



Office of the Legal Adviser and the International
Cooperation and Assistance Division

S/250/2001

22 March 2001

Original: ENGLISH

REPORT ON THE REGIONAL WORKSHOP ON IMPLEMENTING LEGISLATION AND INTERNATIONAL COOPERATION ISSUES, MBABANE, SWAZILAND, 28 - 30 NOVEMBER 2000

1. Introduction

As announced in document S/208/2000 dated 28 August 2000), a three-day Regional Workshop on Implementing Legislation and International Co-operation Issues was conducted from 28 to 30 November 2000 in Mbabane, Swaziland, for the National Authorities of the States Parties and signatory States from the Southern African Development Community (SADC) region. The Workshop was funded by the OPCW Secretariat and organised jointly by the National Authority of the Kingdom of Swaziland and the OPCW through the Office of the Legal Adviser. The Workshop provided a forum for representatives to discuss the urgent need for States Parties to enact implementing legislation as required by the Convention, and to discuss how the OPCW Secretariat can assist in this regard. The Workshop also provided delegates with the opportunity to discuss international cooperation issues, including possible projects in the region, with the assistance of the Secretariat.

2. Attendance

2.1 Out of the 14 SADC members (Angola, Botswana, Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, the Seychelles, Swaziland, Tanzania, Zambia, Zimbabwe), all are States Parties except Democratic Republic of the Congo (signatory State) and Angola (non-signatory State). Madagascar also attended as a signatory from the region but not a SADC member.

2.2 States Parties and signatories from the SADC region were invited in terms of OPCW document S/208/2000. Each invited country was asked to nominate two representatives (one from the country's chemical industry and the other from the legislative side with legislative drafting experience) from either the National Authority or from Government, to be sponsored by the Secretariat. The objective was to ensure that participants at the workshop had hands-on experience in their respective chemical industries or legislative drafting processes. The Workshop was intended to allow a sharing of practical experiences on the problems and successes with the implementation of the Convention. The list of participants is attached as Annex 1.

3. Summary of proceedings

3.1 The following issues were discussed: obligations of States Parties under the Convention, particularly national legislation to implement the Convention; problems faced by States Parties in implementing the Convention; suggesting possible legislative approaches to implementing legislation; single-act legislation versus the integrated approach at the national level and the same at the regional level; the importance of implementing legislation with respect to trade in or any other transfers of scheduled chemicals; monitoring trade in scheduled chemicals, the utility of harmonisation of chemical regulations regionally; the availability of legal technical assistance upon request from the Secretariat to help States Parties with the preparation of the necessary regulations or to meet other legal obligations related to the Convention; and a discussion on the range of possible regional projects by the Secretariat to assist States Parties focusing on enhancing the capabilities of States Parties to meet their obligations under the Convention and to develop their infrastructure. The main points brought forward in the discussions are summarised below.

Obligations of States Parties

3.2 In the first session, obligations of States Parties under the Convention were discussed, categorising them into specific time-bound obligations and general obligations. Time-bound obligations include preparation and submission of declarations, facility agreements, agreements on privileges and immunities, measures by which to provide assistance, and meeting standing obligations such as the establishment of National Authorities. General obligations include those under Article IX (“consultations, cooperation and fact-finding”), Article X (assistance and protection against chemical weapons), and Article XI (economic and technological development). Participants were informed that assistance is available from the Secretariat for the preparation of declarations.

Difficulties with implementing legislation

3.3 In the session that followed, delegations from the region made presentations on the status of their implementing legislation. With the exception of South Africa, even those States Parties with some legislation in force felt they had a long way to go before they could have legislation that met all the requirements of the Convention. A number of delegations informed the workshop of difficulties in relation to enacting implementing legislation, particularly with respect to:

- understanding the Convention requirements;
- preparing declarations;
- how to make declarations with respect to disputed territories;
- the most effective way to establish a National Authority;
- finding the easiest and least costly approach to the preparation of the legislation;
- the most effective approach to legislation;
- how to ensure that the legislation covered all eventualities;
- how to deal with the time-consuming process of reviewing existing legislative provisions (some of which are fragmented) on chemicals;

- problems of how to achieve the necessary cooperation between government and industry for implementation of the Convention;
- lack of capacity and adequate resources;
- need to train personnel dealing with implementation of the Convention;
- concern that application of the Convention provisions does not undermine genuine development;
- how to deal with closures, mergers, take-overs, etc., of industry, hence difficulties identifying declarable sites and – much more cumbersome if it has to be repeatedly done;
- what mechanism should be used for declaring scheduled chemicals of the Convention as dual-use controlled goods;
- the problem of communication with other States Parties regarding the transfer regime for scheduled chemicals.

National implementing legislation

- 3.4 The afternoon session of the first day focused on one particular obligation: legislation to implement the Convention. The Secretariat discussed the important elements to take into account when drafting national legislation. For discussion purposes, the necessary legislative provisions were grouped in three categories:
- Procedural measures to put into place mechanisms to ensure that verification measures can be undertaken on the territory of an intending State Party before the country formally becomes a State Party;
 - Measures that prohibit all actions that contravene the provisions of the Convention on the State Party's territory;
 - Measures to enforce the obligatory control over transfers of scheduled chemicals;
 - Enforcement related measures with respect to penal provisions concerning all violations of the Convention;
- 3.5 The Secretariat indicated that the lack of uniformity in the nature of penalties imposed in domestic laws can give rise to problems and finding a common approach by States Parties in this regard may prove intractable. Achieving a common penal system for the region, let alone for the entire membership of the Convention, will not be easy, if realisable.
- 3.6 In another presentation the Secretariat discussed the merits and demerits of a single-subject-matter legislative act versus the integrated legislative approach when preparing legislation. States Parties were invited to consider the number of other treaties, to which they are party, which deal with the safe management of chemicals and examine the compatibility of these treaties in their objectives. It may be that after such an examination States Parties may conclude that it is cheaper and more efficient to produce a single legislative act dealing with the management of chemicals in accordance with the requirements of all the relevant treaties. The issue was also put as to the possibility of integrated legislation at the regional level. The choice of

legislative approach was, of course, for States Parties themselves to make.

The Secretariat's Legislation Package

- 3.7 The Secretariat introduced the OPCW Secretariat's "Legislative Package", which contains a checklist for the legislator; the Legislation Questionnaire; model national implementing legislation; Australia's illustrative model legislation for incorporating the Convention into domestic law; the model act developed by the Organisation of Eastern Caribbean States (using the integrated approach); case studies of the Islamic Republic of Iran and Romania regarding compliance with Article VII of the Convention; and the import-export regulations of Australia, Canada, Sweden and the United States of America.
- 3.8 Delegates were informed of the availability of legal technical assistance in the drafting of their implementing legislation. The assistance takes the form of seminars, workshops, consultations with the Secretariat on specific drafts of legislation; and possible bilateral assistance by legal experts from other States Parties. Delegates were also informed of the International Symposium on Cooperation and Legal Assistance to be held in the Hague from 7 to 9 February 2001.

Trade in scheduled chemicals

- 3.9 The Secretariat next presented the issues in relation to trade controls for scheduled chemicals. The Convention's restrictions on the trade or approval for trade in certain scheduled chemicals between States Parties and States not party to the Convention was highlighted. It was emphasised that States not party to the Convention will be facing adverse effects in their chemical industries as trade in certain chemicals will be available only among State Parties. In certain instances, this may have serious economic implications for States not party. Participants at the workshop which were not yet party to the Convention were therefore urged to make every effort to convince their governments of the urgency to join the Convention.
- 3.10 The presentation also dealt in detail with the importance of mechanisms for regulating the trade in chemicals. Regulations to control transfers of scheduled chemicals and the need for import and export regulations of chemicals in general was emphasised. Institutional arrangements emphasised the role of customs and trade organisations. It was stressed that whatever the arrangement, there was a need for inter-agency cooperation. In the context of the region, the importance of the customs union as a possible complicating factor in the monitoring of transfers of scheduled chemicals was raised. Countries within the customs union may experience practical difficulties in meeting their Convention obligations to report transfers to the OPCW.
- 3.11 The Secretariat spoke in detail about the importance of adopting and introducing the Harmonised System (HS) Tariff Codes into the "Handbook on Chemicals". The revision of the Handbook on Chemicals was necessary to specify HS codes for scheduled chemicals as the current HS coding of the World Customs Organisation (WCO) contained codes for broad categories of commodities including chemicals.

The revised Handbook on Chemicals (as of May 2000) is available for use by States Parties in hard copy and electronic format. It was indicated that the assigned HS codes in the "Handbook on Chemicals" would be subject to revision by the WCO.

International cooperation

- 3.12 The second day of the workshop was allocated to International Cooperation issues. The Secretariat presented the OPCW international cooperation projects that focus on fostering international cooperation under the Convention. The first presentation discussed the three areas of international cooperation:
- (a) capacity building for implementation of the Convention;
 - (b) capacity building for the peaceful purposes of chemistry; and
 - (c) administrative and technical support to National Authorities.
- 3.13 The Secretariat outlined various projects currently underway with regard to capacity building for implementation of the Convention, which includes support for laboratories seeking OPCW designation and the Associate Programme. Regarding projects for peaceful uses of chemistry, areas of support were available which include support for attendance at conferences, internship support, acquisition of workable equipment, general laboratory assistance and support for research projects. The equipment transfer programme would be pertinent to developing countries or countries in transition in need of such equipment. Also mentioned was a free information service containing information on chemicals, suppliers of chemicals and chemical technology. The Secretariat has put forward a proposal to widen this service to literature search on chemicals.
- 3.14 Support is also available to National Authorities in the form of further training courses and workshops, and on-site assistance with declarations. Various useful infrastructure-building facilities are available which include technical workshops on software for processing and handling declarations, the Handbook on Chemicals and access to the Scientific and Technological Network (STN) International online database. As mentioned earlier, an information service also exists within the ICA Division for use by States Parties.
- 3.15 The Secretariat then described the experience of the OPCW in implementing its international cooperation projects. In terms of the African continent, participation of persons and institutions have been in the following projects:
- Support was given in 1998 to Morocco for its laboratory which was seeking OPCW designation;
 - OPCW's Associate Programme. The pilot project included three participants from African countries namely, Malawi, Nigeria and Burkina Faso. This programme was aimed at scientists and engineers of developing countries and countries with economies in transition. There has been very positive feedback from participants;

- Support was given to researchers to participate in conferences. Three participants from Africa attended the First International Conference on Health, Environment and Natural substances in February 2000 in France;
 - Four participants from Africa participated in the seminar on the Destruction of Adamsite in Poland during April 2000;
 - Two participants from Africa took part in the Chemical and Biological Medicinal Treatment Symposium in May 2000 in Switzerland;
 - Seven scientists from Africa participated in the Botswana Symposium on Science and Technology for development in June 2000;
 - Support was given to one participant from Africa to attend the 10th Asian Symposium on Medicinal plants and species and Other Natural Products in November 2000;
 - Five out of the nine scientists supported under the internship programme during 2000 were from Africa;
 - Kenya and Burkina Faso received equipment in 1998 and 1999 under the equipment transfer programme;
 - In terms of research projects, support is being given to the Kenya Industrial Research and Development Institute on bio-pesticides; and
 - Support is also being given to a joint intercontinental research project on saxitoxin involving Chile, South Africa and the Philippines.
- 3.16 The National Authorities training courses and workshops have also sponsored a large number of participants from Africa. A number of regional seminars and workshops have been held in Africa.
- 3.17 The second part of the day focused on the Secretariat's Legislation Questionnaire. Participants were informed that it was important that the questionnaire be completed by all States Parties; so far only 43 States Parties had completed the questionnaire. Some participants indicated that they had difficulty understanding how to answer certain questions. Since many of the participants would not have the authority to complete the questionnaire, representatives of the Secretariat did not feel that it would be prudent, or practical, to try and help each delegation complete the questionnaire during the workshop. Instead, the Secretariat guided participants through the questions, clarifying aspects thought to be unclear. Participants were urged to have the authorities complete the questionnaires as soon as possible and have them returned to the OPCW for processing.
- 3.18 On the third day the presentations by States Parties on overviews of chemical regulations currently being drafted yielded no more information than had already been presented earlier with regard to overview on chemical regulations already drafted.

There are few in place in the States Parties attending. Representatives from Swaziland, Botswana, Namibia, Malawi, Zimbabwe and South Africa made statements regarding the status of national legislation. There are various pieces of legislation dealing with chemicals in a number of States Parties, but the majority did not yet have a single act for the implementation of the Convention. Those that did, found after the presentation by the Secretariat staff that their legislation was inadequate.

- 3.19 South Africa's approach of treating "all relevant declarable, inspectable activities/facilities under the Convention to be declared as controlled goods in order to give the National Authority powers to, *inter alia*, obtain declarations and conduct inspections," was noted with interest. Dual-use referred to chemicals that have applications for peaceful purposes but could also be used to produce chemical weapons.

Setting regional priorities for international cooperation

- 3.20 In this session, the Secretariat suggested the following areas of cooperation as relevant to the region:

- (a) OPCW Associate Programme;
- (b) Conference support programme for scientists and technologists
- (c) Internship support programme
- (d) Equipment transfer programme
- (e) Technical capacity building for national laboratories
- (f) Information service which is very useful in requesting responses on any questions related to chemicals
- (g) Research projects in areas relevant to the Convention
- (h) National Authority basic and advanced courses
- (i) Declaration support
- (j) Handbook on Chemicals, which will be regularly updated.

- 3.21 The Secretariat suggested that States Parties in the SADC region may wish to consider an integrated approach in their legislation in order to implement uniform controls pertaining to Convention across SADC borders.

- 3.22 The representative of Zimbabwe suggested that interaction and communication between delegations present at the workshop be maintained in order to facilitate a common approach to controls in the region. The Secretariat indicated that a list of names and contact details of participants at this workshop would be made available. Any other special questions or requests or proposals for assistance could be forwarded to the Secretariat, once consultations have been conducted in the respective capitals.

4. Requests by States Parties

- 4.1 The OPCW's international cooperation programmes are under constant assessment for their relevance and efficiency, and participants were requested to forward their proposals to the Secretariat.

- 4.2 In their presentations, and in discussions, participants called for:
- (a) greater general assistance to non-possessor States Parties, in particular those in Africa, so that they may understand better the requirements of the Convention;
 - (b) intensified ways in which to involve non-possessor States Parties in the work of the OPCW;
 - (c) more assistance with the preparation of declarations;
 - (d) ways to help States Parties in the region evaluate shortcomings in their implementing legislation;
 - (e) greater assistance from the Secretariat with how to deal with dual-use chemicals;
 - (f) refinement on how the exchange of technology projects are implemented;
 - (g) assistance with refining customs procedures in general, and in particular those procedures within States Parties that are a members of customs unions or free trade zones;
 - (h) assistance with examining the possibilities for States Parties in the SADC region to use the integrated approach in their legislation in order to implement uniform controls pertaining to Convention across SADC borders.

5. Conclusion

- 5.1 The workshop was fruitful with regard to providing insight into the problems currently being encountered by States Parties in the SADC region. It was agreed by participants that cooperation on Convention matters in the region is essential and should be facilitated by the OPCW in order to speed up the establishment of relevant and efficient National Authorities, early adoption of implementing legislation, and overall implementation of the Convention in the region.
- 5.2 Further assistance to the region is needed as requested in paragraph 4 of this report.

6. Recommendations

- 6.1 The Secretariat should continue to encourage greater communication between the National Authorities/future National Authorities of States Parties in the SADC region, particularly with respect to sharing experiences to ensure a common approach to legislative controls in the region.
- 6.2 The Secretariat should plan further workshops and seminars, as requested, for the region.
- 6.3 The Secretariat should respond urgently and adequately to requests either by individual States Parties, or by the region, for assistance in the preparation of implementing legislation. Bilateral assistance should also be encouraged.

Annex 1**List of Participants of the Regional Workshop on Implementing Legislation and International Cooperation Issues, Mbabane, Swaziland, 28 - 30 November 2000**

Country	Name of Participant
Botswana	Mr Tjatang Kebobone Moloi Mr Mothusi Palai
Lesotho	Ms Moliehi Khabele Ms Matsepo E. Molise-Ramakoa
Madagascar	Ms Lalaina Rakotoarisoa Mr Gamaliell Rakotomalala
Malawi	Mr Rodrick Rabson Kamwana Chimowa Ms Gertrude Lynn Hiwa
Mauritius	Mr Shaheed Bhaukaurally Mr Tridevnath Purmanan
Namibia	Ms Ellaine Samson Ms Sophia Nangombe Mr Samuel R. Philander Mr Edwin Coetzee
South Africa	Ms Tracey Leah Laban Ms Melanie Reddiar
Swaziland	Ms Doris Vilakazi Mr Morrison Mbuli Mr Jameson D. Vilakati Ms Gcinaphi Mndzebele Mr Mboni Dlamini Mr Cyprian Nhlengethwa Mr Stephen Magagula Ms Lucy Mathato Tlaleng Dlamini Mr Victor S.B. Mtetwa H.H. Hlangusemphi Dlamini Ms Lydia S. Dlamini Mr Mahikisana Moses Fakudze Mr Sonias Dludlu Ms Futhi Helen Mdluli Ms Edmund Dlamini Mr Simeon Saskie Dlamini Mr Sense Nhlanhla Dlamini Mr Shiyumhlaba Nicholas Dlamini Mr Sotja Dlamini
Zambia	Ms Anne Mwewa Sitali
Zimbabwe	Mr Alois Makwembere Ms Jennifer Tanyanyiwa