



LESOTHO Government Gazette EXTRAORDINARY

Vol. L

Thursday - 9th June, 2005

No. 62

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Published by the Authority of His Majesty the King

Price: M68.00

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CHEMICAL WEAPONS ACT 2005

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CHEMICAL WEAPONS ACT 2005

An Act to make provision for giving effect to certain obligations that the Kingdom of Lesotho has as a party to the Convention on the Prohibition of the Development, Production, Stock Piling, and Use of Chemical Weapons and their Destruction; and for related matters.

ENACTED BY THE PARLIAMENT OF LESOTHO

Short title and commencement

1. This Act may be cited as the Chemical Weapons Act 2005 and shall come into operation on the date of its publication in the Gazette.

Interpretation

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

“**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);

“**Convention**” means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed in Paris, France on the 13th January 1993, and ratified by Lesotho on the 7th December

1994, as amended from time to time pursuant to Article XV of that Convention;

"Minister" means the Minister responsible for defence and national security;

"Organisation" means the Organisation for the Prohibition of Chemical Weapons established by the State Parties who are signatory to the Convention;

"National Authority" means the National Authority of Lesotho on Defence in relation to Chemical Weapons designated as such under section 4.

(2) All other words and expressions used have the same meaning as in the Convention.

Application

3. (1) Unless otherwise stated in this Act or elsewhere in another law, the Convention as set out in the Schedule, shall be of the same force and effect as if it had been specifically incorporated herein.

(2) This Act applies to acts done or omitted to be done by a citizen of Lesotho inside or outside Lesotho and to acts done on board of Lesotho aircrafts.

National Authority

4. For the purpose of implementing Lesotho's obligations under the Convention and of giving effect to paragraph 4 of Article VII of the Convention, the Minister may designate a Department, Organ or Unit of the security establishments of Lesotho to be the National Authority of Lesotho on Defence in relation to Chemical Weapons.

Chemical weapons and riot control agents

5. No person shall -

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

Toxic chemicals and precursors

6. Except as authorised by the National Authority, no person shall -
- (a) produce, use, acquire, or process a toxic chemical or precursor listed in Schedule 1 set out in the Annex on Chemicals in the Convention;
 - (b) export or import a toxic chemical or precursor listed in Schedules 1, 2 and 3 set out in the Annex on Chemicals in the Convention.

Information and documents

7. A person who -
- (a) does anything under an authorisation referred to in section 6;
 - (b) produces, possesses, insures, exports, or imports a toxic chemical or precursor listed in Schedule 2 of the Schedules of Chemicals set out in the Annex on Chemicals in the Convention;
 - (c) produces, exports or imports a toxic chemical or precursor listed in Schedule 3 of the Schedules of Chemicals set out in the Annex on Chemicals listed in the Convention;

- (d) produces a discrete organic chemical; or
 - (e) holds a riot control agent for riot control purposes,
- shall –

- (i) provide the prescribed information, at the prescribed time and in the prescribed form, to the National Authority or to such other Ministry or Department as the Minister may, by notice published in the Gazette, authorize to collect the information; and
- (ii) keep and maintain the prescribed documents in Lesotho, at the person's place of business or at such other place as may be designated by the Minister, in the prescribed period and, on request by the Minister, or the National Authority, provide the documents to the National Authority.

Inspection

8. (1) Subject to this Act, an inspector designated as such under the Convention may, at a reasonable time and consistent with the provisions of the Convention-

- (a) enter a place in Lesotho -
 - (i) in respect of which information has been provided under section 7;
 - (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;
- (b) inspect the place in a manner consistent with the provisions of the Convention and a facility applicable to the place; and
- (c) where appropriate, install, use and maintain in respect of the place monitoring instruments, systems and seals in a

manner consistent with the provisions of the Convention and facility agreement applicable to the place.

(2) While carrying out an inspection, an international inspector may be accompanied by an observer for the purposes of giving effect to paragraph 12 of Article IX of the Convention.

(3) A representative of the National Authority or an international inspector may not enter a place referred to in subsection (1) without the consent of the proprietor except under the authority of a warrant issued under subsection (4).

(4) Where, on ex-parte application a Judge of the High Court is satisfied by information on oath that -

- (a) a place referred to in subsection (1) meets the conditions for entry set out in this section;
- (b) entry to the place is necessary for a purpose relating to the administration of this Act or the regulations made thereunder;
- (c) entry to the place has been refused or there are reasonable grounds to believe that entry will be refused,

the Judge may issue an order authorizing the representative of the National Authority and the international inspector named in it to enter the place for the purpose of the inspection, subject to such conditions as may be specified in the order.

(5) An order authorizing entry into a place is not required if the conditions for obtaining the order exist but, by reason of exigent circumstances, it would not be practicable to obtain the order.

(6) In executing an order issued under subsection (4) a representative of the National Authority or an international inspector shall not use force unless the representative or inspector is accompanied by a police officer and use of force is specifically authorized in the order.

Toleration and support for inspectors

9. (1) The proprietor of locations or premises under an authorization referred to in section 6 shall tolerate inspections conducted pursuant to Article V of the Convention within the scope of the inspection mandate and shall support the inspections.

(2) The proprietor of locations or premises of any kind shall tolerate inspections conducted pursuant to Article IX of the Convention and investigations carried out pursuant to Article X of the Convention within the scope of the inspection mandate and shall support the inspections and investigations.

(3) A person referred to in subsection (1) or (2) shall meet the expenses arising from the conduct of inspection or investigations unless such expenses are refunded by the Organisation in accordance with the provisions of the Convention or an agreement entered into between the person and the Organisation.

(4) An application for refund of expenses referred to in subsection (3) shall be filed with the National Authority which shall consider the application and submit it to the Organisation.

(5) While an international inspector is conducting an inspection under this Act, no person shall -

- (a) knowingly, make a false or misleading statement to the inspector or to any representative of the National Authority accompanying the inspector in relation to the place or thing being inspected; or
- (b) wilfully, obstruct the inspection, by an act or omission.

Confidentiality

10. (1) Subject to subsection (2), information and documents obtained pursuant to this Act or the Convention are privileged.

(2) Information and documents are not privileged to the extent that they are required to be disclosed or communicated for the purposes of an emergency involving public safety.

(3) No person in possession of privileged information or documents shall knowingly, without the written consent of the person from whom they were obtained, communicate them or allow them to be communicated to a person, or allow a person to have access to them except-

- (a) for the purpose of enforcement of this Act or giving effect to the Convention; or
- (b) pursuant to an obligation of the Kingdom of Lesotho under the Convention.

(4) Notwithstanding any other law, a person shall not be required, in connection with any legal proceedings, to produce a statement or other record containing privileged information or documents or to give evidence relating to them, unless the proceedings relate to the enforcement of this Act.

Privileges and immunities

11. A person who, according to the Convention, is entitled to receive immunity and privileges shall, without hindrance of the laws of the Kingdom of Lesotho, receive immunity and privileges in accordance with the provisions of the Convention.

Lesotho not liable for acts, omissions of Organisation etc

12. (1) Nothing in this Act shall render the Government of the Kingdom of Lesotho liable for an act or omission on the part of the Organisation, or of an Organisation inspector, in implementing the Convention in the name of the Kingdom of Lesotho.

(2) The Ministry of Foreign Affairs shall be entrusted with the representation of the Kingdom of Lesotho to the Organisation in the Hague, Netherlands.

Seizure and forfeiture

13. (1) The Minister may seize or cause to be seized –
- (a) controlled goods for which a license pursuant to regulations made under section 15 is needed, but in respect of which no application for a license has been received by the National Authority;
 - (b) controlled goods which do not comply with the conditions of a license pursuant to regulations made under section 15;
 - (c) controlled goods prohibited under section 5 or 6; or
 - (d) a book, document, data or thing which may afford evidence of an offence in terms of this Act, and to remove from the premises concerned the controlled goods, books, documents, data, or things, or any quantity thereof, or if he or she considers it necessary to leave it there, to affix an identification mark or seal which is considered necessary on such goods, books, documents, data or things or the container thereof.
- (2) Pending a decision regarding the disposal of controlled goods under this section, the Minister may remove or cause to be moved such goods, books, documents, data or things seized under subsection (1) to a place of safekeeping.
- (3) The Minister shall furnish the owner or person in control of, or who has in his or her custody, anything seized in terms of subsection (1), with a receipt.
- (4) Where a person has been convicted of an offence under this Act, anything seized by means or in respect of which the offence was committed shall be forfeited to the Government of the Kingdom of Lesotho and shall be disposed of in accordance with the Criminal Procedure and Evidence Act, 1981¹.

Penalties

14. (1) A person who contravenes a provision of this Act commits an offence and is liable on conviction to a fine not less than M50,000 or to imprisonment for a period not less than 5 years, or both.

(2) Where an offence under this Act is committed on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

(3) A person who commits, outside Lesotho, an act or omission that would, if committed inside Lesotho, be an offence under this Act, shall be deemed to have committed that act or omission in Lesotho.

Regulations

15. (1) The Minister may make regulations for carrying out and giving effect to the provisions of this Act and the Convention.

(2) Without limiting the generality of subsection (1) the regulations may –

- (a) prescribe conditions under which activities referred to in section 6 may be carried on, providing for the issue, suspension and cancellation of licences governing the carrying on of the activity and prescribing the fees or the manner of calculating the fees to be paid in respect of the license;
- (b) provide for the procedures to be followed by representatives of the National Authority in exercising their functions under this Act; and
- (c) provide anything that by this Act is to be prescribed.

NOTE