

THE CHEMICAL WEAPONS CONVENTION BILL
(No. III of 2003)

Explanatory Memorandum

The object of this Bill is to implement the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Commonly called the Chemical Weapons Convention) by -

- (a) creating a National Authority for the purpose of acting as a national focal point to liaise with the other State Parties and the Organisation for the Prohibition of Chemical Weapons;
- (b) prohibiting the development, production, stockpiling, acquisition and use of chemical weapons;

and by providing for related matters.

A. JUGNAUTH
Prime Minister,
Minister of Defence & Home Affairs and
External Communications

21 March 2003

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(No III of 2003)

ARRANGEMENT OF CLAUSES

Clause

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| 1. Short title | 12. Chemicals specified in the Second Schedule |
| 2. Interpretation | 13. Chemicals specified in the Third Schedule |
| 3. The Mauritius National Chemical Weapons Authority | 14. Unscheduled discrete organic chemicals |
| 4. Meetings of the Authority | 15. Confidentiality |
| 5. Functions and duties of the Authority | 16. Offences and penalties |
| 6. Powers of the Minister | 17. Jurisdiction |
| 7. Prohibitions | 18. Regulations |
| 8. Extraterritorial application | 19. Commencement |
| 9. Warrant for search | |
| 10. Detention and forfeiture | |
| 11. Chemicals specified in the First Schedule | |

A BILL

To give effect to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

Enacted by the Parliament of Mauritius, as follows -

1. Short title

The Act may be cited as the Chemical Weapons Convention Act 2003.

2. Interpretation

In this Act -

“Authority” means the Mauritius National Chemical Weapons Authority established under section 3;

“Convention” means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction;

“Chairperson” means the Chairperson of the Authority;

“chemical weapon” means the following, together or separately -

- (a) toxic chemicals and their precursors, except where intended for purposes not prohibited under the Convention as long as the types and quantities are consistent with such purposes;
- (b) munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (a), which would be released as a result of the employment of such munitions and devices;
- (c) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in paragraph (b);

“discrete organic chemical” means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon, except for its oxides, sulfides and metal carbonates, identifiable by chemical name, by structural formula, if known, and Chemical Abstracts Service Registry number, if assigned;

“member” means a member of the Authority and includes the Chairperson;

"Minister" means the Minister to whom responsibility for the subject of internal security and defence is assigned;

"OPCW" means the Organisation for the Prohibition of Chemical Weapons;

"precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multi-component chemical system;

"production" means the formation of a chemical through reaction;

"purposes not prohibited under the Convention" means -

- (a) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;
- (b) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
- (c) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare;
- (d) law enforcement, including domestic riot control, purposes;

"riot control agent" means any chemical not listed in a Schedule which can produce rapidly in humans sensory irritations or disabling physical effects which disappear within a short time following termination of exposure;

"toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals.

3. The Mauritius National Chemical Weapons Authority

(1) There is established for the purposes of this Act the Mauritius National Chemical Weapons Authority.

(2) The Authority shall consist of -

- (a) a representative of the Prime Minister's Office, as Chairperson;
- (b) a representative of the Ministry responsible for the subject of foreign affairs;

- (c) a representative of the Ministry responsible for the subject of industry;
- (d) a representative of the Attorney-General's Office;
- (e) a representative of the Ministry responsible for the subject of environment;
- (f) a representative of the Ministry responsible for the subject of health;
- (g) a representative of the Ministry responsible for the subject of commerce;
- (h) a representative of the Ministry responsible for the subject of labour;
- (i) the Commissioner of Police, or an officer not below the rank of Assistant Superintendent delegated by him;
- (j) the Head, Forensic Science Laboratory, or his representative;
- (k) a representative of the Comptroller of Customs;
- (l) a representative of the Mauritius Chamber of Commerce and Industry.

(3) The members of the Authority shall be paid such fees or allowances as the Minister shall determine.

4. Meetings of the Authority

(1) The quorum of the Authority shall be 6.

(2) (a) The Chairperson, or in his absence, the representative of the Ministry responsible for the subject of foreign affairs, shall preside all meetings of the Authority.

(b) In the absence of the Chairperson and the representative of the Ministry responsible for the subject of foreign affairs, the members present shall elect from among themselves a member to preside at that meeting and the member so elected shall, in relation to that meeting, exercise the functions and have all the powers of the Chairperson.

(3) Everything required or authorised to be done by the Authority shall be decided by a simple majority of the members present and voting.

(4) At any meeting of the Authority, each member shall have one vote and, in the event of equality of votes, the Chairperson shall have a casting vote.

(5) The Authority shall meet at such times as it considers necessary or expedient for the transaction of business and such meetings shall be held at such place as the Authority determines.

(6) The Authority may seek the assistance of any person for the purpose of its deliberations, but that person shall have no right to vote.

(7) Subject to this section and this Act, the Authority shall regulate its meetings and proceedings in such manner as it thinks fit.

5. Functions and duties of the Authority

(1) The Authority shall perform its functions so as to most effectively attain the objects of this Act, and in particular -

- (a) to be the National Authority for Mauritius and serve as the national focal point for effective liaison with other States Parties to the Convention and the OPCW;
- (b) to supervise and monitor the enforcement of this Act through systems established under the Act or by regulations;
- (c) to gather the data to be reported in the initial and, as appropriate, annual declarations to the OPCW;
- (d) to supervise the domestic implementation of the Convention;
- (e) to provide the OPCW and States Parties with relevant informations in fulfilment of the State's obligations under the Convention;
- (f) facilitate and co-operate in inspections under the Convention, including accompanying OPCW inspectors on international routine inspections and international challenge inspections;
- (g) approve the facilities under this Act;
- (h) perform any task assigned to it by the Minister;
- (i) advise the Minister on matters relevant to this Act and the Convention and provide any information which the Minister may require.

(2) The Authority may appoint a task force to advise it on any matter relating to this Act.

6. Powers of the Minister

The Minister may give such directions of a general character to the Authority with regard to its functions under this Act as he considers necessary in the public interest, and the Authority shall comply with these directions.

7. Prohibitions

- (1) No person shall -
 - (a) develop, produce, acquire, stockpile or retain a chemical weapon;
 - (b) directly or indirectly transfer or tranship a chemical weapon to any other person or country;
 - (c) use a chemical weapon;
 - (d) engage in any military preparation to use a chemical weapon;
 - (e) assist, encourage or induce, in any way, a person to engage in any activity prohibited to a State Party under the Convention;
 - (f) use a riot control agent as a method of warfare.

(2) No person shall develop, produce, acquire, retain, transfer or use a toxic chemical or its precursor except for purposes not prohibited under the Convention.

8. Extraterritorial application

The provisions of section 7 shall extend to any act done outside Mauritius-

- (a) by a citizen of Mauritius;
- (b) by any person on board a Mauritian ship or Mauritian aircraft.

9. Warrant for search

(1) Where a police officer has reasonable grounds to believe that an offence is being committed under this Act, the officer shall apply under oath to a Magistrate for a warrant to enter and search any premises and seize any material kept in contravention with this Act.

(2) Where the Magistrate is satisfied upon oath of the police officer and such additional information as he may require to be produced, he may issue the warrant which shall remain valid for one month.

10. Detention and forfeiture

(1) Where an officer seizes any material under section 9, the officer may store the material seized at an appropriate place.

(2) If a Court finds that any material seized was kept or used in contravention with this Act, the Court may order its forfeiture to the State or may make such other order for its disposal as appropriate in the circumstances.

(3) Before making an order for disposal under subsection (2), the Court may seek the views of the Authority on the mode of disposal.

(4) The person from whom the material was seized shall pay to the State such reasonable expenses for its disposal as the Minister may claim from him.

11. Chemicals specified in the First Schedule

(1) Subject to subsections (2) and (3), no person shall export to, nor import from, a State not Party to the Convention a chemical specified in the First Schedule.

(2) No person shall retransfer to a third State any chemical imported in breach of subsection (1).

(3) No person shall import from, or export to, a State Party, a chemical specified in the First Schedule except where the chemical is to be used for purposes not prohibited under the Convention.

(4) Before any import or export under subsection (3), the person intending to effect such import or export shall notify the Authority and supply such additional information as the Authority may require.

(5) No person shall operate a facility that produces, acquires, retains or uses a chemical of the First Schedule unless –

(a) it is a facility approved by the Authority or is a prescribed facility; and

(b) it is a laboratory synthesizing the chemical for research, medical or pharmaceutical purposes, in an aggregate quantity of less than 100 grams per year.

(6) The operator or owner of a facility shall provide to the Authority such information at such times as may be prescribed.

(7) The operator or owner of a facility shall allow the Authority or any inspector of the OPCW –

- (a) access to the facility and any records kept at the facility;
- (b) to install or operate any on-site monitoring instrument or analytical instrument.

12. Chemicals specified in the Second Schedule

(1) No person shall export to, nor import from, a State not Party to the Convention, a chemical specified in the Second Schedule.

(2) No person shall operate a facility that produces, processes, or consumes a chemical specified in the Second Schedule unless the facility is a facility approved by the Authority or is a prescribed facility.

(3) The operator of a facility specified in this section shall provide to the Authority such information at such times as may be prescribed.

(4) For the purposes of this section, a facility shall be deemed to be a facility for a chemical specified in the Second Schedule if it consists of a plant site comprising of one or more plants where it is anticipated to produce, process or consume, in the aggregate for any year under consideration, chemicals specified in the Second Schedule not exceeding the following thresholds -

- (a) 1 kg of a chemical in Part A of the Second Schedule and designated with an asterisk;
- (b) 100 kg of any other chemical listed in Part A of the Second Schedule;
- (c) 1 tonne of a chemical listed in Part B of the Second Schedule.

(5) The operator or owner of a facility shall allow the Authority or any inspector of the OPCW -

- (a) access to the facility and records kept at the facility;
- (b) the right to secure sample of chemicals;
- (c) to install or operate any analytical instrument.

(6) The operator or owner of a facility shall cooperate and provide necessary information for the purposes of a facility agreement which the Authority may deem appropriate to enter with the OPCW.

13. Chemicals specified in the Third Schedule

(1) Where a person intends to effect any export of a chemical specified in the Third Schedule, he shall notify the Authority and supply such additional information as the Authority may require.

(2) No person shall operate a facility that produces a chemical specified in the Third Schedule unless the facility is a facility approved by the Authority or is a prescribed facility.

(3) The operator of a facility specified in this section shall provide to the Authority such information at such times as may be prescribed.

(4) A facility shall be deemed to be a facility for a chemical specified in the Third Schedule if it consists of a plant site comprising one or more plants which produced during the previous calendar year or is anticipated to produce in the next calendar year more than 30 tonnes of a chemical specified in the Third Schedule.

14. Unscheduled discrete organic chemicals

(1) No person shall operate a facility that produces an unscheduled discrete organic chemical unless the facility is a facility approved by the Authority or is a prescribed facility.

(2) A facility that exclusively produces explosives or hydrocarbons shall be exempt from the requirements of subsection (1).

(3) The operator of a facility specified in this section shall provide to the Authority such information at such times as may be prescribed.

15. Confidentiality

(1) Every person shall keep confidential any information that is given pursuant to this Act, or the Convention, concerning the affairs of another person.

(2) Such information may be disclosed only with the consent of the person to whose affairs it relates or for the purpose of -

- (a) enabling the State to fulfil its obligations under the Convention;
- (b) the enforcement of this Act; or
- (c) dealing with an emergency involving public safety.

16. Offences and penalties

(1) Any person who -

- (a) breaches any permit or licence issued under regulations made under this Act;
- (b) assaults, resists, intimidates or obstructs an inspector of the Authority or the OPCW;
- (c) knowingly or recklessly makes any false or misleading statement, either orally or in writing, to the Authority or the OPCW, engaged in the exercise of their powers under this Act or regulations made thereunder;
- (d) removes, alters or interferes in any way with any article seized under this Act;
- (e) contravenes this Act or any regulations made under this Act,

shall commit an offence.

- (2) Any person convicted of an offence -
 - (a) under sections 7, 11, 12, 13 and 14, shall be liable to a fine not exceeding one million rupees and to imprisonment which shall not be less than 5 years nor more than 15 years;
 - (b) under any other section or regulation, shall be liable to a fine not exceeding 100,000 rupees and to imprisonment not exceeding 2 years.

17. Jurisdiction

Notwithstanding -

- (a) sections 113 and 114 of the Courts Act;
- (b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,

the Intermediate Court shall have jurisdiction to try any offence under this Act and may impose the penalties provided by section 16 and forfeiture or other order under section 10.

18. Regulations

(1) The Minister may make such regulations as he considers necessary for the purposes of this Act.

(2) Notwithstanding the generality of subsection (1), regulations made under this section may provide for -

- (a) licensing of imports and exports authorised under this Act;
- (b) licensing of any facility specified in this Act;
- (c) establishing standards for chemicals and facilities;
- (d) storage, distribution, packaging, labelling and advertising requirements;
- (e) record keeping and reporting requirements;
- (f) taking of appropriate fees and charges;
- (g) the amendment of the Schedules;
- (h) the implementations of such guidelines or Codes of Practice as may be prescribed by OPCW.

19. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

FIRST SCHEDULE

(section 11)

A. TOXIC CHEMICALS:

(Chemical Abstract Service
registry number)

- (1) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) alkyl
(Me, Et, n-Pr or i-Pr)-phosphonofluoridates
- e.g. Sarin: O-Isopropyl methylphosphonofluoridate (107-44-8)
Soman: O-Pinacolyl methylphosphonofluoridate (96-64-0)
- (2) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl
(Me, Et, n-Pr or i-Pr)-phosphoramidocyanidates
- e.g. Tabun: O-Ethyl N,N-dimethyl
phosphoramidocyanidate (77-81-6)
- (3) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) S-2 dialkyl
(Me, Et, n-Pr or i-Pr)-aminoethyl alkyl
(Me, Et, n-Pr or i-Pr) phosphonothiolates and
corresponding alkylated or protonated salts
- e.g. VX: O-Ethyl S-2 diisopropylaminoethyl
methyl phosphonothiolate (50782-69-9)
- (4) Sulfur mustards:
- 2-Chloroethylchloromethylsulfide (2625-76-5)
Mustard gas: Bis(2-chloroethyl) sulfide (505-60-2)
Bis(2-chloroethylthio)methane (63869-13-6)
Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane (3563-36-8)
1,3-Bis(2-chloroethylthio)-n-propane (63905-10-2)
1,4-Bis(2-chloroethylthio)-n-butane (142868-93-7)
1,5-Bis(2-chloroethylthio)-n-pentane (142868-94-8)
Bis(2-chloroethylthiomethyl)ether (63918-90-1)
O-Mustard: Bis(2-chloroethylthioethyl)ether (63918-89-8)
- (5) Lewisites:
- Lewisite 1: 2-Chlorovinylchloroarsine (541-25-3)
Lewisite 2: Bis(2-chlorovinyl)chloroarsine (40334-69-8)
Lewisite 3: Tris(2-chlorovinyl)arsine (40334-70-1)
- (6) Nitrogen mustards:
- HNI: Bis(2-chloroethyl)ethylamine (538-07-8)
HN2: Bis(2-chloroethyl)methylamine (51-75-2)
HN3: Tris(2-chloroethyl)amine (555-77-1)
- (7) Saxitoxin (35523-89-8)
- (8) Ricin (9009-86-3)

B. PRECURSORS:

- (9) Alkyl (Me, Et, n-Pr or I-Pr) phosphonyldifluorides
e.g. DF: Methylphosphonyldifluoride (676-99-3)
- (10) O-Alkyl (H or $\leq C_{10}$, incl. Cycloalkyl) O-2-dialkyl
(Me, Et, n-Pr or I-Pr)-aminoethyl alkyl
(Me, Et, n-Pr or I-Pr) phosphonites and
corresponding alkylated or protonated salts

e.g. QL: O-Ethyl O-2-diisopropylaminoethyl
methylphosphonite (57856-11-8)
- (11) Chlorosarin: O-Isopropyl methylphosphonochloridate (1445-76-7)
- (12) Chlorosoman: O-Pinacolyl methylphosphonochloridate (7040-57-5)

SECOND SCHEDULE

(section 12)

A. TOXIC CHEMICALS:

- (1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts (78-53-5)
- (2) PFIB: 1,1,3,3,3,-Pentafluoro-2-(trifluoromethyl)-1-propene (382-21-8)
- (3) BZ: 3-Quinuclidinyl benzilate (*) (6581-06-2)

B. PRECURSORS:

- (4) Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms,

e.g. Methylphosphonyl dichloride (676-97-1)
Dimethyl methylphosphonate (756-79-6)

Exemption: Fonofos: O-Ethyl S-phenyl
Ethylphosphonothiothionate (944-22-9)

- (5) N,N-Dialkyl (Me, Et, n-Pr or I-Pr) phosphoramidic dihalides
- (6) Dialkyl (Me, Et, n-Pr or I-Pr) N,N-dialkyl (Me, Et, n-Pr or I-Pr)-phosphoramidates
- (7) Arsenic trichloride (7784-34-1)
- (8) 2,2-diphenyl-2-hydroxyacetic acid (76-93-7)
- (9) Quinuclidin-3-ol (1619-34-7)
- (10) N,N-Dialkyl (Me, Et n-Pr or I-Pr) aminoethyl-2-chlorides and corresponding protonated salts
- (11) N,N-Dialkyl (Me, Et, n-Pr or I-Pr) aminoethane-2-ols and corresponding protonated salts
- Exemptions: N,N-Dimethylaminoethanol (108-01-0)
and corresponding protonated salts
N,N-diethylaminoethanol (100-37-8)
and corresponding protonated salts
- (12) N,N-dialkyl (Me, Et, n-Pr or I-Pr) aminoethane-2-thiols and corresponding protonated salts
- (13) Thiodiglycol: Bis(2-hydroxyethyl)sulfide (111-48-8)
- (14) Pinacolyl alcohol: 3,3-Dimethylbutan-2-ol (464-07-3)

THIRD SCHEDULE

(section 13)

A. TOXIC CHEMICALS:

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|-----|-------------------------------------|------------|
| (1) | Phosgene: Carbonyl dichloride | (75-44-5) |
| (2) | Cyanogen chloride | (506-77-4) |
| (3) | Hydrogen cyanide | (74-90-8) |
| (4) | Chloropicrin: Trichloronitromethane | (76-06-2) |

B. PRECURSORS:

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|------|--------------------------|--------------|
| (5) | Phosphorus oxychloride | (10025-87-3) |
| (6) | Phosphorus trichloride | (7719-12-2) |
| (7) | Phosphorus pentachloride | (10026-13-8) |
| (8) | Trimethyl phosphite | (121-45-9) |
| (9) | Triethyl phosphite | (122-52-1) |
| (10) | Dimethyl phosphite | (868-85-9) |
| (11) | Diethyl phosphite | (762-04-9) |
| (12) | Sulfur monochloride | (10025-67-9) |
| (13) | Sulfur dichloride | (10545-99-0) |
| (14) | Thionyl chloride | (7719-09-7) |
| (15) | Ethyldiethanolamine | (139-87-7) |
| (16) | Methyldiethanolamine | (105-59-9) |
| (17) | Triethanolamine | (102-71-6) |

(*) subject to special thresholds for declaration and verification