

NUCLEAR WEAPONS (PROHIBITION) ACT, 2018

No. 17



of 2018

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SCHEDULE

An Act to provide for the domestication of the Non-Proliferation of Nuclear Weapons Treaty of 1 July 1968, to prohibit the production, possession and use of nuclear weapons and nuclear materials and to provide for matters incidental or connected therewith.

Date of Assent: 29.06.18

Date of Commencement: 29.06.18

ENACTED by the Parliament of Botswana.

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| <p>1. This Act may be cited as the Nuclear Weapons (Prohibition) Act, 2018.</p> <p>2. In this Act unless the context otherwise requires —</p> <p>“nuclear energy” means any form of energy released in the course of nuclear fission or nuclear fusion or of any other nuclear transmutation;</p> <p>“nuclear explosive device” means any nuclear weapons or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used, whether assembled, partly assembled, or unassembled;</p> <p>“nuclear material” means —</p> <p>(a) any source or fissionable material such as plutonium 239;</p> <p>(b) uranium-233;</p> <p>(c) uranium enriched in isotopes of 235 or 233; or</p> <p>(d) any material containing one of more of the foregoing; and such fissionable material as the Minister shall from time to time determine, but does not include source material such as ores or ore residue;</p> <p>“proliferation financing” means the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling or use of any nuclear weapon and its means of delivery and related materials, including both technologies and goods used for non-legitimate purposes; and</p> | <p>Short title</p> <p>Interpretation</p> |
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“Treaty” means the Non-Proliferation of Nuclear Weapons Treaty of 1st July, 1968 as set out in the Schedule to this Act and includes any amendments thereto and any Resolutions of the Conference of Parties.

Application of Treaty

3. The Non-Proliferation of Nuclear Weapons Treaty of 1st July, 1968 as set out in the Schedule to this Act and any amendments thereto, shall have force of law in Botswana.

Act binds the State

4. This Act binds the State.

Nuclear weapons and nuclear materials
Cap. 24:03

5. (1) Subject to the exceptions for peaceful use of nuclear materials including nuclear energy, nuclear medicine and nuclear technology under the Radiation Protection Act, a person who —

- (a) receives the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly;
- (b) manufactures or otherwise acquires nuclear weapons or other nuclear explosive devices;
- (c) seeks or receives any assistance in the manufacture of nuclear weapons or other nuclear explosive devices;
- (d) engages in the proliferation financing of any nuclear weapon;
- (e) diverts nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices;
- (f) constructs, acquires or retains any facility intended for the production of nuclear weapons or other nuclear explosive devices; or
- (g) possesses, develops, exports, transports, transfers, stockpiles or uses any nuclear weapon or nuclear explosive device or its means of delivery,

commits an offence and is liable to a fine of P25 000 000 or to life imprisonment, or to both.

(2) A person who uses nuclear material for the purpose of causing serious bodily injury or killing human beings, animals or plants or causing damage to property or natural resources commits an offence and is liable to a fine of P25 000 000 or to life imprisonment, or to both, where the act does not result in death, and where the act results in death is liable to the death penalty.

Official capacity or superior orders not a defence

6. It shall not be a defence to an offence under this Act for a person charged with the offence to plead that he or she acted in an official capacity or under the orders or instructions of his or her superior.

Extra-territorial jurisdiction

7. (1) A citizen of Botswana, or a person who permanently resides in Botswana, who commits an act outside Botswana that constitutes an offence under this Act if committed in Botswana, commits an offence and shall be liable to a penalty as prescribed under this Act.

(2) Any act prohibited under section 5 undertaken outside Botswana by a citizen of Botswana shall be deemed to have been undertaken at any place within Botswana.

(3) A person may not be convicted of an offence under subsection (1) if such a person has been acquitted or convicted in the country where that offence was committed.

8. (1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

Regulations

(2) Without prejudice to the generality of subsection (1), the Regulations may provide for the protection of the environment and the health and safety of persons from any risks associated with the activities referred to in this Act.

SCHEDULE
(sections 2 and 3)

TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

The States concluding this Treaty, hereinafter referred to as the “Parties to the Treaty”,
Considering the devastation that would be visited upon all mankind by a nuclear war
and the consequent need to make every effort to avert the danger of such a war and to
take measures to safeguard the security of peoples,

Believing that the proliferation of nuclear weapons would seriously enhance the
danger of nuclear war,

In conformity with resolutions of the United Nations General Assembly calling for
the conclusion of an agreement on the prevention of wider dissemination of nuclear
weapons,

Undertaking to co-operate in facilitating the application of International Atomic
Energy Agency safeguards on peaceful nuclear activities,

Expressing their support for research, development and other efforts to further
the application, within the framework of the International Atomic Energy Agency
safeguards system, of the principle of safeguarding effectively the flow of source and
special fissionable materials by use of instruments and other techniques at certain
strategic points,

Affirming the principle that the benefits of peaceful applications of nuclear technology,
including any technological by-products which may be derived by nuclear-weapon
States from the development of nuclear explosive devices, should be available for
peaceful purposes to all Parties to the Treaty, whether nuclear-weapon or non-nuclear-
weapon States,

Convinced that, in furtherance of this principle, all Parties to the Treaty are entitled to
participate in the fullest possible exchange of scientific information for, and to
contribute alone or in co-operation with other States to, the further development of
the applications of atomic energy for peaceful purposes,

Declaring their intention to achieve at the earliest possible date the cessation of the
nuclear arms race and to undertake effective measures in the direction of nuclear
disarmament,

Urging the co-operation of all States in the attainment of this objective,

Recalling the determination expressed by the Parties to the 1963 Treaty banning
nuclear weapon tests in the atmosphere, in outer space and under water in its Preamble
to seek to achieve the discontinuance of all test explosions of nuclear weapons for all
time and to continue negotiations to this end,

Desiring to further the easing of international tension and the strengthening of trust
between States in order to facilitate the cessation of the manufacture of nuclear
weapons, the liquidation of all their existing stockpiles, and the elimination from
national arsenals of nuclear weapons and the means of their delivery pursuant to a
Treaty on general and complete disarmament under strict and effective international
control,

Recalling that, in accordance with the Charter of the United Nations, States must
refrain in their international relations from the threat or use of force against the
territorial integrity or political independence of any State, or in any other manner

inconsistent with the Purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world's human and economic resources,

Have agreed as follows:

ARTICLE I

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

ARTICLE II

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

ARTICLE III

1. Each Non-nuclear-weapon State Party to the Treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency in accordance with the Statute of the International Atomic Energy Agency and the Agency's safeguards system, for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices. Procedures for the safeguards required by this Article shall be followed with respect to source or special fissionable material whether it is being produced, processed or used in any principal nuclear facility or is outside any such facility. The safeguards required by this Article shall be applied on all source or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere.

2. Each State Party to the Treaty undertakes not to provide:

(a) source or special fissionable material, or
(b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this Article.

3. The safeguards required by this Article shall be implemented in a manner designed to comply with Article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or international co-operation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful

purposes in accordance with the provisions of this Article and the principle of safeguarding set forth in the Preamble of the Treaty.

4. Non-nuclear-weapon States Party to the Treaty shall conclude agreements with the International Atomic Energy Agency to meet the requirements of this Article either individually or together with other States in accordance with the Statute of the International Atomic Energy Agency. Negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty. For States depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations.

ARTICLE IV

1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.

2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also co-operate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

ARTICLE V

Each Party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

ARTICLE VI

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

ARTICLE VII

Nothing in this Treaty affects the right of any group of States to conclude regional

treaties in order to assure the total absence of nuclear weapons in their respective territories.

ARTICLE VIII

1. Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.

2. Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. The amendment shall enter into force for each Party that deposits its instrument of ratification of the amendment upon the deposit of such instruments of ratification by a majority of all the Parties, including the instruments of ratification of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. Thereafter, it shall enter into force for any other Party upon the deposit of its instrument of ratification of the amendment.

3. Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realised. At intervals of five years thereafter a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depositary Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty.

ARTICLE IX

1. This Treaty shall be open to all States for signature. Any State which does not sign the Treaty before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Treaty shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

3. This Treaty shall enter into force after its ratification by the States, the Governments of which are designated Depositaries of the Treaty, and forty other States signatory to this Treaty and the deposit of their instruments of ratification. For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1st January, 1967.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit

of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this Treaty, and the date of receipt of any requests for convening a conference or other notices.

6. This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

ARTICLE X

1. Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

2. Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty.

ARTICLE XI

This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

IN WITNESS WHEREOF the undersigned, duly authorised, have signed this Treaty. DONE in triplicate, at the cities of London, Moscow and Washington, the first day of July, one thousand nine hundred and sixty eight.

PASSED by the National Assembly this 18th day of June, 2018.

BARBARA N. DITHAPO,
Clerk of the National Assembly.