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Abstract

This chapter analyses the inception of the Global Financial Crisis (GFC) of 2008, how it impacted and still impacts the enjoyment of human rights through a decline in economic growth and constantly low revenue thereby adversely affecting the realisation of socio-economic rights in Ghana and Zambia. The chapter proffers the human rights-based approach as desirable to mitigate, if not fully counter, the ramifications of the GFC. The chapter argues that failure to utilise the human rights-based approach can have dire consequences for the most vulnerable in society. Consequently, the chapter concludes that, the adoption of social assistance schemes to protect the most vulnerable and marginalised groups of individuals in these countries; the adoption of human rights centred economic policies as well as of social protection policies; and the regulation of the financial sector by adopting policies more in line with the demands of the demoted groups of citizens should play a growing and important role to ensure the continuous enjoyment of socio-economic rights during economic crises.

1 Introduction

The 2008 global financial crisis (GFC) had adverse socio-economic effects on Africa¹ because of Africa's resource dependence on external actors, which makes Africa vulnerable 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'.² The effect of the GFC continues to

1 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.

2 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.

be felt around the world especially in developing countries although most of these economies are on a recovery path.³ 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).⁴ Notably, the GFC's debut was at the confluence of the financial, fuel and food crises.⁵

The fact that the GFC is neither the first nor the last of its kind⁶ motivated this study, to uncover appropriate and practical human rights-based responses with which to counter future economic crises. Focusing on Ghana and Zambia, this chapter examines 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 located in different parts of Sub-Saharan Africa (SSA), these countries present similar and divergent political, economic, and demographic characteristics worth examining. For instance, in terms of economic drivers, mining constitutes Zambia's mainstay contributing about 70 per cent to export earnings.⁷ For Ghana, beside timber and gold, the agricultural sector remains dominant in the economy employing 56 per cent of the labour force and accounting for more than one third of national output.⁸ Although Ghana and Zambia were both colonised by Britain 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 is part of the Economic Community of West African States (ECOWAS), Zambia belongs to the Southern Africa Development Community (SADC). These characteristics make the two countries suitable choices for the case study, particularly considering that the study's proposals could fit wider application beyond Ghana and Zambia.

The GFC sent shockwaves 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. For Ghana and Zambia, these ramifications

3 M Insaideo 'The impact of the 2007/2008 global financial crisis on Ghana' (2011) 24 <https://www.google.com/search?client=safari&rls=en&q=I+acknowledge+the+im+measurable+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).

4 International Monetary Fund 'World economic outlook 2014: legacies, clouds & uncertainties' (2014) <http://www.imf.org/external/pubs/ft/weo/2014/02/pdf/text.pdf> (accessed 14 July 2015).

5 Center for Economic and Social Rights 'Human rights and the global economic crisis' (2009) 1 http://cesr.org/sites/default/files/CESR-Human_Rights_and_the_Global_Economic_Crisis.pdf (accessed 30 June 2015).

6 D Green *et al* 'The global economic crisis and developing countries: Impact and response' (2010) 54.

7 Green (n 6 above) 22.

8 Insaideo (n 3 above) 40.

were generally transmitted through contraction in international trade, drop in foreign direct investment, reduction in remittances from citizens in the diaspora and cuts in foreign aid.⁹ In other instances, corporations closed down their operations, which led to lower income tax revenue.¹⁰

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.¹¹ 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.¹²

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:¹³

[E]qual attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. The promotion of, respect for, and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.

The Declaration on the Right to Development also provides that States bear the primary responsibility for the creation of national and international conditions favourable to the realisation of the right to development.¹⁴

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.¹⁵ It provides that all peoples are entitled to their economic, social and cultural development.¹⁶ Further, State Parties, including Ghana and Zambia, are mandated individually or collectively, to ensure that the right to development is exercised. In sum, the GFC impeded development, exacerbated extreme poverty and

9 A Arieff *et al* 'Global economic crisis: Impact on Sub-Saharan Africa and global policy responses' (2010) 7.

10 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.

11 Orago (n 2 above) 1.

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

13 Declaration on the Right to Development, preambular para 9.

14 Declaration on the Right to Development, preambular para 14.

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

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

undermined the capacity of developing states to create the requisite environment for the realisation of human rights. This is what informs the need to employ appropriate measures in reaction to GFC.¹⁷ The human rights-based approach is identified for consideration as an appropriate and meaningful response to the woes presented by the GFC.

2 The GFC and its implications on Ghana and Zambia

The 2008 GFC originated in the United States of America (USA), 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 country and other developed economies.¹⁸ During the period leading to the GFC, credit became easily accessible in the USA because financial institutions effected loose loan policies and were not restricted by stringent credit risk management and control. This resulted in huge amounts of financial securities not backed by cash flow from mortgages. At this point investing in the housing sector in the USA was growing at a rate far beyond that of the broader economy.¹⁹

Consequently, the mortgage market 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).²⁰ The widened borrowing net resulted in a proliferation of homeownership, which escalated house price increases and consumer spending so that between 1997 and 2006, home prices increased by about 124 per cent.²¹ During this period, financial assets of all sorts ranging from credit card to companies' debt repayments were turned into securities and priced. The American financial system, without regulation and adherence to strict corporate governance principles,²² employed rapid financial innovation such that debt-risk could be traded and distributed with securitisation. This left the capital base of the financial institutions exposed to the ensuing collapse of the sub-prime mortgage market in the USA. The collapse occurred when prices for houses fell and people could not sell their houses to cover their debt. Thus, borrowers simultaneously defaulted on

17 C Lumina 'Sovereign debt and human rights' <http://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIIIChapter21.pdf> (accessed 30 June 2015).

18 O Ajakaiye *et al* 'Impact of the global financial crisis on the social services sector in Ghana and Nigeria' (2009) 36.

19 Fundanga (n 10 above) 2.

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

21 Ajakaiye *et al* (n 18 above) 36.

22 As above.

their loans. As a result, credit dried up, interest rates surged and housing prices continued to drop²³ leading to a recessionary economic environment in which global trade, stock market indices and commodity prices, suffered a considerable decline and culminated into the GFC.²⁴

The GFC affected Ghana and Zambia in various ways including 'contraction in global trade due to reduced demand for African exports; drop in foreign direct investment and other capital inflows; falling remittances from African workers based overseas; and cuts in foreign aid.'²⁵ It is important to note that the intensity of the impact extended by the GFC transmission channels varied by country.²⁶ 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, remittances, trade and foreign aid.²⁷ This was concurred by the Labour Research and Policy Institute, which proposed 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.²⁸

Because Ghana is a small open economy hooked on cocoa, gold and timber export-led growth, the global slowdown in commodity demand as a result of the GFC presented many adverse ramifications on Ghana's international trade as well as on the labour market, access to credit, Foreign Direct Investment (FDI), Foreign Aid and Grants (FAGs), remittances and the country's financial market.²⁹ The GFC caused declines in cash inflows, household incomes and nutrition, access to health as well as education.³⁰ The GFC also caused job losses, an insecure labour market and increased the cost of living in Ghana. These exacerbated the prevalence of hunger, disease and poverty.³¹

In this context, the GFC undermined Ghana's capacity to create jobs, secure the financial sector, make provision for social service expenditure,

23 As above.

24 Fundanga (n 10 above) 2.

25 Arieff *et al* (n 9 above) 7.

26 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 <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5856.pdf> (accessed 6 October 2015) 1.

27 CG Ackah *et al* 'Global financial crisis discussion series paper 5 on Ghana' (2009) 2.

28 Labour Research & Policy Institute 'The effects of the global economic and financial crisis on the Ghanaian economy and labour market' Working Paper (2009) 15.

29 As above.

30 National development planning commission *et al* '2008 Ghana millennium development goals report' (2010) http://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Ghana/ghana_april2010.pdf (accessed 26 August 2015).

31 As above.

sustain the growth of its economy and, more significantly, progress towards the attainment of the MDGs.³² When the GFC caused the Ghanaian currency (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.³³ The costs of importing or locally purchasing food and accessing other essentials such as transport, healthcare and education were prohibitive for many households.³⁴ In light of these factors, the eradication of extreme poverty and hunger,³⁵ the realisation of universal primary education,³⁶ programmes to promote gender equality and empowerment of women,³⁷ reduction of child mortality,³⁸ improvement of maternal healthcare³⁹ and prevention of HIV/AIDS and malaria and other diseases⁴⁰ was impeded. The GFC by way of decline in remittances, particularly to individuals and households, aggravated the poverty levels and hunger in Ghana.⁴¹ The aggravated poverty levels and hunger hampered the progress on the realisation of most of the eight MDGs, especially MDG 1 on the eradication of extreme poverty and hunger as well as MDG 4 on reduction of child mortality⁴² and MDG 5 on the improvement of maternal health,⁴³ which require consideration funds to be realised.

In addition, as a consequence of the GFC on the financial market, banks were reluctant to offer credit to many households and business enterprises for fear of loan defaults.⁴⁴ Further, discount, interest, prime and lending rates increased.⁴⁵ All these developments depressed share prices paid to clients and exacerbated the reduction in household incomes.⁴⁶ Evidently, the MDGs were not spared from the sting of the

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

33 Quartey (as above) 17.

34 National development planning commission *et al* (n 30 above) 81.

35 MDG 1.

36 MDG 2.

37 MDG 3.

38 MDG 4.

39 MDG 5.

40 MDG 6.

41 National development planning commission *et al* (n 30 above) 81.

42 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 <http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf> (accessed 5 October 2015).

43 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 <http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf> (accessed 5 October 2015).

44 n 30 above, 80.

45 As above.

46 As above.

GFC as elucidated in respect of the impact spread through dwindling remittances.

The GFC's macroeconomic effect transmitted through the reduction in Official Development Assistance (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 their expenditures, spending on health, education, poverty, and sanitation programmes are usually the first to suffer.⁴⁷ Such 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 to achieving the MDGs.

In Zambia, during the decade prior to the GFC, the Zambian economy experienced positive growth and macroeconomic stability.⁴⁸ As a result, Zambia was on course to 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. For Zambia, the impact of the GFC was severe on trade and export earnings especially given that copper, which accounts for about 70 per cent of total export earnings, dominates the export sector in Zambia.⁴⁹ Thus, the immediate impact of the GFC on trade was the fall of copper prices in 2008.⁵⁰ This led to a plunge in the amount of reserves generated by the mining sector and a steep decline in the export earnings. Accordingly, the balance of trade was reduced from US\$ 610 million in 2007 to \$ 29 million in 2008.⁵¹ This situation adversely affected the profitability of the mines such that some mining units were shut down and workers were laid off. More workers from other sectors such as tourism also lost their jobs.

In terms of inflation and depreciation of the Zambian currency (Kwacha), in 2008 alone, the overall inflation rate rose from 8.5 per cent in January to 16.6 per cent in December.⁵² This rise is attributed to the GFC's pressure on the exchange rate leading to 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.

47 Orago (n 2 above) 1.

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

49 As above.

50 As above.

51 As above.

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

On the stock market, the GFC caused an aversion for domestic equities and a decline in demand for equities.⁵³ 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 2009.⁵⁴ 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.⁵⁵

On the whole, the GFC threw a damper on the progress made towards *inter alia* the attainment of MDGs.⁵⁶ In terms of MDG 1,⁵⁷ the GFC caused job losses in varying sectors including mining, tourism, export-based agriculture, and eventually in the manufacturing sectors.⁵⁸ It is estimated that 8 100 workers were laid off from the mines in 2008.⁵⁹ Food inflation escalated from 5.2 per cent in November 2007 to 21.3 per cent in January 2009.⁶⁰ In addition, the prohibitive food prices impeded most of Zambia's urban population from accessing food. Accordingly, the GFC 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 7.⁶¹ Given the 'close link between poverty and environmental degradation'⁶² 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.⁶³ Additionally, the GFC added to the numbers of indigent people who resorted to farming and exploiting natural resources like wood for their energy requirements and livelihood.⁶⁴ Thus, the GFC counteracted Zambia's capacity to reverse the loss of

53 Ndulo *et al* (n 48 above) 10.

54 Fundanga (n 10 above) 4.

55 Ndulo *et al* (n 48 above) 12.

56 Ndulo *et al* (n 48 above) 27.

57 Combat extreme poverty and hunger.

58 UNDP *et al* 'Millennium development goals progress report 2011' (2011) <http://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Zambia/Zambia%20MDG%20Report%202011.pdf> (accessed 26 August 2015).

59 As above.

60 As above.

61 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 <http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf> (accessed 5 October 2015).

62 M Hansungule 'A Government in denial' <http://www.socialwatch.org/book/export/html/816> (accessed 5 October 2015).

63 United Nations 'The millennium development Goals report' (2014) 44 <http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf> (accessed 5 October 2015).

64 Hansungule (n 62 above).

environmental resources and the general attainment of environmental sustainability in terms of MDG 7.⁶⁵

The fall of domestic tax revenue as a percentage of GDP, from 18.7 in 2007 to 17.2 per cent in 2008 and 15.9 per cent in 2009 also reduced the government's fiscal space.⁶⁶ 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.⁶⁷ Furthermore, the funds received by these ministries from the central treasury decreased in 2009 compared to the amounts received in 2008. This presented adverse implications on the attainment of MDGs, especially the education⁶⁸ and health⁶⁹ related MDGs.

The GFC caused a reduction in the flow of ODA to Zambia and in turn, reduced disbursement allocations to recipient ministries such as the 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.⁷⁰ 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 6.⁷¹

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. The above analysis of the GFC's impact, demonstrates a strong correlation between the GFC on one hand and the realisation of human rights on the other hand.

From a general perspective, the GFC 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

65 As above.

66 UNDP *et al* 'Millennium development goals progress report 2011' (2011) <http://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Zambia/Zambia%20MDG%20Report%202011.pdf> (accessed 26 August 2015) 20-21.

67 As above.

68 MDG 2.

69 MDG 4, 5 & 6.

70 n 66 above, 29.

71 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) <http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf> (accessed 5 October 2015) 24, 28 & 34.

realise fundamental socio-economic rights in line with their international and regional human rights treaties. This backdrop exemplifies the correlation between human rights and the GFC's impact. More specifically, the GFC adversely affected the enjoyment of socio-economic rights in that it aggravated hunger and poverty levels. It is commonly accepted that when a government faces a cash squeeze, such as the one facing Ghana and Zambia due to the GFC, it often resorts to cutting social programmes resulting in negative implications especially on the indigent. 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 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 diminished access to basic amenities such as food, housing, healthcare, work and social welfare programmes. This is particularly true for the vulnerable groups in society namely the indigent, women, children, minorities groups and migrants.⁷²

3 Is the human rights-based approach the answer to the impact of the GFC in Ghana and Zambia?

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.⁷³ 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.⁷⁴ Thus, because the sub regional systems largely defer to the existing African regional will focus on the interconnected regimes of social-economic rights at international, regional and national levels.⁷⁵

At the international level, the Universal Declaration on Human Rights (Universal Declaration) highlights the dignity and worth of the human person along with 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'.⁷⁶ Some of the socio-economic rights that the Universal

72 Ajakaiye *et al* (n 18 above) 42.

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

74 ST Ebobrah 'Human rights developments in African sub-regional economic communities during 2011' (2012) 12 *African Human Rights Law Journal* 225.

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

76 Universal Declaration of Human Rights, art 22.

Declaration recognises are the right to property,⁷⁷ the right to work⁷⁸ and the right to social security.⁷⁹ The socio-economic rights in the Universal Declaration were subsequently codified in the ICESCR

Supplementary to the ICESCR is its fairly recent Optional Protocol, which was adopted on 10 December 2008,⁸⁰ to provide a mechanism for individual complaints and access to remedies for victims of violations of socio-economic rights.⁸¹ This complaints mechanism is overseen by 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.⁸² The Committee on ESCR also offers guidance on the implementation of socio-economic rights in the form of General Comments and concluding observations to State Parties. In the wake of the GFC and its impact on human rights, the Committee on ESCR through a letter addressed to the ICESCR States Parties echoed the states' obligation to use the maximum available resources to fulfil economic, social and cultural rights, even in times of crisis.⁸³

At regional level is the African Charter, which constitutes a comprehensive instrument encapsulating a range of individual and group rights.⁸⁴ The African Charter recognises all categories of human rights including individual rights, peoples' rights, duties, some socio-economic rights and political rights.⁸⁵ What is more distinct is that the African Charter is the first binding international human rights instrument to provide for the right to development.⁸⁶ Article 22 of the African Charter provides that 'all peoples are entitled to their economic, social and cultural development'.⁸⁷ 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, to ensure that the right to development is exercised. It is noteworthy that the right to development represents a collective right and,

77 n 76 above, art 17.

78 n 76 above, art 23.

79 n 76 above, arts 22 & 25.

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

81 n 80 above, art 2.

82 n 80 above, para 7 preamble.

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

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

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

86 Viljoen (n 15 above) 226.

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

therefore, 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* (Endorois case).⁸⁸

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 given community and citizens of a state or even continent.⁸⁹ 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 be successfully made by an eligible group of individuals as opposed to a single individual, or groups 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. 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.⁹⁰

In addition to the human rights regime at regional level,⁹¹ 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)⁹² and African Peer Review Mechanism

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

89 Viljoen (n 15 above) 226.

90 Hansungule (n 84 above) 2.

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

92 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.

(APRM).⁹³ Both Ghana and Zambia are committed to NEPAD and the APRM mechanisms.

3.1 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.⁹⁴ He also asserts that 'the ultimate test of international human rights law is the extent to which it takes root in national soil'.⁹⁵ 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.⁹⁶

Ghana and Zambia, like most of Commonwealth Africa, both subscribe to the dualist approach to the incorporation of international law into national law.⁹⁷ The Ghanaian Constitution provides that, duly executed treaties are subject to ratification by either an Act or a resolution of parliament supported by more than half of all the members of parliament.⁹⁸ Similarly, Hansungule posits the Zambian position that, to constitute part of the domestic law, treaties have to be domesticated.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ In terms of legislative measures, Hansungule makes a case that Bill of Rights

93 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 socio-economic development. C Heyns & M Killander 'The African human rights system' in C Heyns & K Stefiszyn (eds) *Human rights, peace and justice in Africa: A reader* (2006)214.

94 Viljoen (n 15 above) 518.

95 Viljoen (n 15 above) 517.

96 As above.

97 M 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.

98 Ghana: Constitution, art 75(2).

99 Hansungule (n 97 above) 71.

100 Viljoen (n 17 above) 522.

101 Viljoen (n 17 above) 517.

entrenched in constitutions, though not extensively; embody provisions of international law, which have been domesticated over the years.¹⁰²

Justice Archer in the Ghanaian case of *New Patriotic Party v Inspector General of Police*¹⁰³ stated that, the mere fact that the African Charter has not been domesticated does not mean that it cannot be implemented at domestic level.¹⁰⁴ In an earlier case, *New Patriotic Party v Attorney General (Ciba case)*¹⁰⁵ Justice Atuguba held that principles of international human rights are enforceable to the extent that they can lend themselves to the Ghanaian context.

The Ghanaian 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.¹⁰⁶ This provision of the Ghanaian Constitution obscures Ghana's dualist position.

Based on the foregoing, it can be safely argued that in Ghana, the African Charter is enforceable. Besides, in the Ghanaian context, international treaties that have been ratified albeit not domesticated may be enforced provided that they either meet the requirements of article 33(5) of the Ghanaian Constitution or constitute international customary law. Appiagyei-Atua 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.¹⁰⁷

The Zambian Constitution does not expressly define the relationship between international law and national law.¹⁰⁸ Nonetheless, like 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.¹⁰⁹ This has been

102 Hansungule (n 97 above) 74.

103 *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 secs 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.

104 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.

105 *New Patriotic Party v Attorney General (CIBA)* (1996-97) SCGLR 729.

106 n 98 above, art 33(5).

107 Appiagyei-Atua (n 104 above) 196.

108 Quansah 'An examination of the use of international law as an interpretative tool in human rights litigation in Ghana and Botswana' in Killander (n 97 above) 37.

109 K Quashigah 'Trends in the promotion and protection of human rights under the 1992 Constitution' in K Boafa-Arthur (eds) *Ghana, one decade of the liberal State* (2007) 71.

done on the premise that such international instruments have been ratified and do not derogate from or conflict with the constitution or national laws.¹¹⁰

For instance, the Zambian High Court pronounced itself in the case of *Sara Longwe v Intercontinental Hotels*¹¹¹ in which Justice Musumali underscored that ratification of a treaty without reservation connotes willingness by a state to be bound by the treaty. Justice Musumali implied that a ratified international instrument can be applied to resolve an issue before court even though it has not been domesticated. In the more recent decision of *Roy Clarke v The Attorney-General*¹¹² Justice Musonda nullified the deportation order issued by the Minister of Home Affairs against a British national resident in Zambia for exercising his freedom of expression enshrined in the Constitution. Justice Musonda noted that the applicant was being punished for doing something for 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.¹¹³ This decision was upheld by the Supreme Court in an appeal instituted before the by the Attorney-General.¹¹⁴

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

Both the Constitutions of Ghana and Zambian contain Bills of Rights enouncing a range of human rights, including socio-economic rights. Chapter 5 of the Ghanaian 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.¹¹⁵ Additionally, chapter 6 of the Ghanaian Constitution provides for directive principles of state policy, outlining 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.¹¹⁶ The legal value of the provisions of chapter 6 of the Ghanaian 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,¹¹⁷ the Supreme Court held in part that directive principles of

110 Quansah (n 108 above) 37; see also Hansungule (n 97 above) 71.

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

112 *Roy Clarke v The Attorney-General* HP/003/2004 (High Court of Zambia).

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

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

115 Constitution of Ghana 1992, art 12.

116 Quashigah (n 109 above) 24.

117 n 105 above.

state policy afford a yardstick by which policy decisions are to be implemented and provide a guide for judicial interpretation. Further, 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.¹¹⁸ Quashigah endorsed the Supreme Court's decision in the *Ciba* case by positing that the provisions of chapter 6 extend judicial consequences. He asserted that:¹¹⁹

the 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 ...

The view 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*.¹²⁰ In this case, Justice Date-Bah 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'.¹²¹ He further declared that the directive principles of state policy are of themselves presumed to be justiciable.¹²² This is a revolutionary stance, which departs from the traditional conception of directive principles of state policy as non-justiciable.¹²³ The Supreme Court endorsed the earlier position advanced by Justice Adade in *National Patriotic Party v Attorney General* (31 December case)¹²⁴ 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 Ghanaian 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.¹²⁵ 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

118 n 105 above, 743.

119 Quashigah (n 109 above) 33.

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

121 n 120 above, 1113.

122 n 120 above, 1113.

123 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.

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

125 Constitution of Zambia, art 112.

one hand and in enacting laws and applying the Constitution and other laws, on the other hand. Part 9 of the Zambian Constitution however, provides that the directive principles of state policy are not justiciable.¹²⁶

Notwithstanding that under the Zambian Constitution, socio-economic rights are non-justiciable, Zambia remains bound to fulfil its international obligations including the socio-economic rights enshrined in treaties like the African Charter and the ICESCR in accordance with the principle of *pacta sunt servanda*, espoused under the Vienna Convention on the Law of Treaties (Vienna Convention).¹²⁷ It is noteworthy that the Vienna Convention proscribes State Parties from invoking municipal laws as an excuse for failing to implement obligations enshrined in international treaties.¹²⁸

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.¹²⁹ 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 adopt 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 and promotional measures towards the full realisation of human rights.¹³⁰

3.3 Measures employed by Ghana in response to the GFC

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. Tax on most foreign and local basic amenities was matched.¹³¹ These measures called for the amendment of the Customs Excise and Preventive Service (Duty and Other Taxes) Act.¹³² Additionally, in an attempt to aid fishing communities to upsurge their output, the Excise Duty and Debt Recovery levies on premix fuel were removed,¹³³ while for purposes of minimising the high cost of transportation, which was exacerbated by escalating oil prices, the Ghanaian government moved to

126 n 125 above, art 111.

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

128 n 127 above, art 27.

129 Ibe (n 75 above) 197.

130 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.

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

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

133 Ackah *et al* (n 27 above) 23.

reduce taxes on all petroleum products.¹³⁴ Furthermore, with respect to the energy sector, the government increased support for the production cost of electricity in order to cushion domestic consumers from high tariffs.

Prior to the onslaught of the GFC, Ghana already had in place a number of social protection and poverty reduction schemes. 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 that were in place prior to the GFC.¹³⁵ 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.¹³⁶

The Ghanaian government put in place a number of structural changes aimed at:¹³⁷

establishing 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.¹³⁸ Further, in an attempt to create a lean government, the total number of Ministries was reduced from twenty-seven to twenty-three.¹³⁹

Moreover, to stabilise 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.¹⁴⁰ 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,¹⁴¹ and further took steps to implement the International Financial Reporting Standards (IFRS).¹⁴² These IFRS

134 Government of Ghana Budget Statement and Economic Policies (2009) 291 available at http://www.mofep.gov.gh/sites/default/files/budget/2009_budget.pdf (accessed 30 September 2015). 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 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.

135 Ackah (n 27 above) 23.

136 As above.

137 n 131 above, 45.

138 n 131 above, 45.

139 n 131 above, 46.

140 n 131 above, 291.

141 n 131 above, 291.

142 Ackah (n 27 above) 24.

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.¹⁴³

3.4 Measures adopted by Zambia in response to the GFC

The Zambian government's reaction to the GFC was largely centred on expansionary fiscal policies meant to stimulate the economy.¹⁴⁴ Accordingly, the government increased its spending from 24.8 per cent of GDP in 2008 to 25.4 per cent of GDP in 2009.¹⁴⁵ Also the source of revenue for the 2009 budget was adjusted so that domestic revenues supported 70 per cent of the budget while the remaining was shared between donor funding and domestic borrowing with 18 per cent of the budget being financed by ODA and 12 per cent by domestic borrowing.¹⁴⁶ In order to support this expansionary budget and meet the shortfall from domestic revenues, government increased domestic borrowing from 1.3 per cent to 1.8 per cent of GDP. Beyond domestic borrowing, Zambia upsurge its borrowing from the planned 1.9 per cent to 3 per cent of GDP in 2009.¹⁴⁷ Moreover, in an attempt to build a dynamic economy, the government maintained a flexible and market-determined exchange rate.¹⁴⁸ However, the Bank of Zambia continued to closely monitor the market and take measures to safeguard the domestic financial system to maintain stability.¹⁴⁹

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.¹⁵⁰ 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 per cent between July and December 2008.¹⁵¹

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

144 Ndulo *et al* (n 27 above) 23.

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

146 As above.

147 DW TeVelde *et al* 'The global financial crisis and developing countries: Phase 2 Synthesis ODI working paper 316' (2009) 28.

148 Ndulo *et al* (n 48 above) 23.

149 n 145 above, 6; Green *et al* (n 6 above) 43.

150 n 145 above, 6.

151 Ndulo *et al* (n 48 above) 23.

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.¹⁵² Likewise, the government removed the windfall tax, retained the variable profit tax and increased capital allowance to 100 per cent, as an investment incentive.¹⁵³ Furthermore, customs duty on heavy fuel oil was reduced from 30 to 15 per cent while tariffs on copper powder, copper flakes and copper blisters were waived.¹⁵⁴ Finally, copper and cobalt concentrates were included on the value added tax import deferment scheme.¹⁵⁵

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.¹⁵⁶ The object of these programmes was 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.¹⁵⁷

The government 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 to guarantee a stable and ready market. This measure was undertaken to stimulate future production and enhance national food security.¹⁵⁸

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 indigent and vulnerable people due to poor targeting and low benefits, resulting from inadequate resources and funding.¹⁵⁹ Additionally, although government undertook in its Fifth National Development Plan (FNDP) for the period 2006 to 2010, to scale up the funding for its major social protection schemes, these

152 n 145 above, 22.

153 As above.

154 As above.

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

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

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

158 n 145 above, 11.

159 Ndulo *et al* (n 48 above) 33.

schemes suffered dwindling government budgetary allocations in the face of the negative implications that came with the GFC. The schemes that are reliant on donor aid for their operations suffered the aid deficit associated with the GFC.

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).¹⁶⁰ Another measure undertaken by the Government to mitigate the impacts of the GFC involved the supply of affordable capital for enterprises. For instance, government sustained the Public Private Partnership Policy, which was launched in 2008 to accelerate the development of infrastructure in the country.¹⁶¹ The government also revived the Citizens Economic Empowerment Commission (CEEC), which was established by an Act of parliament¹⁶² to provide empowerment funds to citizens interested in venturing into business but lack capital to do so.¹⁶³ The CEEC focuses on empowering citizens in economic sectors including tourism, mining, trade, manufacturing, agriculture, energy as well as wholesale and retail trade services sector.¹⁶⁴ During the throes of the GFC, the CEEC sought to provide loans to struggling enterprises to revamp their business. To this end, in 2008 a total of 15 billion Kwacha was disbursed, creating employment for close to 1400 people. This programme, coupled with others ancillary to the Constituency Development Fund, was continued in 2009 with modest increment in disbursements.¹⁶⁵

3.5 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.¹⁶⁶ 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, and bursaries, school feeding or healthcare costs.¹⁶⁷ Accordingly, during the GFC period, with the exception of public sector pensions, Zambia's social protection allocations were mostly negligible.¹⁶⁸ TeVelde *et al* describe Zambia's reaction to the GFC as largely devoid of growth-

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

161 n 145 above, 6.

162 The Citizens Economic Empowerment Act 9 of 2006.

163 As above.

164 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/typo3/doc/pdf/CBMS_country_proj_profiles/Zambia/Zambia_Revised_GFC_paper_CBM_S2_v3.pdf (accessed 11 August 2015).

165 n 145 above, 18.

166 Ndulo *et al* (n 48 above) 23.

167 Green (n 6 above) 44.

168 As above.

enhancing structural, institutional reforms and lacking the drive to diversify the economy.¹⁶⁹ Ndulo *et al* further point out that the discernible government response adopted to address the effects of the GFC was largely limited to fiscal policies, monetary and exchange rate policies.¹⁷⁰

These economic policies were targeted at government spending on infrastructure, health and education. This policy response would be creditable in light of the notion that implementation of prudent economic policies is vital for sustaining the growth of an economy.¹⁷¹ 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.¹⁷² 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.¹⁷³ This relieved mining companies.¹⁷⁴ However, it exacerbated Zambia's already weak fiscal position as it significantly reduced the revenues from the mining sector.¹⁷⁵ Consequently, other sectors, 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 protected jobs in the private industries and ensured food security mostly for farmers. Yet, the government's reluctance 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.

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. This deduction is based on the inadequacy of measures directed to 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.

169 Te Velde *et al* (n 147 above) 75.

170 Ndulo *et al* (n 48 above) 23.

171 n 160 above, 4.

172 As above.

173 Green (n 6 above) 44.

174 Silumbe (n 164 above) 21.

175 Green (n 6 above) 33.

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).¹⁷⁶ More significantly, Ghana's 2009 National Budget committed to sustain social protection expenditure, maintain its school feeding programme, Capitation Grant Scheme and extend participation in the National Health Insurance Scheme.¹⁷⁷

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.¹⁷⁸ In addition, whereas the Ghanaian government reviewed mining, oil and forestry firms' agreements with the intention to curb excessive profit repatriation and stabilise 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.¹⁷⁹ This 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, which is better clarified below.

176 Green (n 6 above) 47.

177 n 131 above, 280.

178 Te Velde *et al* (n 147 above) 28.

179 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 <http://www.isodec.org.gh/publications/UNICEF%20BUDGET%20ANALYSIS%202010-FINAL%20DRAFT.pdf> (accessed 20 September 2015).

3.6 Defining the human rights-based approach and its application to the case of Ghana and Zambia

The human rights-based approach is defined as¹⁸⁰

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.¹⁸¹

This means that states like 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 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 resulting in adverse implications like the exacerbation of hunger has to be reconsidered.¹⁸² 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.¹⁸³ The human rights-based approach requires a constant monitoring of how measures adopted affect the enjoyment of human rights.

3.7 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.¹⁸⁴ Pillay, a former UN Commissioner for human rights advises 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.¹⁸⁵ This illustrates the primacy of human rights even in times of crisis. It also signifies that where there are conflicting national policy concerns, human

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

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

182 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.

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

184 Viljoen (n 15 above) 570.

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

rights should be prioritised.¹⁸⁶ In addition, the UN Office of the High Commissioner for Human Rights asserts that as economic, social and political conditions change, so should states formulate and implement appropriate regulations strengthening protection for human rights.¹⁸⁷ This buttresses the position regarding the primacy of human rights. Consequently, crises such as the GFC should not form a basis upon which states can derogate from their obligation to uphold human rights.¹⁸⁸

A noteworthy rationalisation of the human rights-based approach states that although legislative, administrative and judicial measures at any level may be conceived and managed by states, they exist for the benefit of the people and not the states.¹⁸⁹ 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'.¹⁹⁰

As Viljoen notes, 'poverty is the greatest threat to and source of human rights violations in Africa'.¹⁹¹ Besides, the right to development implies that states must use public resources for public good. The UN High Commission on Human has 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.¹⁹² In addition, 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.¹⁹³ For this reason, it is crucial to indicate that the human rights-based approach neither disregards the significance of economic growth to development nor lends 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'.¹⁹⁴ Needless to say, policies that promote economic growth such as trade, taxation and investment can also

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

187 UN High Commissioner for Human Rights 'Human rights, trade and investment', UN Doc E/CN.4/Sub.2/2003/9, para 31(d).

188 n 184 above.

189 Viljoen (n 15 above) 570.

190 Oppong (n 183 above) 127.

191 Viljoen (n 15 above) 481.

192 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.

193 Oppong (n 183 above) 127.

194 As above.

promote human rights when formulated and implemented in accordance with the human rights-based approach. It is therefore indispensable to properly align structural, economic and social policies to ensure a meaningful development that recognises the significance of synergies by different sectors.

4 Conclusion

This chapter has examined the genesis of the GFC and demonstrated how the GFC constrained development and undermined human rights guarantees by inhibiting individuals from enjoying their socio-economic rights in Ghana and Zambia. It has illustrated how the GFC diminished access to basic amenities, thereby impeding the attainment of the MDGs. The chapter has also illuminated how the GFC undermined Ghana and Zambia's capacities to fulfil their obligations to promote, protect and realise socio-economic rights and the right to development, as provided for under the various international and regional human rights treaties. It then employed the nexus between the GFC and human rights to make a case for applying the human rights-based approach as an indispensable model for countering massive economic crises like the GFC. This is in light of the finding that Ghana and to a larger extent Zambia's response to the GFC largely disregarded the human rights-based approach. Significantly, the chapter demonstrates that Ghana and Zambia are enjoined to implement human rights even in times of crisis.

In line with the findings of this chapter, the governments of Ghana and Zambia need to take definitive steps in reaction to future economic crises through adopting the human rights-based approach to such crisis to enhance socio-economic rights and the right to development. Since the realisation of human rights form the bedrock of the human rights-based approach, the starting point should be the domestication of all the relevant human rights treaties ratified by these countries to enhance the protection of human rights.

Given the shortcomings of the policies adopted by Ghana and Zambia in response to the GFC, policy reform constitutes the most pertinent recommendation in this chapter. Naturally, the primary recommendation is that all policies adopted to counter economic crises should be informed by the human right-based approach. In this regard, the Committee on ESCR has set out that states must¹⁹⁵

[ensure] that the measure is temporary to last only for the period of the crisis; 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; ensure that the measure is not discriminatory and is

195 n 20 above, 2.

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 ensure that the measure identifies the minimum core content of rights and ensures their protection at all times.

Ghana and Zambia are encouraged to adopt and implement measures aimed at enhancing access to basic socio-economic goods and services such as health care, education, housing, social security and cultural life.¹⁹⁶ Sufficient safety nets and social assistance schemes should be adopted to protect vulnerable and marginalised groups who are the most unequipped against the shocks of crisis like the GFC.

In addition, human rights centred economic policies should be adopted and executed in a transparent, equitable and participatory manner that involves the various social groups. Before adopting economic measures, impact assessments should be undertaken to ensure that the measures in form and effect are non-regressive to human rights. The states should also adopt social protection policies and labour market responses to mitigate the impact of the crisis on employment, education and health care. This includes 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), having social protection mandates and being 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.

The governments of Ghana and Zambia should also regulate the financial sector by adopting policy and legal measures to regulate banking services in times of economic crises to ensure that banks serve the interests of society through 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 one hand with the responsibility to curb income inequities and sustain jobs, businesses and other means of livelihood on the other, through various credit and supervisory instruments. There is also the need to promote agricultural production in order to diversify the economic mainstays especially for Zambia whose economy is largely dependent on the mining sector. The promotion of the agricultural sector should focus on expanding domestic and regional markets for the food and consumer goods sectors.

196 n 130 above, 2.

In sum, the human rights-based approach is an essential tool in the mitigation of the impact of economic crisis. Ghana and Zambia's experiences with the GFC have shown that failure to utilise the human rights-based approach can have dire consequences for the most vulnerable in society. The human rights-based approach is indispensable for the protection, promotion and fulfilment of human rights, particularly socio-economic rights and the right to development, as well as for meaningful economic growth.