CUSTOMARY WATER LAWS AND PRACTICES: GHANA

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INTRODUCTION

Ghana has the distinction of being the first British colony south of the Sahara to have attained independence from colonial rule in 1957. The country has had a rather chequered political history largely dominated by military rule. Since 1993, however, Ghana has been governed on democratic lines on the basis of the 1992 Constitution, which has been fashioned along American lines.

The country, with an area of 92,100square miles and a population of about 18 million, is situated on the Gulf of Guinea, West Africa; and has accordingly a generally hot and humid climate in the south and hot dry climate in the northern parts. Ghana's neighbours are all francophone: La Cote D'Ivoire to the west, Togo to the east, and Burkina Faso to the north.

Ghana is fairly well endowed with water resources. The mean annual rainfall ranges from 2150 mm in the extreme southwest to 800 mm in the southeast and about 1000 mm in the Northeast. The country is drained by three main river basin systems: the Volta, South western and Coastal, covering in that order 70 %, 22 % and 8 % of the total area of the country. These systems are shared with Ghana's neighbours; the Volta in particular, with Cote D'Ivoire, Burkina Faso, Togo, Benin and Mali.

The total annual run-off of the basins is estimated as 56.4 billion m^3 out of which 38.7 billion m^3 originate from Ghana. Of this, the Volta River accounts for 68 % of the run off.[1] The water resources of Ghana, synonymous to a large extent with the Volta River, and their associated industries dominate a large part of the economic life of the country[2].

Ghana is also endowed with ground and marine water resources. The ground water resources of the country are found in two rock formations; the sedimentary and non sedimentary. The sedimentary formation mainly of Voltaian origin occupies about 43 % of the total area of the country with yields of 1.0-12.0 m^3/h at depths of 20-80 metres. The non-sedimentary formation mainly comprises the crystalline basement complex of pre-Cambrian origin and occupies 57 % of the total area of the country with yields of 1.5-32.0 m^3/h at depths of 20-100 metres. The quality of groundwater resources in Ghana is generally good except in few instances of localized pollution.[3]

Ghana ratified the United Nations Convention on the Law of the Sea (UNCLOS) in 1985. Pursuant to the ratification of UNCLOS, Ghana enacted the Maritime Zones Delimitation Law, 1986 to give force and effect to UNCLOS. Under the law, Ghana declared a 200-mile Exclusive Economic Zone (EEZ) for purposes of exploration, exploitation, conservation and management of the resources in the EEZ.

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[1]. WARM Study, 1998.
[2] . Law and Human Ecology, Preface.
[3]. Ansa- Asare O.D. et. al, 1996.

Regrettably, the reasonable endowment of water resources in the country is at variance with access to drinking water and sanitation by the populace. Indeed, as indicated in the chart below, it is estimated that only 41.6 % of Ghanaians have access to potable water, and as many as 81% of the rural population in Ghana have no access to potable water. Even in urban and peri-urban areas, the situation is far worse. A study of 60 communities in Kumasi, the second largest municipality in Ghana, and five other districts established that 23 % of the sample did not have access to potable water.[4]

SOURCES OF DRINKING WATER IN GHANA

Source of drinking water	Ghana	Urban	Rural
Pipe-borne	41.6	80.3	18.8
Well	33.9	10.8	47.2
Natural Sources	24.6	8.8	33.9

Source: **Ghana Poverty Reduction Strategy (GPRS) Document,** February, 2003 p.19.

This has serious implications for the health of the population since households without access to potable water tend to rely on other unhygienic and less reliable sources, including mobile water tankers, fixed vendors of water, shallow and deep wells and boreholes. Accordingly, Government would have to invest more in the provision of reliable water supply for the citizenry as part of the measures aimed at improving the health of the community and reducing poverty.

Having regard to the importance of water for human consumption, agriculture, transportation and as an integral part of the environment, indeed the habitat of many species, customary law, even prior to the advent of colonisation, evolved rules to govern the use of water. The advent of colonialism and the modern state has also added a new dimension to the subject as water has since been put to new uses including irrigation and hydropower generation. Accordingly, as in other areas of the law, the law on water in Ghana is one of pluralism, a mix between customary and statutory laws.

This paper provides an account of Ghanaian customary water laws and practices and explores the interface between these and the legislation governing water rights and administration.

LEGAL PLURALISM AND GHANAIAN WATER LAWS

Long before the advent of colonialism, the various communities that currently constitute the modern Ghanaian society had evolved various rules governing the use of water. As a result of colonialism and the advent of the modern state, the traditional uses of water, principally for domestic and limited agricultural uses have been supplemented by other uses, particularly in industry; as sources of power, irrigation and medium for transportation. Climatic and ecological changes coupled with population increases and their attendant requirements for water have sharply reduced

[4]. GPRS Document, ibid.

this vital resource. Faced with the phenomenon of dwindling water resources, the state has had, through the instrumentality of legislation and other policy measures, intervened to regulate the water sector. Customary rules governing the use of water have thus been supplemented or even supplanted by statutory norms in line with changing socio- economic and political dictates.

The existing regime for regulation of water use, as in many areas of Ghanaian jurisprudence, is thus a mixture of customary rules and enactments in consonance with Article 11 of the 1992 Constitution on the sources of laws in Ghana.
Article 11 of the Constitution provides that the laws of Ghana shall comprise:

- The Constitution;
- Enactments made by or under the authority of the Parliament established by the Constitution;
- Orders, Rules and Regulations made by any person or authority under a power conferred under the Constitution;
- The Existing Law; and
- The Common Law.

The common law as defined under Article 11 (2) of the Constitution includes rules of English common law as well as customary law. Customary law is defined under Article 11(3) of the Constitution as the rules of law, which by custom, are applicable to particular communities in Ghana[5]. The Constitution thus raises customary law to a high pedestal, although in terms of hierarchy, customary law rules are subordinated to statutory enactments.

As noted, the customary rules governing water usage in Ghana have been supplemented or even supplanted by legislation. Accordingly, in line with the changes in the legal regime, this Paper initially examines the customary rules governing water use. This is followed by a discussion of the various statutory interventions or inroads made into the subject, so as to put matters in the right perspective. Conclusions are then drawn in the light of the analysis.

1. Customary Rights and Practices[6]

At customary law, water in all its forms including the sea, rivers and lakes are regarded as public property not subject to individual appropriation. The rule is said to be strict, especially in areas where there is scarcity of water. It could, however, be relaxed where there is relative abundance to permit an individual the use of a stream, rivulet or pond on his or her land, but this does not create private ownership over such a resource. When the need arises, other persons in the community have the right to share in its use. In this regard, individual use or appropriation of water, however long, cannot ripen into ownership. Ownership of water in consonance with customary law vests in stools, communities and families. It is, however, doubtful as to whether or not

[5] . There are several communities in Ghana. The largest of this is the Akan group which comprises about 55% of the total population of Ghana; currently estimated at 18 million+. The customary rules discussed in this paper are largely based on Akan practices, but the rules are not dissimilar to those prevailing in other communities.

[6] . This part of the Paper draws on earlier works on the subject, in particular: J. Ofori Boateng, "Environmental Law: Ghana Water Law", 9 Review of Ghana law, 1977.

customary law treats ground water as part of land so as to render same capable of being owned by an individual who owns the land under which it is situated.[7]

Traditionally, water had been used for domestic purposes, watering of animals and for fishing. Accordingly, little or no customary rules were developed or evolved to address matters such as navigation and irrigation. Customary law however evolved rules for reasonable or equitable use of water resources among communities through which a river or stream flows. Where two or more of such communities are located close to each other, they normally agree on a spot where they may go to collect water for domestic use. Further, each user may collect as much water as may be required, provided he or she leaves enough for other users and also leaves the waters in a clean state.

The use of implements for fetching water is regulated by rules determined by the competent local authority, usually fetish priests and priestesses. Earthenware and calabashes and lately buckets are usually the prescribed or acceptable vessels for fetching water. The drinking part of the river is often located upstream from the swimming or bathing part or the part reserved for watering animals. Violation of these rules is an offence punishable by fines- in money or in kind-payable to the local chief or the priests or priestesses.[8]

Apart from imposition of fines, religious and customary beliefs also, served as potent sources of ensuring compliance with customary rules on water usage. Pronouncements of priests and priestesses, as part of customary beliefs, were scrupulously adhered to, and disobedience of such edicts, it was held, had grave consequences including death for the offender. As documented, in some parts of Ghana, it is forbidden to draw water on certain days, and fishing is forbidden on Tuesdays and certain months of the year. It is also forbidden to farm along river banks which are considered to be the resting abode of the river gods and their children. The protection of the environment including rivers is the responsibility of the entire society in traditional societies. They owe it a duty to the ancestors and those yet unborn to maintain its integrity.

To avert the ancestors and the earth- goddesses punishing the entire society for violations, every member of the community is enjoined to refrain from acts that would endanger the environment and to prevent others as well from so acting. As the custodian of the environment and the occupant of the ancestral stool, the chief, assisted by the fetish priests and priestesses, could mete out appropriate sanctions to offenders. Hence, through customary beliefs, enforceable rules were evolved for the conservation and management of water.[9]

Any disputes arising out of the use of water were resolved by the chiefs and elders in line with the prevailing rules or practices and edicts handed down by the fetish priests and priestesses. The awards of these tribunals were adhered to owing to the fear for the fetish priests and priestesses and the potent powers of enforcement wielded by the

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[7]. Ofori Boateng, ibid. at 12.
[8]. Ibid.
[9]. Ibid. at 13; Maxwell Opoku-Agyemang, "Shifting Paradigms: Towards the Integration of Customary Practices into the Environmental Law and Policy in Ghana," (Unpublished Paper) at 6.

chiefs, including the power to ostracise a person from the community for non-compliance with such a judgment or award.

As a result of colonisation and the advent of the modern state, the potency of customary norms as tools for the enforcement of norms on water usage has significantly diminished. Christian beliefs, for example, have supplanted customary beliefs as propounded by fetish priests and priestesses; hence sanctions that were feared would be visited on would-be violators have paled into insignificance.
Colonisation and the advent of the modern state also replaced the powers of chiefs with that of the Governor and subsequently the executive after independence; and laws or ordinances enacted or imposed by the colonial power or by the legislature have replaced traditional customary edicts propounded by fetish priests and priestesses. So by and large, customary law as a basis for the enforcement of norms on the usage of water has paled into insignificance, and indeed is honoured by its observance only in the rural communities.

Apart from customary law, English common law has formed part of the laws of Ghana since 1897. Indeed, as noted under Article 11 of the Constitution, the common law of Ghana includes English common law as well. The common law could thus be employed in addition to, or as a supplement to, customary law. Further, customary law could yield to statutory law or the common law in instances where the customary law is repugnant to good conscience and morality. However, it has been said that Ghanaian customary laws are not repugnant in those senses, and that the common law is of limited application in the area of water use.[10]Accordingly, recourse would have to be had to statutory laws in order to ascertain the current state of the law. Indeed, it is in this area of the law that several inroads have been made into Ghanaian water laws.

2. Statutory Law and Customary Water Rights

The 1992 Constitution, the fundamental law of the land, does not explicitly provide for the establishment of an institutional basis for the regulation of water as it does for the related resources of land, fisheries and forestry through the establishment of Lands, Minerals and Fisheries Commissions charged with the responsibility for the management and coordination of policy in relation to these resources. The activities of these Commissions could, however, impact on the water sector. Perhaps taking a cue from the Constitution which provides for the creation of other Commissions to address natural resource management, the Legislature has established a Water Resources Commission (WRC) pursuant to the Water Resources Commission Act, 1996[11]for the management of the water resources of Ghana, inter alia. The WRC Act is the major instrument that governs water use and management in Ghana. However, prior to, and after the enactment of the WRC Act, various governments have sought, through the instrumentality of legislation and policy initiatives, either directly or indirectly, to regulate water and its uses through various ministries, departments and agencies (MDAs) of state. Consequently several enactments that have a bearing on water use and or management exist on the statute books.[12]

[10]. Ofori-Boateng, ibid at 14.
[11]. Act 522.
[12]. The enactments include the Rivers Ordinance, 1903 (Cap 226), the Forests Ordinance, 1949(Cap 157), the Mosquitoes Ordinance, 1951(Cap 157 Rev), the Wild Animals Preservation Act, 1961(Act

The plethora of legislation dating from the colonial era vest powers in various ministries, departments and agencies of state, including mining, agriculture, industry, works and housing and transport and related agencies such as the VRA, the Minerals and Forestry Commissions and the Irrigation Development Authority for the varied and contemporary uses of water including irrigation, power generation, transportation and industrial uses. These enactments did not affect pre-existing customary rights; they sought to regulate water uses in areas that had hitherto not been addressed by customary law. Further, there was no provision for a single body or institution charged with the responsibility for the control, regulation and management of Ghana's water resources until the enactment of the WRC Act. The subsequent paragraphs of this Paper examine the WRC Act and the inroads it has made in the statutory and customary law regimes in Ghanaian water law and policy.

3. The Water Resources Commission Act, 1996

The WRC Act abolishes the pre-1996 customary regime for ownership of water which resided in stools, communities, families and individuals. In their stead, the state has assumed ownership, management and control of water through the establishment of a multi- institutional cum sectoral body, the Water Resources Commission (the WRC). This arrangement has radically affected the legal regime for the control and management of water. At the same time, the WRC Act leaves several legal issues unresolved in the area of the competence of some of the pre-existing regulatory bodies in the water sector vis-à-vis the WRC. This part of the paper examines the changes introduced into the pre-existing legal regime by the WRC Act and their impact on customary norms, statutory legislation and other related issues on the subject.

The Act has as its object, the establishment of a Water Resources Commission, (WRC), to provide for its composition and functions and the regulation and management of the utilization of water resources in Ghana and related matters. In consonance with its objects, the Act establishes a WRC, a body corporate charged with the responsibility for the regulation and management of the utilisation of water resources and for the coordination of any policy in relation to them. The WRC in this regard is assigned the following specific functions:

- Propose comprehensive plans for the utilisation, conservation, development and improvement of water resources.
- Initiate, control and co-ordinate activities connected with the development and utilisation of water resources;
- Grant water rights;
- Collect, collate, store and disseminate data or information on water resources in Ghana;
- Require water user agencies to undertake scientific investigation, experiments or research into water resources in Ghana;

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43), the Volta River Development Act, 196(Act 46) the Ghana Water and Sewerage Corporation Act, 1965(Act 310), the Oil in Navigable Waters Act, 1964(Act 235), the Irrigation Development Authority Decree, 1977(SMCD 85), the Minerals and Mining Law 1986(PNDCL 153) the Environmental Protection Agency Act, 1994 (Act 490), the Ghana Highway Authority Act(Act 540), and the Timber Resources Management Act, 1998 (Act 547).

- Monitor and evaluate programmes for the operation and maintenance of water resources;
- Advise the Government on any matter likely to have adverse effect on the water resources in Ghana;
- Advise pollution control agencies in Ghana on matters concerning the management and control of pollution of water resources; and
- Perform such other functions as are incidental to the foregoing.

As would be expected of a body dealing with functional/sectoral issues, the composition of the WRC is wide ranging; with representation drawn from all the relevant Ministries, Departments and Agencies of state (MDAs). Thus in addition to the Chairman, the Commission draws a representation from each of the following MDAs:

- the Ghana Water Company Limited; (GWCL)
- organisations producing potable water;
- the Hydrology Department and the Ministry of Works and Housing;
- the Volta River Authority; (VRA)
- the Irrigation Development Authority; (IDA)
- the Water Resources Research Institute;
- the Meteorological Service;
- the Environmental Protection Agency;
- the Forestry Commission; and
- the Minerals Commission;
- the Executive Secretary;
- a Chief and
- two other persons at least one of whom shall be a woman.

All the members of the Commission are appointed by the President acting in consultation with the Council of State, an indication of the importance of the subject matter. Curiously, there is only one representation for Chiefs, the embodiment of custom in the Ghanaian society on the Commission; a clear indication of the diminution in their role as authorities on the subject of water management. The institutional representation approach adopted for the membership of the Commission is to ensure compliance with the policies of the WRC by member institutions[13].

Part lll of the WRC Act[14] deals with the regulations of Water Resources. The WRC Act vests the property in and control of all Water Resources in the President on behalf of, and in trust for, the people of Ghana. Water Resources is defined comprehensively under the Act; it encompasses "all water flowing over the surface of the ground or contained in or flowing from any river, spring, stream or natural lake or part of a swamp or in or beneath a watercourse and all underground water but excluding any stagnant pan or swamp wholly contained within the boundaries of any private land"[15]

No person is allowed to divert, dam, store, abstract or use water resources, construct or maintain any works for the use of water resources except with the permission of the

[13] On this subject, I have drawn on Maxwell Opoku-Agyemang, "Institutional Framework for Watershed Management in Ghana: Conflicts and Prospects," (Unpublished Paper).
[14] Sections 12-24.
[15] Section 37.

WRC, and in accordance with the provisions of the WRC Act. The only permissible use of water resources without recourse to the WRC is for the purpose of fighting fires. The Act, however, recognises the rights of persons with lawful access to water resources to abstract and use same for domestic purposes.

The import of the foregoing provisions is to oust customary water holding rights by stools, families and communities in favour of the state. Until the passage of the legislation, customary water rights were, by and large, regarded as part of land rights. Perhaps, not unmindful of the import of the legislation which essentially expropriates communal and private property rights in water in favour of the state, the Act makes provision for persons who claim existing rights of access to any water resources to notify the WRC within twelve months from the coming into force of the WRC Act,[16] the WRC is enjoined to conduct the necessary investigations and where satisfied that such rights exist in relation to the person, "may take such action as it considers appropriate".

The WRC Act does not provide for what appropriate actions are to be taken under such circumstances. Presumably these could include payment of compensation. It is however, doubtful whether any such claims were made upon the coming into force of the Act. Indeed in a predominantly illiterate society, one wonders how such legislative provisions would come to the notice of the affected parties. The net effect of the legislation then could, *sub-silentio,* divest customary holders of proprietary rights to water without prompt adequate and effective compensation as required in such circumstances by the 1992 Constitution among many an illiterate community unaware of the changes introduced by the legislation.[17]

In addition to divesting stools, communities and families of their customary ownership of rights to water, the WRC Act 1996 vests in the state, the right to grant water rights. In that regard, any person may apply to the WRC in writing for the grant of water rights[18]. Upon receipt of such an application, the WRC is enjoined to conduct such investigations as it considers necessary, including consultations with the inhabitants of the area of the water resources concerned, prior to arriving at its decisions. As part of the process, any person who claims that his or her interest will be affected by the grant may notify the WRC within three months and such objections may be considered in determining whether or not the water rights should be granted.

The WRC Act is silent about avenues that exist for persons dissatisfied with its decisions. However, such persons could invoke the supervisory jurisdiction of the High Court or rely on the constitutional guarantees of property rights to ventilate their grievances.[19] A grant of water rights shall be subject to ratification by Parliament.[19] However, Parliament may, by resolution supported by not less than two-thirds of members exempt such class of water rights as it shall so resolve from the requirements of ratification. Parliament is yet to exercise this power.

The Act bans a transfer of water rights granted without the prior written approval of the WRC. The Commission also reserves the right to suspend or vary water rights

[16] The Act entered into force on 31 December 1996.
[17] Art. 20
[18] Section 16.
[19]. Section 16(8).

granted in any area where the water resource is insufficient or is likely to become insufficient as a result of the grant. The Commission has not exercised this power yet. In addition, the WRC has the power to terminate or limit holdings of water rights on grounds that the water is required for public purposes. A declaration by the Commission is conclusive evidence of that fact.[20] However, the owner of such a right is entitled to compensation on the basis of agreement with the WRC or failing that, by a determination by the Courts. Holders of water rights may be divested of the right if they: fail to comply with any condition of the grant**,** use water resources for a purpose not authorized by the grant or where the owner has not during the preceding two years made full beneficial use of the right**.** In all these instances, the holders of water rights are entitled to notice to remedy the breach prior to the imposition of the sanction. It is also an offence under the Act to interfere with, alter the flow of, pollute or foul water except in accordance with the provisions of the Act or with the approval of the EPA.

The WRC also may on the advice of the District Assembly require a person who has constructed any works contrary to conditions of the grant or whose water rights in respect of which any works in existence have been terminated to modify, demolish or destroy the works within thirty days. Where the offender fails to comply with the demand, the WRC may proceed to effect the demolition or destruction and recover the cost from the person in default by civil suit. Power is also granted to the Minister under section 31 of the Act to declare an area to be protected catchment area where he or she is satisfied that special measures are necessary for the protection of water resources in or derived from any area. The WRC acting in consultation with the National Development Planning Commission and the District Assembly of the protected area are enjoined to establish a comprehensive scheme for the development of the water resources of that area.

Further, power is also given the Minister after prior consultation with the relevant District Assembly, to declare water emergency in an area if he or she is satisfied that because of drought, accident or unforeseen circumstances, serious deficiency of water for essential domestic purposes exists. The WRC Act makes it an offence punishable on conviction to a fine not exceeding two million cedis[21] or three years imprisonment or both, violations of the provision of the Act.[22] In furtherance of its functions or objects, the WRC is given power by legislative instruments to make regulations on a wide range of subjects including:

- preserving existing uses of public water;
- the declaration of water emergencies;
- regulating the use of contained water and ground water;
- the carrying out of investigations in respect of any function of the Commission;
- protection of watersheds;
- the granting of permits to discharge waste into water bodies;
- prescribing the acceptable levels of pollution;
- the doing of any act by any person in a protected catchments area;

[20] Section 16(9).
[21] The cedi is the currency unit. 9000 cedis is the equivalent of 1 United States dollar.
[22]. Section 34.

- the levying of charges; and
- generally for the purpose of giving effect to the provisions of the Act.

As a supplement to the WRC Act, the Government has adopted a water policy based on integrated water resource management, in order to achieve a sustainable management of the country's water resources in consonance with the principle of sustainable development.

4. The impact of the WRC Act, 1996 on Customary Rights

What emerges from the foregoing is that by a stroke of the legislative pen and policy intervention, proprietary and managerial rights which had been held from time immemorial by families, stools and communities have been taken away from a people some of who probably had no prior knowledge of the matter. Significantly, water in view of its appurtenance to land, has all along been regarded as part of land. The Constitution recognises customary land holdings [23] and bars state intervention and/or appropriation of lands except under the stringent conditions laid down under Article 20. Indeed, the 1992 constitution puts behind us the era of unbridled acquisitions of land without payment of compensation.[24]

The issue is whether the WRC Act can unilaterally hive off water from land and provide a separate institutional and legislative framework to address its use. If the Constitution provides that the regime of land tenure ought to be in conformity with customary law, then any attempt by the state to fashion out a separate regime for water that runs counter to this constitutional edict will offend the letter, if not the spirit, of the Constitution. This is an issue that deserves to be examined having regard to the massive nature of the assault of the legislation on customary proprietary water rights.

Perhaps it may be said that for policy considerations, a case could be made for the State to control water and water resources. However, achieving such an objective without the involvement of the customary owners of the resource would, in the long run, create as many problems as the legislation seeks to resolve.

This is one issue that has yet been raised and/or discussed in Ghanaian jurisprudence, perhaps because as of date, the WRC has not exercised any of its far sweeping powers in the area of appropriation of water rights. Indeed, twelve years into the life of this

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[23] See 1992 Constitution, Arts. 257-269.

[24] Article 20 of the 1992 Constitution provides, inter alia ,that:

1. No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the following conditions are satisfied;
   a. the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of property in such a manner as to promote the public benefit; and;
2. Compulsory acquisition of property by the State shall only be made under a law which makes provision for;
   a. the prompt payment of fair and adequate compensation; and
   b. a right of access to the High Court by any person who has interest in or right over the property whether direct or on appeal from any other authority for the determination of his interest or right and the amount of compensation to which he is entitled.

Act, the monumental implications of the Act has not become a subject of debate owing to the non-application of the statute for purposes of water appropriation and the availability of water to meet societal demands.

However, this is not an issue that can be swept under the carpet. In due course, as water availability becomes an issue and the WRC begins to exercise its statutory powers to address the subject, there is bound to be conflict between the state and customary owners of this vital resource. If the law on appropriation of land by the state is to be used as a guide on the matter, then it may be surmised that the WRC, in spite of its far sweeping powers with regard to water appropriation, would have to yield to the constitutional requirement of providing prompt, adequate and effective compensation in accordance with Article 20 of the Constitution for the compulsory acquisition of customary water rights as obtains in the case of compulsory land acquisitions by the state.

CONCLUSION

Ghana is fairly well endowed with water resources. Regrettably, the reasonable endowment of water resources in the country is at variance with access to drinking water and sanitation by the populace. Indeed, it is estimated that only 41.6 % of Ghanaians have access to potable water, and as many as 81% of the rural population in Ghana have no access to potable water. Until the enactment of the WRC Act in 1996, rights to water were vested in various families, stools and communities. There were statutory interventions to govern matters such as power generation, irrigation and navigation, matters that were not addressed by customary law. With the enactment of the WRC Act, customary rights to water by families, stools and communities have been ousted. The State, through the WRC and the Water Policy, has assumed the role of manager with powers to grant water rights and manage same for the public good.

The WRC Act does not provide for any mechanisms to reconcile customary rights with statutory rights; neither does it provide a judicial mechanism or basis for the settlement of disputes between customary water rights and statutory rights. It only enjoins parties whose rights have been affected to stake their claims within 12 months of the coming into force of the WRC Act. The old customary rules on water rights, at least on paper, have thus gone down the drain. In their stead has emerged state control and monopoly over water rights via the WRC. On the other hand, it is arguable that customary rights and practices as regards the usage of water go on unabated on the ground, with the local water users not having the remotest idea that their ancestral rights have evaporated.

Whatever be the outcome of the debate, it is incontrovertible that water as a vital resource has hitherto been taken for granted since its availability had been guaranteed in the past. However, with increases in population coupled with adverse effects on the resource occasioned by factors such as climate change, water availability can no longer be taken for granted. There is therefore the need for judicious management and utilization of this vital resource. In that regard, the state is more endowed in terms of resources as well as the requisite institutional and legislative frameworks to accomplish this task compared to the traditional authorities. In the circumstances, the

WRC is likely to remain the dominant or decisional tool for the management and utilization of water resources in Ghana.

The WRC Act, however, does not resolve all the issues in this vital area of the law. It leaves us for instance, guessing as to whether or not it is the sole regulatory body or that other institutions still have mandates in certain areas of water management or water use. Above all, the enactment of the Act raises a fundamental issue as to whether or not water resources can be separated from land and accorded statutory treatment in a constitutional dispensation where customary law is the prescribed norm on land matters. These are issues that governments and policy makers would have to grapple with in Ghana's quest for a sustainable management of this vital resource in the years to come.

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