

The economic crisis, debt and the impact on human rights: Eastern Partnership countries

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Abstract: The article explores the nexus between the economic crisis, foreign debt and the impact on human rights as it has manifested in the Eastern Partnership (EaP) region since the beginning of the 2008 'global economic crisis'. That an economic crisis requires states to borrow internationally is not novel. By researching and developing case studies for all but one of the EaP countries, and then engaging in a comparative analysis of the case studies, the article seeks to explore, in the EaP context, the extent and legitimacy of borrowing, the impact on human rights of the economic crisis and/or debt, and the degree to which national debt frameworks of EaP countries comply with the UN Guiding Principles on Foreign Debt and Human Rights. As for the nexus between human rights, economics and debt, this dynamic is founded in the fact that human rights values the equality of individuals and, in the socio-economic context, this may be expressed in terms of equal opportunity, which must be ensured and fomented by the state – often through the expenditure of public resources. As a developed society is best conceived of as a collective of developed individuals, and as equal opportunity is foundational to individual development, phenomena which curtail the equal opportunity of individuals necessarily impact negatively on the human rights regime. It is generally accepted that several factors influence an individual's equal opportunity for development: civil and political rights; economic facilities (for instance employment opportunities,

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fair remuneration); social opportunities (for instance education); transparency/accountability (for instance the rule of law); and protective securities (for instance healthcare and social welfare). It is in this broad context that the article considers increasing poverty and the degradation in socio-economic rights as having a negative impact on equal opportunity and on human rights, and explores this impact as a derivative of the economic crisis and foreign debt.

Key words: *Eastern Partnership; economic crisis; foreign debt; human rights; UN Guiding Principles on Foreign Debt and Human Rights*

1 Introduction

The article explores the nexus between the economic crisis, foreign debt and the impact on human rights as it has manifested in the Eastern Partnership (EaP) region since the beginning of the 2008 global economic crisis. That an economic crisis requires states to borrow internationally is not novel. However, by researching and developing the case studies for all but one of the EaP countries, and then engaging in a comparative analysis of the case studies, the article seeks to explore, in the EaP context, the extent and legitimacy of borrowing, the impact on human rights of the economic crisis and/or debt, and the degree to which national debt frameworks of EaP countries comply with the UN Guiding Principles on Foreign Debt and Human Rights. As for the nexus between human rights, economics and debt, this dynamic is founded in the fact that the notion of human rights values the equality of individuals, often expressed in terms of equal rights against the state, but in the socio-economic context also expressed in terms of equal opportunity for individuals, which must be ensured and fomented by the state - often through the expenditure of public resources. As a developed society is best conceived of as a collective of developed individuals, and as equal opportunity is foundational to individual development, phenomena which curtail the equal opportunity of individuals necessarily impact negatively on the human rights regime (Sen 2000). It is generally accepted that several factors influence an individual's equal opportunity for development: civil and political rights; economic facilities (for instance, employment opportunities, fair remuneration); social opportunities (for instance, education); transparency/accountability (for instance, the rule of law); and protective securities (for instance, healthcare, social welfare) (Sen 2000). It is in this broad context that the article considers increasing poverty and the degradation in socio-economic rights as having a negative impact on equal opportunity and on human rights in general, and explores this impact as a derivative of the economic crisis and foreign debt.

2 Eastern Partnership countries under review

The EaP is a construct of the European Union (EU), engendered to facilitate its relations with the post-Soviet states of Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Although an EaP country, Azerbaijan was not included in this study because its vast petroleum reserves and sales render it a unique and distinct economic model not readily comparable to the other EaP countries, especially considering the topic of this research. As for the other EaP countries – and apart from Ukraine's distinction with regard to size of territory and population – all

are relatively comparable, especially with regard to the economic and governance challenges of post-Communist transition, as well as the geopolitical concerns which require each state to negotiate and balance its ties and interests between Russia and the West.

In this regard, it is noteworthy that Armenia was pursuing EU integration until September 2013 when its President, while in Moscow, suddenly announced that Armenia would instead enter the Eurasian Economic Union (EEU), of which Russia is the prominent economic actor. Armenia entered the EEU in 2014, closing its path to EU integration, but both Armenia and the EU are currently seeking new platforms for co-operation. While Belarus maintains close ties with Russia and is a member of the EEU, it also engages with the EU and receives EaP support for social inclusion, environmental issues and local and regional development. In 2014 Georgia and the EU adopted an Association Agreement with a Deep and Comprehensive Free Trade Area (AA/DCFTA) and the parties are now pursuing visa liberalisation. Moldova and the EU also agreed to an AA/DCFTA in 2014 and are currently pursuing visa liberalisation (EEAS 2015). In the case of Ukraine, when the government started to withdraw from EU integration in 2013, protests erupted in favour of EU integration. By early 2014, protesters had brought about a change of government, but eastern sections of the country with high Russian-speaking populations sought ties with Russia, resulting in the secession/annexation of Crimea to Russia, as well as other secession movements, periods of armed conflict and general instability in Eastern Ukraine. Despite this, by July 2014 Ukraine's new government and the EU had entered into an AA/DCFTA (EEAS 2015)). In ways such as these, politics tie in with economics and impact on human rights in the EaP.

3 Setting the stage: The economic crisis and foreign public debt in the Eastern Partnership

In the context of this research, and as EaP countries in many ways still are economies and democracies in transition from the Soviet experience, it was valid to explore to what extent the global economic crisis affected foreign public debt, and to consider whether there were also other extraneous factors which contributed to the increase in debt experienced in the EaP.

In Armenia, which typically borrows for development projects and to cover constant current account balance deficits (for example trade imbalances) and budget deficits, public debt doubled in 2009 from US \$1.4 to \$2.4 billion (World Bank Data). At the same time, a review of the annual percentage change in real gross domestic product (GDP) shows a steady decrease from a positive 13.7 per cent in 2007 and 6.9 per cent in 2008 to 14.1 per cent in 2009, followed by years of modest recovery and now a forecast 1 per cent for 2015 (World Bank Outlook 2015: 174). This contraction of the economy reduced tax revenues, which as a ratio to GDP fell by 20.5 per cent in 2009, while expenditures to GDP grew 30.2 per cent as the government borrowed from international financial institutions (IFIs) and Russia so as to maintain economic activity through government expenditure and lending to private economic actors (Armenian Development Strategy 2014: 22). Also, current account balances as percentage of GDP went from 8.5 per cent in 2007 to 17 per cent in 2008

to 17.6 per cent in 2009, and despite modest recovery in intervening years was projected at 8.6 per cent for 2015 (World Economic Outlook 2015: 189). This imbalance continuously depletes central bank reserves and necessitates borrowing. Additionally, according to one source the refusal by Armenia's Central Bank to allow for currency devaluation – which might increase exports – also factors in to the size of the debt and is symbolic of corruption because the fixed exchange rate benefits import businesses of oligarchs (Policy Forum Armenia 2012). In response, the government claims the fixed exchange rate to be an anti-inflationary measure. Another issue is whether authorities have borrowed from Russia and issued Eurobonds at unfavourable rates because such monies come without restrictions, unlike funds from international financial institutions (Artak Kyurumyan interview). Questions of corruption, as discussed below in the section on Guiding Principles, may also have disproportionately increased debt. While it is estimated that public debt will reach 50 per cent of GDP by the end of 2015 (WB Country Programme Snapshot Armenia 2015), others estimate that if privately-held but publicly-guaranteed debt is also included, the public debt is already 100 per cent of GDP (Samson Avetyan interview, Civilnet 2015).

As for Belarus, the GDP growth of 8.3 per cent per year on average ended in 2008 (WB Country Programme Snapshot Belarus 2015) with a decrease in demand for Belarusian exports and increasing limits on attracting foreign capital (both as external debt and direct investments) (Semak 2011). By 2009, external trade was down by 69.3 per cent and between 2009 and 2013, on average the pace of foreign trade growth decreased by a factor of two or more (Statistical Yearbook Republic of Belarus 2014: 488). This new reality created budget deficits until 2011. However, later surpluses were not the result of increased state revenues, but rather the underfunding of planned state expenditures and high inflation (Struk 2014: 58). As a result, between 2009 and 2013 foreign public debt increased by a factor of 2.6, reaching 54.3 per cent of GDP (Struk 2014: 55). Worse still, the foreign public debt of Belarus has an unfavourable structure because of a high percentage of short-term loans, rendering expenditures to service debt of a high cost. This is complicated by past currency devaluations and instability which increase foreign public debt in relative measure (Struk 2014: 55). Also, devaluation pressures on Belarus's currency are increasing as of 2014 due to the weakening Russian Ruble and a decline in foreign trade demand from Russia, Belarus's main trading partner (WB Snapshot Belarus 2015: 2).

In the case of Georgia, the economic crisis was compounded by a short-term armed conflict with Russia in 2008. By 2009, both domestic and foreign investment had fallen from 17.2 per cent of GDP in 2007 to 7.1 per cent (Edilashvili 2011). The downturn manifested in a sharp fall in GDP during 2009 of 15.9 per cent (Trading Economics 2015). Also in 2009, budget revenues fell below budget expenditures creating deficits, and the current account balance showed trade deficits which continue today and are in the negative by a factor of four (Papava 2008). Although after the conflict Georgia received a recovery package, approximately half of the aid was in the form of loans, adding to the foreign public debt. As a result of all these factors, foreign public debt increased from 16.8 per cent of GDP in 2007 to 31.7 per cent in 2009 and 33.6 per cent in 2010 (World Bank Data). Recent years, however, have seen a decrease in debt to GDP which as of 2014 stands at 26.8 per cent (World Bank Data).

The situation in Moldova in 2009 was also marked by a contraction in the economy. Within only the first quarter of 2009, the demand for Moldovan exports, principally agricultural products to the EU, decreased by 20 per cent, while remittances from Moldovans abroad decreased by one-third, corresponding also with a decrease in domestic demand and sales, despite the fact that Moldovan migrants were returning from abroad at the same time (Impact of the Global Financial Crisis on Local Communities in Moldova 2009). The first quarter of 2009 also reflected a three-fold contraction in foreign direct investment (FDI) (Impact of the Global Financial Crisis 2009). By the end of 2009, the GDP had contracted by more than 17 per cent (World Bank Data). One result was a decrease in tax revenues, but because of the upcoming elections there was a sharp increase in public sector spending as salaries were raised to promote goodwill on election day (Trading Economics 2015). Consequently, for the 2009-2010 period, foreign public debt increased by 10 per cent (Moldovan Government Debt to GDP 2015). Despite this, however, the foreign public debt did not reach, and has not reached, the 2006 high of 34.81 per cent of GDP, mostly because of the strong influence of the International Monetary Fund (IMF) over the government and its debt management. At present debt is not the issue, but the economy is weak, reliant on remittances, and facing an uncertain future.

With regard to Ukraine, 2009 was the end of steady economic growth. From a high of 8.2 per cent of GDP growth in 2007, Ukraine went to a low of 15.1 per cent by 2009 (World Economic Outlook 2015: 174). Concurrent with a falling GDP were increasing deficits in current account balances: 2.2 (2009); 6 (2011); 8 (2012); 9.2 (2013) (World Economic Outlook 2015: 174). This situation, coupled with the failure to modernise industry and to pursue concrete economic and governance reforms, as well as persistent corruption in government, led to declining tax revenues, budget deficits and increased debt (Valchishen 2015). From a rather substantial debt to GDP ratio of 56 per cent in 2008, the debt rose to 84.7 per cent in 2009 and 91 per cent in 2010 (Pynzenyk 2015). Although some economic recovery was made in succeeding years, the instability occasioned in 2014 brought renewed difficulties: a fall in GDP by 6.8 per cent for 2014 with an expected additional 5.5 per cent for 2015, along with a 85 per cent depreciation of national currency as measured against the US dollar (WB Country Programme Snapshot Ukraine 2015: 2). Considering declining tax revenues and increasing defence expenditures as conflict continues, budget deficits will necessitate more borrowing and the debt to GDP ratio will pass 100 per cent by the end of 2015 (WB Country Programme Snapshot Ukraine 2015: 2).

Thus, the general impact of the global economic crisis on EaP states was a decreased demand for EaP exports, which led to negative economic growth, increased current account balance deficits, reduced state revenues and budget deficits, and which cumulatively caused spikes in borrowing and debt. While amongst the countries studied Moldova may have experienced the least increase in debt, it continues to struggle with economic growth and remains remittance dependent. Armed conflict and instability were also significant in increasing debt in Georgia and especially in Ukraine. Also, close ties to Russia and Russia's current economic difficulties have impacted, and will continue to impact, negatively on economic recovery in Armenia and Belarus. Corruption issues, explored in

detail later, also increase the public debt in EaP states. How economics and debt impact on human rights follows.

4 Economic crisis and its impact on human rights: To what extent did the economic crisis impact on development and rights in the Eastern Partnership?

As explained by human development theory and as summarised in the introduction to this article, poverty and unemployment as well as other factors, such as poor education and poor health, restrict an individual's opportunity to pursue development, thus impinging on individual equality and human rights in general. Unfortunately, the economic crisis in the EaP and its aftermath coincide with increased poverty, increased unemployment and increased inequality as between rich and poor. These negative human development indicators thus allude to the negative impact of the crisis on human rights as well.

In Armenia, the economic crisis increased poverty, and continues to grow income inequality today as well as to negatively impact on employment and working conditions, all to the detriment of human rights. The percentage of the population living in poverty grew from 27.6 per cent in 2008 to 34.1 per cent in 2009 and levelled at 35 per cent for 2010 and 2011; despite poverty levels falling to 32 per cent in 2012 and 2013. In terms of shared prosperity, the lower 40 per cent of income earners were in real terms still worse off in 2012 to 2013 than they were in 2010 to 2011 (WB Snapshot Armenia 2015: 5). Income inequality indicators also show that the top 20 per cent of income earners were 7.8 times better off than the lowest 20 per cent in 2008, but 8.5 times better off in 2012 (Armenian Development Strategy 2014: 87). Also indicative of the situation is the working poor, whereby 26 per cent of the active working population which is employed still lives below the poverty line (WB Snapshot Armenia 2015: 6-7). Moreover, 50 per cent of employment is informal (unregistered) (WB Snapshot Armenia 2015: 6-7) and, in an economy where formal employees are expected to work overtime without overtime pay, and are paid late, informal employment not only leaves the worker unprotected under the law, but highly susceptible to the abuse of labour rights. Consequently, high poverty figures and income inequality, in addition to the working poor and high informal employment, reflect a heavy negative impact on equality and human rights as a result of the economic crisis.

As for Belarus, it was severe inflation related to the crisis, and principally in 2011, that impacted on poverty and equality, resulting in an increase in poverty from 5.2 per cent in 2010 to 7.3 per cent in 2011 (Zayats 2012), along with an increase in income inequality as represented by a decrease in the GINI index from 27.7 per cent in 2010 to 26.5 per cent in 2011 (World Bank Data). This was addressed by a government policy to index wages to inflation, which allowed for increases in wages, but more so for lower than for higher wage earners (Bornukova 2012). However, old age pensioners were left out and their real incomes decreased on average by 16.7 per cent (World Bank Data). Also, increasing wages may have high economic costs in terms of inefficiency due to low mobility and motivation, and wage increases without productivity gains

are unsustainable in the long term (Akulava et al 2013: 3). Related to this, recorded unemployment in Belarus is incredibly low, as low as 0.5 per cent in 2013 and 2014 (Trading Economics 2015). However, this figure is flawed in real terms because it reflects only the registered unemployed, and there are disincentives to register: bureaucratic procedures which try a person's patience and take up one's time, as well as an obligation to participate in poorly-paid public works programmes (Astapenia 2015). Consequently, in its last review before the UN Committee on Economic, Social and Cultural Rights (ESCR Committee), Belarus was criticised for issues of compulsory labour, inadequate protection of workers' rights and high rates of poverty in rural areas, among other things (ESCR Committee Concluding Observations Belarus 2013). Continued economic challenges will frustrate the enhancement in the provision of these rights.

In the case of Georgia, economic indicators for the post-crisis period actually showed signs of alleviation of poverty and inequality, most likely due to decreases in food prices (Asian Development Bank 2015) and an increase in social transfers, as 42 per cent of the post-conflict stimulus package was dedicated to social protection (Zhang et al 2010). However, this once-off measure questions efficiency and long-term impact, and income disparities may be rising as of late. Principally, more than half the population lives in rural areas, and in 2010 poverty affected 25 per cent of the rural population compared to 17 per cent of the urban population, while today poverty is a factor for 40 per cent of the rural population compared to 31 per cent of the urban (Asian Development Bank 2015). While officially unemployment stands at around 15 per cent, polls show that 68 per cent of respondents consider themselves unemployed, which may be due to differences in perspectives as to typical employment versus subsistence farming, Georgia's natural safety net (CRRRC Georgia 2014). Officially, 52.3 per cent of people are considered self-employed, and the majority of the self-employed (44.1 per cent) are in the agricultural sector. Unfortunately, the families of more than half of those self-employed in agriculture are living on less than US \$250 per month (Grigolia 2013). Therefore, although Georgia successfully weathered the global crisis, growth after the crisis fails to address balanced regional development, poverty alleviation and job creation (Melkadze 2013), all of which negatively impact on the development of rights.

As for Moldova, it is worth noting that the economic crisis reduced employment by 6 per cent, decreased worker productivity by 5 per cent and 4 per cent of employees were left unpaid, while at the same time migrants returned from Russia and remittances from Russia decreased (Impact of the Global Financial Crisis 2009). More than half of Moldovan households experienced some decline in income, which required 30.7 per cent to take immediate and future action to recover expendable income (Impact of the Global Financial Crisis 2009). By 2011, pensions fell below the poverty threshold (European Committee of Social Rights Conclusions 2013). Interestingly, perception surveys also showed a spike in corruption during the crisis period of 2008-2010 (Transparency International 2015). Thus, considering the nexus between economics, development and rights, this evidence suggests that the crisis negatively impacted on rights and freedoms via reduced equality, reduced self-sufficiency and reduced transparency.

In Ukraine, although poverty and unemployment have been a constant after independence, there was progress in poverty reduction until 2009 when official figures showed it at a low of 5.8 per cent of the population. However, as the crisis took hold, poverty grew to 7.8 per cent in 2011 and 9.1 per cent in 2012 (World Bank Data). Unemployment also grew from 6.4 per cent in 2008 to 8.8 per cent in 2009 (ILO Data). While unemployment figures started coming down in the following year, anecdotal information reported great difficulties for new graduates seeking employment. Other sources report employers placing persons on administrative leave, reducing working hours and even not paying salaries on time (wage arrears) as evidence of sharp underemployment (OECD 2011). Also, a depreciation in currency dramatically affected the purchasing power of the average individual. This situation is today further compounded by over one million internally-displaced persons (IDPs) from the east of the country, all of whom are struggling to secure employment, housing, healthcare and social protection benefits (OCHA 2015; Ogarkova interview 2015). What is not reported in statistics is the desperation of people like Tamara, who was forced to flee her apartment, leaving all her possessions behind while the building collapsed from artillery fire; she now lives in a dilapidated dormitory room and, after working her entire life, cannot collect her pension (UNHCR Stories from Ukraine 2015). Thus, not only did the crisis negatively impact on development and rights, but the continuing armed conflict will compound matters and make the restoration of rights more difficult.

Overall, a review of poverty, unemployment and income inequality shows the negative impact of the economic crisis on development and rights in the EaP. Depending on the country, issues of armed conflict and corruption often enhanced the negative impact, unless otherwise compensated for by social protection benefits. Also, while state borrowing and expenditures may alleviate impact issues in the short term, the later servicing of foreign debt also carries its own negative impact on rights, as is explored in the next section.

5 Debt servicing and its impact on human rights: To what extent does debt servicing impact on development and rights in the Eastern Partnership?

A combination of structural factors and economic circumstances makes debt repayment a priority over guarantees for socio-economic rights in the EaP. Debt servicing, thus, redirects public resources away from the protection and promotion of rights.

In Armenia, structural factors reaffirm accruing evidence that budgetary support for socio-economic rights will be sacrificed to repay debt. Armenian legislation specifies that (a) debt repayment is an absolute imperative; (b) once debt reaches 50 per cent of GDP, budget deficits may not exceed 3 per cent of GDP; and (c) no additional borrowing may occur after debt reaches 60 per cent of GDP (RA Law on Public Debt, articles 5 and 23). Without additional loans or increased tax revenues, debt repayments must come from expenditure cuts. Coincidentally, an analytical review of the 2014 national budget shows that, in real terms, funding for social protection has only increased by 1.7 per cent compared

to 2008 and, because much of the increase has gone to paying pensions, aid to poor families actually is 6 per cent lower than what it was in 2008 (EDRC 2014: 4 & 17). Additionally, standard unemployment benefits were discontinued in 2013, ostensibly as part of a reform to offer professional job training, self-employment support and compensation to employers for a minimum wage increase, but the new programmes are only calculated for 248 beneficiaries compared to the old programme, which covered 10 090 beneficiaries (EDRC 2014: 21). For these and other reasons, the ESCR Committee correctly criticised Armenia for not using the maximum available resources to support socio-economic rights in general and, specifically, with regard to healthcare, education, pensions and aid to poor families (ESCR Committee Concluding Observations Armenia 2014). Clearly, in Armenia debt repayment is prioritised at the expense of rights.

Similarly, structural factors in Belarus indicate that socio-economic rights will be sacrificed to service debt. First, like Armenia, Belarusian legislation gives priority to debt service over any other budgetary expenditure (RB Budget Code, article 57). Additionally, the traditional social state structure in Belarus makes the state the primary actor, as evidenced by the fact that one half of all state expenditures are dedicated to social needs (Medvetskiy 2015). For example, during the 2011 economic crisis year alone, social protection expenditures increased from 9.9 per cent to 15.8 per cent of GDP (ILO Data). Considering weak economic factors, borrowing is a necessity, but future borrowing is frustrated by the fact that a weakened Russia has less capacity to lend, and the IMF has stated that a new stand-by agreement is contingent on the initiation of structural reforms (Moody's Investor Service (2015)), which may well include dismantling social sector programmes or provisions. Thus, debt servicing will negatively impact on socio-economic rights in Belarus.

In the case of Georgia, the constantly-increasing foreign public debt is a looming threat to newly-reformed social services and may necessitate debt refinancing should development investment in other sectors fail to materialise (RT 2010). During post-crisis recovery, borrowed funds have been used for pensions, universal health coverage and targeted social assistance (WB Data 2014: 18). To offset poverty, pensions were raised in 2009, 2011, 2012 and 2013 (WB Snapshot Georgia 2015). Targeted social assistance to lift households out of poverty was doubled in 2013, and in the same year universal health coverage was initiated (WB Data 2014). As a result, social spending now amounts to one-third of all budgetary expenditures. With an ageing population and increasing social protection costs financed by debt, debt refinancing may not be enough without cuts to social services, which would infringe on socio-economic rights.

In contrast, Moldova's debt service is under control, but despite improvements and increases in expenditure for social protections and health care, socio-economic rights are under-funded and under-protected. A new targeted social service programme necessitated a 4 per cent increase in budgetary expenditure, but benefits such as pensions are still criticised as being wholly inadequate (European Committee on Social Rights Conclusions 2013). Mandatory health insurance as of 2004 covers 85 per cent of the population and is financed by 13 per cent of the state budget (WB Snapshot Moldova 2015), but insurance is incomplete, leaving 45 per

cent of costs to be covered by patients (WB Snapshot Moldova 2015), and services are inadequate, as evidenced by above-average infant and maternal mortality rates as compared to other European countries (European Social Committee Conclusions 2013). High rates of migration mean that less is collected in state revenues, and a Russian ban on Moldovan goods, along with declining exports to Ukraine, threatens recession. In this situation, debt service may be manageable, but socio-economic rights remain under-financed and under-protected.

While the current instability and chaos in Ukraine make forecasting debt management and its impact on socio-economic rights too speculative, in general the structural prioritisation of debt repayment over all other issues in the EaP, along with recent threats of renewed recession and the prospect of debt refinancing, cumulatively shows that rights in the EaP are infringed upon as a consequence of foreign public debt.

6 UN Guiding Principles on Foreign Debt and Human Rights compared to norms and process in the Eastern Partnership: To what extent is there compliance?

The UN Guiding Principles on Foreign Debt and Human Rights (Principles), endorsed by the UN Human Rights Council in July 2012, advocate prioritising and ensuring human rights over the service of debt, and principally focus on preventing debt problems through measures of transparency, participation and accountability, including the public sharing of information, the engagement of civil society and other stakeholders, and enshrining in national legal frameworks systems of checks and balances. The Draft Commentary to the Principles, published by the Independent Expert in March 2014, aids in interpreting the Principles (OHCHR 2015).

In terms of transparency and participation, the Principles call for legislation to clarify the role of state institutions in the debt process, for an annual debt strategy and needs assessment which is participatory, and for consultation with stakeholders (including civil society) when negotiating to borrow (Principles paragraphs 33, 36 and 42-43). As to the role of state institutions, the Draft Commentary argues that important factors include specifying in legislation who may encumber the state and how, and involving several different institutions through a system of information sharing to create oversight. As to accountability, the Principles envision (a) borrowing limits via budgetary legislation; (b) mandatory needs assessment and consideration of alternatives before borrowing; (c) specific purpose – rather than general purpose – borrowing; (d) holding officials to fiduciary duties under law; (e) assessments by independent bodies; and (f) ensuring that debt servicing does not divert resources from social services or require modification in the protection and promotion of human rights (Principles paragraphs 34, 37, 44, 66, 48 and 49, respectively). While legislation and process in EaP states comply to some extent with the Principles, gaps exist and borrowing practices of EaP states generally fall well below the standards set by the Principles.

In Armenia, the Law on Public Debt and its enacting regulations specify that the Ministry of Finance (MoF) and the Central Bank of Armenia (CBA) are charged with managing the debt, and both are 'competent to

timely execute obligations, if corresponding instruments are not prohibited' (RA Law on Public Debt, article 11). Unfortunately, as this vague provision does not specify that *only* the MoF and CBA may execute obligations, it is not a clear designation of who encumbers the state. Furthermore, evidence indicates that other state actors are encumbering the state. For example, the public debt strategy for 2015 to 2017, adopted on 3 July 2014, does not envision borrowing for the nuclear power plant renovation, but on 8 August 2014, the Ministry of Energy announced that it was borrowing US \$300 million from Russia for nuclear power plant renovation. The one month difference indicates that the Ministry of Energy negotiated the loan independent of the MoF and outside of the state debt strategy (Artak Kyurumyan, interview 19 April 2015 and e-mail comments 4 May 2015). Transparency, participation and accountability were thwarted.

As regards other transparency and participation priorities, for example that a diversity of state actors be involved in debt management, two institutions in Armenia (the MoF and CBA) seem insufficient. Also, regarding the call by the Principles for an annual debt strategy and needs assessment, which the Draft Commentary interprets as an audit facilitating public debate, Armenian legislation only requires that the government's annual report on the budget to parliament includes state debt obligations (RA Law on Public Debt, article 13). Intuitively, and as was confirmed by one expert, this does not constitute sharing a debt strategy which is truly subjected to debate (Karine Harutyunyan, interview 20 April 2015). Moreover, even though Armenian legislation qualifies that 'the governance of the state debt is implemented through the principle of transparency, accountability, credibility and publicity' (RA Law on Public Debt, article 10), no provisions call for consulting with stakeholders, whether they be other state actors or civil society. Also, the debt strategy for 2015 to 2017, adopted on 3 July 2014, while referencing the possible issuance of Eurobonds, did not include how interest payments would affect the debt strategy, and subsequently Eurobonds were summarily issued at the beginning of 2015 (Artak Kyurumyan, e-mail comments 4 May 2015), thus circumventing public debate.

Perhaps the worst example of a violation of transparency is the ArmRosGazprom case of 2013, which revealed that Armenia had to cede to Russia its last remaining interest in the national supply system of natural gas in exchange for cancelling a debt to Russia, of which no one was aware, and which had accrued during the subsidising of gas prices during an election period:

Energy Minister Armen Movsisyan did not hide the fact that if Armenia had not agreed to join the Customs Union and had not sold the remaining 20 per cent of ArmRosgazprom shares to Russia, it would have had to pay the debt of \$300 million for natural gas accumulated since 2011. As it turned out, Russia actually raised gas prices for Armenia in 2011 but, by mutual consent, it was not declared in Armenia officially, because in 2012-13 Armenia held three national elections' (ArmeniaNow.com, 5 December 2013).

This was clearly a secret and politically-motivated act of encumbrance on the part of the state.

As to accountability, Armenian legislation limits borrowing by restricting the budget deficit to no more than 3 per cent of GDP after the debt to GDP ratio has reached 50 per cent, and by prohibiting debt

accumulation to GDP ratio of 60 per cent. However, in addition to restricting the budget deficit after the 50 per cent mark is reached, this provision and one other plainly guarantee debt repayment to creditors (RA Law on Public Debt, articles 5 and 23). In contrast, no legislative provisions protect social service expenditures or prohibit the modification of human rights provisions. Thus, the provision limiting debt and guaranteeing repayment acts to prioritise debt service over human rights, and makes it probable that when debt repayment difficulties arise, expenditures for social services and provisions for human rights will be curtailed to finance debt repayment, thus countering the last point (f) from the Principles outlined above.

Regarding the other factors, Armenian legislation does not require needs assessment or a consideration of alternatives ((b) above), and the government has borrowed funds when its treasury single account was full (Kyurumyan 2014: 15). Also, Armenian legislation specifies that borrowing is for the purpose of covering budget deficits, rebuilding reserves for current account balances, and to develop the local debt market (RA Law on Public Debt, article 8). However, the ArmRosGazprom and the nuclear power plant loan cases prove that debt is acquired for other reasons, compromising point (c) above. Lastly, no provisions specifically impose fiduciary duties on officials for debt malfeasance and no independent bodies are involved in debt assessment or management ((d) and € above). In general, Armenian compliance is poor.

In Belarus, legislative and regulatory compliance with the Principles is often lacking, and when there is formal compliance, it is often undermined by practice. For example, regulations appropriately designate three state actors and their separate functions with regard to debt: the National Bank is to oversee issues of monetary accommodation and banking in general; the Ministry of Finance oversees the public sector; and the Ministry of Economy oversees other sectors and co-ordinates debt analysis and strategy (Concept for the Management of Gross External Debt 2011). Furthermore, the capacity to borrow is reserved to the government through a decision of the President (Belarus Budget Code, article 52). Although the roles are designated, the reality is that no entity has sufficient independence from the executive to act as a true check against abuse. Additionally, borrowing limits are set annually in the budget law, which does little to limit future borrowing or create a debt strategy debate (Belarus Budget Code, article 55). Also, no legislation or regulation specifies any needs assessment process, nor any stakeholder participation. Although the Budget Code requires the source of debt to be listed, it does not require listing of the corresponding purpose, and the strategy is simply incorporated in the annual budget law, which does little to inform or foster debate (Belarus Budget Code, article 57). For these reasons, transparency, participation and accountability are extremely compromised in the debt management framework of Belarus.

Georgia's debt management framework also falls well below the UN standards. Legislation does specify that debt is managed by the Ministry of Finance and the National Bank, and provides for a subsidiary or oversight role for parliament, the government and the Ministry of Sustainable Economic Development (Georgian Law on Public Debt). However, legislation does not specifically regulate the process of borrowing and debt service, and there is no strategic document on debt management. There are

neither provisions for participation by stakeholders and civil society, nor provisions for transparency or debate. Experts argue that Georgia needs a holistic approach to identify, evaluate and manage risks, to co-ordinate debt management activities and decrease debt service costs, as well as to ensure transparency, participation and accountability (Economic Policy Research Centre 2014).

With regard to Moldova, 80 per cent of foreign public debt is owed to the World Bank or IMF and, based on a 20-year working relationship, a new partnership agreement with these IFIs was recently executed (IMF Country Report 2011; Documents and Reports Moldova 2015). Moldovan debt management scores well as per IMF criteria based on a manageable debt to GDP ratio and long-term, low-cost portfolio (IMF Country Report 2011). Also, Moldovan legislation designates the Ministry of Finance with sole jurisdiction as to debt, including borrowing, public guarantees and lending to public entities (Law on Public Debt and State Guarantees and on Lending from State Borrowings). However, when compared to the Principles, the Moldovan framework is significantly lacking, as (a) legislation does not include clear debt management objectives; (b) elaboration of debt strategies is not required (compromising parliament's oversight abilities); (c) local self-governing entities may borrow internationally independent of the Ministry of Finance even though they lack sophistication for loan negotiation; and (d) provisions to foster stakeholder and civil society participation, as well as general transparency, are absent (Law on Public Debt; Public Debt Management Reform Plan 2011). Moreover, accountability is weak and corruption in the banking sector endemic. Perhaps 70 per cent of banks are controlled by oligarchs connected to Russia, and the Moldovan National Bank governor has accused them of manipulating exchange rates which caused national currency devaluation (Soloviev 2015). Also, it is common for shell companies to sue Russian companies which do not defend and then transfer funds in payment of judgments, but such payments are quickly sent to off-shore accounts, meaning that this is a process of money laundering (Butin et al 2014). Thus, transparency, participation and accountability need greater attention through debt management reform.

Surprisingly, Ukraine neither has legislation dedicated to debt management nor any integrated debt regulatory system. Instead, relative provisions are found in the Constitution, budgetary code and other legislation. The Cabinet of Ministers is charged with setting borrowing parameters, and the Ministry of Finance elaborates the programme of borrowing and servicing of debt, which again is overseen by the Cabinet of Ministers. Although other actors include parliament, the national bank and treasury, the framework fails to produce true checks and balances. Although yearly borrowing limits are set via the annual budget law (Budgetary Code, article 16), this does little in terms of transparency and participation. Moreover, there are no specified aims for borrowing, which opens the door to abuse and corruption. No needs assessments, no consideration of alternatives, and no consultations with civil society or stakeholders are required. In many ways, the Ukrainian debt management framework is open to abuse and political manipulation, and reform as per the Principles is essential.

Considering the precarious economic environment of the EaP and the penchant for borrowing to finance both short-term and long term-social

and economic needs, more vigorous debt management is required in the EaP and the Principles are the most modern standard to which EaP states should aspire.

7 Primary actors and recommendations for decision makers

The dynamic between the economic crisis, foreign debt and human rights, as it unfolds in each EaP country, includes a broad range of actors, both domestic and international. However, those actors who are most directly involved and who can effect change through reform are considered the most primary for this study.

As for international actors in the EaP, many international financial institutions are involved, mostly through financing targeted projects or programmes: the World Bank Group; the European Bank of Reconstruction and Development; the EURASEC Anti-Crisis Fund; the Eurasian Bank; and the Asian Development Bank. In order to secure repayment of their project and programme loans, EaP states should be pressured to better conform to the UN Guiding Principles so that EaP states (a) become better-managed debtors that are better able to repay loans; and (b) become more democratic states pursuing a course of genuine development. After all, all IFIs in theory are development agencies. To this end, IFIs should monitor government spending of loaned monies and make such audit information public and transparent, as well as reconsider the potential negative impact on human rights of austerity measures or other restrictive terms they require as preconditions to lending.

Additionally, foreign states, such as Russia, China, Germany, Japan, the United States and others, are also involved in this dynamic in their individual state capacity. While foreign states may have ulterior motives for lending, inasmuch as the repayment of loans is also a priority, such foreign states would also serve their own best interests by pressuring EaP states to better conform to the Principles, so as to reduce the risk of default.

In terms of Armenia and its domestic context, the primary state actors include the Ministry of Finance and the Central Bank of Armenia, because legislation charges these entities with managing the debt. In terms of oversight, legislation requires the government to report to parliament on debt issues in its annual budget report, making parliament an oversight entity and a primary agent for change. Unfortunately, parliament has not proven itself to be an attentive oversight mechanism, principally for political reasons and/or questions of corruption. Worse still, political campaigning has not been responsive to economic and social issues, including rights, and questionable elections have severely undermined the oversight capability of the electorate. Considering these factors, without external pressure domestic-initiated reform seems unlikely.

In Armenia, the contrast between the Principles and examples of (a) secret debt in the ArmRosGazprom case; (b) debt incurred by unauthorised state actors as per the nuclear power plant renovation debt; and (c) unplanned debt acquisition as per the Eurobond issuance, suggests a number of measures that should be demanded of domestic actors:

- to investigate how debt was secretly incurred in the ArmRosGazprom case and to amend legislation to prevent this in the future;
- to clearly specify in legislation that only the MoF may negotiate and incur debt on behalf of the state so as to avoid debt incurred by other state actors as occurred in the nuclear power plant renovations case;
- through legislation to diversify the number of state bodies involved in decision making regarding debt, to create a mechanism for the independent auditing of debt, and to include civil society stakeholders in all processes so as to address unplanned or rash borrowing as per the Eurobond issuance, the interest payment of which is not foreseen in the debt strategy;
- through legislation to require a human rights assessment with regard to budgeting and debt; to specify that budgetary support for the fulfilment of human rights is superior to the debt repayment security in article 5 of the RA Law on Debt; and to prohibit regressive austerity measures as per real terms in budgetary allocations to the social protection sector; and
- through legislation to clarify the specific purposes for which debt may be acquired, and to require studies of alternative policies to debt acquisition, such as the frequent suggestion to allow currency devaluation.

For its part, civil society must actively demand these reforms from government and should monitor and report on this situation and Armenia's failures regarding the Principles during the Universal Periodic Review before the Human Rights Council.

In the Belarusian context, three main domestic actors are responsible for the foreign debt analysis, monitoring and control: the National Bank; the Ministry of Economy; and the Ministry of Finance. However, the exclusive capacity to borrow public debt belongs to the government either by the decision or consent of the President, and the role of parliament in the process is limited to the adoption of the law on Republican budget, which in fact contains the annual foreign debt strategy. Nevertheless, due to the high concentration of power in the executive, the role of the other actors is marginalised, thus frustrating transparency, participation and accountability. A comparison between the Belarusian framework and the Principles suggests the following recommendations:

- to enhance accountability with regard to budgeting and debt by ensuring independent domestic expertise and reporting mechanisms to the legislative branch;
- through legislation to guarantee mechanisms for civil society participation in budgeting and debt-monitoring processes;
- to include a human rights component in the state's concept of foreign debt management and through legislation to establish a human rights assessment with regard to budgeting and debt;
- to clarify the specific needs for which debt should be acquired, and to implement studies of alternative policies to debt; and
- to ensure a stable social expenditure level for poverty reduction and full employment, while making structural changes whereby subsequent wage increases relate to productivity gains and labour mobility is increased across sectors, while also affording opportunities to private sector initiatives.

Engaging in such reforms with a long-term perspective may allow Belarus to establish a more stable socio-economic environment and to sustain its high social protection in the long term.

In terms of Georgia and its domestic context, the primary actors include the Ministry of Finance and the National Bank of Georgia, because

legislation provides these institutions with an exclusive mandate to enter into agreements on borrowing. In addition, the Ministry of Justice issues legal opinions on public borrowing and state guarantee agreements. However, such a budget-monitoring and management process has not been fully responsive to economic and social rights, nor to the sustainability of external debt. Considering these issues, domestic proactive measures are necessary to improve the debt management capacity in Georgia. Therefore, in light of constantly-growing external debt, the Principles suggested certain measures that should be demanded of domestic actors:

- to develop a debt management strategy which would be an integral part of macro-economic policy;
- to ensure the sustainability of debt by defining criteria for borrowing and clearly identifying those projects and sectors for which the debt should be acquired;
- to implement the effective use and transparent spending of grants and preferential loans of international IFIs in order to assure sufficient returns to repay future obligations;
- to focus on equality, non-discrimination, participation, empowerment, accountability and transparency, because a rights-based approach would improve the sustainability and effectiveness of development policies;
- to improve public expenditure management systems that would ensure the efficiency of poverty-reducing expenditures;
- to establish a periodic review of the effectiveness of external financing, which could be done as part of the periodic public expenditure review; and
- to intensify efforts in improving the social conditions of citizens and to promote the realisation of human rights by ensuring that state public policies on foreign debt are in compliance with the Principles as well as with the state's obligations as laid out in the Constitution and the international human rights treaties ratified by Georgia.

Such reforms would enhance the long-term rights perspective necessary for future growth and development.

With regard to Moldova, it is clear that adequate compliance with IMF assessment criteria is wholly insufficient in terms of creating transparency, participation and accountability, the underlying values of the Principles. Considering the high level of corruption in general, and its prominence in the banking industry, Moldova should undertake reforms which mandate specifically-defined borrowing objectives and conditions, more detailed and prompt reporting mechanisms for parliamentary oversight and the adoption of other mechanisms, highlighted in the Principles, to implement checks and balances in relation to foreign debt.

As for Ukraine, despite the current instability and increasing need for economic and structural reforms, the 'silver lining in the clouds' is an active citizenry which, with proper orientation, can force positive change. In the sphere of foreign public debt, the Principles should serve as an orientation for both government and civil society as reforms are pursued. Starting with the basics, a dedicated law on public debt is required to comprehensively regulate debt and debt management, and all the mechanisms discussed before as part of the Principles should be considered and incorporated so as to guarantee the greatest degree of transparency, participation and accountability possible. The fact that Ukraine is currently engaging in reforms and that civil society is part of this engagement, and the fact that currently no dedicated law exists, seem

to coincide to create an opportunity for innovative legislation that conforms to the Principles. With sufficient support and encouragement from outside actors, this could be the case.

Therefore, it is for these reasons that the Principles are not only a relevant but also an essential guide to how debt management reforms should be pursued in the EaP if countries of the region are to follow a rights-based approach to development, which probably is the best approach for their current process of transition.

8 Conclusion

For better or for worse, EaP states are states in transition from a Communist past, and are in the process of global integration. Foreign public debt, often spurred on by all types of economic crises, has played, and continues to play, an important role in national development, in general, and in the promotion and protection of rights, in particular. All EaP states struggle to create a realistic balance between borrowing, debt servicing and the protection and promotion of rights, especially socio-economic rights. Most recently, the renewed economic crisis has impacted on debt portfolios and on the provision of rights, and debt servicing will impact on rights guarantees in the future. In the mist of this dynamic, it is the UN Guiding Principles which best illuminate a balanced, rights-based approach to debt management, development and rights protection, mainly because the Principles are founded in transparency, participation and accountability. Now that the tool is available, it is up to civil society – and hopefully also international actors – to persuade governments to employ the Principles for the well-being of all.

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Appendix: Experts consulted/interviewed

Armenia

Name	Date	Biography
Artak Kyurumyan	19, 20 April & 4 May 2015	Artak Kyurumyan holds an MBA from Tulane University and served in the Ministry of Finance and Economy of Armenia during the late 1990s. Currently he is engaged in consulting and research on public finance issues and is a fellow of the Open Society Foundation Armenia.
Karine Harutyunyan	20 April 2015	Karine Harutyunyan holds a PhD in Economics and serves as Chair of Mathematical-Economic Methods at the Yerevan State Economic University. Formerly employed at the Macroeconomics Department of the Ministry of Finance of Armenia, she now serves as a consultant there and has taken up the responsibilities of Executive Director of the Economic Development Research Center (EDRC).
Samson Avetian	28 April 2015	Samson Avetian holds an MBA from Harvard and an MS in Financial Management from the Gothenburg School of Business. He currently serves as the Managing Director of Arrow Global Ltd, an investment advisory and fund management firm, in Armenia.

Georgia

Name	Date	Biography
Maya Grigolia	17 April 2015	Maya Grigolia holds an MA in Economics from ISET and a BA in Mathematics from TSU. After graduating (in 2008), she started working at ISET as a research associate, specialising in macroeconomics. Ms Grigolia teaches macroeconomics, principles of economics, statistics and data analysis in TSU's Economics and Business Faculty. In 2011, she was accepted as a Senior Research Associate with the ISET Policy Institute. Ms Grigolia has been involved in independent studies of the effectiveness of the Georgian public sector in the wake of the 2008 war and global financial crisis as macroeconomics analyst. In addition, she is the co-ordinator and leading instructor in ISET's training programme for the banking sector. Maya Grigolia is a PhD student at Tbilisi State University's (TSU).

Nino Doghonadze	23 April 2015	Nino Doghonadze holds a Master's degree in economics from the International School of Economics at Tbilisi State University (ISET). She joined the ISET Policy Institute in July 2012. Ms Doghonadze is conducting research and providing economic policy consulting. Additionally, she also teaches Principles of Economics at Tbilisi State University's International School of Tourism.
Mariam Chachua	28 April 2015	Mariam Chachua received a BA in Business Administration from Tbilisi State University in 2010. In 2012-2014 she studied at the International School of Economics at TSU. In 2014 she received MA in Economics. She has four years of working experience in Revenue Service of Georgia. During 2014-2015 she was working as an economic-analyst at Georgian Reforms Associates. Currently she provides lectures in Georgian Institute of Public Affairs.

Ukraine

Name	Date	Biography
Tetyana Ogarkova	30 April 2015	Tetyan Ogarkova holds a PhD in literary studies, Universite Paris-XII Val-de-Marne, Paris, France. She is a fellow of the Fulbright Faculty Development programme (FFDP) University of Arkansas, USA. Currently she is a co-ordinator at Ukraine Crisis Media Centre, www.uacrisis.org and a free-lance journalist at Ukrainska Pravda (life.pravda.com.ua). She is also a senior lecturer at Kyiv-Mohyla Academy (NaUKMA), Department of literature.
Aleksandra Novitchkova	2 May 2015	Alexandra Novitchkova holds a MA in political science in Kyiv-Mohyla academy and later was a visiting scholar in EHES (Paris, France) in 2005-2007 and Fulbright fellow in State University of Kansas (Lawrence, USA) in 2011-2012. She is an analyst in Centre for Civil Liberties and a senior lecturer at the University of Kyiv-Mohyla Academy Kyiv, Ukraine. Ms Novitchkova is a co-author of the book <i>Analysis, elaboration and realisation of public policies in Ukraine</i> (2005) and numerous articles on democracy and human rights. She has become actively involved in human right defence with the start of the Euromaidan in Kyiv.