relevant international organisations, foresaw an administrative procedure on the determination and cessation of the status of IDPs. This was linked with property status. Once an IDP repossessed her/his property, had the property reconstructed or acquired a new property, through purchase or exchange, the person lost the status of IDP and the competent authorities had to terminate their benefits.

During the Bosnian war, the movement of people had become inextricably linked with control of territory, through the expulsion of civilian populations and the relocation of majority displaced persons into housing ‘abandoned’ by minorities. This pattern continued in the post-Dayton period, with the creation of elaborate legal and administrative controls designed to prevent minorities

¹² The Constitution of Bosnia and Herzegovina was adopted as Annex IV to the General Framework Agreement for Peace in Bosnia and Herzegovina, and consequently there cannot be a conflict or a possibility for controversy between this Agreement and the Constitution of Bosnia and Herzegovina. The Constitution permits and guarantees private property. In addition, Annex VII of the agreement guarantees that all displaced persons and refugees have the right to return, as well as the right to reclaim the property they had left behind, or be compensated for properties lost.

¹³ On a lesser scale, the Bosniac authorities attempted something similar with the settlement of small numbers of foreign fighters (*mujahadeen*) in Serb villages along the IEBL near Maglaj.

¹⁴ The Inter-Entity Boundary Line (IEBL) divides Bosnia and Herzegovina into two entities, the Republika Srpska and the Federation of Bosnia and Herzegovina.

from repossessing their homes. The infamous ‘abandoned property laws’ remained in force until April 1998 in the Federation, and December 1998 in Republika Srpska, when they were repealed under enormous international pressure.

While the reform of the property laws had opened up the possibility of a genuine return movement, the mass allocation of free land looked like an attempt to defeat the process before it had begun. There were reports that nationalist authorities were engaging in “hostile relocation”, positioning settlements so as to create real or psychological barriers to the return of minorities. There were also reports of minority housing, business premises and religious or cultural premises being destroyed, and the land reallocated for new housing.

On the other hand, while the Dayton Agreement contains strong legal and institutional protection of the right to return, it also explicitly allows voluntary resettlement. The Constitution of Bosnia and Herzegovina guarantees the “right to liberty of movement and residence”, and Annex 7 instructs the entity governments not to “interfere with the returnees’ choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life.”

Some of the main land rights-related issues in BiH immediately following the war and more recently include:

- Farming/building on land without the owner's permission. For example, land belonging to IDPs was allocated to other IDPs who worked it and made an income for themselves.
- Altering municipal development plans in order to take advantage of the absence of minority groups and construct on their property. This occurred in particular with agricultural land, which was declared building land by a municipal decision. The pre-war right holders were entitled to build on it, but since they had been displaced, they were not aware of these new decisions. Therefore, they quickly lost the right to build and someone else, usually someone well connected, was granted those rights in their place.
- The lack or inadequacy of land records. Users of real property are registered on possession lists or cadastres in municipal cadastre¹⁵ offices, also called land register offices. To register a possession right, a person can supply one of three types of evidence: a land sale contract, a court decision or a decision on usurpation (state-owned land that has been given to the user). (Because it recorded only possession, the cadastre was somewhat better maintained, and in many places, served as a practical substitute to the property book. However, even the cadastre failed to keep up with the scale of illegal construction in Sarajevo, where entire suburbs continue to be recorded as vacant or agricultural land.)
- Property holders that were “cleansed” from certain areas being unable to use legitimate titles and other documents as evidence of ownership
- Fragmentation of land and small size farm units.
- Uncertainty over land rights.
- Abandoned farms occupied by IDPs, etc. For example, under the laws on abandoned properties, the new users, IDPs in many cases, were granted the right to use the land and farm. Once the owner sought repossession through the relevant laws, the domestic authorities resisted such

¹⁵ An official register of the ownership, extent, and value of real property in a given area, used as a basis of taxation

attempts for a long time in order to maintain the IDPs in the claimed property. The main reason for this was that the IDPs belonged to the majority ethnic group, while the owners were part of the minority.

- Municipalities charge a land improvement fee (*naknada za uredenje*) on the allocation of land, which varies. However, these revenues are not used for the development of the land in question. Instead, they disappear into the general municipal budget. Where construction is illegal, they may not be collected at all. In effect, the municipalities engage in a form of snowball financing, where development charges are used to clear old infrastructure obligations, rather than to pre-finance new ones. New housing settlements, even when constructed illegally, create strong public pressure on the municipality to provide infrastructure. Funds are scraped together from the municipal budget, household connection fees or, in some rural areas, through citizens' contributions (*samodoprinos*) organised by local communities (*mjesne zajednice*). Public utility companies, particularly the electricity and telephone companies, are prone to political pressure, and may connect houses without any legal or financial basis. Local politicians build their power and influence through their ability to channel scarce public resources towards favoured constituencies. Every pre-election period therefore brings a flurry of road building.
- Loss of quality agricultural land to wild construction. In Bosnia, agricultural land is graded into eight classes. Grades I – IV may not be used for development purposes under any circumstances. Grades V and VI may be used only with the permission of the responsible Ministry for Agriculture. These rules are widely ignored. Where the separation of agricultural and construction land is not enforced, the market for agricultural land becomes distorted, with the price rising in anticipation of future construction. The Federation Ministry of Agriculture estimates that a significant amount of prime agricultural land is lost annually.
- Widespread illegal sale of socially-owned land. A person holding a temporary user right to an empty plot of land, has no right to sell it to another person. If the person follows the law and returns it to the municipality, their compensation would be of the order of [X] per m².¹⁶ If the other party then received the land from the municipality through a formal allocation procedure, they would be obliged to pay a series of substantial charges, which might be as much as [Y] per m².¹⁷ Both parties therefore have an interest in making an informal agreement on the sale at a price somewhere between the two. The purchaser would then construct a house illegally, or apply for a building permit in the name of the seller. Through this kind of informal transaction, the purchaser does not acquire legal title to the land, but is unlikely to face any challenge to their possession, especially once they have begun construction. The purchaser has no legal right to connect the house to infrastructure, however 'home-made' connections are common.
- Breakdown of the property registration system. Since the time of Austrian rule, Bosnia has had two systems operating in parallel - the property book administered by the courts which provides formal proof of property title, and the cadastre managed by the municipal administration which records possession of property for taxation purposes. Among its various institutional problems, the property registration system was severely undermined by the high volume of informal transactions and illegal construction. Because registration in the property book required proof of payment of various taxes and charges, the incentives worked against registration. Over successive decades, the system broke down to the point where it was

¹⁶ Law on Construction Land; Law on Expropriation, with the rates in each municipality set by municipal regulation.

¹⁷ These include reimbursing the municipality's costs of compensation the former owner, where appropriate, a fee on the allocation of the land and the land improvement. In addition, there are charges relating to the issuing of planning permission, building permits and permits on use. These charges are set by municipal regulation.

estimated to be no more than 20 percent accurate.¹⁸ A law passed through the Entity parliaments in 2003, developed through the assistance of the German government agency GTZ, is intended to initiate a process of restoring the system. However, the costs and time required to complete the task are substantial.

2.4 Land related legal protection instruments

The Office of the High Representative (OHR) in BiH is the ultimate power in post-Dayton BiH. On 27 April 2000, the OHR issued a Decision¹⁹ declaring that no development of socially-owned land of any kind was permitted without the express approval of the OHR.

The Decision states: "Notwithstanding the provision of any other law, state-owned real property, including former socially-owned property, but excluding socially owned apartments, may not be disposed of, allotted, transferred, sold, or given for use or rent, by the authorities of either Entity or Bosnia and Herzegovina. ... The Office of the High Representative may, upon a clear showing by the competent authorities... that a proposed transfer of state-owned real property is non-discriminatory and in the best interests of the public, grant a written exemption to this Decision."

Any allocation of land, without this written exemption (or "waiver"), was declared null and void. A year later, the OHR wrote to all municipal authorities informing them that the waiver system also applied retrospectively to all transactions since 6 April 1992. By this Decision, the OHR made itself the supreme authority for development control in Bosnia and Herzegovina, becoming in effect a part of the Bosnian public administration. It acquired jurisdiction over 2.7 million hectares of socially owned land, or 53 per cent of the country's territory, including all urban land, ninety percent of forests, and the ten percent of agricultural land previously within agricultural combines and co-operatives. There is no parallel to the OHR waiver procedure in any contemporary European system.

The issue of State property in BiH also emerged as problematic one. In March 2005, the OHR issued another set of regulations - the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina. This Law prohibits the disposal of State Property and remains in force in BiH. By imposing the ban, the OHR created a legal vacuum. By setting the issue of the state property very high on the agenda, the OHR has made itself responsible as trustee and administrator for a vast amount of state and socially owned property across Bosnia. However, over the past years, little has been done to resolve this matter. As a result, control over some of Bosnia's valuable economic assets is being blocked until there is a better political climate. This has been harmful to the most important issue for BiH, economic development. Large assets of the state of Bosnia and Herzegovina, remain in a stalemate of governance. The land owned by formerly socialist cooperatives, military companies, airports, flats and holiday resorts remains unsolved. The ownership has not been resolved between different levels of governments in BiH.

2.5 System of land titling and registration

BiH has a formal system of land titling and registration. Land books are kept in the basic courts and copies of these are in the municipal offices. Changes to the law books can only be made following an official court decision or through the verification of contracts. Even during the conflict, contrary to popular belief, few changes were made to the law books. Specific laws on cadastre and on property transcriptions existed before the conflict in BiH. However, the legal framework was not always respected in reality. Houses and land in rural areas were also subject to informal transactions, mostly to avoid taxation.

¹⁸ CRPC reports

¹⁹ Decision Enacting the Law on Construction Land of the Federation of Bosnia and Herzegovina, http://www.ohr.int/decisions/plipdec/default.asp?content_id=29898

During the conflict, residential property and land were subject to the existing laws on abandoned property. The property was declared temporarily abandoned by an administrative decision, and temporarily allocated to IDPs or refugees for housing or to make an income out of it. Another, implicit goal of the laws on abandoned property was to prevent the return of pre-war owners, cementing ethnic cleansing. After the conflict, as a result of the peace agreement, special legislation was required in order to reverse this process, and ensure the protection of rights of pre-war owners and the return of IDPs and refugees. However, such legislation wasn't passed before 1998, and its implementation required several years in order to deal with the over 200,000 claims for occupied property under tight international monitoring (the so-called Property Law Implementation Programme (PLIP))²⁰.

2.6 Main land actors

BiH stands out in property restitution. It played a key role in the development of new international standards on Housing, Land and Property (HLP) rights, also known as the "Pinheiro Principles"²¹. For many years after the conflict, the international community (UN, UNHCR, OSCE), the OHR and the Commission for Real Property Claims (CRPC) coordinated an intensive effort to ensure the rights of IDPs and refugees to repossess their property and return to their land. Local authorities were in charge of drafting the relevant laws and implementing them. However, the international community was forced to intervene in this process, and amended the laws on several occasions. Even after a proper legal framework had been established, huge obstacles remained. Nationalistic political leaders seeking to preserve their political bases resisted the implementation of property laws. Local officials went to "...considerable lengths to prevent, hinder, disrupt and delay return...", and in any case most municipalities lacked the administrative capacity to process claims. In addition, there was, and remains, a housing shortage in some areas.

The international community closely monitored the implementation of these laws. In the end, the process was very successful. Almost all habitable housing was returned to their pre-war owners. Concerning destroyed property, the international community coordinated reconstruction efforts which were largely supported by foreign donors. Towards the end of its engagement, the international community transferred those competencies to the relevant state body, the Ministry for Human Rights and Refugees, and disengaged.

2.7 Gender and ethnic inequalities

In some cases, mines were placed in the early years of peace to prevent the return of IDPs and refugees to certain areas. A few casualties occurred and properties were destroyed. For example, in 2001 in Glogova, one person was killed outside Bratunac after finding a landmine, which had been recently placed amongst the rubble of his house while he was cleaning it before return. In October 1996 in Prijedor, in Republika Srpska, 400 anti-tank mines were used to intentionally destroy 100 Bosniak houses, whose owners and their families had been expelled during the conflict. The houses were supposed to be visited by their owners during an UNHCR visit the day after. The explosions

²⁰ The PLIP was a semi formalised agreement among 5 different international agencies (OHR, OSCE, UNHCR, UNMIBH and CRPC) which ensured thorough monitoring of the performance of domestic authorities in the process of property restitution. The results of such monitoring, which relied on standardised performance indicators, were channelled to an operational unit at HQ level which served the purpose of addressing, at the highest level, the problems encountered in the field and if necessary proposing legislative changes and sanctions for officials obstructing the process. The whole system was widely endorsed and supported by most diplomatic representations present in BiH.

²¹ The UN Principles for Housing and Property Restitution for Refugees and IDPs, otherwise known as the Pinheiro Principles, provide guidance on the management of the technical and legal aspects of housing, land and property (HLP) restitution. The Pinheiro Principles however have been criticised for raising false expectations in contexts where, unlike BiH, national capacities are weaker, support from the international community is less clear, and land and property relations are less tidy and equitable (Rhodri C. Williams, News from Bosnia – ECtHR Dokic decision and guest blogger Massimo Moratti's view from the field, May 2010, <http://terra0nullius.wordpress.com/2010/05/31/news-from-bosnia-ecthr-dokic-decision-and-guest-blogger-massimo-morattis-view-from-the-field/>)

were never investigated by the local police, which at the time was run by a Serb indicted for war crimes against Bosniaks. In Drvar in October 2008, a couple of returnees were murdered and the perpetrators never found. As they were among the first returnees, the murders sent a clear signal to other potential returnees. Formally the law didn't present *prima facie* discriminatory clauses. However it was clear that in fact, it applied only to certain categories, who were in the overwhelming number of cases identified as minorities²².

BiH's peace agreement includes an annex which specifically prohibits gender-based discrimination. The government has also established special commissions on gender equality, which are active in Parliament, as well as gender centres which focus on formulating gender-sensitive policies.²³ Women have the same ownership rights as men, and any assets can be individually or jointly owned. Assets owned by a spouse prior to marriage remain their individual property. However assets, including land that were acquired during the marriage are considered joint property. There is no legal discrimination against women in regard to access to land or access to property other than land.

Despite this, traditional practices typically favour men over women, particularly those living in rural areas, face barriers. Men are the traditional owners of private property in BiH. Although women acquire the right to joint property ownership during marriage, property titles tend to be always registered in the husband's name. After divorce, property acquired through marriage is divided. However, due to inefficiencies within the judiciary, this process can take years and during that time, husbands typically use or even sell the land.

As women commonly lack land title, they also encounter difficulties accessing credit, as most loans require some form of collateral. For example, while women have unrestricted access to bank loans, statistics show that in 1998, women were the recipients of less than one-third of loans in the country. Women seldom have access to loans that require guarantees because within couples, men often hold a larger share of property than their wives.²⁴

Women are also excluded from reconstruction projects that only benefit pre-war property owners.²⁵ According to the UN High Commissioner for Refugees, physical return to pre-conflict property is more difficult for female-headed households. The exclusion of women from the reconstruction process has been a problem.²⁶

3. MINE/ERW CONTAMINATION IN BIH AND THE RESPONSE

A general assessment of the mine situation in BiH conducted by the Bosnia and Herzegovina Mine Action Centre (BHMIC) in 2007, identified 1,631 mine/ERW impacted communities, up from 1,366 in the Landmine Impact Survey (LIS), which was conducted in 2002-2003. The assessment estimated that mines/ERW directly influence the lives of 921,513 people, including 154,538 in high-impacted communities, 342,550 in medium, and 424,425 in low-impacted communities. Of the total number

²² For example, certain provision of the Republika Srpska (RS) law on abandoned property were applicable to all those who had left the RS during the conflict or those whose children didn't serve in the RS army. Similarly, in the Federation, the provisions of the law on abandoned socially owned property implied a very tight deadline for people who had left their homes (7 days) to return and repossess them, otherwise they would lose them forever.

²³ IFAD, Bosnia and Herzegovina gender profile, 2007, <http://www.ifad.org/english/gender/cen/profiles/bih.htm>

²⁴ OECD, Social Institutions and Gender Index, Gender Equality and Social Institutions in Bosnia and Herzegovina, accessed 20 September 2010, <http://genderindex.org/country/bosnia-and-herzegovina>

²⁵ Global Rights/Partners for Justice, In cooperation with Non-Governmental Organisations In Bosnia and Herzegovina, SHADOW REPORT On the Implementation of CEDAW and Women's Human Rights in Bosnia and Herzegovina, Presented to the UNITED NATION'S COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW), January 2004, http://www.iwraw-ap.org/resources/pdf/Bosnia&Herzegovina_SR.pdf

²⁶ UNHCR with UNHCHR. Daunting prospects – Minority Women: Obstacles to their return and integration, Sarajevo, April 2000, <http://80.65.85.77/unhcr/images/stories/Publications/proj.pdf>

of impacted communities, 122 or 7.48% were high-impacted, 625 or 38.32% medium-impacted, and 884 or 54.19% low-impacted.²⁷ This makes BiH one of the most mine-affected countries in the world.

Contaminated land mostly affects communities located in rural areas, where people depend economically on the land. Two-thirds of the affected population are returnees, most of whom live in villages.²⁸ BHMAC reports that the “inhabitants of major cities have a relatively safe economic and social life, in comparison with people living in rural areas.”

From 1996 to 2009, the amount of land suspected of being mine contaminated decreased from 4,200km² to 1,555km². This indicates that the total released area amounts to 2,645km² or 3.03 per cent of BiH’s total territory.²⁹

During the war (1992-1995), 3,339 mine/UXO casualties were recorded, while 1,694 casualties were recorded after the war (1995-2009), of which 495 people were killed. The number of mine victims is constantly decreasing since the start of the mine action process in the country.³⁰

The LIS has identified males of working age as those at highest risk of being killed or injured in landmine/UXO-related accidents. Mine accidents typically involve members of rural communities, while they are working in fields and forests.³¹ In recent years, the majority of accidents have occurred during wood cutting activities, typically during the winter. However, the main mine risk awareness activities have focused on the child population.

Returnees

There are no accurate statistics on the number of direct returnees to demined areas in Bosnia and Herzegovina. From the start of the demining process, mined areas have been directly connected with the return of IDPs and refugees, and the reconstruction of infrastructure, both of which were considered high priorities by the government. All urban centres in Bosnia and Herzegovina and settled rural areas have now been cleared or released through technical survey.

The Bosnia and Herzegovina Ministry of Human Rights and Refugees has funds available to facilitate demining in support of repatriation.³² According to them, the conflict caused a total of 2.2 million refugees and displaced persons. By 2007, approximately one million people had returned to their homes, with mine action significantly contributing to the process of return.

Mine action organisations

In order to coordinate various demining initiatives and to support the establishment of national bodies, the UN Mine Action Centre (UNMAC) was created in 1996. The UN then transferred responsibility for mine action to the BiH government in 1998. The Ministry of Civil Affairs plays the leading role and a national Demining Commission provides political guidance. A state-level Mine Action Centre (BHMAC) coordinates mine action activities. A Board of Donors, chaired by the Minister of Civil Affairs, coordinates donor support for mine action.

At the end of 2009, 36 demining organisations were accredited and working in BiH, six of which were governmental (Armed Forces, Civil Protection [Federation BH, Republic of Srpska and District

²⁷ BHMAC, “Mine Action Annual Report, Bosnia and Herzegovina, year 2008,” p. 4; see also *Landmine Monitor Report 2008*, p. 174.

²⁸ BHMAC, “Mine Action Annual Report, Bosnia and Herzegovina, year 2008,” p. 4.

²⁹ ‘Bosnia and Herzegovina Mine Action Annual Report 2009’, BHMAC, Adopted by Demining Commission, 25 March 2010, p. 5.

³⁰ ‘Bosnia and Herzegovina Mine Action Annual Report 2009’, BHMAC, Adopted by Demining Commission, 25 March 2010, p. 6.

³¹ Landmine Impact Survey Bosnia and Herzegovina, 2004, p. 28.

³² Article 5 deadline Extension Request (Revised version), 27 June 2008, p. 18.

Brcko], the Mine Detection Dog Centre and the Red Cross), 15 non-governmental (ten national and five international) and 15 commercial (14 national and one international).³³

Immediately following the end of the conflict, the UN was the key mine action authority in the country. Through establishing the Bosnia and Herzegovina Mine Action Centre (BHMIC), the UN also played a key role in the transfer of mine action responsibilities to the Bosnian government in 1998. The UN continues to support mine action in BiH through the UNDP's support for capacity building of BHMIC, technical assistance, and resource mobilisation. Also, UNICEF assists mine action in the areas of mine risk education and victim assistance.

3.1 Land issues in mine-affected areas

Former-Yugoslavia was one of the biggest producers of landmines in the world which meant that mines were widely available. All conflicting parties actively laid landmines. Most of the minefields were laid in accordance with traditional war techniques, but many were also laid randomly. For large numbers of minefields, no records were kept. One of the key features of the conflict was the intra-state nature of the fighting. This meant that the frontlines of the conflict often divided towns, and was constantly moving. As a result, the concentration of mines within towns and villages in BiH is far higher than in countries contaminated by mines as a result of inter-state conflict. Also, while not a general practice, in some sporadic, individual cases, mines were used to depopulate certain areas.

Few land rights-related problems exist in mine/ERW-affected areas and none of the issues have delayed the demining process or had any direct influence on it. Below are examples of the type of isolated land rights-related problems that mine action organisations have encountered:

- Commercial company AMPHIBIA: Two years after demining was completed in the location of Kolačuša in the Vogošća municipality, we received numerous calls regarding unexploded ordnance. The land plot owner, of Serb ethnicity (which is the minority in the area), was cultivating the land since the clearance was completed. However, he continuously found UXO on his land and repeatedly reported it. BHMIC (the Bosnia-Herzegovina Mine Action Centre) which had already issued a clearance certificate for this plot of land, examined the area due to repeatedly reporting the new UXO. The owner told BHMIC and AMPHIBIA that he believed he was being discriminated against, and that 'they want to evict me from my land'. By "they", he meant the majority Muslim population. He also said that even if he tried to sell the land, whenever buyers found out about possible UXO contamination on the land, they immediately reduced the offer price, and he was unable to get his asking price. In the end, this land was sold and a gas station "AME" was built.³⁴
- Local people recognised demining as a mechanism and a cheaper option to return to their property and prepare the land for the return, possible land cultivation, etc. For this reason, there were cases where people would report their land as contaminated by mines/ERW, in the hope that it would be cleared by a mine action organisation.
- An issue that mine action organisations sometimes encounter relates to obtaining consent from property owners to demolish ruins on contaminated areas, which are part of their property (the ruins are only demolished in cases where they are classified as 'not for reconstruction'). Problems can arise if the owners have left the country and it is difficult to locate them and obtain their consent (which is regulated with the ownership rights).³⁵ However, in practice, the delays in clearance are not significant in such cases.³⁶

³³ BHMIC, "Mine Action Annual Report, Bosnia and Herzegovina, year 2009," p.21.

³⁴ Email from Rusmir Hanic, Director, Commercial Company Amphibia, Sarajevo, 6 June 2010.

³⁵ This refers to private ownership rights in general, and permission to be obtained before the process of demolishing.

³⁶ Interview with Zdenko Tadic, Mine Action Coordinator, Civil Protection, Tuzla, 11 May 2010; interview with Jovo Peric, Deputy Director of BHMIC Office in Banja Luka, Banja Luka, 12 May 2010; interview with Dusan Gavran, Director and Tarik Serak, Mine Action Planning

4. MINE ACTION RESPONSE TO LAND RIGHTS ISSUES

Since demining operations began, there have only been a few isolated land rights-related cases.³⁷ The current mine action process ensures that land rights issues are resolved prior to the involvement of mine action organisations. Demining takes place only once land issues have been addressed. If the owner suspects that their land is contaminated by ERW, he can register a request for clearance with the municipality. Often, municipalities require the owner to submit the cadastral documents proving ownership. If the person who requests the clearance cannot provide the document of ownership, the municipality investigates it prior to submitting the request for clearance to BHMIC. Once the plot of land is subject of survey, the survey team uses the cadastral map to prepare the demining and technical survey tasks. The few isolated land issues that have arisen in mine action have to do with issues of income from the land, or usage of the entire plot of the land. For example, when a mine clearance task divides a plot of land into two, issues sometimes come up in relation to which plot will be cleared first.³⁸

While mine action organisations, government bodies and development partners coordinate during the demining prioritisation process, they generally do not coordinate when it comes to land rights issues. BHMIC submits lists of prepared tasks for clearance to all mine impacted communities. Local communities then select and prioritise tasks from this list, and send their requests back to BHMIC, which becomes the priority list. Issues relating to land rights tend to come up prior to the priority-setting process, when affected communities and local authorities submit clearance requests for contaminated areas. Occasionally, land rights-related issues occur once clearance has taken place, but this is uncommon.³⁹

In BiH, there are no guidelines or procedures in place for mine action organisations for dealing with land issues.⁴⁰ Although land rights issues are minor in mine action, there is an opinion that this should be included in mine action Standard Operating Procedures (SOPs) and legislation in order to prevent even rare cases in the future⁴¹.

Box 1: Priority-setting in Bosnia and Herzegovina

The priority-setting system in Bosnia and Herzegovina combines both bottom-up and top-down methods. For example, the implementation of mine action in a particular location is very much a bottom-up process, with requests for clearance coming from affected communities and local authorities. However, top-down guidance is provided in the form of broad criteria for setting priorities. The government provides broad criterion for priorities to be implemented through BHMIC. These criterion reflect government support for the return of refugees and displaced persons, the expansion of agricultural and grazing land, and rehabilitation, reconstruction and development.

BHMIC also ensures that priority tasks are allocated fairly across the different regions of the country. At

Manager, BHMIC, Sarajevo, 13 May 2010; telephone interview with Azira Manov Pandzo, Chief of department for legal, personal and general issues, BHMIC, Sarajevo, 26 May 2010.

³⁷ Interview with Jovo Peric, Deputy Director of BHMIC Office in Banja Luka, Banja Luka, 12 May 2010; interview with Dusan Gavran, Director and Tarik Serak, Mine Action Planning Manager, BHMIC, Sarajevo, 13 May 2010; interview with Sanja Tica, Democratic Stabilisation and Social Development, EC, Sarajevo, 14 May 2010; interview with Amna Berbic, Cluster Leader, UNDP, Sarajevo, 14 May 2010; telephone interview with Azira Manov Pandzo, Chief of department for legal, personal and general issues, BHMIC, Sarajevo, 26 May 2010.

³⁸ Interview with Azira Manov Pandzo, Chief of department for legal, personal and general issues, BHMIC, Sarajevo, 2 June 2010.

³⁹ Telephone interview with Azira Manov Pandzo, Chief of department for legal, personal and general issues, BHMIC, Sarajevo, 26 May 2010.

⁴⁰ Telephone interview with Azira Manov Pandzo, Chief of department for legal, personal and general issues, BHMIC, Sarajevo, 26 May 2010.

⁴¹ Bosnia and Herzegovina is in process of adopting a new mine action legislation since 2007, but so far it hasn't been adopted. However, with the elections that are ongoing it will not take place soon. The changes in new Mine Action Law are mostly connected to financing of mine action and some levels of responsibility.

State level, and in accordance with the 1996 decision of the Peace Implementation Council, priority tasks are allocated in a 2:1 ratio between the FBiH and RS. At the cantonal level in the Federation, priority tasks are allocated 'in proportion to the number of registered hazard areas and their impact on the humanitarian and development needs of the Cantons according to the requirements of the cantons.' Requests are submitted to BHMAL (via the regional and entity offices) by municipalities, higher levels of government, utilities, the 'international community', NGOs, and others. The requests are submitted through municipality and cantonal coordinators. BHMAL then carries out a general survey of the area to technically determine if the perceived threat has a legitimate basis, and to confirm tasks. BHMAL then ranks tasks based on the level of risk associated with the contaminated area, the level of benefit of clearing the contaminated land, which considers both humanitarian benefits of demining the land and economic development benefits of clearing the land.

The annual priority list is then submitted to the entity Government for approval and forwarded to BHMAL, where it is used as a basis for the preparation of annual plans and resource mobilisation. Following the approval of the priority list, there is a second stage of 'task selection' in which the actual demining tasks that will be undertaken in the current year, are selected. It is in this second process that those who provide funding have a major input. BHMAL will typically provide the funder and/or independent clearance agency (generally the army, civil protection, and international NGOs) with a short list of tasks that the MAC would endorse (these will generally be Category I tasks from the annual plan). BHMAL, in cooperation with the funder and/or clearance agency, will then make the final selection, sometimes after further consultation with various stakeholders (e.g. local government officials). Broadly, the process can be seen as a discussion among parties involved, to arrive at a consensus on the task(s) to be cleared, guided by the principle that the annual plan is the authoritative document.

5. CONCLUSIONS AND RECOMMENDATIONS FOR MAINSTREAMING LAND RIGHTS ISSUES INTO MINE ACTION

At the present time, there is no legislation or mandate for mine action authorities to address land rights issues. As BHMAL has set up a strong system for demining, which is adhered to throughout the country, the best option at the current time is for BHMAL to continue to consider demining based on this highly legitimate prioritisation system.

One possible area in which mine action organisations can address any land rights issues, or more broadly, can ensure that the prioritisation system for demining is meeting its objectives, is through conducting a socio-economic evaluation of how land released through mine action under the control of BHMAL is used. This is an issue that has been considered by mine action actors in BiH, specifically the UNDP but as of yet, conducting such evaluations has not taken place.

These evaluations would enable BHMAL to check that land was being used for its intended purpose. If there were any land rights issues arising over contaminated/recently cleared land, such evaluations would alert BHMAL and other mine action organisations to these land right issues. Such an evaluation could be used both as a monitoring and evaluating measure by BHMAL, specifically with regard to its prioritisation system, and could be used to keep track of any land rights issues. By keeping records of land use following demining, and any land rights issues, Mine action authorities could then raise such issues with relevant governmental bodies that have the authority and the capacity to deal with land rights issues.

Similarly, donors have in general been satisfied with the current prioritisation system for mine action, in which land rights issues are dealt with at the local level, prior to the involvement of mine action authorities and organisations. Following the end of the conflict in BiH, there has been a tendency for different sectors of the public service to become highly politicised. Mine action in BiH has managed to avoid much of this politicisation and to remain a fairly technocratic endeavour, which donors have tended to support. Generally, mine action is viewed favourably in the country, particularly by donors and the larger International Community.

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Annex 2: INTERVIEWS

Name of Interviewee	Position Held	Date and Location of Interview
Ranko Banjac	Chief of Department for Quality Assurance, BHMAC	2 June 2010, Sarajevo
Amna Berbic	Cluster Leader (Human Security), UNDP	14 May 2010, Sarajevo
Sadik Cutura	Secretary of Mjesna Zajednica-Gora, near Vogosca, local community	18 August 2010 (via phone)
Dusan Gavran	Director of BHMAC	13 May 2010, Sarajevo
Zoran Grujic	Chief of IT Department, BHMAC	2 June 2010, Sarajevo
Rusmir Hancic	Director of commercial demining company, <i>Amphibia</i>	6 June 2010 (via email correspondence)
Darvin Lisica	Programme Manager, NPA	3 June 2010, Sarajevo
Eset Muracevic	Demining coordinator in Vogosca municipality	13 August 2010, Sarajevo, Vogosca municipality,
Azira Manov Pandzo	Chief of Department for Legal, Personal and General Issues, BHMAC	26 May 2010 (via telephone interview) 2 June 2010, Sarajevo
Jovo Peric	Deputy Director of BHMAC office, Banja Luka	12 May 2010, Banja Luka
Tarik Serak	Mine Action Planning Manager for BHMAC	13 May 2010, Sarajevo 2 June 2010, Sarajevo
Jovan Srijemac	Coordinator - civilian protection, Brod, RS	16 August 2010 (via telephone interview)
Zdenko Tadic	Mine Action Coordinator for Civil Protection, Tuzla	11 May 2010, Tuzla
Sanja Tica	Task Manager for Democratic Stabilisation and Social Development office, EC	14 May 2010, Sarajevo
Roman Tursic	Head of ITF (in BiH)	13 May 2010, Sarajevo