



SAMOA

CHEMICAL WEAPONS ACT 2010

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CHEMICAL WEAPONS ACT 2010

2010

No. 29

AN ACT to give effect to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, and for related matters.

[Assent date: 19 October 2010]

[Commencement date: 1 November 2010]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement – (1) This Act may be cited as the Chemical Weapons Act 2010.

(2) This Act commences on a date to be nominated by the Minister.

2. Interpretation – (1) In this Act, unless the context otherwise requires:

“Attorney General” means the Attorney General of Samoa;

“chemical weapons” means the following, together or separately:

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

of munitions and devices specified in paragraph (b);

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“Convention” means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, which Samoa ratified on 27 September 2002, and its Annexes and any amendments to, or substitutions of, the Convention or the Annexes that are, or will become, binding on Samoa, but does not include any amendments or substitutions that have been objected to by Samoa;

“corporation” means a body corporate formed or incorporated whether in Samoa or outside Samoa;

“Court” means the Supreme Court of Samoa;

“Director-General” means the Director-General of the Technical Secretariat;

“Minister” means the Minister responsible for Foreign Affairs;

“Ministry” means the Ministry responsible for Foreign Affairs;

“National Authority” means the National Authority designated under section 5;

“National Authority inspector” means a person appointed under section 17 to be a National Authority inspector for the purposes of this Act;

“old chemical weapon” means:

(a) a chemical weapon which was produced before 1925; or

(b) a chemical weapon produced in the period between 1925 and 1946 that has deteriorated to such extent that it can no longer be used as a chemical weapon;

“OPCW” means the Organisation for the Prohibition of Chemical Weapons and its constituent bodies established under Article VIII of the Convention;

“precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical and includes any key component of a binary or multi-component system;

“purposes not prohibited under the Convention” means:

(a) industrial, agriculture, research, medical, pharmaceutical, or other peaceful purposes;

(b) protective purposes directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) military purposes not connected with the use of chemicals as a method of warfare; and

(d) law enforcement purposes (including domestic riot control purposes);

“OPCW inspector” means a person designated under section 18 as an inspector or inspection assistant;

“Samoa registered aircraft” means an aircraft registered or required to be registered under the Civil Aviation Act 1998 as a Samoa registered aircraft;

“Samoa ship or vessel” means, in accordance with the Shipping Act 1998:

(a) a ship or vessel registered or licensed in Samoa; or

(b) an unregistered ship or vessel for which a person has assumed Samoan nationality;

“Technical Secretariat” means the Technical Secretariat of the OPCW established under Article VIII 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 human or animals, including any toxic chemical, regardless of its origin or of the method of production and regardless of whether the chemical is produced in facilities, munitions or elsewhere;

“Verification Annex” means the Annex on Implementation and Verification to the Convention.

(2) Unless the context otherwise requires, any other term or expression used in this Act which is not defined has the same meaning as in the Convention.

3. Application – (1) This Act binds the Government.

(2) This Act extends to each Samoa registered aircraft, and Samoa ship or vessel.

(3) This Act extends to acts done or omitted to be done outside Samoa by:

(a) a Samoan citizen; or

(b) a person ordinarily resident in Samoa; or

(c) a person on board a Samoa registered aircraft, Samoa ship or vessel.

(4) Despite any other enactment, proceedings in respect of any contravention of this Act anywhere outside Samoa shall

not be instituted in Court unless the consent of the Attorney General has been obtained and the Attorney General has certified that it is expedient that the proceedings should be instituted.

(5) Despite subsection (4), a person may be arrested, or a warrant for a person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but no further or other proceedings shall be taken until the Attorney General consent has been obtained.

4. Purpose – (1) The purpose of this Act is to implement Samoa's obligations under the Convention.

(2) A person exercising a power or discretion conferred under this Act shall do so in compliance with Samoa's obligations under the Convention.

PART 2 NATIONAL AUTHORITY

5. Designation of National Authority – (1) The Ministry and a person or body designated by the Ministry are designated the National Authority for the Prohibition of Chemical Weapons, for the purposes of the Convention.

(2) The functions and powers of the Authority are to be exercised by the Chief Executive Officer.

(3) An act required to be done by the Authority for the purposes of complying with Samoa's obligations under the Convention is to be done by the Chief Executive Officer.

(4) The Chief Executive Officer may delegate in writing to a person all or any of his or her powers, functions and duties under this Act, other than this power of delegation.

6. Functions of the Authority – The functions of the Authority are:

- (a) to act as the national focal point for the effective liaison with the OPCW and other States Parties; and
- (b) to co-ordinate activities of Ministries, agencies and industrial facilities for the purpose of implementing the Convention; and
- (c) to gather and compile the data that is needed for Samoa's notifications and declarations to the OPCW under the Convention; and

- (d) to submit notifications and declarations to the OPCW as required by the Convention, within the time frames specified by it; and
- (e) to carry out national inspections to obtain information or data needed by the Authority in order to meet Samoa's obligations under the Convention; and
- (f) to develop the procedures for the handling of confidential information received from the OPCW, other States Parties, or any other person in the implementation of the Convention or this Act; and
- (g) to perform any other function necessary to fulfil or implement Samoa's obligations under the Convention.

PART 3

PENAL PROVISIONS

7. Offences – (1) A person who intentionally or recklessly does any or all of the following commits an offence:

- (a) develop, produce, otherwise acquire, stockpile or retain chemical weapons;
- (b) directly or indirectly transfer a chemical weapon to another person;
- (c) use a chemical weapon;
- (d) engage in any military preparations to use chemical weapons;
- (e) assist, encourage or induce, in any way, any person to engage in—
 - (i) the use of riot control agents as a method of warfare; or
 - (ii) any other activity prohibited to a State Party under the Convention.

(2) A person who commits an offence under subsection (1) is punishable, upon conviction, by:

- (a) in the case of a corporation, a fine not exceeding 100,000 penalty units; or
- (b) in the case of a natural person, a fine not exceeding 10,000 penalty units or imprisonment for a term not exceeding 7 years, or both.

(3) Nothing in subsection (1) applies in respect of any seizure of chemical weapons by the Government under the authority of this or any other Act.

(4) Nothing in subsection (1)(e) limits Part 5 of the Crimes Act 2013.

8. Riot control agents – A person who intentionally or recklessly uses riot control agents as a method of warfare commits an offence, and is punishable by imprisonment for life or a fine not exceeding 10,000 penalty units, or both.

9. Forfeiture and seizure– (1) If a substance or article is developed, produced, stockpiled, otherwise acquired or retained in contravention of section 7, the substance or article is forfeited to the Government.

(2) A police officer may, without a warrant, seize any substance or article that is forfeited or that the police officer has reasonable grounds to believe to be forfeited under subsection (1), and may retain the substance or article until the expiration of a period of 60 days after the seizure, or, if a prosecution for an offence referred to in section 3 in relation to the substance or article is instituted before the expiration of that period, until the prosecution is terminated.

(3) Any substance or article seized under subsection (2) shall be stored pursuant to the procedures to be prescribed by regulations.

(4) If a chemical weapon is found in a place under the jurisdiction of Samoa, the weapon:

- (a) must be forfeited to the Government or may be seized without warrant by an officer or employee of the Government; and
- (b) must be stored pending disposal, and disposed of pursuant to the Convention.

10. Old chemical weapon – (1) A person knowingly in possession of an old chemical weapon shall inform the Commissioner of Police of such possession and the precise location of the old chemical weapon.

(2) Failure to comply with subsection (1) is an offence punishable by a fine not exceeding 100 penalty units.

11. Tampering with approved equipment – (1) In this section, “approved equipment” means the devices and instruments necessary for the performance of the inspection team’s duties that have been certified by the Technical

Secretariat pursuant to regulations prepared by the Technical Secretariat under Part II, paragraph 27 of the Verification Annex.

(2) A person who tampers with any approved equipment with the intention of adversely affecting the operation of the approved equipment commits an offence and is punishable, upon conviction:

- (a) if the offender is a corporation, to a fine not exceeding 100 penalty units; or
- (b) if the offender is a natural person, to a fine not exceeding 10 penalty units or to imprisonment of a term not exceeding 2 years, or both.

12. False or misleading statements – (1) A person commits an offence if the person:

- (a) makes to a police officer, a National Authority inspector, an OPCW inspector or another person exercising a power, or performing a function or duty in relation to this Act, a statement either orally or in writing that is to the knowledge of the person false or misleading in a material particular; or
- (b) presents to a police officer, a National Authority inspector, an OPCW inspector or another person exercising a power, or performing a function or duty in relation to this Act a book, document or other record that is to the knowledge of the person false or misleading in a material particular.

(2) A person who commits an offence under subsection (1) is liable, upon conviction, by:

- (a) if the offender is a corporation, a fine not exceeding 100 penalty units; or
- (b) if the offender is a natural person, a fine not exceeding 10 penalty units or imprisonment of a term not exceeding 1 year, or both.

13. Obstruction of inspectors – A person who obstructs or hinders a National Authority inspector or an OPCW inspector in the performance of that inspector's duty or function pursuant to Part II B of the Verification Annex or the exercise of a power under this Act or the regulations, commits an offence and is liable, upon conviction:

- (a) if the offender is a corporation, to a fine not exceeding 100 penalty units; or
- (b) if the offender is a natural person, to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 1 year, or both.

14. Confidentiality – (1) A person shall keep confidential any information that is given under this Act or the Convention concerning the affairs of another person.

(2) Information under subsection (1) may be disclosed only with the consent of the person whose affairs it relates or for the purpose of:

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

(3) A person who contravenes this section commits an offence, and is liable to a fine not exceeding 1,000 penalty units or to imprisonment for a term not exceeding 1 year, or both.

15. Liability of an officer of a corporation – If an offence has been committed by a corporation, a person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the corporation, or was purporting to act in such capacity, shall, as well as such corporation, be taken to be guilty of that offence unless the person proves that:

- (a) the offence was committed without his or her consent or connivance, tacit or otherwise; and
- (b) he or she exercised all such diligence to prevent the commission of the offence as ought to have been exercised, having regard to the nature of his or her functions in that capacity and to all the circumstances.

PART 4 INSPECTIONS

16. Interpretation – In this Part:

“relevant inspection purpose” is to be read as a reference to a purpose of ascertaining whether the purposes of

the Convention or this Act have been or are being complied with;

“relevant power” means a power to:

- (a) search a facility, premises, site, land or other location, ship, vessel, aircraft or vehicle; or
- (b) inspect or examine a matter or thing; or
- (c) take samples of a matter or thing; or
- (d) examine a document including a record kept under this Act; or
- (e) take extracts from, or make copies of, a document including a record of the kind referred to in paragraph (d); or
- (f) measure any quantity of material; or
- (g) verify the proper functioning or calibration of any instrument (including any instrument that forms part of an on-site monitoring device); or
- (h) install or operate an on-site monitoring device; or
- (i) interview personnel; or
- (j) do any other thing necessary or convenient to be done in order to achieve a relevant inspection purpose.

17. National Authority inspector – (1) The Minister may, in writing, appoint a person to be a National Authority inspector for the purposes of this Act.

(2) The Minister may:

- (a) determine terms and conditions of appointment, including remuneration and allowances, of a person appointed under subsection (1); and
- (b) revoke the appointment.

18. OPCW inspector – (1) A person who has, in accordance with the Convention, been designated by the Technical Secretariat to carry out or assist in inspections or visits as inspectors or inspection assistants shall be an OPCW inspector for the purposes of this Act.

(2) An OPCW inspector shall, for the purposes of this Act, enjoy the privileges and immunities, as set out in Part II B of the Verification Annex.

(3) For the purposes of an inspection, the OPCW inspector must be accompanied by:

- (a) a National Authority inspector; and

- (b) an observer for the purpose of paragraph 12 of Article IX of the Convention; and
- (c) a police officer.

19. Identity cards – The Chief Executive Officer may issue relevant identity cards to any of the following persons:

- (a) a National Authority inspector;
- (b) an OPCW inspector designated under this Act;
- (c) an analyst appointed under section 34;
- (d) any other class of persons prescribed by regulations.

20. Power of entry of inspectors in premises etc – An OPCW inspector or National Authority inspector may, with the consent of the occupier or owner of any facility, premises, site, land or other location or pursuant to a warrant issued under section 22 in respect of any facility, premises, site, land or other location, enter upon or into any facility, premises, site, land or other location, and exercise any relevant power for a relevant inspection purpose.

21. Power of entry of inspectors on ships etc – An OPCW inspector or team of OPCW inspectors may, with the consent of the person in control of a ship, vessel, aircraft or vehicle or pursuant to a warrant issued under section 22 in respect of any ship, vessel, aircraft or vehicle, enter the ship, vessel, aircraft or vehicle and exercise any relevant power for a relevant inspection purpose.

22. Warrants – (1) When an information or oath is laid before Court alleging that access to any facility, premises, site, land or other location within Samoa or any Samoan ship or vessel, aircraft or vehicle is necessary for the purpose of fulfilling Samoa's obligations under the Convention by the exercise of a relevant inspection purpose, the Court may issue a warrant for the purpose of this section authorising relevant persons named in the warrant, with such assistance as necessary:

- (a) to enter upon or into the facility, premises, site, land, other location, ship or vessel, aircraft or vehicle; and
- (b) to exercise relevant powers in relation to the facility, premises, site, land, other location, ship or vessel, aircraft or vehicle.

(2) A warrant issued under this section shall state:

- (a) whether entry is authorised to be made at any time of the day or night; and
- (b) a day not being later than 1 month after the day of issue of the warrant, upon which the warrant ceases to have effect.

23. Use of force – If force is required to enter and inspect any place specified in a warrant, or in breaking open anything in the place, a police officer who accompanies an OPCW inspector may use such force as is reasonable in the circumstances.

24. Power to detain – If an OPCW inspector or a National Authority inspector enters a ship, vessel, aircraft or vehicle under section 21, the inspector may for the purpose of exercising any relevant power for a relevant inspection purpose, stop and detain the ship, vessel, aircraft or vehicle.

PART 5 INDUSTRY AND TRADE

25. Interpretation – In this Part:

“discrete organic chemical” has the same meaning in this Part as in the Convention;

“Other Chemical Production Facility” means any facility consisting of a plant site which:

- (a) produced by synthesis during the previous calendar year more than 200 tonnes of unscheduled discrete organic chemicals; or
- (b) comprises 1 or more plants which produced by synthesis during the previous calendar year more than 30 tonnes of an unscheduled discrete organic chemical containing the elements phosphorus, sulphur or fluorine, unless such facility exclusively produced explosives or hydrocarbons;

“Schedule 1 chemical” means a chemical listed in Schedule 1 to the Annex on Chemicals to the Convention, unless an exemption prescribed by regulations applies;

“Schedule 2 chemical” means a chemical listed in Schedule 2 to the Annex on Chemicals to the Convention, unless an exemption prescribed by regulations applies;

“Schedule 2 facility” means a facility consisting of a plant site which comprises 1 or more plants which produced, processed or consumed during any of the 3 previous calendar years, or is anticipated to produce, process or consume in the next calendar year, more than:

- (a) one kg of a chemical designated “*” in Part A of Schedule 2 to the Annex on Chemicals to the Convention; or
- (b) one hundred kg of any other chemical listed in Part A of Schedule 2 to the Annex on Chemicals to the Convention; or
- (c) one tonne of a chemical listed in Part B of Schedule 2 to the Annex on Chemicals to the Convention;

“Schedule 3 chemical” means a chemical listed in Schedule 3 to the Annex on Chemicals to the Convention, unless an exemption prescribed by regulations applies;

“Schedule 3 facility” means a facility consisting of a plant site which comprises 1 or more plants which produced during the previous calendar year or is anticipated to produce in the next calendar year more than 30 tonnes of a Schedule 3 chemical;

“unscheduled discrete organic chemical” means a discrete organic chemical not listed in Schedule 1, 2 or 3 to the Annex on Chemicals to the Convention.

26. Schedule 1 chemical – (1) It is unlawful to:

- (a) produce, acquire, retain or use a Schedule 1 chemical outside the territory of Samoa unless such production, acquisition, retention or use takes place within the territory of another State Party to the Convention or is undertaken for the purposes of lawfully transporting such chemicals to another State Party;
- (b) export a Schedule 1 chemical unless to another State Party for research, medical, pharmaceutical or protective purposes; or
- (c) own or operate a facility which produces, acquires, retains or uses a Schedule 1 chemical unless the facility is—
 - (i) a prescribed single small scale facility or such other facility prescribed by

regulations and the facility complies with any conditions or requirements as may be prescribed by regulations; or

- (ii) a laboratory synthesizing Schedule 1 chemicals for research, medical or pharmaceutical purpose in aggregate quantities of less than 100 grams per year.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction:

- (a) for a corporation, to a fine not exceeding 1,000 penalty units; or
- (b) for a natural person, to a fine not exceeding 100 penalty units or to imprisonment not exceeding 7 years, or both.

27. Duty to declare – An operator or owner of a prescribed single small-scale facility or prescribed other facility shall provide to the National Authority the information required by Part VI D of the Verification Annex, and such other information as prescribed by regulations.

28. Provision of information by operator or owner of Schedule 2 facility – (1) An operator or owner of a Schedule 2 facility shall provide to the National Authority the information required by Part VII of the Verification Annex to the Convention and such other information as prescribed by regulations.

(2) An operator or owner of a facility which has produced at any time a Schedule 2 chemical for chemical weapons purposes shall provide to the National Authority the information required by Part VII of the Verification Annex to the Convention and such other information as prescribed by regulations.

(3) The information required under this section shall be provided on an annual basis in respect of past and anticipated activities in the form requested by the Technical Secretariat.

29. Import and export of Schedule 2 chemicals– (1) The export of Schedule 2 chemicals to non-party States is prohibited.

(2) A person who produces, processes, consumes, imports or exports Schedule 2 chemicals shall provide the National Authority with information as prescribed by regulations.

30. Provision of information by operator or owner of Schedule 3 facility – (1) An operator or owner of a Schedule 3 facility shall provide to the National Authority the information required by Schedule 3 to the Annex on Chemicals to the Convention and such other information as prescribed by regulations.

(2) An operator or owner of a facility which has produced at any time since 1 January 1946 a Schedule 3 chemical for chemical weapons purposes shall provide to the National Authority the information required by Part VIII of the Verification Annex to the Convention and such other information as prescribed by regulations.

(3) The information required under this section shall be provided on an annual basis in respect of past and anticipated activities in the form requested by the Director-General.

31. Import and export of Schedule 3 chemicals – (1) The export of Schedule 3 chemicals to non-party States is prohibited unless pursuant to a licence from the National Authority.

(2) A person producing, importing or exporting Schedule 3 chemicals shall provide the National Authority with information as prescribed by regulations.

32. Provision of information by operator or owner on Other Chemical Production Facility – (1) An operator or owner of an Other Chemical Production Facility shall provide to the National Authority the information required by Part IX of the Verification Annex and such other information as prescribed by regulations.

(2) The information required under this section shall be provided on an annual basis in respect of past activities in the form requested by the Director-General.

33. Application of Customs Act 2014 – The provisions of the Customs Act 2014 that apply with respect to prohibited imports and prohibited exports, except the penalties for offences under that Act, shall extend and apply with respect to chemicals and precursors whose importation and exportation is prohibited under this Act, in all respects as if the importation or exportation of the goods were prohibited under the Customs Act 2014.

PART 6 MISCELLANEOUS

34. Analyst's evidence – (1) The Minister may appoint an analyst for the purposes of this Act.

(2) Subject to subsection (3), a certificate of an analyst appointed under this section stating that the analyst has analysed or examined a substance and stating the result of the analysis or examination, is admissible in Court and before any other judicial or quasi-judicial body and is *prima facie* evidence of the facts stated in the certificate and of the correctness of the results of the analysis or examination.

(3) A request may be made by the Court for the analyst to appear in the proceedings for the purpose of examination.

35. Delegation – (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing and signed by the Minister, delegate to an officer or employee of the National Authority all or any of the Minister's powers under this Act or the regulations, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, is, for the purposes of this Act or the regulations, taken to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

36. Regulations – The Head of State may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, making provision for, or with respect to the following:

- (a) the prohibition of possession of old chemical weapons;
- (b) the imposition of penalties not exceeding 100 penalty units for offences against the regulations;
- (c) the transportation of any toxic chemicals listed in Schedules 1, 2 and 3 of Part B of the Annex of Chemicals to the Convention;
- (d) prescribing designated Schedule 1 single small scale facilities and other facilities;

- (e) prescribing additional information to be provided to the National Authority;
- (f) the storage of materials or articles seized.

REVISION NOTES 2010 – 2017

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2010 to 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a” or “each” as appropriate
 - (ii) Present tense drafting style
 - “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - “shall have” changed to “has”
 - “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (iii) Offence provisions
 - “shall be guilty” changed to “commits”
 - “charged and convicted of an offence under” changed to “who contravenes”
 - “punishable by” changed to “liable to”
 - (iv) “pursuant to” changed to “under”
 - (v) Numbers in words changed to figures
 - (vi) Section 3(3), renumbering of subparagraphs (i) to (iii) as paragraphs (a) to (c)
 - (vii) References to, e.g. “section 34 of this Act” changed to “section 34”
 - (viii) References to “said” deleted
 - (ix) Part in Roman numerals now changed to decimal numbers.

The following amendments were made since its enactment:

By the National Prosecution Office Act 2015 (No.38), which commences on 1 January 2016:

- Section 3** For subsection (4) omit “Attorney General” and substitute “Director of Public Prosecutions”;
 For subsection (5) omit “Attorney General’s” and substitute “Director of Public Prosecutions”;

By the Constitution Amendment Act (No. 1) 2017, No. 8:

Section 3 For subsection (4) omit “Director of Public Prosecutions” and substitute “Attorney General”;
For subsection (5) omit “Director of Public Prosecutions” and substitute “Attorney General’s”;



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Foreign Affairs and Trade.*
