
MEMORANDUM TO PARLIAMENT

BY

DR. JOE OTENG-ADJEI

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

ON

**RATIFICATION OF THE CONVENTION
ON SUPPLEMENTARY COMPENSATION
FOR NUCLEAR DAMAGE**

17TH DECEMBER, 2013

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1. ACTION REQUESTED

Parliament is respectfully invited to consider and ratify, the Convention on Supplementary Compensation for Nuclear Damage (CSC).

2. BACKGROUND

The Convention on Supplementary Compensation for Nuclear Damage was opened for signature at the Headquarters of the International Atomic Energy Agency in Vienna on 29 September 1997. It removed legal uncertainties surrounding liability for nuclear materials during transportation and enhances international cooperation in nuclear projects. It is to also contribute towards ensuring nuclear safety, while at the same time guaranteeing the availability of a meaningful amount of compensation in the event of a nuclear accident.

The creation of such a global regime is necessary as it includes both nuclear and non nuclear States. It has not entered into force and Ghana has neither signed nor ratified the Convention. The depositary of this Convention is the Director General of the IAEA at Vienna Austria.

Thus, the CSC creates a global regime of nuclear liability which serves as an "umbrella" over the present fragmented situation for addressing nuclear liability which is characterized by the existence of:

- (a) Paris Convention on Nuclear Liability consisting of a group of States mostly western European countries as parties;
- (b) The 1963 Vienna Convention on Nuclear Liability and the 1997 Vienna Protocol amending the 1963 Convention both of which are under the auspices of the International Atomic Energy Agency (IAEA). Membership is however, limited to nuclear power countries who are not members to the Paris Convention and excludes the United States of America.
- (c) A third group of States (like Ghana) which are not party to any international convention on nuclear liability.

In September 1997, Parties to the Vienna Convention on Civil Liability for Nuclear Damage (1963) adopted a Protocol to amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage. The Protocol sets a new possible limit nuclear damage. The amendment was necessary in order to provide a 'broader scope, of increased amount of liability of the operator of nuclear installation and enhanced means for securing 'adequate and equitable compensation' for nuclear damage. The Protocol was later developed to become the Convention on Supplementary Compensation for Nuclear Damage.

The Convention on Supplementary Compensation amended most of the provisions of the 1963 Vienna Convention to the extent that, now, the texts of the Vienna (1963) and the Protocol (1997) respectively are expected to be read and interpreted together as one single text. It pegged the limit of the Operator's liability at not less than 300 million Special Drawing Rights (400 million US dollars). *A significant feature of the CSC is the introduction of additional amounts to be provided through contributions by States Parties on the basis of installed nuclear capacity based on United Nations rate of assessment.* It also grants

exclusive jurisdiction to the Courts of State Parties over actions in whose territory the nuclear incident occurred.

Like its predecessor, the 1997 Vienna Protocol, the CSC upholds the principle of non-discrimination against victims irrespective of nationality, domicile or residence. The Convention will come into force when at least 5 States with a minimum of 400,000 units of installed nuclear capacity have deposited their instruments of ratification. So far four (4) States, namely Argentina, Morocco, Romania and the United States of America have deposited their instruments and of these, the USA is the only Party to the Convention with a significant nuclear installed capacity.

3. OBLIGATIONS OF GOVERNMENT AND HOW THESE ARE TO BE ADDRESSED

The Convention does not affect the rights and obligations of a Contracting Party under the general rules of public international law, but makes it necessary for each Contracting State to adopt a national law or adapt its national laws to be in conformity with the provisions of the Convention by:

- (a) providing for strict liability in the event of a nuclear incident where there is substantial nuclear damage off the site of the nuclear installation where the incident occurs;
- (b) requiring the indemnification of any person other than the operator liable for nuclear damage to the extent that person is legally liable to provide compensation; and
- (c) ensuring the availability of at least 1,000 million Special Drawing Rights (SDRs) in respect of a civil nuclear power plant and at least 300 million SDRs in respect of other civil nuclear installations for such indemnification.

Another commitment of Ghana in ratification will be to contribute to the cost to be predetermined by UN rates to a global supplementary compensation scheme if there is a nuclear accident which affects any of the State Parties to the convention. The cost to each state will be determined by the number of nuclear power plants installed at the time of the incident or accident.

The Contracting Parties are also to ensure that proper jurisdiction is established to enable the courts of the land pay adequate compensation to both citizens and non citizens as appropriate for injury suffered.

4. BENEFITS TO BE DERIVED FROM RATIFICATION OF THE CONVENTION

The CSC extended the geographical scope of the Vienna Convention on Civil Liability for Nuclear Damage and the period during which claims may be brought for loss of life and personal injury. It also provided for jurisdiction of coastal states over actions incurring nuclear damage during transportation.

The Convention also gives the opportunity to all States to join, regardless of whether they are parties to any existing nuclear liability conventions or have nuclear installations on their

territories and also gives a better definition of nuclear damage which includes the concept environmental damage and preventive measures.

The CSC, when it comes into force will make it possible for new States Parties to automatically become Party to the Protocol without ratification of the 1963 Convention on Liability for Nuclear Damage. And existing Parties to the 1963 Convention who have not ratified the Protocol will still be recognized under the Supplementary Convention.

5. NEED FOR RESERVATION

According to the provisions of the CSC, any Contracting Party whose national law ceases to comply with the provisions of the Annex to the Convention and which is not a Party to either the Vienna Convention or the Paris Convention shall notify the Depositary thereof and of the date of such cessation. On that date, such Contracting Party shall have ceased to be a Party to the Convention. The CSC does not have any provision for reservation.

6. INTER-MINISTERIAL CONSULTATION

There was an African Regional Cooperation Agreement for Research, Development and Training related to Nuclear Science and Technology (AFRA) Project between the Atomic Energy Commission and the International Atomic Energy Agency (IAEA) for: '*Establishing a Legal Framework for the Safe, Secure and Peaceful Uses of Nuclear Energy.*' The main thrust of the project is among others to enable Ghana establish a proper legislation in the areas of emergency preparedness, nuclear safety and security, including safe transportation of radioactive material, radioactive waste management, safeguards and physical protection of nuclear materials and compensation for nuclear liability, for the peaceful application of nuclear technology in Ghana.

The project was coordinated by the Principal Legal officer of Ghana Atomic Energy Commission. The project team consisted of two representatives from the Attorneys Generals Department; a Chief State Attorney and a State Attorney, Civil and the Drafting Divisions respectively. The other members were the Executive Secretary and the Director of Policy of the Energy Commission, Legal Officers from the Ministry of Environment Science and Technology, Council for Scientific and Industrial Research, Standards Board, and the Water Resources Commission. The Director of the Radiation Protection Board of the Atomic Energy Commission was also a member of the team.

The Team discussed the ratification of some international legal instruments including the Convention on Supplementary Compensation for Nuclear Damage.

7. FINANCIAL IMPACT

Ghana does not have any nuclear power plant, so will not have to pay for any supplementary compensation even if the Convention enters into force and there is a nuclear accident somewhere. It will rather inure to our benefit if after the Convention comes into force and there is a nuclear accident anywhere which affects Ghana, be it in our territorial waters or

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from any other country. Thus, there is no direct financial burden coming from the ratification of the Convention.

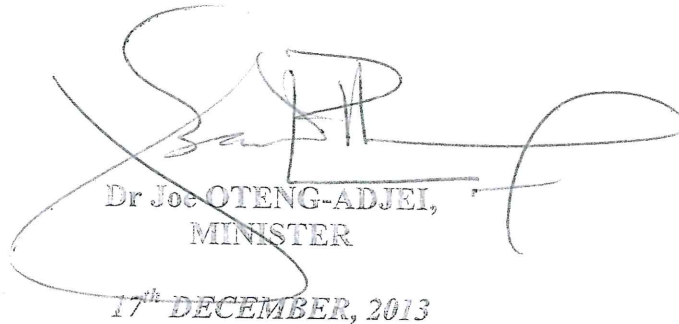
8. CABINET APPROVAL

This Convention received Cabinet approval for ratification by Parliament but it was not laid before Parliament until its last recess in 2012. A copy of the Cabinet approval letter granted at its 19th Meeting held on 14th, 19th and 20th October 2010 is attached for your information.

At its thirteen meeting, held on Thursday, 5th December 2013, Cabinet approved the Convention on Supplementary Compensation for Nuclear Damage (CSC). A copy of the letter-referenced OP/CA.1 v 2 and dated 5th December 2013 is attached for your perusal and action.

9. RECOMMENDED ACTION

In view of the benefits, I respectfully invite Parliament to approve and ratify the Convention.



Dr Joe OTENG-ADJEI,
MINISTER
17th DECEMBER, 2013