

**Human rights implications of including services in Economic Partnership
Agreements: the case of banking services in Ghana**

**Submitted in partial fulfilment of the requirements of the degree LLM (Human
Rights and Democratisation in Africa)**

By

Matilda E K Lasseko

Student number 24168981

Prepared under the supervision of

Mr K K K Ampofo

at the

Faculty of Law, University of Ghana, Legon

3 November 2008

DECLARATION

I, **Matilda Elizabeth Kweti Lasseko** declare that the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree in Human Rights and Democratisation in Africa.

Signed.....

Date.....

Supervisor: Mr K K K Ampofo

Signature

Date.....

DEDICATION

My people, Agnes, Olgo, Joy and Gerald, this is for you.

Acknowledgments

I am grateful to the Centre for Human Rights, University of Pretoria, for affording me the opportunity to make this contribution towards bringing Africa closer to its development objectives. I am especially grateful for the financial support I received for the duration of my study. I extend my gratitude particularly to Prof F Viljoen, Mr M Nsibirwa and Mr J Uwimama. A special appreciation goes to Prof M Hansungule and Mr T Madlingozi whose comments encouraged this work.

I am indebted to my supervisor, Mr KKK Ampofo for his guidance and defining comments. I am beholden to the staff at the Faculty of Law, University of Ghana, Legon for their assistance during my stay in Ghana. I am particularly grateful to Mr. B Amartey, Mr E Darkey, Ms Y Morley and Mr R Tonyigah for their assistance in accessing library material. Special thanks to Prof Quashigah, Mr JO Nkansah, Ms VA Bondizie, Mr B Nkumsah, Mr J Arthur, Mr M Benson, Ms B Blankson and Mr KO Acheampong for their assistance in various capacities.

Special thanks to Mr DP Agbogah of Bank of Ghana for going that extra mile to offer me assistance while I was conducting the field work aspect of this study.

A most heartfelt appreciation for the assistance of various other people whose contributions were instrumental in various ways during my study; Mr F Mulatu, Mr T Musarurwa, Ms S Swart, Mr A Mandlate and Mr C Mmbando. Mr JM Memba, you are the wind beneath my wings, thank you.

To all my friends and colleagues, whom I could not mention due to the constraint of space, thank you for your support.

List of abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACP	African, Caribbean and Pacific
ADB	Agricultural Development Bank
AU	African Union
BOG	Bank of Ghana
CAT	Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
CRC	Convention on the Rights of the Child
EAC	East African Community
EC	European Community
ECOWAS	Economic Community of West African States
EPA	Economic Partnership Agreement
ESA	East and South African countries
EU	European Union
FDI	Foreign Direct Investment
FIDH	International Federation for Human Rights
FINSAP	Financial Sector Adjustment Programme
FTA	Free Trade Area
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GLR	Ghana Law Reports
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IMF	International Monetary Fund
JSC	Justice of the Supreme Court

NEPAD	New Partnership for Africa Declaration
NGOs	Non-governmental Organisations
SADC	South African Development Community
SAP	Structural Adjustment Programme
SCGCR	Supreme Court of Ghana Case Reports
SOMO	Centre for Research on Multinational Corporation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNDRD	United Nations Declaration on the Right to Development
WTO	World Trade Organisation

Table of contents

Declaration	i
Dedication	ii
Acknowledgments	iii
List of abbreviations	iv

Chapter 1: Introduction

1.1 Background of the study	1
1.1.1 EPAs and services	1
1.1.2 EPAs and human rights	5
1.2 Objectives of the study	7
1.3 Significance of the study	7
1.4 Research questions	8
1.5 Literature review	8
1.6 Methodology	8
1.7 Limitations of the study	9
1.8 Chapterisation	9

Chapter 2: What are Human Rights?

2.1 Introduction	10
2.2 The concept of 'human rights'	10
2.3 Human rights law	11
2.3.1 UN human rights law system	12
2.3.2 African regional human rights system	13
2.4 Human rights as interrelated rights	14
2.5 Conclusion	15

Chapter 3: The Right to Development as creating human rights obligations on Ghana

3.1 Introduction	16
3.2 What is the right to development?	16
3.3 Ghana's obligations to respect the right to development	18

3.3.1 International law	18
3.3.2 African regional human rights law	19
3.3.3 Ghana law	20
3.4 Poverty reduction and the right to development as preconditions for the effective enjoyment of other human rights	21
3.5 Conclusion	22

Chapter 4: Banking services in Ghana: an overview

4.1 Introduction	23
4.2 Structure of the banking sector	25
4.2.1 Bank of Ghana	25
4.2.2 Commercial banks	26
4.2.3 Rural banking sector	28
4.3 The sector's contribution to development and poverty reduction in Ghana	28
4.3.1 Agricultural Development Bank	28
4.3.2 Rural banks	29
4.4 Challenges to contributing to development and poverty reduction	30
4.4.1 Rural Banks	30
4.4.2 Agricultural Development Bank	31
4.5 Conclusion	31

Chapter 5: Envisaged human rights implications of liberalising the banking sector in Ghana under EPAs

5.1 Introduction	33
5.2 Liberalisation of banking services: an overview	33
5.3 Arguments by proponents and opponents of liberalisation	34
5.3.1 Arguments by proponents of liberalisation	34
5.3.2 Arguments by opponents of liberalisation	35
5.3.3 Experiences from elsewhere of liberalisation	35
5.4 Possible consequences in Ghana of liberalising banking services under EPAs	36
5.4.1 The sector as a whole	36
5.4.2 The Agricultural Development Bank	37

5.4.3 The rural banks	37
5.5 Envisaged human rights implications of the consequences identified	37
5.5.1 The right to an adequate standard of living	38
5.5.2 The right to work	38
5.6 Conclusion	39

Chapter 6: Conclusion and recommendations

6.1 Summary	40
6.2 Conclusion	41
6.3 Recommendations	41

Bibliography 43

Annexure 1	49
Annexure 2	50
Annexure 3	51
Annexure 4	52
Annexure 5	53
Annexure 6	55
Annexure 7	56

Tables

1 UN treaty based human rights law and its implementation mechanisms	13
2 AU treaty based human rights law and its implementation mechanisms	14
3 Ownership of commercial banks in Ghana as at September 2008	26
4 Regional distribution of rural banks as at April 2008	28

Figures

1 Credit allocations to the private sector as at March 2008	25
---	----

Chapter 1 Introduction

1.1 Background to the study

1.1.1 EPAs and services

The European Union (EU) as a political and economic union of twenty seven member states primarily located in Europe,¹ has had a long history of development cooperation with the African, Caribbean and Pacific (ACP) countries since their independence. Development cooperation is cooperation between the EU community and their former colonies that is intended to promote economic, social and cultural development in the former colonies. The first of the development cooperation agreements was the Yaoundè I Convention which came into effect in 1963. This was replaced by Yaoundè II Convention which came into effect in 1969.² Thereafter the Lomè regime of agreements, Lomè I to IV, came to pass.

The Lomè Conventions expired in February 2000. A new arrangement had to be made as aspects of the Lomè Conventions were contrary to the WTO rules.³ The six groups of basic rules and principles that are covered in the various WTO agreements are the principle of non-discrimination, the rules on market access, the rules on unfair trade, the rules on conflict between trade liberalisation and other societal values and interests, the rules on special and differential treatment for developing countries and procedural rules on decision making and dispute settlement.⁴ In terms of the Lomè regime of agreements, the EU gave ACP states a non-reciprocal trade preference for goods that they exported into the EU territory.⁵

¹ The EU was created under the Maastricht Treaty in 1993 upon the pre-existing European Economic Community (EEC). It is composed of three pillars; European Community (EC) that is concerned with economic, social and environmental policies thus is the body responsible for trade agreements entered by EU, Common Foreign and Security Policy (CFSP) that deals with foreign policy and military matters and the third pillar is Police and Judicial Cooperation in Criminal Matters (PJCC).

² SR Hurt 'Co-operation and coercion? The Cotonou Agreement between the European Union and ACP states and the end of the Lomè Convention' (2003) 24 *Third World Quarterly* 161.

³ The WTO is an intergovernmental organisation of member states that provides a forum for the negotiation of trade agreements. It came into being on 1 January 1995 and consists of a package of multilateral agreements annexed to a single agreement, the Marrakesh Agreement, establishing the WTO. All parties to the Marrakesh agreement are therefore bound to the multilateral agreements attached to it commonly referred to as the WTO agreements. See <http://www.wto.org> (accessed 30 August 2008).

⁴ See P Van Den Bossche *The law and policy of the World Trade Organisation: text, cases and materials* (2005) 39-60 for more on the WTO rules.

⁵ Trade preferences for particular groups of countries are contrary to the principle of non-discrimination in the WTO as decided by the WTO appellate body in the EC-Bananas case. Individual developed countries are only allowed to provide preferences to all developing countries without discriminations between them. Special preferences for limited groups of developing countries such as ACP states, to the exclusion of other developing states, are not allowed. See S Tangermann 'The future of preferential trade agreements for developing countries and the current round of WTO negotiations on agriculture' <http://www.fao.org> (accessed 15 October 2008).

The Cotonou Partnership Agreement (the Cotonou Agreement) therefore proposed to rectify this inconsistency with WTO rules by providing for the negotiation of a new regime of trade agreements that provide for a reciprocal trade preference between the EU and ACP states.⁶ The Cotonou Agreement was concluded on 23 June 2000.⁷ In terms of this Agreement, the ACP states are required to reciprocate the EU's action of letting imports into their territories without charging tariffs.⁸ This is to be achieved through a series of Free Trade Area (FTA) agreements with the ACP states known as the Economic Partnership Agreements (EPAs).⁹ Such regional agreements are permissible under the WTO rules of trade.¹⁰ In order to allow for the negotiation of EPAs, the WTO granted a waiver to the European Community (EC) with regard to preferential tariffs treatment given to products of ACP states in terms of the Cotonou Agreement, which would otherwise be contrary to the non-discrimination obligations in the WTO.¹¹ Such a waiver is granted by the WTO where a member cannot meet an obligation under WTO rules.¹² This waiver was granted until 31 December 2007 when the EPAs were to become operational. The negotiation of these agreements has been ongoing with the African group of states divided into regional groups spearheading the negotiations with the EU.¹³ Negotiations are being conducted at the regional level since the EPAs aim at building on and strengthening the regional integration processes in ACP.¹⁴ The Economic Community of West African States (ECOWAS) is one of these regional groupings.¹⁵ Ghana being a member state of this group is the focus of this dissertation.

At the end of year 2007, no comprehensive agreement had been concluded with any African region. As a result, the EU approached various African states to conclude interim EPAs. These are 'stepping stone' agreements with provisions to remove the risk that the end of the WTO waiver would result in some ACP states losing their preferential EU market access.¹⁶ With the pressure to meet the WTO commitments removed, the parties can resume negotiations towards more comprehensive 'full'

⁶ A Borrmann & M Busse 'The institutional challenges of the ACP/EU Economic Partnership Agreements' (2007) 25 *Development Policy Review* 403.

⁷ Hurt (n 2 above) 161.

⁸ A tariff is a tax that a country charges on an imported product at the time of import. See BL Das *An introduction to the WTO agreements: trade and development issues and the world trade organisation* (1998) 18-29 for more on tariffs.

⁹ A Free Trade Area (FTA) is a group of countries that have agreed to remove tariffs, quotas and preferences on most, if not all, goods that are imported and exported between them. See AO Kruger *Free Trade Agreements versus Customs Unions* (1995) <http://www.papers.ssnr.com> (accessed 20 October 2008).

¹⁰ Borrmann & Busse (n 6 above) 404.

¹¹ Van Den Bossche (n 4 above) 115-116.

¹² Van Den Bossche (n 4 above) 116.

¹³ United Nations Economic Commission for Africa *Economic report on Africa: Africa and the Monterrey consensus 2008* (2008) 97.

¹⁴ S Bilal & A Walker Background note for the 6th ACP Summit of Heads of State and government 2-3 October 2008 Accra, Ghana: Economic Partnership Agreements and the future of the ACP group <http://www.ecdpm.org> (accessed 20 October 2008) 1.

¹⁵ ECOWAS is a regional group of 15 countries founded in 1975 with a mission of promoting economic integration in all fields of economic activity. For more on ECOWAS see <http://www.comm.ecowas.int> (accessed 20 October 2008).

¹⁶ C Stevens *et al* The new EPAs: comparative analysis of their content and the challenges for 2008 Policy management report 14 <http://www.ecdpm.org> (accessed 20 October 2008).

EPAs.¹⁷ Ghana and Cote d'Ivoire were the only two ECOWAS states that entered into such individual interim EPAs.¹⁸ The interim EPAs that have been entered into by South African Development Community (SADC), Eastern and Southern African (ESA) countries, East African Community (EAC), Ghana and Cote d'Ivoire deal primarily with trade in goods. They were concluded under the pressure to prevent potential trade disruption at the end of 2007 upon expiry of the WTO waiver.¹⁹ Civil society organisations in Africa have accused European nations of employing a divide and rule tactic by instigating bilateral deals with individual countries to secure the interim EPAs which will interfere with the regional negotiation process.²⁰

Having secured agreements for trade in goods, the matters on the negotiation table are likely to shift to trade in services.²¹ African states are however under no obligation to negotiate the liberalisation of trade in services in the full EPAs. This is because the main reasons for entering a new trade agreement concerned the expiry of the WTO waiver for solely trade in goods and not trade in both goods and services.²² Trade liberalisation involves providing greater market access to foreign firms by lowering the barriers to trade.²³ Market access is an umbrella term for a reduction in the measures that a country uses to restrict imports of both goods and services into its territory.²⁴ A political undertaking has been signed in the interim EPAs to negotiate the liberalisation of services.²⁵ Article 44 of the interim EPA between the EU and Ghana provides as follows:

'Building on the Cotonou Agreement, the Parties will cooperate to facilitate all the necessary measures leading to the conclusion as soon as possible of a global Economic Partnership Agreement between the whole West African Region and the EC in the following:

- a) *trade in services* and electronic commerce;²⁶
- b) investments;

¹⁷ Bilal & Walker Background note for the 6th ACP Summit of Heads of State and government 2-3 October 2008 Accra, Ghana: Economic Partnership Agreements and the future of the ACP group <http://www.ecdpm.org> (accessed 20 October 2008) 1.

¹⁸ UN Economic Commission for Africa (n 13 above) 100.

¹⁹ African Union Commission secretariat Economic Partnership Agreements Negotiations: a comparative assessment of the Interim Agreements <http://www.acp-eu.org> (accessed 20 August 2008) 2.

²⁰ Call to action against Europe's aggressive agenda in Africa: declaration of civil society organisations at the meeting of the Africa Trade Network, Cape Town, South Africa *African Agenda* Issue 1 2008 14.

²¹ African Union Commission secretariat Economic Partnership Agreements Negotiations: a comparative assessment of the Interim Agreements <http://www.acp-eu.org> (accessed 20 August 2008) 2.

²² South Centre Why inclusion of services in the EPAs is problematic: legal and development implications <http://www.southcentre.org> (accessed 20 August 2008) 4.

²³ J Hodge 'Liberalisation of trade in services in developing countries' in A Matoo *et al Development trade and the WTO: a handbook* (2002) 221.

²⁴ Centre for International Development at Harvard University <http://www.cid.harvard.edu> (accessed 20 October 2008).

²⁵ ILEAP Trade negotiations and pro-poor services reforms in Africa <http://www.ileap-jeicp.org> (accessed 10 August 2008).

²⁶ The emphasis indicated is the author's.

- c) competition;
- d) intellectual property.

The Parties will take all necessary measures to endeavour to conclude a global EPA between the West Africa region and the EC before the end of 2008.²⁷

Services include education, transport, storage, communication, finance, insurance, community, social and personal services, restaurants and hotels, real estate, business services, producers of private non-profit services and governmental services.²⁸ Banking services fall under financial services. There are four modes of supplying services trade determined under WTO rules.²⁹ In terms of the General Agreement on Trade in Services (GATS),³⁰ commercial presence as a mode of supplying services is defined as any type of business or professional establishment within the territory of another state for the purpose of supplying a service, including through the constitution, acquisition or maintenance of a juridical person, or the creation or maintenance of a branch or a representative office.³¹ Commercial presence is commonly associated with foreign direct investment (FDI).

The service sector plays a vital role in Ghana's economic development with an increase in its share of contribution to the total Gross Domestic Product (GDP) of the country from 24.3% in 2005 to 30.1% in 2006 and 30.5% in 2007.³² The banking sector also plays a vital role as it is a sector where the government can set up support mechanisms, through national policy, for other sectors in the economy such as the agricultural sector. This is usually done in a bid to encourage development and poverty reduction in the state. According to the findings of a joint ILO/UNDP team of researchers in 2004, the agriculture sector dominates the sectoral distribution of employment by providing employment for an estimated 55% of the population in Ghana.³³ The sector also produces food that sustains a large part of the population. 90% of all agricultural output is produced by small scale peasant farmers who live in rural areas. These small-scale producers form about 80% of the rural

²⁷ Interim Economic Partnership Agreement between the EU and Ghana available at <http://www.bilaterals.org> (accessed 20 August 2008).

²⁸ Institute of Statistical, Social and Economic Research (ISSER) University of Ghana, Legon *The state of the Ghanaian economy in 2006* (2007) 166.

²⁹ The first is cross border trade, which is when the service moves across borders either physically or electronically. The second is consumption abroad which is when the consumer moves to the jurisdiction of the supplier. The third is presence of a natural person which is the case when the supplier moves temporarily to provide a service in another country. Finally, there is commercial presence which is the case when the supplier moves to the country of the consumer through commercial presence. See Hodge (n 23 above).

³⁰ GATS is the WTO agreement that regulates trade in services in the WTO system. It establishes a regulatory framework within which members states can undertake and implement commitments for the liberalisation of services. See Van Den Bossche (n 4 above) 50.

³¹ Art XXVIII (d) of GATS.

³² Institute of Statistical, Social and Economic Research (ISSER) University of Ghana, Legon *The state of the Ghanaian economy in 2007* (2008) 179.

³³ J Heintz Elements of an employment framework for poverty reduction in Ghana <http://www.undp.org> (accessed 8 September 2008) 19.

population. Ghana's economy is therefore heavily dependent on agriculture and also upon the small scale farmer.³⁴ In light of this, the Government of Ghana has for some years maintained mechanisms within the banking sector to assist in the development of this sector through *inter alia* provision of credit facilities. This has been done through various means by the government both directly and indirectly, through the Bank of Ghana.³⁵ This study will be limited the Agricultural Development Bank and the rural banking system as they are primarily focused on servicing the agricultural sector and the rural population. These are considered by the author to be vulnerable sectors of the population. They are vulnerable in that they are perceived as risky and non-profitable for banks. They therefore have a higher probability of experiencing the effects of liberalising the banking sector.

As indicated, creating a FTA has the result that there can be no special treatment accorded to any domestic bank over a foreign one. The question therefore is whether the liberalisation of the banking sector in Ghana under the EPAs will have negative impacts which would go against the human rights objectives of the Cotonou Agreement under which the EPAs are being negotiated.

1.1.2 EPAs and human rights

According to Karin Arts, the decision to include human rights and democracy clauses in the Lomé Convention was guided by a wish on the European part to create a clear legal basis for suspending or limiting cooperation with any ACP state whose human rights or democracy situation warranted this.³⁶ ACP member states opposed the idea of the inclusion of a human rights clause for the reason that this would lead directly to Europe being involved in the internal affairs of ACP countries.³⁷ There was no human rights reference made in Lomé I and II. The third Lomé Convention did not include any direct reference to human rights in the main text rather only some relevant pledges in the preamble and in annexes attached to it.³⁸ Lomé IV made the first clear reference to a link between development and human rights. It left no uncertainties about the fact that Lomé cooperation was to be directed towards human-centred development,³⁹ a concept of which human rights are a part of.⁴⁰

It is the author's view that this human-centred development guided the inclusion of the human rights clauses in the Cotonou Agreement. The Cotonou Agreement goes beyond the standard features of trade agreements which only focus on the trade related aspects by refocusing development policies

³⁴ Bank of Ghana 'The rural banking system in Ghana' (available from the author) 2.

³⁵ Bank of Ghana is the Central Bank of Ghana.

³⁶ K Arts *Integrating human rights into development cooperation: the case of the Lome Convention* (2000) 203.

³⁷ Arts (n 36 above) 169.

³⁸ Arts (n 36 above) 178.

³⁹ The human development idea came about as a response to the trend of equating development with economic development only. The main idea behind human development is the recognition of non-economic components of development with focus on equality and aspects of non-discrimination within society. See K De Feyter *World development law: sharing responsibility for development* (2001) 4-6.

⁴⁰ Arts (n 36 above) 184.

on poverty reduction.⁴¹ Article 1 of the Cotonou Agreement provides that '[t]he partnership shall be centred around the *objective of reducing and eventually eradicating poverty* consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy'.⁴²

Mary Robinson the former United Nations High Commissioner for Human Rights has stated that:

'poverty in the true light is a denial of a whole of rights pertaining to the human being based on each individual's dignity and worth, the poor are the subjects of poverty and the poor have rights that are systematically violated.'⁴³

Although it may not be readily acknowledged by all that there is a right not to be poor, it can be accepted that there is a link between poverty and the violation of human rights.⁴⁴ Poverty encompasses a large number of aspects of life, many of which involve rights related to personal safety and integrity as well as economic and social safety and well being that leaves people voiceless and powerless, distancing them from the people and institutions making decisions that affect their lives.⁴⁵ Poor people are the subjects of poverty, and they have rights that are systematically violated. If the human rights violations experienced by poor people are to be addressed, poverty will need to be addressed through the rights of the individual, the family and the social and economic setting in which they live.⁴⁶ The current normative human rights framework, particularly as provided for under the International Convention on Economic Social and Cultural Rights (ICESCR) contains crucial guarantees which if fulfilled would lift poor people out of poverty.⁴⁷ In addition to this, article 22 of the African Charter on Human and Peoples' Rights (the African Charter) guarantees the right to economic, social and cultural development. The right to development as envisaged in the African Charter is both an independent right as well as a prerequisite for the enjoyment of other human rights.⁴⁸ According to Lorand Bartels, by setting as an objective of the Cotonou Agreement the achievement of economic, cultural and social development, and the reduction and eventual eradication of poverty, the parties made an undertaking to improve certain human rights.⁴⁹

The EPAs are negotiated in the framework of the Cotonou Agreement. Therefore any full EPA that is to be concluded should not go against this objective of poverty reduction and development. As has been noted, trade is but a means to poverty reduction and human development, not an end in

⁴¹ Borrmann & Busse (n 6 above) 403.

⁴² Art 1 Cotonou Partnership Agreement (the emphasis indicated is the author's).

⁴³ SI Skogly 'Is there a right not to be poor?' in R McCorquodale (ed) *Human rights* (2002) 563.

⁴⁴ SI Skogly 'Is there a right not to be poor?' in McCorquodale (ed) (n 43 above) 560.

⁴⁵ SI Skogly 'Is there a right not to be poor?' (2002) 2(1) *Human Rights Law Review* 71.

⁴⁶ Skogly (n 45 above) 63.

⁴⁷ SI Skogly 'Is there a right not to be poor?' in McCorquodale (ed) (n 43 above) 573.

⁴⁸ M Bulajic *Principles of international development law* (1993) 361.

⁴⁹ L Bartels *Human rights conditionality in the European Union's international agreements* (2005) 85.

itself.⁵⁰ Where trade is undertaken in a country, the resulting benefits should be felt by everyone in the country through the improvement of amenities in the country. The benefits of a country engaging in trade should be manifest in more than economic measures such as improved GDP figures. It should meaningfully reflect in the improved living standards of all the citizens of the country that comes about as a result of the country's development.

1.2 Objective of the study

This study aims to make an assessment of the possible implications on human rights of liberalising banking services, on account of increased commercial presence of foreign banks, in Ghana.

1.3 Significance of the study

The inclusion of services in EPAs may have serious consequences on human rights in African countries as has been the experience of other places.⁵¹ The impacts, however, of incorporating services in the EPAs are widely unknown to the knowledge of the writer. The International Federation for Human Rights (FIDH) attributes this to the fact that there have been no assessments done in this regard.⁵² At a time when the focus of the EPA negotiations is likely to turn to trade in services, this study is appropriately timed. There are several indications that this is likely to happen according to the author. Firstly, in the Nairobi Declaration on Economic Partnership Agreements (2006), the African Union (AU) Ministers of Trade noted the intention of the EU to seek extensive opening of African services sectors.⁵³ From a report of the annual meeting of Ministers of Economy, Finance and Planning in Addis Ababa, Ethiopia in March 2008, it is evident that the EU's focus in the negotiations of EPAs will likely shift to trade in services.⁵⁴ Secondly, after comparing FTAs concluded by the EU with third countries, Heidi Ulrich found that there is a general trend toward liberalising trade in services.⁵⁵ Further, the author's view is that with the WTO Doha round of trade negotiations having stalled in July 2008, the EU is likely to try to achieve its market access goals through the bilateral and regional agreements. The negotiations stalled over a divide between the developed states led by the EU, the United States of America and Japan and the major developing states

⁵⁰ Third World Network 'Bringing human development to the trade negotiating table' *Third World Resurgence* January/February 2005 22.

⁵¹ Mexico has experienced some documented negative impact upon liberalising its banking sector. Although there are markable differences in inter alia the economic environments in Mexico and that in Ghana, they are both developing countries that are involved in trade relations with the EU. The experiences of Mexico can therefore be of benefit in terms of experience sharing to Ghana.

⁵² FIDH Economic Partnership Agreements and human rights <http://www.fidh.org> (accessed 20 August 2008).

⁵³ The OAU formed in 1963 was the first Pan-African intergovernmental organisation. It paved the way for the AU which was launched in 2002 to replace the OAU. It is the principal organisation for promoting accelerated socio-economic integration on the continent, building partnerships between governments and all segments of civil society and aims to promote security and stability on the African continent that is necessary for the implementation of the development and integration agenda of the union. See <http://www.africa-union.org> (accessed 20 October 2008).

⁵⁴ As above (n 19).

⁵⁵ H Ulrich Comparing EU free trade agreements: services ECDPM *In Brief* 6C July 2004 2.

represented mainly by India, Brazil, China and South Africa.⁵⁶ They could not reach consensus on market access for agricultural and non-agricultural goods and on market access on services.⁵⁷ Developing countries maintained that the developed states failed to address the development concerns of the developing states.⁵⁸ With the banking sector showing such remarkable growth in Ghana, it is a probable target for liberalisation by the EU to enable their banks to enter into this market.

1.4 Research questions

- 1 What are the possible outcomes of increased foreign participation through commercial presence upon liberalising the banking sector under EPAs?
- 2 Which recognised human rights, that Ghana has an obligation to respect, could be affected by liberalising the banking sector in Ghana under EPAs?
- 3 What are the consequences if any, of the outcomes of liberalising the banking sector on poverty reduction and development in Ghana?

1.5 Literature review

M Vander Stichele compiled a report for the Centre for Research on Multinational Corporations (SOMO) in September 2006 in which she argues that including services in EPAs is unfavourable to the development of ACP countries.⁵⁹ The International Federation for Human Rights (FIDH) compiled a position paper in June 2007 which argues that the liberalisation of services will reduce the ability of African government to govern these fields.⁶⁰ The South Centre has done a policy brief on the legal and development implications for East and South African (ESA) countries in negotiating trade in services under EPAs.⁶¹ An assessment conducted by PricewaterhouseCoopers in May 2007 concluded that liberalisation of financial services can increase access to affordable credit particularly to small and medium sized businesses which will encourage development.⁶²

1.6 Methodology

⁵⁶ ACP Group Secretariat Draft Agenda of the joint meeting of the ACP Council of Ministers and Ministers of Foreign Affairs to be held on 1 October 2008, Accra, Ghana (available from the author) Part D 3.

⁵⁷ ACP Group Secretariat (n 56 above) Part F 5.

⁵⁸ As above (n 56).

⁵⁹ M Vander Stichele The risks and dangers of liberalisation of services in Africa under EPAs <http://www.somo.nl> (accessed 23 August 2008).

⁶⁰ FIDH Economic Partnership Agreements (EPAs) and human rights <http://www.fidh.org> (accessed 20 August 2008).

⁶¹ South Centre Why inclusion of services in the EPAs is problematic: legal and development implications <http://www.southcentre.org> (accessed 20 August 2008).

⁶² PricewaterhouseCoopers 'Sustainable impact assessment of the EU-ACP Economic Partnership Agreements: key findings, recommendations and lessons learned (2007).

An analytical and descriptive approach to the desktop research material, including electronic research material, collected for this dissertation will be done. Interviews will be conducted in Ghana in order to obtain as far as possible, relevant data. Secondary research data that may be obtained from field visits conducted in Ghana to government departments, banks and other relevant institutions will also be used.

1.7 Limitations of the study

As the interviews with the responsible officials are yet to be arranged, the availability of the proposed interviewees may prove to be a limitation to the study. A further limitation of the study is that since the issues around EPAs are relatively new, there is not much published research on the topic, thus there will be considerable reliance on electronic desktop research material. Finally there will be some reliance on secondary data made available by organisations in Ghana. It is assumed for the purpose of this study that this information will be accurate.

1.8 Chapterisation

Chapter 1 Introduction

Chapter 2 What are human rights?

Chapter 3 The right to development as creating human rights obligations on Ghana

Chapter 4 Banking services in Ghana: an overview

Chapter 5 Envisaged human rights implications of liberalising the banking sector in Ghana under EPAs

Chapter 6 Conclusion and recommendations

Chapter 2 What are Human Rights?

2.1 Introduction

Article 9(2) of the Cotonou Agreement provides that ‘respect for *human rights*, democratic principles and the rule of law, which underpin the ACP-EU Partnership *shall underpin the domestic and international policies of the parties* and constitute the essential elements of this agreement’.⁶³ According to the Director of EU External Funds Mobilisation Department at Ghana’s Ministry of Finance, Ghana decided to enter into the interim EPA mainly upon taking into consideration the impacts of a disruption in trade on the welfare and interests of the segment of the population who export goods to the European markets.⁶⁴ It is the policy of the Government of Ghana to always put the welfare and interests of its people into consideration in determining policies and civil servants are continuously encouraged to do this in their everyday work.⁶⁵ International law and the 1992 Constitution of Ghana (the 1992 Constitution) have several human rights provisions which if protected by the state can help reduce the levels of poverty and promote development in the country. These constitutionally guaranteed rights create a duty on Ghana to consider them in its policy considerations and in negotiation of the EPAs. Before looking into whether or not human rights will be affected by the liberalisation of the financial sector in Ghana through EPAs a look will be taken at human rights as a concept.

2.2 The concept of ‘human rights’

Human rights are rights that one has simply because one is a human being.⁶⁶ As the state of being human cannot be renounced or lost, human rights are said to be inalienable.⁶⁷ There have been several philosophical theories advanced to advocate the existence of human rights in society. The three fundamental theories are the positivist theory, the natural law theory and the theological theory. The author is of the opinion that they are to be considered the fundamental theories as other theories on the justifications for human rights have been premised on elements of these three theories. These classic philosophical theories will be briefly mentioned.

⁶³ The emphasis indicated is the author’s.

⁶⁴ Interview with MA Addo, Director EU-ACP External Resources Mobilization Department, Ministry of Finance, Accra on 24 October 2008.

⁶⁵ As above (n 64).

⁶⁶ K English & A Stapleton *The human rights handbook: a practical guide to monitoring human rights* (1995) 4.

⁶⁷ J Donnelly *International human rights: dilemmas in world politics* (1993) 19.

Theological theory has justified the existence of human rights as a law that is higher than the state and which is from a Supreme Being.⁶⁸ Thus accepting a universal common Supreme Being gives rise to a common humanity and from this flows a universality of certain rights which are inalienable owing to their mortal authority.⁶⁹ The natural rights theory stems from the natural law theory.⁷⁰ Natural law theorists such as John Locke propose that human beings, in an effort to mitigate the hazards and inconveniences found in living in the natural state of affairs, entered into a social contract with a sovereign government to regulate the state. The government is however obliged to protect the natural rights of its subjects and were it to fail in this regard, would forfeit its validity and office in terms of the social contract.⁷¹ The positivist theory promulgates the view that the source of human rights is to be found only in the enactments of the system of law with sanctions attached to them.⁷² It goes against the moral philosophical basis of human rights that is present in the natural law and the theological theories.⁷³ There has been a revival of the human rights theories based on the classic theories in one way or another.⁷⁴ Whichever school of thought one may subscribe to regarding the justifications for recognition and respect of human rights, human rights now form part of both national and international law.

2.3 Human Rights law

Having considered what the possible reasons are for the recognition and the respect for human rights, human rights law has to be looked at. Human rights law is a part of international law.⁷⁵ Sources of international law are listed in article 38 of the Statute of the International Court of Justice as international conventions, international custom as evidence of a general practice accepted as law, general principles of law recognised by the community of nations and judicial decisions and the teachings of the most highly qualified publicists. Human rights law can therefore also be found in the same sources. What will be discussed hereunder however is human rights law as it is in international conventions. Human rights norms have through continuous negotiations at international meetings been agreed on in international documents and treaties.⁷⁶

⁶⁸ JJ Shestack 'The Philosophical foundations of human right' in J Symonides (ed) *Human rights: concepts and standards* (2000) 35.

⁶⁹ As above (n 68).

⁷⁰ Shestack 'The Philosophical foundations of human right' in Symonides (ed) (n 68 above) 37.

⁷¹ As above (n 70).

⁷² Shestack 'The Philosophical foundations of human right' in Symonides (ed) (n 68 above) 38.

⁷³ As above (n 72).

⁷⁴ For further readings on the theories of human rights including an exposition of the modern human rights theories see Shestack 'The Philosophical foundations of human rights' in Symonides (ed) (n 68 above) 42-61.

⁷⁵ G Alfredson *et al* (eds) *International human rights monitoring mechanisms: essays in honour of Jakob Th. Moller* (2001) 15.

⁷⁶ Alfredson *et al* (n 75 above) 20.

Human rights law is to be found in the International Bill of Human Rights as the primary source, various treaties that governments have entered into and in the domestic laws of certain countries.⁷⁷ The main United Nations (UN) documents that contain provisions aimed at protecting the human rights of people are contained in three documents that are collectively referred to as the International Bill of Rights. These are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The UDHR which is the parent of the two covenants was adopted as a non-binding resolution of the UN General Assembly (General Assembly) on 10 December 1948.⁷⁸ It contains a wide array of rights that were later put into the two covenants and distinguished as either being civil and political rights or economic, social and cultural rights. These Covenants are two of several that make up the UN treaty-based human rights law system. The UN system now has a wide array of treaties aimed at the protection of several human rights. Some of these documents will now be briefly highlighted.

2.3.1 UN Human Rights law System

The treaties that make up the UN treaty based human rights law system are the following:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of all forms of Racial Discrimination (CERD)
- Convention on the Elimination of Discrimination Against Women (CEDAW)
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of the Child (CRC)
- Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)

These treaties have various enforcement mechanisms that have been set up in order to ensure the realisation of the rights that they guarantee. The table below gives a summary of the implementation mechanisms under each of the treaties.⁷⁹ There is also an indication as to Ghana's ratification of or accession to these treaties.

⁷⁷ English & Stapleton (n 66 above) 5.

⁷⁸ A Conte *et al* *Defining civil and political rights: the jurisprudence of the United Nations Human Rights Committee* (2004) 1.

⁷⁹ See F Viljoen *International human rights law in Africa* (2007) 92-146 for a more on the UN treaty-based human rights system and Africa.

	CERD	ICCPR	ICESCR	CEDAW	CAT	CRC	CMW
Is there a monitoring committee? ⁸⁰	✓	✓	✓	✓	✓	✓	✓
Is there a state reporting mechanism? ⁸¹	✓	✓	✓	✓	✓	✓	✓
Is there an individual complaints mechanism? ⁸²	✓	✓	×	✓	✓	×	✓
Is there a confidential inquiry mechanism? ⁸³	×	×	×	✓	✓	×	×
Are early warning measures available? ⁸⁴	✓	×	×	×	×	×	×
Is Ghana a state party to it?	✓	✓	✓	✓	✓	✓	✓

✓ Yes × No

Table 1 UN treaty based human rights law and its implementation mechanisms

2.3.2 African regional Human Rights Law

Regional human rights protection systems have been set up in Europe, Americas and Africa. To this end, regional human rights conventions have been adopted which complement and reinforce the universal human rights conventions adopted under the auspices of the UN.⁸⁵ The AU has adopted several conventions aimed at the protection of human rights. The main AU treaties on human rights are the following:

⁸⁰ The main function of monitoring committees is the examination of periodic reports made by the states and to consider inter-state and individual complaints. They consist of independent experts appointed by the member states upon election for a set term that varies from committee to committee.

⁸¹ State parties to the treaties are required to make an initial report and thereafter, periodic reports on the state of the particular right that the treaty guarantees. Each treaty has provisions on the interval period for the periodic reports to be submitted by the state parties.

⁸² Some of the treaties make provision for the individuals who have been victims of the violation of their rights as guaranteed under the particular treaty to make complaints to the monitoring body of that treaty for their consideration. The monitoring body makes a ruling as to whether there has been a violation of the treaty or not.

⁸³ This is a mechanism that allows the monitoring committee to undertake an inquiry into the state where there are well-founded indications of violations of the rights guaranteed under the relevant treaty body. The results of the inquiry are communicated to the state parties.

⁸⁴ These are measures undertaken by the monitoring committee that are aimed at preventing existing problems from turning into conflicts.

⁸⁵ J Dugard *International law: a South African perspective* (2005) 330.

- African Charter on Human and Peoples' Rights (ACHPR)
- Protocol to the African Charter on human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol)
- African Charter on the Rights and Welfare of the Child (African Children's Charter)

The table below shows these conventions and their implementation mechanisms. There is also an indication as to whether or not Ghana has ratified the convention.

	ACHPR	Women's Protocol*	African Children's Charter
Is there a monitoring committee?	✓	✓	✓
Is there a state reporting mechanism?	✓	✓	✓
Is there as individual complaints mechanism?	✓	✓	✓
Is there a confidential inquiry mechanism?	✓	✓	✓
Are early warning measures available?	×	×	×
Is Ghana a state party to it?	✓	×	✓

* The implementation of the Women's Protocol is regulated under the ACHPR thus the enforcement mechanisms under the ACHPR apply similarly to it.

✓ Yes × No

Table 2 AU treaty based human rights law and its implementation mechanisms

2.4 Human Rights as interrelated rights

The rights that are considered to be civil and political rights, also referred to as first generation rights, are often said to provide the citizen with a shield against the state in that the state has a duty to refrain from taking actions that violate these rights.⁸⁶ The economic, social and cultural rights are

⁸⁶ Conte (n 78 above) 1.

categorised as second generation rights and are said to provide a citizen with a sword against the state in that the state is required to do something positive in order to fulfil the rights.⁸⁷

As these rights are indivisible and mutually supportive this raises the uncertainty of the possibility of distinguishing these rights in such a hard and fast manner.⁸⁸ It is the author's view that all human rights are interrelated in that for one to effectively enjoy the civil and economic rights, there has to be provision for and respect of the economic, social and cultural rights. A citizen who has not had a meal to eat in several days and in ill health for lack of health care facilities cannot fully realise his right to participate in elections by getting to the polling station to place his vote into the ballot box. Therefore, securing his right to vote as a priority over his right to food and health is not beneficial as the right to vote becomes superfluous without fulfilment of the other two rights. This illustrates the interrelated nature of all human rights.

2.5 Conclusion

This chapter has given a simple overview of human rights and human rights law. The various ways of enforcing and implementation of the rights within the UN system as well as the African Regional system have been shown. Ghana is a state party to all the treaties that were looked at in the chapter with the exception of the African Women's Protocol. By becoming a state party to the treaties, it creates obligations upon itself that it has to fulfil. It therefore has a duty to respect its peoples rights be they civil and political or economic, social and cultural. This chapter has also shown that all human rights are interrelated, indivisible and mutually supportive. These human rights are to underpin the domestic and international policies of Ghana.⁸⁹

⁸⁷ As above (n 86).

⁸⁸ As above (n 86).

⁸⁹ Art 9(2) of the Cotonou Agreement.

Chapter 3 The right to development as creating human rights obligations on Ghana

3.1 Introduction

The concept of human rights, the major human rights law instruments and their enforcement mechanisms have been outlined under chapter 2. This chapter however deals specifically with the right to development. This right is contained in the African Charter as a source of human rights law. It is also found in a General Assembly declaration.⁹⁰ It can thus be said to qualify as customary law, evidenced by practice of the states which will be shown in this chapter. It is both an independent right and a prerequisite for the enjoyment of other human rights that are protected by the instruments mentioned under that chapter 2. It is the author's view that with the realisation of the right to development, other human rights will be realised and with the realisation of a totality of human rights, there is likely to be a reduction in poverty levels. This chapter therefore endeavours to outline what the right to development is. Thereafter, the obligation of the Government of Ghana to respect and realise this right for its people will be discussed. The link between the right to development and poverty reduction will be illustrated as both being inclusive concepts that can be realised by the fulfilment of other specific human rights.

3.2 What is the right to development?

The idea of the existence of a human right to development was first put forward by Karel Vasak and Kèba M'Baye as part of a new theory on human rights that they referred to as solidarity rights.⁹¹ Providing equal access to resources is the essence of the right to development. It encapsulates the distribution of vital resources by the state to individuals in order to make individual development possible.⁹² The implementation of the right to development is a precondition for the effective enjoyment of all other human rights.⁹³

The right to development is contained in the United Nations Declaration on the Right to Development (the UNDRD) adopted on 4 December 1986. This document does not contain a definition of the right to development. Article 1(1) of the UNDRD provides that 'the right to development is an inalienable human right by virtue of which every human person and all peoples

⁹⁰ Declaration on the Right to Development adopted by General Assembly res 41/128 of 4 December 1986 <http://www.unhcr.ch> (accessed 20 August 2008).

⁹¹ De Feyer (n 39 above) 21.

⁹² M Ghandi 'Right to development as a right to equal resources' in SR Chowdhury *et al* (eds) *The right to development in international law* (1992) 142.

⁹³ T Ansbach 'Peoples and individuals as subjects of the right to development' in Chowdhury *et al* (eds) (n 92 above) 161.

are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized’.

According to Ramu Sarkar, the right to development can be claimed by individuals as well as by collective entities such as states.⁹⁴ Where the right is claimed by individuals, the state has a duty to promote their development. Where it is seen as a collective right claimed by the developing states, the duty bearers are developed states, the international community and world institutions addressing development problems.⁹⁵ However, the collective aspect of the right to development, claimable by states, is not accepted for various reasons. Ramu Sarkar endorses the view by Jack Donnelly that human rights are rights that are held by human beings, it is therefore illogical to claim to give developing countries a human right.⁹⁶ However, according to Lois Sohn, international law recognises inalienable rights of individuals but in the same breath recognises certain collective rights that are exercised jointly by individuals grouped into larger communities including peoples and states, these rights are still human rights.⁹⁷ Thus, a human right remains a human right whether it is enjoyed by the individual alone or by the individual as a member of a group.

The UNDRD does not make any clear assertions regarding the right to development being a collective or an individual right. The provision indicating the duty bearers for the right is article 3 which provides that ‘[s]tates have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.’ This provision indicates the possibility of both a collective as well as an individual understanding of the right to development. However, an indication of the beneficiary of the right is included under article 2(1) of the UNDRD which provides that ‘[t]he human person is the central subject of development and should be the active participant and beneficiary of the right to development’. Here UNDRD seems to exclude states from being beneficiaries of the right to development.

According to Fatsah Ouguerouz, the right to development as is captured in the African Charter is a collective right with the sole holders being ‘the people’. He however goes ahead to note the opinions of Kèba Mbaye and Wolfgang Benedict, which the author endorses, that the right to development as envisaged in the African Charter contains an implicit right of an individual to development.⁹⁸ The right to development as used in this dissertation is that of an individual claimable against the state. It is the duty of the Government of Ghana to provide individuals access to the resources needed for them to be able to achieve individual development.

⁹⁴ R Sarkar *Development law and international finance* (2002) 281.

⁹⁵ Sarkar (n 94 above) 282.

⁹⁶ As above (n 94).

⁹⁷ Sarkar (n 94 above) 285.

⁹⁸ F Ouguerouz *The African Charter on Human and Peoples’ Rights: a comprehensive agenda for human dignity and sustainable democracy in Africa* (2003) 304-305.

3.3 Ghana's obligations to respect the right to development

3.3.1 International law

The General Assembly adopted by resolution the UNDRD. Resolutions of the General Assembly are not recognised as one of the sources of international law listed under article 38(1) of the Statute of the International Court of Justice but international custom is. While states give their express consent to be bound by the international law in treaties, the consent of states to customary law is inferred from their conduct.⁹⁹ Admittedly the resolutions of the General Assembly are not binding as such on the member states, however, repetition of recommendations on a particular topic may amount to collective practice on the part of states regarding that topic.¹⁰⁰

For the existence of a customary law to be demonstrated, there are two requirements; settled practice (*usus*) and a feeling on the part of the states that they are bound by the rule (*opinion juris*).¹⁰¹ The author takes the view that the right to development has gained the status of an independent recognised right as part of customary international law. The *usus* is to be found in the UNDRD itself. The right to development that it guarantees has been the subject of several of the General Assembly's resolutions.¹⁰² It can be inferred from this that the right to development as contained in the UNDRD has received general acceptance, which is what is needed to establish a rule as a custom.¹⁰³ The World Conference on Human Rights, held in Vienna in 1993 adopted the Vienna Declaration and Programme of Action which reaffirmed by consensus the right to development as a universal and inalienable right and an integral part of fundamental human rights.¹⁰⁴ This further supports the position that there is general acceptance that the right to development as a human right has the required *usus* to make it a customary rule.

A sense of obligation to fulfil the right to development as part of the *opinion juris* requirement can be inferred, according to the author, from the conduct of states in the last few decades pertaining to their quest for the realisation of the right to development. A working group has been established by the Commission on Human Rights and the Economic and Social Council to work on the implementation of the right to development as recognised under on the UNDRD. A high-level task force was then established by the Commission on Human Rights to assist the Working Group.¹⁰⁵ The

⁹⁹ Dugard (n 85 above) 29.

¹⁰⁰ I Brownlie *Principles of public international law* (1998) 5.

¹⁰¹ Dugard (n 85 above) 31.

¹⁰² See for examples GA Res 45/97 of 14 Dec 1990, GA Res 46/123 of 17 Dec 1991, GA Res 47/123 of 18 Dec 1992, GA Res 48/130 of 20 Dec 1993, GA Res 49/183 of 23 Dec 1994, GA Res 50/184 of Mar 1996, GA Res 51/99 of 3 Mar 1997 and GA Res 52/136 of 12 Dec 1997.

¹⁰³ Dugard (n 85 above) 32.

¹⁰⁴ Development: the right to development <http://www2.ohchr.org> (accessed 2 October 2008).

¹⁰⁵ Report of the Working Group on the Right to Development on its 9th session (Geneva 18-22 August 2008) A/HRC/9/17 10 September 2008 <http://www.un.org> (accessed 2 October 2008).

adoption of a development agenda by the AU in the form of New Partnership for Africa Declaration (NEPAD) is also indicative of a feeling of obligation by the AU states to do something positive to realise the protection of the right to development. The pursuit of trade by the EU with the rest of the world with the objective of development cooperation is seen by the author to imply a sense of obligation felt by EU states to realise the right to development. The Government of Ghana specifically, in giving a reply to the UN Secretariat's note *verbale* seeking information relevant to the implementation of the UNDRD stated that it recognises that the UNDRD constitutes a milestone in the construction of a universally accepted human rights architecture and is convinced that governments should undertake radical economic reforms in terms of the realisation of economic, social and cultural rights as enshrined in the International Bill of Human Rights and the UNDRD.¹⁰⁶ Ghana can therefore be said to be bound to respect the right to development contained in the UNDRD and recognised as a right according to customary international human rights law.

3.3.2 African regional human rights law

The African Charter is at the centre of the African human rights system. It contains the fundamental human rights that the AU member states have undertaken to recognise and take measures to give effect to. Ghana has been an AU member since the beginning when it was still the Organisation of African Unity and was in fact one of the founding members. Article 22 of the African Charter guarantees the right to development and obliges the Government of Ghana to ensure the exercise of this right. Article 75(2) of the 1992 Constitution provides that a treaty, agreement or convention executed by or under the authority of the President is subject to ratification by an Act of Parliament or a resolution of Parliament supported by the votes of more than half of all the members of Parliament. Most of the rights that are guaranteed in the African Charter were incorporated into the law of Ghana as part of chapter five of the 1992 Constitution that contains the fundamental human rights and freedoms. Unfortunately, the right to development was not incorporated as an independent right protected under the laws of Ghana. However, article 33(5) of the 1992 Constitution can be used to make the case that this right is incorporated into Ghana's domestic law. This section provides as follows:

'[t]he rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.'

This provision is to the effect that any right that relates to fundamental rights and freedoms which are considered to be inherent in a democracy and intended to secure the freedom and dignity of

¹⁰⁶ Report of the Secretary General on the Right to Development to the General Assembly 17 August 1998 A53/268 <http://www.un.org> (accessed 2 October 2008).

man although not specifically mentioned are recognised. The court in *Adjei-Ampofo v Attorney General* stated that '[t]he reference to 'others' referred to in article 33(5) could only be those rights and freedoms that have crystallised into widely or generally accepted rights, duties, declarations and guarantees through treaties, conventions, international and regional accords, norms and usage.'¹⁰⁷ The right to development, according to the author, is a right that has crystallised into a generally accepted right through regional accords, norms and usage both in the UN system as well as in the African regional system.

3.3.3 Ghana law

As has been noted, the right to development as an independent right is recognised under the 1992 Constitution impliedly in terms of article 33(5). In addition to this chapter six of the 1992 Constitution contains the Directive Principles of State Policy (the Directive Principles). Article 36(2)(d) of the 1992 Constitution provides that the state shall take steps to establish an economy whose underlying principles include even and balanced development of all regions in Ghana and in particular improving the conditions of life in the rural areas. Article 36(6) of the 1992 Constitution provides that the state shall afford equality of economic opportunity to all citizens. These provisions aim to achieve the goals behind the right to development. Providing equal access to resources is after all the essence of the right to development.¹⁰⁸

Whether or not article 36(2)(d) and 36(6) create an enforceable obligation on the Government of Ghana is the question. Adade JSC in *NPP v Attorney General (31st December case)* stated that he was of the opinion that Directive Principles contained in the 1992 Constitution were in fact justiciable.¹⁰⁹ This was the position of the majority judgment. In the *NPP v Attorney General (CIBA case)*, which is the most recent reported case on the issue, it was stated that the directive principles are only enforceable through the fundamental human rights and freedoms provisions of the Constitution and are not by themselves enforceable.¹¹⁰ In this case, the plaintiff, a political party brought a claim to declare certain legislative provisions to be unconstitutional as being against certain sections of chapter six of the 1992 Constitution. The defendant raised legal preliminary objections to *inter alia* the fact that the rights relied on by the plaintiff falling under chapter six of the 1992 Constitution were not justiciable. Bamford-Addo JSC held the view that although the directive principles were of value only as interpretive tools to be used by the judiciary in their interpretive duty and have no separate existence, when they are read with any of the substantive guaranteed rights and freedoms

¹⁰⁷ *Adjei-Ampofo v Attorney General* [2003-2004] SCGLR 411 at 418-419.

¹⁰⁸ M Ghandi 'Right to development as a right to equal resources' in Chowdhury *et al* (eds) (n 92 above)141.

¹⁰⁹ *New Patriotic Party v Attorney General (31 December case)* [1993-1994] 2 GLR 35 at 66.

¹¹⁰ *New Patriotic Party v Attorney General (CIBA case)* [1996-1997] SCGCR 729 at 733.

under chapter five they become enforceable.¹¹¹ Bamford-Addo JSC in the *31st December case* had taken the position that the state directives are not at all enforceable. In the *CIBA case*, she clarifies her position to have been that the directive principles are not by themselves enforceable but where read in conjunction with other enforceable rights they are justiciable.¹¹²

Akuffo JSC took the same position.¹¹³ The statement of the law as is endorsed by Akuffo JSC is that Policy Directives are enforceable to the extent that they are supported by specifically recognised rights under the Constitution. In the case, the court found that the particular Directives Principles relied upon were in fact justiciable as the right being sought to be protected in this case was contained in chapter five of the Constitution.

As the right to development has been shown under paragraph 3.3.2 above to be capable of protection as a fundamental human right in terms of article 33(5) of the 1992 Constitution, then the Directive Principles that contain elements of the right to development that are contained in the Constitution are equally enforceable against the government of Ghana in keeping with the Supreme court's decision in *CIBA case*.

3.4 Poverty reduction and the right to development as preconditions for the effective enjoyment of other human rights

The right to development as both an inalienable and independent human right as well as a prerequisite for the enjoyment of other human rights, can be said to be a right of access to the means necessary for the realisation of human rights defined in international human rights instruments.¹¹⁴ Article 8 of UNDRD provides that '[s]tates should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income'. The African Human Rights Commission in the *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria case*,¹¹⁵ had an opportunity to address the right to development contained in the African Charter. In this case the Commission recognised the right to food as being an implicit right to be found in several provisions of the African Charter including the right to development. This acknowledges the contention that the

¹¹¹ *New Patriotic Party v Attorney General (CIBA case)* [1996-1997] SCGCR 729 at 743.

¹¹² *New Patriotic Party v Attorney General (CIBA case)* [1996-1997] SCGCR 729 at 747.

¹¹³ Speaking, however, on the policy directive contained in article 36, an economic objective, Akuffo JSC takes the position that they cannot be enforceable because of the broad nature by which they are stated. *New Patriotic Party v Attorney General (CIBA case)* [1996-1997] SCGCR 729 at 803.

¹¹⁴ Bulajic (n 48 above) 361.

¹¹⁵ *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 as found in C Heynes and M Killander *Compendium of key human rights documents of the African Union* (2007) 251. The complaint before the Commission concerned the consequences of environmental degradation in Onguniland in the Niger Delta. In the decision, the Commission finds some implied socio-economic rights in the African Charter violated by Nigeria.

right to development is a precondition for the effective enjoyment of other human rights. To illustrate that poverty reduction is also a precondition for the effective enjoyment of other human rights, a multi-dimensional understanding of poverty which reflects the indivisible and interdependent nature of all human rights needs to be adopted. This was done by the UN Economic, Social and Cultural Committee when it stated that '[i]n the light of the International Bill of Rights, poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights'.¹¹⁶

3.5 Conclusion

This chapter has shown that the government of Ghana has an obligation to its people to respect their right to development. What the right to development entails was also determined in this chapter. It has been illustrated that the right to development like the notion of poverty reduction entails fulfilment of several guaranteed human rights. The difference, however, between the right to development and poverty reduction is that the right to development as has been argued in this chapter is enforceable as a right against Ghana whereas poverty reduction is not. Demanding the respect of the right to development against Ghana will be tantamount to demanding the realisation of several other human rights as guaranteed in international and regional accords.

¹¹⁶ UN Economic, Social and Cultural Rights Committee 'Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: poverty and the ICESCR <http://www.unhchr.ch> (accessed 23 October 2008).

Chapter 4 Banking services in Ghana: an overview

4.1 Introduction

In order to be in a position to attempt a prediction of the consequences of liberalising the sector by the EPAs, it is paramount to give an overview of the banking sector in Ghana as it currently is. In giving an overview of the banking sector, this chapter will focus on the Agricultural Development Bank and the rural banking system through which the government set up mechanisms to give support to the agricultural sector in the country. The role that these particular institutions play in development and poverty reduction in the country will be highlighted.

An understanding of the history of the Ghanaian banking sector is vital for an understanding of the current state it is in. The banking sector before the mid-1980s was the result of a government driven effort through direct and indirect financing of institutions which it felt could fill gaps within the financial sector. Under this effort, several development banks were established and rural finance was encouraged.¹¹⁷ The Bank of Ghana (BOG) during this period would direct the banks as to loan allocations to the various sectors of the economy. In the mid 1980's due to the sector being heavily regulated and highly inefficient, sector reforms were introduced by the state in a bid to renovate it. Ghana, at this time, undertook liberalisation of its banking sector unilaterally in the form of Financial Sector Adjustment Programme (FINSAP). This was done in line with International Monetary Fund (IMF)/World Bank directed Structural Adjustment Programme (SAP) guideline.¹¹⁸ FINSAP was introduced in 1987 and gave priority to the privatisation of state-owned banks.¹¹⁹ Its objectives were to be attained by restructuring distressed banks, reforming prudential legislation and the supervisory system, permitting new entry into financial markets by public and private sector investments and developing money and capital markets.¹²⁰

Market access was opened up resulting in foreign and domestic service providers being allowed to operate the same range of services. No special treatment is afforded either of them.¹²¹ There are, however, licensing requirements that the Bank of Ghana uses to determine who can set up as a bank

¹¹⁷ TO Antwi-Asare *Financial sector reforms and bank performance in Ghana* (2000) 26.

¹¹⁸ IMF and World Bank are international financial institutions (IFIs). The World Bank is a UN channel for the international community's development efforts whereas the IMF has the aim of ensuring global economic stability. In their role in development assistance to African states, they provided funds to them that was accompanied by SAP. SAP included conditions such as trade liberalisation, privatisation of state enterprises and downscaling of the civil service. For reading on the negative effect of structural adjustment programmes see Viljoen (n 79 above) 78-80.

¹¹⁹ CD Jebuni & A Laryea 'Trade in services in Ghana' in CD Jebuni & AD Oduro (eds) *African imperatives in the new world trade order: a case study of Ghana* (2007) 93.

¹²⁰ Antwi-Asare (n 117 above) 27.

¹²¹ As above (n 120).

in the country.¹²² Banking licences are issued in accordance with the Banking Act 673 of 2004. It comes as no surprise that the banking sector has a high level of foreign participation. From table 3,¹²³ the author deduced that there is only one wholly Ghanaian owned private commercial bank and the government has a stake hold of 50% plus in five commercial banks in the country. Bank charges are lower in nationally owned banks than in foreign ones.¹²⁴ As at April 2008, there were 26 registered banks in Ghana and 129 Rural Banks.¹²⁵ Rural banks are the main source of credit facilities for the rural poor. Formal banking reaches only 5% of the population and about half of all the bank branches in the interior belong to the dominant state owned banks.¹²⁶ The banks in Ghana are currently structured to supply high-cost, short-term credit. Access to medium and long-term credit on favourable terms for investment remains a challenge.¹²⁷ Further, J.B. Siriboe, Chief Director at the Ministry of Finance and Economic Planning in Ghana noted that:

‘the key challenge going forward, which cannot be stressed enough, is the importance of inclusiveness, access to affordable finance for the poor, medium term funds for small and medium enterprises, especially small entrepreneurs, as well as or in particular for agricultural business.’¹²⁸

The sectoral share of credit allocations to the private sector as at March 2008 was as follows:

¹²² Interview with F Kwesi, Deputy Manager Banking Supervision Department, Bank of Ghana, Accra on 26 September 2008.

¹²³ Table 3 is on pg 26 below.

¹²⁴ CD Jebuni & A Laryea ‘Trade in services in Ghana’ in Jebuni & Oduro (eds) (n 119 above) 98.

¹²⁵ A list of the registered banks and rural banks is available from the Bank of Ghana’s website <http://www.bog.gov.gh>.

¹²⁶ CD Jebuni & A Laryea ‘Trade in services in Ghana’ in Jebuni & Oduro (eds) (n 119 above) 96.

¹²⁷ J Heintz Elements of an employment framework for poverty reduction in Ghana <http://www.undp.org> (accessed 8 September 2008) 19.

¹²⁸ Ministry of Finance and Economic Planning Ghana Making finance work for Africa conference June 17-18 2008 and making finance work for Ghana June 16 2008 Accra, Ghana <http://www.mofep.gov.gh> (accessed 23 September 2008).

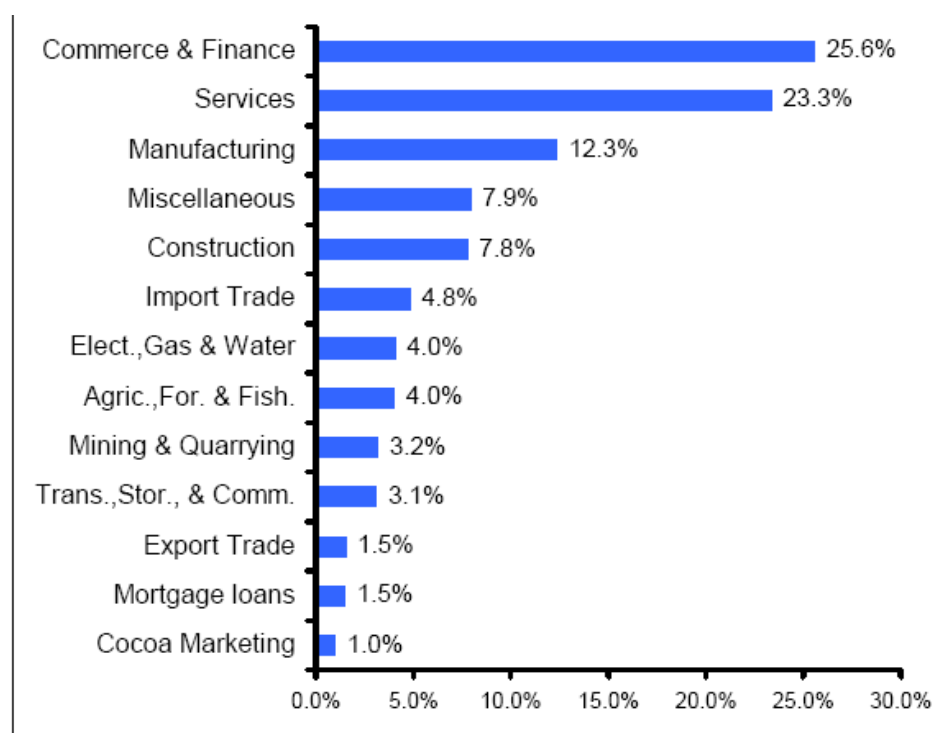


Figure 1 Credit allocations to the private sector as at March 2008¹²⁹

From the graph above, the agricultural, forestry and fishing sector received a total allocation of 4% of the total amount of loans disbursed by banks in Ghana. The author observes that considering the vital role that the sector plays in the social and economic development of the citizens in terms of employment and food production this disproportionality is unsettling. There are several microfinance providers in the country through various schemes that provide financial services to the agricultural sector in the country.¹³⁰ However the scope of this dissertation is limited to the formal banking sector.

This chapter will begin with a breakdown of the structure of the banking sector in Ghana. Thereafter the role of the sector in development and poverty reduction through servicing of the agricultural sector will be looked at. The challenges that the sector faces in this role in development will then be highlighted. A conclusion will then be reached.

4.2 Structure of the Ghanaian banking sector

4.2.1 Bank of Ghana

The Bank of Ghana is the Central Bank of the country. It was established as such on March 4 1957 through the Bank of Ghana Ordinance 34 of 1957.¹³¹ It is responsible for the issue and management

¹²⁹ The figure was extracted from material obtained from the Bank of Ghana (available from the author).

¹³⁰ Interview with DP Agbogah Research and Publications Officer, Bank of Ghana, Accra on 26 September 2008.

¹³¹ As above (n 122).

of the currency, public debt, foreign exchange regulation, banking supervision and formulation of monetary and credit policies.¹³²

4.2.2 Commercial banks

Since 2003, universal banking has replaced the three-pillar banking model in which the banks were categorised as being development, merchant or commercial banks depending on the activities that they engaged in and were thus restricted to that activity. With the introduction of universal banking, the commercial banks in Ghana are now allowed to engage in whichever activity they choose to. All but Barclays Bank Ghana Ltd are licensed as universal banks. Barclay Bank Ghana Ltd is a general bank as it is also authorised to operate off-shore accounts.¹³³ The ownership structure of commercial banks as at September 2008 is in the table below.

	Government	Private		
		Domestic	Foreign	
1	Agricultural Development Bank	100.00	-	-
2	Amalgamated Bank Ghana Ltd.	-	51.00	49.00
3	Barclays Bank Ghana Ltd	-	-	100.00
4	Bank of Baroda	-	-	100.00
5	BPI Bank Ghana Ltd.	2.07	5.15	92.78
6	BSIC Ghana Ltd	-	-	100.00
7	CAL Bank	27.27	61.83	10.90
8	Ecobank Ghana Ltd.	3.30	4.50	92.20
9	Fidelity Bank	31.00	25.25	43.75

¹³² As above (n 122).

¹³³ As above (n 122).

10	First Atlantic Merchant Bank	20.73	67.85	11.42
11	Ghana Commercial Bank Ltd.	53.12	35.66	11.22
12	Guaranty Trust Bank	-	15.00	85.00
13	HFC Bank	34.31	33.79	31.90
14	Intercontinental Bank	-	10.00	90.00
15	International Commercial Bank	-	-	100.00
16	Merchant Bank Ghana Ltd.	87.50	12.50	-
17	National Investment Bank Ltd.	89.94	10.06	-
18	Prudential Bank Ltd.	10.00	90.00	-
19	SG SSB Bank	21.61	26.67	51.72
20	Stanbic Bank Ghana Ltd.	-	3.48	96.52
21	Standard Chartered Bank Ltd.	14.61	14.53	70.86
22	The Trust Bank	70.50	6.00	23.50
23	UniBank Ghana Ltd.	-	100.00	-
24	United Bank Africa	-	49.00	51.00
25	Zenith Bank	-	-	100.00

Table 3 Ownership of commercial banks in Ghana as at September 2008¹³⁴

¹³⁴ The table was extracted from material obtained from the Bank of Ghana (available from the author).

4.2.3 Rural banking sector

A rural bank is a unit bank established to provide simple bank facilities for the rural community in which it is located. It is owned, managed and patronised by the locals and operates no branches therefore the savings mobilised are invested in local business through lending to small farmers, fishermen and other entrepreneurs.¹³⁵

Region	Number
Ashante	22
Central	21
Eastern	21
Brong Ahafo	20
Western	14
Volta	11
Greater Accra	6
Upper East	4
Upper West	4
Northern	6
Total	129

Table 4 Regional distribution of rural banks as at April 2008¹³⁶

4.3 The sector's contribution to development and poverty reduction in Ghana

4.3.1 Agricultural Development Bank

The Agricultural Development Bank (ADB) was formed in 1965 when the Bank of Ghana saw the need to provide some credit to small scale farmers who produce the bulk of agricultural output.¹³⁷ ADB is now operating as a universal commercial bank. The bank primarily specialises in financial intermediation related services with the aim of promoting agricultural and rural development as a foundation for the country's overall economic development.¹³⁸ The Government of Ghana owns 51.83% shares while the Bank of Ghana owns 48.17% shares.¹³⁹ The objectives and functions of the ADB include, providing credit facilities for agricultural and allied services, developing agriculture through joint share-holding and joint participation in agricultural enterprises with persons or

¹³⁵ K Badu *Monetary economics in the developing countries: money and banking institutions* (1994) 64.

¹³⁶ Registered banks in Ghana <http://www.bog.gov.gh> (accessed 3 September 2008).

¹³⁷ As above (n 122).

¹³⁸ <http://www.agricbank.com> (accessed 22 September 2008).

¹³⁹ <http://www.agricbank.com> (accessed 15 September 2008).

institutions both foreign and local and the management of special funds and loans granted to government and international agencies for promoting agricultural development.¹⁴⁰

However, the problems that the ADB faced in the 1980s forced it to follow the practice of existing commercial banks of locating branches mostly in urban and semi-urban areas and focusing their loans on commerce and large scale farmers who were deemed better risks than small farmers.¹⁴¹ This occurred under FINSAP when the bank undertook a capital restructuring program. It diversified its portfolio to sectors other than agriculture which were not only less risky but also comparatively highly profitable.¹⁴² ADB is estimated to provide 85% of institutional credit to the agricultural sector.¹⁴³ It offers credit to both small-to-medium scale farmers and large scale farmers in the form of cash or input or a mix of the two.¹⁴⁴ The bank nonetheless currently offers a wide variety of services as a universal commercial bank. The share of credit allocated to agriculture sector has gone down since the unilateral liberalisation of the sector when the bank started operating as a universal commercial bank in competition with 24 other banks.¹⁴⁵

In July 2007, there was debate in Ghana when it became public knowledge that the BOG had received an unsolicited offer from Stanbic Bank, a South African bank, to purchase the 48.17% shares that the BOG holds in ADB. Many Ghanaians were against this as it was felt that the strategic role that the bank plays in the country is too important to leave in the hands of the private sector. As of the time of writing, the ADB's ownership had not changed.

4.3.2 Rural banks

The rural banking system was developed as a reaction to the realisation that there was a gap in institutional finance to the rural agricultural sector in Ghana. A rural bank is like any other banks except that it is a unit bank and therefore has no branches.¹⁴⁶ The idea during their formation was that the local savings mobilized in the rural communities were to be used for the needs of the community in which it is located. The first bank was started in 1976, by 1987 the number of rural banks had increased to 117.¹⁴⁷ There are currently 129 rural banks in Ghana.

¹⁴⁰ <http://www.agricbank.com> (accessed 15 September 2008).

¹⁴¹ As above (n 122).

¹⁴² As above (n 122).

¹⁴³ E-mail from D Koomson Head of Public Relations Unit, ADB on 13 October 2008.

¹⁴⁴ As above (n 143).

¹⁴⁵ As above (n 143).

¹⁴⁶ Bank of Ghana 'The rural banking system: performance appraisal and policy proposals material' (available from the author) 2.

¹⁴⁷ Bank of Ghana (n 146 above) 3.

The rural banks were to operate no branches so that the savings mobilised from the community are invested in local business through lending to small farmers, fishermen and other entrepreneurs. With time, rural banks were having trouble surviving as the amount of savings that were collected from the local population was not enough to sustain them. They were therefore allowed to open one agency per rural bank in the areas closer to the urban areas so as to increase the amount of deposits they collect. This money was to benefit the rural areas. Currently, the agencies of rural banks can be found in the urban areas of Ghana which is contrary to the idea of their formation. However, this can also be attributed to the fact that the urban area has expanded outwards and now covers what was once the areas surrounding the urban areas.

Another significant change that has affected the rural banks is that before FINSAP reforms in 1987, the rural banks were to follow a mandatory sectoral allocations directive issued by the BOG as to the allocation of their loans. They were required to allocate fifty percent of their loans to the agricultural sector, thirty percent to the cottage industries and twenty percent to trading and transport activities.¹⁴⁸ After the financial sectors reforms, this form of government intervention does not apply anymore. The banks can decide to whom they want to give credit to.

Research carried out by the BOG research department however revealed that 'rural banks, since their establishment, have made tremendous strides in the performance of their duty of financial intermediation in the rural areas. They continue to mobilise and lend out funds to promote the various sectors of the rural economy'.¹⁴⁹ This inevitably has a positive effect on the living standard of the rural population.

4.4 Challenges to contributing to development and poverty reduction

4.4.1 Rural banks

Rural banks cannot access the resources and economies of scale of formal banks.¹⁵⁰ Another challenge faced by the rural banks is the weak management due to lack of skilled directors and personnel.¹⁵¹ As the rural banks are now operating agents in what can be said to be urban areas, they are increasingly giving loans to the urban population. Ideally, the function of the agents in the urban areas was to increase the savings collected, which are to be used in the development of the rural areas by providing loans to the small scale farmers and the rural population. However, having

¹⁴⁸ Bank of Ghana 'Trends in rural bank credit allocation: the shift from agriculture to the 'other' sector' (available from the author) 5.

¹⁴⁹ As above (n 148).

¹⁵⁰ J Heintz Elements of an employment framework for poverty reduction in Ghana <http://www.undp.org> (accessed 8 September 2008) 33.

¹⁵¹ As above (n 130).

realised the profitability of giving loans to less risky sectors, the loan allocation to the urban areas has increased and unfortunately the profits are not being ploughed back into the rural areas. Frietas Kwesi estimates that currently the loan allocation to the urban and rural population by rural banks is at 60:40. 60% being the loan allocated to the rural population and 40% that to the urban population.¹⁵² With the removal of mandatory allocations for the banks, the agricultural sector lending has reduced in favour of salaried workers who have a better record of repayment and are therefore viewed as being 'less risky' than the rural population.¹⁵³

4.4.2 Agricultural Development Bank

Although the ADB claims that its primary function is to service the agricultural sector, as a commercial bank in competition with 24 other commercial banks, it is focusing on the more profitable, meaning, less risky areas. The challenges that the agricultural sector faces pose as hindrances for ADB in financing the sector. These challenges have been identified as crop failure, bush fires, flooding, pests and disease, post-harvest losses due to inadequate storage infrastructure, absence of guaranteed prices, absence of credit insurance to mitigate risks and lack of tangible security or collateral.¹⁵⁴

The ADB in attempting to service more rural areas can only expand to a certain point beyond which the costs involved will exceed the benefits gained. Finally, the ADB like other commercial banks is tapping resources from the rural areas to be invested in the urban areas.¹⁵⁵ The BOG has issued a directive that every bank must have a capital base of seventy billion Ghana Cedis by 2012. There is concern that several of the banks in Ghana will not be able to meet this requirement without resorting to measures such as mergers and acquisitions or any other means of getting increased capital from either the domestic or foreign private investors.

4.5 Conclusion

The query is whether or not further liberalisation of the sector under the EPAs will help to remove these challenges or exacerbate them. Universal banking has levelled the playing field, and opened up the system to competition, product innovation and entry. This is seen as the source of many of the challenges mentioned in this chapter. The increased competition has forced the banks to pursue a profit oriented form of operating. The agricultural sector has been shown to be perceived as being a risky and non-profitable sector for banks. The licensing policy of the Bank of Ghana at this stage is

¹⁵² As above (n 122).

¹⁵³ As above (n 130).

¹⁵⁴ As above (n 143).

¹⁵⁵ Bank of Ghana 'Financial sector reform and recent trends in the banking and financial sector' (available from the author) 2.

that the entry of foreign banks is limited to truly internationally active financial institutions.¹⁵⁶ What the consequences of an increase in the number of these foreign banks will be is yet to be determined.

¹⁵⁶ As above (n 122).

Chapter 5 Envisaged human rights implications of liberalising the banking sector in Ghana under EPAs

5.1 Introduction

In the previous chapter, the nature of the Ghanaian banking sector was outlined. This chapter considers the possible consequences on this sector of an increase in the number of licensed foreign banks in the country. This assessment will be made based on the experience of Ghana upon undertaking unilateral liberalisation of the sector as well as experiences from other countries upon undertaking liberalisation of their banking sectors in terms of a regional accord such as an EPA. Once these consequences are identified, the human rights implications of these consequences will be highlighted. However in order to put this assessment in context, the chapter will begin with a general discussion to explain the concept liberalisation of a banking sector. Thereafter, the pros and cons of such liberalisation as has been presented by other commentators on the topic will be looked at. Experiences drawn from Mexico's liberalisation of its banking sector under the EU-Mexico FTA will also be noted.

5.2 Liberalisation of banking services: an overview

Liberalisation of trade in services can be achieved through several mechanisms which are unilateral, bilateral, regional and multilateral.¹⁵⁷ Unilateral liberalisation as undertaken by Ghana has already been noted under chapter four. Multilateral liberalisation is that undertaken in terms of GATS which allows WTO members to determine the extent and the rate at which they will liberalise services.¹⁵⁸ This system gives developing countries the possibility of undertaking a commitment to liberalise a particular service and later withdraw or modify this decision if it proves not to be in the country's interest.¹⁵⁹ The focus of this dissertation is on the EPAs as an instrument to liberalise services, therefore, a discussion of the GATS provisions is beyond the scope of this work.

Liberalising through the regional agreements is yet another means of undertaking the liberalisation of a state's banking sector. This is done in terms of commitments undertaken by state parties in regional economic agreements. This is what the full EPAs are ideally to do. According to TA Oyejide, the challenge Africa faces in this regard is in the form of problems of implementation and full

¹⁵⁷ TA Oyejide Strategies and mechanisms for liberalising trade in services in Africa: implications for EPA negotiations <http://www.idrc.ca> (accessed 5 September 2008) 5.

¹⁵⁸ United Nations Conference on Trade and Development (UNCTAD) secretariat *Trade and development report 2007* (2007) 57.

¹⁵⁹ Art XXI of GATS makes this provision in general wording, however, the second annex on financial services specifically addresses modification or withdrawal of commitments on financial services.

compliance that continue to impede the realisation of effective liberalisation of trade in services within the regional integration schemes.¹⁶⁰ Liberalising the banking sector can also be done through bilateral agreements. Of concern to the author, is the fact that as has been demonstrated in the case of the interim EPAs, EU can pursue such an agreement with the individual states and not the regional grouping that it belongs to. Where the region is working towards a FTA the conclusion of a bilateral agreement with the EU that includes services by one of the member states will have an effect in the other member states of a regional group regardless of the fact that they have not concluded such agreements with the EU. The effect of the EPAs on regional integration in Africa is however beyond the scope of this dissertation.

Liberalising through bilateral agreements has been criticised as being disadvantageous because certain issues that developing countries could not reach an agreement on during the multilateral trade negotiations are made elements of the bilateral agreements.¹⁶¹ This was seen in the case of the European Union Mexico Free Trade Agreement, which took effect in 2000, where government procurement and industrial goods were included in the agreement although they had not been agreed upon in the WTO system.¹⁶² Further, the provisions in the agreement on services go beyond the commitments undertaken by Mexico in GATS.¹⁶³ It is the author's view that with the breakdown of the WTO Doha 'development' Round of multilateral trade talks in July 2008 and the perceived resistance presented by African states where they negotiate as a united front, this concern should not be ignored.

5.3 Arguments by proponents and opponents of liberalisation

5.3.1 Arguments by proponents of liberalisation

Foreign banks can offer their clients a greater variety of financial services and to offer these services with a better relationship between the prices charged for the service and the quality of the service that is received by the client.¹⁶⁴ This increased competitive pressure, it is argued, will push the domestic banks to become more efficient.¹⁶⁵ According to R Cull and MSM Peria, existing studies on the impact of foreign bank participation on efficiency and competition largely support the view that it does improve the domestic banks efficiency and increases competition by pressuring other

¹⁶⁰ Oyejide Strategies and mechanisms for liberalising trade in services in Africa: implications for EPA negotiations <http://www.idrc.ca> (accessed 5 September 2008) 9.

¹⁶¹ UNCTAD Secretariat (n 158 above) 58.

¹⁶² T Jones Raw deal: the EU's unfair trade agreements with Mexico and South Africa <http://www.wdm.org> (accessed 8 September 2008) 28.

¹⁶³ RA Reveles & MP Rocha The EU-Mexico Free Trade Agreement seven years on: a warning to the global south <http://www.tni.org> (accessed 5 September 2008).

¹⁶⁴ M Jansen & Y Vennes Liberalising financial services trade in Africa: going regional and multilateral <http://www.papers.ssrn.com> (accessed 5 September 2008) 2.

¹⁶⁵ Jansen & Vennes Liberalising financial services trade in Africa: going regional and multilateral <http://www.papers.ssrn.com> (accessed 5 September 2008) 3.

banks.¹⁶⁶ The size of African economies negatively affects the banks' capital flow. Cross-border capital flows can help overcome this problem.¹⁶⁷ With improved capital flow, the banks are better placed to advance long-term loans to the public. In addition to this, due to the economies of scale that the foreign banks will have, there is bound to be improvements in the pricing of banking services as the foreign banks are more efficient therefore incur lower running costs thus charging lower prices in order to meet these costs.¹⁶⁸

5.3.2 Arguments by opponents of liberalisation

Cross-border capital flows may pose a new challenge in that internal or external events have been known to trigger capital flight out of emerging markets.¹⁶⁹ This poses a challenge because the host country is now put at risk of experiencing financial shocks from the home country of the foreign bank or the world. An increase in the number of foreign banking firms makes the country susceptible to being affected where such capital flight occurs for whatever reason. Domestic banks that do not improve their efficiency may lose their market share which will result in their facing financial problems that will lead to job losses.¹⁷⁰ Liberalisation involves among others, the withdrawal of the state from being a financial intermediary which results in the conversion of development banks into regular banks and the privatisation of the publicly owned banking system.¹⁷¹ The risk of a reduction in credit is also predicted as is the risk that there will be what is termed as 'cherry picking'.¹⁷²

5.3.3 Experiences upon liberalising the sector from elsewhere

According to a study by Haber and Musacchio's as analysed by Cull and Peria, foreign bank participation in Mexico has not been found to increase competition and efficiency.¹⁷³ This has been attributed to the concentrated nature of the banking sector. The IMF has found that loans made by the banks to companies are concentrated in larger companies while small and medium sized firms

¹⁶⁶ R Cull & MSM Peria Foreign bank participation and crisis in developing countries <http://econ.worldbank.org> (accessed 5 September 2008) 14.

¹⁶⁷ Jansen & Vennes Liberalising financial services trade in Africa: going regional and multilateral <http://www.papers.ssrn.com> (accessed 5 September 2008) 4.

¹⁶⁸ M Vander Stichele Financial services liberalisation and pro-poor and sustainable development: critical issues <http://www.SOMO.nl> (accessed 20 August 2008).

¹⁶⁹ Jansen & Vennes Liberalising financial services trade in Africa: going regional and multilateral <http://www.papers.ssrn.com> (accessed 5 September 2008) 4.

¹⁷⁰ Jansen & Vennes Liberalising financial services trade in Africa: going regional and multilateral <http://www.papers.ssrn.com> (accessed 5 September 2008) 5.

¹⁷¹ CP Chandrasekhar & P Pal Financial liberalization in India: an assessment of its nature and outcomes <http://www.networkideas.org> (accessed 5 September 2008) 14.

¹⁷² This is a profit strategy used by large banks that entails withdrawal from poor or remote areas to focus only on rich clients and rich areas. Vander Stichele Financial services liberalisation and pro-poor and sustainable development: critical issues <http://www.SOMO.nl> (accessed 20 August 2008).

¹⁷³ Cull & Peria Foreign bank participation and crisis in developing countries <http://econ.worldbank.org> (accessed 5 September 2008) 16.

cannot get credit. Bank credit to small farmers has literally ceased.¹⁷⁴ Although there has been an increase in consumer credit, there has been a notable decrease in lending to primary producers which includes the agricultural sector.

The liberalisation of the banking sector in Mexico did result in an increase in capital flow as FDI in the country increased. However the result of this is that the Mexican finance sector is at the mercy of EU and US capital.¹⁷⁵ If anything is to happen in the home countries of the four dominant banks' countries that affects the capital flow, this will have a devastating effect in Mexico. The positive side of this is that technically there is more money available for the banks to advance medium and long-term loans. However as has been noted, the banks are 'cherry picking'. This is being done by limiting their loans to the bigger companies which are more profitable and ignoring the medium and small enterprises that are more risky and less profitable.

5.4 Possible consequences in Ghana of liberalising banking services under EPAs

5.4.1 The banking sector as a whole

Increased foreign banks participation in the Ghanaian banking sector is likely to improve the competition between the banks. The Ghanaian banking sector is not as concentrated as that in Mexico. As such there is likely to be increased competition. With increased competition, there will be an improvement in efficiency of the existing banks. As has been the experienced by the sector upon implementation of FINSAP, an increase in the number of foreign and privately owned banks in the sector increased competition and improved the efficiency of the sector as a whole.¹⁷⁶ Further, as has been seen upon implementation of FINSAP, there is likely to be a reduction in pricing of services. Prior to these reforms, banks such as Standard Bank and Barclays Bank had very high charges for their services. Now they have reduced their prices as they are forced to compete with other banks for the same clients.¹⁷⁷ Domestic banks that do not improve their efficiency will lose their market share, resulting in poor performance that can result in closure and therefore job losses. The banks are likely to reduce the amount of credit issued to risky areas that will not be profitable. There will likely be an increase in consumer credit to salaried workers. However, there is likely to be a reduction in the amount of loans advanced to the agricultural sector. With the BOG's directive on the seventy billion Ghana Cedis capital requirement, there is likely to be an increase in mergers between the local banks or the acquisition of some local banks by foreign banks or foreign investors. The government is likely to sell most of its stake in the banks to allow for increase in capital needed to meet and

¹⁷⁴ Jones Raw deal: the EU's unfair trade agreements with Mexico and South Africa <http://www.wdm.org> (accessed 8 September 2008) 42.

¹⁷⁵ Reveles & Rocha L The EU-Mexico Free Trade Agreement seven years on: a warning to the global south <http://www.tni.org> (accessed 5 September 2008) 7.

¹⁷⁶ As above (n 122).

¹⁷⁷ As above (n 122).

maintain the BOG's directive. The effect of mergers and acquisitions is likely to cause a loss of jobs in the sector. The banks that do not meet this requirement are going to have to close down also resulting in job losses.

5.4.2 The Agricultural Development Bank

The ADB as a commercial bank in the sector is likely to experience the same consequences identified above. The bank's lending to the agricultural sector has already drastically reduced due to unilateral liberalisation undertaken under FINSAP. Further liberalisation that will increase the competition that ADB is against will force it to further reduce the amount allocated to this sector. Also in a bid to improve its efficiency and remain competitive, the ADB is not likely to increase the opening up and maintenance of branches in the rural areas. There is likely to be loss of jobs in the ADB in a bid to improve its efficiency. Therefore the challenges that were identified under paragraph 4.4.2 are not likely to be reduced but rather exacerbated by further liberalisation of the banking sector.

5.4.3 The rural banks

Although the rural banking sector is not considered to be a part of the mainstream banking sector in Ghana, further liberalisation of the sector will nonetheless have its effects felt in the rural banking system.¹⁷⁸ This was the case when Ghana undertook unilateral liberalisation under FINSAP. There is likely to be an increase in the amount of loans disbursed to the urban areas as a profit making strategy. Thus the challenges the banks are currently facing are also not likely to be dealt with upon further liberalisation of the sector.

5.5 Envisaged human rights implications of the consequences identified

It follows that with further liberalisation of the banking sector under EPAs, there is likely to be a reduction in the extent of access to credit facilities for the rural farming communities and an increase in job losses within the agricultural sector and also within the banking sector itself. These consequences are going to have some implications on the human rights of the Ghanaian people. It has been argued in chapter two and chapter three that human rights are indivisible, interrelated and mutually supportive. It has also been shown that the right to development is a precondition for the enjoyment of other human rights. The Government of Ghana has an obligation to respect and protect the right to development of its citizens. The consequences indicated above have implications on the right to development in various ways. Components of the right to development have been identified as including *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.¹⁷⁹ These

¹⁷⁸ As above (n 130).

¹⁷⁹ Art 8 of UNDRD.

components as they are encompassed in other international human rights treaties will be highlighted.

5.5.1 The right to an adequate standard of living

Article 11 (1) of ICESCR provides that state parties recognise the right of everyone to an adequate standard of living for himself and his family including *adequate food, clothing and housing* and to the *continuous improvement of living conditions*.¹⁸⁰ Components of an adequate standard of living, as can be seen from the ICESCR, include *inter alia* adequate food. Adequacy of food includes considerations of the stability of the supply and access to food.¹⁸¹ This in turn implies economic and social sustainability in terms of conditions and mechanisms securing food access which concerns a just income distribution and effective markets together with public and informal support mechanisms.¹⁸² This right will be infringed upon where the Government of Ghana fails to make policies that encourage the productivity of the agricultural sector through *inter alia* ensuring access to credit to the farmers in rural area. The right to food puts an obligation on Ghana to ensure that the external conditions are such that individuals have the ability to feed themselves.¹⁸³ The conditions created by the liberalisation of the banking sector as identified in this dissertation are likely to reduce this capacity of individuals to feed themselves unless the government takes the necessary precautionary steps.

The inability to earn an income will also have the effect of reducing an individual's ability to have clothing and housing for him and his family. This will be the case where the source of employment for both the rural agricultural farmers is affected by the reduction in their access to credit as well as the people employed in the banking sector who are threatened with job losses upon further liberalisation of the banking sector.

5.5.2 The right to work

Article 6 of ICESCR provides that the state parties recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right. The right to work is crucial for the enjoyment of rights such as the right to food, clothing and housing and affects the standard of satisfaction of the right to education, culture and health. Work is an element that is central to the maintenance of the

¹⁸⁰ The emphasis indicated is the author's.

¹⁸¹ A Eide *et al* (eds) *Economic, Social and Cultural Rights: a textbook* (1995) 90.

¹⁸² Eide *et al* (eds) (n 181 above) 91.

¹⁸³ M Craven *The International Convention on Economic, Social and Cultural Rights: a perspective on its development* (1998) 310.

dignity of an individual.¹⁸⁴ The Committee on Economic, Social and Cultural Rights has interpreted this right to mean that the state has a duty to establish and pursue a policy that has as its main objective the achievement of full employment and due consideration be given to vulnerable sectors of the population.¹⁸⁵ A vulnerable sector of the population has been interpreted by the Committee on Economic, Social and Cultural Rights as including the part of the population that is disadvantaged by regional imbalances.¹⁸⁶ State policies should be aimed at full integration of the informal sector into the formal economic and social life of the nation.¹⁸⁷ The right to work of the rural agricultural folks in Ghana is likely to be affected. They are to be considered as vulnerable section of the population that is disadvantaged by regional imbalance in the resources available in the rural areas as opposed to the urban areas. These imbalances cause them to be perceived as risky and non-profitable to the mainstream banking industry. Their inability to access credit for this reason will ultimately affect their access to employment. State policy ought to be aimed at the expansion of credit facilities to this section of the population in a bid to facilitate full integration of this sector into the formal economic and social life of Ghana. Further liberalisation of the banking sector is likely to result the in reverse.

5.6 Conclusion

It is submitted that the right to development encompasses other human rights. Most of these rights will be adversely affected by the inclusion of liberalising banking services in the EPAs. The specific rights that are at risk of being infringed upon with the liberalisation of the banking sector in the author's view, taking into consideration the interrelated nature of human rights, include; the right to food, the right to education, the right to dignity, the right to an adequate living standard, the right to work, the right to health, the right to clothing, the right to housing and the right to development.

¹⁸⁴ Craven (n 183 above) 195.

¹⁸⁵ Craven (n 183 above) 224.

¹⁸⁶ Craven (n 183 above) 209.

¹⁸⁷ As above (n 186).

Chapter 6 Conclusion and recommendations

6.1 Summary

In Chapter one, the origins of the EPAs as being negotiated under the framework of the Cotonou Agreement was presented. It was indicated that Ghana has entered into an interim EPA. Included in Ghana's interim EPA is an undertaking to negotiate on liberalising services in the full EPAs. It was demonstrated that the EU is likely to seek the liberalisation of the African service sectors through EPAs. It was also shown that human rights are a factor to be considered in the negotiation of the EPAs as this is in line with the objectives of the Cotonou Agreement. The banking sector was shown to have a strategic function in Ghana's development through, *inter alia*, employment creation and contributing to food production. The form of liberalisation under consideration in the study was selected as increased commercial presence of EU banking firms in Ghana. The aim of the study was indicated as being, to make an assessment of the possible implications on human rights of liberalising banking services, on account of increased commercial presence of foreign banks in Ghana.

Chapter two begins by establishing that human rights are an essential element of the Cotonou Agreement. Parties to the agreement therefore have to consider them in their internal and international policies. The main international and regional human rights law instruments that Ghana has obligations under were highlighted. The nature of the enforcement mechanisms for these obligations was briefly mentioned. It was then demonstrated that all human rights are interrelated, indivisible and mutually supportive.

Chapter three dealt specifically with the right to development as creating human rights obligations for Ghana. As the right to development is a pre-condition for the enjoyment of other rights, it was shown that with the realisation of the right to development, other human rights will be realised and with the realisation of a totality of human rights there is likely to be a reduction in poverty levels in Ghana. Ghana's obligation to individuals in the country to respect their right to development in terms of international law, African regional human rights law and the domestic law of the land was established. It was shown that the link between the right to development and the notion of poverty reduction is the fact that they are both preconditions for the effective enjoyment of other recognised human rights.

In Chapter four it was seen that the banking sector in Ghana has undergone some reforms in the past two decades that have resulted in gradual unilateral liberalisation that is still ongoing. It was

established that the support given to the agricultural sector by the banking sector reduced with the liberalisation of the sector because the sector was operating on a policy of profit maximisation. An illustration of the ownership structure of the banks led to the conclusion that there is a considerable level of foreign participation in the sector. It was found that the rural banking system currently largely caters for the agricultural sector. ADB was identified as the commercial bank dedicated primarily to the agricultural sector. It was established that when it needed to increase profit margins, the ADB reduced the amount of loans disbursed to the agricultural sector. The rural banks were shown to have shifted their focus from financing the agricultural sector with the unilateral liberalisation of the sector. Further challenges faced by the ADB and the rural banks in catering for the agricultural sector were shown. It was concluded that most of these challenges were experienced as a result of the increase in competition brought about by the reforms undertaken under the unilateral liberalisation of the sector.

Chapter five attempted to make a prediction of the consequences of further liberalisation of the sector under EPAs. The possible consequences on the sector as a whole were identified as increased competition between the banks, improved efficiency in the sector, reduction in pricing, increased consumer credit. However, domestic banks that do not improve their efficiency will lose their market share, resulting in poor performance that can result in closure or mergers and acquisitions which usually result in job losses. Also there is likely to be a reduction in loans to the agricultural sector. The challenges that the sector experiences in servicing the agricultural sector are therefore going to be exacerbated by further liberalisation of the banking sector if the Government of Ghana does not make the appropriate policies. Thereafter the human rights that are to be affected by such consequences were identified as the following; the right to work, the right to an adequate standard of living, the right to food, the right to education, the right to dignity, the right to health, the right to clothing, the right to housing and the right to development.

6.2 Conclusion

The conclusion drawn from the study is that liberalising the banking sector in Ghana under EPAs is going to have human rights implications for the Ghanaian people. The right to development will be infringed by such an undertaking if the appropriate safeguards are not undertaken by the government. This will have a negative impact on efforts in Ghana aimed at poverty reduction and development. The Government of Ghana has an obligation to respect the right to development of its people as well as other human rights that are encompassed under the umbrella of this right.

6.3 Recommendations

Based on the study, the following recommendations are offered:

- In order to ensure that the EPAs contribute to development and poverty reduction in the country the government's representatives should raise Ghana's human rights obligations under the various human rights instruments as considerations during negotiations.
- BOG should be effectively equipped as the supervisory body to develop prudent domestic regulatory frameworks that take into consideration the government's developmental policies. A balance should be struck between how far banks should be allowed to pursue profits and how far the government can maintain some degree of oversight over them to ensure that they contribute to development and poverty reduction.
- In deciding on the adequate regulatory framework to be implemented, the government should look beyond the trade related aspects and to consider the effects on the reduction of poverty and the right to development of the citizens.
- An impact assessment study of liberalising service under the EPAs in Ghana needs to be undertaken taking into consideration all the different players in the banking sector in order to determine its capacity to fully control the scope, coverage and the timetable for liberalisation of the banking sector.
- A partnership between rural banks and commercial banks aimed at supporting the rural agricultural sector should be encouraged by the BOG through creation of an enabling environment.
- The right to development should be seen as a broad concept that includes several other independent rights and be utilised as such by human rights advocates in demanding that the EPAs deliver on their development objectives.
- Ghana should stand by the AUs collective resolve, in the Nairobi Declaration on Economic Partnership Agreements in April 2006, not to make service commitments in the EPAs that go beyond its WTO commitments.

17,390 words (including footnotes)

Bibliography

Books

- Alfredson, A *et al* (eds) (2001) *International human rights monitoring mechanisms: essays in honour of Jakob Th. Moller* The Hague Kluwer Law International
- Antwi-Asare, TO (2000) *Financial sector reforms and bank performance in Ghana* London Overseas Development Institute
- Arts, K (2000) *Integrating human rights into development cooperation: the case of the Lome Convention* The Hague Hague Academic Press
- Badu, K (1994) *Monetary economics in the developing countries: money and banking institutions* New York Vantage Press
- Bartels, L (2005) *Human rights conditionality in the European Union's international agreements* Oxford Oxford University Press
- Brownlie, I (1998) *Principles of public international law* Oxford Clarendon Press
- Bulajic, M (1993) *Principles of international development law* London Martinus Nijhoff Publishers
- Conte, A *et al* (2004) *Defining civil and political rights: the jurisprudence of the United Nations Human Rights Committee* Aldershot Ashgate Publishing Limited
- Craven, M (1998) *The International Covenant on Economic, Social and Cultural Rights: a perspective on its development* New York Oxford University Press
- Das, BL (1998) *An introduction to the WTO agreements: trade and development issues and the world trade organisation* Penang Third World Network
- De Feyer, K (2001) *World development law: sharing responsibility for development* Oxford Intersentia
- Donnelly, J (1993) *International human rights: dilemmas in world politics* Oxford Westview Press
- Dugard, J (2005) *International law: a South African perspective* Lansdowne Juta
- Eide, A *et al* (eds) (1995) *Economic, Social and Cultural Rights: a textbook* Norwell Kluwer Academic Publishers
- English, K & Stapleton, A (1995) *The human rights handbook: a practical guide to monitoring human rights* Essex Human Rights Centre, University of Essex
- Heyns, C & Killander M (eds) (2007) *Compendium of key human rights documents of the African Union* Cape Town Pretoria University Law Press
- Institute of Statistical, Social and Economic Research (ISSER) University of Ghana, Legon (2007) *The state of the Ghanaian economy in 2006* Accra ISSER

Institute of Statistical, Social and Economic Research (ISSER) University of Ghana, Legon (2008) *The state of the Ghanaian economy in 2007* Accra ISSER

Ougergouz, F (2003) *The African Charter on Human and Peoples' Rights: a comprehensive agenda for human dignity and sustainable democracy in Africa* London Martinus Nijhoff

PricewaterhouseCoopers (2007) *Sustainability impact assessment of the EU-ACP Agreements: key findings, recommendations and lessons learned* Paris PricewatersCoopers

Sarkar, R (2002) *Development law and international finance* The Hague Kluwer Law International

United Nations Economic Commission for Africa (2008) *Economic report on Africa 2008: Africa and the Monterrey Consensus: tracking performance and progress* Addis Ababa ECA Publications

Van Den Bossche, P (2005) *The law and policy of the World Trade Organisation: text, cases and materials* New York Cambridge University Press

Viljoen, F (2007) *International human rights law in Africa* New York Oxford University Press

Chapters in books

Ansbach, T 'Peoples and individuals as subjects of the right to development' in Chowdhury, SR *et al* (eds) (1992) *The right to development in international law* London Martinus Nijhoff Publishers

Ghandi, M 'The right to development as a right to equal resources' in Chowdhury, SR *et al* (eds) (1992) *The right to development in international law* London Martinus Nijhoff Publishers

Hodge, J 'Liberalisation of trade in services in development countries' in Matoo A *et al* (eds) (2002) *Development trade and the WTO: a handbook* Washington World Bank

Jebuni, CD & Laryea, A 'Trade in services in Ghana' in Jebuni, CD & Oduro, AD (eds) (2007) *African imperatives in the new world trade order: a case study of Ghana* Nairobi Centre for Policy Analysis

Shestack, JJ 'The philosophical foundations of human rights' in Symonides, J (ed) (2000) *Human rights: concepts and standards* Cornwall UNESCO Publishing

Skogly, SI 'Is there a right not to be poor?' in McCorquodale, R (ed) (2003) *Human rights* Aldershot: Ashgate

Journal articles

Borrmann, A & Busse, M 'The institutional challenges of the ACP/EU Economic Partnership Agreements' (2007) 25 *Development Policy Review* 403

Hurt, SR 'Co-operation and coercion? The Cotonou Agreement between the European Union and ACP states and the end of the Lomè Convention' (2003) 24 *Third World Quarterly* 161

Skolgy, SI 'Is there a right not to be poor?' (2002) 2(1) *Human Rights Law Review* 62

Web sites

- African Union Commission secretariat Economic Partnership Agreements Negotiations: a comparative assessment of the Interim Agreements <<http://www.acp-eu.org>> (accessed 20 August 2008)
- Bilal, S & Walker, A EPAs and the ACP Group: a background note for the 6th summit of ACP Heads of States and Governments, Accra September 3, October 2008 <<http://www.ecdpm.org>> (accessed 20 October 2008)
- Chandrasekhar, CP & Pal, P Financial liberalization in India: an assessment of its nature and outcomes <<http://www.networkideas.org>> (accessed 5 September 2008)
- Centre for International Development at Harvard University <<http://www.cid.harvard.edu>> (accessed 20 October 2008).
- Cull, R & Peria, MSM Foreign bank participation and crisis in developing countries <<http://econ.worldbank.org>> (accessed 5 September 2008)
- Development: the right to development <<http://www2.ohchr.org>> (accessed 2 October 2008).
- Declaration on the Right to Development adopted by General Assembly resolution 41/128 of 4 December 1986 <<http://www.unhchr.ch>> (accessed 20 August 2008)
- FIDH Economic Partnership Agreements and human rights <<http://www.fidh.org>> (accessed 20 August 2008)
- Heintz, J Elements of an employment framework for poverty reduction in Ghana <<http://www.undp.org>> (accessed 8 September 2008)
- ILEAP Trade negotiations and pro-poor services reforms in Africa <<http://www.ileap-jeicp.org>> (accessed 10 August 2008)
- Interim Economic Partnership Agreement between the EU and Ghana available at <<http://www.bilaterals.org>> (accessed 20 August 2008)
- Jansen, M & Vennes, Y Liberalising financial services trade in Africa: going regional and multilateral <<http://www.papers.ssrn.com>> (accessed 5 September 2008)
- Jones, T Raw deal: the EU's unfair trade agreements with Mexico and South Africa <<http://www.wdm.org>> (accessed 8 September 2008)
- Kruger, AO Free Trade Agreements versus Customs Unions <<http://www.papers.ssrn.com>> (accessed 20 October 2008)
- Ministry of Finance and Economic Planning Ghana Making finance work for Africa conference June 17-18 2008 and making finance work for Ghana June 16 2008 Accra, Ghana <<http://www.mofep.gov.gh>> (accessed 23 September 2008)

Nairobi Declaration on Economic Partnership Agreements <[http:// www.africa-union.org](http://www.africa-union.org)> (accessed 20 August 2008)

Oyejide, TA Strategies and mechanisms for liberalising trade in services in Africa: implications for EPA negotiations <<http://www.idrc.ca>> (accessed 5 September 2008)

Report of the Working Group on the Right to Development on its 9th session (Geneva 18-22 August 2008) A/HRC/9/17 10 September 2008 <<http://www.un.org>> (accessed 2 October 2008)

Report of the Secretary General on the Right to Development to the General Assembly 17 August 1998 A53/268 <<http://www.un.org>> (accessed 2 October 2008).

Reveles, RA & Rocha, LMP The EU-Mexico Free Trade Agreement seven years on: a warning to the global south <<http://www.tni.org>> (accessed 5 September 2008)

South Centre Why inclusion of services in the EPAs is problematic: legal and development implications <<http://www.southcentre.org>> (accessed 20 August 2008)

Stevens, C *et al* the new EPAs: comparative analysis of their content and the challenges of 2008 <<http://www.ecdpm.org>> (20 October 2008)

Tangermann, S The future of preferential trade agreements for developing countries and the current WTO negotiations on agriculture <<http://www.fao.org>> (accessed 15 October 2008)

UN Economic, Social and Cultural Rights Committee Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: poverty and the ICESCR <<http://www.unhchr.ch>> (accessed 23 October 2008)

Vander Stichele, M The risks and dangers of liberalisation of services in Africa under EPAs <<http://www.somo.nl>> (accessed 23 August 2008)

Vander Stichele, M Financial services liberalisation and pro-poor and sustainable development: critical issues <http://www.SOMO.nl>> (accessed 20 August 2008)

<<http://www.agricbank.com>> (accessed 22 September 2008).

<<http://www.wto.org>> (accessed 20 October 2008)

<<http://www.comm.ecowas.int>> (accessed 20 October 2008)

<<http://www.africa-union.org>> (accessed 20 October 2008)

<http://www.bog.gov.gh> (accessed 3 September 2008)

Magazine articles

Call to action against Europe's aggressive agenda in Africa: declaration of civil society organisations at the meeting of the Africa Trade Network, Cape Town, South Africa *African Agenda* Issue 1 2008 14

Third World Network 'Bringing human development to the trade negotiating table' *Third World Resurgence* January/February 2005

Ulrich, H 'Comparing EU free trade agreements: services' ECDPM *In Brief* 6C July 2004

Articles available from the author

ACP Group Secretariat Draft Agenda of the joint meeting of the ACP Council of Ministers and Ministers of Foreign Affairs to be held on 1 October 2008, Accra, Ghana

Bank of Ghana 'The rural banking system in Ghana'

Bank of Ghana 'The rural banking system: performance appraisal and policy proposals material'

Bank of Ghana 'Trends in rural bank credit allocation: the shift from agriculture to the 'other' sector'

Bank of Ghana 'Financial sector reform and recent trends in the banking and financial sector'

Interviews

Interview with MA Addo, Director EU-ACP External Resources Mobilization Department, Ministry of Finance, Accra on 24 October 2008

Interview with F Kwesi, Deputy Manager Banking Supervision Department, Bank of Ghana, Accra on 26 September 2008

Interview with DP Agbogah, Research and Publications Officer, Bank of Ghana, Accra on 26 September 2008.

Emails

E-mail from D Koomson, Head of Public Relations Unit, Agricultural Development Bank on 13 October 2008

Ghana case law

Adjei-Ampofo v Attorney General [2003-2004] SCGLR 411

New Patriotic Party v Attorney General (31 December case) [1993-1994] 2 GLR 35

New Patriotic Party v Attorney General (CIBA case) [1996-1997] SCGCR 729

Ghana law

Constitution of the Republic of Ghana, 1992

Banking Act, 673 of 2004

WTO trade agreements

General Agreement on Trade in Services

EU-ACP agreements

Cotonou Partnership Agreement

Ghana-EU bilateral agreements

Agreement Establishing an Interim Economic Partnership Agreement between Ghana and EU

International human rights instruments

CAT

CEDAW

CMW

CRC

ICCPR

ICESCR

UDHR

UNDRD

Regional Treaties

ACHPR

African Children's Charter

Women's Protocol

UNIVERSITY OF GHANA FACULTY OF LAW

Tel: (233-21) 500304
Fax: (233-21) 512840
E-mail: lawfac@ug.edu.gh



P. O. B.
LEGON, AC
GHANA, W. AF

Our Ref. No.:.....

OFFICE OF THE DEAN

21 August 2008

TO WHOM IT MAY CONCERN

Ms Matiida Lasseko is a student at the University of Ghana, Legon. She is spending a period of 4 months with the Faculty of Law at the University, August 2008 – November 2008, in order to complete her LLM in Human Rights and Democratisation in Africa.

As a requirement of the LLM, Ms Lasseko is currently writing a dissertation in the field of human rights. The title of her dissertation is 'The human rights implications of including services in the Economic Partnership Agreements: the case of banking services in Ghana'. It would be much appreciated if she could be afforded assistance for her research purposes. Research conducted by Ms Lasseko is for the purpose of her dissertation only.

Any help that can be given to Ms Lasseko will be greatly appreciated.

Professor E. K. Quashigah
Acting Dean

Cc: K K K Ampofo
LLM thesis co-ordinator

UNIVERSITY OF GHANA FACULTY OF LAW

Tel: (233-21) 500304
Fax: (233-21) 512840
E-mail: lawfac@ug.edu.gh



P. O. BOX 70
LEGON, ACCRA.
GHANA, W. AFRICA

Our Ref. No.:.....

OFFICE OF THE DEAN

4 September 2008

The Secretary
Bank of Ghana
Accra

RE: LETTER OF INTRODUCTION

Ms Matilda Lasseko is a student at the University of Ghana, Legon. She is spending a period of 4 months with the Faculty of Law at the University, August 2008 – November 2008, in order to complete her LLM in Human Rights and Democratisation in Africa.

As a requirement of the LLM, Ms Lasseko is currently writing a dissertation in the field of human rights. The title of her dissertation is 'The human rights implications of including services in the Economic Partnership Agreements: the case of banking services in Ghana'. It would be much appreciated if she may be afforded the use of your library for her research purposes. Research conducted by Ms Lasseko is for the purpose of her dissertation only.

Any help that can be given to Ms Lasseko will be greatly appreciated.

Professor E.K. Quashigah
Acting Dean

Cc: K K K Ampofo
LLM thesis co-ordinator

Annexure 3

Request for interview sent to Agricultural Development Bank

Matilda Lasseko
Faculty of Law
University of Ghana, Legon
Ghana
Mobile no. 0271791337

7 October 2008

Public Relations Officer
Agricultural Development Bank
Accra, Ghana

Dear Sir/ Madam,

RE: REQUEST FOR AN INTERVIEW WITH THE RELEVANT BANK OFFICIAL

I am a student at the University of Ghana. As a requirement for my LLM degree, I am required to write a dissertation. The topic that I am writing on is 'The human rights implications of including services in the Economic Partnership Agreements: the case of banking services in Ghana' In order to complete my paper, I require some information from your bank. As such, I am writing to make a request for an interview with a bank official that is in a position to answer my questions. I hope you will grant my request. My paper is due on 3 November 2008, time is therefore of the essence to me. I hope you will consider my application positively.

Thank you for your time. I hope to hear from you soon.

Attachments: A list of the questions that I need answered.

Yours truly,

Matilda Lasseko.

Mobile: 0271791337

Annexure 4

Questionnaire sent to Agricultural Development Bank

Proposed questions for interview with an official from ADB

Questions

- 1 It is stated on your website that it is estimated that you provide about 85% of loan to the agricultural sector in Ghana, how was this estimate arrived at?
- 2 It has been argued that a large part of this credit is given to large scale farmers rather than the medium and small scale farmers, what is your take on this?
- 3 In what ways does the bank provide assistance to the rural small scale farmers in Ghana?
- 4 Can you give me an indication of the role the bank plays in credit provision to the rural small scale farmers
- 5 What would you say are the challenges that your bank faces in providing credit facilities to the rural small scale farmers?
- 6 With the reforms undertaken in the banking sector in the recent past, ADB has become a commercial bank like all the other 25 commercial banks. How has this competition with other commercial banks affected you capacity to focus on lending to the agriculture sector?
- 7 What then do you foresee will be the situation if even more foreign banks set up in the country regarding your capacity to service the rural small scale farmers?
- 8 Is the sale of the BOG shares in ADB still being considered?
- 9 Is the ADB in a position to meet the BOGs capital reserve requirement by 2012?
- 10 Do you see the possibility of capital inflow from the private sector helping ADB meet his requirement if such assistance is necessary?

Annexure 5

Email response from ADB

ADB Questionnaire

Question 1

From Bank of Ghana Statistics. Bank of Ghana classifies agriculture, forestry and fishing together.

Question 2

ADB's credit goes to both small-to-medium-scale farmers and large-scale farmers. That in the case of especially the former is mainly through the outgrower system.

Questions 3 & 4

Credit is in cash or in the form of inputs or a mix of the two.

(a) Scheme loan - Groups of farmers undertaking the same activity. No collateral is required. The group warranty is the only form of security here. An example is Cocoa maintenance loan, Small-scale maize scheme, Mango Project in the north, etc.

(b) Nucleus-Outgrower Scheme - Here a nucleus farmer is identified through who unput credit is extended to a large number of outgrowers. The nucleus farmer usually buys back the produce of the outgrower. Under this arrangement, the nucleus farmer sometimes provides some form of security.

(c) Contract farming - Here, small-scale farmers are organized to produce a specific variety of crops for a specific nuyer. The buyer will be responsible for repaying the facility from produce supplied by the farmer. An example is Trusty Food tomato scheme and the Guinness Sorghum Scheme.

(d) Individual credit - A large number of individual farmers (both crops and livestock) also access loans in their own right.

(e) Value-chain financing - Here the Bank extends assistance to a number of small-scale farmers undertaking separate but interrelated activities along the chain from primary production through processing to transportation and marketing. An example is the Broiler Project.

Question 5

The challenges can be treated under two headings.

(a) Farm challenges

- Crop failure (e.g., drought)
- Bush fires, flooding, pests and diseases
- Post-harvest losses, due to inadequate storage infrastructure.

(b) Market challenges

- Absence of guaranteed prices
- Absence of credit insurance to mitigate risks
- Lack of tangible security/collaterals
- Improper coordination between production and marketing activities

Question 6

In spite of these developments and the universal banking concept, the ADB is still focused on supporting agriculture. Even though the share of agriculture in the portfolio mix has gone down, the quantum of credit to the sector has grown. The Bank is further determined to increase the share of agriculture in the portfolio mix within the next couple of years. As always, the Bank has been competing for funds with industry players, which is still a challenge.

Question 8

Such question should be addressed to the right quarters.

Annexure 6

Letter sent to ARB Apex Bank

Matilda Lasseko
Faculty of Law
University of Ghana, Legon
Ghana
Mobile no. 0271791337

7 October 2008

TO WHOM IT MAY CONCERN

Dear Sir/ Madam,

RE: REQUEST FOR AN INTERVIEW WITH THE RELEVANT BANK OFFICIAL

I am a student at the University of Ghana. As a requirement for my LLM degree, I am required to write a dissertation. The topic that I am writing on is 'The human rights implications of including services in the Economic Partnership Agreements: the case of banking services in Ghana' In order to complete my paper, I require some information from your bank. As such, I am writing to make a request for an interview with a bank official that is in a position to answer my questions. I hope you will grant my request. My paper is due on 3 November 2008, time is therefore of the essence to me. I hope you will consider my application positively.

Thank you for your time. I hope to hear from you soon.

Attachments: A list of the questions that I need answered.

Yours truly,

Matilda Lasseko.

Mobile: 0271791337

Annexure 7

List of Questions for Apex bank

Proposed questions for the ARB Apex bank official

Questions

- 1 In what respects do the rural banks assist the rural small scale farmers in Ghana?
- 2 What was the primary objective behind the formation of the rural banks?
- 3 Considering this primary objective, in what ways have the rural banks objectives changed?
- 4 What do you estimate the proportion of loans advanced by the rural banks to the rural farmers to those advanced to the salaried workers is?
- 5 What factors caused these changes to occur?
- 6 How if at all has the liberalisation that came about as a result of reforms in the financial sector affected the rural banks service to the rural farmers?
- 7 It has been argued that the liberalisation of the sector has brought credit from the commercial banks to the rural poor, what is your take on this?
- 8 What efforts have been made by the government through its various agents to support the rural banks considering the important role played by these banks in poverty reduction and rural development?

