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REPUBLIC OF GHANA

OFFICE OF THE PRESIDENT
P.O. BOX 1627
ACCRA
TEL: 0302-201000/2

CONFIDENTIAL

16th December, 2019

ACCESSION TO THE VIENNA CONVENTION ON
CIVIL LIABILITY FOR NUCLEAR DAMAGE (1963)

Cabinet at its Sixty-seventh meeting held on Thursday, 12th December, 2019 considered a report of the Cabinet Committee on Governance and Legal Matters on the above Memorandum submitted by the Minister for Environment, Science, Technology and Innovation.

2. The Memorandum requested Cabinet to consider and approve for Parliament to accede to the Vienna Convention on Civil Liability for Nuclear Damage (1963).

3. Cabinet approved the Memorandum for the consideration of Parliament.

4. I should be grateful if you could take requisite action on the decision by Cabinet.



MERCY DEBRAH-KARIKARI
SECRETARY TO THE CABINET

THE HON. MINISTER FOR ENVIRONMENT,
SCIENCE, TECHNOLOGY AND INNOVATION

- cc: Chief of Staff
Secretary to the President
Secretary to the Vice President

Minister for Parliamentary
Affairs

Chairperson, Cabinet Committee
on Governance and Legal Matters

Acc No: 1245 G₂
Class No Cn / MESTI / 19

SECRET



PARLIAMENTARY MEMORANDUM

PRESENTED

BY

PROF. KWABENA FRIMPONG-BOATENG

**MINISTER FOR ENVIRONMENT, SCIENCE, TECHNOLOGY &
INNOVATION**

**TITLE:
ACCESSION TO THE VIENNA CONVENTION ON CIVIL LIABILITY
FOR NUCLEAR DAMAGE (1963)**

JANUARY, 2020

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EXECUTIVE SUMMARY

1. Cabinet Decision Requested

This Memorandum is an invitation to Cabinet, to consider and approve for Parliament to accede to the Vienna Convention on Civil Liability for Nuclear Damage. The Convention which was adopted on 21st May 1963 was opened for signature on the same day and entered into force on 12th November 1977.

2. Background

In 2008 Cabinet took the decision to add Nuclear Power to Ghana's energy mix. This decision was implemented in 2010 when Nuclear Energy was included in Ghana's National Energy Policy and Strategy Document.

As part of its efforts to introduce nuclear power, Ghana has been working with the International Atomic Energy Agency (IAEA) in the implementation of the IAEA's Three-Milestone-Approach for introducing Nuclear Energy into new-comer Countries. The Three-Milestone Approach outlines three phases that must be completed to ensure the smooth implementation of a newcomer country's nuclear power programme.

Ghana, being at the first milestone needs to address 19 infrastructure issues, one of which is the Legal Framework.

As part of the requirements for the Legal Framework, a newcomer country is expected to adhere to a number of international instruments on nuclear safety, security, safeguards and liability.

Ghana has already ratified most of the conventions on nuclear safety, security and safeguards, but is yet to ratify all the conventions on Nuclear Liability.

There are four conventions on Nuclear Liability and Ghana has ratified one, the Convention on Supplementary Compensation for Nuclear damage, on 12th September 2016.

In order to satisfy the requirements for the Legal Framework, Ghana has to ratify the remaining three liability Conventions which include the Vienna Convention on Nuclear Liability for Nuclear Damage (hereinafter referred to as the Vienna Convention).

The Vienna Convention was the first global convention adopted under the auspices of the International Atomic Energy Commission on Civil Liability for Nuclear Damage. The Convention aims at harmonizing the National Law of Contracting Parties by establishing

a minimum standard to provide financial protection against damage resulting from certain peaceful uses of Nuclear Energy.

Further Ghana has already domesticated the requirements of the Vienna Convention on Nuclear Liability in its Nuclear Regulatory Authority Act, 2015 (Act 895) together with its Protocol to Amend the Vienna Convention on Nuclear.

However, in the absence of treaty relations, Ghana cannot enforce the provisions therein contained against another state.

3. Justification for Government Action.

Ghana has passed the Nuclear Regulatory Authority Act, 2015 (Act 895) (herein after referred to as the NRA Act). The NRA Act establishes the Nuclear Regulatory Authority and provides for the regulation and management of activities and practices for the peaceful uses of nuclear material or energy, radioactive material or radiation. The NRA Act also provides for the protection of persons and the environment against the harmful effects of radiation hazards.

The NRA Act has put in place measures to ensure that liability for damage to people and the environment are clearly defined and compensation adequately catered for. Sections 60-70 of the NRA Act contain provisions on Liability for Nuclear Damage.

These provisions are in line with provisions of the Vienna Convention on Civil Liability for Nuclear Damage and the Protocol to Amend the Vienna Convention on Nuclear Liability.

By the very nature of international law, a State cannot be liable for an incident that occurs within its territory, but the effects are felt outside its jurisdiction, unless it has undertaken to be bound within the context of a convention.

For Ghana to be in a position to claim for compensation in the event of a nuclear incident occurring outside its jurisdiction, it must establish treaty relations with as many States as possible.

Therefore, Ghana needs to accede to the Vienna Convention.

4. Options and Impacts Considered

There are currently two streams of international legal instruments dealing with liability for nuclear damage.

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The first stream which was negotiated within the framework of the Organization for European Economic Co-operation (OECD) and adopted in 1960 is the Paris Convention on Third Party Liability in the Field of Nuclear Energy. This Convention has 16 Parties, all being Western European States. The Convention has been amended twice, first in 1964 and 1982. In 2004 there was a protocol to yet again amend this convention but that protocol is yet to come into force.

These instruments are open to any OECD country as of right and to any non-member with the consent of the other contracting parties. This requirement makes membership of the Paris Convention regional in nature.

The other stream negotiated within the framework of the International Atomic Energy Agency (IAEA) is the Vienna Convention on Civil Liability for Nuclear Damage (**recommended option**). This Convention unlike the Paris Convention is not regional in character and currently has 40 member states. There is one Protocol which amends the Vienna Convention that entered into force on 4th October 2003.

5. Inter-Ministry Consultation Record.

Ghana Atomic Energy Commission (GAEC) organized a consultative meeting with the Major Stakeholders. There were representatives from the Nuclear Regulatory Authority (NRA), The Nuclear Power Institute (NPI), Ghana Reinsurance Company and the Ministry of Justice and Attorney General's Department.

There were no issues after the meeting which need to be resolved.

Parliament is yet to be consulted. Consultation will be done once Cabinet recommends that Parliament ratifies the Vienna Convention.

6. Financial Impact

Ratification of this Convention will have some financial obligations on the County. Ghana, being the Installation State will have to ensure that claims for compensation for Nuclear Damage which have been established against the operator, are paid for by providing the necessary funds to the extent that the yield of insurance or other financial security, taken by the operator is inadequate to satisfy such claims.

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7. **Legislative/Regulatory Plan**

Ghana in 2015 passed the Nuclear Regulatory Authority Act, 2015 (Act 895). This Act was reviewed by the International Atomic Energy Agency as part of the Integrated Nuclear Infrastructure Review (INIR) Mission held in Accra in January 2017.

Though the NRA Act embodies most of the principles espoused in the Vienna Convention, it became apparent after the review session that there is a need to develop Subsidiary Legislation to address the specific issue of Civil Liability for Nuclear Damage.

Ghana has also acceded to the Convention on Supplementary Compensation for Nuclear Damage.

The Atomic Energy Commission Act, 2000 (Act 588) establishes the Ghana Atomic Energy Commission and makes the Commission responsible for nuclear damage resulting from the peaceful use of nuclear energy both on the premises of the Commission and during carriage on its behalf, to or from the premises of the Commission.

There will, therefore, not be a need for any new legislation once the Vienna Convention has been ratified.

8. **Recommended Action to be taken by Cabinet.**

I am respectfully calling upon Cabinet to give its approval for Parliament to accede the Vienna Convention on Civil Liability for Nuclear Damage. It is imperative that the Convention is acceded to in order to take advantage of the Nuclear Liability regime it establishes.



Analysis Document

1. Context

In 2008 Cabinet took the decision to add Nuclear Power to Ghana's energy mix. This decision was implemented in 2010 when Nuclear Energy was included in Ghana's National Energy Policy and Strategy Document.

As part of its efforts to introduce nuclear power, Ghana has established a Nuclear Regulatory Authority with the passage of the Nuclear Regulatory Act, 2015 (Act895)

This Act, apart from establishing the Nuclear Regulatory Authority, provides for the regulation and management of activities and practices for the peaceful uses of nuclear material or energy and radioactive material or radiation. The Act also provides for the protection of persons and the environment against the harmful effects of radiation hazards. The Act has put in place measures to ensure that liability for damage to people and the environment are clearly defined and compensation adequately catered for. Sections 60-70 of the NRA Act contain provisions on Liability for Nuclear Damage. These provisions are in line with the Vienna Convention on Civil Liability.

By the very nature of international law, a State cannot be liable for an incident that occurs within its territory, but the effects are felt outside its jurisdiction, unless it has undertaken to be bound within the context of a convention.

For Ghana to be in a position to claim for compensation in the event of a nuclear incident occurring outside its jurisdiction, it must establish treaty relations with as many States as possible.

The main objectives of this Vienna Convention is to harmonize national legislation relating to third party liability for damage caused by a nuclear incident occurring at certain installations (NPP), or in the course of transport of nuclear material to or from such installations.

It did not cover state responsibility or liability for nuclear damage under the general rule of public international law. It had a close resemblance to the Paris Convention on Third Party Liability in the Field of Nuclear Energy (1960). The Vienna Convention on Civil Liability for Nuclear Damage unlike the Paris Convention is a global one, negotiated under the auspices of the International Atomic Energy Agency (IAEA). The Vienna Convention currently has 40 State Parties some of which are newcomer nuclear states like Ghana.

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The Vienna Convention is based on the civil law concept and has the following main principles:

- a. Liability of the operator is absolute, that is to say, the operator is held liable irrespective of fault;
- b. Liability is channeled exclusively to the operators of nuclear installations;
- c. Liability is limited in amount. It was limited to not less than US\$ 5 million (value in gold on 29 April 1963), but an upper ceiling was not fixed and,
- d. The Convention also has a limitation of time within which one can bring an action. Compensation rights are extinguished if an action is not brought within ten years from the date of the nuclear incident. Longer periods may be permissible under the law of the Installation State. In that case, the liability of the operator is covered by financial security or a national law which may establish a shorter time limit.
- e. It has become necessary for Ghana to accede to the Vienna Convention as the country has added nuclear energy to its energy mix and plans are far underway to build a Nuclear Power Plant to provide power for both industry and homes.

2. Options and Impacts.

Under the Vienna Convention, the minimum liability of an Operator is Five Million United States Dollars. The Convention does not provide a maximum limit for the liability of the Operator.

Damage to or loss of life can be a basis for a claim in compensation under the Convention. Damages to or loss of property and any other loss or damage can also be a basis for a claim if and to the extent it is provided by the law of the Court with Jurisdiction to hear claims.

The Convention again provides a time frame within which claims can be brought. In the case of personal injuries and loss of life, damage to or loss of property the claim must be brought within a period of 10 years from the date of the incident.



PROF. KWABENA FRIMPONG-BOATENG
MINISTER, MESTI



15TH OCTOBER 2019