

Manual on National Implementing Legislation on the Chemical Weapons Convention



OPCW

Organisation for
the Prohibition of
Chemical Weapons

ORGANISATION FOR THE PROHIBITION OF CHEMICAL
WEAPONS



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Introduction

The Chemical Weapons Convention (CWC) entered into force on 29 April 1997. The Convention aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties.

The CWC is not a self-executory treaty and, as such, States Parties need to adopt implementing legislation in order to give effect to its provisions. Under Article VII(1) of the Convention, “each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under the Convention”. Specifically, a State Party is obliged to adopt penal legislation that will make it punishable for natural and legal persons to undertake any activity that is prohibited to a State Party under the Convention anywhere on its territory or in any other place under its jurisdiction.

Objectives, scope and structure of manual

This Manual aims to enhance States Parties’ understanding of their legislative and administrative obligations under Article VII of the CWC. Its objectives are three-fold:

1. to guide States Parties in providing accurate updates to the Technical Secretariat on their status of implementation of Article VII;
2. to facilitate the drafting of provisions for new implementing legislation, or amendments of existing laws or regulations; and
3. to serve as a reference in reviewing existing legislation or regulations.

The Manual will discuss the initial measures that are required to be included in implementing legislation on the CWC for it to be deemed comprehensive. It will include commentary on the rationale for the measure, model language from the National Legislation Implementation Kit, as well as illustrative examples from laws and regulations currently in force in States Parties. It will also include questions for self-assessment that may be used in reviewing existing laws or regulations in order to identify and address possible gaps.

Initial measures

In 2013, States Parties agreed on a new set of criteria to be used by the Technical Secretariat to assess the status of implementation of the Convention. These criteria, known as “initial measures”, comprise the minimum set of legislative measures deemed necessary for a non-possessor State Party that has no declarable chemical production facility on its territory.

These measures pertain to:

- a) definitions under the Convention;
- b) a comprehensive control regime for scheduled and toxic chemicals and reporting on transfers (import and export) of scheduled chemicals;
- c) prohibited actions and activities;
- d) penalties for violations of the law;
- e) extraterritorial application of penal legislation;
- f) a legal basis for developing implementing regulations; and
- g) the establishment of a National Authority.

These criteria are aimed at providing a more comprehensive and objective overview of the implementation of the Convention by States Parties, and assist the Technical Secretariat in

planning and providing tailor-made legal technical assistance to States Parties. Each year, beginning in 2013, the Technical Secretariat invites States Parties to fill in a matrix corresponding to the initial measures. The information that is collected forms part of the concurrent annual reports of the Director General on the status of implementation of Article VII.¹ The accuracy and frequency of reporting by States Parties are critical to the Technical Secretariat's provision of appropriate and effective technical assistance.

However, apart from serving as criteria against which the Technical Secretariat assesses the status of implementation by States Parties of Article VII, and as a self-assessment tool for States Parties, the initial measures serve as a guide for States Parties in drafting texts for new laws and regulations. At the same time, they also serve as reference for States Parties in reviewing existing legislation or regulations in order to ensure that they meet the requirements of the Convention.

It is important to emphasise that this Manual focuses exclusively on the implementation of the minimum set of measures necessary under the CWC. Possessor States and States Parties that have declarable chemical production facilities must also implement additional measures on the basis of their specific profile and circumstances in accordance with the Convention. Further, paragraph 2 of Article VI of the Convention obliges each State Party to "adopt the necessary measures to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used within its territory or in any other place under its jurisdiction or control for purposes not prohibited by the Convention." It is for each State Party to determine the scope and nature of measures that are necessary in this respect, depending on its own context.

¹ CSP Decision (C-14/DEC.12), "National implementation measures of Article VII Obligations", invited the Technical Secretariat to, inter alia, compile two concurrent annual reports on the status of implementation of Article VII of the Convention and requested the Technical Secretariat to provide those annual reports to the Council. The Council was invited to consider and submit these reports to the Conference, together with its recommendations, as appropriate.

Discussion

I. Definitions

Article II sets out the definitions of fundamental terms used in the Convention. These terms are critical to understanding and interpreting the Convention and the obligations it confers on States Parties. Specifically, these definitions serve to ensure that the scope of prohibitions under Article I, the declaration and destruction activities required under Articles III, IV and V, and the verification regime established by Article VI are implemented consistently and uniformly by States Parties.

National legislation may include a comprehensive glossary of terms which a State Party may deem necessary for clarity in its implementation. However, States Parties that do not possess industrial facilities declarable under the Convention should, as a minimum, include a definition of the term ‘chemical weapons’ in their legislation. The definition of this term under Article II of the Convention makes reference to other terms (i.e. ‘toxic chemical’, ‘precursor’, and ‘purposes not prohibited’) which are also defined thereunder. Therefore, in order to ensure that the definition of ‘chemical weapons’ is comprehensive, it will be necessary to include definitions of these other terms in the national legislation as well.

Definitions should substantially accord with those set out in Article II of the Convention, as they were negotiated and adopted by States Parties in order to ensure consistency in the understanding of key terms.

State Practice

Typically, States Parties incorporate the definitions under Article II into domestic implementing legislation in one of two ways. The first is by reproducing the language in the Convention verbatim. The second is by incorporating the definitions without reproducing the language in the Convention, by making specific reference thereto, an example of which is provided below. The method chosen is at the discretion of the State Party and depends, inter alia, on domestic context and legal drafting style.

Chemical Weapons (Prohibition) Act 1998 (Zimbabwe)

Section 2(2)

Any expression to which a meaning has been assigned in the Convention shall bear the same meaning in this Act.

A. *Chemical Weapons*

National implementing legislation must contain a definition of ‘chemical weapons’ that fully reflects the meaning of chemical weapons as defined under paragraph 1 of Article II of the Convention:

"Chemical Weapons" means the following, together or separately:

- a) *Toxic chemicals and their precursors, except where intended for purposes not prohibited under this 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 subparagraph (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 subparagraph (b).*

i. Model language

Article 1, Implementation Kit

“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 subparagraph (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 subparagraph (b).

ii. Commentary

The definition of ‘*chemical weapons*’ covers toxic and precursor chemicals, munitions, and devices specifically designed for chemical weapons purposes, and any equipment specifically designed for uses directly related to the employment of such munitions and devices. The term ‘chemical weapons’ applies to these elements together *or* separately. Each component of a chemical weapon is, by itself, to be regarded as a prohibited weapon. For example, non-toxic precursor chemicals that have been manufactured or stockpiled with the intention to produce agents for chemical weapons are, in line with this definition, themselves chemical weapons.

Article II(1)(a) outlines that the ultimate criterion for defining a toxic chemical as a chemical weapon is its intended purpose. This is known as the ‘general purpose criterion’. To this end, *all* toxic chemicals and their precursors are regarded as chemical weapons *unless* they have been developed, produced, acquired, stockpiled or used for purposes not prohibited.

SELF-ASSESSMENT

Definitions: ‘chemical weapons’
Convention reference: Article II(1)

please check applicable boxes

Is ‘chemical weapons’ defined in domestic implementing legislation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the definition apply, together or separately, to...	
Toxic chemicals and their precursors?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Munitions and other devices?

Yes No

Equipment designed for use with munitions and other devices?

Yes No

B. Toxic chemical

National implementing legislation must contain a definition of '*toxic chemical*' that fully reflects the meaning of toxic chemical as defined under paragraph 2 of Article II of the Convention:

"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. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

i. Model language

Article 2, Implementation Kit

"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. The definition in paragraph 1 includes all such chemicals therein, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere. Toxic chemicals which have been identified for the application of verification measures by the Organisation are listed in the Schedules contained in the Annex on Chemicals to [the Convention / this [Act, Statute, Ordinance, etc.]

iii. Commentary

The phrase '*toxic chemical*' is embodied in the definition of '*chemical weapons*' under Article II(1). In order to ensure that the definition of '*chemical weapons*' is comprehensive, it is necessary to set out a separate definition of '*toxic chemical*'.

'Toxic chemical' is defined in two parts. Part one outlines that toxic chemicals act on life processes and, as a result, can cause 'death', 'temporary incapacitation' or 'permanent harm' in humans or animals. These terms are not defined in the Convention. Therefore, the level of toxicity and the specific nature of the chemical action on life processes are not relevant, provided the toxic chemical is capable of causing death, temporary incapacitation, or permanent harm. Since any chemical can cause toxic effects in humans and animals at a certain dosage, the coverage of all chemicals and the general purpose criterion are again reinforced in this definition. By defining '*toxic chemical*' in this way, States Parties avoid the need to outline threshold amounts for each chemical listed in the Annex on Chemicals.

It is important to note that the definition does not cover toxicity against plants. Thus, herbicides are not chemical weapons if they are used solely with the intent to destroy plants. Herbicides

would be considered chemical weapons if deliberately used to kill or harm humans or animals. Toxins, or toxic chemicals produced by living organisms, are covered by the definition.²

Part two of the definition, which states that the term '*toxic chemical*' includes "all chemicals regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere", is aimed at ensuring that all toxic chemicals are covered, irrespective of how and where they are produced or otherwise acquired.

SELF-ASSESSMENT

Definitions: 'toxic chemical'

Convention reference: Article II(2)

please check applicable boxes

Is 'toxic chemicals' defined in domestic implementing legislation?

Yes No

Does the definition apply to...

Any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals?

Yes No

Does the definition include...

All such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere?

Yes No

C. Precursor

National implementing legislation must contain a definition of '*precursor*' that fully reflects the meaning of precursor as defined under paragraph 3 of Article II of the Convention:

"Precursor" means:

Any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.

ii. Model language

Article 3, Implementation Kit

"Precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system. Precursors which have been identified for the application of

² Krutzsch W & Trapp R, "Part Three Articles of the Chemical Weapons Convention, Art. II Definitions and Criteria" In *The Chemical Weapons Convention: A Commentary*, edited by Krutzsch W, Myjer E & Trapp R, 308-11. Oxford, 2014

verification measures by the Organisation are listed in the Schedules contained in the Annex on Chemicals to [the Convention / this [Act, Statute, Ordinance, etc.].

iv. Commentary

The term '*precursor*' is also used in the definition of '*chemical weapons*' under *Article II(1)*. The definition of '*precursor*' ensures that the term '*chemical weapon*' also refers to any chemical that takes part in a chemical reaction, at any stage, in the manufacturing of a toxic chemical for chemical weapons purposes.

As with the definition of '*chemical weapon*', the general purpose criterion—i.e., the intended use—informs the definition of precursor. Accordingly, any precursor that has been manufactured in order to be converted into a toxic chemical for chemical weapons purposes must be declared as a chemical weapon and destroyed. On the other hand, if it is produced for purposes not prohibited, then it would not be considered a chemical weapon. Chemicals listed in the Schedules, however, are subject to the provisions of Article VI and the corresponding Part of the Verification Annex.

SELF-ASSESSMENT

Definitions: 'precursor'

Convention reference: Article II(3)

please check applicable boxes

Is 'precursor' defined in domestic implementing legislation?

Yes No

Does the definition apply to...

Any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical?

Yes No

Does the definition include...

Any key component of a binary or multicomponent chemical system?

Yes No

D. Purposes not prohibited

National implementing legislation must contain a definition of '*purposes not prohibited*' that fully reflects the meaning of purposes not prohibited under the Convention as defined under paragraph 9 of Article II of the Convention:

"Purposes Not Prohibited Under this 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.*

i. Model language

Article 4, Implementation Kit

“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; and
- d) Law enforcement including domestic riot control purposes.

ii. Commentary

The phrase ‘*purposes not prohibited*’ is the last term embodied in the definition of ‘*chemical weapons*’. This term outlines the purposes for which the development, production, stockpiling, and use of toxic chemicals and their precursors are not prohibited under the Convention.

Subparagraph 9(a) lists non-prohibited peaceful purposes as an illustration of what is understood by ‘peaceful’, a term that is itself not defined in the Convention. The items in subparagraph (a) are generally accepted concepts of what could be considered ‘peaceful’ for the purposes of the Convention. This list is not intended to be exhaustive. It is important to note that the purposes for which Schedule 1 chemicals can be used are more restrictive and only include research, medical, pharmaceutical, or protective purposes (Part VI, paragraph 2(a)) of the Verification Annex).

Subparagraph 9(b) permits the use of toxic chemicals for protective purposes, namely as a defence against chemical weapons and emergencies associated with toxic chemicals. These protective purposes can include activities related to defence against chemical warfare, protection against industrial and occupational hazards, as well as for the preparation of responses to emergencies involving toxic chemical spills. Related chemicals, equipment and devices, and administrative or other structures are also, necessarily, permitted.

Subparagraph 9(c) concerns other 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. This means that any chemical can be used for military purposes provided the primary effect sought does not rely on the toxicity of the chemical with respect to humans or animals. Therefore, weapons and equipment including explosive chemicals, rocket fuels, incendiaries, and smoke, are excluded from the operation of the Convention despite some of the chemicals involved having toxic properties.

Subparagraph 9(d) permits the development, production, stockpiling, and use of toxic chemicals for law enforcement including domestic riot control purposes. This exclusion is directly related to the general prohibition under Article I(5) that States Parties undertake not to use riot control agents as a method of warfare.³

³See Krutzsch W & Trapp R, "Part Three Articles of the Chemical Weapons Convention, Art. II Definitions and Criteria" In *The Chemical Weapons Convention: A Commentary*, edited by Krutzsch W, Myjer E & Trapp R, Oxford, 2014, pp 92-94

SELF-ASSESSMENT

Definitions: ‘purposes not prohibited’

Convention reference: Article II(9)

please check applicable boxes

Is ‘purposes not prohibited’ defined in domestic implementing legislation?

Yes No

Does the definition include...

Industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes?

Yes No

Protective purposes?

Yes No

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?

Yes No

Law enforcement including domestic riot control purposes?

Yes No

II. Reporting on transfers

A. Schedule 1

National legislation must ensure that the State Party is in a position to fulfil the prior reporting requirements concerning transfers of Schedule 1 chemicals (paragraphs 5 and 5bis of Part VI, Verification Annex), to provide all information that is to be included in the declaration required by paragraph 6 of Part VI of the Verification Annex, and to provide a sanction in the event of non-compliance by natural and legal persons.

i. Model language

Article 11, Implementation Kit

(1) The production, acquisition, retention, in-country-transfer, import, export and the use of Schedule 1 chemicals are prohibited unless on the territory of a State Party and the chemicals are exclusively applied to research, medical, pharmaceutical or protective purposes and the types and quantities of chemicals are strictly limited to those which can be justified for such purposes. These activities are subject to prior and past declaration in accordance with regulations established under this [Act, Statute, Ordinance, etc.].

(2) Retransfer of Schedule 1 chemicals to a third State is prohibited

(3) If the prior declaration shows that the activity reported would conflict with the obligations of [State Party] under the Convention, the [competent authority] shall prohibit or limit the activity.

ii. Commentary

Under Part VI(5) of the Verification Annex, States Parties are required to notify the Technical Secretariat of any Schedule 1 chemical transfers at least 30 days before the transfer takes place.

Part VI(5bis) of the Verification Annex carves out an exception to the prior notification requirement for quantities of 5 milligrams or less of the Schedule 1 chemical saxitoxin. Pursuant to this exception, if the transfer is made for medical/diagnostic purposes, the notification shall be made by the time of the transfer.

States Parties are also required by Part VI(6) to make a detailed annual declaration regarding transfers of Schedule 1 chemicals effected during the previous calendar year. The declaration must be submitted not later than 90 days after the end of that year.

iii. State Practice

As States Parties must notify the Technical Secretariat at least 30 days before the transfer of a Schedule 1 chemical is to occur, notification to the National Authority (or other supervisory body) must necessarily occur sooner. For example, a State Party may require a transfer of Schedule 1 chemicals to be notified to the National Authority at least 60 days (or another reasonable period of time) before the transfer is to take place. The State Party, in turn, has 30 days within which to notify the Technical Secretariat. The same principle applies to transfers of saxitoxin. For example, States Parties may choose to require that their National Authority is notified one week before the scheduled transfer.

States Parties often elect to vest their National Authority with the power to collect data on transfers. This gives the National Authority the mandate to collate and submit the information as annual or periodic declarations to the Technical Secretariat before the deadlines specified in the Convention.

Chemical Weapons (Prohibition) Act 2018 (Botswana)

Notification of Schedule 1 transfers

Section 20

1. Subject to subsection (2), any person who transfers a Schedule 1 chemical shall notify the Authority 45 days before the transfer of any such chemical to another State Party.
2. A person shall make a notification to the Authority at least five days before the transfer of the Schedule 1 chemical saxitoxin if –
 - a. the transfer is for medical or diagnostic purposes; and
 - b. the transfer is for quantities of 5 milligrams or less.
3. A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P3 000 000 or to imprisonment for a term of 20 years, or to both.

Annual declarations for schedule 1 transfers

Section 23

The Director shall compile all notifications and declarations required under this Part and submit to the Organisation a detailed annual declaration within 90 days after the end of the calendar year.

Chemical Weapons Convention Act 2007 (Sri Lanka)

Section 13

The Authority shall prepare such initial, annual and other periodic declarations regarding toxic chemicals or precursors listed in Schedules I, II and III to this Act or any other declaration required to be made under the Convention and shall submit such declarations to the OPCW at such time or times as may be specified under the Convention.

SELF-ASSESSMENT

Reporting on transfers: Schedule 1

Convention references: Article VI(2); Article VI(3); Verification Annex Part VI(B)

please check applicable boxes

Does domestic implementing legislation require the State Party...

To notify the Technical Secretariat, not less than 30 days before any transfer to another State Party, of the transfer of a Schedule 1 chemical?

Yes No

To make detailed annual declarations regarding transfers of Schedule 1 chemicals during the previous year?

Yes No

B. Schedules 2 and 3

National legislation must ensure that the State Party is in a position to provide all transfer-related information that is to be included in annual declarations required by paragraphs 1 and 2 of Part VII and paragraph 1 of Part VIII of the Verification Annex, and that a sanction is applicable in the event of non-compliance by natural and legal persons.

i. Model language

Article 14, *Implementation Kit*

(1) Without prejudice of the section above, the development, production, acquisition, retention, in-country-transfer, import, export and the use of toxic chemicals are prohibited unless it is for purposes not prohibited under the Convention.

(2) Any person conducting one of the above activities shall make declarations in accordance with the regime established in the regulations issued under this [Act, Statute, Ordinance, etc.]

Article 15

The export and the import of Schedule 2 chemicals to or from the territory of a State not party to the Convention, including transit through such State, are prohibited unless an exemption that is provided for in regulations is applicable; in case such an exemption is applicable, the export and the import shall be subject to declaration in accordance with the regime established in the regulations under this [Act, Statute, Ordinance, etc.].

Article 16

Except when exempted by regulations, the export of Schedule 3 chemicals to the territory of a State not Party is prohibited unless licensed by the [competent authority] in accordance with regulations established under this [Act, Statute, Ordinance, etc.]. The license may only be granted after it has been ensured that the transferred chemicals shall only be used for purposes not prohibited under the Convention. No license shall be granted without first having received an end-use certificate from the competent authorities of the recipient State.

Article 17

The export and the import of Schedule 2 and 3 chemicals to or from the territory of a State Party to the Convention shall be declared in accordance with the regime established in the regulations issued under this [Act, Statute, Ordinance, etc.].

ii. Commentary

The declarations regimes for Schedules 2 and 3 chemicals and unscheduled discrete organic chemicals are outlined in Parts VII and VIII of the Verification Annex to the Convention.

Part VII(A) requires States Parties to make initial and annual declarations, including aggregate national data for the previous calendar year, on the quantities of Schedule 2 chemicals produced, processed, consumed, imported and exported, as well as a quantitative specification of import and export for each country involved.

Part VIII(A) requires States Parties to make initial and annual declarations, including aggregate national data for the previous calendar year, on the quantities of Schedule 3 chemicals produced,

imported and exported. Unlike Schedule 2 chemicals, States Parties are not required to report on Schedule 3 chemicals processed and consumed.

Annual declarations for both Schedule 2 and 3 chemicals shall be made not later than 90 days after the end of the previous calendar year.

iii. State Practice

As States Parties are required to submit annual declarations at least 90 days after the end of the calendar year, States Parties typically draft provisions that require information to be submitted to the National Authority sooner in order to provide it with sufficient time to submit declarations to the Technical Secretariat before the deadlines specified in the Convention. For example, the implementing legislation of Botswana requires declarations to be made 30 days after the end of the calendar year; this provides the National Authority with 60 days to prepare the declarations for submission to the Technical Secretariat

Chemical Weapons (Prohibition) Act 2018 (Botswana)

Declaration of Schedule 2 and 3 transfers

Section 21

1. Any person who transfers a Schedule 2 chemical shall declare all such transfers within 30 days after the end of the calendar year.
2. A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P1 500 000 or to imprisonment for a term of 10 years, or to both.

Section 22

1. Any person who transfers a Schedule 3 chemical shall declare all such transfers within 30 days after the end of the calendar year.
2. A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term of five years, or to both.

Section 23

1. The Director shall compile all notifications and declarations required under this Part and submit to the Organisation a detailed annual declaration within 90 days after the end of the calendar year.

SELF-ASSESSMENT

Reporting on transfers: Schedule 2 and 3

Convention references: Article VI(2); Article VI(4); Article VI(5); Verification Annex Part VII; Verification Annex Part VIII

please check applicable boxes

Does domestic implementing legislation require the State Party...

To make detailed annual declarations regarding transfers of Schedule 2 chemicals during the previous year?

Yes No

To make detailed annual declarations regarding transfers of Schedule 3 chemicals during the previous year?

Yes No

III. Prohibitions

Pursuant to Article VII(1)(a), each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under the Convention. This includes enacting penal legislation to prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction recognized by international law from undertaking any activity prohibited to a State Party under the Convention.

Prohibited activities fall into two broad categories: those related to chemical weapons and those related to scheduled chemicals. States Parties are required to enact prohibitions and penalties with respect to both classes of activity.

A. *Chemical Weapons*

National implementing legislation must ensure that the following activities prohibited for States Parties under the Convention are also prohibited to natural and legal persons:

- To develop, produce, otherwise acquire, stockpile or retain chemical weapons (Article I(1)(a));
- To transfer, directly or indirectly, chemical weapons to anyone (Article I(1)(a));
- To use chemical weapons (Article I(1)(b));
- To engage in military preparations to use chemical weapons (Article I(1)(c));
- To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to State Party under the Convention (Article I(1)(d)); and
- To use riot control agents as a method of warfare (Article I(5)).

i. **Model language**

Article 9, *Implementation Kit*

1. It is prohibited to:
 - a. develop, produce, otherwise acquire, stockpile or retain a chemical weapon;
 - b. transfer, directly or indirectly, a chemical weapon to any other person;
 - c. use a chemical weapon;
 - d. engage in any military preparations 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;
 - g. engage in any other activity prohibited to a State Party under the Convention.

ii. **Commentary**

Article I outlines the basic undertakings of States Parties. Together, these undertakings establish the primary objective of the Convention -- ‘to exclude completely, for the sake of all mankind, the possibility of the use of chemical weapons’.

The prohibitions outlined under Article I apply exclusively to States and as a result they must be extended, in accordance with subparagraph 1(a) of Article VII, to natural and legal persons. Extending these prohibitions necessarily includes the adoption of penal legislation prohibiting and criminalising the enumerated acts. Ensuring that these acts are prohibited is essential to addressing the threat posed by the use of chemical weapons by non-state actors and is an

important element of national implementing legislation. To this end, domestic penal legislation must prohibit the following:

- ‘To develop, produce, otherwise acquire, stockpile or retain chemical weapons’. By prohibiting these activities States Parties can ensure that all activities connected with the development, acquisition and possession of chemical weapons can be punished by law.
- ‘To transfer directly or indirectly, chemical weapons to anyone’. This prohibition ensures that all movements of chemical weapons are prohibited: not only is the transfer between States Parties prohibited, but so is the transfer of chemical weapons inside or outside the territory of a State Party to anyone else, be it a State, a juridical entity or a natural person.
- ‘To use chemical weapons’. This prohibition is the foundation upon which the other prohibitions are built. The prohibition on the use of chemical weapons is at the heart of the Convention’s preamble and any violation of this prohibition would necessarily entail the violation of one or more of the other undertakings contained in Article I.
- ‘To engage in any military preparations to use chemical weapons’. This undertaking prohibits activities that include planning, organising and training to use chemical weapons. However, it does not prohibit military training for protective purposes.
- ‘To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention’. This prohibition consists of two elements. The first element relates to the provision of assistance, which includes assistance in the form of material and intellectual support, financial resources, and technological and scientific know-how. The second element concerns the encouragement or inducement of another person to commit a prohibited act.

iii. State Practice

States Parties typically seek to reproduce the structure and language of the Article I prohibitions when drafting domestic implementing legislation. This ensures that a State Party’s Article VII obligation to adopt the necessary measures to prohibit natural and legal persons from undertaking any activity prohibited to a State Party under the Convention is implemented in a comprehensive and consistent manner.

Chemical Weapons Convention Act 2007 (Sri Lanka)

Section 19

(1) Any person who—

- (a) uses a chemical weapon;
- (b) develops or produces a chemical weapon;
- (c) acquires, stockpiles or retains a chemical weapon;
- (d) transfers, directly or indirectly, any chemical weapon to another person;
- (e) engages in any military preparations to use a chemical weapon;
- (f) knowingly assists, encourages or induces, any prohibited activity; or
- (g) uses any riot control agent as a method of warfare,

shall be guilty of an offence under this Act and be punished with imprisonment of either description for a period not exceeding twenty years and a fine not exceeding one million rupees.

(2) The prohibition contained in subsection (1) shall not apply to the retention or possession of chemical weapons by an inspector appointed under section 17 or an international inspector,

pending destruction of such weapons under the authority of this Act or any regulation made thereunder or any other written law.

SELF-ASSESSMENT

Prohibitions: chemical weapons

Convention references: Article I(1)(a); Article I(1)(b); Article I(1)(c); Article I(1)(d); Article I(5)

please check applicable boxes

Is it prohibited under domestic implementing legislation...

To develop, produce, otherwise acquire, stockpile or retain chemical weapons?

Yes No

To transfer, directly or indirectly, chemical weapons to anyone?

Yes No

To use chemical weapons?

Yes No

To engage in military preparations to use chemical weapons?

Yes No

To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to State Party under the Convention?

Yes No

To use riot control agents as a method of warfare?

Yes No

B. Schedule 1 Chemicals

National implementing legislation must ensure that the activities related to Schedule 1 chemicals prohibited to States Parties under paragraphs 1, 2, 3, and 4 of Part VI of the Verification Annex are prohibited to natural and legal persons in accordance with subparagraph 1(a) of Article VII:

- To produce, acquire, retain or use Schedule 1 chemicals outside the territories of States Parties (Part VI(A)(1), Verification Annex);
- To transfer Schedule 1 chemicals outside its territory except to another a State Party (Part VI(A)(1), Verification Annex) and only for research, medical, pharmaceutical or protective purposes (Part VI(B)(3), Verification Annex);
- To produce, acquire, retain, transfer or use Schedule 1 chemicals unless:
 - The chemicals are applied to research, medical, pharmaceutical or protective purposes; and
 - The types and quantities of chemicals are strictly limited to those which can be justified for such purposes; and
 - The aggregate amount of such chemicals at any given time for such purposes is equal to or less than 1 tonne; and
 - The aggregate amount for such purposes acquired by a State Party in any year through production, withdrawal from chemical weapons stocks and transfer is equal to or less than 1 tonne (Part VI(A)(2), Verification Annex).
- To retransfer Schedule 1 chemicals to a third State (Part VI(B)(4), Verification Annex).

- To transfer Schedule 1 chemicals to another State Party without notifying the Technical Secretariat of the OPCW at least 30 days before (Part VI(B)(5), Verification Annex).
- To produce Schedule 1 chemicals outside the regime established by Verification Annex VI(C).

i. Model language

Article 11, *Implementation Kit*

- 1) The production, acquisition, retention, in-country-transfer, import, export and the use of Schedule 1 chemicals are prohibited unless on the territory of a State Party and the chemicals are exclusively applied to research, medical, pharmaceutical or protective purposes and the types and quantities of chemicals are strictly limited to those which can be justified for such purposes. These activities are subject to prior and past declaration in accordance with regulations established under this [Act, Statute, Ordinance, etc.].
- 2) Retransfer of Schedule 1 chemicals to a third State is prohibited
- 3) If the prior declaration shows that the activity reported would conflict with the obligations of [State Party] under the Convention, the [competent authority] shall prohibit or limit the activity.

Article 12

The production of Schedule 1 chemicals is prohibited unless carried out for research, medical, pharmaceutical or protective purposes and in a facility licensed by the [competent authority] in accordance with regulations established under this [Act, Statute, Ordinance, etc.].

Article 13

The export and the import of Schedule 1 chemicals to or from a State not Party to the Convention, including transit through such State, are prohibited.

ii. Commentary

Part VI of the Verification Annex establishes a regime for the production, acquisition, retention, transfer and use of Schedule 1 chemicals. In doing so, it requires States Parties to comply with certain prohibitions and restrictions relating to the amount of Schedule 1 chemicals that can be produced, the purposes for which they can be produced, and to whom they can be transferred. By prohibiting not only the transfer of Schedule 1 chemicals to States not Party to the Convention, but also the production, acquisition, retention or use of Schedule 1 chemicals outside the territories of States Parties, the regime aims to prevent Schedule 1 chemicals from being acquired in any way by States not party to the Convention.

The purposes for which Schedule 1 chemicals can be produced, acquired, retained, transferred or used are outlined under Part VI(1) of the Verification Annex. These purposes are significantly more restrictive than the ‘purposes not prohibited’ described in Article II of the Convention and only apply to situations in which very small amounts of the chemicals would be used. National implementing legislation must be clear in this distinction and only permit the use of Schedule 1 chemicals for activities related to research, medical, pharmaceutical and protective purposes and only in quantities that can be justified for such purposes.

States Parties retain the right to transfer Schedule 1 chemicals to other States Parties only for research, medical, pharmaceutical or protective purposes. The language of this provision implies

that States Parties must satisfy themselves that the transferred chemicals will be used for a permitted purpose. States Parties are prohibited from retransferring imported Schedule 1 chemicals to third states. The prohibition applies to retransfers to States Parties and States not Party alike.

Part VI(5) of the Convention requires all transfers of Schedule 1 chemicals to be notified to the Technical Secretariat at least 30 days before the transfer takes place. This applies to both the importing and exporting State Party. Transfers that have not been notified to the Technical Secretariat are prohibited. This notification requirement is discussed in more detail in the preceding section.

Finally, States Parties are required to prohibit the production of Schedule 1 chemicals outside of the regime established under section C of Part VI. Section C permits the production of Schedule 1 chemicals in quantities exceeding 100 grams per year only single small-scale facilities, defence laboratories (of which there can be only one per State Party), and the laboratories of approved commercial producers manufacturing less than 10 kilograms per year.⁴

iii. State Practice

While States Parties largely elect to incorporate these prohibitions in national legislation in the manner illustrated below (Zambia), other States Parties have chosen to incorporate the transfer and notification prohibitions in implementing regulations. This is at the discretion of the State Party and typically reflects a domestic policy of establishing and regulating transfer regimes through administrative measures.

Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons Act 2007 (Zambia)

Section 10

(1) No person shall –

- (a) produce, acquire, retain or use Schedule 1 chemicals outside the territory of the Republic of Zambia unless such production, acquisition, retention or use takes place within the territory of another State Party;
- (b) produce, acquire, retain, transfer or use Schedule 1 chemicals unless licensed by the Authority under the licensing scheme for Schedule 1 chemicals;
- (c) transfer Schedule 1 chemicals to the Republic of Zambia or outside the territory of the Republic of Zambia from or to a State not Party to the Convention;
- (d) transfer Schedule 1 chemicals to a person in another State Party without notifying the Authority at least sixty days before the transfer:
Provided that notwithstanding the provisions of this subparagraph, notification of the transfer of saxitoxin shall be made not less than twenty-four hours before the time of transfer, if the transfer is for medical or diagnostic purposes and the quantity is five milligrams or less.
- (e) retransfer to a third State chemicals transferred to the Republic of Zambia.

⁴ See Trapp R, "Part Five: Annexes to the Chemical Weapons Convention, Verification Annex, Part VI" In The Chemical Weapons Convention: A Commentary, edited by Krutzsch W, Myjer E & Trapp R, Oxford, 2014

SELF-ASSESSMENT

Prohibitions: Schedule 1 chemicals

Convention references: Article VI(2); Verification Annex Part VI(A)(1), VI(A)(2), VI(B)(4), VI(B)(5), VI(B)(5bis), VI(C)

please check applicable boxes

Is it prohibited under domestic implementing legislation...

To produce, acquire, retain or use Schedule 1 chemicals outside the territories of States Parties?

Yes No

To transfer Schedule 1 chemicals outside the State Party's territory except to another State Party?

Yes No

To produce, acquire, retain, transfer or use Schedule 1 chemicals except for the purposes and in the quantities listed at VA Part VI (A)(2)(a)-(d)?

Yes No

To retransfer Schedule 1 chemicals?

Yes No

To transfer Schedule 1 chemicals without according with the reporting regime established by VA Part VI (B)(5) and B(5bis)?

Yes No

To produce Schedule 1 chemicals outside the regime established by Verification Annex VI (C)?

Yes No

C. Schedule 2 and Schedule 3 Chemicals

National implementing legislation must ensure that activities related to Schedule 2 and 3 chemicals prohibited to States Parties under paragraph 31 of Part VII and paragraph 26 of Part VIII of the Verification Annex are prohibited to natural and legal persons in accordance with subparagraph 1(a) of Article VII:

- To transfer Schedule 2 chemicals to or receive Schedule 2 chemicals from States not Party to the Convention (Part VII(C)(31), Verification Annex); and
- To transfer Schedule 3 chemicals to States not Party to the Convention without adopting the necessary measures to ensure that the transferred chemicals shall only be used for purposes not prohibited under the Convention (Part VIII(C)(26)).

i. Model language

Article 15, Implementation Kit

The export and the import of Schedule 2 chemicals to or from the territory of a State not party to the Convention, including transit through such State, are prohibited unless an exemption that is provided for in regulations is applicable; in case such an exemption is applicable, the export and the import shall be subject to declaration in accordance with the regime established in the regulations under this [Act, Statute, Ordinance, etc.].

Article 16

Except when exempted by regulations, the export of Schedule 3 chemicals to the territory of a State not Party is prohibited unless licensed by the [competent authority] in accordance with regulations established under this [Act, Statute, Ordinance, etc.]. The license may only be granted after it has been ensured that the transferred chemicals shall only be used for purposes not prohibited under the Convention. No license shall be granted without first having received an end-user certificate from the competent authorities of the recipient State.

Article 17

The export and the import of Schedule 2 and 3 chemicals to or from the territory of a State Party to the Convention shall be declared in accordance with the regime established in the regulations issued under this [Act, Statute, Ordinance, etc.].

ii. Commentary

States Parties are not permitted to transfer Schedule 2 chemicals to, or receive Schedule 2 chemicals from, States not Party to the Convention. This seeks to ensure that activities prohibited to States Parties are not undertaken by States that are outside the regulatory regime established by the Convention. States Parties must extend the application of this prohibition to natural and legal persons and ensure that any violation is penalised.

The Convention does not prohibit the transfer of Schedule 3 chemicals to States not Party to the Convention. However, it requires an end-user certificate in the event of a transfer of Schedule 3 chemicals to a State not Party to the Convention. Hence, the Convention requires States Parties to adopt the necessary measures to ensure that Schedule 3 chemicals transferred to States not Party shall only be used for purposes not prohibited under the Convention.

iii. State Practice

Chemical Weapons (Prohibition) Act 2007 (Cook Islands)

Section 7 – Schedule 2 chemicals

- 1) Subject to subsection (2), every person who transfers to or receives from a State not Party to the Convention Schedule 2 chemicals, commits an offence and is liable on conviction to the penalties stated in Section 5.
- 2) Paragraph (1) shall not apply to those products containing Schedule 2 chemicals in which –
 - a. the product contains one percent or less of a Schedule 2A or 2A chemical; or
 - b. the product contains 10 percent or less of a Schedule 2B chemical; or
 - c. the product is identified as a consumer good packaged for retail sale for personal use or packaged for individual use.

Section 8 – Schedule 3 chemicals

- 1) Every person who transfers to a State not Party Schedule 3 chemicals, without first receiving an end-user certificate from the competent government authority of the State not Party commits an offence and is liable on conviction to the penalties stated in Section 5.
- 2) Paragraph (1) shall not apply to mixtures containing 30 percent or less of a Schedule 3 chemical.
- 3) An end-user certificate shall contain, at a minimum –
 - a. a statement that the Schedule 3 chemicals will only be used for purposes not

- prohibited under the Convention; and
- b. a statement that the Schedule 3 chemicals will not be re-transferred; and
 - c. the types and quantities of the Schedule 3 chemicals to be transferred; and
 - d. the end-use(s) of the Schedule 3 chemicals to be transferred; and
 - e. the name(s) and address(es) of the Schedule 3 chemical end-user(s).

SELF-ASSESSMENT

Prohibitions: Schedule 2 and 3 chemicals

Convention references: Verification Annex Part VII(C)(31), Part VIII(C)(26)

please check applicable boxes

Is it prohibited under domestic implementing legislation...

To transfer Schedule 2 chemicals to or receive Schedule 2 chemicals from States not Party to the Convention?

Yes No

To transfer Schedule 3 chemicals to States not Party to the Convention without first receiving an end-user certificate from the competent government authority of the State not Party?

Yes No

IV. Penalties

National implementing legislation must ensure that penal sanctions are applicable in the event of any violation of the prohibitions related to chemical weapons detailed in the preceding section.

The CWC does not specify the penalties for the violation of prohibitions relating to chemical weapons and scheduled chemicals. States are therefore free to determine the penalties applicable to these violations in line with their domestic legal framework. Developing, producing, otherwise acquiring, stockpiling or retaining chemical weapons can jeopardise the object and purpose of the Convention. As a result, States Parties typically elect to attach severe penalties to the violation of the prohibitions related to these activities. Violations that do not directly compromise the object and purpose of the Convention, for example the negligent preparation of an inaccurate declaration, are generally not criminalised and are instead sanctioned through administrative fines or related penalties. In other words, States Parties should seek to implement a graded approach depending on the gravity of the offence.

A. *Chemical weapons*

i. Model language

Article 21, *Implementation Kit*

Any person [level of intent] who commits any of the following acts shall be punished upon conviction by of not less than [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount]:

- a) developing, producing, manufacturing, otherwise acquiring, possessing, stockpiling or retaining a chemical weapon;
- b) transporting, transiting, trans-shipping or transferring directly or indirectly a chemical weapon to any other person;
- c) using a chemical weapon;
- d) engaging in any military preparations to use a chemical weapon
- e) using riot control agents as a method of warfare ;
- f) owning or possessing a chemical weapons production facility, constructing any new chemical weapons production facility or modifying any existing facility for the purpose of transforming it into a chemical weapons production facility.

ii. State Practice

A graded approach to penalties permits States Parties to apply them in a manner that accords with the nature and gravity of the offence. For example, Canadian implementing legislation provides scaled penalties for both summary and indictable offences, allowing an appropriate penalty to be determined and applied according to the violation.

Chemical Weapons Convention Implementation Act 1995 (Canada)

Section 20

Every person who contravenes any provision of this Act guilty of an offence and liable

- a) on summary conviction, to a fine not exceeding \$5,000 or to imprisonment not exceeding eighteen months, or to both; or
- b) on conviction on indictment, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding five years, or to both.

Section 21

For greater certainty, the provisions of the *Criminal Code* apply for the purposes of enforcing this Act.

National Code, 'Prohibitions Against Chemical Weapons' 2005 (Palau)

Section 4005

Every person commits an offense who intentionally or knowingly:

- a) develops, produces, otherwise acquires, stockpiles or retains chemical weapons;
- b) transfers, directly or indirectly, chemical weapons to another person;
- c) uses chemical weapons;
- d) engages in any military preparations to use chemical weapons; or
- e) assists, encourages, or induces, in any way, any person to engage in any activity prohibited to the Republic under the Convention.

Upon conviction of such offense, the person shall be sentenced up to life imprisonment or a fine not exceeding \$1,000,000, or both.

SELF-ASSESSMENT

Penalties: chemical weapons

Convention references:

please check applicable boxes

Do penalties apply to the violation of the prohibitions...

Yes No

To develop, produce, otherwise acquire, stockpile or retain chemical weapons?

Yes No

To transfer, directly or indirectly, chemical weapons to anyone?

Yes No

To use chemical weapons?

Yes No

To engage in military preparations to use chemical weapons?

Yes No

To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to State Party under the Convention?

Yes No

To use riot control agents as a method of warfare?

Yes No

B. Scheduled chemicals

National implementing legislation must ensure that penal sanctions are applicable in the event of violation of the prohibitions related to scheduled chemicals detailed in the preceding section.

i. Model language

Article 22, Implementation Kit

Any person [level of intent] who commits any of the following acts shall be punished upon conviction by of not less than [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount]:

- a) producing, otherwise acquiring, retaining, using or in-country transferring a Schedule 1 chemical in the territory of a State not Party to the Convention;
- b) illegally producing, otherwise acquiring, retaining, using or in-country transferring a Schedule 1 chemical;
- c) exporting a Schedule 1 chemical previously imported into [State Party] to a third state;
- d) illegally exporting to, or importing from, a State not party to the Convention, a Schedule 1, 2 or 3 chemical.

ii. State Practice

Chemical Weapons Convention Act 2000 (India)

Section 41

Whoever, in contravention of any provision of this Act, produces, acquires, retains, transfers or uses any Toxic Chemical or Precursor listed in Schedule 1 in the Annex on Chemicals to the Convention for the purposes prohibited to a State Party under the Convention or transfers any Toxic Chemical or Precursor listed in Schedule 1 in the Annex on Chemicals to the Convention outside India, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

Section 42

Whoever, in contravention of any provision of this Act transfers to or receives from any person who is not a citizen of a State Party any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the Convention, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

Section 43

Whoever, in contravention of any provision of this Act, exports from or imports into India any Toxic Chemical or Precursor listed in any of the Schedule 1 to 3 in the Annex on Chemicals to the Convention, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees.

SELF-ASSESSMENT

Penalties: scheduled chemicals

Convention references: Article VI(2); Verification Annex Part VI(A)(1), VI(A)(2), VI(B)(4), VI(B)(5), VI(B)(5bis), VI(C)

please check applicable boxes

Do penalties apply...

To the violation of the prohibition to produce, acquire, retain or use Schedule 1 chemicals outside the territories of States Parties?

Yes No

To the violation of the prohibition to transfer Schedule 2 chemicals to or receive Schedule 2 chemicals from States not Party to the Convention?

Yes No

To the violation of the prohibition on transferring Schedule 3 chemicals to States not Party to the Convention without first receiving an end-user certificate from the competent government authority of the State not Party?

Yes No

V. Other measures

A. Extraterritoriality

Pursuant to Article VII(1)(c) of the Convention, States Parties must extend the application of the penal legislation established under paragraph 1(a) ‘to any activity prohibited for a State Party undertaken by natural persons, possessing its nationality, in conformity with international law’.

i. Model language

Article 25, Implementation Kit

Any natural person who, in a place outside the jurisdiction of [State Party], commits an act or omission that would, if committed in a place under the jurisdiction of [State Party], constitute an offence under this [Act, Statute, Ordinance, etc.] is deemed to have committed it in a place under the jurisdiction of [State Party] if –

- a) the person is a [State Party’s] national; or
- b) the place was under the control of [State Party]

ii. Commentary

States Parties are required, under subparagraph 1(c), to extend the penal legislation established under subparagraph 1(a) to “any activity prohibited to a State Party undertaken anywhere by natural persons, possessing its nationality”. The wording in subparagraph 1(c) “in conformity with international law” should be interpreted as an implied reference to respect for State sovereignty. In this way, it emphasises that, under international law, national measures, such as enforcement measures, cannot be applied by one State in the territory of another.⁵ Ensuring that prohibitions and penalties apply extraterritorially to all State Party nationals is critical to addressing gaps that may exist on the territory of States not Party or States Parties that have yet to adopt implementing legislation.

iii. State Practice

Chemical Weapons (Prohibition) Act 1994 (Australia)

Section 5

1. Subject to this Act, this Act extends to acts done or omitted to be done by an Australian citizen outside Australia and the external Territories or to acts done on board Australian ships and aircraft.
2. In subsection (1):

Australian ships and aircraft means ships and aircraft registered in Australia or belonging to, or in the possession of, the Commonwealth or a State.

⁵ Tabassi L & Dhavle A., "Part Three Article of the Chemical Weapons Convention, Art. VII." In *The Chemical Weapons Convention: A Commentary*, edited by Krutzsch W, Myjer E & Trapp R, Oxford, 2014, p. 195

SELF-ASSESSMENT**Prohibitions: extraterritoriality**

Convention references: Article VII(1)(c)

 please check applicable boxes

Does domestic penal legislation extend to any activity prohibited for a State Party undertaken by natural persons, possessing its nationality?

 Yes No***B. Legal basis for regulations***

National implementing legislation must contain provisions that enable the relevant ministries or government departments to enact measures to regulate the production, processing, and consumption of scheduled chemicals, the verification regimes, the confidentiality regimes and all other measures deemed necessary to give full effect to the legislation and to ensure its effective administration.

i. Model language**Article 18, Implementation Kit**

Following the entry into force of the present Act/180 days after the entry into force of the present act, for the purposes of further enforcing its provision and those of the Convention, [the competent authority], in cooperation with other relevant [Authorities] as needed, shall/is authorized to make regulations on:

- (a) Challenge inspections in accordance with the provisions under article IX and of the Convention and part II and X of its annex on implementation and verification;
- (b) Protection of Confidential information in accordance with the provisions of the annex on the protection of confidential information of the Convention

Article 19

Should the circumstances require, the [competent authority] shall make regulations establishing a declaration regime for all declarations to be made under the Convention and its Annexes, and establishing a licensing regime for all licenses to be granted accordingly, concerning notably but not limited to:

- (a) activities involving the production, processing or consumption of Schedule 1, 2 and 3 chemicals that is carried out, was carried out, or is anticipated to be carrying out in the future.
- (b) Other chemical production facilities, notably producing unscheduled discrete organic chemicals.

Article 20

When required under Article 19, the regulations establishing a licensing and a declaration regime shall ensure that the [competent authority] is enabled to

- (a) prevent prohibited activities and comply with the requirements of the Convention;
- (b) gather all information as required under Article VI of the Convention;
- (c) make all declarations to the Organisation under Article VI of the Convention in a comprehensive and timely manner.
- (d) ensure that International inspections can be carried out in any place under the jurisdiction of [State Party] when required by the Convention; and
- (e) ensure that all information and documents given to or obtained by any other person pursuant to the Convention, this law or its implementing regulations is treated as confidential information, unless such information or document is publicly available.

Article 26

Without prejudice to the provisions contained in this Act, the [competent authority], may take additional steps deemed necessary with respect to the implementation of this law and the Convention, notably via the adoption of regulations.

ii. Commentary

It is important for States Parties to legislate a legal basis for the enactment of administrative regulations. Enabling ministries or government departments to enact measures regulating the production, processing and consumption of scheduled chemicals or to establish rules giving full effect to the verification regime is critical to the comprehensive implementation of the Convention. Regulations are both easier to amend and permit States Parties to develop regulatory frameworks that provide a greater level of detail than that possible in the legislation itself.

Accordingly, practical developments related to the implementation of the Convention, emanating from, for example, a decision of the Conference of the States Parties, can be addressed efficiently and expeditiously by simply amending the administrative measures, dispensing of the need to recommence legislative procedures which tend to be slow and complicated. Moreover, the legal authority to enact administrative measures permits States Parties to formulate regulatory regimes that respond to the needs of a fast-growing domestic chemical industry or chemical trade. Providing for the adoption of administrative measures at a later date permits States Parties to address aspects of implementation, such as inspection regimes, as their domestic situation requires.

iii. State Practice

States Parties' typically seek to establish a legal basis for the adoption of administrative measures in one of two ways: either by conferring a general power on a Minister to make regulations "providing for any matter that is necessary or desirable for the purpose of implementing the Convention" (New Zealand); or by granting a general power to make regulations necessary for the giving full effect to the Act while also enumerating specific areas over which a Minister is to be granted administrative and regulatory competence (Malaysia).

Chemical Weapons (Prohibition) Act 1996 (New Zealand)

Section 29

1. The Governor-General may from time to time, by Order in Council, make regulations –

- a. providing for any matter that is necessary or desirable for the purpose of implementing the Convention or any agreement that is concluded between New Zealand and the Organisation pursuant to the Convention;
 - b. prescribing offences in respect of the contravention of or non-compliance with any provisions of any regulations made under this section, and prescribing fines, not exceeding \$5,000, that may, on conviction, be imposed in respect of any such offence;
 - c. providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
2. The Governor-General may from time to time, by Order in Council, -
- a. Amend the Schedule by making such amendments to the text of the Convention set out in that schedule as are required to bring that text up to date;
 - b. Revoke the Schedule, and substitute a new schedule setting out in an up-to-date form the text of the Convention set out in that schedule.

Chemical Weapons Convention Act 2005 (Malaysia)

Section 62

1. The Minister may make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act.
2. Without prejudice to the generality of subsection (1), regulations may be made—
 - a. to prescribe the procedures to be followed by members of the National Authority in exercising their functions under this Act;
 - b. to prescribe any forms for the purposes of this Act;
 - c. to prescribe on any information to be furnished and any declaration to be submitted for the purposes of this Act;
 - d. to prescribe the procedures for making application for authorization and the determination of questions in connection with the issuance and withdrawal of the authorization and the conditions to be attached to the Chemical Weapons Convention 41 authorization and the procedures in connection with appeals;
 - e. to prescribe the procedures for application of end-user certificate, and conditions to be attached to the end-user certificate;
 - f. to prescribe the fees to be paid under this Act and the manner for collecting and dealing with such fees;
 - g. to prescribe the form of register to be kept and maintained by the owner of the facility and information to be recorded in such register;
 - h. to provide for any matter which under this Act is required or permitted to be prescribed or which is necessary or expedient to be prescribed.

SELF-ASSESSMENT

Prohibitions: legal basis for regulations

please check applicable boxes

Does domestic implementing legislation allow for the creation of rules or regulations to facilitate the implementation of the Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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C. Establishment/designation of a national authority

States Parties must establish or designate a National Authority pursuant to Article VII(4) of the Convention:

In order to fulfil its obligations under this Convention, each State Party shall designate or establish a National Authority to serve as the national focal point for effective liaison with the Organisation and other States Parties. Each State Party shall notify the Organisation of its National Authority at the time that this Convention enters into force for it.

i. Model language

Article 8, Implementation Kit

1. The [competent authority] shall by means of regulations designate or establish a National Authority to serve as the national focal point for effective liaison with the Organisation and other States Parties and for coordination of all national measures to be taken to fully and effectively implement the Convention.
2. In these regulations the [competent authority] shall direct or assign to the National Authority such powers and budget as may be necessary to coordinate the implementation and enforcement of the Convention, this law and its implementing regulations.
3. The [competent authority] may designate or establish further authorities to which it may assign specific duties with regard to the implementation of the Convention, this law and its implementing regulations.

ii. Commentary

Each State Party must decide whether a new organ shall be established to assume the role and functions of the National Authority, or if an existing organ can be vested with additional authority to carry out the required functions. Different roles could also be entrusted to various organs - thus comprising an inter-ministerial or inter-agency body - with one of them being designated as the focal point for the 'National Authority' with the responsibility for coordination and liaison with the Technical Secretariat. It is important for States Parties to designate or establish the National Authority by way of legislation, as this modality provides the National Authority with a more solid mandate with which to carry out its functions, thereby ensuring continuity and stability in its operations.

iii. State Practice

The nature and functions of a National Authority will depend on the domestic context, including the bureaucratic structure, size and nature of the domestic chemical industry and chemical trade. Consequently, the statutory language establishing or designating a National Authority can differ greatly. A number of States Parties elect to provide their National Authorities with a basic legal foundation, leaving the elaboration of their roles and functions to administrative measures and governmental policy, while others choose to delineate the specific functions, powers and roles of the National Authority in the implementing legislation itself.

Chemical Weapons Convention Act 2007 (Sri Lanka)

Section 5

1. For the purposes of this Act, the Minister shall establish an Authority to be known as the

National Authority for Implementation of the Chemical Weapons Convention (hereinafter referred to as “the Authority”).

2. The Authority shall by the name assigned to it by subsection (1) be a body corporate and shall have perpetual
3. Succession and a common seal and may sue and be sued in such name.
4. The Secretary to the Ministry of the Minister in charge of the subject of Industries shall be the Chairman of the Authority.

Section 11

The functions of the Authority shall be—

- a) to implement a regulatory regime within the scope of the Convention in respect of the toxic chemicals specified in Schedules I, II and III to this Act ;
- b) to seek advice or services of specialists and experts from within outside Sri Lanka ; (c) to fulfil on behalf of the Government of Sri Lanka the obligations under the Convention ; and
- c) to serve as the national focal point for effective liaison with the Organization for the Prohibition of Chemical Weapons (hereinafter referred to as “the OPCW”) and other States Parties pursuant to Article VII of the Convention.

Section 12

The powers of the Authority shall be—

- a) to co-ordinate with other relevant government departments and institutions with a view to—
 - (i) administering the licensing and permit scheme for the regulation of toxic chemicals or their precursors specified in Schedules I, II and III to this Act, and unscheduled discrete organic chemicals or the facilities used to produce them ; and
 - (ii) assisting the relevant authorities in developing a national protection programme and appraising the OPCW periodically of its progress;
- a) to monitor the implementation of the provisions of this Act and the regulations made thereunder ;
- b) to facilitate routine industry inspections ;
- c) to interact with other relevant Government entities and carry out such functions and duties as are assigned to the Authority under this Act or any regulation made thereunder ;
- d) to advise the Minister on matters relevant to the making of regulations under this Act ;
- e) to perform any other tasks assigned to it by the Minister ; and
- f) to do anything incidental or conducive to the performance of any of the functions referred to in paragraphs (a) to (d).

SELF-ASSESSMENT

Prohibitions: establishment/designation of a National Authority

Convention references: Article VII(4)

please check applicable boxes

Has a National Authority been designated or established in your State?

Yes No

Does the National Authority in your State have a legislative basis?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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VI. Conclusion

Adoption of national implementing legislation on the CWC is a slow and challenging process that involves the full engagement of all relevant stakeholders. Likewise, a comprehensive review of all existing laws and regulations that are relevant to the CWC is a complex process, as the implementing authority within the government bureaucracy for each of these legal texts may vary. The National Authority may not have a full grasp of the country's full range of laws and regulations that are relevant to the Convention, mostly due to the lack of effective national coordination mechanisms and frequent staff turnover.

The National Authority plays a crucial role in the legislative adoption process—primarily by facilitating the preparation of the draft text, coordinating stakeholder consultations and liaising with relevant ministries and agencies, providing clarifications in case questions or issues are raised and facilitating the inclusion of the draft law in the legislative agenda. As focal point, the National Authority is also tasked to provide information to the Technical Secretariat of the legislative and administrative measures taken to implement the Convention pursuant to Article VII(5) thereof, including the adoption or amendment of relevant legislation. While a number of factors that affect national implementation of the CWC may be beyond its control, the level of commitment, knowledge, and understanding of the National Authority reflects on the country's status of implementation of its obligations under the Convention.

Annex 1: Checklist for the Legislator



Chemical Weapons Convention

National implementing legislation

Prohibitions

	REFERENCE	CHECK	NATIONAL LEGISLATION
National implementing legislation shall prohibit any natural and legal person:			
• to develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone	Article I(1)(a)		
• to use chemical weapons	Article I(1)(b)		
• to engage in any military preparations to use chemical weapons	Article I(1)(c)		
• to use riot control agents as a method of warfare	Article I(5)		
• to produce, acquire, retain or use Schedule 1 chemicals outside the territories of States Parties or transfer such chemicals outside the State Party's territory except to a person in another State Party	Article VI(2); VA ⁶ Part VI(A)(1)		
• to produce, acquire, retain, transfer or use Schedule 1 chemicals except for research, medical, pharmaceutical or protective purposes	Article VI(2); VA Part VI(A)(2)		
• to retransfer Schedule 1 chemicals	Article VI(2); VA Part VI(B)(4)		
• to transfer Schedule 1 chemicals without prior notification	Article VI(2); VA Part VI(B)(5) & (5bis)		
• to produce Schedule 1 chemicals outside the regime established by VA Part VI(C)	Article VI(2); VA Part VI(C)		
• to transfer to or receive from a person in a State not Party Schedule 2 chemicals	VA Part VII(C)(31); C-V/DEC.16		
• to transfer to a person in a State not Party Schedule 3 chemicals without first receiving an end-user certificate from the competent government authority of such	VA Part VIII (C)(26); C-III/DEC.6 & 7;		

⁶ "VA" refers to the Annex to the Convention on Implementation and Verification (the Verification Annex).

recipient State not Party	C-VI/DEC.10		
<ul style="list-style-type: none"> to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Convention 	Article I(1)(d)		

Matrix I

	REFERENCE	CHECK	NATIONAL LEGISLATION
National implementing legislation shall contain the following definitions (or refer to them):			
<ul style="list-style-type: none"> chemical weapons 	Article II(1)		
<ul style="list-style-type: none"> toxic chemicals 	Article II(2)		
<ul style="list-style-type: none"> precursors 	Article II(3)		
<ul style="list-style-type: none"> purposes not prohibited under the Convention 	Article II(9)		
National implementing legislation shall provide for the basic requirements of the control regime for scheduled chemicals:	VA		
<ul style="list-style-type: none"> Reporting on transfers of Schedule 1 	VA Part VI(B)		
<ul style="list-style-type: none"> Reporting on transfers of Schedule 2 	VA Part VII(C)		
<ul style="list-style-type: none"> Reporting on transfers of Schedule 3 	VA Part VIII (C)		
National implementing legislation should provide prohibitions and penalties with regards to:	Article VII (1) (a)		
<ul style="list-style-type: none"> Chemical Weapons 			
<ul style="list-style-type: none"> Scheduled Chemicals 			
National implementing legislation shall provide for <u>other initial</u> requirements:			
<ul style="list-style-type: none"> National penal implementing legislation shall be given extraterritorial application to nationals 	Article VII (1) (c)		
<ul style="list-style-type: none"> National legislation should set the legal basis for regulations to concretise the legislation (as required) 			
<ul style="list-style-type: none"> National implementing legislation may designate or establish the National Authority and briefly set out its mandate and enforcement powers (In some States Parties this requirement is rather fulfilled by means of regulations, in others the legislation creates the legal basis, which is complemented by regulations) 	Article VII(4)		

Annex 2: Implementation Kit

– National Legislation – Implementation Kit for the Chemical Weapons Convention

“Initial measures”

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Legal Notice

The provisions contained in this document are not meant as model provisions for inclusion in national drafts of legislation, but shall rather serve as illustration of how legal mechanisms on the national level can implement *initial measures* of the Chemical Weapons Convention (CWC).

The Technical Secretariat reminds users that the text of the CWC and decisions adopted there under by the Policy-Making Organs of the OPCW are the only authentic legal reference. The provisions in this document do not constitute legal advice. The OPCW does not accept any liability with regard to the contents of this document.

CHAPTER 1

Definitions

Article 1

“*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 subparagraph (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 subparagraph (b).

Article 2

“*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.

The definition contained in the paragraph above includes all such chemicals therein, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

Toxic chemicals which have been identified for the application of verification measures by the Organisation are listed in the Schedules contained in the Annex on Chemicals to [the Convention / this [Act, Statute, Ordinance, etc.]

Article 3

“*Precursor*” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.

Precursors which have been identified for the application of verification measures by the Organisation are listed in the Schedules contained in the Annex on Chemicals to [the Convention / this [Act, Statute, Ordinance, etc.]

Article 4

“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; and
- (d) Law enforcement including domestic riot control purposes.

Article 5

“Riot control agent” means any chemical not listed in Schedule 1, 2 or 3, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.

Article 6

“Schedule 1, 2 and 3 chemicals” means those chemicals listed respectively in Schedule 1, Schedule 2 and Schedule 3 of the Annex on Chemicals to [the Convention / this [Act, Statute, Ordinance, etc.]] regardless of whether the chemical is pure or contained in a mixture.

Article 7

The definitions shall be interpreted in light of the Convention, including its Annexes, and the decisions adopted thereunder. Such specifications can be laid down by regulations.

Terms and expressions used and not defined in this [Act, Statute, Ordinance, etc.] but defined in the Convention shall, unless the context otherwise requires, have the same meaning as in the Convention.

CHAPTER 2
National Authority

Article 8

The [competent authority] shall by means of regulations designate or establish a National Authority to serve as the national focal point for effective liaison with the Organisation and other States Parties and for coordination of all national measures to be taken to fully and effectively implement the Convention.

In these regulations the [competent authority] shall direct or assign to the National Authority such powers and budget as may be necessary to coordinate the implementation and enforcement of the Convention, this law and its implementing regulations.

The [competent authority] may designate or establish further authorities to which it may assign specific duties with regard to the implementation of the Convention, this law and its implementing regulations.

CHAPTER 3
General Prohibitions

Article 9

(1) It is prohibited to:

- develop, produce, otherwise acquire, stockpile or retain a chemical weapon;
- transfer, directly or indirectly, a chemical weapon to any other person;
- use a chemical weapon;
- engage in any military preparations to use a chemical weapon;
- assist, encourage or induce, in any way, a person to engage in any activity prohibited to a State Party under the Convention;
- use a riot control agent as a method of warfare;
- engage in any other activity prohibited to a State Party under the Convention.

Article 10

(1) If any chemical weapon, or old or abandoned chemical weapon is found in any place under the jurisdiction of [State Party], the weapon—

- (a) is forfeited to the State; and
- (b) may be seized without warrant by any [competent officer] of the State; and
- (c) shall be stored pending disposal, and disposed of in a manner determined by [the competent authority] in accordance with the Convention.

(2) Any chemical weapon discovered on the territory of [State Party] shall be reported to the Organisation by [competent authority] in accordance with the Convention.

(3) Any chemical that is being used in the development or production of a chemical weapon may be seized by the State.

CHAPTER 4

Control regime for scheduled chemicals and discrete organic chemicals

SECTION 1: Schedule 1 chemicals

Article 11

(1) The acquisition, retention, in-country-transfer, import, export and the use of Schedule 1 chemicals are prohibited unless the chemicals are exclusively applied to research, medical, pharmaceutical or protective purposes and the types and quantities of chemicals are strictly limited to those which can be justified for such purposes. These activities are subject to anticipated declarations in accordance with regulations established under this [Act, Statute, Ordinance, etc.].

(2) If the prior declaration shows that the activity reported would conflict with the obligations of [State Party] under the Convention, the [competent authority] shall prohibit or limit the activity.

Article 12

The production of Schedule 1 chemicals is prohibited unless carried out for research, medical, pharmaceutical or protective purposes and in a facility licensed by the [competent authority] in accordance with regulations established under this [Act, Statute, Ordinance, etc.].

Article 13

The export and the import of Schedule 1 chemicals to or from a State not Party to the Convention, including transit through such State, are prohibited.

SECTION 2: Schedule 2 and 3 chemicals

Article 14

Without prejudice of the section above, the development, production, acquisition, retention, in-country-transfer, import, export and the use of toxic chemicals are prohibited unless it is for purposes not prohibited under the Convention.

Article 15

The export and the import of Schedule 2 chemicals to or from the territory of a State not party to the Convention, including transit through such State, are prohibited unless an exemption

that is provided for in regulations is applicable; in case such an exemption is applicable, the export and the import shall be subject to declaration in accordance with the regime established in the regulations under this [Act, Statute, Ordinance, etc.].

Article 16

Except when exempted by regulations, the export of Schedule 3 chemicals to the territory of a State not Party is prohibited unless licensed by the [competent authority] in accordance with regulations established under this [Act, Statute, Ordinance, etc.]. The license may only be granted after it has been ensured that the transferred chemicals shall only be used for purposes not prohibited under the Convention. No license shall be granted without first having received an end-use certificate from the competent authorities of the recipient State.

Article 17

The export and the import of Schedule 2 and 3 chemicals to or from the territory of a State Party to the Convention shall be declared in accordance with the regime established in the regulations issued under this [Act, Statute, Ordinance, etc.].

CHAPTER 5

Basis for implementing regulations

Article 18

Following the entry into force of the present Act/180 days after the entry into force of the present act, for the purposes of further enforcing its provision and those of the Convention, [the competent authority], in cooperation with other relevant [Authorities] as needed, shall/is authorized to make regulations on:

Challenge inspections in accordance with the provisions under article IX and of the Convention and part II and X of its annex on implementation and verification;

Protection of Confidential information in accordance with the provisions of the annex on the protection of confidential information of the Convention.

Article 19

Should the circumstances require, the [competent authority] shall make regulations establishing a declaration regime for all declarations to be made under the Convention and its Annexes, and establishing a licensing regime for all licenses to be granted accordingly, concerning notably but not limited to:

- (a) activities involving the production, processing or consumption of Schedule 1, 2 and 3 chemicals that is carried out, was carried out, or is anticipated to be carrying out in the future.
- (b) Other chemical production facilities, notably producing unscheduled discrete organic chemicals.

Article 20

When required under Article 19, the regulations establishing a licensing and a declaration regime shall ensure that the [competent authority] is enabled to

- (a) prevent prohibited activities and comply with the requirements of the Convention;
- (b) gather all information as required under Article VI of the Convention;
- (c) make all declarations to the Organisation under Article VI of the Convention in a comprehensive and timely manner.
- (d) ensure that International inspections can be carried out in any place under the jurisdiction of [State Party] when required by the Convention; and
- (e) ensure that all information and documents given to or obtained by any other person pursuant to the Convention, this law or its implementing regulations is treated as confidential information, unless such information or document is publicly available.

CHAPTER 6

Penal provisions

SECTION 1: Chemical Weapons

Article 21

Any person [level of intent] who commits any of the following acts shall be punished upon conviction by of not less than [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount]:

- (a) developing, producing, manufacturing, otherwise acquiring, possessing, stockpiling or retaining a chemical weapon;
- (b) transporting, transiting, trans-shipping or transferring directly or indirectly a chemical weapon to any other person;
- (c) using a chemical weapon;
- (d) engaging in any military preparations to use a chemical weapon
- (e) using riot control agents as a method of warfare ;

- (f) owning or possessing a chemical weapons production facility, constructing any new chemical weapons production facility or modifying any existing facility for the purpose of transforming it into a chemical weapons production facility.

SECTION 2: Scheduled Chemicals

Article 22

Any person [level of intent] who commits any of the following acts shall be punished upon conviction by of not less than [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount]:

- (a) producing, otherwise acquiring, retaining, using or in-country transferring a Schedule 1 chemical in the territory of a State not Party to the Convention;
- (b) illegally producing, otherwise acquiring, retaining, using or in-country transferring a Schedule 1 chemical;
- (c) exporting a Schedule 1 chemical previously imported into [State Party] to a third state;
- (d) illegally exporting to, or importing from, a State not party to the Convention, a Schedule 1, 2 or 3 chemical;

SECTION 3: failure to comply with implementing regulations of this law

Article 23

Any person [level of intent] who commits any of the following acts shall be punished upon conviction by of not less than [period of time] imprisonment [and/or] fined an amount ranging from [currency; amount] to [currency; amount]:

- (a) obstructing measures of verification or enforcement under the Convention [and/or] this law and its implementing regulations;
- (b) failing to comply with the licensing or the declaration regime or any other requirement to provide information established by this law and its implementing regulations;
- (c) failing to comply with the provision of this law and its implementing regulations to protect confidential information.

Subparagraph (a) above does not apply to a person that has not granted its consent to the carrying out of the international inspection, unless a search warrant has been issued.

SECTION 4: Accessory offence, conspiracy and attempt

Article 24

Any person–

- (a) [level of intent] assisting, encouraging or inducing anyone to commit an offence under this [Act, Statute, Ordinance, etc.];
 - (b) conspiring to commit an offence under this [Act, Statute, Ordinance, etc.]; or
 - (c) attempting to commit an offence under this [Act, Statute, Ordinance, etc.]
- shall be deemed to have committed the like offence.

CHAPTER 7

Extraterritorial application

Article 25

Any natural person who, in a place outside the jurisdiction of [State Party], commits an act or omission that would, if committed in a place under the jurisdiction of [State Party], constitute an offence under this [Act, Statute, Ordinance, etc.] is deemed to have committed it in a place under the jurisdiction of [State Party] if –

- (a) the person is a [State Party's] national; or
- (b) the place was under the control of [State Party].

CHAPTER 8

Final provisions

Article 26

Where there is any inconsistency between any other law and this [Act, Statute, Ordinance, etc.] or the Convention, this [Act, Statute, Ordinance, etc.] and the Convention shall prevail.

Article 27

Without prejudice to the provisions contained in this Act, the [competent authority], may take any additional steps deemed necessary with respect to the implementation of this law and the Convention, notably via the adoption of regulations.

Article 28

In case the Annex on Chemicals to the Convention is amended the Annex on Chemicals to this [Act, Statute, Ordinance, etc.] shall be adjusted and for this purpose be amendable by regulations.]

* * *



OPCW

منظمة حظر الأسلحة الكيميائية

禁止化学武器组织

Organisation for the Prohibition of Chemical Weapons

Organisation pour l'Interdiction des Armes Chimiques

Организация по запрещению химического оружия

Organización para la Prohibición de las Armas Químicas