



**PROHIBITION OF THE DEVELOPMENT, PRODUCTION,  
STOCKPILING AND USE OF CHEMICAL WEAPONS AND THEIR  
DESTRUCTION ACT 2007**

**Act No. 289**

**Arrangement**

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An Act to Implement the Convention on the Prohibition of the Development,  
Production, Stockpiling and Use of Chemical Weapons and on Their  
Destruction 1993 (CWC)

**1 Short title**

This Act may be cited as the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction Act 2007.

**2 Interpretation**

“Chemical weapon” for the purposes of this Act 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 subparagraph (1) (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 subparagraph (1) (b).

“Convention” means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction 1993.

“OPCW” means the Organization for the Prohibition of Chemical Weapons.

“Precursor” for the purposes of this Act means-

- a) Any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.
- b) Precursors which have been identified for the application of verification measures by the OPCW are listed in the Schedules contained in the Annex on Chemicals to this Act.

“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.

“Toxic chemical” for the purposes of this Act means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals.

- a) The definition in paragraph (2) includes all such chemicals therein, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.
- b) Toxic chemicals which have been identified for the application of verification measures by the OPCW are listed in the Schedules contained in the Annex on Chemicals to this Act.

(1) 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.

### **3 General prohibitions**

(1) Every person commits an offence who-

- (a) develops, produces, otherwise acquires, stockpiles or retains a chemical weapon;
- (b) transfers, directly or indirectly, a chemical weapon to any other person;
- (c) uses a chemical weapon;
- (d) engages in any military preparations to use a chemical weapon;
- (e) assists, encourages or induces, in any way, a person to engage in any activity prohibited to a State Party under the Convention;
- (f) uses a riot control agent as a method of warfare;
- (g) engages in any other activity prohibited to a State Party under the Convention

and shall be punished upon conviction by imprisonment for a term not exceeding 10 years or a fine not exceeding 1000 penalty units or both.

(2) If any chemical weapon is developed, produced, otherwise acquired, stockpiled, retained, or transferred in contravention of this provision, the weapon-

- (a) is to be forfeited to the Crown; and
- (b) may be seized without warrant by any officer of the Police; and
- (c) shall be stored pending disposal, and disposed of, as Cabinet of Ministers sees fit.

### **4 Schedule 1 Chemical prohibitions**

Every person commits an offence who-

- (a) produces, acquires, retains or uses Schedule 1 chemicals outside the territory of Niue unless such production, acquisition, retention or use takes place within the territory of another State Party;
- (b) produces, acquires, retains, transfers or uses Schedule 1 chemicals unless fully licensed by the Cabinet of Ministers under the licensing scheme for Schedule 1 chemicals;
- (c) transfers Schedule 1 chemicals outside the territory of Niue to a State not Party to the Convention;
- (d) transfers Schedule 1 chemicals to another State Party without notifying the licensing authority which is the Cabinet of Ministers not less than 60 days before the transfer, except as follows:
  - (i) Notification of the transfer of sax toxin shall be made not less than 24 hours before the time of transfer, subparagraph (d) notwithstanding, if the transfer is for medical/diagnostic purposes and the quantity is 5 milligrams or less.

(e) retransfers to a third State Schedule 1 chemicals transferred to Niue; and shall be punished upon conviction by imprisonment for a term not exceeding 14 years and or a fine not exceeding 1000 penalty units.

## **5 Schedule 2 chemical prohibitions**

(1) Every person commits an offence who transfers to or receives from a State not Party to the Convention Schedule 2 chemicals, or products containing such chemicals, except as stipulated below. He shall be punished upon conviction by imprisonment for a term not exceeding 14 years and or a fine not exceeding 1000 penalty units.

(2) Paragraph (1) shall not apply to those products containing Schedule 2 chemicals in which:

- (a) the product contains one percent or less of a Schedule 2A or 2A\* chemical;
- (b) the product contains 10 percent or less of a schedule 2 B chemical;
- (c) the product is identified as a consumer good packaged for retail sale for personal use or packaged for individual use.

## **6 Schedule 3 chemical restrictions**

(1) Every person commits an offence who transfers to a State not Party to the Convention Schedule 3 chemicals, or mixtures containing such chemicals in excess of 30 percent in weight, without first receiving an end-user certificate from the competent government authority of that State. He shall be punished upon conviction by imprisonment for a term not exceeding 14 years and or a fine not exceeding 1000 penalty units.

(2) An end-user certificate shall contain, at a minimum-

- (a) a statement that the Schedule 3 chemicals will only be used for purposes not prohibited under the Convention
- (b) a statement that the Schedule 3 chemicals will not be re-transferred
- (c) the types and quantities of the Schedule 3 chemicals to be transferred
- (d) the end-use(s) of the Schedule 3 chemicals to be transferred
- (e) the name(s) and address(es) of the Schedule 3 chemical end-user(s).

(3) With regard to subparagraphs (2) (d) – (e), in the event that the Schedule 3 chemical transfer is to an importer in a State not Party to the Convention, and such importer is not the actual end-user, the importer shall be obliged to specify the name(s) and address(es) of the end-user(s) for the purposes of paragraphs (1) and (2).

## **7 Extraterritorial application**

(1) This Act shall extend-

- (a) to acts or omissions prohibited under the Convention, which are committed by a Niuean national or permanent resident of Niue, who is outside the jurisdiction of Niue

(2) to acts or omissions prohibited under the Convention, which are committed on board Niuean sea vessels and aircraft. For the purposes of subparagraph (1) (b), “Niuean sea vessels and aircraft” shall mean sea vessels and aircraft registered in Niue or belonging to, or in the possession of, Niue.

## **8 Legal assistance**

(1) The Office of the Secretary to Government is the National Authority and is responsible for crime prevention, criminal proceedings, and implementation of the Convention. It may collaborate with other competent State authorities and International organizations and entities, and coordinate their actions to the extent required by the implementation of this Act or of the equivalent foreign statute(s), subject to the other State authorities or international organizations or entities being bound to official secrecy.

(2) The National Authority may request other State authorities and international organizations or entities, under paragraph (1), to provide relevant data or information. The National Authority is authorized to receive data or information concerning-

- (a) the nature, quantity, and utilization of scheduled chemicals or their precursors and related technologies, and the places of consignment and consignees for such scheduled chemicals, precursors, or related technologies, or
- (b) persons taking part in the production, delivery, or brokerage of the scheduled chemicals, precursors or related technologies in subparagraph (a).

(3) If a State has entered into the appropriate reciprocity agreement with Niue, the National Authority, may provide, on their own initiative or on request, the data or information described in paragraph (2) to that State so long as that other competent State authority provides assurances that such data or information shall-

- (a) only be utilized for purposes consistent with this Act; and
- (b) only be used in criminal proceedings on the condition that they are obtained in accordance with those provisions governing international judicial cooperation.

(4) The National Authority may provide the data or information described in paragraph (2) to international organizations or entities if the conditions set forth in paragraph (3) are fulfilled, in which case the requirement for a reciprocity agreement is waived.

## **9 Mandatory reporting**

(1) Purpose of this section.

- (a) The purpose of this section of this Act is to ensure that-
  - (i) toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or

used for purposes not prohibited under the Convention, and

(ii) the National Authority has knowledge of dealings with chemicals that facilitates the making of Niue annual declarations under the Convention to the OPCW, and

(iii) Niue is otherwise able to fulfil its obligations under the Convention.

(b) Any power under this section of this Act may be exercised only for the purpose in subparagraph (1) (a).

(2) Supply of information.

(a) Any person who, as the case may be, develops, produces, otherwise acquires, retains, transfers or uses toxic chemicals or their precursors to which any provision in Parts VI through IX of the Verification Annex of the Convention applies must-

(i) Notify the chemicals and, as the case may be, the facility or plant site to the National Authority within 60 days after this section commences to apply to the chemicals or facility or plant site, by giving written notice in a form approved by the National Authority and issued under the regulations further to this Act, containing such information as is required by the form, and

(ii) Keep records in relation to the chemicals and facility or plant site, and the purpose to which the chemicals are put, and

(iii) Prepared, from those records, annual reports relating to the chemicals and the facility or plant site in a form approved by the National Authority and issued under the regulations issued further to this Act, and

(iv) Send those annual reports to the National Authority at intervals specified in the regulations issued further to this Act.

(b) The records and reports under subparagraphs 2 (a) (i)-(iv) must be sufficient to satisfy the National Authority that the Convention and the provisions of this Act and any regulations made under this Act are being complied with.

(c) Every person commits an offence who refuses or fails to comply with subparagraph 2 (a), and shall be punished upon conviction by imprisonment for a term not exceeding 2 years, and or a fine not exceeding 100 penalty units.

(3) Additional information.

(a) this paragraph applies if the National Authority has reason to believe that any person is capable of giving information that is relevant to-

(i) a declaration required to be given by Niue to the OPCW under the Convention, or

(ii) the implementation of the Convention or enforcement of this Act.

- (b) further to subparagraph (3) (a), the National Authority may require the person to give such information to the National Authority-
    - (i) Within such reasonable period and in such manner as specified in the notice, and
    - (ii) If the person is a natural person, by writing signed by the person, or
    - (iii) If the person is a body corporate, by writing signed by an officer authorized to sign on behalf of the body corporate.
  - (c) The National Authority may, by written notice given to a person, require the person to give to the National Authority particular documents, of a particular kind, specified in the notice, within such reasonable period and as is specified in the notice.
  - (d) Every person commits an offence who refuses or fails to comply with a notice under this section to the extent that the person is capable of complying with it, and shall be punished upon conviction by imprisonment for a term of 2 years and or a fine not exceeding a fine of 100 penalty units.
  - (e) The power of the National Authority under this paragraph to require a person to give information or documents to the National Authority is in addition to any obligation to give information or documents that the person may have under paragraph (2) of this section of this Act.
- (4) False or misleading statements-
- Every person commits an offence who, in any document prepared pursuant to this section of this Act, makes a statement or omits any matter knowing that the statement or omission makes the document false or misleading in a material particular, and shall be punished upon conviction by imprisonment for a term not exceeding 2 years and or a fine not exceeding 100 penalty units.

## **10 Scheduled chemicals licensing**

### **(1) Schedule 1 chemical.**

No person shall produce, acquire, retain, transfer or use Schedule 1 chemicals for a permitted purpose except under and in accordance with the conditions of a license granted by the Cabinet of Ministers pursuant to paragraph (4).

### **(2) Schedules 2 and 3 chemicals and unscheduled discrete organic chemicals.**

#### **(a) No person shall-**

- (i) produce, process or consume more than 1 kilogram of a Schedule 2A\* chemical per year for a purpose not prohibited under the convention or,
- (ii) produce, process or consume more than 100 kilograms of any other Schedule 2A chemical per year for a permitted purpose, or

- (iii) subject to subparagraph (2) (c), produce, process or consume more than 1 tonne of a Schedule 2B chemical per year for a permitted purpose, or
    - (iv) subject to subparagraph (2)(c), produce more than 30 tonnes of a Schedule 3 chemical per year for a permitted purpose,
    - (v) subject to subparagraph (2) (c), produce by synthesis more than 200 tonnes of unscheduled discrete organic chemicals or more than 30 tonnes of an unscheduled discrete organic chemical containing the elements phosphorous, sulfur or fluorine  
except under and in accordance with the conditions of a license granted by the Cabinet pursuant to paragraph (4).
  - (b) A license, granted by Cabinet pursuant to paragraph (4), is required for any person that produced, processed, or consumed a Schedule 2 chemical for a permitted purpose during any of the three calendar years previous to the current year, above the following thresholds per year-
    - (i) 1 kilogram of a Schedule 2A\* chemical
    - (ii) 100 kilograms of any other Schedule 2A chemical
    - (iii) 1 tonne of a Schedule 2B chemical.
  - (c) A license is not required for, the production, processing or consumption of mixtures of chemicals containing 30% or less of a Schedule 2B chemical or the production of chemicals 30 per cent or less of a schedule 3 chemical or an unscheduled discrete organic chemical.
- (3) Imports and exports of Schedules 2 and 3 chemicals. No person shall import or export a Schedule 2 chemical or Schedule 3 chemical except under and in accordance with the conditions of a license granted by Cabinet pursuant to paragraph (4).
- (4) Licensing
- (a) An application for a license to do any of the acts referred to in paragraph (1) to (3) shall be made to the Cabinet of Ministers in such manner or form as the Chairperson of the National Authority may determine and shall be accompanied by the prescribed fee.
  - (b) The Cabinet of Ministers may make regulations to prescribe the manner of application for a license; the form and duration of a license; the terms and conditions upon which and the circumstances in which a license may be granted, held, suspended, cancelled, extended, renewed or replaced; and the fees payable in respect thereof.
- (5) Penalties
- (a) Every person commits an offence who-
    - (i) produces, acquires, retains, transfers or uses Schedule 1 chemicals for a purpose other than a permitted purpose, or



- (ii) contravenes paragraph (1)  
and shall be punished upon conviction by imprisonment for a term not exceeding 14 years and or with a fine not exceeding 1000 penalty units.
- (b) Every person commits an offence who-
  - (i) as the case may be, produces, processes or consumes Schedules 2 or 3 chemicals or unscheduled discrete organic chemicals for a purpose other than a permitted purpose, or
  - (ii) contravenes paragraph (2) or (3)  
and shall be punished upon conviction by imprisonment for a term not exceeding 14 years and or with a fine not exceeding 1000 penalty units.
- (6) A reference in this section to “permitted purpose” means-
  - (a) in the case of a Schedule 1 chemical, research, medical, pharmaceutical or protective purposes only, or
  - (b) in the case of any other toxic chemical or precursor,
    - (i) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes
    - (ii) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons
    - (iii) 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, or
    - (iv) law enforcement including domestic riot control purposes.

## **11 Inspections**

- (1) Purpose of this section
  - (a) The purpose of this section is to-
    - (i) facilitate inspections by national inspectors for a compliance purpose, and
    - (ii) facilitate inspections by international inspectors in accordance with the Convention and any facility agreement between Niue and the OPCW.
  - (b) A reference in this paragraph and in paragraph (2) to a compliance purpose is a reference to the purpose of-
    - (i) determining whether the provisions of this Act and any regulations made thereunder have been or are being complied with at any premises
    - (ii) determining whether the conditions applicable to a license have been or are being complied with by the holder of a license, or
    - (iii) ensuring the proper functioning at any premises of any monitoring equipment installed in the course of an

international compliance inspection or under a facility agreement between Niue and the OPCW.

- (c) A reference in paragraphs (2) and (4) to an inspection power is a reference to a power to-
- (i) search any premises
  - (ii) inspect or examine a matter or thing
  - (iii) take examples of a matter or thing
  - (iv) measure a matter or thing
  - (v) examine a document, including a record kept in accordance with the requirements of this Act and any regulations made thereunder, or the conditions of a license
  - (vi) take extracts from, or make copies of, a document including a record of a kind referred to in subparagraph (1) (c) (v)
  - (vii) interview any person working on the premises, including making sound recordings of such interviews
  - (viii) have operated any equipment, including electronic equipment, located at the premises
  - (ix) operate any photographic or video-recording equipment anywhere in or around the premises provided safety regulations in force at the location permit doing so
  - (x) do anything that is necessary or expedient for the carrying out of any of the acts referred to in subparagraphs (1) (c) (i)-(ix), including restricting or prohibiting the access of persons and vehicles to or from the premises.
- (d) A power referred to in subparagraphs (1) (c) (i), (ii), (iii), (iv), or (ix) may only be exercised in a manner that the facility operator believes, on reasonable grounds, to be in accordance with safety procedures applicable at the premises.

(2) National inspections

- (a) All authorized officers shall be national inspectors for the purposes of this Act and any regulations made thereunder.
- (b) The Chair of the National Authority may, from time to time, appoint in writing other persons from within the Public Service to be national inspectors.
- (c) A national inspector may-
  - (i) with the consent of the person in control of any premises, or
  - (ii) under a warrant issued under paragraph 7 in respect of any premises,enter the premises and exercise, on or in the premises, any inspection power for a compliance purpose.

(3) International inspections.

- (a) An international inspector may-
    - (i) with the consent of the person in control of any premise –
      - (A) in respect of which any provision of Parts VI to IX of the Verification Annex to the Convention applies, or
      - (B) that is subject to an on-site challenge inspection referred to in Article IX (8) of the Convention, or
      - (C) in respect of which an investigation under Article X (9) of the Convention has been initiated, or
    - (ii) under a warrant issued under paragraph 8 in respect of the premises,
  - (b) do the following-
    - (i) enter the premises, and
    - (ii) inspect the premises pursuant to-
      - (A) Part II of the Verification Annex to the Convention, except where the provisions of this Part differ from the provisions set forth for specific types of inspections in Parts VI to XI of the Verification Annex, in which case the latter provisions will take precedence, and
      - (B) In the case of any facility, any applicable facility agreement between Niue and the OPCW, and
    - (iii) exercise, in connection with any inspection, any function contemplated, and power provided for in-
      - (A) Part II of the Verification Annex to the Convention, except where the provisions of this Part differ from the provisions set forth for specific types of inspections in Parts VI to XI of the Verification Annex, in which case the latter provisions will take precedence, and
      - (B) In the case of any facility, any applicable facility agreement between Niue and the OPCW.
- (4) Persons who may accompany international inspectors.
- (a) In order to facilitate an inspection, an international inspector may be accompanied by one or more of the following persons-
    - (i) an observer
    - (ii) a national inspector
  - (b) A national inspector may exercise any inspection power for the purposes of facilitating an inspection referred to in paragraph (3).
  - (c) For the purposes of subparagraph (4) (a) (i), “observer” means an observer referred to in Article IX (12) of the Convention, and includes any person authorized by the Chairperson of the National Authority to observe the inspection.
- (5) Written directions.
- (a) The National Authority may, by notice in writing, issue directions to any person for the purpose of facilitating any inspection under this section.

- (b) Every person commits an offence who fails to comply with any direction given by the Chairperson of the National Authority and shall be punished upon conviction by imprisonment for a term of not exceeding 2 years with a fine not exceeding 100 penalty units.

(6) Identification certificates

The Chairperson of the National Authority shall issue to every international inspector and national inspector a certificate identifying him as such international inspector or national inspector, as the case may be.

(7) Warrant for national inspection.

- (a) A national inspector may apply for a warrant where the consent of the person in control of any premises to enter the premises to exercise any inspection powers for a compliance purpose cannot be obtained or where the person refuses to give such consent.
- (b) Subject to subparagraph (7) (c), a judge of the High Court of Niue who is satisfied that there are reasonable grounds for believing that-
  - (i) entry to the premises is necessary to exercise any inspection power for a compliance purpose, and
  - (ii) the consent of the person who is in control of the premises cannot be obtained or such consent is refused,may issue, unconditionally or subject to conditions, a warrant authorizing the entry of the premises, at any time within 7 hours after the issue of such warrant, or within such further time as may be specified in the warrant, by the national inspector for the purpose of exercising any inspection power for a compliance purpose.

(c) The national inspector applying for a warrant shall-

- (i) first make reasonable inquiries as to whether any other applications for such a warrant have been made in respect of the premises concerned, and if so, as to the following matters-
  - (A) the offence or offences, if any, alleged in respect of each application, and
  - (B) the results of each application, and
- (ii) disclose on the application for the warrant the results of the inquiries.

(8) Warrant for international inspection.

- (a) The Chairperson of the National Authority may apply for a warrant on behalf of an international inspector or national inspector where the consent of the person in control of any premises to enter the premises for the purposes referred to in subparagraphs (3)(b)(ii)-(iii) cannot be obtained or where the person refuses to give such consent.
- (b) Subject to subparagraph (8)(c), a judge of the High Court of Niue who is satisfied that there are reasonable grounds for believing that-
  - (i) The premises meets the conditions for entry described in paragraph (3)

- (ii) Entry to the premises is necessary for the purposes referred to in subparagraph (3)(b)(ii)-(iii), and
    - (iii) The consent of the person who is in control of the premises cannot be obtained or such consent is refused, may issue, unconditionally or subject to conditions, a warrant authorizing the entry of the premises, at any time within 7 hours of the issue of the warrant, or within such further time as may be specified in the warrant, by the international inspector or national inspector for the purposes referred to in subparagraph (8)(b)(ii).
  - (c) The Secretary to Government shall-
    - (i) before applying for a warrant, make reasonable inquiries as to whether any other applications for such a warrant have been made in respect of the premises concerned, and, if so, as to the following matters-
      - (A) the offence or offences, if any alleged in respect of each application, and
      - (B) the results of each application, and
    - (ii) disclose on the application for the warrant the results of the inquiries.
- (9) Obligations of persons carrying out inspections.
- (a) Every national inspector shall-
    - (i) carry his identification certificate, and
    - (ii) produce it to any person appearing to be in control of the premises entered-
      - (A) on entering the premises, if such a person is then present, and
      - (B) at any reasonable time thereafter, if asked to do so by the person.
  - (b) Every national inspector shall-
    - (i) as soon as is practicable after completing the inspection, give the occupier or person in control of the premises a written notice stating that the premises has been entered, if, at any time between the time of entry of any premises to be inspected and the time the inspection is completed, there is no person appearing to be in control of the premises, and specify the following matters-
      - (A) the time and date of entry
      - (B) the circumstances and purpose of entry, and
      - (C) the name of every person entering
    - (ii) where applicable, have a warrant with him and produce it if required to do so, and
    - (iii) where any thing is seized, give the occupier or person in control of the premises a written inventory of all things so seized.

## **12 Obstruction of national or international inspectors**

- (a) Every person commits an offence who obstructs, hinders, resists, or deceives any national inspector or international inspector who is exercising any function contemplated, or any power provided for, in this section or in the Convention or in any applicable facility agreement, and shall be punished upon conviction by imprisonment for a term not exceeding 1 year and/or a fine not exceeding 50 penalty units.
- (b) Nothing in this section shall apply to a refusal to give consent to entry by a national inspector who is not acting pursuant to a warrant referred to in paragraph 7 or 8.
- (c) Nothing in this section shall to a refusal to give consent to entry by an international inspector who is not acting pursuant to a warrant referred to in paragraph 8.

## **13 Privileges and immunities of members of OPCW inspection teams**

(1) Members of inspection teams and observers shall enjoy the following privileges and immunities as are enjoyed by diplomatic agents in accordance with the following provisions of the Articles of the Vienna Convention on Diplomatic Relations of 1961, namely-

- (a) Article 29
- (b) Article 30, paragraph 1
- (c) Article 31, paragraphs 1, 2, 3, and
- (d) Article 34.

(2) In addition to those privileges and immunities granted in paragraph (1), members of inspection teams and observers shall-

- (a) have the right to use codes for their communications with the Technical Secretariat of the OPCW, in addition to the same privileges as are enjoyed by diplomatic agents in accordance with paragraph 2 of Article 30 of the Vienna Convention on Diplomatic Relations 1961
- (b) be permitted to bring into the territory of Niue, without payment of any customs duties or related charges, articles for personal use, with the exception of articles the importing or exporting of which is prohibited by law or controlled by quarantine regulations, and
- (c) be accorded the same currency and exchange facilities as are accorded to representatives of foreign Governments on temporary official missions in Niue.

(3) Samples and approved equipment carried by members of an inspection team shall be inviolable and exempt from customs duties.

(4) The privileges and immunities accorded to members of inspection teams and observers by virtue of this section shall be enjoyed by them at any time-

- (a) when they are in Niue-
  - (i) in connection with the carrying out of a routine inspection, a challenge inspection or an assistance inspection, or

- (ii) while in transit to or from the territory of another State Party in connection with the carrying out of such an inspection there, or
  - (b) after an inspection under sub-paragraph (4)(a)(i), with respect to acts previously performed in the exercise of their official capacity.
- (5) If-
  - (a) immunity from jurisdiction of a member of an inspection team is expressly waived in accordance with Part II(b)(14) of the Verification Annex to the Convention, and
  - (b) a notice made by the Cabinet of Ministers and informing the member of the waiver is delivered to him or her in person,then, from the time the notice is so delivered, this section shall not have effect to confer that immunity on the member.
- (6) If in any proceedings any question arises whether a person is entitled or not to any privilege or immunity by virtue of this section, a certificate issued by or under the Cabinet of ministers stating any fact relating to that question shall be conclusive evidence of that fact.
- (7) Members of inspection teams and observers are hereby prohibited from engaging in any professional or commercial activity for personal profit in Niue.

#### **14 Protection of confidential information**

- (1) Every person shall 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 Niue to fulfil its obligations under the Convention
  - (b) the enforcement of this Act, or
  - (c) dealing with an emergency involving public safety.
- (3) Every person who fails to comply with this section commits an offence and shall be punished upon conviction by imprisonment for a term of 2 years and/or with a fine not exceeding 50 penalty units.

#### **15 Establishment, mandate and enforcement powers of the National Authority**

- (1) Establishment  
There is established for the purposes of this Act the Niue National Authority for the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.
- (2) Composition.
  - (a) The National Authority shall consist of but shall not be limited to-

- (i) the Secretary to Government, who shall also serve as the Chairperson of the National Authority
- (ii) a representative from the National Environment Council for Sustainable Development;
- (iii) a representative each from the Department of Police and the Customs Office.

(3) Functions and duties of the National Authority.

(a) The National Authority shall perform its functions so as to most effectively attain the objectives of this Act and in particular-

- (i) To serve as the national focal point for effective liaison with the OPCW and other States Parties.
- (ii) To supervise and monitor the enforcement of this Act through the regime established by this Act and the regulations issued thereto
- (iii) To gather the data to be reported in the initial and annual declarations to the OPCW and to report such data to the OPCW
- (iv) To supervise the implementation and enforcement of the Convention
- (v) To provide the OPCW and other States Parties with relevant data and information in fulfillment of Niue's obligations under the Convention
- (vi) To facilitate and cooperate with inspections under the Convention, including accompanying OPCW inspectors on international routine inspections and challenge inspections
- (vii) To approve facility agreements further to this Act.
- (viii) To perform any other tasks assigned to it by appropriate authorities.
- (ix) To advise the Cabinet of Ministers on matters relevant to this Act and the Convention and to provide any information, which the Premier or other appropriate authorities may require.

(b) b) The National Authority may appoint a task force to advise it on any matter relating to this Act or the Convention.



## **SCHEDULES OF CHEMICALS**

[Section 4, 5, 6]

The following Schedules list toxic chemicals and their precursors. For the purpose of implementing the Convention, these Schedules identify chemicals for the application of verification measures according to the provisions of the Verification Annex. Pursuant to Article II, subparagraph 1 (a), these Schedules do not constitute a definition of chemical weapons.

(Whenever reference is made to groups of dialkylated chemicals, followed by a list of alkyl groups in parentheses, all chemicals possible by all possible combinations of alkyl groups listed in the parentheses are considered as listed in the respective Schedule as long as they are not explicitly exempted. A chemical marked "\*" on Schedule 2, part A, is subject to special thresholds for declaration and verification, as specified in Part VII of the Verification Annex.)

### **Schedule 1**

**(CAS Registry number)**

#### **A. Toxic chemicals:**

- (1) O-Alkyl (<C10, incl. cycloalkyl) alkyl  
(Me, Et, n-Pr or i-Pr)-phosphonofluoridates  
e.g. Sarin: O-Isopropyl methylphosphonofluoridate (107-44-8)  
Soman: O-Pinacolyl methylphosphonofluoridate (96-64-0)
  
- (2) O-Alkyl (<C10, incl. cycloalkyl) N,N-dialkyl  
(Me, Et, n-Pr or i-Pr) phosphoramidocyanidates  
e.g. Tabun: O-Ethyl N,N-dimethyl  
phosphoramidocyanidate (77-81-6)
  
- (3) O-Alkyl (H or <C10, incl. cycloalkyl) S-2-dialkyl  
(Me, Et, n-Pr or i-Pr)-aminoethyl alkyl  
(Me, Et, n-Pr or i-Pr) phosphonothiolates and  
corresponding alkylated or protonated salts  
e.g. VX: O-Ethyl S-2-diisopropylaminoethyl  
methyl phosphonothiolate (50782-69-9)
  
- (4) Sulfur mustards:  
2-Chloroethylchloromethylsulfide (2625-76-5)  
Mustard gas: Bis(2-chloroethyl)sulfide (505-60-2)  
Bis(2-chloroethylthio)methane (63869-13-6)  
Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane (3563-36-8)

- |  |                         |
|--|-------------------------|
| 1,3-Bis(2-chloroethylthio)-n-propane   | (63905-10-2)            |
| 1,4-Bis(2-chloroethylthio)-n-butane  | (142868-93-7)           |
| 1,5-Bis(2-chloroethylthio)-n-pentane   | (142868-94-8)           |
| Bis(2-chloroethylthiomethyl)ether  | (63918-90-1)            |
| O-Mustard: Bis(2-chloroethylthioethyl)ether  | (63918-89-8)            |
| (5) Lewisites:   |                         |
| Lewisite 1: 2-Chlorovinylchloroarsine  | (541-25-3)              |
| Lewisite 2: Bis(2-chlorovinyl)chloroarsine   | (40334-69-8)            |
| Lewisite 3: Tris(2-chlorovinyl)arsine  | (40334-70-1)            |
| (6) Nitrogen mustards:   |                         |
| HN1: Bis(2-chloroethyl)ethylamine  | (538-07-8)              |
| HN2: Bis(2-chloroethyl)methylamine   | (51-75-2)               |
| HN3: Tris(2-chloroethyl)amine  | (555-77-1)              |
| (7) Saxitoxin  | (35523-89-8)            |
| (8) Ricin  | (9009-86-3)             |
| <b>B. Precursors:</b>  |                         |
| (9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides<br>e.g. DF: Methylphosphonyldifluoride  | (676-99-3)              |
| (10) O-Alkyl (H or <C10, incl. cycloalkyl) O-2-dialkyl<br>(Me, Et, n-Pr or i-Pr)-aminoethyl alkyl<br>(Me, Et, n-Pr or i-Pr) phosphonites and<br>corresponding alkylated or protonated salts<br>e.g. QL: O-Ethyl O-2-diisopropylaminoethyl<br>methylphosphonite | (57856-11-8)            |
| (11) Chlorosarin:<br>methylphosphonochloridate   | O-Isopropyl (1445-76-7) |
| (12) Chlorosoman:<br>methylphosphonochloridate   | O-Pinacolyl (7040-57-5) |

**Schedule 2**

**(CAS Registry number)**

**A. Toxic chemicals:**

- (1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl]  
phosphorothiolate (78-53-5)  
and corresponding alkylated or protonated salts
- (2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-  
propene (382-21-8)
- (3) BZ: 3-Quinuclidinyl benzilate (\*) (6581-06-2)

**B. Precursors:**

- (4) Chemicals, except for those listed in Schedule 1,  
containing a phosphorus atom to which is bonded  
one methyl, ethyl or propyl (normal or iso) group  
but not further carbon atoms,  
e.g Methylphosphonyl dichloride (676-97-1)  
Dimethyl methylphosphonate (756-79-6)  
Exemption: O-Ethyl S-phenyl  
Fonofos: ethylphosphonothiolothionate (944-22-9)
- (5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic  
dihalides
- (6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl  
(Me, Et, n-Pr or i-Pr)-phosphoramidates
- (7) Arsenic trichloride (7784-34-1)
- (8) 2,2-Diphenyl-2-hydroxyacetic acid (76-93-7)
- (9) Quinuclidin-3-ol (1619-34-7)
- (10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-  
chlorides  
and corresponding protonated salts
- (11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-  
ols

and corresponding protonated salts

Exemptions: N,N-Dimethylaminoethanol (108-01-0)

and corresponding protonated  
salts

N,N-Diethylaminoethanol (100-37-8)

and corresponding protonated  
salts

(12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-  
thiols

and corresponding protonated salts

(13) Thiodiglycol: Bis(2-hydroxyethyl)sulfide (111-48-8)

(14) Pinacolyl alcohol: 3,3-Dimethylbutan-2-ol (464-07-3)

### **Schedule 3**

**(CAS  
number)**

**Registry**

#### **A. Toxic chemicals:**

(1) Phosgene: Carbonyl dichloride

(75-44-5)

(2) Cyanogen chloride

(506-77-4)

(3) Hydrogen cyanide

(74-90-8)

(4) Chloropicrin: Trichloronitromethane

(76-06-2)

#### **B. Precursors:**

(5) Phosphorus oxychloride

(10025-87-3)

(6) Phosphorus trichloride

(7719-12-2)

(7) Phosphorus pentachloride

(10026-13-8)

(8) Trimethyl phosphite

(121-45-9)

(9) Triethyl phosphite

(122-52-1)

(10) Dimethyl phosphite

(868-85-9)

(11) Diethyl phosphite

(762-04-9)

(12) Sulfur monochloride

(10025-67-9)

(13) Sulfur dichloride

(10545-99-0)

(14) Thionyl chloride

(7719-09-7)

(15) Ethyldiethanolamine

(139-87-7)

(16) Methyldiethanolamine

(105-59-9)

(17) Triethanolamine

(102-71-6)

**I, ATAPANA SIAKIMOTU**, Speaker of the Niue Assembly, hereby certify that the requirements of Article 34 of the Niue Constitution have been duly complied with.

**SIGNED AND SEALED** at the Assembly Chambers the 7<sup>th</sup> day of November 2007

(sgd)

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**Speaker of the Niue Assembly**

**COUNTERSIGNED** in the presence of the Speaker

(sgd)

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**Clerk of the Niue Assembly**

This Act was passed by the Niue Assembly on the 3<sup>rd</sup> day of October 2007

This Act is administered by the Office of the Secretary to Government.