



## Summary Report on HLCLEP Eastern Europe/Central Asia Regional Consultation

**Purpose of report:** to capture lessons and main findings from this Eastern Europe/Central Asia regional gathering on 23-24 May 2006 in Kiev, Ukraine and provide feedback to HLCLEP<sup>1</sup>

### Main Conclusions

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1. Too narrow a focus on securing rights through legislative change alone is unlikely to translate into tangible benefits for the poor. For improvement in the rights of poor people to make a significant contribution to poverty reduction, there is a clear need to accompany legal recognition of rights with additional support to allow rights to be turned into livelihoods benefits (e.g. timely access to information and advice, means of handling disputes over land and assets, credit etc). Be bold in providing practical recommendations on how rights need to be secured and their implementation supported in order to bring benefits to the poor.
2. One of the many benefits of the Commission's work is in capturing and sharing lessons between countries and regions. There are similarities of problems and issues, even from very diverse country specific contexts, which make lesson sharing between countries and regions a valuable part of the process. This will help to turn concepts into reality, by identifying best practice and workable mechanisms to improve legal empowerment and access to justice.
3. The Commission's work can not be seen in a vacuum. Effective States and legitimate national governments are needed to set the right framework for legal empowerment of their citizen and to support the strong and independent institutions which are essential to the provision of access to justice.

### Consultation Background, Format and Participation

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On 23-24 May 2006 the HLCLEP hosted a two day regional consultation in Kiev in close collaboration and with co-funding from the United Nation Economic Commission for Europe (UNECE) and the United Kingdom's Department for International Development (DFID). The consultation was organized to ensure a broad network of policy makers, technical experts and representatives from civil society are able to contribute to the work of the HLCLEP, to provide effective outreach to countries in

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<sup>1</sup> This report has been submitted to the HLCLEP and represents the summary of views expressed at the Regional Consultation meeting in Kiev; an event co-funded by UK DFID and UNECE in support of the HLCLEP.

the region; and to create opportunities for Commission members to develop platforms on country and/or regional level. The Ukrainian government, while not officially hosting the meeting, was represented by officials from four Ministries and various state departments with a substantial presentation on labour informality and employment.

The meeting had a **dual function** of regional consultation for the HLCLEP and of lesson sharing on **dispute resolution and access to justice in the context of economic reform**. It brought together more than hundred participants representing policy makers, officials, NGOs and practitioners from over ten countries and various backgrounds:

- CIS countries: Ukraine, the Russian Federation, Moldova, Georgia, Kyrgyzstan and Tajikistan;
- Experts from UK and Norway, sharing ‘Western’ perspectives on better ways to provide cost-effective access to justice ("From court process to mediation");
- NGO representatives from Norway (TRANSCEND – provides conflict and dispute resolution services worldwide), and Bangladesh (a legal rights activist aiding the understanding of gender dimensions in informal labour and access to justice);
- UN Economic Commission for Europe;
- UN Commission on International Trade Law (Vienna) – mandated to provide advice on arbitration laws;
- Tanzanian officials sharing their expertise in land reform and land dispute resolution;
- Representatives of donor programmes and international organizations (UK DFID, European Union, World Bank, Ministry of Foreign Affairs/Norway, Swiss Cooperation office, Canadian International Development Agency, US Agency for International Development).

[The conference programme is attached to this summary report.]

The **Keynote** speech was delivered by HLCLEP Commissioner **Allan Larsson**, former Minister of Finance of Sweden. He explained the purpose and aspirations of the HLCLEP, expressed its strong commitment to achieving the MDGs and to identifying the key legal instruments necessary to reduce poverty and helping the poor to improve their economic and social situation. He set out key questions to the audience and encouraged a free lesson sharing.

At the request of participants the intended format, involving parallel panels, was amended to allow all participants to attend all sessions. This is a reflection of the audience’s perception that the various aspects of the legal empowerment agenda are interrelated and are best analysed and debated together, rather than in separate, parallel discussions.

## Regional Context

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Over the last 10 to 15 years the CIS countries of the Former Soviet Union have witnessed a dramatic transition including the breakdown of their State and the emergence of new independent countries accompanied by fundamental changes in their socio-political and economic conditions affecting all aspects of life. These countries have undergone fundamental reforms, changing from centrally planned economies to market economies and from one-party systems to multi-party democracies. This massive restructuring has affected all sectors of their economies and has, unintentionally, led to increased levels of poverty in the region which are unprecedented in the post-Second World War era.

This consultation event paid particular attention to the social-economic changes in the agrarian sector as a result of land reforms, mass restructuring of large “collective” farm enterprises and subsequent changes in property rights for land and farm assets. Many speakers referred to the ongoing polarisation of society; the widening gap between rich and poor; increased unemployment; missing social protection; and the many uncertainties faced by the millions working in the informal sector. There has been an explosion in the numbers of households where no member is employed in the formal sector, commonly no taxes are paid, and as a consequence it is hard for family members to demand improvements in service provision from local or national administrations.

For example, in Ukraine, of 15 million rural residents, 52% are not formally employed. It is estimated that 60% of the entire agricultural production is produced by self-employed rural residents who do not pay tax, are not socially protected and do not contribute to the pension fund or other social funds. Only 40% of the agricultural produce is produced by the formal farm enterprise sector. The average salary level is 51% that of urban workers. 82% of people making a living in the agrarian economy earn less than the official poverty level. The prevailing situation is characterized by a high level of low paid, unskilled workers.

## Case Study: Land Reform in Russia

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**Key issue:** what have common people received as a result of the land reform of the ‘90s and why have their land shares not become a tradable asset?

### **Land Shares**

11,8 million people or every third rural resident of Russia received land shares amounting to 113 million hectares of agricultural land. The total value of these land shares is –according to cadastral valuation- \$42 billion or \$3.500 per person.

### **Farm assets or Property Shares**

As of 1 January 1992 the total value of privatized farm assets amounted to \$60 billion. As of 1 January 2003, farm enterprises net assets were valued \$15.7 billion including \$4.2 billion worth of assets owned by private individuals. (exchange rate: \$1=Rbl 30). More than 90% of property shares were lost unless shareholders had acted on their rights immediately in the early 90s by setting up their own private farms and requesting

allocation of their “paper” property shares “in kind”.

For many people land shares still only exist on paper. The transaction costs in terms of effort and time taken to turn a land share “on paper” into a land plot “in kind” are simply too high. According to recent research it takes, on average, 12 visits to 6 different institutions, involving 32 hours physically waiting in queues over a period of at least 4 months to complete the entire procedure of turning a land share “on paper” into an actual demarcated land plot. The time and cost involved in formalizing the right to inherit a land plot is 53 days and costs Rbl 5,212. (The validity of the various documents needed as part of that formalization process often expires after only 10-30 days adding another complication for people to cope with.) Many people have failed to secure their ownership of land due to these complicated and highly bureaucratic processes and the high transaction costs associated with them.

#### Time and cost involved in formalizing the right to inherit a land plot

Institution and reason for application		Time/Money spent
1.	Record-Keeping Office (request for a copy of the authorizing document issued by the head of administration on land plot allocation)	2 days
2.	Cadastre Camber (request for a map of the land plot)	1 day
3.	Land surveying organization (request for land surveying work)	30 days; Rbl 5,000
4.	District Land Committee (endorsement of the land surveying file)	1 day
5.	Cadastre Camber (request for registration of the land plot with the land cadastre)	7 days; Rbl 12
6.	Tax Inspection Office (confirmation that the applicant has no outstanding tax liabilities)	1 day (validity period of the document - 1 month)
7.	Cadastre Camber (a record from Cadastre)	1 day
8.	Registration Camber (request for a record from Integrated State Register of Enterprises / ISRE)	7 days; Rbl 100
9.	Registration Camber (getting the record from ISRE)	1 day (validity period of the document – 10 days)
10.	District Land Committee (getting the confirmation that the land plot had been under no seizure prior to 1.01.98; getting a statement determining the standard value of the land plot)	1 day
11.	Record-Keeping Office (getting the copy of the authorizing document issued by the head of administration on land plot allocation)	1 day
<b>Total:</b>		<b>53 days; Rbl 5,212</b>

**Most common means by which an individuals' private land share is acquired by others.**

Many people who were entitled to private ownership of land have subsequently lost the land or their entitlement to land. Many farm enterprises went bankrupt. It is even more difficult to claim property rights for land in such cases. There is a significant level of coercion exercised on people to invest their land shares into charter capital of farm enterprises. This is an irreversible process since according to the law people receive only financial compensation if they want to leave the enterprise. They can not leave with their land. People can also be coerced into selling land shares at low prices as condition of business deals. There is also widespread coercion into signing rental contracts for over 49 years, which de facto means losing control over their land for that period.

**Summary of the main barriers for poor people to implement their rights to land in Russia:**

- Discrepancies between regional and federal legislation.
- Ordinary farm residents were unable to understand or act upon the new legislation which was alien to their prevailing mentality at the time ("people were not ready and mature enough for the reform").
- High transaction costs associated with formalizing ownership rights.
- Insufficient state support to help people to turn access to rights into livelihoods improvements such as access to affordable loans, input supply facilities and marketing support, cooperative structures
- Underdeveloped land markets helped to create an environment in which peoples' land could be acquired unfairly or even illegally by less disadvantaged members of the community.
- Strong process of accumulation of land in the hands of a small number of 'oligarchs', who were best able to understand the legislation and make it work to their advantage.

Problems Identified by Participants Which Prevent Legal Empowerment of The Poor

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**The poor enabling environment:** The existence of "good" national laws and the provision of rights on paper are not enough to provide access to justice. At national, provincial and local level, the means of implementing laws and turning rights into practical benefits is lacking. Poor people need additional support mechanisms and the support of capable institutions to turn access to rights into livelihoods improvements.

- For example, poor people face a shortage of information and legal advice necessary to be able to understand, claim and protect their rights and resources.
- Imperfect legislation, discrepancies between laws and regulations, and punitive tax laws discourage or even prevent formalization (often it is financially beneficial for

individuals to leave arrangements informal, and thereby avoid tax and additional costs associated, for example, with fire regulations or hygiene and phyto-sanitary regulations).

- There is a clear need to reduce the cost of registering property, along with other costs associated with entrepreneurship and legitimate business activity. For example, the bureaucracy associated with obtaining the permits for registration of private property, land ownership and business registration is too complex and demands too much in terms of costs and time of those who need to apply.
- People on low incomes lack credit facilities and savings services.
- Formal banks use time consuming and costly credit approval and service procedures which discourage people from applying for loans.
- Formal banks reject poor people as clients on the grounds that they lack credit history and sufficient assets to be creditworthy. The informal sector has however demonstrated that rural poor people can be creditworthy. For example, over the last five years 30 credit cooperatives in the Kiev region have reported no default in credit repayments.

**Distrust of authorities:** Poor people distrust politics and politicians. Corruption is endemic in the region at all levels; people in power misuse their positions for personal gains. (This is reflected in the positions of CIS countries in Transparency International's league of corrupt states where e.g. Russia ranks 126 along with Niger, Sierra Leone and Albania.)

- Poor people have lost trust in formal justice institution and doubt the impartiality of formal courts (courts are corrupt; ordinary people will not get a fair deal or equal access to justice; court proceedings take a long time and cost a lot of money).
- People are afraid to disclose private information about their assets or income, knowing that it can be passed on to the tax authorities or misused by black market "racketeers".
- People in the region are extremely distrustful of cooperative arrangements - a lasting legacy of the failed "collectivism" of the old Soviet system (i.e., prevailing beliefs that cooperatives do not live up to their promises; communal benefits will be captured by local elites; overwhelming fear that small people once again will get deceived and lose control over use of their resources).
- People in the region have lost private savings more than once during the break-up of the Soviet Union, as a result of periods of hyper-inflation, changes in the value of local currency against the foreign currencies, the collapse of mismanaged financial institutions or simple criminality on the part of banks. Many people now have a deep distrust of the formal banking systems. This constrains the role that the formal

financial sector can play in supporting the formalization of assets and their use in legitimate economic activity.

**Conflict between market principles and social legislation:** In Georgia, legal recognition of property rights for land and rural houses has not provided access to capital because the formal banking sector is reluctant to accept these as collateral. There are two reasons:

- Social legislation protects the basic livelihood assets of individuals, e.g. their houses, in cases of loan default. The formal banking sector is therefore unwilling to accept these assets as security against loans. Hence social legislation that protects the poor has the unintended consequence of rendering their assets essentially valueless as collateral.
- The specifics of closely knitted rural social fabrics de facto prevent the confiscation of land and rural houses in the case of loan default.. Banks are afraid of the "collective" resistance exercised by rural neighbourhoods in the case of lawful expropriation of such collateral. Bank managers face the unlikelihood of being actually able to sell the property to anyone outside of that village. The local community will collectively reject any "outsiders/intruders" who want to take advantage of newly acquired property and live in the house and farm the land of their previous neighbours who were evicted and perhaps made homeless as a result of financial incapacity.

These barriers are hard to overcome. Possible ways of mitigating these problems are:

- a) Improving the creditworthiness of rural residents by promoting alternative credit schemes with subsequent recognition of such loan history by the formal banks. For example, in Moldova, people who have successfully borrowed from Savings and Credit Associations over several years, have begun to graduate from that micro-finance scheme to the formal business banking sector.
- b) Loan Guarantee Schemes and other mechanisms to allow the formal banking sector to manage the risk of lending to poorer sections of clients more efficiently. (example: Moldova)

### Recommendations for the HLCLEP and lessons for the wider development community:

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#### **Recommendations for HLCLEP**

Too narrow a focus on securing rights through legislative change alone is unlikely to translate into tangible benefits for the poor. For improvement in the rights of poor people to make a significant contribution to poverty reduction, there is a clear need to accompany legal recognition of rights with additional support to allow rights to be turned into livelihoods benefits. Be bold in providing practical recommendations on how rights need to be secured and their implementation supported in order to bring benefits to the poor.

The HLCLEP should examine whether an international fund in support of protection of rights for poor people would be an effective tool, what institutional arrangements would be necessary for it to deliver, and how such an international fund would work at the national level.

### **Recommendations for the wider development community**

Do not work just with average poverty and income levels! Analyse the real poverty situation! The problem of many mid-income countries in the region is that they also have large numbers of poor people but they are regarded as less in need of assistance by the international community when compared to the poor in low-income countries.

Individual country situations are specific and need tailor made solutions, but there is also a need to harmonise legislation (according to EU legislation for the Europe/Central Asia region)

Timely access to easily digestible information during reforms is a vital precondition for people to claim and protect their rights.

Access to credit and advice provision, help in organizing joint actions, group formation for accessing markets are necessary support mechanisms poor people to turn rights into benefits and lasting poverty reduction.

Dispute resolution mechanisms are an important tool to guarantee protection of rights for poor people, but will not on their own be sufficient to protect peoples' rights. Additional measures are needed to help poor people to turn rights into livelihood improvements.

Development efforts of all partners should be based on the respect for the law, legal rights and human rights.

Laws need to be improved and procedures for implementation simplified, so that transaction cost for poor people are reduced. Laws might be perfect, but until mechanisms of implementation of laws and legal rights are not in place, the situation for poor people will not change.

The timeframes for implementing reforms and policies need to be realistic. This was often not the case with many reform policies in the CIS countries, and people were disadvantaged due to that speed.

Lesson sharing between policy makers and practitioners at all levels including between countries and regions is important to understand better What mechanisms work, How to organize support, What to do and Which inputs are right to empower poor people to understand, claim and protect their rights.

### **Specific lessons for dispute resolution practitioners**

It is possible to provide access to justice for poor people, including in remote geographical areas, by combining the best traditions of alternative dispute resolution with the formal enforcement of decisions achieved out-of-court. The sheer fact that mandatory enforcement is available, where voluntary compliance does not occur, helps to achieve a high degree of voluntary implementation of decisions (only 2 out of the more than 300 disputes resolved over the last year by the Third Party Arbitration mechanism in Tajikistan needed to ask for legal back up by courts). This is proof that this mechanism enjoys authority and delivers quality services in support of fair and transparent dispute resolution and protection of property rights for poor men and women.

Practical experience shows that if poor men and women can appoint arbitrators of their choice who they feel confident about to be the protectors of their rights and interests, they are more likely to seek justice, take an active part in the process and implement decisions. This mechanism offers voluntary action, legitimacy and legality and is a tool for empowering poor people.

Women traditionally face disadvantages in securing access to land, water and other assets and resources and, more than others, require protection of their rights and interests. More women need to be trained in this method in order to offer services to women who seek help from the dispute resolution system.

There is an operational challenge to find a good balance between institutional and financial sustainability and affordability of services by the poor. Providing access to information, legal advice and dispute resolution services by mediation and third party arbitration should be recognised as a public good function. Cooperation with local governments and courts as well as funding arrangements, including support in kind, should, however, not undermine independence of the system.

### **And finally....**

The lesson sharing itself was useful for participants. The Tajik delegation learned a lot from the Moldovan and Russian colleagues, the Ukrainians highlighted the usefulness of the Norwegian expertise. The Georgian delegation felt enthused by experiencing the strong regional network of expertise which can be called upon for improving dispute resolution work. The Russian

delegation has presented an excellent analysis of the post-land reform situation and the existing barriers to utilizing rights, protect property and turn into livelihoods improvements. Other country delegations want to use the format to improve the analyses of their national situations.

There were useful lessons on how to improve work in practical terms, how to improve organizational aspects of their service provision for poor people, enhance their knowledge

regarding the appropriateness of various legal entities to offer services and how to work better with governments or with donors.

Colleagues from Tanzania, Bangladesh and Norway shared insights into post-colonial land reform and land disputes, alternative dispute resolution and gender, and western perspectives on conflict and dispute resolution. This was immensely valuable in turning this regional lesson sharing into a wider professional dialogue, reinforcing the global relevance of the issues under debate and providing an extra source of motivation for the regional network of dispute resolution practitioners.

The Tanzanian expert from the Ministry of Land, Housing and Urban development voiced the value of the Kiev lesson sharing by saying:

**“This conference has demonstrated the ability to turn concepts into reality!”**