

REPUBLIC OF KIRIBATI

(No 2 of 2006)

I assent,

Anito Tong
Beretiteriti
20 July, 2006

**AN ACT TO GIVE EFFECT TO THE PROVISIONS OF THE
CHEMICAL WEAPONS CONVENTION, AND FOR RELATED MATTERS**

Commencement:
2006

MADE by the Maneaba ni Maungatabu and assented to by the Beretiteriti

PART I—PRELIMINARY

1. Short title

This Act may be cited as the *Chemical Weapons (Prohibition) Act 2005*.

2. Purpose

- (1) The purpose of this Act is to implement the obligations of Kiribati under the Convention.
- (2) Every person exercising a power or discretion conferred under this Act must have regard to the obligations of Kiribati under the Convention, and the exercise of the power or discretion or the performance of any duty or function authorised by this Act must not be inconsistent with such obligations.

3. Interpretation

- (1) In this Act, unless the context otherwise requires—

‘Annex on Chemicals’ means the the Annex to the Convention on Chemicals;

‘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);

'citizen of Kiribati' includes a person of Kiribati descent;

'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 (a copy of the English text of which is set out in the Schedule to this Act), and includes the Annexes to the Convention and any amendments to, or substitutions of, that Convention or the Annexes that are, or will become, binding on the Republic from time to time;

'international inspector' means an individual designated by the OPCW Technical Secretariat according to the procedures as set forth in Part II, Section A, of the Verification Annex, to carry out an inspection or visit in accordance with the Convention, and includes any inspection assistant as defined in the Convention;

'Kiribati aircraft' means any aircraft that is registered or required to be registered in Kiribati under the *Civil Aviation Act 2004*, or regulations or rules made under that Act;

'Kiribati ship' means any ship that is registered or required to be registered in Kiribati under the *Merchant Shipping Act 1983*, or regulations or rules made under that Act;

'Minister' means the Minister responsible for foreign affairs;

'OPCW' means the Organization for the Prohibition of Chemical Weapons, established pursuant to Article VIII of the Convention;

'purposes not prohibited under the Convention' means—

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

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

'Secretary' means the Secretary of the Ministry responsible for foreign affairs;

'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;

'Verification Annex' means the Annex to the Convention on Implementation and Verification.

- (2) Terms and expressions used and not defined in this Act but defined in the Convention shall, unless the context otherwise requires, have the same meaning as in the Convention.

4. Act binds the Republic

This Act binds the Republic.

PART II—OFFENCES

5. Chemical weapons

Any person who, intentionally or recklessly,—

- (a) develops, produces, otherwise acquires, stockpiles, or retains chemical weapons; or
- (b) transfers, directly or indirectly, chemical weapons to another person; or
- (c) uses chemical weapons; or
- (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 a State Party under the Convention,

commits an offence and is liable upon conviction to imprisonment for life or a fine of \$1,000,000.

6. Forfeiture and seizure

If any chemical weapon is developed, produced, otherwise acquired, stockpiled, retained or transferred in contravention of section 5, the weapon—

- (a) is forfeited to the Republic; and
- (b) any Police officer may, without a warrant, seize such chemical weapon that is forfeited, or that he or she has reasonable grounds to believe to be forfeited to the Republic under subsection (1); and
- (c) the weapon seized shall be stored pending disposal, and disposed of, as the Minister thinks fit.

7. Riot control agents

Any person who intentionally or recklessly uses riot control agents as a method of warfare commits an offence and is liable upon conviction to imprisonment for life or a fine of \$1,000,000.

8. Schedule 1 toxic chemicals and precursors

- (1) Any person who intentionally or recklessly produces, acquires, retains, or uses any toxic chemical or precursor listed in Schedule 1 of the Annex on Chemicals without the consent of the Secretary commits an offence and is liable upon conviction to imprisonment for one year or a fine of \$100,000.
- (2) In determining whether or not to give consent, the Secretary shall be guided by the provisions of Part VI of the Verification Annex.

9. Imports and exports of toxic chemicals and precursors

- (1) Except with the consent of the Secretary, the importation into Kiribati, and the exportation from Kiribati, of any toxic chemical or precursor listed in Schedules 1, 2, and 3 of the Annex on Chemicals is hereby prohibited.
- (2) In determining whether or not to give consent, the Secretary shall be guided by the restrictions on transfer set out in Parts VI, VII and VIII of the Verification Annex.
- (3) Any person who imports or exports any chemical or precursor in contravention of subsection (1) commits an offence and is liable upon conviction to imprisonment for one year or a fine of \$100,000.

PART III—INFORMATION AND DOCUMENTS

10. Purpose of this Part

- (1) The purpose of this Part is to ensure—
 - (a) that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred or used for purposes not prohibited under the Convention; and
 - (b) that the Secretary has knowledge of dealings with chemicals that facilitates the making of periodic declarations by Kiribati under the Convention; and
 - (c) that Kiribati is otherwise able to fulfil its obligations under the Convention.
- (2) Any power under this Part may be exercised only for that purpose.

11. Supply of information

- (1) Any person who produces, acquires, retains, transfers or uses toxic chemicals or their precursors to which any provision of Parts VI, VII, VIII and IX of the Verification Annex applies must—
 - (a) notify the chemicals and, as the case may be, the facility to the Minister as soon as practicable after this section commences to apply to the chemicals or facility, by giving written notice in a form approved by the Secretary, containing such information as is required by the form;
 - (b) keep records in relation to the chemicals and the facility, and the purpose to which the chemicals are put; and
 - (c) prepare, from those records, periodic reports relating to the chemicals and the facility in a form approved by the Secretary; and
 - (d) send those periodic reports to the Secretary at intervals specified by the Minister or by regulation.
- (2) The records and reports under paragraphs (b), (c) and (d) of subsection (1) must be sufficient to satisfy the Minister that the Convention and the provisions of this Act and any regulations made under this Act are being complied with.
- (3) Any person who refuses or fails, without reasonable excuse, to comply with subsection (1) of this section commits an offence and is liable upon conviction to imprisonment for one year or a fine of \$100,000.

12. Secretary may seek information

- (1) This section applies if the Secretary considers that any person is capable of giving information that is relevant to—
 - (a) a declaration required to be given by Kiribati to the OPCW under the Convention; or
 - (b) the implementation of the Convention or the enforcement of this Act.
- (2) The Secretary may, by written notice given to a person, require the person to give such information to the Secretary,—
 - (a) if the person is a natural person, by writing signed by the person; or

(b) if the person is a body corporate, by writing signed by an officer authorised to sign on behalf of the body corporate,

within such reasonable period and in such manner as is specified in the notice.

- (3) The Secretary may, by written notice given to a person, require the person to give to the Secretary particular documents, or documents of a particular kind, specified in the notice, within such reasonable period as is specified in the notice.
- (4) Any person who, without reasonable excuse, fails to comply with a notice under this section to the extent that the person is capable of complying with it commits an offence and is liable upon conviction to imprisonment for one year or a fine of \$100,000.
- (5) The power of the Secretary under this section to require a person to give information or documents to the Secretary is in addition to any obligation to give information or documents that the person may have under section 11.

13. False or misleading statements and documents

Any person who, in any document prepared pursuant to this Part, makes a statement or omits any matter knowing that, or being reckless as to whether, the statement or omission makes the document false or misleading in a material particular commits an offence and is liable upon conviction to imprisonment for one year or a fine of \$100,000.

PART IV—INSPECTIONS

DIVISION 1—PURPOSE

14. Purpose of this Part

The purpose of this Part is to facilitate inspections under the Convention by—

- (a) confirming the right of international inspectors to inspect facilities and other places in Kiribati in accordance with the Convention and any facility agreement;
- (b) enabling Kiribati officers to secure access for any international inspector where consent cannot be obtained; and
- (c) enabling Kiribati officers to accompany or assist any international inspector.

DIVISION 2—ACCESS BY INTERNATIONAL INSPECTORS

15. Verification of toxic chemicals and their precursors

All toxic chemicals and their precursors listed in Schedules 1, 2, and 3 of the Annex on Chemicals, facilities related to such chemicals, and other facilities and places as specified in the Verification Annex, are hereby declared to be subject to verification measures as provided in the Convention.

16. Inspections

Every person must permit an international inspector to—

- (a) enter any place in Kiribati—
 - (i) in respect of which any provision of Parts VI, VII, VIII and IX of the Verification Annex applies; or

- (ii) that is subject to an on-site challenge inspection referred to in paragraph 8 of Article IX of the Convention; or
 - (iii) in respect of which an investigation under paragraph 9 of Article X of the Convention has been initiated; and
- (b) inspect the place pursuant to the Convention and, in the case of any facility, any applicable facility agreement; and
 - (c) exercise, in connection with the inspection, any function contemplated, and exercise any power provided for, in the Convention and, in the case of any facility, any applicable facility agreement.

17. Persons who may accompany international inspectors

In order to facilitate inspections, an international inspector may be accompanied by—

- (a) an observer for the purposes of giving effect to paragraph 12 of Article IX of the Convention;
- (b) any person appointed by the Minister under section 19; and
- (c) any Police officer.

DIVISION 3—DIRECTIONS

18. Ministerial directions

- (1) The Minister may, by notice in writing, issue directions to any person for the purpose of facilitating any inspection under the Convention.
- (2) Any person who wilfully fails to comply with any direction given by the Minister under this section commits an offence and is liable upon conviction to a fine of \$100,000.

DIVISION 4—KIRIBATI ASSISTANCE WITH INSPECTIONS

19. Appointment of Kiribati officials

The Minister may appoint any person to accompany or assist any international inspector.

20. Identification certificates

The Minister may issue a certificate identifying any international inspector or other person authorised to accompany or assist any international inspector.

DIVISION 5—ENFORCEMENT

21. Search warrants

- (1) Any Police officer, or other person appointed under section 19, may apply for a search warrant where the consent of the person who is in control of any place cannot be obtained.
- (2) Subject to subsection (3), a magistrate, who is satisfied that there are reasonable grounds for believing that—
 - (a) a place referred to in section 16 meets the conditions for entry described in that section; and

- (b) entry to the place is necessary for the purpose of exercising any function contemplated, or any power provided for, in this Act, the Convention or any applicable facility agreement; and
 - (c) the consent of the person who is in control of the place cannot be obtained, may issue, unconditionally or subject to conditions, a warrant authorising the entry of the place, at any time within 14 days of the issue of the warrant (or within such further time as may be specified in the warrant) by the international inspector (and any person authorised to accompany the international inspector), for the purpose of exercising any function contemplated, or any power provided for, in this Act, the Convention or any applicable facility agreement.
- (3) The person applying for a warrant under subsection (2)—
- (a) must first make reasonable inquiries as to whether any other applications for such a warrant have been made in respect of the place concerned, and (if so) the following matters—
 - (i) the offence or offences (if any) alleged in respect of each application; and
 - (ii) the results of each application; and
 - (b) must disclose on the application for the warrant the results of the inquiries.

22. Use of force

If force is required to enter and inspect any place specified in a warrant (whether by breaking down a door or otherwise), or in breaking open anything in the place, a Police officer, or other person appointed under section 19, who accompanies an international inspector may use such force as is reasonable in the circumstances.

23. Obligations of persons accompanying international inspectors

~~Every Police officer, or other person appointed under section 19, who accompanies an international inspector on any inspection—~~

- (a) must carry his or her identification certificate; and
- (b) must produce it to any person appearing to be in charge of the place entered—
 - (i) on entering the place (if such a person is then present); and
 - (ii) at any reasonable time thereafter, if asked to do so by the person; and
- (c) if there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspection concerned has been completed, must, as soon as is practicable after completing the inspection, give an occupier or person in charge of the place a written notice stating that the place has been entered, and specifying the following matters—
 - (i) the time and date of entry;
 - (ii) the circumstances and purpose of entry;
 - (iii) the name of every person entering; and
- (d) must have any warrant with him or her and produce it if required to do so; and
- (e) where any thing is seized, must give an occupier or person in charge of the place a written inventory of all things so seized; and
- (f) must report any offence or suspected offence to the Police as soon as possible.

24. **Obstruction of international inspectors**

- (1) Any person who wilfully obstructs, hinders, resists, or deceives any international inspector who is exercising in Kiribati any function contemplated, or any power provided for, in the Convention commits an offence and is liable upon conviction to imprisonment for one year or a fine of \$100,000,
- (2) Nothing in this section applies to a refusal to give consent to entry by an international inspector who is not acting pursuant to a search warrant.

PART V—MISCELLANEOUS

25. Jurisdiction

Proceedings may be brought for an offence under this Act whether or not the act or omission constituting the offence is committed in or outside Kiribati, if the act or omission—

- (a) is committed by a citizen of Kiribati or a citizen of any country who is ordinarily resident in Kiribati; or
- (b) is committed by a person who is, after the commission of the offence, present in Kiribati; or
- (c) is intended to be committed in the Republic; or
- (d) originates in or transits the Republic.

26. Consent of Attorney-General required where offence committed outside Kiribati

- (1) Proceedings for any offence under this Act, for which jurisdiction is claimed for an offence committed outside Kiribati, may only be instituted with the consent of the Attorney-General.
- (2) Subsection (1) does not prevent the arrest, or the issue of a warrant for the arrest, of any person for any offence, or the remanding in custody or on bail of any person charged with any offence.

27. Liability of a body corporate

- (1) This Act applies to a body corporate in the same way as it applies to an individual and a body corporate may be found guilty of any of the offences set out in this Act, in addition to the liability of any person for the same offence.
- (2) For an offence under this Act, the conduct or state of mind of an employee, agent or officer of a body corporate is taken to be attributed to the body corporate if that person is acting—
 - (a) within the scope of the person's employment; or
 - (b) within the scope of the person's actual or apparent authority; or
 - (c) with the consent or agreement (express or implied) of a director, servant or agent of the body corporate, and giving that consent is within the actual or apparent authority of the director, servant or agent.
- (3) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose, and the person's reasons for that intention, opinion, belief or purpose.

28. Confidentiality

- (1) Every person must keep confidential any information that is given pursuant to this Act or the Convention concerning the affairs of another person.
- (2) Such information may be disclosed only with the consent of the person to whose affairs it relates or for the purpose of—
 - (a) enabling Kiribati to fulfil its obligations under the Convention; or
 - (b) the enforcement of this Act; or
 - (c) dealing with an emergency involving public safety.
- (3) Any person who contravenes this section commits an offence and is liable upon conviction to imprisonment for one year or a fine of \$100,000.

29. Self-incrimination

- (1) A person is not excused from answering a question or giving any information or document under this Act or the Convention on the ground that to do so may incriminate or tend to incriminate that person.
- (2) A self-incriminating statement made or given under this Act or the Convention is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that statement.

30. Regulations and amendment of the Schedule

- (1) The Minister, acting in accordance with the advice of the Cabinet, may from time to time 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 Kiribati and the OPCW pursuant to the Convention;
 - (b) prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines not exceeding \$5,000, that may, upon 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 Minister, acting in accordance with the advice of the Cabinet, may from time to time, by notice published in the *Gazette*,—
 - (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.
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SCHEDULE

**CONVENTION ON THE PROHIBITION OF THE
DEVELOPMENT, PRODUCTION, STOCKPILING
AND USE OF CHEMICAL WEAPONS
AND ON THEIR DESTRUCTION**

Version incorporating:

1. the correction of errors, in accordance with Depositary Notification C.N.246.1994.TREATIES-5 issued on 31 August 1994; and
2. the change made under Article XV of the Convention (new paragraph *5bis* of Section B of Part VI of the Verification Annex), in accordance with:
 - a. the change to Section B of Part VI of the Verification Annex, effective 31 October 1999, pursuant to Depositary Notification C.N.916.1999.TREATIES-7 issued on 8 October 1999; together with
 - b. the correction to the change to Section B of Part VI of the Verification Annex, effective 9 March 2000, pursuant to Depositary Notification C.N.157.2000.TREATIES-1 issued on 13 March 2000.

CHEMICAL WEAPONS (PROHIBITION) ACT 2006

EXPLANATORY MEMORANDUM

The *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction* (the Chemical Weapons Convention), which entered into force in April 1997, is an international treaty that bans the use of chemical weapons and aims to eliminate chemical weapons, everywhere in the world, forever. Kiribati acceded to the Convention on 7 September 2000.

This Act, which is based on model legislation developed for the Pacific under the auspices of the Organisation for the Prohibition of Chemical Weapons (OPCW), endeavours to meet Kiribati's obligations under the Convention by incorporating the relevant provisions of the Convention into domestic law.

The Act is divided into five Parts, the first of which deals with preliminary matters, including definitions. Terms and expressions defined in the Convention and used in the Act have the same meaning.

Part II provides for activities prohibited by the Convention to be criminal acts under Kiribati law. Commission of the most serious offences will attract stiff penalties. Chemical weapons can be seized without a warrant and are automatically forfeited to the Republic. The import and export of certain toxic chemicals and their precursors without permission, is prohibited.

Part III establishes a régime for the provision of information concerning all dealings with Scheduled chemicals to the Secretary for Foreign Affairs, who is responsible for making annual declarations on such matters to the OPCW. The making of false or misleading statements, by those providing information to the Secretary is prohibited.


A key component of the Convention concerns inspection and verification, to ensure compliance. Part IV of the Act includes various measures to facilitate such measures. Inspectors from the Technical Secretariat of the OPCW have the right to inspect certain facilities in Kiribati, in accordance with the Convention. The Minister can give directions, with which the recipient must comply. The Minister can also appoint persons to accompany or assist the inspectors. Search warrants can be obtained where necessary, and a reasonable use of force is permitted to gain access to any place the subject of a warrant. Anyone who obstructs an inspector commits an offence.

Part V sets out some general provisions to give effect to the legislation. A broad jurisdiction to prosecute is provided for, although in certain circumstances the Attorney-General must expressly consent to a prosecution. A body corporate can be guilty of an offence in the same way as an individual. Strict confidentiality must be maintained, and a failure to do so can lead to prosecution. There are limitations on the use to which incriminating statements can be put. Finally, there is a general regulation-making power and the Minister will have the power to amend the Schedule, to ensure that any future changes to the Convention can be incorporated.

Titabu Tabane
Attorney-General
April 2005

**CERTIFICATE OF THE CLERK OF THE MANEABA NI
MAUNGATABU**

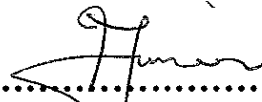
This printed impression of the Chemical Weapons (Prohibition) Act 2006 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 8th June 2006 and is found by me to be a true and correctly printed copy of the said Bill.



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Ioataake Timeon
Clerk of the Maneaba ni Maungatabu

**Published by exhibition at the Maneaba ni Maungatabu this
day of²⁵ July..... 2006.**



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Clerk of the Maneaba ni Maungatabu