

GHANA ACCEDES TO THE INTERNATIONAL WATER CONVENTIONS FOR COOPERATION

By

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Ensuring the availability of water is one of the major global challenges of our time - climate change, population growth, and urbanization are major causes of water insecurity in most countries and continents. Given the complexity and scale of the challenges, strong cooperation is needed to tackle them. And, given that most water resources cross borders, transboundary cooperation is crucial.

Indeed, water has proven to be a catalyst for cooperation and not for conflict. We learn from empirical studies that during the past 50 years, the total number of water-related events between nations, are weighted towards cooperation: 7 conflict-related events, against 1,228 cooperative ones, implying that cooperation over water, and not conflict, is the most strategically rational, effective and economically viable choice response to transboundary water management issues.

On 20th September, 2020, Ghana officially became a Party to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, serviced by the United Nations Economic Commission for Europe (1992 Water Convention); and the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (1997 Watercourses Convention). These are the international legal arrangements necessary for cooperation towards the protection and use of Ghana's transboundary waters.

Ghana's transboundary river basins are the Volta, Tano, Bia and Todzie-Aka, which together cover over 75% of the country's land surface. They generate around 80% of freshwater flow of which about 30% flows from outside of Ghana's international borders - Burkina Faso, Côte d'Ivoire and Togo. These transboundary basins and their shared groundwater aquifers also provide substantial domestic water supply, hydropower, irrigation and industrial needs; link the populations; and create socioeconomic interdependencies between the riparian countries.

On the other hand, extreme events especially flooding and pollution occurrences in the transboundary basins are of grave concern. For instance, Cote d'Ivoire raised concerns in early 2017 that the Bia river had been polluted by illegal mining activities in Ghana leading to the cessation of water production and supply to its population and civil strives. In the case of the White Volta basin, Ghana continues to raise concerns on the destructive but preventive flooding of parts of the Upper East, North East, Northern and Savannah regions caused partly by the spillage from the Bagre dam in Burkina Faso.

Such interdependencies and occurrences, call for urgent action to deepen existing cooperation and formalize international agreements and protocols that place obligations on the governments in the utilization, development and management of the shared water resources. In addition, there are now calls for international principles, standards and practices as a necessary framework for the sound management of international watercourses in order to achieve the Sustainable Development Goals (SDGs) by 2030, especially looking at target 6.4 (substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals) and target 6.5 (implement integrated water resources management at all levels, including through transboundary cooperation as appropriate).

Against this background, the government in 2018 took the position of seeking pragmatic solutions anchored on negotiations and dialogue and recognised the need for international legal agreements, specifically the 1992 Water Convention and the 1997 Watercourses Convention, to serve as vital tools to guide, foster and secure improved international water cooperation. In January 2018, the National Level Learning Alliance Platform (NLLAP) for the water sector, which is a well patronized platform for learning and sharing, with the support of World Wildlife Fund, Green Cross International, and the 1992 Water Convention Secretariat hosted a major national consultative forum to inform as well as seek general consensus on the two Conventions. The consensus was that Ghana needed to ratify the international conventions to benefit directly from the existence of a stronger legal framework. The next significant steps included the development and submission of an accession toolkit to key decision makers including Cabinet and Parliament; engagements with Parliament; and sustained education and dissemination of the Conventions.

Both the 1992 Water Convention and 1997 Watercourses Convention cover international watercourses, that is, freshwater, whether on the surface or underground, that is shared by two or more States and serve as a mechanism to strengthen international cooperation. The Conventions embody a number of principles on: equitable and reasonable utilization; the obligation not to cause significant harm; the general obligation to cooperate; regular exchange of data and information; notification and response, relating to planned measures; protection and preservation of ecosystems; prevent, reduce and control pollution; introduction of alien or new species; and protection and preservation of the aquatic environment.

The two Conventions are fully compatible with no contradiction between them. Moreover, the two Conventions are in many ways mutually complementary. For example, the 1997 Watercourses Convention complements the 1992 Water Convention by detailing the factors relevant to equitable and reasonable utilization (Article 6 of the 1997 Watercourses Convention), by providing the procedures for notification and consultations on planned measures (Part III of the 1997 Watercourses Convention) and by describing the consequences of the occurrence of transboundary impact (Article 7(2) of the 1997 Watercourses Convention).

Generally, there are some differences between the two Conventions on the same subject matter that are of greater or lesser stringency or detail rather than a matter of conflicting prescriptions. For example, whereas the 1997 Watercourses Convention leaves confined groundwater outside its scope, the 1992 Water Convention covers all transboundary groundwater, including confined aquifers. Again, the 1992 Water Convention allows limiting the exchange of information between Riparian Parties on the ground of intellectual property rights, whereas the 1997 Watercourses Convention does not allow such a limitation.

In fact, these differences are rather a strength and allow seeing both instruments as a full package of norms, where more detailed provisions in one instrument can inform the implementation of the other. That complementarity was recognized by the United Nations Secretary-General Ban Ki-moon who stressed in 2012 that “these two instruments are based on the same principles. They complement each other and should be implemented in a coherent manner.” In 2018, the United Nations Secretary-General Antonio Guterres called upon Member States “to join both Conventions and to strive for their full implementation”.

The Conventions have proven their effectiveness as an international legal regime that provides benefits for Ghana as a member in each case. Ghana’s accession to the Water Conventions signals

to other countries, international organizations, financial institutions and other actors the willingness to cooperate on the basis of transboundary norms and standards and also enhances the trust of international investors in terms of good governance (clear processes, rules, standards and norms). It is worth mentioning that Ghana is currently the chair of the Council of Ministers of the Volta Basin Authority, our key international platform for transboundary water cooperation. The ratification of the conventions therefore provides the country the strength and footing to lead actions and negotiations.

A key government policy initiative is to have in place agreements and joint bodies for the Bia, Tano and Todzie-Aka basins and their shared aquifers. Fortunately, both Conventions provide the valuable framework and support for Ghana to establish the needed agreements and management bodies for the basins. The Conventions also provide specific timeframes, standards and procedures for Ghana in developing single and joint trans-border water infrastructure such as the Sogakope-Lome Water Supply, the Pwalugu Multipurpose Dam, and the Water Transport Infrastructure projects.

In the area of data exchange and information sharing, Ghana has an arrangement with Burkina Faso for data sharing on water discharges from the Bagre Dam in Burkina Faso and on planned measures/developments. However, the six States Party sharing the Volta are now working on the allocation of water for major water uses and agreeable minimum flow allowable into downstream countries like Ghana, especially in the dry season. The applicable provisions of the Water Conventions will be of essence to help resolve this critical matter. The 1992 Convention also provides for joint training programmes and relevant seminars and meetings on data exchange.

Another benefit to Ghana is the implementation of obligations, especially the obligation aimed at prevention, control and reduction of significant transboundary impacts. The application of standards and obligations on impacts such as the flow of pollution water from the Bia River from Ghana into Cote d'Ivoire is crucial for Ghana. The Conventions have step by step mechanisms (such as negotiation, mediation, and arbitration), which States can choose to pursue conflict prevention and resolution. An important element of Article 33 of the 1997 UN Watercourses Convention is the fact-finding procedure that may be invoked by one or both parties during a dispute. The ongoing negotiations between Egypt, Ethiopia and Sudan concerning the Grand Ethiopian Renaissance Dam (GERD) on the Nile river illustrates the benefits of having such a fact-finding procedure in place. This creates room for Ghana to engage its neighbours on activities inimical to us as the downstream country. Fortunately, the accession of the Conventions has been central within the Volta Basin Authority. All the six riparian states – Benin, Burkina Faso, Cote d'Ivoire, Ghana, Mali and Togo - have been encouraged and agreed to proceed with the accession. Benin, Burkina Faso and Cote d'Ivoire have already ratified the 1997 Watercourses Convention and seeking to do same with the 1992 Water Convention.

With the accession completed, the next stage is to ensure the successful implementation of the Conventions. In preparation for implementation, particularly the 1992 Water Convention, the recommendation is to develop an implementation plan which would be proportionate to the technical, economic, financial and other capacities of the country.

It is the hope that the 1992 Water Convention and the 1997 Water Convention will serve the country well as we strive towards improving transboundary water cooperation and the obligation of overcoming the imminent water crisis and achieving the SDGs.