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The Global Financial Crisis and Its Impact on Human Rights: Case Study of Ghana and Zambia

Master's Degree Programme in Human Rights
and Democratisation in Africa



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and Democratisation

**THE GLOBAL FINANCIAL CRISIS AND ITS IMPACT
ON HUMAN RIGHTS: CASE STUDY OF GHANA &
ZAMBIA**

**Submitted in partial fulfilment of the requirements for the
Master of Laws (Human Rights and Democratisation in Africa)
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29 October 2015

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Dedication

This work is dedicated to my parents Mr Justice EN and Mrs LK Mukulwamutiyo, whose unflinching benevolence, patience, wisdom and dependability remain unmatched. And to my son Shawn Naleli Namilonga, who is my strength and inspiration.

To both my parents and son, I aspire to deserve you and may God bless you.

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Most of all I would like to thank my family for their unwavering patience, support and sacrifices to see me attain greater heights in life.

Unto the Lord God almighty be all the glory, great things He has done and greater things He will do.

List of abbreviations

APRM	African Peer Review Mechanism
ASI	All Share Index
AU	African Union

CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CEEC	Citizens Economic Empowerment Commission
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECOWAS	Economic Community of West African States
FAGs	Foreign Aid and Grants
FDI	Foreign Direct Investment
FNDP	Fifth National Development Plan
FRA	Food Reserve Agency (Zambia)
FSDP	Financial Sector Development Programme
FSP	Food Security Pack
GAS	Ghana National Accounting Standards
GDP	Gross Domestic Product
GFC	Global financial crisis
GNI	Gross National Income
GPRS	Ghana Poverty Reduction Strategy
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
LEAP	Livelihood & Empowerment Against Poverty
LUSE	Lusaka Stock Exchange
MDG	Millennium Development Goals
NEPAD	New Partnership for Africa's Development
ODA	Official Development Assistance
ODI	Overseas Development Institute
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organisation for Security and Co-operation in Europe
PSD	Private Sector Development
PSM	Public Sector Management
PWAS	Public Welfare Assistance Scheme
REC	Regional Economic Community

SADC	Southern Africa Development Community
SCTS	Social Cash Transfer scheme
SCGLR	Supreme Court of Ghana Law Reports
SSA	Sub-Saharan Africa
UK	United Kingdom
UN	United Nations
USA	United States of America

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CHAPTER ONE – INTRODUCTION

1.1 Background

In October 2008 the world economy was officially recognised as being in a recession; the great credit crunch, the magnitude of which is only comparable to the great depression of the 1930s. Major stock markets around the globe collapsed, currencies fell in value and interbank lending dried up overnight. The financial and economic systemic crises that have become a recurring feature of neo-liberal capitalism once again emerged, this time on a global scale as it was in the 1930s.¹

The 2008 Global Financial Crisis (GFC)² is one of many, albeit the most contemporary occurrence, with origins from outside the African continent but presenting adverse socio-economic effects to Africa. The logic for this effect factor is to be found in Africa's resource dependence on external actors, which is underpinned by Africa's vulnerability to the dynamics of the global financial system and globalisation generally. As Orago notes, most African countries are reliant on 'primary commodity exports, donor aid, debt funding through international bonds (Eurobonds), remittances from Africans in the diaspora, among others, which renders African economies vulnerable to global financial shocks'.³

The effect of the GFC continues to be felt around the world especially in developing countries even though most of these economies are on a recovery path.⁴ Whereas most parts of the world have made considerable strides in recovering from the GFC, most of Africa continues to experience a decline in economic growth and consistently low global growth projections as set out by the International Monetary Fund (IMF).⁵ It is apposite to state that the GFC's debut was at

¹ Labour Research & Policy Institute 'The effects of the global economic and financial crisis on the Ghanaian economy and labour market' Working Paper (2009) 1 available at <<http://www.ghanatuc.org/The-Effects-of-the-Global-Economic-and-Financial-Crisison-the-Ghanaian-Economy-and-Labour-Market.pdf>> (accessed 30 June 2015).

² The GFC began in the United States in August 2007 and then erupted into a global credit crisis in September 2008. It was triggered by events in the United States of America's housing market, United Nations Economic And Social Council Economic Commission For Africa & African Union Commission 'The global financial crisis: impact, responses and way forward' paper presented at the twenty eighth meeting of the Committee of Experts (2009) 1.

³ N Orago 'The impact of the global financial crisis on the realisation of socio-economic rights in Sub-Saharan Africa: an analysis based on the achievement of the Millennium Development Goals framework and processes' paper presented at the Global campus of human rights research programme (2015) 1.

⁴ M Insaadoo 'The impact of the 2007/2008 global financial crisis on Ghana' (2011) 24 available at <<https://www.google.com/search?client=safari&rls=en&q=I+acknowledge+the+immeasurable+advice,+insightful+criticisms+and+heavenly+encouragement+by+my+supervisor,+Dr.+Susan+Newman+which+aided+the+writing+of+this+paper+i&ie=UTF-8&oe=UTF-8>> (accessed 30 June 2015).

⁵ International Monetary Fund 'World economic outlook 2014: legacies, clouds & uncertainties (2014) available at

the confluence of the financial, fuel and food crises.⁶ Therefore it should not solely get the discredit for devastating lives and livelihood in Sub-Saharan Africa (SSA).

Focusing on Ghana and Zambia, this study will examine the impact of the GFC on the realisation of human rights particularly, socio-economic rights and the right to development. The study proceeds on the premise that though parts of SSA, Ghana and Zambia, being located in the west and southern regions of Africa respectively, have similar and divergent political, economic, and demographic characteristics. For instance in terms of economic drivers, mining constitutes Zambia's mainstay contributing about 70 percent to export earnings.⁷ For Ghana, beside timber and gold, the agricultural sector remains dominant in the economy, employing 56 percent of labour force and accounting for more than one third of national output.⁸ More distinctly, although Ghana and Zambia share pre-independence colonisers and are member states of the United Nations (UN) and African Union (AU), they each belong to different regional economic communities (RECs) and thereby represent different sub regional institutions. While Ghana represents the Economic Community of West African States (ECOWAS), Zambia embodies the Southern Africa Development Community (SADC). These characteristics *inter alia* make the two countries suitable choices for the case study, particularly given that the study's proposals could fit wider application beyond Ghana and Zambia.

At the heart of this study is the GFC, whose epicentre is in the United States and how it permeated the rest of the world, principally Ghana and Zambia. The study's main concern is the ramification of the GFC on the realisation of human rights on Ghana and Zambia. Significantly, the fact that the GFC under study is neither the first nor the last of its kind⁹ to uncover appropriate and practical human rights-based responses with which to counter future economic crises, for countries like Ghana and Zambia.

1.2 Statement of the problem

The GFC spread wave shocks across the world and caused far-reaching ramifications characterised by the acceleration of unemployment, declines in cash inflows, reductions in household incomes and restrictions on access to goods and services. Particularly for Ghana and Zambia, these ramifications were generally transmitted through contraction in international trade,

<<http://www.imf.org/external/pubs/ft/weo/2014/02/pdf/text.pdf>> (accessed 14 July 2015).

⁶ Center for economic and social rights 'Human rights and the global economic crisis' (2009) 1 available at <www.cesr.org/rights@cesr.org> (accessed 30 June 2015).

⁷ D Green et al 'The Global Economic Crisis and Developing Countries: Impact and Response' (2010) 22.

⁸ Insaïdoo (n 4 above) 40.

⁹ Green (n 7 above) 54.

a drop in foreign direct investment, a reduction in remittances from citizens in the diaspora and cuts in foreign aid.¹⁰ In other instances, corporations closed down their operations, which led to lower income tax revenue.¹¹

On the whole, it is a widely accepted notion that the impact of the GFC presents adverse implications on the enjoyment of human rights. Economic crises such as the GFC tend to undermine government's capacity to foster development and deliver on the obligation to promote, protect and fulfil human rights. As this study will demonstrate, GFCs essentially reduce the fiscal space of governments and cause capital expenditures to suffer adjustments in tune with consequential lower revenues. This not only impedes human rights but also undermines the attainment of sustainable development especially for developing states like Ghana and Zambia. Pillay, the former UN High Commissioner for Human Rights, aptly illuminated the need to understand that, 'when the economic indicators head south, fundamental human rights such as the right to work, housing, food, health, education and social security are severely curtailed or undermined altogether'.¹²

As a response to the ramifications of the GFC, Ghana and Zambia adopted measures to alleviate the impact of the GFC. Some of these measures shrunk government expenditures, thereby impeding social spending on basic services like health and education.¹³ Bilchitz contends that such measures are retrogressive and not in keeping with State Parties' obligation to respect, promote, protect and fulfil human rights including socio-economic rights as entrenched in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other international legal instruments that provide for Socio-economic rights.¹⁴

In terms of the right to development, the UN Declaration on the Right to Development (Declaration on the Right to Development) underscores in its preamble that, in order to promote development:¹⁵

[E]qual attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. The

¹⁰ A Arieff et al 'Global Economic Crisis: Impact on Sub-Saharan Africa and Global Policy Responses' (2010) 7.

¹¹ CM Fundanga 'The global economic crisis: Zambia's strategy to maintain stability' paper presented at the 4th Eastern and Southern African management institute summer school event (2009) 3.

¹² N Pillay United Nations Human Rights Office of the High Commissioner for Human Rights 'Human rights and the Global Economic Crisis' (2009) 1 available at <<http://www.ohchr.org/EN/NEWSEVENTS/Pages/HRAndGlobalEconomicCrisis.aspx>> (accessed 11 August 2015).

¹³ Orago (n 3 above) 1.

¹⁴ D Bilchitz 'Socio-economic rights, economic crisis and legal doctrine' (2014) 12 *International Journal of Constitutional Law* 710.

¹⁵ Declaration on the Right to Development, art 3(1).

promotion of, respect for, and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.

Further, the Declaration on the Right to Development provides that states have the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development.¹⁶

At the African regional level, the right to development is enshrined in the African Charter on Human and Peoples' Rights (African Charter). The African Charter is the first binding international human rights instrument to provide for the right to development.¹⁷ It provides that all peoples are entitled to their economic, social and cultural development.¹⁸ Further, State Parties including Ghana and Zambia, are mandated individually or collectively, to ensure that the right to development is exercised.

Thus, there is sufficient evidence that GFCs impede development, exacerbate extreme poverty and undermine the capacity of developing states to create the requisite environment for the realisation of human rights. This is what informs the need for employing appropriate measures in reaction to GFCs.¹⁹ Accordingly, the human rights-based approach has been classified for consideration as an appropriate and meaningful response to the woes presented by GFCs.

1.3 Research objectives

The first objective of this study is to analyse the effects of the GFC on the realisation of human rights particularly socio-economic rights and the right to development in Ghana and Zambia, respectively. The study will assess policy and institutional measures adopted by the states under study in reaction to the effects of the GFC.

The second objective is to ascertain the extent to which policies and institutional measures adopted in reaction to the GFC include the human rights-based approach. A human rights-based approach to countering the impact of economic crises entails adopting a culture of human rights and placing it at the centre of all measures formulated in response to the crises. Further, this

¹⁶ As above.

¹⁷ F Viljoen *International human rights law in Africa* (2012) 226.

¹⁸ African Charter on Human and Peoples' Rights, art 22.

¹⁹ C Lumina 'Sovereign debt and human rights' available at

<<http://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIIIChapter21.pdf>> (accessed 30 June 2015) 300.

approach is considered as encompassing a wide range of issues but primarily premised on the legal framework of socio-economic rights.

The significance of this study is to importune states towards the adoption of the human rights-based approach to countering the impact of economic crises like the GFC. Thus the ultimate objective is to provide the case study countries with guidelines of the model human rights-based approach with which to counter economic crises. This is crucial for the protection, promotion and fulfilment of human rights as well as for meaningful economic growth.

1.4 Research questions

This study aims to answer a number of questions. The main questions are the relationship between the GFC and human rights and how human rights can be employed to ensure development such as the attainment of the MDGs. The study will address the following sub-questions:

1. What is the nexus between human rights and the GFC?
2. To what extent, if any, do Ghana and Zambia include the human rights-based approach in policy and institutional measures adopted in reaction to the GFC?
3. How do Ghana and Zambia's respective policies and institutional measures mirror their international human rights obligations to protect, promote and fulfil human rights?
4. How can Ghana and Zambia manage the impediments presented by the GFC to the realisation of human rights?

1.5 Literature review

The GFC and its impact on human rights has been the subject of research by a number of scholars. This part of the study reviews some of the existing works for their contributions and identifies the gap left so as to inform the contribution for the present work.

The Committee on Economic, Social and Cultural Rights (Committee on ESCR) addressed a letter to state parties to the ICESCR in which it illuminated the nexus between human rights and crises like the GFC.²⁰ The letter elaborates how effects of the GFC, like revenue deficits and

²⁰ Committee on ESCR 'Letter to State Parties to the International Covenant on Economic, Social and Cultural Rights' available at <<http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>> (accessed 11 August 2015).

economic declines, can impede the realisation of socio-economic rights. It is recognised in the letter that economic crises tend to pressure states to embark on austerity programmes including the adjustment of government expenditure mostly on social protection measures, which result in states infringing social-economic rights and thereby violating their human rights obligations under the ICESCR.²¹

Orago underscores the nexus between human rights and the GFC in his examination of the GFC's impact on the realisation of socio-economic rights in SSA.²² To this end, Orago analyses SSA's economic growth before the advent of the GFC and goes on to assess the impact of the GFC on the realisation of socio-economic rights in SSA. In assessing the impact of the GFC on socio-economic rights, Orago highlights the GFC's bearing on the achievement of the Millennium Development Goals (MDGs). The approach of assessing the impact of the GFC employed by Orago partly informed this study. However, whereas Orago takes on the broader context of the impact of the GFC on the realisation of socio-economic rights in SSA, this study is directed to the specific contexts of Zambia and Ghana. Further, while Orago employs MDGs as the tool for his analysis, this study adds macro-economic factors to the evaluation of the GFC's bearing on the realisation of socio-economic rights.

Similarly, Te Velde *et al* elucidate the debilitating effects of the GFC on economies of developing countries of which Ghana and Zambia form a part. Further, Te Velde *et al* aptly highlight that generally the GFC's effects are country specific and therefore require country-specific monitoring and coping strategies.²³

Correspondingly, the Congressional Research Service in the United States released a report on the impact of the GFC on SSA and highlighted the global policy responses to the GFC.²⁴ The report provides an analysis of Africa's vulnerability to the global crisis and potential implications for economic growth, poverty alleviation, fiscal balances and political stability. The report describes channels through which the crisis is affecting Africa and provides information on international efforts to address the impact, including the United States' policies and those of multilateral institutions in which the United States plays a major role.

²¹ As above.

²² Orago (n 3 above) 1.

²³ DW Te Velde et al 'The global financial crisis and developing countries: phase 2 Synthesis ODI working paper 316' (2009) 4.

²⁴ Congressional Research Service 'The global economic crisis: impact on Sub-Saharan Africa and global policy responses' (2010).

With respect to the impact of the GFC generally, the Overseas Development Institute (ODI) undertook research covering various countries in SSA. In its phase of two syntheses on the GFC and developing countries,²⁵ the ODI highlights the following; the key transmitters of the GFC, the GFC's impact on growth, the GFC's impact on development, policy responses and lessons learned from the impact of the GFC. The ODI's synthesis focuses on a number of SSA countries including Zambia but not Ghana. Nevertheless, the ODI has commissioned other country specific research conducted on diverse countries by various scholars including Ackah *et al* and Ndulo *et al* who focus on Ghana and Zambia respectively.

The work of Ackah *et al* provides an assessment of the impact of the GFC on the Ghanaian economy.²⁶ This work examines the extent of the GFC's impact on Ghana and identifies the GFC's transmission channels into Ghana. Finally it presents the GFC's policy implications on Ghana as well as the potential policy responses. What is notable is that Ackah *et al* deliver an economic perspective to the impact of the GFC. Their approach of assessing the impact of the GFC is distinguished from this study's human rights trajectory.

Likewise, Ndulo *et al* provide one of the most authoritative works for the impact of the GFC on the Zambian economy. The work presents the Zambian setting onto which the GFC seeped. It examines the performance of the economy before the advent of the GFC and evaluates the GFC's impact in terms of global resource transfers, which are the transmission belts for the GFC into the domestic economy. The work also analyses the GFC's impact on growth and development and covers the policy implications as well as proposals for countering the GFC and ensuring macroeconomic stability.²⁷ Ndulo *et al* take on an economic analysis of the GFC, which is at variance with this study's focus on the human rights perspective of the GFC.

Other scholars like Ajakaiye *et al* highlight the extent to which the GFC affects social sectors in developing countries. Ajakaiye *et al*'s work focuses on the impact of the GFC on the equity market and social services in Ghana and Nigeria.²⁸

Additionally, Namatovu and Espinosa elaborate the impact of the GFC on patterns of

²⁵ Overseas Development Institute 'The global financial crisis and developing countries: Phase 2 synthesis' working paper 316 Results of ODI research presented in preliminary form for discussion and critical comment, March 2010 available at

<<http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5856.pdf>> (accessed 6 October 2015).

²⁶ CG Ackah et al 'Global financial crisis discussion series paper 5 on Ghana' (2009).

²⁷ M Ndulo et al 'Global financial crisis discussion series paper 10: Zambia' (2009) 1.

²⁸ O Ajakaiye et al 'Impact of the global financial crisis on the social services sector in Ghana and Nigeria' (2009) 37.

employment among men and women in the mining sector of Zambia. Focusing on the differential impact of the GFC on men and women and the intimate link between the formal and informal sectors, these scholars contend that people whose livelihoods are not integrated into the global market economically, such as rural Africa, are as much likely to be affected by the aftermath of the GFC as those integrated in the global market economy.²⁹ The work of Namatovu and Espinosa does not specifically examine the impact of the GFC on human rights but presents insight into the impact of the GFC on gender related MDGs.

Generally, Owoye identifies and analyses the different transmission vulnerability channels of African states with the aim to ascertain the level of susceptibility to external shocks and presents policy recommendations to governments and policy makers of both developed and developing countries.³⁰

Significantly, Green *et al* appositely observe that the GFC is not the last economic crisis.³¹ Accordingly, Green *et al*'s work underscores the significance of countering the GFC with measures suited to ensure resilience for reducing vulnerability, fostering development and countering existing as well as impending economic crises.³²

In terms of the human rights legal framework, Viljoen brings to light an in-depth and comprehensive overview of human rights in Africa. He examines the norms, institutions and processes for human rights realisation provided for at the United Nations (UN), the African Union (AU) and sub regional economic communities (RECs) in Africa. Further, he measures the international human rights framework against the varied African national legal systems including Ghana and Zambia. His work illustrates the role of human rights in eradicating poverty and pays attention to national integration and implementation of international human rights instruments.

The human rights legal framework is significant to this study because it embodies the human rights-based approach to countering the impact of economic crises, which is a fundamental guide for governments.

This study focuses on the socio-economic rights legal framework for Ghana and Zambia.

²⁹ R Namatovu & C Espinosa 'Engendering the Global Financial and Economic Crisis: Unveiling the links between formal and informal sectors in the mining regions in Zambia and assessing the gender implications' (2011) 2 *International Journal of Business and Social Science* 66.

³⁰ O Owoye 'The global economic and financial crisis: an overview of the effects on African countries' (2009) 15 *The Journal of African Policy Studies* 2.

³¹ Green (n 7 above) 54.

³² Green (n 7 above) 11.

Accordingly, Quansah and Hansungule have aptly covered the subject. Quansah has analysed the use of international law as an interpretative tool in human rights litigation in Ghana and Botswana³³ whereas Hansungule has examined the domestication of international human rights law in Zambia.³⁴ Through their respective works, these scholars provide an authoritative overview of the position of the international socio-economic legal framework at the Ghanaian and Zambian national levels.

In terms of a human rights approach in policy and institutional measures, the United Nations, by way of an expert meeting on promoting human rights in financial regulation and macroeconomic policies, posits that:³⁵

The financial crisis and the policy response that followed it, highlight the need for a critical re-examination of crisis prevention, response, mitigation and recovery measures that adequately accounts for their human rights impacts. Critics have charged that a lack of transparency and democratic governance in international financial institutions and the imposition of austerity measures at the national level have had wide-ranging financial and human rights implications that must be addressed.

The expert meeting resolved to support the High Commissioner for human right's mandate to mainstream the right to development and accountability of crisis prevention, response, mitigation and recovery measures, financial sector governance, national and international financial regulations, and macroeconomic policies.³⁶

This approach is pivotal in offering guidance to countries in terms of requisite policy and institutional practices for the realisation of human rights as well as the prevention, mitigation and recovery from economic crises.

Whereas there is adequate literature on the GFC and its impact on SSA generally, the nature of assessment is mostly limited to an economic as opposed to a social or human rights perspective. The few scholars like Orago, who have adopted a human rights trajectory in their assessment of the GFC's impact, have directed their focus on SSA. Therefore, there is a dearth of literature on the GFC's impact on the realisation of human rights in Zambia and Ghana respectively. Also,

³³ EK Quansah 'An examination of the use of international law as an interpretative tool in human rights litigation in Ghana and Botswana' in M Killander (eds) *International law and domestic human rights litigation in Africa* (2010) 37.

³⁴ M Hansungule 'Domestication of international human rights law in Zambia' in M Killander (eds) *International law and domestic human rights litigation in Africa* (2010) 71.

³⁵ Office of the High Commissioner for Human Rights 'Rights in Crisis: An expert meeting on rights-based approaches to financial regulation, macroeconomic policies and economic recovery' (2013) 1.

³⁶ Office of the High Commissioner for Human Rights (n 35 above) 2.

what remains a gap is that none of the available works have set out the human rights-based approach from the international human rights legal framework to inform measures with which to counter economic crises. This is imperative in effectively countering future crises and transforming the socio-economic underpinnings of Ghana and Zambia.

This study examines the GFC and its implications on Ghana and Zambia. It analyses the impact of the GFC on the realisation of human rights particularly, socio-economic rights and the right to development. This analysis is undertaken through an assessment of macroeconomic factors and the impact of the GFC on MDGs. Also, the study lays out the legal framework of socio-economic rights and the right to development. This legal framework is imperative in that it informs the human rights-based approach which is crucial for countering effects of crises like the GFC.

1.6 Research methodology

This study will be primarily based on desktop research. International and regional human rights instruments as well as literature on the subject will be analysed to provide the framework for the nexus between the effects of the GFC and human rights. Ghanaian and Zambian legislation, policy and institutional frameworks employed in response to the GFC will be analysed to ascertain their conformity with international and regional human rights obligations embodied in the human rights-based approach. Zambian and Ghanaian laws and policies will be comparatively analysed to present a model premised on country best practices.

1.7 Limitations of study

- A. The impact of the GFC on two countries encompasses very extensive issues that cannot be exhaustively discussed given the limited space of this study. The study therefore focuses on the impact of the GFC on socio-economic rights and the right to development. The study measures the impact of the GFC through macro-economic factors and the MDGs.
- B. Since the study aims at analysing whether policy and institutional measures employed in response to the GFC conform to human rights obligations as provided by international and regional instruments, it would be ideal to conduct interviews with policy makers, implementing institutions and civil society to ascertain their views on the subject.

Unfortunately owing to time and financial constraints for the study, conducting interviews would not be feasible.

- C. Whereas there is sufficient literature on the GFC and its impact on SSA generally, there is a dearth of literature specifically on the extent of the GFC's impact on Ghana and Zambia respectively and its role in impeding the attainment of the MDGs. Also, the nature of policies and institutional practices adopted by the respective countries has not been extensively covered.

1.8 Overview of chapters

Chapter one provides the background to the study, the problem statement and research questions. It also discusses the research methodology, limitations of the study and undertakes a literature review and an outline of the other chapters.

Chapter two presents the conceptual framework for the study. It provides the background of the GFC, investigates the ramifications of the GFC - particularly on macro-economic factors and MDGs - and concludes by resolving whether there is a nexus between human rights and the GFC.

Chapter three tackles the legal framework of socio-economic rights and the right to development and interrogates the policies and institutional measures formulated and implemented in response to the GFC. Specifically, the chapter examines whether the measures adopted in response to the GFC by the case study countries embody a human rights-based approach and sufficiently mirror Ghana and Zambia's international, regional, sub regional and domestic human rights obligations to protect, promote and fulfil human rights.

Chapter four draws conclusions on the findings of the study and makes recommendations, in terms of reactions to economic crises, for the implementation of measures that include the human rights-based approach. The chapter emphasises the significance of ensuring that Ghana and Zambia conform to their human rights obligations even in times of economic crises.

CHAPTER TWO – THE GFC AND ITS IMPLICATIONS ON GHANA AND ZAMBIA

2.1 Introduction

This chapter examines the GFC and its implications on Ghana and Zambia. To this end, the chapter begins with a brief background of the GFC. Thereafter it provides a synopsis of the general transmission belts of the GFC. The chapter then employs a two-pronged approach to analyse the impact of the GFC on the realisation of human rights in Ghana and Zambia respectively. The first prong explores the effects of the GFC through macroeconomic factors, whereas the second prong considers the impact of the GFC on Ghana and Zambia's attainment of the MDGs. The chapter concludes by resolving whether there is a nexus between human rights and the effects of the GFC.

2.2 The origins of the GFC

The 2008 GFC originated in the United States of America (USA). It was primarily caused by the collapse of the housing market in the USA, which resulted from the lax financial regulatory conditions and the lack of implementation of strict corporate governance conditions in the USA and most of the developed economies.³⁷ During the period leading to the GFC, credit increasingly became easily accessible in the USA. This was because financial institutions effected loose loan policies and were not restricted by stringent credit risk management and control. As a result, huge amounts of financial securities not backed by cash flow from mortgages were created. This was when investments in the housing sector in the USA were growing at a rate far beyond that of the broader economy.³⁸

Thus the mortgage market system became inundated with all types of credits including the high-risk, unsustainable and predatory lending of mortgage brokers to people whose salaries were too low to pay off the loans and were not creditworthy by acceptable standards (sub-prime borrowers).³⁹ As a result of the widened borrowing net, there was a proliferation of homeownership. This proliferation of homeownership intensified house price increases and consumer spending so that between 1997 and 2006, home prices increased by about 124 percent.⁴⁰ During this period, financial assets of all sorts ranging from credit card to companies'

³⁷ Ajakaiye et al (n 28 above) 36.

³⁸ Fundanga (n 11 above) 2.

³⁹ FA Gockel 'The world financial crisis and its implications for Ghana' Fes parliamentary briefing paper (2010) 1 available at <<http://library.fes.de/pdf-files/bueros/ghana/10494.pdf>> (accessed 23 August 2015).

⁴⁰ Ajakaiye et al (n 28 above) 36.

debt repayments were turned into securities and priced. The USA financial system, without regulation and adherence to strict corporate governance principles,⁴¹ employed rapid financial innovation such that debt-risk could be traded and distributed with securitisation. Accordingly, this left the capital base of the financial institutions exposed to the ensuing collapse of the sub-prime mortgage market in the USA. This collapse occurred when prices for houses fell and people could not sell their houses to cover their debt. Thus borrowers simultaneously and rapidly defaulted on their loans. As a result, credit dried up, interest rates surged and housing prices continued to drop.⁴² This presented the recessionary economic environment in which global trade, stock market indices and commodity prices, suffered a considerable decline.⁴³

2.3 Synopsis of The GFC's Implications on Ghana and Zambia

At the advent of the GFC, there were various schools of thought on Africa's susceptibility or lack thereof, to the sting of the GFC. At that time, the GFC was mostly prominent in the USA and Europe. Most scholars such as Arieff contended that with the exception of South Africa and Nigeria, SSA had limited exposure to the international financial markets and because of this, the GFC's initial impact would have minimal implications on SSA's financial sector.⁴⁴ However, SSA's real economy is integrated with the world economy through transmission channels such as international trade, foreign direct investment (FDI), portfolio investments, foreign aid flows, private remittances and tourism.⁴⁵ This chapter proceeds from the premise that Ghana and Zambia, like the rest of SSA, were susceptible to the external shocks of the GFC as evidenced by various transmission channels.

The contagion of the GFC permeated most developing countries, such as Ghana and Zambia, by way of the following mechanisms:⁴⁶

- a) contraction in global trade due to reduced demand for African exports;
- b) drop in foreign direct investment and other capital inflows;
- c) falling remittances from African workers based overseas; and
- d) cuts in foreign aid.

Fundanga, a former governor of the Bank of Zambia, itemised the negative effects of the GFC to include falling export demand, low tourist receipts, declining commodity prices, reductions in the availability of credit and trade finance as well as meagre inflow of remittances, foreign portfolio,

⁴¹ As above.

⁴² As above.

⁴³ Fundanga (n 11 above) 2.

⁴⁴ Arieff et al (n 10 above) 7.

⁴⁵ Owoye (n 30 above) 1.

⁴⁶ Arieff et al (n 10 above) 7.

direct investment and other capital flows.⁴⁷

The intensity of the impact extended by the GFC transmission channels varies by country.⁴⁸ Arieff asserts that these transmission mechanisms are largely connected to Africa's real economy rather than its financial sector. He relies on the rationale that, at the advent of the GFC, SSA's financial system was not as integrated into the global economy as that of emerging markets.⁴⁹ Thus, whereas most industrialised countries have managed to finance their own rescue packages by borrowing domestically and from international capital markets, developing states have insufficient sources of capital and turn to help from regional development banks, the World Bank, the IMF and traditional donors such as the Group of Eight (G8).⁵⁰

2.4 The GFC's impact on Ghana

2.4.1 The First Prong: Examining the GFC's impact through macroeconomic factors

According to Ackah *et al*, the GFC permeated the Ghanaian economy through key transmission belts such as the stock markets, banking sectors, foreign direct investment, remittances⁵¹, foreign aid and trade.⁵² Incidentally, the Labour Research and Policy Institute propose that the pronounced ramifications of the GFC on Ghana include limited access to international credit, reduced FDI and dwindling foreign exchange from international trade, reduced aid and grants, reduced remittances from Ghanaians abroad and a fall in income from tourism.⁵³

The impact of the GFC on the Ghanaian Stock market

Ajakaiye *et al* note that part of the GFC's adverse impact on Ghana's economy is mirrored by the stock market.⁵⁴ During the period preceding the GFC, Ghana's stock exchange performance was impressive and attracted considerable capital inflows.⁵⁵ This is evidenced by the steady rise of the stock market indicators such as the All-Share Index (ASI), market capitalisation and government

⁴⁷ Fundanga (n 11 above) 2.

⁴⁸ Overseas Development Institute 'The global financial crisis and developing countries: Phase 2 synthesis' working paper 316 Results of ODI research presented in preliminary form for discussion and critical comment, March 2010 available at <<http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5856.pdf>> (accessed 6 October 2015) 1.

⁴⁹ Arieff *et al* (n 10 above) 7.

⁵⁰ Arieff *et al* (n 10 above) 2.

⁵¹ According to the World Bank, remittances are the sum of workers' remittances, compensation of employees, and migrants' transfers. The IMF also defines remittances as current private transfers from migrant workers who are considered residents of the host country to recipients in the workers' country of origin. World Bank *Migration and Remittances Factbook* (2011) available at <<http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf>> (accessed 3 October 2015) 264.

⁵² Ackah *et al* (n 26 above) 2.

⁵³ n 1 above, 15.

⁵⁴ Ajakaiye *et al* (n 28 above) 37.

⁵⁵ Insaidoo (n 4 above) 24.

bonds in the period between 2005 and 2008. Yet, during the last quarter of 2008, the market started contracting so that by the first quarter of 2009, the stock market indicators declined.⁵⁶ The dawn of the impact of the GFC on the Ghana stock market is said to be the suspension of the intended issuance of a seven-year US\$ 300 million bond on the premise of gloomy world market conditions.⁵⁷ Subsequently, between 2008 and 2009, government and corporate bonds declined by 16.1 and 39.1 percent respectively.⁵⁸ During the same period, market capitalisation suffered a decline from GH¢ 17 895.12 million to GH¢ 15 941.92 million.⁵⁹ Similarly the ASI declined by 46.6 percent registering a loss of 51.76 percent.⁶⁰

The GFC's impact on Inflation and depreciation of the Ghanaian Cedi

Ghana set to achieve bold objectives, which included monetary policies such as, accelerated gross domestic product (GDP) growth rate, achievement of middle-income status of US\$ 1 000 dollars per capita by 2015, and reduction of the end period inflation to 7.0 percent then further down to 4 - 6 percent by 2008 and 2009 respectively. However, the inflation rate increased so that by 2008 it stood at 16.5 percent,⁶¹ which swelled to 19.8 and later to 20.34 percent in January and February 2009 respectively. Accordingly, the monetary policy to reduce inflation to single digit for 2008, 2009 and the beginning of 2010 respectively was not realised.⁶²

In terms of the exchange rate, the Ghanaian cedi traded steadily on the interbank market up to the second quarter of 2008 when it weakened sharply, such that by the third quarter of 2008, the cedi had depreciated by 6.0 percent, 4.6 percent and 11.7 percent against the US dollar, the UK pound and the euro respectively.⁶³ On an annual basis, the Ghanaian cedi depreciated by 20.1 percent and 16.3 percent against the US dollar and the euro respectively.⁶⁴ The Bank of Ghana attributed this turn of events partly to 'the realignments of the major international currencies, a surge in demand for foreign exchange to meet higher oil bills and food prices and servicing of external

⁵⁶ Ajakaiye et al (n 28 above) 37.

⁵⁷ See <<http://in.reuters.com/article/2009/01/28/emerging-bonds- idINLS40896920090128?sp=true>> (accessed 30 June 2015).

⁵⁸ National development planning commission et al '2008 Ghana millennium development goals report' (2010) available at <http://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Ghana/ghana_april2010.pdf> (accessed 26 August 2015) 77-78.

⁵⁹ As above.

⁶⁰ Insaadoo (n 4 above) 37.

⁶¹ n 58 above, 78.

⁶² n 58 above, 77-78.

⁶³ Insaadoo (n 4 above) 9.

⁶⁴ As above.

debts'.⁶⁵

The impact of the GFC on international trade

Because it is considered a small open economy that is hooked on cocoa, gold and timber export-led growth, the global slowdown in commodity demand as a result of the GFC presented a plethora of adverse ramifications not only on Ghana's international trade but also on the labour market, access to credit, Foreign Direct Investment (FDI), Foreign Aid and Grants (FAGs), Remittances and the country's financial market.⁶⁶ Ghana started 2008 with a great deal of buoyancy in the export sector, climaxing at about GH¢1.4 billion in the second quarter of the year. On the other hand, from the third quarter of 2008 the sting of the GFC intensified resulting in export receipts dropping below the 2007 figures in the fourth quarter.

The impact of the GFC on foreign aid flows

For a long time, foreign aid has been a major source of external finance for Ghana accounting for over 50 percent of Ghana's development budget and about 12 percent of gross national income (GNI).⁶⁷ Since 2000, Ghana has been receiving high levels of aid in support of the country's poverty reduction strategy (GPRS I and II) to achieve middle-income status by 2015 and to fulfil the MDGs.⁶⁸ The Ghana Millennium Development Goals report elaborates that although most development partners did not announce the curtailing of official development assistance (ODA), it was estimated that there would be a reduction in 2009 due to the financial crisis.⁶⁹ Accordingly the ODA to Ghana enjoyed an increasing trend, until 2009 when it recorded a very steep decline of 32.3 percent.⁷⁰ This implies that until 2009, the GFC had little or no impact on aid flows to Ghana.⁷¹

The impact of the GFC on Foreign Direct Investment (FDI)

Prior to the wave of the GFC, investing in the Ghanaian economy was attractive and FDI flows to Ghana were considerable.⁷² The 2008 'Best Investment Climate' in the Commonwealth Business Council that Ghana was awarded exemplifies Ghana's economic state in terms of FDI.⁷³ Insaideo credits the entrance of Kosmos Energy and Tullow Oil Plc in the oil industry for raising the 2007

⁶⁵ As above.

⁶⁶ n 1 above, 15.

⁶⁷ Insaideo (n 4 above) 29.

⁶⁸ As above.

⁶⁹ n 58 above, 79.

⁷⁰ As above.

⁷¹ Insaideo (n 4 above) 38.

⁷² As above.

⁷³ As above.

FDI percentage to 112.3 percent. On the other hand, by the 4th quarter of 2008 FDI inflows drastically declined by about 500 percent, from US\$1.2 billion to US\$0.2 billion.⁷⁴ The fallout of the GFC shook FDI flows to Ghana and presented significant consequences on economic growth. These results were fundamentally damaging given that FDI accounted for the creation of many jobs and also because the industrial sector relied heavily on FDI.⁷⁵ The projected employment creation by FDI projects to Ghanaians plummeted from 195 942 in 2008 to 21 050, accounting for an 89.3 percent drop.⁷⁶ The GFC contagion's negative impact on FDI is attributed to an increasing capital outflows aimed at eluding a seeming risky investment climate in Ghana. With high inflation and lending rates, weak local currency and a general loss of confidence in the economy, it is unsurprising that investors looked outside the Ghanaian economy.⁷⁷

The impact of the GFC on Remittances

Remittances from Ghanaians living abroad to their relatives at home remain an important component of the economy and constitute about five percent of total household income, 12 percent of GDP and 29 percent of exports.⁷⁸ As a consequence of the GFC there was a decline in remittances from Ghanaians in the diaspora, evidenced in part by MoneyGram.⁷⁹ MoneyGram recorded a decline in remittances from an October 2008 peak of US\$ 8 million to US\$ 6.8 million and US\$ 6 million in January 2009 and February 2009 respectively.⁸⁰ The indication is that the Ghanaian economy suffered the impact of the GFC through remittances from the last quarter of 2008 through 2009.⁸¹

On the whole, it is apposite to add that the implications elucidated above are not an exhaustive picture of the GFC's impact on Ghana's economy. Also the macroeconomic indicators employed are selected on the basis of prominence but not in an order to depict importance over the others.

2.4.2 The Second Prong: Implications of the GFC on the MDGs

The second prong employs social indicators embedded in the MDGs to assess the GFC's impact

⁷⁴ Ackah et al (n 26 above) 10.

⁷⁵ Insaideo (n 4 above) 38.

⁷⁶ Insaideo (n 4 above) 28.

⁷⁷ Insaideo (n 4 above) 28.

⁷⁸ n 58 above, 80.

⁷⁹ MoneyGram is a money transfer service that was founded in the USA and is currently the second-largest money transfer organisation in the world. It operates in more than 200 countries with more than 347,000 agent locations including Ghana and Zambia. See < http://www.ehow.com/about_5348720_moneygram.html > (accessed 11 August 2015). In Ghana, MoneyGram is operated by Ghana Commercial Bank, the biggest commercial bank in Ghana in terms of market share. See Insaideo (n 4 above) 10.

⁸⁰ Insaideo (n 4 above) 10.

⁸¹ As above.

on Ghana's development.

The GFC contagion caused declines in cash inflows, household incomes and nutrition, access to health as well as education.⁸² Additionally, the GFC caused job losses, an insecure labour market and increased the cost of living in Ghana. These results exacerbated the prevalence of hunger, disease and poverty.⁸³ In this context, the GFC undermined Ghana's capacity to create jobs, secure the financial sector, make provision for social service expenditure, sustain the growth of its economy and more significantly progress towards the attainment of the MDGs.⁸⁴

When the GFC caused the Ghanaian cedi to depreciate by way of high current-account deficits and other macroeconomic factors, it posed negative implications on the importation of goods and services. In particular, basic necessities such as consumer goods became too costly to import. This in turn caused the increase in prices of domestic consumer goods thereby reducing access to food, especially for the indigent populace.⁸⁵ The costs of importing or locally purchasing food and accessing other essentials such as transport, healthcare as well as education were prohibitive for many households.⁸⁶ In light of these factors, the eradication of extreme poverty and hunger,⁸⁷ the realisation of universal primary education,⁸⁸ programmes to promote gender equality and empowerment of women,⁸⁹ curtailment of child mortality,⁹⁰ improvement of maternal healthcare⁹¹ and prevention of HIV/AIDS, malaria and other diseases⁹² was impeded.

Remittances, as demonstrated under macroeconomic factors, represent an important income source. Thus, the GFC contagion by way of decline in remittances, particularly to individuals and households, aggravated the poverty levels and hunger in Ghana.⁹³ The aggravated poverty levels and hunger obviously laid a damper and hampered the progress on the realisation of most of the 8 MDGs. Appropriate examples are MDG 1, which is concerned with the eradication of extreme

⁸² n 58 above, 85.

⁸³ n 58 above, 85.

⁸⁴ P Quartey 'The impact of the financial & economic crisis on remittances, return migration and development in Ghana' (2009) 16.

⁸⁵ Quartey (n 84 above) 17.

⁸⁶ n 58 above, 81.

⁸⁷ MDG 1.

⁸⁸ MDG 2.

⁸⁹ MDG 3.

⁹⁰ MDG 4.

⁹¹ MDG 5.

⁹² MDG 6.

⁹³ n 58 above, 81.

poverty and hunger as well as MDG 4⁹⁴ and MDG 5⁹⁵ which require good nutrition and availability of funds in order to be realised.

In addition, as a consequence of the GFC contagion on the financial market, banks were reluctant to offer credit to households and business enterprises for fear of loan defaults.⁹⁶ Further, discount, interest, prime and lending rates increased.⁹⁷ These developments depressed share prices paid to clients and exacerbated the reduction in household incomes.⁹⁸ Evidently the MDGs were not spared from the sting of the GFC contagion as elucidated in respect of the impact spread through dwindling remittances.

The GFC's macroeconomic effect transmitted through the reduction in ODA inflow coupled with the consequence of reduced government expenditure, presented adverse implications on development and the attainment of the MDGs. This is because when governments, as did the Ghanaian government, reduce on their expenditures, spending on health, education, poverty, and sanitation programmes are usually the first to suffer.⁹⁹ These developments placed a substantial portion of Ghanaians, particularly the indigent, in precarious situations and more significantly impeded the attainment of the MDGs. The GFC depressed investment and growth thereby undermining Ghana's capacity and course of achieving the set MDGs.

2.5 The effect of the GFC on Zambia

During the decade prior to the GFC, the Zambian economy experienced positive growth and macroeconomic stability.¹⁰⁰ As a result, Zambia was on course towards realising sustainable growth and attaining the MDGs. Against this backdrop, it is apposite to state that the emergence of the GFC threatened to reverse Zambia's progress.¹⁰¹

⁹⁴ MDG 4 targets the reduction of under-five child mortality by two-thirds between 1990–2015. See United Nations 'The millennium development Goals report' (2014) 24 available at <<http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf>> (accessed 5 October 2015).

⁹⁵ MDG 5 relates to improving maternal health by reducing the maternal mortality ratio by three quarters between 1990–2015 and achieving universal access to reproductive health by 2015. See United Nations 'The millennium development Goals report' (2014) 28 available at <<http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf>> (accessed 5 October 2015).

⁹⁶ n 58 above, 80.

⁹⁷ As above.

⁹⁸ As above.

⁹⁹ Orago (n 3 above) 1.

¹⁰⁰ Ndulo et al (n 27 above) 27.

¹⁰¹ As above.

2.5.1 The First Prong: Examining the GFC's impact through macroeconomic factors

To measure the impact of the GFC on the Zambian economy, Ndulo *et al* catalogue the major global resource transfer mechanisms for Zambia to include FDI, private capital flows, ODA, remittances and trade.¹⁰² These scholars assert that among the itemised resource transfer mechanisms, FDI, ODA and trade are crucial whereas remittances and private portfolio flows remain insignificant albeit growing in importance.¹⁰³ Yet, the study employs all the itemised resource transfer mechanisms. This is because all the mechanisms are indispensable for establishing the full impact of the GFC on the country.

The impact of the GFC on trade

For Zambia, the impact of the GFC was significantly severe on trade and export earnings especially given that, the export sector in Zambia is dominated by copper, which accounts for about 70 percent of total export earnings.¹⁰⁴ The GFC contagion on trade began with the diminished demand for copper that resulted from contraction in global trade and dwindling markets in developed countries.¹⁰⁵ Thus, the immediate impact of the GFC on trade was the fall of copper prices in 2008.¹⁰⁶ Also, the amount of reserves generated by the mining sector fell by 30 percent from US\$ 649 million to US \$ 454.5 million in 2008.¹⁰⁷ Furthermore, the export earnings declined by 11 percent in 2008 when measured against the 2007 export earnings. Accordingly, the balance of trade was reduced from US\$ 610 million in 2007 to \$ 29 million in 2008.¹⁰⁸ This situation adversely affected the profitability of the mines such that some mining units were shut down and workers were laid off.¹⁰⁹ It is estimated that 8 100 workers were laid off from the mines in 2008.¹¹⁰ More workers from other sectors such as tourism also lost their jobs.

The GFC's effect on inflation and depreciation of the Zambian Kwacha

As with most economic factors, save for the ODA, the GFC contagion became more pronounced during the third quarter of 2008, although the inflation rate had already started rising during the

¹⁰² As above.

¹⁰³ As above.

¹⁰⁴ As above.

¹⁰⁵ Orago (n 3 above) 12.

¹⁰⁶ Ndulo et al (n 27 above) 27.

¹⁰⁷ African Development Bank Group 'Impact of Global Financial and Economic Crisis in Africa' (2009) available at <<http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/BAD%2096%20Anglais%20%20INTERNET%20PDF.pdf>> (accessed 21 August 2015) 7.

¹⁰⁸ Ndulo et al (n 27 above) 27.

¹⁰⁹ As above.

¹¹⁰ As above.

second quarter.¹¹¹ In 2008 alone, the overall inflation rate rose from 8.5 percent in January to 16.6 percent in December.¹¹² This rise is attributed to the GFC's pressure on the exchange rate thereby producing an increase in the annual inflation rate and depreciating the Kwacha against major currencies such as the US dollar and the UK pound during the second half of 2008. The Kwacha depreciated to above K 5 600 to one dollar in April 2009. The depreciation of the Kwacha, the exorbitant food prices and the increased net outflow of portfolio investment caused inflation to surge from nine percent in January 2008 to 16.6 percent in December 2008.

The GFC's impact on the Zambian Stock market

Beyond the fall in copper prices and the resultant devaluation of the Kwacha, the GFC adversely affected the stock market in a number of ways. The GFC caused an aversion for domestic equities and a decline in demand for equities.¹¹³ By the third quarter of 2008, many investors sold off their shares on the stock market. This resulted in the diminution of most stock prices.¹¹⁴ The flow of foreign investments at the Lusaka Stock Exchange (LUSE) during the first quarter of 2008 switched from a net inflow of US\$ 2.5 million to a net outflow of US\$ 8.5 million in the first quarter of 2009.¹¹⁵ Similarly, turnover in foreign portfolio investment declined substantially while foreign portfolio gross inflows plunged to US\$ 1.2 million during the fourth quarter of 2008 from a high of US\$ 28.6 million in the third quarter of that year.¹¹⁶ Portfolio investors in equities on the stock market liquidated their investments in equities and externalised the money. These factors had significant implications on stock market indicators such as the ASI and market capitalisation.

The effect of the GFC on FDA

According to Ndulo *et al*, FDI constitutes the third major external resource transfer belt after trade and ODA and it is mainly concentrated in the mining industry.¹¹⁷ In this regard, it is tempting to infer that FDI suffered a uniform range of sting from the GFC contagion as did trade and the security market. However, by the second quarter of 2008, the major investment projects in the mining sector had already been completed thus evading immediate discernible negative

¹¹¹ Ndulo et al (n 27 above) 9.

¹¹² Zambia National Budget Speech (2009) available at <http://www.parliament.gov.zm/sites/default/files/images/publication_docs/2009%20Budget%20Speech.pdf> (accessed 30 August 2015) 3.

¹¹³ Ndulo et al (n 27 above) 10.

¹¹⁴ Ndulo et al (n 27 above) 12.

¹¹⁵ Fundanga (n 11 above) 4.

¹¹⁶ Ndulo et al (n 27 above) 12.

¹¹⁷ Ndulo et al (n 27 above) 11.

impacts on inflows of FDI into Zambia.¹¹⁸ Nonetheless, many investments were not rolled over as most foreign investors scaled-down or held-back their investment projects not only in the mining sector but also in other sectors of the economy.¹¹⁹ Whereas some sectors scaled down their investments, production and employment, others particularly in mining units shut down resulting in about 8 100 jobs losses.¹²⁰

The GFC's impact on ODA

According to scholars such as Ndulo *et al*, ODA ranks among the most important resource inflows for Zambia.¹²¹ For many years, ODA has been greater than both FDI and reported remittances.¹²² The Zambian government budget depends on 60 percent donor support and most of it goes into health, education and poverty reduction projects. Between 2001 and 2006, the level of ODA support increased from a low of US\$ 349 million to a high of \$ 1 425 million, which is above double the level of FDI and about 13.2 percent of GDP.¹²³

It is apposite to state that as at the last quarter of 2008, the flow of ODA into the Zambian economy was not adversely affected by the GFC. That is to say that Zambia continued to receive ODA support during 2008, despite the crisis. It is noteworthy that in some cases, there was a scaling-up of ODA. On the other hand, in 2009 most donors suspended disbursements albeit on the premise that Zambia did not meet requisite governance triggers. This suspension of ODA, whatever its premise, led to a huge budgetary deficit, estimated to stand at more than US\$ 200 million by the end of 2009.¹²⁴ The domino effect of the budgetary deficit was the imputation of so much pressure on government revenue that there was no alternative funding to support projects that ran on donor funding.

The Impact of the GFC on Remittances

There is an obvious dearth of data and literature on remittance flows to Zambia. The rationale proffered by Hougaard suggests that the GFC did not present significant effects on flows of remittances to Zambia.¹²⁵ Hougaard mainly attributes this to the low migration rate out of Zambia.¹²⁶ Ndulo *et al* on the other hand resolve that because Zambia has a small diaspora

¹¹⁸ As above.

¹¹⁹ Fundanga (n 11 above) 2.

¹²⁰ Ndulo *et al* (n 27 above) 11.

¹²¹ Ndulo *et al* (n 27 above) 5.

¹²² As above.

¹²³ Ndulo *et al* (n 27 above) 17.

¹²⁴ M Ndulo *et al* 'Global financial crisis discussion Series Paper 22: Zambia Phase 2' (2010) 13.

¹²⁵ C Hougaard *et al* 'The landscape of remittances in Zambia' (2008) 3.

¹²⁶ As above.

compared with countries like Ghana, Nigeria and Kenya, the level of worker remittances is generally lower.¹²⁷ Further, it is implied that most Zambians in the diaspora are skilled workers whose jobs and income levels may not have been affected adversely by the GFC contagion.¹²⁸ Conversely, whereas some scholars suggest that the GFC had no major impact on flows of remittances in 2009, others contend that there was a stalemate in remittance rates whereby worker remittances recorded between 2005 and the second quarter of 2009, in terms of quarterly inflows, oscillated between US\$ 10 million and US\$ 20 million.¹²⁹

2.5.2 The Second Prong: Implications of the GFC on the MDGs

As alluded to above, the GFC threw a damper on the progress made towards *inter alia* the attainment of MDGs. In terms of MDG 1,¹³⁰ the GFC caused job losses in varying sectors including mining, tourism, export-based agriculture, and eventually in the manufacturing sectors.¹³¹ Food inflation escalated from 5.2 percent in November 2007 to 21.3 percent in January 2009.¹³² In addition, the prohibitive food prices impeded most of Zambia's urban population from accessing food. Accordingly the GFC contagion undermined Zambia's capacity to eradicate extreme poverty and hunger especially in urban areas.

Against this backdrop, the GFC posed a threat to the achievement of MDG 7.¹³³ Given the 'close link between poverty and environmental degradation'¹³⁴ the GFC's impact on Zambia's fiscal position both at public and private levels and the resultant job losses in, for instance, the mining and tourism sectors in 2008 and 2009 exacerbated the unemployment and poverty levels.¹³⁵ Additionally, the GFC added to the numbers of indigent people who resorted to farming and

¹²⁷ Ndulo et al (n 124 above) 12.

¹²⁸ Hougaard et al (n 125 above) 5.

¹²⁹ Ndulo et al (n 124 above) 12.

¹³⁰ Combat extreme poverty and hunger.

¹³¹ UNDP et al 'Millennium development goals progress report 2011' (2011) available at

<<http://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Zambia/Zambia%20MDG%20Report%202011.pdf>> (accessed 26 August 2015) 5.

¹³² As above.

¹³³ MDG 7 is concerned with ensuring environmental sustainability with the following targets, (a) integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources, (b) reduce biodiversity loss, achieving by 2010, a significant reduction in the rate of loss, (c) halve by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation and (d) by 2020 to achieve a significant improvement in the lives of at least 100 million slum dwellers. United Nations 'The millennium development Goals report' (2014) 40 available at <<http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf>> (accessed 5 October 2015).

¹³⁴ M Hansungule 'A Government in Denial' available at <socialwatch.org/book/export/html/816> (accessed 5 October 2015).

¹³⁵ n 95 above, 44.

exploiting natural resources like wood for their energy requirements and livelihood.¹³⁶ Thus, the GFC contagion counteracted Zambia's capacity to reverse the loss of environmental resources and the general attainment of environmental sustainability in terms of MDG 7.¹³⁷

As elaborated under the microeconomic factors, the GFC contagion depressed the fiscal position of the Zambian Government. The fall of domestic tax revenue as a percentage of GDP, to 17.2 percent in 2008 and 15.9 percent in 2009, accounts for one way in which the GFC contagion reduced the government's fiscal space.¹³⁸ Within this framework, government disbursement allocations for several ministries (Ministry of Education, Ministry of Agriculture and Ministry of Community Development & Social Services) became more erratic.¹³⁹ Additionally, the funds received by these ministries from the central treasury dwindled in 2009 compared to the amounts received in 2008. This of course presented adverse implications on the attainment of MDGs, especially the education¹⁴⁰ and health¹⁴¹ related MDGs.

Zambia relies to a large extent on external funding in order to deliver crucial health care services including curbing malnutrition, stunting and malaria in addition to HIV and AIDS.¹⁴² As indicated under the macroeconomic factors, the GFC caused a reduction on the flow of ODA to Zambia. This, in turn, reduced disbursement allocations to recipient ministries such as ministry of health. As a consequence of limited funds to the health sector, District Health Management Teams had to cut down on food, drugs and extension services to patients.¹⁴³ In this context, the GFC undermined Zambia's capacity to deliver nutritional and health amenities thereby impeding the reduction of child mortality and resultant attainment of MDGs 4, 5 and 6.¹⁴⁴

The GFC not only undermined government's capacity to deliver health services, it also impeded many households from accessing nutrition, transport and health facilities necessary for eliminating diseases and other health related conditions.

¹³⁶ Hansungule (n 134 above).

¹³⁷ As above.

¹³⁸ n 131 above, 20-21.

¹³⁹ As above.

¹⁴⁰ MDG 2.

¹⁴¹ MDG 4, 5 & 6.

¹⁴² n 132 above, 29.

¹⁴³ n 131 above, 29.

¹⁴⁴ MDG 4 targets the reduction of under-five child mortality by two-thirds between 1990 – 2015, MDG 5 relates to improving maternal health by reducing the maternal mortality ratio by three quarters between 1990 – 2015 and achieving universal access to reproductive health by 2015, and MDG 6 expects to combat and achieve universal access to treatment for HIV/AIDS, malaria and other diseases by 2015. See United Nations 'The millennium development Goals report' (2014) available at <<http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf>> (accessed 5 October 2015) 24, 28 & 34.

The foregoing two-prong analysis of the GFC's impact, demonstrates a strong correlation between the GFC contagion on one hand and the realisation of human rights on the other hand.

2.6 The nexus between human rights and the GFC

From a general perspective, the GFC contagion constrained development and undermined human rights guarantees by inhibiting individuals from enjoying their socio-economic rights. Similarly, the GFC undermined Ghana and Zambia's capacities to fulfil their obligations to promote and realise fundamental socio-economic rights, as provided for in the human rights instruments like the ICESCR and the African Charter. This backdrop exemplifies the correlation between human rights and the GFC's impact.

More specifically, the GFC contagion adversely affected the enjoyment of socio-economic rights in that it aggravated hunger and poverty levels. It is a commonly accepted trend that when a government faces a cash squeeze, such as the one facing Ghana and Zambia due to the GFC contagion, it often resorts to cutting social programmes resulting in negative implications especially on the indigent population. One of the GFC's most severe effects was its acceleration of unemployment in the two countries, which depressed household incomes and negatively affected government revenue as a result of lowered consumer consumption and thus reduced amounts of direct tax collected. In addition, diminished household income caused many households to descend into poverty, thus retreating on the progress made by government in the realisation of MDGs by 2015. The GFC contagion diminished access to basic amenities such as food, housing, medical care, work and social welfare programmes. This is particularly true for the vulnerable groups in society namely the indigent, women, children, minority groups and migrants.¹⁴⁵

2.7 Conclusion

This chapter illuminates the GFC and its implications on the realisation of human rights in Ghana and Zambia respectively. The discourse on the genesis of the GFC, its transmission channels as well as its impact on Ghana and Zambia, has demonstrated the interlock between human rights and economic crises such as the GFC. Against this backdrop, the next chapter proffers an approach to countering economic crises, which also ensures the realisation of human rights.

¹⁴⁵ Ajakaiye et al (n 28 above) 42.

CHAPTER THREE – TOWARDS A HUMAN RIGHTS BASED-APPROACH FOR COUNTERING ECONOMIC CRISES: GHANA AND ZAMBIA’S PERSPECTIVE WITH THE GFC

3.1 Introduction

This chapter interrogates the measures formulated and implemented in response to the GFC by Ghana and Zambia. The aim of the chapter is to establish whether the measures adopted in response to the GFC by the states under study, embody the human rights-based approach. To this end, the chapter lays out an abridged legal framework of socio-economic rights and the right to development. The chapter then presents the measures adopted by Ghana and Zambia, later undertaking a brief comparative analysis of the two countries’ reaction to the GFC. Lastly, the chapter rationalises the human rights-based approach as the desirable approach to countering economic crises like the GFC.

3.2 Abridged legal framework of Socio-Economic Rights

The main sub regional institutions of the African human rights system, especially through their respective judicial organs, have over the years contributed to the development of Africa’s human rights agenda.¹⁴⁶ Although the respective sub regional institutions have adopted various human rights instruments and set standards that are worthy of note, the guarantee of human rights is primarily undertaken in accordance with the African Charter.¹⁴⁷ Thus, because the sub regional systems largely defer to the existing African standards, this chapter will not detail its contribution to the legal framework of socio-economic rights.

Therefore, this section presents the three different but interconnected regimes of social-economic rights namely the global, regional and national levels.¹⁴⁸

3.2.1 International level

At the international level, the Universal Declaration on Human Rights (Universal Declaration)

¹⁴⁶ ST Ebobrah ‘Human rights developments in African sub-regional economic communities during 2010’ (2011) 11 *African Human Rights Law Journal* 217.

¹⁴⁷ Ebobrah ‘Human rights developments in African sub-regional economic communities during 2011’ (2012) 12 *African Human Rights Law Journal* 225.

¹⁴⁸ S Ibe ‘Implementing economic, social and cultural rights in Nigeria: Challenges and opportunities’ (2010) 10 *African Human Rights Law Journal* 197.

highlights the dignity and worth of the human person as well as the equal rights of men and women. It stipulates that, ‘everyone as a member of society has the right to the economic, social and cultural rights indispensable for his dignity and the free development of his personality’.¹⁴⁹ The Universal Declaration recognises a few socio-economic rights like the right to property,¹⁵⁰ the right to work¹⁵¹ and the right to social security.¹⁵²

The rights contained in the Universal Declaration were divided into two separate covenants namely, the International Covenant on Civil and Political Rights (ICCPR) and the ICESCR. Of significance to this discourse is the ICESCR, which provides for socio-economic rights.

Ancillary to the ICESCR is its fairly recent Optional Protocol, which was adopted on 10 December 2008.¹⁵³ The Optional Protocol to the ICESCR established, at the international level, the procedure for individual complaints and access to remedies for victims of violations of socio-economic rights.¹⁵⁴ This complaints procedure is implemented before the UN Committee on Social, Economic and Cultural Rights (Committee on ESCR), which is the monitoring body of the ICESCR enjoined to carry out the functions provided for under the Optional Protocol.¹⁵⁵ The Committee on ESCR also offers guidance on socio-economic issues as provided for under the ICESCR. In the wake of the GFC and its impact on human rights, the Committee on ESCR through a letter addressed to the ICESCR state parties echoed the states’ obligation to use the maximum available resources to fulfil economic, social and cultural rights, even in times of crisis.¹⁵⁶

At international level, socio-economic rights are also anchored in several instruments such as the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against women (CEDAW).

3.2.2 Regional level

At regional level is the African Charter which constitutes a comprehensive instrument,

¹⁴⁹ Universal Declaration of Human Rights, art 22.

¹⁵⁰ n 149 above, art 17.

¹⁵¹ n 149 above, art 23.

¹⁵² n 149 above, arts 22 & 25.

¹⁵³ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights available at <http://www.ohchr.org/Documents/HRBodies/CESCR/OProtocol_en.pdf> (accessed 28 September 2015).

¹⁵⁴ n 153 above, art 2.

¹⁵⁵ n 153 above, paragraph 7 preamble.

¹⁵⁶ See <<http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>> (accessed 3 October 2015).

encapsulating a range of individual and group rights.¹⁵⁷ The African Charter recognises all categories of human rights like individual rights, peoples' rights, duties, some socio-economic rights and political rights.¹⁵⁸

What is more distinct is that the African Charter is the first binding international human rights instrument to provide for the right to development.¹⁵⁹ Article 22 of the African Charter provides that 'all peoples are entitled to their economic, social and cultural development'.¹⁶⁰ According to this provision, the right to development is to be realised with due regard to peoples' freedom and identity and in the equal enjoyment of the common heritage of mankind.

The African Charter mandates state parties, including Ghana and Zambia, individually or collectively, to ensure that the right to development is exercised. It is noteworthy that the right to development represents a collective right and thus distinguishable from other types of rights such as individual rights. The distinction between a collective right and an individual right was discussed by the African Commission on Human and Peoples' Rights (African Commission) in the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*¹⁶¹ (*Endorois case*).

It is notable that the right-holders of the right to development belong to specific categories of individuals such as indigenous people, members of a community and citizens of a state or even continent.¹⁶² It follows that the enforceability of the right to development is limited to common concerns of collectives and does not extend to subjective interests of individuals. This means that a claim for the right to development can only successfully be made by an eligible group of individuals as opposed to a single individual or group that does not meet the requisite classification as outlined in the *Endorois case*.

Even though the right to development may be considered restrictive in that it discounts individuals and focuses on peoples collectively, it remains crucial for advancing the needs of groups. For instance, the right to development can be employed to ensure that the needs of minority groups in a divided society receive equal treatment as the majority groups.

¹⁵⁷ M Hansungule 'History of the African Charter' unpublished paper, University of Pretoria, South Africa 2015 3.

¹⁵⁸ C Heyns & M Killander *Compendium of key human rights documents of the African Union* (2013) 29.

¹⁵⁹ Viljoen (n 17 above) 226.

¹⁶⁰ African Charter on Human and Peoples' Rights, art 22.

¹⁶¹ *Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (2009) AHRLR 75 (ACHPR 2009).

¹⁶² Viljoen (n 17 above) 226.

Other notable features of the African Charter are reflected by its principles underlying the rights, duties and freedoms contained in it. Prominent principles of the African Charter include equal access to basic rights such as education, healthcare, work and work-related rights.¹⁶³

In addition to the human rights regime at regional level,¹⁶⁴ there are also policy-related mechanisms adopted to sanction sustainable economic development and the achievement of developmental goals. These mechanisms are relevant to the promotion and protection of socio-economic rights. Notable among them is the New Partnership for Africa's Development (NEPAD)¹⁶⁵ and The African Peer Review Mechanism (APRM).¹⁶⁶ Both Ghana and Zambia are committed to NEPAD and the APRM mechanisms.

3.2.3 National implementation of international human rights obligations

Viljoen contends that, the extent to which international human rights law becomes part of a country's domestic law is closely linked to the status international law enjoys under that country's domestic law.¹⁶⁷ In recapitulation of this theory, Viljoen asserts; 'the ultimate test of international human rights law is the extent to which it takes root in national soil'.¹⁶⁸ This is taken to mean that ratification of international human rights treaties only becomes meaningful where their provisions can be enforced at the national level.¹⁶⁹

Ghana and Zambia, like most of commonwealth Africa, both subscribe to the dualist approach to the incorporation of international law into national law.¹⁷⁰ The Ghanaian Constitution provides that, duly executed treaties are subject to ratification by either an act of parliament or a resolution

¹⁶³ Hansungule (n 157 above) 2.

¹⁶⁴ The African regional human rights regime comprises all the instruments under the African Union.

¹⁶⁵ New Partnership for Africa's Development (NEPAD) is a framework within which the African Union interacts with the rest of the world, particularly the industrialised countries and the multilateral global institutions. NEPAD's main objective is to place African countries on a path of sustainable growth and development and thereby curb the escalating marginalisation of the continent. E Baimu 'Human rights in NEPAD and its implications for the African human rights system' (2002) 2 *African Human Rights Law Journal* 303.

¹⁶⁶ The African Peer Review Mechanism (APRM), established under the Declaration on Democracy, Political, Economic and Corporate Governance (Governance Declaration) is NEPAD's accountability mechanism. It is a self-monitoring mechanism, which aims to prompt states to draft a national program of action to remedy identified governance deficiencies. The APRM deals with four governance thematic areas namely; democracy and political governance, economic governance and management, corporate governance, and socioeconomic development. C Heyns & M Killander 'The African human rights system' in C Heyns & K Steffiszyn (eds) *Human rights, peace and justice in Africa: a reader* (2006) 214.

¹⁶⁷ Viljoen (n 17 above) 518.

¹⁶⁸ Viljoen (n 17 above) 517.

¹⁶⁹ As above.

¹⁷⁰ Hansungule 'Domestication of international human rights law in Zambia' in Killander (n 34 above) 71; EK Quansah 'An examination of the use of international law as an interpretative tool in human rights litigation in Ghana and Botswana' in Killander (n 33 above) 37.

of parliament supported by more than half of all the members of parliament.¹⁷¹ Similarly, Hansungule posits the Zambian position that, to constitute part of the domestic law, treaties have to be domesticated.¹⁷² This means that international treaties do not *ipso facto* form part of domestic law upon ratification.

It is noteworthy that neither Ghana nor Zambia has domesticated the African Charter. Currently, the only dualist state that has domesticated the African Charter is Nigeria.¹⁷³ Nevertheless, Ghana and Zambia bear a significant responsibility to recognise the rights in the treaties they have ratified and give them effect through legislative and other measures.¹⁷⁴ In terms of legislative measures, Hansungule makes a case that Bill of Rights entrenched in constitutions, though not extensively; embody provisions of international law which have been domesticated over the years.¹⁷⁵

More notably, Appiagyei-Atua underscores Archer J's position in the case of *New Patriotic Party v Inspector General of Police*¹⁷⁶ that, the mere fact that the African Charter has not been domesticated does not mean that it cannot be implemented at domestic level.¹⁷⁷ To buttress this position, Appiagyei-Atua refers to the case of *New Patriotic Party v Attorney General (Ciba case)*¹⁷⁸ in which Atuguba JSC held that, principles of international human rights are enforceable to the extent that they can lend themselves to the Ghanaian context.

The Ghana Constitution leaves room for deference to international human rights norms by the courts and relevant government agencies. It provides that the fundamental human rights provided for under chapter 5 are not exclusive of other rights which are not specifically listed provided these other rights are inherent in democracy and are intended to secure the freedom and dignity of man.¹⁷⁹ It is clear that article 33(5) of the Ghana Constitution tempers with Ghana's dualist position.

Based on the foregoing, it can be safely argued that in Ghana, the African Charter is enforceable.

¹⁷¹ Ghana Constitution, art 75(2).

¹⁷² M Hansungule 'Domestication of international human rights law in Zambia' in Killander (n 34 above) 71.

¹⁷³ Viljoen (n 17 above) 522.

¹⁷⁴ Viljoen (n 17 above) 517.

¹⁷⁵ M Hansungule 'Domestication of international human rights law in Zambia' in Killander (n 34 above) 74.

¹⁷⁶ *New Patriotic Party v Inspector-General of Police* (2000) 2 HRLRA 1 (Supreme Court of Ghana). In this case the Supreme Court of Ghana found sections 7 and 8 of the Ghana Public Order Decree 1972 which required prior permission, at the discretion of the Minister of Interior, in order to hold a public meetings or processions, to be in violation of the Constitution as well as the African Charter in terms of freedom of assembly guarantees.

¹⁷⁷ K Appiagyei-Atua 'Ghana at 50: the place of international human rights norms in the courts' in HJAN Mensa-Bonsu et al (eds) *Ghana law since independence: history, development and prospects* (2007) 196.

¹⁷⁸ *New Patriotic Party v Attorney General (CIBA)* (1996-97) SCGLR 729 (Supreme Court of Ghana).

¹⁷⁹ n 171 above, art 33(5).

Besides, in the Ghanaian context, international treaties that have been ratified albeit not domesticated may be enforced provided they either meet the requirements of article 33(5) of the Ghana Constitution or constitute international customary law. Accordingly, Appiagyei-Atua advances a remarkable postulation, which deserves consideration and analysis in line with international law. He suggests that the African Charter has attained the status of a regional customary norm, having been ratified by all African states and considering the African Commission's rich jurisprudence, which is premised on its provisions.¹⁸⁰

Conversely, the Zambian Constitution does not expressly define the relationship between international law and national law.¹⁸¹ Nonetheless, like in Ghana, there is a trend of adjudicating human rights issues, whenever possible, and placing reliance on relevant international human rights instruments even where the instruments have not been domesticated.¹⁸² This has been done generally on the premise that such international instruments have been ratified and do not derogate from or conflict with the constitution or national laws.¹⁸³

For instance, the Zambian High Court pronounced itself in the case of *Sara Longwe v Intercontinental Hotels*¹⁸⁴ in which Musumali J underscored that ratification of a treaty without reservation connotes willingness by a state to be bound by the treaty. Musumali J implied that a ratified international instrument can be applied to resolve an issue before court which is not covered by local legislation. In a more recent decision namely *Roy Clarke v The Attorney-General*,¹⁸⁵ Musonda J nullified the deportation order of the Minister of Home Affairs issued against a British national resident in Zambia for exercising his freedom of expression enshrined in the Constitution. Musonda J noted that the applicant was being punished for doing something for

¹⁸⁰ Appiagyei-Atua 'Ghana at 50: the place of international human rights norms in the courts' in Mensa-Bonsu (n 32 above) 196.

¹⁸¹ Quansah 'An examination of the use of international law as an interpretative tool in human rights litigation in Ghana and Botswana' in Killander (n 33 above) 37.

¹⁸² K Quashigah 'Trends in the promotion and protection of human rights under the 1992 Constitution' in K Bofo-Arthur (eds) *Ghana, One Decade of the Liberal State* (2007) 71.

¹⁸³ Quansah 'An examination of the use of international law as an interpretative tool in human rights litigation in Ghana and Botswana' in Killander (n 33 above) 37; see also M Hansungule 'Domestication of international human rights law in Zambia' in Killander (n 34 above) 71.

¹⁸⁴ *Sara Longwe v Intercontinental Hotels* HP/765/1992 (High Court of Zambia)

¹⁸⁵ *Roy Clarke v The Attorney-General* HP/003/2004 (High Court of Zambia). This case involved an attempted deportation of the applicant from Zambia to the United Kingdom. The applicant, a British national who has been resident in Zambia for over 40 years, published a satire in one of the national newspapers in which he described politicians, including the president, using names of animals. The minister of home affairs under whose docket immigration and deportation falls immediately made it known he would not tolerate insults from a foreigner abusing his welcome to the country. Thereafter the minister of foreign affairs took definitive steps to deport the applicant. As a result, the applicant lodged an emergency application before the High Court to restrain the government from deporting him. Musonda J upheld the application and held in part that, the applicant only exercised his freedom of expression enshrined in the Constitution and in international law for which if he was Zambian, he would not have been punished. Consequently, the deportation order issued against him was quashed.

which he would not have been punished if he were a Zambian national. Notable in this case is the court's reliance on international human rights instruments.¹⁸⁶ The Attorney-General appealed against Musonda J's decision but was unsuccessful. The Supreme Court upheld Musonda J's decision.¹⁸⁷

Guarantee of socio-economic rights in the Ghana and Zambian Constitutions

Both the Ghana and Zambian Constitutions contain a Bill of Rights enouncing a range of human rights, including socio-economic rights. Chapter 5 of the Ghana Constitution captures fundamental human rights and freedoms including socio-economic rights. These rights are binding both on the state and on private individuals and institutions.¹⁸⁸

Additionally, Chapter 6 of the Ghana Constitution provides for directive principles of state policy, which outline the political, economic, social, educational and cultural objectives to be implemented by state officials and individuals, for the establishment of a just and free society.¹⁸⁹ The legal value of the provisions of Chapter 6 of the Ghana Constitution has hitherto been the subject of debate and undergone positive development.

Judicial precedence and scholarly works have elaborated the legal value of the directive principles of state policy entrenched in Chapter 6. In the *Ciba* case,¹⁹⁰ the Supreme Court held in part that directive principles of state policy afford a yardstick by which policy decisions are to be implemented and provide a guide for judicial interpretation. Further that when a court applies them for interpretation, they are read and applied in conjunction with justiciable rights and freedoms set out in chapter 5 because they have no separate existence of their own.¹⁹¹

Quashigah endorsed the Supreme Court's decision in the *Ciba* case by positing that the provisions of Chapter 6 extend judicial consequences. He further asserted that:¹⁹²

[T]he directive principles of state policy are enforceable through fundamental human rights and freedoms provisions of the Constitution...in the interpretation of this fundamental right provision, the court must take into account the directive principles provision....

¹⁸⁶ ICCPR, art 13; n 60 above, arts 7 & 13.

¹⁸⁷ *Attorney-General v Clarke* (2008) AHRLR 259 (ZSC 2008) (Supreme Court of Zambia).

¹⁸⁸ n 171, art 12.

¹⁸⁹ Quashigah 'Trends in the promotion and protection of human rights under the 1992 Constitution' in Bofo-Arthur (n 182 above) 24.

¹⁹⁰ n 178 above.

¹⁹¹ n 190 above, 743.

¹⁹² Quashigah (n 182 above) 33.

The foregoing view stating that directive principles of state policy are not independently enforceable before court has been superseded by the latter Supreme Court decision in the case of *Ghana Lotto Operators Association v. National Lottery Authority*.¹⁹³ In this case, Date-Bah JSC held *inter alia* that ‘the economic objectives laid out in article 36 of the Constitution are legally binding and not merely a matter of conscience for successive government’.¹⁹⁴ Also, Date-Bah JSC declared that the directive principles of state policy are of themselves presumed to be justiciable.¹⁹⁵ This is a revolutionary stance, which departs from the traditional conception of directive principles of state policy as non-justiciable.¹⁹⁶ Basically the Supreme Court endorsed the earlier position stated by Adade JSC in *National Patriotic Party v Attorney General* (31 December case)¹⁹⁷ that directive principles of state policy are an integral part of the constitution and therefore of equal binding force as other provisions of the constitution. Therefore, human rights provisions spelt out in Chapters 5 and 6 of the Ghana Constitution are justiciable.

Similarly, Part 3 of the Zambian Constitution protects fundamental rights and freedoms of the individual, which are mainly civil and political rights. Socio-economic rights are relegated to the directive principles of state policy set out under Part 9 of the Constitution. These directive principles in part enjoin the state to provide citizens with an enabling economic, social and cultural environment.¹⁹⁸ According to article 110 of the Constitution, the principles of state policy should guide the three organs of government in developing and implementing national policy on one hand and in enacting laws and applying the Constitution and other laws, on the other hand. Part 9 of the Zambian Constitution clearly details the legal value of these directive principles of state policy by providing that the directive principles of state policy are not justiciable.¹⁹⁹

Notwithstanding that under the Zambian Constitution, socio-economic rights are non-justiciable, Zambia remains bound to perform its international obligations including the socio-economic rights related obligations enshrined in treaties like the African Charter and the ICESCR. This position is portended by the principle of *pacta sunt servanda*, which is enounced under the Vienna Convention on the Law of Treaties (Vienna Convention).²⁰⁰ It is noteworthy that, the

¹⁹³ *Ghana Lotto Operators Association v. National Lottery Authority* (2007-2008) SCGLR 1089 (Supreme Court of Ghana).

¹⁹⁴ n 193 above, 1113.

¹⁹⁵ n 193 above, 1113.

¹⁹⁶ K Quashigah ‘The evolution of the Constitution of Ghana: the jurisprudence of the courts’ in HJAN Mensa-Bonsu et al (eds) *Ghana law since independence: history, development and prospects* (2007) 132.

¹⁹⁷ *New Patriotic Party v Attorney General* (31 December case) (1993-94) 2 GLR 35.

¹⁹⁸ Constitution of Zambia, art 112.

¹⁹⁹ n 198 above, art 111.

²⁰⁰ Vienna Convention on the Law of Treaties, art 26.

Vienna Convention proscribes state parties from invoking municipal laws as an excuse for failing to implement obligations enshrined in international treaties.²⁰¹

On the whole, in discharging their human rights obligations, Ghana and Zambia are required to ensure the respect, protection and fulfilment of human rights as provided for at all levels of the human rights regimes including customary international law.²⁰² In particular, the obligation to *respect* entails that states must refrain from interfering, directly or indirectly, with the enjoyment of human rights. Equally, the obligation to *protect* requires states to take measures to prevent third parties, including legal entities, from interfering with human rights while the duty to *fulfil* means that states must adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of human rights.²⁰³

3.3 Laws, Policies and institutional mechanisms adopted in response to the GFC

This section examines the measures employed by Ghana and Zambia in response to the GFC. The examination focuses on the macro-economic, social and structural policies adopted in an attempt to alleviate the hard impact of the GFC. It should be noted that the record of measures highlighted below is not exhaustive.

3.3.1 Measures employed by Ghana in response to the GFC

Macro-economic measures

In response to the GFC, the Ghanaian government waived import duties on fertilisers and agricultural inputs as well as on rice, wheat and yellow maize. Particularly, tax on most foreign and local basic amenities was matched.²⁰⁴ These measures called for the amendment of the Customs Excise and Preventive Service (Duty and Other Taxes) Act.²⁰⁵ Additionally, in an attempt to aid fishing communities to upsurge their output, the Excise Duty and Debt Recovery levies on premix oil were removed.²⁰⁶ Also, for purposes of minimizing the high cost of transportation, which was exacerbated by escalating oil prices, the Ghanaian government moved to reduce taxes on all petroleum products.²⁰⁷ Furthermore, with respect to the energy sector, the

²⁰¹ n 200 above, art 27.

²⁰² Ibe (n 148 above) 197.

²⁰³ UN Committee on ESCR, General Comment 14; Centre for Economic and Social Rights 'Human Rights and the Global Economic Crisis: Consequences, Causes and Responses' (2009) 9.

²⁰⁴ Government of Ghana Budget Statement and Economic Policies (2009) 280 available at <http://www.mofep.gov.gh/sites/default/files/budget/2009_budget.pdf> (accessed 30 September 2015).

²⁰⁵ Customs and Excise (Duties and other taxes) (Amendment) Act 2007, Act 739.

²⁰⁶ Ackah et al (n 26 above) 23.

²⁰⁷ n 204 above, 291. Petroleum Taxes and Related Levies Amendment Act 756 of 2008. Under this Act, excise duty on oil and gas was reduced from 9.1000 pesewas per litre to 6.2000 pesewas; kerosene from 6.4875 pesewas per litre to

government increased support for the production cost of electricity in order to cushion domestic consumers from high tariffs.

Social measures

Prior to the advent of the GFC, Ghana already had in place a number of social protection and poverty reduction schemes such as the Agriculture Subsidy programme, Livelihood and Empowerment against Poverty (LEAP) programme, Capitation Grants to basic schools, school feeding programme, health exemptions including the National Health Insurance Scheme, and social security and pension schemes (for formal sector workers).²⁰⁸ In order to counter the impact of the GFC, the Ghanaian government undertook to not only maintain but also expand the social protection and poverty reduction schemes including cash transfers, provision of healthcare and free education through capitation grants and school feeding programmes.²⁰⁹ For example, the government granted subsidies on fertiliser to ensure a uniform good harvest and curb the impact of rising food prices, which was causing food shortages.²¹⁰ With reference to the LEAP programme,²¹¹ the government undertook to expand the programme from its 2008 high of 23 000 households to 35 000 households in 2009.²¹² The LEAP programme provides flexible subsistence grants to targeted extremely poor households.²¹³ During the GFC's precursor (food crisis), LEAP was used as an emergency programme to help households in the flood-affected areas in the north of Ghana. Thus, by the end of 2008, LEAP had reached out to over 8 000 households across 54 districts on regular LEAP and an additional 15 000 households were supported under the emergency programme.

4.5375; marine gas oil from 6.4945 pesewas per litre to 3.9945 pesewas; and premix fuel from 5.1456 pesewas per litre to zero. The Debt Recovery Levy on petroleum products was also reviewed, with oil, gas and marine gas oil attracting 2.50 pesewas per litre, down from 5.00 pesewas.

²⁰⁸ ISODEC-UNICEF Collaboration *Analysis of the 2010 national budget and economic policy statement of the government of Ghana to determine gaps and opportunities for women and children* (2010) 32 available at <<http://www.isodec.org.gh/publications/UNICEF%20BUDGET%20ANALYSIS%202010-FINAL%20DRAFT.pdf>> (accessed 20 September 2015).

²⁰⁹ Ackah (n 26 above) 23.

²¹⁰ As above.

²¹¹ The LEAP programme targets the aged (above 65 years and without subsistence or support), persons with severe disabilities without productive capacities as well as orphans and vulnerable children through their caregivers, available at <<http://www.ghana.gov.gh/index.php/media-center/regional-news/432-payment-of-livelihood-empowerment-against-poverty-leap>> (accessed 30 September 2015).

²¹² Ackah (n 26 above) 24.

²¹³ See <<http://www.ghana.gov.gh/index.php/media-center/regional-news/432-payment-of-livelihood-empowerment-against-poverty-leap>> (accessed 30 September 2015).

Structural measures

The Ghanaian government put in place a number of structural changes mainly aimed at:²¹⁴

[E]stablishing a lean but effective and efficient government by cutting out ostentation and profligate expenditure, rationalising ministries and ministerial appointments and promoting service, humility and integrity as canons of government.

In terms of adjusting government expenditure, the government cut down disbursements on official foreign travels, workshops and conferences.²¹⁵ Further, in an attempt to create a lean government, the total number of Ministries was reduced from 27 to 23.²¹⁶

Moreover, to stabilize the local currency in the face of the GFC's fiscal reduction effect, the government sought to curb excessive profit repatriation by reviewing mining, oil and forestry firms' agreements.²¹⁷ Correspondingly, in order to promote investor confidence in Ghana and to salvage the declining economic and trade sectors, the Ghanaian government undertook measures to enforce the Foreign Exchange Act in terms of monitoring and reporting.²¹⁸ To this end, Ghana took steps to implement the International Financial Reporting Standards (IFRS).²¹⁹ These IFRS were adopted in January 2007 to replace the Ghana National Accounting Standards (GAS) and to regulate, in accordance with international standards of financial reporting, Ghanaian public corporations including banks, insurance companies and listed companies on the Ghana stock exchange.²²⁰

3.3.2 Measures adopted by Zambia in response to the GFC

Macro-economic measures

The Zambian government's reaction to the GFC was largely centered on expansionary fiscal policies meant to stimulate the economy.²²¹ Accordingly, the government increased its spending from 24.8 percent of GDP in 2008 to 25.4 percent of GDP in 2009.²²² Also the source of revenue

²¹⁴ n 204 above, 45.

²¹⁵ n 204 above, 45.

²¹⁶ n 204 above, 46.

²¹⁷ n 204 above, 291.

²¹⁸ n 204 above, 291.

²¹⁹ Ackah (n 26 above) 24.

²²⁰ See <<http://www.ghananewsagency.org/economics/ghana-adopts-international-financial-reporting-standards-next-year-1919>> (accessed 3 October 2015).

²²¹ Ndulo et al (n 27 above) 23.

²²² Zambia National Budget Speech (2009) 8 available at <http://www.parliament.gov.zm/sites/default/files/images/publication_docs/2009%20Budget%20Speech.pdf> (accessed 30 September 2015).

for the 2009 budget was adjusted so that domestic revenues supported 70 percent of the budget while the remaining percentage was shared between donor funding and domestic borrowing with 18 percent of the budget being financed by ODA and 12 percent being owed to domestic borrowing.²²³ In order to support this expansionary budget and meet the shortfall from domestic revenues, government increased domestic borrowing from 1.3 percent to 1.8 percent of GDP. Beyond domestic borrowing, Zambia up surged its borrowing from the planned 1.9 percent to 3 percent of GDP in 2009.²²⁴ Moreover, in an attempt to build a dynamic economy, the government maintained a flexible and market-determined exchange rate.²²⁵ However, the Bank of Zambia continued to closely monitor the market and take measures to safeguard the domestic financial system so as to maintain stability but also as a result of public pressure.²²⁶

Additionally, the Bank of Zambia enhanced its vigilance and interaction with the domestic financial system to ensure adherence to its supervisory guidelines and reduce the volatility of the exchange rate by increasing the supply of foreign exchange to the market.²²⁷ During the fourth quarter of 2008, the Bank of Zambia made net sales of US\$ 127.5 million to the inter-bank market in an effort to check the exchange rate. This resulted in the depletion of foreign exchange reserves causing the gross international reserves at Bank of Zambia to drop by 23 percent between July and December 2008.²²⁸

In 2009 the government made major strides towards maintaining and attracting investment particularly in the mining sector by offering concessions to mining corporations, meant to reduce the cost of production and increase profitability.²²⁹ Also, the government removed the windfall tax, retained the variable profit tax and increased capital allowance to 100 percent, as an investment incentive.²³⁰ Furthermore, customs duty on heavy fuel oil was reduced from 30 percent to 15 percent, while tariffs on copper powder, copper flakes and copper blisters were waived.²³¹ Additionally copper and cobalt concentrates were included on the value added tax import deferment scheme.²³²

²²³ As above.

²²⁴ Te Velde et al (n 23 above) 28.

²²⁵ Ndulo et al (n 27 above) 23.

²²⁶ n 222 above, 6; Green et al (n 7 above) 43.

²²⁷ n 222 above, 6.

²²⁸ Ndulo et al (n 27 above) 23.

²²⁹ n 222 above, 22.

²³⁰ As above.

²³¹ As above.

²³² Southern Africa Resource Watch 'Impact of the global financial crisis on mining in southern Africa' (2009) 84.

Social measures

At the time of the GFC explosion, Zambia already had an operational social protection scheme comprising a number of major social protection programmes such as the Public Welfare Assistance Scheme (PWAS), the Social Cash Transfer Scheme (SCTS), the Food Security Pack (FSP), the School Feeding Programme and the Urban Self-help Programme.²³³ In addition to these social protection programmes, there are other smaller social protection projects run by Non-Governmental Organisations (NGOs) and local communities.²³⁴ The object of these programmes is to promote community capacity to develop initiatives to overcome the problems of extreme poverty and vulnerability and at the same time assist beneficiaries to fulfil their basic needs.²³⁵

In terms of the major social protection programmes, the PWAS predates Zambia's independence (1964) and owes its main funding to the government.²³⁶ Through this scheme, beneficiaries receive aid like income support, education, child protection, occupational training as well as for better nutrition and health.²³⁷ At the advent of the GFC, the SCTS was still a pilot scheme limited to the eastern and southern provinces of Zambia and dependent on donor funding for its operations.²³⁸ On the other hand, the FSP is a government funded scheme that provides agricultural inputs and training to poor and vulnerable small-scale farmers in rural areas.²³⁹

Beside the FSP, the government employed the Fertiliser Support programme through which it supplied fertiliser and other farming inputs as loans to struggling subsistence farmers to enable them continue their farming activities through the GFC period.²⁴⁰ The government further supported farmers through the Food Reserve Agency (FRA). During the harvest season, the FRA being the major buyer of agro-products fixed a higher buying price for all agro-products from farmers so as to guarantee a stable and ready market. This measure was undertaken to stimulate future production and enhance national food security.²⁴¹ On the other hand, the School Feeding Programme provides school meals and take-home rations to schoolchildren from poor and

²³³ See <<http://www.socialprotection.org/gimi/gess/ShowCountryProfile.action;jsessionid=2d1ac45bd9930603733a199f08991c3c02272719fd163acca0d77691bc294360.e3aTbhuLbNmSe34MchaRahaKbNz0?id=238>> (accessed 30 September 2015).

²³⁴ Ndulo et al (n 27 above) 33.

²³⁵ See <http://www.ilo.org/dyn/ilossi/ssimain.viewScheme?p_lang=en&p_scheme_id=327&p_geoaid=894> (accessed 25 September 2015).

²³⁶ Ndulo et al (n 27 above) 33.

²³⁷ As above.

²³⁸ See <<http://www.socialprotection.org/gimi/gess/ShowCountryProfile.action;jsessionid=2d1ac45bd9930603733a199f08991c3c02272719fd163acca0d77691bc294360.e3aTbhuLbNmSe34MchaRahaKbNz0?id=238>> (accessed 25 September 2015).

²³⁹ See <<http://www.mcdmch.gov.zm/food-security-pack-programme>> (accessed 30 September 2015).

²⁴⁰ n 222 above, 10.

²⁴¹ n 222 above, 11.

vulnerable households. This scheme is funded by The World Food Programme (WFP).²⁴² Last among the major social protection schemes in terms of coverage and impact is the Urban Self-help Programme.²⁴³ This is an urban-based project concentrated in peri-urban areas, which provides employment mostly on a short-term basis through public works programmes, such as those on roads, drainages and solid waste removal.²⁴⁴

With the exception of the PWAS and the FSP, the major social protection schemes are supported by donor aid. These schemes are valuable to their beneficiaries. However, their impact even before the explosion of the GFC did not benefit most of the poor and vulnerable people due to poor targeting and low benefits, resulting from inadequate resources and funding.²⁴⁵ Additionally, although government undertook to scale up the funding for its major social protection schemes in its Fifth National Development Plan (FNDP) for the period 2006 to 2010, these schemes suffered dwindling government budgetary allocations in the face of the negative implications that came with the GFC. Needless to say, the schemes that are reliant on donor aid for their operations suffered the aid deficit associated with the GFC.

Structural measures

In response to the GFC, government sustained certain structural reforms in the areas of Private Sector Development (PSD), Public Service Management (PSM) and Financial Sector Development (FSDP).²⁴⁶ The PSD and the FSDP programmes both completed their first phases during the GFC period and government approved their respective second phases to commence in 2009 and end in 2012. In respect of the PSD:²⁴⁷

[G]overnment approved the business licensing report, which recommended that 170 licences be eliminated, 57 reclassified, 99 amalgamated into 21, while 290 licences be retained. In addition, the Micro Small Medium Enterprise (MSME) policy was launched as a response to the limited access to affordable finance. In this regard, the Business Development Services (BDS) Voucher Scheme was set up to increase access of MSMEs to business development services through the scheme at a subsidized cost.

Other measure undertaken by the Government to ensure that the GFC is brought under control involved the supply of affordable capital for enterprises. For instance, government sustained the

²⁴² Ndulo et al (n 27 above) 33.

²⁴³ As above.

²⁴⁴ <<http://interactions.eldis.org/programme/peri-urban-self-help-push-replaced-push-ii-replaced-programme-support-poverty-elimination>> (accessed 25 September 2015).

²⁴⁵ Ndulo et al (n 27 above) 33.

²⁴⁶ Republic of Zambia Ministry of Finance and National Planning 'Fifth National Development Plan annual progress report' (2009) 3.

²⁴⁷ n 246 above, 3.

Public Private Partnership Policy, which was launched in 2008 to accelerate the development of infrastructure in the country.²⁴⁸ Correspondingly, government revived the Citizens Economic Empowerment Commission (CEEC). This Commission is established by an Act of parliament²⁴⁹ to provide empowerment funds to citizens interested in venturing into business but lack capital to do so.²⁵⁰ The CEEC focuses on empowering citizens in economic sectors including tourism, mining, trade, manufacturing, agriculture and energy as well as wholesale and retail trade services sector.²⁵¹ During the throes of the GFC, the CEEC sought to provide loans to struggling firms so as to revamp their business. To this end, in 2008 a total of 15 billion Kwacha was disbursed, creating employment for close to 1 400 people. This programme, coupled with others ancillary to the Constituency Development Fund, was continued in 2009 with modest increment in disbursements.²⁵²

3.4 Comparative analysis of Ghana and Zambia's responses to the GFC

Ndulo *et al* describe the response of the Zambian government to the GFC as rather lacklustre.²⁵³ Similarly, Green *et al* postulate that prior to and during the GFC period, the Zambian government was disinclined to extend social transfer programmes in the form of cash, in-kind benefits, bursaries, school feeding or healthcare costs.²⁵⁴ Accordingly, during the GFC period, with the exception of public sector pensions, Zambia's social protection allocations were mostly negligible.²⁵⁵ Te Velde *et al* describe Zambia's reaction to the GFC as largely devoid of growth-enhancing structural, institutional reforms and lacking the drive to diversify the economy.²⁵⁶ Correspondingly Ndulo *et al* point out that the discernible government response adopted to address the effects of the GFC was largely limited to fiscal policies, monetary policies and exchange rate policies.²⁵⁷

From an inverse perspective, these economic policies were targeted at government spending on *inter alia* infrastructure, health and education. Ideally this policy response would be creditable in light of the notion that implementation of prudent economic policies is vital for sustaining the

²⁴⁸ n 222 above, 6.

²⁴⁹ The Citizens Economic Empowerment Act 9 of 2006.

²⁵⁰ As above.

²⁵¹ R Silumbe 'Monitoring the impact of the Global Financial Crisis on poverty in Zambia' (2010) 21 available at <http://www.pepnet.org/sites/pepnet.org/files/typo3doc/pdf/CBMS_country_proj_profiles/Zambia/Zambia_Revised_GFC_paper_CBMS2_v3.pdf> (accessed 11 August 2015).

²⁵² n 222 above, 18.

²⁵³ Ndulo *et al* (n 27 above) 23.

²⁵⁴ Green (n 7 above) 44.

²⁵⁵ As above.

²⁵⁶ Te Velde *et al* (n 23 above) 75.

²⁵⁷ Ndulo *et al* (n 27 above) 23.

growth of an economy.²⁵⁸ However, this policy response was largely unsatisfactory for more reasons than the sting of the GFC on the Zambian economy. The unsatisfactory performance is also attributable to government's proclivity to expend resources thinly on distinct programmes without taking the significance of intra and inter-sectorial linkages into account.²⁵⁹ To exemplify, government forfeited potential tax revenues (windfall tax and tax breaks given to mining corporations) and facilitated the reopening of some mines that were closed.²⁶⁰ This relieved mining companies.²⁶¹ However, it exacerbated Zambia's already weak fiscal position as it significantly reduced the revenues from the mining sector.²⁶² Consequently, other sectors like the social sector suffered significant turbulence in levels of budgetary allocations and actual disbursements.

Generally, the government's policy response to the GFC was biased towards protecting key investments especially in the mining sector and sustaining diversification in agriculture. This approach undeniably protected jobs in the private industries and ensured food security mostly for farmers. Yet, the government's disinclination to widely expend resources on key social programmes disadvantaged vulnerable groups with no connection to the agricultural or private industry sectors. This exacerbated the poverty levels in Zambia.

Plainly, the foregoing response to the GFC undertaken by Zambia does not mirror a direction towards remedying the GFC's threat to the realisation of human rights especially socio-economic rights, including the right to development as guaranteed at the different human rights levels. This deduction is based largely on the inadequacy of measures deliberately directed at promoting and protecting human rights. Most social protection schemes highlighted were either allocated negligible disbursements or executed in an uneven fashion. This response lacks the direction to mitigate the devastating effects of the GFC on lives and livelihoods especially on the poorest people.

By contrast, the Ghanaian government made attempts to increase its social protection coverage in the wake of the GFC. For instance, some components of the Ghana National Social Protection Strategy (GNSPS) were launched and coverage of a new social grants programme was extended during the GFC's precursor (food crisis).²⁶³ More significantly, Ghana's 2009 National Budget

²⁵⁸ n 246 above, 4.

²⁵⁹ As above.

²⁶⁰ Green (n 7 above) 44.

²⁶¹ Silumbe (n 251 above) 21.

²⁶² Green (n 7 above) 33.

²⁶³ Green (n 7 above) 47.

committed to sustain social protection expenditure, maintain its school feeding programme, Capitation Grant Scheme and extend participation in the National Health Insurance Scheme.²⁶⁴

Generally, for both Ghana and Zambia, the GFC did not result in major social protection policy revisions or significant expansion of social protection provision. Nonetheless, Ghana extended some pre-existing programmes like the food distributions for vulnerable groups and school feeding programmes albeit on a modest scale.²⁶⁵ Also, whereas the Ghanaian government reviewed mining, oil and forestry firms' agreements with the intention to curb excessive profit repatriation and stabilize the local currency in the face of the GFC's fiscal reduction effect, the Zambian government exacerbated its fiscal deficit by forfeiting potential tax revenues mostly from mining corporations.

At a cursory glance, the measures commissioned by the Ghanaian government appear responsive and progressive. Yet, most of the measures were not realised due to inadequate budgetary allocations, limited coverage, weak targeting mechanisms in some interventions, weak institutional capacity, low cost efficiency and effectiveness, inadequate support to informal sectors outside the agricultural sector, over concentration on protection and lack of coordination among implementing agencies.²⁶⁶ This result informs the conclusion that the measures adopted by the Ghanaian government in reaction to the GFC fell short of the international human rights standards requisite for the advancement of human rights.

The absence of significant social protection measures employed by Ghana and Zambia reflects these countries' disregard for the human rights-based approach. Said human rights-based approach is illustrated as follows:²⁶⁷

[A] conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities, which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.

The foregoing means that states such as Ghana and Zambia should view human rights norms and standards as the frame of reference and consider human rights implications in the planning, implementation and evaluation of strategies, policies and national economic and social

²⁶⁴ n 204 above, 280.

²⁶⁵ Te Velde et al (n 23 above) 28.

²⁶⁶ n 208 above, 32.

²⁶⁷ See <<http://www.unicef.org/policyanalysis/rights/>> (accessed 17 September 2015).

development programmes. Under the human rights-based approach, the efficacy of a policy must be measured against its impact on fundamental freedoms and rights. For instance, a policy that may result in adverse implications for the vulnerable citizenry like the exacerbation of hunger has to be reconsidered.²⁶⁸ The human rights-based approach to countering the impact of economic crises entails adopting a culture of human rights and placing it at the centre of all measures formulated in response to the crises. Particularly, the human rights-based approach entails placing the realisation of human rights among the objectives of development or recovery from crises.²⁶⁹ Also it requires a constant monitoring of how measures adopted affect the enjoyment of human rights.

3.5 Rationalisation of the human rights approach

The effective enforcement of socio-economic rights is not only limited to the adoption of simplistic legislative, administrative, and judicial measures. It also requires the use of the human rights-based approach as the foundation for government developmental programmes.²⁷⁰

Pillay, a former UN Commissioner for human rights, espoused the value of the rights-based approach by advising governments to fully integrate human rights principles and standards into law and practice, in order to respond to economic downturns in a truly sustainable manner.²⁷¹ This illustrates the primacy of human rights even in times of crisis. Also, it signifies that where there are conflicting national policy concerns, human rights should be prioritised.²⁷² In addition, the former High Commissioner for Human Rights stated that, as economic, social and political conditions change, so should states formulate and implement appropriate regulations strengthening protection for human rights.²⁷³ This buttresses the position regarding the primacy of human rights. Additionally, from the list of bases upon which states can derogate from their obligation to uphold human rights, Pillay excluded crises such as the GFC.²⁷⁴

A noteworthy rationalisation of the human rights-based approach states that although legislative, administrative and judicial measures at whatever level may be conceived and managed by states,

²⁶⁸ RF Oppong 'Trade and human rights: a perspective for agents of trade policy using a rights-based approach to development' (2006) 6 *African Human Rights Law Journal* 127.

²⁶⁹ JC Mubangizi 'Towards a human rights-based approach to trade and investment' (2012) 16 *Law democracy & Development* 114.

²⁷⁰ Viljoen (n 17 above) 570.

²⁷¹ N Pillay UN High Commissioner for Human Rights 'Statement to the UN General Assembly High Level Conference on the World Financial and Economic Crisis and its Impact' (2009).

²⁷² N Udombana 'Keeping the promise: improving access to socio-economic rights in Africa' (2012) 18 *Buffalo Human Rights Law Review* 138.

²⁷³ UN High Commissioner for Human Rights, Trade and Investment E/CN.4/Sub.2/2003/9, paragraph 31(d).

²⁷⁴ n 271 above.

they exist for the benefit of the people and not the states.²⁷⁵ It follows that measures to curb the effects of crises like the GFC are otiose if they are not people-centred and concerned more with the vulnerable groups of society. Oppong asserts that the human rights-based approach ‘sees the human being as the central object of development and not merely as its facilitating instrument; it treats individuals as the end and not merely the means of development’.²⁷⁶

As Viljoen states, ‘poverty is the greatest threat to and source of human rights violations in Africa’.²⁷⁷ This lays the foundations for challenging the reasonableness of government policies and demanding the re-direction of state resources towards people-centred measures. This is particularly indispensable for the protection of vulnerable members of society given that where there are no resources ‘it is people who are poor, and not states...’²⁷⁸ Besides, the right to development implies that states must use public resources for public good.

Similarly the UN High Commission on Human Rights in a report on austerity measures and economic and social rights arising from the GFC, reiterated the state duty to have regard to the principles of non-retrogression, progressive realisation, non-discrimination and minimum core obligations when adopting policies such as austerity measures because such policies raise significant implications for the protection of socio-economic rights.²⁷⁹

Furthermore, Oppong portends that it would be irrational to advocate that developing countries like Ghana and Zambia should only implement economic development when all human rights have been realised.²⁸⁰ For this reason, it is crucial to indicate that the human rights-based approach neither disregards the significance of economic growth to development nor lend itself as the exclusive solution to countering economic crises or ensuring human development. Instead, ‘what the approach advocates is that respect for human rights should be an essential component of all development policies, including trade’.²⁸¹ Needless to say, policies that promote economic growth such as trade, taxation and investment can promote human rights when formulated and implemented in accordance with the human rights-based approach. Thus it is indispensable to properly align structural, economic and social policies so as to ensure a meaningful development that recognises the significance of synergies by different sectors.

²⁷⁵ Viljoen (n 17 above) 570.

²⁷⁶ Oppong (n 268 above) 127.

²⁷⁷ Viljoen (n 17 above) 481.

²⁷⁸ Viljoen (n 17 above) 481.

²⁷⁹ United Nations human rights office of the high commissioner Report on austerity measures and economic and social rights submitted pursuant to General Assembly resolution 48/141.

²⁸⁰ Oppong (n 268 above) 127.

²⁸¹ As above.

3.6 Conclusion

At the heart of the chapter is an examination of Ghana and Zambia's adherence to their human rights obligations in reaction to the GFC contagion. The discourse has shown that the governments of Ghana and Zambia adopted diverse economic measures such as expansionary monetary policies, special monitoring units, strengthening financial sector regulations, providing fiscal stimulus packages, foreign exchange controls and revising budget expenditures.²⁸² Evidently, both countries sought to counter the GFC largely with economic rescue measures, which is generally prudent given that the GFC is an economic crisis. However, the human rights standards set out at the different levels presented in this chapter, require countries to formulate and execute such measures essentially in tune with the human rights-based approach.

This chapter has resolved that Ghana and Zambia's response to the GFC disregarded the human rights-based approach. Generally, the formulation and implementation of most of the measures employed in response to the GFC by both countries neglected the approach requisite to remedy the GFC's threat to the realisation of human rights especially socio-economic rights, including the right to development.

The chapter has illustrated how the human rights based-approach can counter economic crises while at the same time giving primacy to the promotion and protection of human rights. The chapter proffers the human right based-approach as the desirable model to inform policy and institutional measures adopted to counter economic crises.

²⁸² Ackah (n 26 above) 25.

CHAPTER FOUR – CONCLUSIONS AND RECOMMENDATIONS

4.1 Introduction

This chapter draws conclusions on the findings of the study and makes recommendations, in terms of reactions to economic crises, for the implementation of measures that include the human rights based approach. The chapter emphasises the significance of ensuring that Ghana and Zambia conform to their human rights obligations even in times of economic crises.

4.2 Summary of key findings

This section summarises the study's key findings as framed by the research objectives and questions, which are detailed under chapter one. The main thrust of this study is an enquiry of the GFC and its impact on human rights. The study focuses on the GFC's impact on the realisation of socio-economic rights and the right to development in Ghana and Zambia respectively.

The work presents the genesis of the GFC, which is centred on the collapse of the housing market in the USA. The study highlights the factors leading up to the GFC such as risky and easily accessible loans involving sub-prime borrowers, tradable credit and lax financial regulatory conditions in the USA financial system. The study points out that these factors culminated in credit drying up, interest rates surging and prices for houses falling such that people could not sell their houses to cover their debt hence they ended up defaulting on their debt. Consequently, financial institutions and individuals alike sold off stocks and hoarded onto their money. Furthermore, major financial institutions went bankrupt. The study concludes that the foregoing basically caused the credit crunch, which is the recessionary economic environment in which consumption, global trade, stock market indices and commodity prices suffered a considerable decline.

The work then takes on a two-pronged approach to set out the impact of the GFC on the realisation of human rights in the two countries case studied. The first prong explores the effects of the GFC through macroeconomic factors while the second prong considers the impact of the GFC on Ghana and Zambia's attainment of the MDGs. On the whole, this study has demonstrated that the GFC contagion plagued Ghana and Zambia, through the following mechanisms:

- I. contraction in global trade due to reduced demand for African exports;
- II. drop in foreign direct investment and other capital inflows;
- III. falling remittances from African workers based overseas; and
- IV. cuts in foreign aid.

In response to the main enquiry, the work has demonstrated how the GFC contagion constrained development and undermined human rights guarantees by inhibiting individuals from enjoying their socio-economic rights in the two countries case studied. The work has illustrated how the GFC diminished access to basic amenities such as food, housing, medical care, work and social welfare programmes and thereby impeding the attainment of the MDGs. Also the study has illuminated how the GFC undermined Ghana and Zambia's capacities to fulfil their obligations to promote and realise socio-economic rights and the right to development, as provided for under the socio-economic rights and right to development legal framework.

Based on the foregoing, this study resolved the first research question, which sought to establish the nexus between the GFC and human rights. The study has concluded that there is a strong correlation between the GFC on one hand and the realisation of human rights on the other. Further, the work has underscored the inclination of governments to cut down on social programmes when confronted with cash deficits like the case, which plagued Ghana and Zambia because of the GFC. This trend of cutting on programmes such as social protection schemes, presents negative implications on the realisation of human rights, which as the study has illustrated, are mostly rooted in social programmes. Accordingly, this study has featured several effects of the GFC, in the countries case studied, including the acceleration of unemployment, which depressed household incomes and negatively affected government revenue as a result of lowered consumer consumption and reduced amounts of direct tax collected. In addition, diminished household income caused many households to descend into poverty thus retreating on the progress made by the respective governments in the realisation of the MDGs by 2015.

The study employs the nexus between the GFC and human rights to make a case for applying human rights-based approaches to inform policy and institutional practices, when countering crises like the GFC. Correspondingly, the second objective of this study is to ascertain the extent to which policies and institutional practices adopted in reaction to the GFC include the human rights-based approach.

This study has revealed that the governments of Ghana and Zambia adopted diverse economic measures including expansionary monetary policies, special monitoring units, strengthening financial sector regulations, providing fiscal stimulus packages, foreign exchange controls and revising budget expenditures. The main finding on this subject is that Ghana and Zambia's response to the GFC disregarded the human rights-based approach. This finding is mainly

because the measures employed in response to the GFC by both countries do not reflect primacy to preventing regression on human rights and protecting vulnerable groups. The measures adopted by both countries case studied were largely economic rescue measures like expansionary monetary policies, financial sector regulations, foreign exchange controls and revision of government budget expenditures. These measures neglected the approach requisite to remedy the GFC's threat to the realisation of human rights especially socio-economic rights, including the right to development.

The foregoing resolves the second research question, which sought to establish the extent to which the countries case studied include human rights-based approaches in policy and institutional measures adopted in reaction to the GFC. Accordingly the second research question is linked to the third research question, which sought to interrogate the extent to which Ghana and Zambia's respective policies and institutional measures mirror their international human rights obligations to protect, promote and fulfil human rights. This study has detailed the legal framework for the right to development and socio-economic rights so as to proffer the standard that Ghana and Zambia should measure up to. This was done particularly to illuminate the human rights-based approach, which is embedded in the legal framework enunciated in the study.

The work has contrasted the measures adopted by Ghana and Zambia in reaction to the GFC. Further, the work has highlighted the domestic legal and institutional practice inadequacies that have undermined the realisation of human rights and in particular, the right to development and socio-economic rights. Significantly, the work illustrates how the human rights-based approach ensures the protection of human rights, later proffering the human rights-based approach as an indispensable model for countering massive economic crises like the GFC.

Finally, using the human rights-based approach the work lays out how Ghana and Zambia can manage the impediments to the realisation of human rights presented by economic crises. This study's final assessment demonstrates that Ghana and Zambia are both enjoined to implement human rights.

4.3 Recommendations

In line with the findings of this study, the governments in Ghana and Zambia need to take definitive steps in reaction to future economic crises, so as to enhance socio-economic rights and

the right to development. To this end, the countries under study should facilitate the adoption of the human rights-based approach.

This study has shown through Ghana and Zambia that the GFC's impact affects growth and impedes the realisation of socio-economic rights. The GFC causes governments to retreat on their commitments to social service expenditure, which can lead to retrogression in the enjoyment of these rights. This emphasises the importance of maintaining and enhancing financial support for safety nets to protect rights holders against the shocks of economic crises. The macro economic and social challenges posed by the GFC require an understanding of suitable social protection policy responses.²⁸³ In this regard, Owoye posits that major economic crises like the GFC present rare opportunity for African countries like Ghana and Zambia to realign their economic structures.²⁸⁴

Thus lessons learned from the GFC and preceding economic crises can offer guidance on how to minimise the shocks of future economic crises on human rights. Given the shortcomings of the policies undertaken in response to the GFC by Ghana and Zambia, policy reform constitutes the most pertinent recommendation in this study. To ensure that policies adopted to counter economic crises are rooted in the human right-based approach, certain requirements have to be applied.

The Committee on ESCR has set out the following requirements that any proposed policy change or adjustment has to meet:²⁸⁵

- I. ensure that the measure is temporary to last only for the period of the crisis;
- II. demonstrate exhaustion of alternative measures and show that the proposed measure is necessary, proportionate and the least restrictive to the enjoyment of socio-economic rights;
- III. ensure that the measure is not discriminatory and is supportive of social transfers to mitigate inequalities associated with crises and protects disadvantaged groups from being disproportionately affected. Also, demonstrate legitimate participation of affected groups in the policy adoption process; and
- IV. ensure that the measure identifies the minimum core content of rights and ensures their protection at all times.

Ghana and Zambia are importuned to adopt and implement laws and policies aimed at enhancing access to basic socio-economic goods and services such as health care, education, housing, social

²⁸³ Ajakaiye (n 28 above) 42.

²⁸⁴ Owoye (n 30 above) 25.

²⁸⁵ n 20 above, 2

security and cultural life.²⁸⁶ The writer advocates for the adoption of sufficient safety nets and social assistance schemes to protect vulnerable and marginalised groups who are the most unequipped against the shocks of the GFC.

The foregoing guidelines are central to ensuring that measures adopted to counter economic crises mirror the human rights-based approach. In addition, the writer advocates for the following measures, as crucial for countering economic crises:

- Adopt human rights centred economic policies and execute them in a transparent, equitable and participatory manner that involves the various social groups. Before adopting economic measures, undertake impact assessments so as to ensure that the measures in form and effect are non-regressive to human rights.
- Adopt social protection policies and labour market responses to mitigate the impact of the crisis on employment, education and health care. This also entails strengthening social assistance institutions and protection programmes. The strengthening of social assistance institutions should not be limited to funding government social welfare departments and social insurance institutions for civil servants but should extend to strengthening the capacity of Non-Governmental Organisations (NGOs) that have social protection mandates and are actively involved in the implementation of response measures. This will ensure human rights protection from the shocks of the crises and generate human development, which is indispensable for sustainable and resilient economic systems in the face of future economic crises.
- Regulate the financial sector by adopting policy and legal measures to regulate banking services in times of economic crises so as to ensure that banks serve the interests of society by lending without discriminating against members of vulnerable groups. The Ghanaian and Zambian governments should also enjoin their central banks to balance the need to maintain low inflation on the one hand with the responsibility (which should be formulated into policy) to curb income inequities and sustain jobs, businesses and other means of livelihood on the other, through various credit and supervisory instruments.
- Promote agricultural production in order to diversify the economic mainstays especially for Zambia whose economy is largely dependent on the mining sector. This study

²⁸⁶ n 20 above, 2

recommends the promotion of agriculture and agricultural production with a focus on expanding domestic and regional markets for the food and consumer goods sectors.

- To mitigate the shocks of economic crises, this study's findings on Ghana's GFC experience brings to the fore, the importance of formulating policies and targets that are realistic and can actually be implemented taking into account the available resources.
- Both Ghana and Zambia should domesticate the African Charter.

4.4 Conclusion

The significance of this study is to advocate for the implementation of the human rights-based approach from states, when countering economic crises such as the GFC. Thus in line with the ultimate objective of the study, the work has provided the case study countries with guidelines of the model human rights-based approach with which to counter economic crises. Needless to say, the human rights-based approach is indispensable for the protection, promotion and fulfilment of human rights as well as for meaningful economic growth.

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