

## **Landmines and Land Rights in Cambodia**

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## List of Acronyms

AusAID	Australian Agency for International Development
ADB	Asian Development Bank
ADMAC	Agriculture Development in Mine Affected Area of Cambodia
CC	Commune Council
CDP	Commune Development Plan
CIP	Commune Investment Plan
CIDA	Canadian International Development Agency
CMAA	Cambodian Mine Action and Victim Assistance Authority
CMAC	Cambodian Mine Action Center
CMVIS	Cambodian Mine Victim Information Service
CLEC	Community Legal Education Centre
CLUP	Commune Land Use Planning
CoM	Council of Ministers
CSHD	Cambodian Self-Help Demining
ECOSORN	Economic and Social Relaunch of Northwest
ELC	Economic Land Concession
ERW	Explosive Remnants of War
EWMI	East-West Management Institute
FA	Forestry Administration
FDI	Foreign Direct Investment
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
HRND	Human Resource and Natural Development
ICBL	International Campaign to Ban Landmines
IMA	Integrated Mine Action
KR	Khmer Rouge
LAMMA	Land Administration in Mine Affected Area
LASED	Land Allocation for Social and Economic Development
LICADHO	Cambodia League for the Promotion and Defense of Human Rights
LMAP	Land Management and Administration Project
LUPU	Land Use Planning Unit
MADWG	Mine Action District Working Group
MAFF	Ministry of Agriculture Fishery and Forestry
MAG	Mines Advisory Group
MAPU	Mine Action Planning Unit
MDG	Millennium Development Goals
MLMUPC	Ministry of Land Management, Urban Planning and Construction
NCDD	National Committee for Deconcentration and Decentralisation
NGO	Non-governmental Organisation
NPA	Norwegian People's Aid
NPRS	National Poverty Reduction Strategy
NSDP	National Strategic Development Plan
ODA	Official Development Assistance
PLMUPC	Provincial Department of Land Management Urban Planning and Construction
PLUAC	Provincial Land Use and Land Allocation Committee
PMAC	Provincial Mine Action Committee
RCAF	The Royal Cambodian Armed Forces
REDD	Reduction of Emissions from Deforestation and Degradation
RGC	Royal Government of Cambodia
SD	Sub-decree
SLC	Social Land Concessions
UNDP	United Nations Development Programme
UNEP-WCMC	United Nations Environment Programme – World Conservation Monitoring Centre
WVC	World Vision Cambodia

## **1. Introduction**

Cambodia is located in Southeast Asia and shares land borders with Thailand and Lao PDR to the West and North, and Vietnam to the East. The country has a total land mass of 176,515 square kilometres, and is mountainous at its Western, Northern and Eastern borders. The Tonle Sap Basin lies in the central part of the country, which is comprised of 23 provinces, 1,621 communes or sangkats, and 14,073 villages. Cambodia's current population is approximately 14 million.

### **1.1 Country overview**

Cambodia's economic growth is principally based on four industries – agriculture, construction, tourism and garment production. More than 80% of the population is engaged in subsistence agriculture (CDRI, 2007). Agricultural productivity is one of the lowest in the region. This is in part due to insecurity of tenure and land rights, which discourages household farmers from making major investments in their land. In recent years, foreign direct investment (FDI) in the agricultural sector has expanded with the development of agricultural concessions (GTZ, 2009). Major investors in agriculture include China, Korea and Vietnam.

Cambodia is one of the poorest countries in South-East Asia. 2008 per capita Gross National Income was approximately US\$600 (ADB, 2009). Access to education has improved over the past 10 years, but adult literacy remains low. The average literacy rate is 77.6%, but rural rates are lower than urban rates. At 66.3% rural literacy is particularly low for women (Ibid).

### **1.2 Origin and nature of mine/ERW contamination in Cambodia**

Cambodia is one of the most mine affected countries in the world. Its contamination problem stems from a series of internal and regional conflicts which started in the late 1960s and ended in 1998. The Northwest, which was a Khmer Rouge stronghold until 1998, is where the majority of mine contaminated land is located. In August 2009, the Cambodian Government estimated that approximately 649 square kilometres of contaminated land will require clearance over the next 10-15 years<sup>1</sup>. In 2009, 63.26 square kilometres were reported to have been cleared; this represents an increase over 55.31 square kilometres cleared in 2007. The Cambodian Mine Victim Information Service (CMVIS) recorded 244 landmine/explosive remnants of war (ERW) casualties in 2009, 87% of whom were civilians<sup>2</sup>. At 89%, men comprised the majority of adult casualties. Slightly over a third of total casualties were children (35%); the majority were boys (84%). Casualties recorded by CMVIS in 2009 represented a decrease of 9% from 2008 (ICBL, 2010). The number of recorded casualties has decreased each year since 2006.

## **2. Land rights issues in Cambodia**

### **2.1 Pre-conflict land rights situation**

Most land in Cambodia has never been systematically titled. Historically, land occupancy and use has been 'extensive,' with no firm rights given to individual households (Chan and Acharya, 2002). Prior to the colonial period, all land was owned by the crown. Households were allowed to farm as much land as they could clear and cultivate (Ibid, 2002)<sup>3</sup>. The French colonial administration (1864-1953) began implementing a system of

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<sup>1</sup> For more information on the origin of the nature and extent of the mine/ERW contamination, see Cambodia's Article 5 Extension Request chapters 1-3.

<sup>2</sup> 11% were military personnel, 2% were deminers.

<sup>3</sup> The historical practice of clearing and cultivating land that is unoccupied has had important consequences as it has become embedded in social history and continues to be practiced on in spite of prevailing land laws.

privatisation and formal land ownership, but this effort was met with limited success. Following independence, the Cambodian Government continued this effort, but again with limited success and only on a small scale.

## **2.2 Land rights situation during the 1980s and 1990s**

During the Khmer Rouge (KR) Regime, land was farmed collectively by groups of farmers ('krom samakii') and was owned by the State. The KR period resulted in population displacement and the death of an estimated 2 million people. Many people fled the country entirely. During the 1980s, after the Vietnamese forced the KR to retreat to the North and North-western parts of the country, people began returning to and resettling in their place of origin but the State continued to own all land.

Under Instruction No. 3 on Policy on Land Management (1989), all land rights established prior to 1979 were void and all land was owned by the State. In accordance with sub-decree No. 25, Instruction No. 3 (1989), the Government began privatising and redistributing land over a two-year period during the early 1990s. This practice was not accompanied by systematic cadastral mapping and land titling due to a lack of funding and capacity to carry this out (Chan and Acharya, 2002).

Post-conflict dynamics of land use and land rights in Cambodia are complex. There are a number of issues at play, including population pressure, increased land value, and insufficient financial support which are necessary to implement a land registration and titling system. Current land registration and titling initiatives are funded by external donor support. Legal complications regarding sub-decrees issued by the Council of Ministers of the Royal Government, land classification status, and low levels of understanding among the public regarding legal instruments related to land management and land use, also complicate land use and land rights dynamics.

Expropriation of land has been an increasing challenge over the past twenty years. Cases of expropriation and land disputes are situational and are generally concentrated in urban areas that have high commercial value (CDRI, 2007). Many rural land disputes are small-scale and involve boundary disagreements between neighbours, though there is an increase in the number of reported cases involving non-local parties (CDRI, 2007). In urban areas, forced evictions are the source of increasing conflict between long-term residents of contested areas whose occupancy rights may be recognised under the 2001 Land Law<sup>4</sup>, the Government and land developers. The Royal Government of Cambodia (RGC) has articulated its support for appropriate compensation for these residents, but some residents find compensation offers to be unfair as in certain cases<sup>5</sup> these offers have not reflected current land values.<sup>6</sup>

## **2.3 Land rights situation from 2000 – present**

The Gini coefficient for inequality of access to land is a relatively high 0.66<sup>7</sup> (GTZ, 2009). Although it is not possible to accurately determine the scale of landlessness, research and media reports indicate that it has been on the rise since the 1980s, and has risen sharply since 1990 (So, 2010). A survey of 31,793 households in 143 villages in 15 provinces conducted in 1999-2000 found that 13% of the sample was 'landless' meaning that they had no land holdings and no means with which to obtain land (Biddulph, 2000). A recent study conducted by GTZ estimated that landlessness now stands at approximately 20%, and that 40% of farming households own less than 0.5 hectares of farmland (GTZ, 2009). There are a number of reasons which account for the increase in

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<sup>4</sup> Whether or not their rights should be legally recognised is contingent on the status of the land and whether it was classified as State Private or State Public land when the Land Law was promulgated in 2001.

<sup>5</sup> It is widely agreed that in recent high-profile cases where residents were forcefully evicted, such as the 'Dei Kraham' and Boeung Kak Lake cases, reasonable compensation was not offered to all households.

<sup>6</sup> This partly due to the lack of mechanisms for final determination of land rights and the limited recognition by the Government of property rights that must be compensated (comment by Nhean, S., 2010).

<sup>7</sup> On a scale from 0 to 1; 0 corresponding to perfect equality of income and 1 to total inequality

landlessness. These include increases in population pressure, distress sales of land, involuntary land acquisition and expropriation.

The country's population increased from approximately 6 million in the 1980s to around 14 million in 2010 (Chan and Acharya, 2002). However, household land holdings have not increased to accommodate the significant increase in population. When land was privatised and allocated to households in 1989, parcel size was determined by the number of family members in each household. Households with more family members received larger plots of land, those with fewer family members received smaller plots. In some areas of the country land was divided equally among households (ibid). Households have continued to subdivide land among children, but as plot sizes were rather small to begin with this arrangement has meant that newlywed couples are often landless or land poor.<sup>8</sup>

Cambodia's land market was privatised at around the same time that its economy was liberalised. While occupancy rights were recognised, most people could not acquire definite ownership of the land that they occupied lawfully as cadastral mapping and land registration had not yet been widely and affordably made accessible to the general population. Individuals had the right to lease the land that they occupied to another party for a 99 year period. This time frame was subsequently reduced to 50 years for any lease entered into after promulgation of the 2007 Civil Code. As foreign direct investment increased in the 1990s, companies and individuals transacted land leases on an increased scale, particularly in and around Phnom Penh as the garment and tourism sectors grew (Chan and Acharya, 2002). The land market in Cambodia is characterised by imperfect information as very little data is available to the public on the true value of land. This has led to speculation about its value. High levels of economic growth, coupled with high demand for land and high speculative land value has been a contributing factor to forced evictions in Phnom Penh. Forced evictions in and around Phnom Penh and in other parts of the country such as the Northeast where land value is also high should be of major concern to the RGC as it is a potential source of civil unrest.

#### **2.4 Current system of land titling and registration**

Property boundaries have been traditionally demarcated and assigned by mutual agreement between occupants of the land, under witness by local authorities. However, documentation of land occupancy rights is generally not issued when these agreements are made. A study conducted in 2007 found that over 60% of households in the sample had no documents detailing their occupancy rights such as a land occupancy certificates (CDRI, 2007).

Land needs to be registered in order to ensure legal ownership of the land. Upon registration, Cambodia's land registration officials add the land to an official list, along with the owner's details. The owner is then given a document called a land possession or immovable property ownership certificate. The certificate is proof that someone is the legal possessor or owner of the land. The lack of this certificate does not mean that a person has no rights to the land. Most Cambodians currently do not hold land certificates but still have rights as acquisitive lawful possessors.

#### **Legal framework for land management and use**

According to the Cambodian Constitution, all Cambodians, women and men equally, have the right to own property, and ownership of land must be protected by law.<sup>9</sup> The most relevant laws and regulations relating to land tenure and land use are<sup>10</sup>:

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<sup>8</sup> Households that are 'land poor' may have land to farm but lack capital to make investments to improve land use (ie cultivation technique, purchase of improved seeds, draught animals, etc).

<sup>9</sup> The Constitution of the Kingdom of Cambodia 1993, Article 44: All persons, individually or collectively, shall have the right to ownership.

<sup>10</sup> See Annex 3 for more details on each law and sub-decree

- The Land Law of 2001
- The Forestry Law of 2002
- Sub-decree No. 48 (2002) on the Sporadic Registration System
- Sub-decree No. 46 (2002) on the Cadastral Index Map and Land Register
- Sub-decree No. 19 (2003) on Social Land Concessions
- Sub-decree No. 118 (2005) on State Land Management
- Sub-decree No. 146 (2005) on Economic Land Concessions
- Sub-decree No. 53 (2005) on Permanent Forest Estates Demarcation, Classification and Land Registration Procedures
- Sub-decree No. 26 (2008) on Procedures for Granting Permit for Tree Planting on State Land
- Sub-decree No. 79 (2003) on Community Forestry Management
- Sub-decree No. 72 (2009) on Commune Land Use Planning (CLUP)
- Other laws and royal decrees on natural protected areas and natural resources management

In order to better understand the complex land rights situation in mine affected communities, the following is a brief explanation of the most relevant laws and regulations. Please see Annex 1 for more detailed information.

### **Land Law 2001<sup>11</sup>**

Cambodia's Land Law 2001 is the main law that ensures protection of private land ownership rights recognised and protected under the 1993 Constitution.<sup>12</sup> Ownership of land includes the rights to:

- Use and enjoy the land. For example, moving onto the land to live, building a house or shelter for animals, and growing crops.
- Stop other people from entering or using the land. Examples include building a fence to keep others out, informing neighbours that they are not permitted to plant crops on land that you leave empty and stopping people from constructing anything on your land.
- Transfer the land to others. For example, a landowner can sell land to someone, give land as a gift, exchange land for something else, and leave land to someone upon death.

The 2001 Land Law divided land into three classifications: i) State property, ii) Private property and iii) Collective property.<sup>13</sup> The 2001 Land Law sought to ensure an equitable and efficient land management system. However, implementation of the Law has proven challenging as there are a number of sub-decrees and policies that guide its implementation and a number of other laws and regulations that exist alongside the Law, creating complications to implementation of the Land Law. Sub-decrees and Prakas may be drafted by individual or joint ministries, and their implementation may require coordination across concerned ministries. Horizontal inter-ministerial coordination can be particularly challenging, and may act as an obstacle to implementation of legal instruments if no appropriate and adequate technical and/or financial support is in place.

### **Sub-decree No. 19 on Social Land Concessions**

In 2003, the RGC passed Sub-decree 19 on Social Land Concessions (SLC).<sup>14</sup> Sub-decree 19 provides mechanisms for land that is classified as State public property after mine clearance<sup>15</sup> to be re-designated and allocated as

<sup>11</sup> Royal Government of Cambodia, Land Law 2001.

<sup>12</sup> Land Law 2001, Articles 4, 5 and 8.

<sup>13</sup> See Annex 3 for more information on the 3 categories of land.

<sup>14</sup> A Social Land Concession refers to a legal mechanism to transfer private state land for social purposes to the poor who lack land for residential and/or family farming purposes; Royal Government of Cambodia, Sub-decree 19 on Social Land Concessions

<sup>15</sup> Article 9 of Sub-decree 70 on Socio-Economic Management of Mine Clearance Operations, October 2004.

State private property, though these are now obsolete.<sup>16</sup> Social Land Concessions aim to reduce poverty by providing landless or land poor families with farm land, or to foster economic growth through Economic Land Concessions. Sub-decree 19 includes special provisions for granting land to demobilised soldiers, single or disabled-headed households, and to families displaced by residential resettlement. However, it does not provide detailed procedures for dealing with these special cases.

Households occupying land awarded through SLC provisions are eligible to apply for land ownership certificates after meeting the condition of having resided on the land. This confers full and definite ownership of the concerned land parcel. However, in practice the Government has awarded few SLC allocations due in part to challenges relating to classification of State Land as Public or Private State Land under Sub-decree 118. The other obstacle to SLC allocation relates to political attempts to classify forest land managed by the MAFF/FA as Public State Land based on political interpretation of the 2002 Forestry Law and the 2001 Land Law provisions (but not necessarily based on legislative intent). Sub-decree 19 also requires a high level of horizontal integration between ministries, making it particularly challenging to implement (Oberndorf, 2006).

Public State Land cannot be re-determined or reclassified as Private State Land until comprehensive cadastral mapping and land use planning is undertaken. This process is currently underway in some provinces, and may enable some land to be re-determined or reclassified as Private State Land (where appropriate and in the best interest of land use), making it eligible for consideration as a socioeconomic land concession under Sub-decree 19. Until comprehensive cadastral mapping and land use planning is undertaken in mine affected areas, concessions to landless and land poor families will be difficult to obtain.

#### **Sub-decree No. 118 on State Land Management**

Promulgated in 2005, Sub-decree 118 is a legal instrument for managing state land. Since land concessions can only be allocated if the land in question is state private land, it must be classified as such before it can be offered as a land concession under Sub-decree 19. Implementation of Sub-decree 118 also requires a high level of coordination between different ministries such as the MLMUPC, MAFF<sup>17</sup>, and Ministry of Environment. This Sub-decree requires that land be mapped and registered, and includes a provision for the establishment of a public database listing the status of land. It also includes provisions for community consultation. Implementation of the Sub-decree demands a high level of technical skill and is complex and time consuming. Its implementation also requires political will.

Sub-decree No. 118 on State Land Management has remained largely unimplemented after it was passed in 2004 (Grimsditch and Henderson, 2009). The sub-decree outlines procedures for state property management, which include procedures for reclassification of state public land as state private land so that the land can be considered for inclusion in a social land concession programme under Sub-decree No. 19 on Social Land Concessions. State land management involves a number of complicated processes and requires a high level of coordination between different ministries,<sup>18</sup> and requires considerable financial resources in order to be implemented.

#### **Sub-decree No. 70 on Socio-Economic Management of Mine Clearance Operations**

In 2004, the government passed Sub-decree 70 on the Socio-Economic Management of Mine Clearance Operations, which outlines the role of key mine action actors (eg the Cambodian Mine Action and Victim

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<sup>16</sup> Provincial Land Use and Allocation Committees are not active and have been replaced by Provincial State Land Management Committees under Sub-decree 118 (Nhean 2010. See also Boramy, Sareth. "State Land Distribution for the Poor: State Land Identification, Mapping, Classification and Registration," MLMUPC, 2008)

<sup>17</sup> Ministry of Agriculture, Forestry and Fisheries

<sup>18</sup> See Grimsditch and Henderson, 'Untitled' (2009) for a full discussion of the challenges regarding implementation of Sub-decree 118.

Assistance Authority (CMAA), Provincial Governors, Provincial Mine Action Committees (PMACs), Mine Action Planning Units (MAPUs), and Mine Action District Working Groups). The guidelines for implementation of this sub-decree outlines the process involved in clearing contaminated land and handing it over to affected communities in the post-clearance stage. There are a few challenges regarding Sub-decree 70:

- Language in the Sub-decree regarding minefield and beneficiary selection lacks clarity, stating in Article 25 that “the MADWG shall provide technical support to the Commune-Sangkat Councils to select mined areas linking mine clearance activities with the right beneficiaries in accordance with land use planning”(Sub-Decree No. 70 on Socio-economic Management of Mine Clearance Operations). One argument is that Sub-decree undermines Sub-decree 19, which outlines a detailed application process for social land concession and criteria that must be adhered to in selecting beneficiaries. Allocation of a social land concession might not be granted if mine clearance beneficiaries do not match the criteria outlined in Sub-decree 19. However, the CMAA Socio-economic Guidelines on Mine Clearance Operations, a policy document that is intended to guide implementation of Sub-decree 70, does provide sufficient detail regarding minefield clearance prioritisation and beneficiary selection. The beneficiary selection criteria outlined in the CMAA Guidelines adhere to the beneficiary selection criteria outlined in Sub-decree 19. If these criteria are used to select beneficiaries for cleared land and subsequent social land concessions, there should be no conflict between implementation of Sub-decrees 70 and 19.
- There is still question about SLC approval and implementation management mechanisms, and whether demined areas will be deemed appropriate for SLC allocation given land classification status. The process of applying for minefield clearance, while not outlined in sufficient detail in Sub-decree 70, is adequately described in the Guidelines for mine clearance. This process is almost identical to that outlined in Sub-decree 19, which states that applications for land concessions must originate from the commune/sangkat council (Sub-decree 19, 2003).
- The biggest problem related to the Guidelines is that it does not sufficiently deal with the provision of Article 9 of the Sub-decree 70, which proposes that land only be allocated as a social land concession and not as another type of concessions which the Government might favour over SLCs.
- The biggest challenge regarding allocating cleared minefields as social land concessions is that the status of the land must be clear before this process can be initiated. The commune council submitting the request to clear land might not be aware of the status of the land prior to submitting their request, and other actors such as the Mine Action Planning Unit might not have sufficient time or capacity to verify the status of the land prior to submitting requests to operators for clearance. Operators and NGOs implementing mine action programmes may also be unaware of the land’s status before moving forward with clearance plans.
- Because Sub-decree 118 has not been systematically implemented, it is subject to ad-hoc implementation on a case-by-case basis (Grimsditch and Henderson, 2009).
- Concerned stakeholders and local authorities are not aware that there are a number of sub-decrees that have been issued on the determination, classification, or reclassification of state public land throughout the country.
- The perceived value of land may change once competent authorities become aware that it is slated for clearance, prompting them to decide to assert it as public state land with the intention of involuntarily acquiring it in the future. This makes it very difficult to develop mine clearance plans in accordance with

NGO development project plans as the status of the land could change suddenly, rendering it unsuitable for clearance.<sup>19</sup>

To address these challenges, some hope can be found in the newly issued regulatory framework (Sub-decree No. 72), which deals with commune land use planning (CLUP). With sufficient financial, technical and cross-donor support, Sub-decree No. 72, Sub-decree No. 118 and Sub-decree No. 70 could be implemented in one geographic area (one commune, for example) using an integrated approach. The CLUP process has the potential to address challenges related to state land classification and land use allocation planning and approval.

## 2.5 Land management and land rights actors

The main land management actor in Cambodia is the Ministry of Land Management, Urban Planning, and Construction (MLMUPC).<sup>20</sup> The mandate of the MLMUPC is to undertake comprehensive survey, mapping and registration of all land in the country. The Department of Cadastre (now referred to as the General Department of Cadastre and Geography who is serving the function of the Cadastral Administration established under the 2001 Land Law) is under the direction of the MLMUPC.

The Land Management and Administration Project (LMAP) was implemented from 2002-2009. LMAP activities included development of land-related policy, legal and regulatory instruments, capacity building, land conflict resolution mechanisms and land titling and registration. Funding and technical support for the Project was provided by external donors (World Bank, German Finnish Governments, GTZ, CIDA).

The land titling component<sup>21</sup> of the LMAP is considered to have been largely successful, having adjudicated more than 1 million land titles in 2,323 villages. An additional 4,000 titles were issued in 2003 through the Land Administration in Mine Affected Area (LAMMA) project in Banteay Meanchey province. This project, implemented by CIDA/GeoSpatial International Inc (Cambodia) and Mclhanny Ltd, resulted in the PLMUPC/NPA issuing 1,407 titles.<sup>22</sup> The East-West Management Institute provided technical support to the MLMUPC in implementation of the 2001 Land Law. It has also provided Land Law training to NGO workers, and worked with a local partner to coordinate production of a land awareness campaign in remote communities as part of the ECOSORN project (EWMI 2009). The Ministry of Youth, Education and Sport developed curricula on 'safeguarding land rights,' also under the ECOSORN project (ECOSORN 2010).

Implementation of the state land management component<sup>23</sup> of the LMAP fell short of its goal of defining and classifying state land, which proved to be far more complicated and challenging than LMAP designers originally envisioned (Grimsditch and Henderson, 2009). Sub-decree 118 on State Land Management, which includes provisions for land classification, remains largely unimplemented. The World Bank and GTZ are currently supporting implementation of the Land Allocation for Social and Economic Development (LASED) Pilot Project, which aims to strengthen the process of identifying and classifying state land for consideration as social land concessions (NCDD, 2010).

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<sup>19</sup> The Socio-Economic Guidelines give land that has an unclear status or is in dispute a 'low' priority for clearance due to potential complications associated with developing the land after clearance if it is in dispute.

<sup>20</sup> Article 231 of Land Law 2001 the General Department of Cadastral and Geography that is responsible for the preparation, coordination and supervision of operation concerning cadastral measurements of immovable property within the Kingdom of Cambodia

<sup>21</sup> Component 3

<sup>22</sup> Whilst LMAP target areas have undergone systematic land titling, people living in other areas of the country are legally eligible to register their land under the sporadic land titling scheme as outlined in Sub-decree 46. However in practice this is not affordable to the rural poor due to high formal and informal transaction fees associated with this process. Even if it were affordable, land certificates issued under the sporadic land titling procedure do not provide sufficient tenure security and state guarantee of ownership. These types of certificates are not produced using accurate land parcel data, in part because land around the concerned parcel not been systematically registered. The RGC could therefore nullify the certificate on a number of grounds.

<sup>23</sup> Component 5

There are several national and international NGOs operating in Cambodia that address land issues as part of their programming. Most of these are engaged in documenting allegations of land rights abuses and advocating for the recognition of land rights on behalf of vulnerable households. Several NGOs assist landless or land poor households by helping them to formulate complaints regarding expropriation, seek redress and advocate for their land rights. NGOs also conduct research on land issues, and provide training and awareness on land legislation and land rights.<sup>24</sup> The NGO Forum on Cambodia has a Land and Livelihoods Programme which involves policy research, advocacy and training on a range of land issues. The Community Legal Education Centre (CLEC) provides legal assistance and advocates on behalf of individuals involved in land disputes.

## **2.6 Main land rights issues in mine-affected areas**

There are several major challenges regarding land registration and titling in mine affected areas. The first is that much of the land that was not already occupied or used when the 2001 Land Law was promulgated was regarded by the Government as state public land. In order to be allocated under a social land concession scheme under Sub-decree No. 19, the land must be reclassified as state private land in accordance with Sub-decree No. 118. Any decision on reclassification must be agreed by the Forestry Administration, the Ministry of Environment, the MLMUPC, and the CMAA with authorisation from the Royal Government. This is a highly complex and time-consuming process that at least initially would most likely exceed the life cycle of an integrated mine action project (conversations with Chum Rithy, World Vision, and Phat Phalit, LASED Program, 2010).

Another challenge is that the Forestry Administration has an interest in maintaining land as forest land in order to maintain its forest coverage rate of 60% so that it can meet Cambodia's 7<sup>th</sup> MDG on ensuring environmental sustainability<sup>25</sup> by 2015 (UNEP-WCMC 2010). Since mine affected provinces of Battambang, Banteay Meanchey, Pailin and Oddar Meanchey have seen some of the highest rates of deforestation since the 1990s (TWG Forestry & Environment 2010), the Forestry Administration and the Ministry of Environment may have a disincentive to declassify state public land and reclassify it as state private land so that parcels can be considered under a social land concessions programme.

A further challenge stems from the fact that under Sub-decree No. 70, cleared land can only be allocated to families as a social land concession, rather than as an economic concession or forestry concession. Both could be awarded as alternatives to social land concessions and are in line with national policy regarding forest protection. Gaining political support for social land concessions may be difficult given the absence of a sound post-clearance land use plan which ensures households have access to: adequate farmland with soil that can sustain agricultural activities; forests as a means of additional livelihood support and; infrastructure. (Discussion with So Than, TA to MLMUPC, 2010). A social land concession programme in a mine-affected area along the Thai border (province) implemented in the 1990s is considered to have been unsuccessful due to a lack of basic services and poor soil quality in the area. This is believed to have been a factor that contributed to non-use of the cleared land (Ibid, 2010. See also NPA, 2003).

## **2.7 Land rights, gender and diversity**

According to the 2001 Land Law, women and men have the equal right to own land. Sub-decree 19 on Social Land Concessions states that women, as one of the heads of the household, qualify as eligible applicants (assuming they meet other criteria). Sub-decree 19 emphasises that female-heads of household, people with disabilities and demobilised soldiers should not be denied the right to participate in social land concession

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<sup>24</sup> These NGOs include LICADHO, NGO Forum on Cambodia, Cambodia Legal Education Centre (CLEC), Bridges Across Borders, East-West Management Institute, Centre for Housing Rights and Evictions (COHRE); Bib Hughes (Oxfam), Land Ownership Disputes in Cambodia: A Study of the Capacity of Four Provinces to resolve Conflicts over Land, 2001, [www.mlmuqc.gov.kh/mlm/docout.php?ID=2](http://www.mlmuqc.gov.kh/mlm/docout.php?ID=2)

<sup>25</sup> Ensuring Environmental Sustainability

programmes. In situations where there are more applicants than land available, female-heads of household, people with disabilities and demobilised soldiers are prioritised as recipients.

Research suggests that female headed households in rural Cambodia may experience greater difficulty acquiring land, or may be more likely to lose their land through distress sales. A study conducted in 2000 found that 13% of households surveyed were landless; while 21% of female-headed households were landless (Biddulph, 2000). However, any households that were single-headed (male or female) in 1989 when land was distributed by the State would hold less land, as allocation size was based on the number of household members.

The challenge that many female-headed households face is their increased vulnerability to shocks caused by illness or crop failure. This is particularly true for young women whose children have not yet reached productive age. Studies have found that female-headed farming households are also less able to make investments in their land, making it difficult for them to move out of poverty (Thiel, 2009).

Most plots of land that are inherited are in the name of parents, and males typically have their names in the land application receipts or certificates. Women tend to be less aware about the importance of land related receipts, certificates and papers than men. Female spouses typically do not know how large their family plots are, in part due to low education or no access to formal land measurement. In a study of gender dimensions of a land titling programme, women whose names were listed on land title documents together with their husbands who had since separated from them expressed concern that their husbands would come back to claim the land. Though there are procedures for handling these types of cases, women reported that they did not trust local authorities to recognize their ownership rights, or that local authorities were sufficiently aware of procedures to follow (Mehrvan et al 2008).

There are 17 minority groups in Cambodia. Some of these groups include the Jarai, Brao, Kreung, Phnong and the Poar. Indigenous minority people constitute 0.9% of the Cambodian population, with most located in the North-eastern provinces of Mondulakiri and Ratanakiri (NFO Forum, 2006). Given government support for industrial development and natural resource extraction in these provinces, indigenous minority groups have been particularly vulnerable to land expropriation, grabbing and encroachment. Cambodian regulatory framework includes provisions for communal land use by indigenous minority communities under the Community Forestry Management Sub-decree (2006). Indigenous minority communities must register themselves legally before these rights may be conferred. As registration is a complex and time consuming process these groups will require technical support in order to undertake it.

### **3. Mine/ERW contamination and response**

The most heavily mine/ERW-contaminated area in Cambodia, located along the Cambodian-Thai border, is referred to as the K-5 mine belt. Throughout the 1980s, armed groups laid millions of landmines along the border. According to the Royal Cambodian Armed Forces (RCAF), there are approximately 2,400 anti-personnel mines per K-5 linear kilometre, making it one of the most densely mined areas in the world (RGC, 2009). Sporadic fighting in other key strategic positions in the country resulted in mine/ERW contamination. Additional short but intense internal conflicts during the mid and late 1990s further contributed to the mine contamination problem. Landmines were typically laid to establish defensive positions. This resulted in a series of sporadic and overlapping minefields that follow no regular pattern, and for which, few if any, records are available outlining their location (Ibid, 2009).

The Cambodian Mine Action and Victim Assistance Authority (CMAA) is currently coordinating a baseline survey that is being undertaken in coordination with demining operators. The first phase of the survey was completed

in late 2010; the entire survey period is expected to last until 2012. Survey results will improve identification of suspected areas and enable improved integration into land use planning initiatives.

### **3.1 Socio-economic impact of mine/ERW contamination**

The mine contamination problem has impeded social and economic development in mine affected areas by restricting access to land. Many areas that are still mine affected have not been accessed consistently for long periods of time, and were unoccupied at the time that the Forestry Law was promulgated in 2002. This land was politically asserted by MAFF/FA as state 'forest land' under the broad categories of forest provided in the Forestry Law 2002 and sought approval of the RGC for classifying such land as state public land in the first instance. This land is not available for social land concession, creating a shortage of land available for farming or settlement in some mine affected areas.

Studies have found that farming families rely on multiple sources of income to support their families, such as non-timber forest products (vines, rattan, wild fruits and vegetables) that they harvest from forests (World Bank, 2005). Even if families have access to farmland that has been cleared, they have limited access to forests or put themselves at risk by entering forests that may still be contaminated. This impacts a family's ability to maximize their income earning potential by engaging in non-agricultural activities.

### **3.2 Gender dimensions of mine/ERW contamination**

Mine/ERW contamination impacts women, girls, boys and men differently due to their different roles in society. Men comprise the majority of mine/ERW casualties (ICBL, 2010) due to their increased exposure to landmines through activities such as ploughing and clearing new land for agriculture. Boys and men are most commonly involved in tampering incidents which are related to gendered recreational activities such as fishing and drinking with friends.

### **3.3 Key mine action actors**

The RGC established the Cambodian Mine Action and Victim Assistance Authority (CMAA) in 2000. The CMAA acts as a regulatory authority and its coordination role is to regulate and coordinate mine action at the national level, and establish demining policies and procedures. Provincial Mine Action Committees (PMACs) were established under Sub-decree 70; these are headed by Provincial Governors. The PMACs approve annual clearance plans that identify which minefields will be cleared during the year. PMACs also ensure that the annual clearance plans comply with national and provincial-level development strategies and policies, and that they involve local authorities, demining operators and development organisations.

The RGC established Land Use Planning Units (LUPUs) in May 1999 in four provinces: Battambang, Banteay Meanchey, Oddar Meanchey and Preah Vihear. The LUPUs helped mine-affected communities clarify and prioritise which areas for clearance and tried to ensure that land was allocated to pre-identified beneficiaries accordingly. In 2004, the Government transformed LUPUs into Mine Action Planning Units (MAPUs). MAPUs<sup>26</sup> provide technical support to PMACs by coordinating prioritisation and selection of demining tasks. They also have a mandate to ensure that demining contributed to risk reduction and development by monitoring post-clearance land use. They are also responsible for developing annual demining work plans and monitoring post clearance land use. In reality MAPUs are constrained in their capacity to carry out these tasks. Their work focuses mainly on pre-clearance planning, whilst the CMAA conducts post-clearance monitoring spot checks to ensure that land is used in accordance with post-clearance land use plans. The CMAA is limited in the number of spot checks that it can conduct in a given year; in 2010 its teams visited 15% of total clearance sites (Interview

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<sup>26</sup> Article 17 of the Sub-decree 70 date 20 October 2004 on Socio-economic Management of Mine Clearance Operation

with HE Leng Sochea, 2010). The CMAA reports that the MAPUs are expected to monitor 100% of clearance sites in 2011 (Ibid, 2010).

Mine Action District Working Groups (MADWGs)<sup>27</sup> have been established in heavily mine affected districts. Their members are representatives from district line offices. They work toward ensuring transparency in prioritisation of mine clearance tasks, but are faced with the challenge of not always having sufficient information regarding minefield location and classification status (interview with Battambang MAPU Chief, 2010).<sup>28</sup>

Cambodia has a national demining capacity of approximately 4,802 deminers. The Cambodian Mine Action Centre (CMAC) employs 2,113 staff, 135 of which are female, and 95% of whom are engaged at field-level. The RCAF consists of 1,300 demining staff. The HALO Trust mine clearance programme employs 1,157 national staff, 41 of which are female. MAG employs 232 staff, 25% of which are female and approximately 1,000 police officers work at national, provincial, district and commune levels on ERW identification and as resource persons for field operational staff.<sup>29</sup> Cambodia Self-Help Demining (CSHD) is also an accredited mine/ERW operator.

Between 1992 and 2009, CMAC, The HALO Trust, MAG and RCAF jointly cleared 535,942,581 m<sup>2</sup>, and found and destroyed 860,159 antipersonnel mines, 19,952 anti-tank mines and 1,907,621 items of ERW (CMAA, 2010). Post-clearance development initiatives have enabled families to access cleared land and put it to productive use, though challenges regarding the efficiency of post-clearance land use remain.

### **3.4 Impact of tenure insecurity in mine-affected areas**

Land is one of the most basic resources available for the social and economic development of Cambodia. As a result of years of war and civil unrest, access to safe land in landmine contaminated parts of the country remains a challenge. Securing access to land for the landless and land poor, including those in mine-affected communities, is of vital importance to Cambodia's development.

Access to agricultural land by the poor and vulnerable is limited in some contaminated areas, particularly remote villages near the Thai border. Most private state land has already had claims made to it, and there is reason to believe that much of the remaining land has been registered as protected areas or forest land.<sup>30</sup> A high level of contamination limits the amount of land that is accessible, or that people feel is safe to access. Most landmine contaminated parts of the country have not undergone systematic land titling, so households in these areas do not yet have official title certificates. As part of the process of handing land over to communities, households receive documentation stating that land has been handed over and that the preparation of plot plans are the responsibility of the Department of Land Management. This document, though it does not constitute a definite legal title document, is generally accepted by creditors as loan collateral. A study conducted in 2009 found that most families in the sample had used this document as collateral for loans. Households did not express reluctance to make agricultural investments out of real or perceived tenure insecurity, though some expressed concern that their land might be vulnerable to reclaim by the state in the context of law enforcement or expropriation in the future (Rasmussen, 2010).

Like most Cambodians, people living in mine-affected areas have little understanding of their land occupancy rights and obligations. In cases where people do understand land documentation processes, many are reluctant to obtain documentation due to high unofficial transaction fees associated with obtaining this documentation.

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<sup>27</sup> Article 23 of Sub-decree 70 dated 20 October 2004 on Socio-economic Management of Mine Clearance Operations

<sup>28</sup> Another challenge is that not all MADWG members attend meetings so they are not party to decision-making on clearance prioritization.

<sup>29</sup> Kingdom of Cambodia, 2009.

<sup>30</sup> Though this could not be verified, based on the fact that the Forestry Administration uses 2002 coverage maps as a basis for determining current land use, it is likely that even areas where people have been living for more than 5 years could be classified as public state land.

Households that are involved in land conflicts will generally seek assistance from village authorities as the first step in seeking redress. Local disputes are often settled either by village or commune authorities. If a case cannot be settled by local authorities and concerns unregistered land, it must go to the Cadastral Commission first before going to the courts. Households are not quite aware of the existence of the Cadastral Commission or unable to wait an indefinite timeframe for obtaining any decision of the Cadastral Commission. They are also often reluctant to take their case to the court as this may result in high transaction fees. An alternative for these households is to prepare and send a collective petition for redress to different authorities at national levels including the Prime Minister, National Assembly and other authorities or seek assistance from NGOs that provide advocacy and/or legal assistance for land disputes.

#### **4. Mine action response to land Rights issues**

##### **4.1 Issues that mine action organisations encounter**

The Cambodian Mine Action Authority and mine clearance operators conduct routine post-clearance monitoring to ensure that beneficiaries use land for its intended purpose and that there are no disputes regarding claims to the land. In 2010, the CMAA reported that of 15% of total clearance sites visited during its routine spot check, only 1% of sites were in dispute (Interview with HE Leng Sochea, 2010). Disputes that have occurred have been largely limited to Banteay Meanchey Province, where land classified as public state land (forest land according to 2002 maps) was cleared. Land-grabbing in mine affected areas does not seem to be occurring to the extent that it did in the late 1990s and in 2000, when large areas of land were grabbed by high-level officials.<sup>31</sup> Post-clearance land use management challenges at that time led to the formation of the Mine Action Planning Units (MAPUs) which were formed as part of an effort to improve post mine clearance land use planning. MAPUs facilitate clearance planning and post-clearance land use monitoring. Clearance operators also conduct post-clearance land use monitoring.

##### **4.2 Mine action organisation efforts to address land issues**

The CMAA, MAPUs, and clearance operators do not have a mandate to address land issues, though they are increasingly aware of the need to do so. The CMAA has taken steps to strengthen clearance planning and monitor post-clearance use in an effort to ensure land is being used by its intended beneficiaries. A first step was taken when the CMAA established the MAPUs, which act as a mechanism for ensuring that beneficiaries are able to access and use land after clearance, and that they fulfil their obligation to do so. The CMAA has also taken recent steps to require that the mine clearance planning process is integrated into commune development plans rather than develop plans in isolation, which had been the case until the most recent CDPs were developed in November 2010. Harmonisation of these two planning processes will ensure that clearance activities are effectively integrated into commune investment plans as part of an effort to enable effective post-clearance land use.

Operators and development organisations deal with land issues on a case-by-case basis as they arise as they do not have any explicit guidelines or procedures in place for this. If land disputes cannot be resolved at the provincial level, they are addressed by national level authorities, including the CMAA, the Forestry Administration, the Department of Environment, the MLMUPC, and in serious cases, the Council of Ministers of the Royal Government.

Provincial authorities such as the provincial governor and the provincial department of land management are responsible for resolving any land issues related to clearance or post-clearance land use. If the dispute involves

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<sup>31</sup> The researcher acknowledges that there may be some cases that are not reported. There have been cases of land grabbing that have occurred in Banteay Meanchey within the past 5 years, though there is a lack of official reports on this issue.

forested areas that have been cleared for resettlement, forestry and/or environment department officials at the local level will also be involved in dispute settlement. While MAPUs and operators may be asked to provide information about a particular case, it is not within their mandate to resolve land issues directly.<sup>32</sup> The CMAA has not developed guidelines or procedures for MAPUs or operators to follow in the case of land disputes as it is not within their mandate to address these directly. In special cases, the CMAA will meet with representatives from the MLMUPC, the Forestry Administration, MAPUs, PMACs and development organisations to address issues related to conducting clearance in areas deemed forested land (public state land) according to 2002 Forestry maps (Interview with HE Leng Sochea, CMAA and Leng Ranin, MAPU, December 2010).

The CMAA recently revised the MAPU minefield prioritisation and clearance planning process so that it is integrated with commune investment planning processes. The revised prioritisation and planning process requires MAPU staff to verify the classification status of land prior to identifying and prioritising areas for clearance, which should reduce the possibility of land issues arising in the future. This will ensure that land prioritised for clearance is not state public land and is not eligible for consideration as a social land concession (Interview with HE Leng Sochea, 2010).

Development organisations have made efforts to address land right issues through their Integrated Mine Action (IMA) programmes. World Vision Cambodia provided training on the 2001 Land Law and other land and forestry-related sub-decrees to commune council members, village chiefs, and recipients of demined land in their target area (interview with Chum Rithy, 2010). ActionAid has also integrated land rights issues into its programme by implementing a pilot project on post clearance land titling and conducting research on land rights issues within its programme.<sup>33</sup>

#### **4.3 Demining and Handover Procedures**

The Socio-economic Guidelines for Mine Clearance Operations is a document that is intended to help guide implementation of Sub-decree No. 70 (2004) on the Socio-economic Management of Mine Clearance Operations. Article 9 of Sub-decree No. 70 states that “with respect to the legal procedures for allocating land to the landless poor, this must abide by sub-decree No. 19 ANKR/BK dated 19 March 2003, on Social Land Concessions and other relevant policies.” The Sub-decree does not clarify what “other policies” are referred to. The CMAA Socioeconomic Guidelines also state that it should be used “in accordance with Government policy,” but also does not specify which policies these are.

The Socio-economic Guidelines articulate procedures for MAPUS, commune councils, MADWGs and PMACs to follow when identifying land for clearance, submitting clearance requests and approving clearance tasks. Post-clearance handover procedures are also outlined in the Guidelines (CMAA Socio-economic Guidelines, 2007).

Handover is meant to occur in two stages:

- During the first stage, outlined in Operational Guideline 10, demined land is handed over to local authorities
- In the second stage, Operational Guideline 12, parcel plots are handed over to family beneficiaries after land has been ‘classified’ by the Department of Land Management.

When land is handed over to communities, a community or family representative is required to sign documents that are included in a packet of documents held by the MAPU. These documents are also signed by the MAPU and PMAC chiefs. The document lists land use conditions,<sup>34</sup> which state that families must remain on the land for five years after clearance, and that they are eligible to apply for ownership after three years (Ibid, 2007). On

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<sup>32</sup> MAPUs can address cases directly by reporting them to competent authorities and follow up on their status.

<sup>33</sup> See Mao, V. and Srin, D. 2007. “AIMAD Land Titling Pilot Project: Research on Post Clearance Land Titling.”

<sup>34</sup> A full list of conditions is found in Annex 3.

a practical level, this is very difficult for farmers to do as there are high costs associated with having land measured and submitting land ownership application documents.

Operational Guideline No. 10, “Compilation of Demined Land Document for Department of Land Management” lists procedures for compiling documentation such as beneficiary lists with thumbprints, photographs of family heads, and handover documents to the Provincial Department of Land Management (PLMUPC). Once these documents are handed over to the PLMUPC, the MAPU no longer has authority to directly address land issues that may arise. The Department of Land Management is responsible for carrying out the procedures outlined in Operational Guideline 11, “Preparation of Plot Plans”, with assistance from MAPUs and local authorities. None of the documentation prepared as part of these procedures confer ownership rights, though beneficiaries of cleared land have the right to occupy the land. This process, articulated in the CMAA Guidelines document which was prepared to guide implementation of Sub-decree No. 70, is not harmonised with sub-decrees 118 and 53, which outline procedures for demarcating and classifying state land (forest land) so that it can then be considered as a social land concession. Sub-decrees 118 and 53, both of which were promulgated after Sub-decree No. 70 was promulgated in 2004, must be adhered to in cases where public state land is ‘declassified’ so that it can be ‘reclassified’ as private state land and allocated as a social land concession. This issue is relevant in mine affected areas, where there is little private land available that has not already been claimed, and therefore little private land available for new settlement.

#### **4.4 Coordination on land rights issues**

The CMAA, MAPU and demining operators coordinate on land issues to the extent that they monitor post clearance land use to ensure that there are no disputing claims to land after clearance, and to ensure that beneficiaries are fulfilling their obligation to utilize the land in accordance with proposed post-clearance land use plans. Development partners also monitor post-clearance land use as they maintain a presence in the area after clearance occurs as part of integrated mine action programme implementation. Land rights issues that arise after or before clearance are addressed initially by Provincial level authorities. If they cannot be resolved at sub-national level, the CMAA will take up the issue to resolve it through coordination with other ministries such as the MLMUPC, Forestry Administration, or the Ministry of Environment (Interview with HE Leng Sochea, CMAA, 2010).

#### **4.5 Mine clearance as a contributing factor in land tensions**

Recent cases where there have been land occupancy or use challenges related to clearance have involved cases where land that was classified as forested land (state public land) was cleared. Most of the recent cases have occurred in Banteay Meanchey where an integrated mine action programme had been implemented since 2006 (Interview with HE Leng Sochea, CMAA, 2010); a similar case in Battambang Province dates back to 2005 (Interview with Chum Rithy,<sup>35</sup> 2010). In cases where the status of land only became known after clearance, Forestry Department officials did not attend PMAC meetings in 2006 and 2007 despite having been invited, and officials at the commune and district levels who were involved in clearance prioritisation were unaware of the status of land classification (interview with Leng Ranin, MAPU Banteay Meanchey, 2010). People living on the land who had encroached on it illegally also reported that they were unaware that they were living on public state land (Ibid, 2010). After the land was cleared Forestry Department officials became aware of the situation and checked the status of the land; the National Forestry Administration later confirmed that the land was indeed public state land (Ibid, 2010).

#### **4.6 Risks to not addressing post-clearance land use issues**

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<sup>35</sup> Former Food and Water Security Programme Manager, World Vision Cambodia

According to the CMAA Guidelines, land must be allocated to landless and/or land poor families in accordance with Sub-decree No. 19 on social land concessions. Land must be recognised by concerned government authorities as state private land in order to be eligible for consideration as a social land concession. The process of de-classifying state public land and re-classifying it as state private land is an extremely time consuming process that requires a high level of inter-ministerial communication and coordination. However, as clearance proceeds, there may come a point where all remaining land to be cleared is state public land and therefore not eligible for consideration as a social land concession unless it is converted to state private land. If a new sub-decree were to be issued allowing communities to propose alternative land use plans for public state land parcels, families in mine affected areas would at least have access to income generation opportunities. Their rights to use these resources (such as in a community forest) would also be upheld.

#### **4.8 Donor response to land use issues**

It is not within the donor mandate to provide guidance on how to address land issues as this falls under the mandate of the MLMUPC. However, donors are aware of the challenges related to post-clearance land issues in mine affected areas. In 2007, AusAID met with integrated mine action development partners<sup>36</sup> to discuss challenges in encouraging personnel from the provincial department of land management to travel to cleared plots to take measurements and photographs. This is a required step for future submission of a request for immovable property ownership certificates. The only viable solution to this challenge would have been to allocate funds to cover costs associated with land parcel measurement and documentation. As there were no excess funds that partners were able or willing to allocate for this purpose, the issue remained unresolved. The UNDP is also aware of land issues in mine affected areas, and has taken steps to address them to the extent that it is able to given its mandate. It has worked closely with its partner, the CMAA, to develop revised MAPU prioritisation guidelines which are designed to mitigate land issues in the future through clear identification of land classification status (CMAA revised clearance planning process framework, 2010).

### **5. Conclusions and recommendations for mainstreaming land rights issues into mine action**

#### **5.1 Lessons learned**

##### **Clarification of land status prior to clearance**

Mine action organisations have learned a number of lessons regarding land issues, and have become increasingly aware of how to address them by improving their practice in areas where these issues intersect with their work and respective mandates. One of the most important lessons relates to accuracy of information regarding land classification status, and the understanding that local officials may not have awareness of its status. Given that the mine clearance prioritisation begins at the commune level, it is important that knowledge of land classification be accurate at this level. Other information such as maps of areas proposed for clearance also plays an important role in improving data accuracy and decision-making at the district and provincial levels. Revised MAPU planning processes offer hope for addressing the challenge of inaccurate local knowledge regarding the status of land and whether it is forested land or protected areas which are classified as public state land.

##### **Full participation in minefield identification and prioritisation is critical**

MAPUs are responsible for facilitating minefield identification and prioritisation. However, this is difficult for them to do unless concerned stakeholders at the commune, district and sub-national levels are fully engaged in this process. Their full participation in clearance prioritisation and approval reduces the chance that there will be subsequent disagreement about whether a particular area meets conditions for clearance.

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<sup>36</sup> Austcare (now ActionAid), Care, World Vision, and the International Women's Development Agency

### **Post-clearance land use support as a mechanism for ensuring continued occupancy**

Another lesson learned regards selection of land for clearance that can support poverty reduction programmes. Plots of land that are identified for clearance and post-clearance settlement should either have existing infrastructure or there should be plans in place to develop these inputs. Unless families have access to a water source and roads at a minimum, they will not be able to remain on the land. Soil quality of land proposed for demining is another important factor to consider if the resettled are farming families. If they are labouring families, then it is necessary for them to have access to labour sales-related income earning opportunities (NPA, 2003). If land continues to be occupied and used continuously by beneficiaries of cleared plots, then they will be eligible to apply for property ownership certificates at some point in the future, provided that the land is private state land and there are no competing claims to it. It is unlikely that families will continue to occupy the land if there are no livelihood support options for them.

### **Impact of land issues on mine clearance operations**

Land use and land rights issues are extremely complex. Addressing them requires engagement from a range of concerned stakeholders. In some cases disputes or issues regarding land classification may take years to address. This can impact the ability of operators to clear a particular parcel within a specified timeframe, which could affect clearance operations as a whole. This highlights the importance of conducting long-term clearance planning in conjunction with post-clearance land use negotiation and planning.

### **5.2 Land issues for consideration**

In order to make informed decisions about which areas to prioritise for clearance, concerned stakeholders at the commune and district level must have accurate information about land classification status of areas proposed for clearance. MAPUs must also have accurate information about this. Even if people have been living on land parcels proposed for clearance for a decade, that land could still be asserted as forest land, and thus not eligible for consideration as a social land concession.

Development organisations involved in implementing integrated mine action (IMA) and development programmes should consider long-term land use, even if it exceeds the lifetime of the programme. Post-clearance land use should be proposed a year or more in advance of slated clearance dates, as there may be a long process of negotiation with concerned authorities at the sub-national or national level regarding proposed post-clearance land use.<sup>37</sup>

### **5.3 Entry points for addressing land use and land rights issues**

Integrated implementation of Sub-decree 70 and the Socio-economic Guidelines for Mine Clearance Operations with Sub-decrees 118 and 72 as part of a pilot project could provide valuable lessons on mine clearance planning within a broader development framework. This type of pilot project should be implemented within one or two communes, using the CLUP process outlined in Sub-decree 72 as a basis for long-term, harmonised clearance and commune investment planning.

There is scope for MAPUs and Commune Councils to initiate the process of definite classification or re-classification of land and registration as prioritised minefields as State Private land or to allocate it for another land use purpose that would benefit local communities. This will require coordination with the MAFF and Ministry of Environment as many mined areas are currently asserted or classified as forest cover. This would

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<sup>37</sup> For example, if the RGC were to issue a sub-decree allowing cleared land to be used for other purposes, communities would need to submit applications to different ministries (Ministry of Commerce, Ministry of Agriculture, Forestry and Fisheries) depending on type of proposed post-clearance land use.

remove the primary obstacle to the Social Land Concession or other secure land use access granting processes, and make the demining and land allocation processes easier to implement. This would also ensure that the Commune Councils and MAPUs select minefields where it is possible to undertake land allocation under the Social Land Concession procedures outlined in Sub-decree 19. They could also select land use allocation plans that benefit the local communities while meeting other RGC policies related to land use, goals and commitments; for example, maintaining a certain level of national forest coverage and increasing land use productivity while at the same time discouraging acts of encroachment on state land.

Recent efforts to integrate mine action planning into commune development planning processes shows promise as a mechanism for maximising the benefits of poverty reduction programmes by successfully clearing land that could become a social land concession in the future. Integration of long-term post-clearance land use planning could also yield positive results as areas identified for clearance could be turned into forestry concessions or economic land concessions, which concerned Government stakeholders may be more willing to grant. A study funded by the World Bank and GTZ assessing the potential impact of social land concessions, found that social land concessions initiatives would be most effective if ‘embedded in commune land use planning (i.e. commune development plans)(Khorn and Groetschel, 2004). The study also found that benefits of concession programmes could be maximised through harmonisation or redesign of the legal frameworks and procedures for social, economic, and forest concessions (World Bank, 2005). Land that has been granted as economic concessions that is not put to use could be farmed by local residents as part of an arrangement that would benefit both concession holders and local farmers. Examples of these mutually beneficial arrangements occurred as part of land reform efforts in Malaysia and Thailand (Ibid, 2005). While families applying for alternative types of concessions in areas classified as state public land would not have ownership rights, poverty could be reduced through land use through these types of concessions.

#### **5.4 Post-clearance monitoring as a tool for supporting land rights**

While it is not within the mandate of operators and MAPUs to address land rights issues directly, they play an important role in monitoring post-clearance land use. Likewise, development organisations implementing integrated mine action programmes are in a position to monitor how land is used after clearance, and whether it is used by people who applied for clearance. These actors are in a position to uphold land rights by monitoring post-clearance use and reporting on cases where land is grabbed by non-beneficiary families. They can also report on cases where clearance requests are submitted in the name of other individuals as a form of land speculation. In these types of situation, their only recourse is to report cases to competent authorities, but they can play an indirect role in defending land rights by doing so.

#### **5.5 Strengthening coordination**

The CMAA currently facilitates coordination between the MLMUPC, Forestry Administration, Department of Environment, and MAPUs in serious cases. Such cases could be avoided by improving coordination on land issues through enhanced horizontal and vertical communication between different departments and ministries at district, sub-national and national levels before clearance commences. Final decisions regarding land use are made at the national level. Provincial level authorities cannot assure that proposed use of land will not be challenged at some point in the future, nor do they always have sufficient information about a particular area to make an informed decision about its status.<sup>38</sup> Officials at the national level might not have sufficient information about a particular case to uphold rights that beneficiaries might have. A Forestry Administration on a PMAC might ‘approve’ of a clearance task by stating that the land does not lie within a forested area, but this might be contested later by the Forestry Administration in the future. Coordination between MAPUs and operators can also be improved to ensure land dispute cases are addressed in a way that upholds rights that beneficiaries may

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<sup>38</sup> Whether it is a protected area or a forested area, or what type of forest it is classified as.

have. Since operators have more resources at their disposal, they collect more information about beneficiaries. In cases where there are disputing claims on land and MAPUs lack documentation about a particular case, operators can play a support role in providing MAPUs with information that they might require to resolve it.

## **5.6 Engagement with government on land use and land rights issues**

### **Supporting government procedures and Harmonisation: Considering alternatives to social land concessions.**

The Government's policy of maintaining a certain level of forest cover limits possibilities for clearing certain areas with the intent of issuing social land concessions. Issuing a sub-decree to ensure land is cleared for purposes other than exclusively for the purpose of granting social land concessions<sup>39</sup> would enable the use of clearance for purposes such as forestry concessions or community forestry. These purposes are in alignment with the national policy of maintaining 60% forest coverage, and could be less difficult to obtain than social land concessions. This is particularly true in areas where land that is not classified as forest land is scarce. If contaminated land has been claimed by a non-local party such as a land speculator or overseas resident, as is the case in some mine affected areas, the land could be cleared to establish a small scale economic land concession. Local families could lease the land from the owner to farm it, sharing earnings with the land owner. At the very least, this would ensure that local residents use the land and maximise its economic potential. Families would not have any potential for gaining definite ownership of the land in either of these cases, but they could benefit from having access to the land for income earning potential. In the case of forest concessions, communities could benefit by selling carbon credits on the global market as part of a REDD programme.<sup>40</sup>

### **Technical and financial support to government partners**

The Department of Land Management is responsible for documenting information and taking measurements as part of the process of submitting applications for land ownership certificates. Since they have limited funding to undertake this activity, which requires travel to remote areas, it will not be undertaken unless paid for by the applicant or with programme funding. It is estimated that fewer than 10% of recipients of cleared plots have submitted documentation with assistance from the Department of Land Management (Interview with Noum Chhay Roun, 2010). Development organisations and donors should include funding for land parcel documentation and measurement in their programmes so that the process of submitting applications to receive land ownership documents can be successfully completed in cases where beneficiaries cannot afford to do this.

Development organisations can also play a role in providing training to beneficiaries and residents of mine affected communities about their legal rights and obligations. They should ensure that residents are aware of land classification issues and legal and illegal activities under the law (such as encroachment).

### **Integrate long-term land use plans into Commune development plans**

Development organisations that implement integrated mine action programmes should consider how land that is cleared will be used over the long term. This could be challenging since most programmes are not funded for more than five years. An alternative to this would be to fund communes directly so that they can implement long-term development plans, which would require accountability measures to ensure transparency. The Commune Land Use Planning process, which is being implemented under Sub-decree No. 72, should be accessed to ensure that any development activities proposed by organisations are harmonised with commune land use plans. Land use must be negotiated with and authorised by stakeholders at the national level prior to preparing development plans in order to mitigate future challenges regarding land use. Communities should also have full

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<sup>39</sup> As one of many purposes of landmine clearance

<sup>40</sup> Reducing Emissions from Deforestation and Degradation. The Forestry Administration is currently considering strategies for implementing REDD programmes in partnership with international NGOs that implement community forestry programmes. If implemented successfully and transparently, these types of programmes could offer considerable benefits to the RGC and local communities.

understanding of their rights and obligations under the law. For example, if a community wishes to apply for a forestry permit on a plot of forested area cleared of landmines, they must be aware the land is public state land and they do not have definite ownership rights to the land<sup>41</sup>.

### **5.7 Issues for donors to consider**

Donors should fund programmes that are in line with the RGC National Strategic Development Plan, as well as those that support implementation of the CMAA mine action strategy. Proposed programmes should also be endorsed by the CMAA prior to approval. As one objective of the National Mine Action Strategy (NMAS) is to support land administration processes, donors should consider mainstreaming this type of support into their programmes.

Donors should also develop IMA programmes so that they include long-term land use negotiation and planning processes that are in line with Sub-decree No. 72 on Commune Land Use Planning. This will ensure that post-clearance land use will occur without being challenged by the RGC on the grounds that land use does not adhere to national policies. Donors should also consider promoting innovative alternatives to allocations of social land concessions after clearance. Other post-clearance activities could include a pilot project to harmonise implementation of Sub-decrees 70, 118 and 72.

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<sup>41</sup> If the land is classified as 'conversion forest' the land could theoretically be 'declassified' ('anoopreyook') as forest which would enable it to be classified as state private land. However, this is a long and complicated process that might not be successful, and communities should be made aware of this at the outset.

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## Annex 1 - List of Interviewees

<b>Name</b>	<b>Organisation</b>	<b>Title</b>
HE Leng Sochea	CMAA	Deputy Permanent Secretary General
HE Keut Sothea	Provincial Mine Action Committee	Deputy Provincial Governor and PMAC Chairman
Jamie Franklin	Mines Advisory Group	Country Programme Manager
Lauren Conrad	Mines Advisory Group	Programme Officer
Chum Rithy	World Vision Cambodia	Food and Water Security Programme Manager (former)
Patricia Baars	East-West Management Institute	Programme Director
Nhean Somunin	East-West Management Institute	Legal Advisor
Melissa Sabatier	UNDP	Programme Manager
Prak Angkeara	MLMUPC	Technical Advisor, Land Management Component
So Than	MLMUPC	Technical Advisor, Land Management Component
Phat Phalit	LASED	Program Consultant – SLC Implementation
Ruth Bottomley	Mines Advisory Group	Community Liaison Manager
Chea Sarim	Mines Advisory Group	Regional Manager
Nhoum Chay Roun	MAPU Battambang Province	Chief
Leng Ranin	MAPU Banteay Meanchey Province	Deputy Chief

## Annex 2 - Hierarchy of Cambodian law and regulations

The highest ranking legal instrument in Cambodia is the Constitution. One of the key pieces of land rights related legislation is the 2001 Land Law (and the 1992 Decree 100 on Land Law). The RCG/CoM issues sub-decrees to outline the ‘structure and workings’ (organization and functioning) of an executive agency that is given responsibility for administering implementation and enforcement of a given law. Sub-decrees and other forms of regulatory instruments are also issued as a necessary mechanism for providing more detailed elaboration on provisions in laws or sub-decrees, and to provide guidance concerning implementation procedures. In Cambodia, the entire hierarchy is as follows: law implementation and enforcement, but often sub-decrees and other forms of regulatory instruments are also issued as necessary to provide further elaboration on provisions in laws or sub-decrees and to provide guidance concerning implementation procedures. For Cambodia, the entire hierarchy is as follows:

Constitution	Supreme legal norm for the country, adopted by the Constituent Assembly.
Constitutional Law	Revision or amendment to the Constitution, passed by the National Assembly with a two-thirds majority and promulgated by the King.
Law ( <i>Chhbab</i> )	Act passed by the National Assembly and promulgated by the King through a legal instrument called “Preah Reach Kram”.
Royal Decree	A legal instrument issued by the King, normally upon request of the Prime Minister, for appointment/removal of high ranking government officials, including the appointment of the CoM members, or for establishment or amendment of nature protected areas or transitional government body considered necessary by the RGC while no law on establishment of such body.
Decree-Law ( <i>Kret-Chhbab</i> )	Legal instrument equivalent of law, adopted by the the government body holding legislative power in the regime of State of Cambodia.
Sub-decree ( <i>Anukret</i> )	A regulatory instrument adopted by the Council of Ministers (CoM) and signed by the Prime Minister.
Order ( <i>Botbanhchea</i> )	A guidelines issued by the Prime Minister dealing with issues of high concern and requiring immediate government action/measure.
<i>Prakas</i> /Joint <i>Prakas</i>	Regulation issued by a competent/responsible minister or ministers.
Circular ( <i>Sarachor</i> ) or Instruction ( <i>Seich Kdey Nenom</i> )	Implementation instruction or internal guidelines issued by the RGC or a concerned minister.
Decision (Sor Chor Nor)	RGC or ministerial formal view or determination on specific issue under its jurisdictional authority.

Prepared with assistance from Mr. Nhean Somunin, Legal Advisor, East-West Management Institute Cambodia.

### Annex 3: Cambodian legislation on land rights

Sub-decree No. 48 on the sporadic registration system outlines the process for applying for applying for land parcel registration at the District/Khan cadastral administration level. Sub-decree 46 on the procedure to establish Cadastral Index Map and Land Register outlines the process for declaration on adjudication areas.<sup>42</sup> Sub-decree No. 118 on State Land Management together with a number of other laws and regulations listed above supports Sub-decree No. 19. Sub-decree No. 118 outlines the procedures and mechanisms for state land management, including state land identification and mapping, the registration and classification of unregistered state land as private or public state land.

#### Land Law 1992 (Decree 100)

The Decree 100 Land Law<sup>43</sup> was passed in 1992. Approximately 4 million applications for land use and occupation records were submitted. However, little progress was made on this initiative as the Government faced limited capacity to process applications. Conflict persisted in North and North-western Cambodia. The civil war continued to impede residential re-establishment and block land allocations in affected areas. The military retained control some part of agricultural land, particularly in the North-west, some of which still remains under military control to date. The Government and donors also saw a clear need to make improvements to prevailing legislation in order to carry out systematic and reliable land registration as this would create favourable investment conditions. The Government began drafting what became the 2001 Land Law with support from the ADB. This new Land Law was developed using the 1992 Land Law as a basis as opposed to abrogating Decree 100 entirely. Therefore both legislative instruments are still relevant in determining land rights in Cambodia.

#### Land Law 2001<sup>44</sup>

The 2001 Land Law divided land into three classifications: State property, Private property and Collective property:

- i) **State property** land is classified as State public property or State private property:
  - State public property is property that belongs to the State, but which the public can use or which provides a service to the public. This may be property of natural origin (eg lakes and forests), property for public use or service (eg railways, roads and public parks), and archaeological and historical sites.
  - State private property refers to property belonging to the State but which is not available for public use, and does not provide a service to the public. If State public property is not used for public interest, then it can be reclassified as State private property. This might include some categories of forested land such as the conversion forest land which could be allocated by the RGC upon request of the Ministry of Agriculture Fishery and Forestry (MAFF)/ Forestry Administration (FA) for use by landless or land poor families under alternative land use and tenure arrangements.<sup>45</sup>
- ii) **Private property** is owned or possessed by a private individual or company. Private owners and possessors can enter, use, transfer or prevent people from using their land, as long as they do not break any provision of existing laws and regulations.

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<sup>43</sup> "The Land Law (1992) emerged in part because the land market (particularly the speculative market created in Phnom Penh under the influence of the expectation of a massive capital injection that would accompany the imminent arrival of UNTAC) had outstripped the regulatory regime ... There is also a commonly held view that the law was written in order to legitimize the transfer of state properties into private hands (in some instances those of members of the State of Cambodia government, military officers or public officials) in case the forthcoming election resulted in a change of government and put those sales in jeopardy." Shaun Williams, Review of Current and proposed Cambodian Land Legislation, Oxfam, 1999,

<sup>44</sup> Royal Government of Cambodia, Land Law 2001

- iii) **Collective property** differs from private property in that a community owns it in common, not just an individual or company. Collective property is the only property that cannot be owned or occupied by private companies or individuals (Thiel, 2009). The two categories of collective property in Cambodia are:
- a. **Monastery** property is owned by Buddhist monasteries, and cannot be sold or privately owned or possessed by anyone, except temporary land use or rental with proper authorization from the pagoda committee to serve the best interest of the pagoda.<sup>46</sup> The pagoda committee is responsible for the management of monastery property.
  - b. **Indigenous minority community property** refers to groups of people whose members share similar ethnic, social, cultural and economic ties. Indigenous community property consists of property where indigenous communities reside and practice traditional farming methods. In order to be covered by the collective ownership provisions in the 2001 Land Law, an indigenous minority community must establish and seek government recognition of its by-laws (statutes). Only indigenous minority persons who are admitted by their traditional leaders as members of the community with legally recognized by-laws are subject to the rules of collective ownership to the community land. Only land, not other property such houses, trees or crops must be held collectively.

#### **Sub-decree No. on 19 Social Land Concessions**

In 2003, the RGC passed Sub-decree 19 on Social Land Concessions<sup>47</sup> (SLC).<sup>48</sup> Sub-decree 19 provides mechanisms for land that is classified as State public property after mine clearance<sup>49</sup> to be re-designated and allocated as State private property, though these are now obsolete<sup>50</sup>. Social Land Concessions aim to reduce poverty by providing landless or land poor families with farm land, or to foster economic growth through Economic Land Concessions. Sub-decree 19 includes special provisions for granting land to demobilised soldiers, single or disabled-headed households, and to families displaced by residential resettlement. However, it does not provide detailed procedures for dealing with these special cases.

Households occupying land awarded through SLC provisions are eligible to apply for land ownership certificate after meeting the condition of having resided on the land for which confers full and definite ownership of the concerned land parcel. However in practice the Government has awarded few SLC allocations due in part to challenges relating to classification of State Land as Public or Private State Land under Sub-decree 118. The other obstacle to SLC allocation relates to political attempts to classify forest land managed by the MAFF/FA as Public State Land based on political interpretation of the 2002 Forestry Law and the 2001 Land Law provisions (but not necessarily based on legislative intent). Sub-decree 19 also requires a high level of horizontal integration between ministries, making it particularly challenging to implement (Obendorf, 2006). Until comprehensive cadastral mapping and survey or commune land use planning is undertaken so that land that is currently asserted by different government agencies or classified by the RGC through Public State Land can be re-determined or reclassified as Private State land where appropriate and in the best interest of land use, making it eligible for consideration as an SLC under Sub-decree 19, concessions to landless and land poor households will be difficult to obtain.

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<sup>47</sup> A Social Land Concession refers to a legal mechanism to transfer private state land for social purposes to the poor who lack land for residential and/or family farming purposes.

<sup>48</sup> Royal Government of Cambodia, Sub-decree 19 on Social Land Concessions, March 2003

<sup>49</sup> Article 9 of Sub-decree 70 on Socio-Economic Management of Mine Clearance Operations dated 20 October 2004.

<sup>50</sup> Provincial Land Use and Allocation Committees are not active, and have been replaced by Provincial State Land Management Committees under Sub-decree No. 118 (Nhean 2010. See also Boramy, Sareth. "State Land Distribution for the Poor: State Land Identification, Mapping, Classification and Registration," MLMUPC, 2008.)

#### **Annex 4 - List of CMAA operational guidelines for mine clearance**

##### **Operational Guidelines (OG)**

- OG.01- Commune Meeting
- OG.02- District Workshop
- OG.03- Minefield Investigation
- OG.04- Meeting of MAPU and Concerned Agencies
- OG.05- Meeting of Core PMAC Members and MAPU
- OG.06- Provincial Workshop
- OG.07- Urgent Demining Requests
- OG.08- Demining Workplan Monitoring
- OG.09- Handover of Demined Land to Local Authority
- OG.10- Compilation of demined land documents for DLM
- OG.11- Preparation of Plot Plans
- OG.12- Handover of Plot Plans to Beneficiaries
- OG.13- Post-clearance Land-use Monitoring
- OG.14- Quarterly PMAC Meeting
- OG.15- Beneficiary Classification Standard
- OG.16- Prioritization Criteria
- OG.17- Control and Usage of Guidelines
- OG.18- Amendment of Guidelines

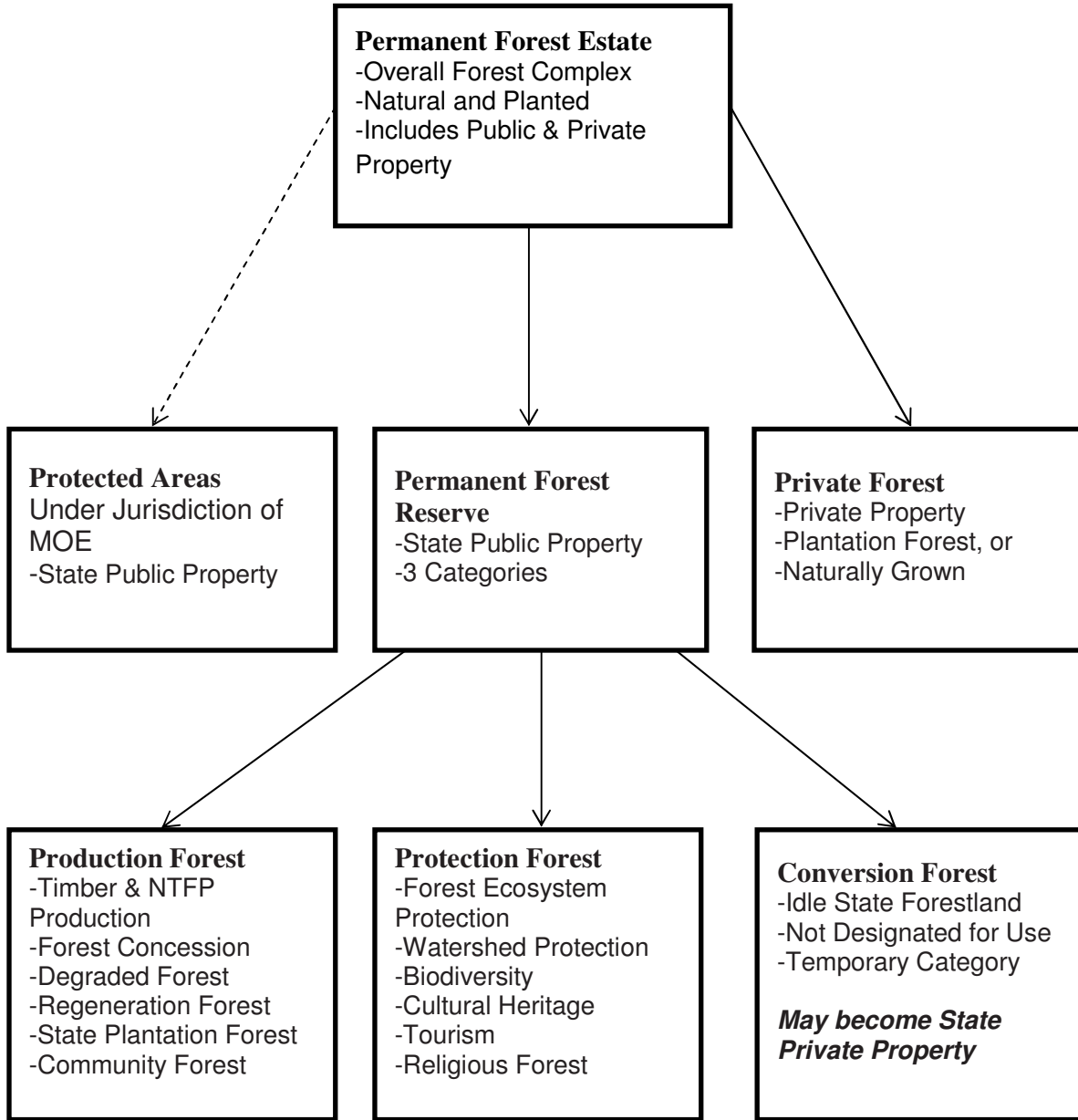
Source: CMAA Policy and Operational Guidelines on Socioeconomic Management of Mine Clearance Operations

## Annex 5 - Recommended criteria for consideration during minefield prioritisation

Criteria	Description	Example Use
Clear Land use Benefit	Land use clearly benefits local community or there is a real land-use needs.	High – Land use is beneficial to many people or beneficial to provincial development Medium – Land use is beneficial only to a few Low – Land use not yet clear or no benefit to poor or not benefit to local community
Development support from NGO or Government	Gives a score based on certainty of resources committed to support the proposed land use	High - Have clear development project after clearance Medium - Development project expected to commence after clearance Low - No development project after clearance or budget for development project insufficient
Demining operator technical factors and preferences based on their prioritisation processes	Scores minefield based on technical factors, such as condition of road to minefield (distance from village and condition of access road) and high density of mines. Allows Demining operators to give input based on their own prioritisation and to show their willingness to clear the minefield.	High – Clear support from demining operators, such as continued clearance or known minefields highlighted by villagers etc. Medium – Medium level of support from demining operators or selected as a ‘Spare’ minefield Low – No support from demining operators due to technical problems with minefield
Problems or disputes on minefield land	Score minefield depending on whether it is under dispute or not, and whether that dispute may be resolved. This criterion may also be used to note whether clearing this minefield is conflicting with government policy such as environment protected areas.	High – No dispute or problem, or problem or dispute has been resolved. Medium – Have dispute or problem, but solution has been identified Low – No solution to the dispute or problem
Available Resources or Village Plan	Whether the local community will be able to use the land once cleared.	High – Village or beneficiaries have sufficient resources or confirmed support to carry out planned land use Medium – Village of beneficiaries have some resources but require further support to carry out planned land use Low – Village or beneficiaries have no resources to carry out planned land use

Source: CMAA Policy and Operational Guidelines on Socioeconomic Management of Mine Clearance Operations

**Annex 6 – Classification of forested areas under Forestry Law**



Source: “Legal Analysis of Forest and Land Laws in Cambodia,” Oberndorf, R., Community Forestry International