

**MODEL DECREE ON THE ESTABLISHMENT OF A NATIONAL AUTHORITY
FOR IMPLEMENTING THE CONVENTION ON THE PROHIBITION OF THE
DEVELOPMENT, PRODUCTION, STOCKPILING AND USE OF CHEMICAL
WEAPONS AND ON THEIR DESTRUCTION**

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Explanatory note. This model decree was prepared as a suggested guideline for establishing the “National Authority” required by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (hereinafter the “Convention”). Article VII, paragraph 4, of the Convention provides:

“4. 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 Organization of its National Authority at the time that this Convention enters into force for it.”

Structure. States Parties enjoy the widest discretion in determining the size, structure, composition, and mandate of their National Authorities. As the words “designate or establish” indicate, State Parties may either assign the task of acting as the National Authority to an existing government department or agency, or they may create an entirely new entity specifically for this function. Each State Party’s actual situation (e.g. whether or not it possesses chemical weapons, chemical weapons production facilities, Schedule 1 facilities, significant chemical industry and/or export-import activities relevant to the Convention, as well as the resources it can allocate) determines the composition, structure and mandate of its National Authority. The National Authority can be either a centralised entity responsible for carrying out all aspects of national implementation of the Convention, or a decentralised entity playing a liaison role between the OPCW and the several government departments or agencies responsible for carrying out specific aspects of national implementation.

OPCW States Parties have structured their National Authorities in a variety of ways. Most have established a National Authority as an inter-ministerial body, most often chaired by the Ministry of Foreign Affairs or, in some cases, by the Ministry of Defence or the Ministry of Industry. A few National Authorities are chaired by the Office of the President or the Ministry of Health or the Environment.

Functions. As the national focal point for liaison with the OPCW and other States Parties, the national data collection point, and the facilitator of national implementation, an effective National Authority is of central importance to the effectiveness of the Convention itself. To meet its basic obligations, each State Party must be in a position to carry out the following fundamental functions: (a) to gather and compile data on declarable production, processing, consumption, import and export of chemicals; (b) to prepare and submit the required declarations on time to the OPCW; (c) to licence relevant chemical facilities; (d) to monitor and control imports and exports of scheduled chemicals; (e) to communicate with the OPCW and respond to requests for clarification of implementation matters; (f) to cooperate with other States

Parties; (g) to facilitate OPCW inspections; (h) to respond to OPCW requests for assistance; (i) to protect the confidentiality of classified information; (j) to monitor and enforce national compliance; and (k) to cooperate in the field of chemical activities for purposes not prohibited under the Convention. All these functions involve a State Party's National Authority to a greater or lesser extent, and the mandates of National Authorities have been defined correspondingly.

In addition, the National Authority usually engages in outreach activities to inform various government departments, agencies, research institutions and chemical industry about the scope of the Convention and the manner in which it relates to national interests, national control mechanisms and reporting obligations.

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[The President/The Prime Minister/The King]

Considering Law No. [●] dated [●] approving the ratification of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (“the Convention”),

Considering Law No. [●] dated [●] on the implementation of the Convention,

Considering the obligation provided for in paragraph 4 of Article VII of the Convention, requiring each State Party to designate or establish a National Authority to serve as the national focal point for effective liaison with the Organisation for the Prohibition of Chemical Weapons (“OPCW”) and other States Parties to the Convention,

Considering that it is necessary to give the National Authority a legal and administrative framework for the proper fulfilment of its functions,

Decrees:

Chapter I Establishment, Functions and Composition of the National Authority

Article 1 Establishment of a National Authority

In order to implement the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (hereinafter “the Convention”) in [name of State Party], and carry out the policy of the government in respect of it, a National Authority for the implementation of the Convention (hereinafter “the National Authority”) is hereby established.

Article 2 Functions and duties of the National Authority

- (1) The National Authority shall in particular –
 - (a) assist with the development and application of national policy and legislation for the implementation of the Convention,
 - (b) serve as national focal point for effective liaison with the Organisation for the Prohibition of Chemical Weapons (hereinafter “the OPCW”) and other States Parties to the Convention,
 - (c) serve as guarantor of national implementation and enforcement of the Convention; and
 - (d) support the Convention’s objectives in [the State Party].
- (2) The National Authority shall perform its duties so as to achieve the Convention’s objectives in the most effective manner.
- (3) The National Authority shall perform any other duty which may be assigned to it by law or regulations.

Article 3 Composition of the National Authorityⁱ

The National Authority shall be composed of:

- (1) an interministerial Board, which shall be the decision making body of the National Authority, hereinafter “the Board”, and
- (2) a Technical Secretariat, which shall be the executive body of the National Authority, hereinafter “the Secretariat”.

Article 4 Budget of the National Authority

- (1) The resources of the National Authority shall consist of-
 - (a) such funds as may be provided annually in the general budget of the State to the National Authority for the fulfilment of its missions;
 - (b) the revenues from fees collected pursuant to Law No. [●] dated [●] on the implementation of the Convention;
 - (c) such other funds as may be granted by international organisations.
- (2) The expenses of the National Authority, including the remuneration and allowances of the Members and staff thereof, office equipment, stationery, cost of training, workshops, seminars and any other subject matter arising from the obligations of [name of the State Party] under the Convention, shall be paid out of the resources of the National Authority.

Chapter II The Board

Article 5 Composition of the Board

- (1) The Board shall be composed of:ⁱⁱ
 - [(a) a representative of the Ministry of Foreign Affairs;
 - (b) a representative of the Ministry of Defence;
 - (c) a representative of the Ministry of Environment;
 - (d) a representative of the Ministry of Agriculture;
 - (e) a representative of the Ministry of Health;
 - (f) a representative of the Ministry of Justice;
 - (g) a representative of the Ministry of Trade;
 - (h) a representative of the Ministry of Industry;
 - (i) a representative of the Police Service;
 - (j) a representative of the Department of Customs and Excise;
 - (k) a representative of the University of;
 - (l) a representative of the Chamber of Commerce;
 - (m) a representative of the [Chemical Industry Association].]
 hereinafter “the Members” of the Board.
- (2) The Members shall be appointed by [...].
- (3) The Board shall be chaired by the representative of the Ministry of [...].
- (4) According to the nature of matters on the agenda of the Board, the Chairperson may, where useful, bring in other relevant bodies or qualified persons. These latter are not Members in the sense of the first paragraph of this Article.

Article 6 Guarantor of National Implementation and Enforcement of the Convention, and of the Compliance of National Policies and Legislation with the Convention

The Board shall-

- (1) propose the measures it deems necessary or appropriate to ensure the implementation of the Convention, including drafts of laws and regulations, to the relevant authorities;
- (2) review and give its opinion on any law, regulations and other administrative decisions aiming at implementing the Convention;
- (3) prior to the signature of any kind of international agreement relevant to the implementation or the objectives of the Convention, give its opinion on its compatibility with the Convention;
- (4) participate in the drafting of national positions pursued by [name of the State Party] in the decision-making organs of the OPCW.

Article 7 Supervision of the Secretariat

The Board shall supervise the Secretariat in the exercise of all the functions are assigned to it under Chapter III of this Decree.

Article 8 Functioning of the Board

- (1) The Board shall meet upon summons of the Secretariat, which shall be issued upon request of the Chairperson or of another Member at least once every [●] months and on any occasion when necessary, at a place which the Chairperson shall determine.
- (2) The attendance of at least [●] Members at a Board meeting shall constitute a quorum.
- (3) The Board shall take its decisions and opinions, and formulate its proposals based on a vote [by a simple majority of the Members present and voting / consensus of the Members]. [In the event of a tie, the Chairperson shall have a casting vote.]
- (4) The Board shall approve the annual report on the activities of the National Authority prepared by the Secretariat by a simple majority of the Members present and voting.
- (5) The Board may appoint the technical and *ad hoc* task forces it deems necessary or appropriate for the accomplishment of its functions.
- (6) The Board shall issue an internal regulation to define further modalities of its functioning.

Chapter III The Secretariat

Article 9 Composition of the Secretariat

The Secretariat shall be established within [●] and consist of [●].ⁱⁱⁱ

Article 10 National focal point for effective liaison with the OPCW and other States Parties

- (1) The Secretariat shall ensure liaison and cooperation with the OPCW.
- (2) The Secretariat shall develop liaisons with other States Parties and cooperate with them and their National Authorities to attain the objectives of the Convention.
- (3) In accordance with the obligations of [name of the State Party] under the Convention, the Secretariat shall submit to the OPCW relevant facts, information and, in particular, the periodic national declarations and notifications required by the Convention.

Article 11 Assistance in National Implementation and Enforcement of the Convention

The Secretariat shall-

- (1) ensure coordination of all national activities to accomplish the Convention's objectives;
- (2) support the follow up of the Board's proposals and opinions;
- (3) be empowered to require any natural or legal person to provide it with any information relevant for the implementation of the Convention;
- [(4) issue licenses and receive declarations on the activities involving scheduled chemicals contained in the Annex on Chemicals of the Convention and the discrete organic chemicals, in strict compliance with the rules, conditions and procedures set in Law No. [●] dated [●] on the implementation of the Convention and its implementing regulations;
- (5) be entitled to appoint and task national inspectors to pay control visits to facilities to which Parts VI to IX of the Verification Annex to the Convention could apply;]^{iv}
- (6) facilitate the inspections conducted in accordance with the Convention. In particular it shall-
 - (a) accompany the OPCW inspection team on international inspections in the territory of [the State Party] or to any other place under its jurisdiction or control,
 - (b) assist – in case of inspection – the relevant authorities and bodies to provide the OPCW inspection team with all information and documents required under the Convention;
- (7) ensure the confidentiality of data received in the implementation of Law No. [●] dated [●] on the implementation of the Convention and its implementing regulations, including this Decree;
- (8) advise the Board on the development of a national protective programme against chemical weapons;
- (9) liaise and cooperate with the national enforcement authorities in the event of suspected violation of Law No. [●] dated [●] on the implementation of the Convention and its implementing regulations.

Article 12 Support of the Convention's objectives

- (1) The Secretariat shall establish and maintain a national registry of any regulated activities involving scheduled chemicals and discrete organic chemicals and serve as Registrar.^v As Registrar it shall:
 - (a) record applications for licensing of Schedule 1 chemicals production facilities and administer the licensing system as may be established under Law No. [●] dated [●] on the implementation of the Convention and its implementing regulations;
 - (b) record applications for import or export of Schedules 1, 2 or 3 chemicals and administer the licensing and permit system established under Law No. [●] dated [●] on the implementation of the Convention and its implementing regulations;
 - (c) record information received from juridical or natural persons pursuant to Law No. [●] dated [●] on the implementation of the Convention and its implementing regulations and compile the relevant information into the declarations of [name of the State Party] to be submitted to the OPCW under the Convention;
 - (d) exercise its discretion to assign national inspectors appointed under Article 11 of this Decree to verify the information received pursuant to Law No. [●] dated [●] on the implementation of the Convention and its implementing regulations.
- (2) The Secretariat shall carry out research-

- (a) on all information and activities which can be relevant to the implementation and enforcement of the Convention; and
- (b) to facilitate the cooperation of the authorities of [name of the State Party] to implement the Convention.

To carry out the research it can cooperate with all relevant departments and qualified bodies and persons. Based on that research the Secretariat shall develop effective strategies to further the implementation of the Convention.

- (3) The Secretariat shall initiate outreach and training activities to sensitise the public as to the dangers of proliferation of chemical weapons, the means of protection against them, the objectives of the Convention, and licensing and reporting requirements.

Article 13 Administrative Functions of the Secretariat

The Secretariat shall-

- (1) summon the meetings of the Board upon request of the Chairperson or another Member, and prepare the meetings, including its agenda;
- (2) formulate the reports of the meetings and keep and register the files of the Board;
- (3) prepare an annual report on the activities of the National Authority and submit it to the Board for approval;
- (4) serve as the liaison between the Members of the Board;
- (5) coordinate the work of any task forces appointed by the Board under Article 8 of this Decree.

Article 14 Organisation and Functioning of the Secretariat

- (1) The Secretariat shall be supervised by the Board, and follow guidelines and orders issued by it.
- (2) The Secretariat shall be directed by a coordinator designated by the Board.
- (3) Specific rules for its organisation and functioning shall be defined and approved by the Board.

Article 15 Support of the Secretariat by Governmental Authorities

All governmental authorities relevant to implementation of the Convention by [name of the State Party] shall support the Secretariat in the exercise of its functions under this Decree.

Chapter IV Final Provisions

Article 16 Execution of this Decree

[●] shall be charged [each within his area of competence] with the implementation of this Decree which shall be published in [●].

[Place and date]

[Name of the State Party's President/Prime Minister/King]

[Countersigned]
[Name and function]

ⁱ Some States Parties have established a Secretariat within their National Authority (e.g. Bolivia, Burkina Faso, Colombia, Panama, Portugal, Spain). The necessity for a State Party to establish such a Secretariat will largely depend on whether the State Party: (1) owns or possesses chemical weapons or chemical weapons production facilities (implying the significant task of overseeing destruction of them and preparing the necessary reports and declarations), (2) has significant declarable chemical industry (implying the collection of data and preparation of periodic declarations to the OPCW) and/or (3) has significant import/export of declarable chemicals (implying import/export controls and collection of data).

France, instead of assigning all executive functions to the Secretariat, only assigned to it administrative functions similar to those in Article 2 of this model. The other functions have been split up and assigned to different relevant Ministers:

- (1) The Minister of Foreign Affairs is the National Authority and, among other functions: (a) liaises with the OPCW and the other States Parties; (b) maintains and publishes the list of States Parties; (c) maintains the lists of OPCW inspectors and inspections assistants likely to come to inspect facilities in France and transmits them without delay to the relevant Ministers; (d) sends the national declarations to the OPCW; (e) after an inspection, receives the final inspection report and forwards it without delay to the relevant Ministers; (f) signs with the OPCW facility agreements prepared by the relevant technical Ministries, (g) negotiates other agreements between the OPCW and France, signs them after the Committee (advisory body of France's National Authority) has given its opinion, and transmits any changes to the OPCW; (h) acknowledges receipt of inspection notifications and forwards them without delay to the relevant Ministries; (i) after the Committee (respectively the advisory body) has given its opinion, accepts the international inspectors or withdraws their acceptance;
- (2) The Minister of Defence is responsible for the implementation of the Convention at the sites under his authority and among other functions: (a) prepares the facility agreements concerning facilities located on these sites and sends them to the Minister of Foreign Affairs for his signature; (b) compiles, formats and sends to the Minister of Foreign Affairs the declarations of the concerned facilities that are subject to declaration; (c) arranges for the inspection teams to be received and escorted; (d) when necessary, and after receiving the inspections reports, he gives his comments, which are conveyed to the Minister of Foreign Affairs.
- (3) The Minister of the Interior, among other functions, is responsible for: (a) the collection, transport and intermediate storage of old chemical munitions. Pending the commissioning of the site for the dismantling and destruction of these munitions, he is responsible for the storage of existing chemical munitions and of those that will be collected until such commissioning; (b) the declarations of old chemical munitions and of their storage facilities as well as the transmission of these declarations to the Minister of Foreign Affairs.
- (4) The Minister of Industry is responsible for the implementation of the Convention for all of the civilian facilities subject to the powers entrusted by the decree to other Ministers. Among other functions he is responsible for: (a) preparing the facility agreements and sending them to the Minister of Foreign Affairs for his signature; (b) advising the individuals who are subject to the obligations provided for in the Convention; (c) compiling, formatting and sending to the Minister of Foreign Affairs the declarations called for in Parts VI to IX of the Convention's Verification Annex;
- (5) The Minister responsible for Customs is responsible for the implementation of the import and export provisions of the Convention.

Belarus on the other hand, has not established a Secretariat. It has attached to its National Authority a "Commission of Experts", which consists of representatives of agencies concerned with the implementation of the Convention. This Commission is responsible for the effective implementation of the Convention and for the resolution of issues which may arise in the process of implementation and the decree by which is established. The other functions remain with the National Authority.

ⁱⁱ The suggested composition of the Board is indicative only and reflects the composition found in many National Authorities established under the Convention.

ⁱⁱⁱ In Bolivia, Panama and Spain for example, the Secretariat has been established within an already existent governmental authority (the Ministry of Defence in Bolivia, the Ministry of Health in Panama, the Secretariat of Industry and Energy in Spain) and is supported by other relevant governmental authorities. In Burkina Faso on

the other hand, the Secretariat is composed of representatives of the Ministries represented in the Board. In Portugal the Secretariat has been established within an institute of scientific research, which provides technological and scientific support for the Portuguese National Authority, the Ministry of Foreign Affairs.

^{iv} In some States Parties the National Authority administers a licensing system for Schedules 1, 2 and 3 facilities/plants and a permit system for imports or exports of Schedules 1, 2 and 3 chemicals. In other States Parties, the requirements of the Convention have been incorporated into existing licensing and import/export control systems and the respective Ministry responsible for administering the existing system liaises with the National Authority on whether approval should be granted or not in respect of applications for facility licensing or import/export of scheduled chemicals.

States Parties may also wish to consider introducing a provision similar to the one developed by Singapore in its implementing legislation and reading as follows:

“In cooperation with the Police, Customs Administration, Port Authority, Coast Guard and/or Ministry of Justice of [name of the State Party], and based on information which may come to its knowledge, the Secretariat may-

- (a) require juridical or natural persons, including any importer, exporter, agent, forwarding agent, common carrier, consignor or consignee of goods or on any owner, agent, master or person in charge of a conveyance to furnish such particulars, information or documents as may be prescribed in respect of any scheduled chemical that is transiting the territorial waters of [name of the State Party];
- (b) require the master of any vessel to attend at the National Authority or Port Master, and to furnish such particulars, information and documents, as may be prescribed; and
- (c) prohibit the issue of a port clearance to the master of any vessel pending compliance with any provisions of the CWC implementing legislation.”

^v The establishment of a registry is not required by the Convention. The practice of National Authorities has shown that it is helpful to send reminders to all persons which engage in declarable activities, or which are on the threshold borderline, that their reports on declarable data are due. For this purpose it is useful to maintain the contact data in a registry.