

Best practice for Pesticide Control Act (from laws of Eastern & Southern Africa)

Notes:

Countries whose pesticide laws were analysed in this part of the HAPL project were:

Botswana

Eritrea (Draft)

Ethiopia

Kenya

Mauritius

Namibia (Draft)

Seychelles

South Africa

Tanzania

Uganda

Title

Short title: Pesticides Control Act/Law

Long title: Seychelles

An Act to regulate the manufacture, distribution , use, storage and disposal of pesticides for the protection of the public health and the environment and to provide for matters connected therewith.

Preamble: optional according to usage of the member state

Notes:

Use 'pesticides' as this is the accepted word for this type of material (see definitions).

Commencement: Either on a date set in the Act or on a date by Order of the Minister (delegated authority).

Notes:

If the Act is to be implemented piecemeal, there should be provisions for this within the Act.

Savings

Tanzania

43.-(1) Subject to the provisions of subsection (2), the Plant Protection Ordinance the Locust Ordinance and section 4(c) , 13 and of the Tropical Pesticides Research Institute Act are hereby repealed.

(2) Any applicable regulations, rule, order or notice made under the Plant Protection Ordinance of 1937, the Locust Ordinance of 11929, the Tropical Pesticides Research Institute Act of 1979, and in force, shall remain in force, so far as may be, as if they have been made as regulations, rules, notices or orders under this Act until such time as they are amended or revoked by regulations, rules, notices or made under this Act.

Definitions

Standard list as adopted at LWG Meeting, Pretoria, April 2001 headed by:

2. In this Act, unless the context otherwise requires -

Active ingredient	The biologically active part of the chemical present in the pesticide formulation.
Advisory Committee	The committee that advises the Registrar on any matter pertaining to pesticide registration and control.
Banned/Prohibited	A pesticide for which all registered uses have been prohibited by final government regulatory action, or for which all requests for registration or equivalent action for all uses have, for health and environmental reasons, not been granted.
Certification	A process by which the Registration Board determines whether or not a person is a competent pesticide applicator.
Common name	The name assigned to a pesticide active ingredient by the International Standards Organization or adopted by national standards authorities to be used as a generic or non-proprietary name for that particular active ingredient only.
Trade name	The name under which the pesticide is labelled, registered and promoted by the manufacturer and which, if protected under national legislation, can be used exclusively by the manufacturer to distinguish the product from other pesticides containing the same active ingredient.
Defoliant	A substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
Desiccant	A substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
Environment	Includes water, air, land, and all plants, man, animals and other organisms living therein, and the interrelationships which exist among them.
Formulation	The combination of various ingredients designed to render the product useful and effective for the purpose claimed; the form of the pesticide as purchased by users.
General use pesticide	A pesticide other than one designated as restricted pesticide.
Inert ingredient	An ingredient in the pesticide formulation that is not an active ingredient.
Inspector	The person to whom duties have been assigned by the Registrar for the inspection and or verification of compliance with the provisions of the Act.
Label	The written printed or graphic matter on, or attached to, the pesticide; or the immediate container thereof and the outside container or wrapper of the retail package of the pesticide.
Labelling	All labels and other written, printed, or graphic matter accompanying the pesticide at any time or to which reference is made on the label or in literature accompanying the pesticide.
Authorised applicator	Any person certified according to the provisions of the Act as competent to apply pesticides or supervise the application of pesticides by others under his direction.
Manufacture	The production, by a corporation or other entity in the public or private sector or any individual engaged in the business or function (whether directly or through an agent or through an entity controlled by or under contract with it), of a pesticide active ingredient or preparation of its formulation or product.

Pest	Any insect, rodent, weed, virus, nematode, fungus, bacteria or other organisms causing plant diseases and interfering with or destroying crops, food, human beings, animals and other things.
Pesticide	Any substance or mixture of substances intended for preventing, destroying or controlling any pest, including vectors of human or animal disease, unwanted species of plants or animals causing harm during or otherwise interfering with the production, processing, storage, transport, or marketing of food, agricultural commodities, wood and wood products, or animal feedstuffs, or which may be administered to animals for the control of insects, arachnids or other pests in or on their bodies. The term includes substances intended for use as a plant growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport.
Pictogram	A symbol, a symbol that conveys a message without, words.
Plant Growth regulator	A substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation, or otherwise to alter the behaviour of an ornamental or crop plant or the product of an ornamental or crop plant, but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment.
Provisional Registration	A use permit issued by the Registration Board for crops and applications given on the label, for a period of time specified by the Act.
Registrant	A person who has registered a pesticide under the legislation.
Registrar	The person appointed by the responsible Minister or Ministers to administer the pesticide legislation on his behalf.
Registration	The process whereby the responsible national government authority approves the sale and use of a pesticide following the evaluation of comprehensive scientific data demonstrating that the product is effective for the purposes intended and not unduly hazardous to human or animal health or the environment.
Registration Board	The Pesticide Registration Board formed under the Act.
Restricted-use pesticide	A pesticide classified as a restricted-use pesticide by the Registration Board.
Responsible Authority	The government appointed Board, government agency or agencies responsible for regulating the manufacture, distribution or use of pesticides and more generally for implementing pesticide legislation.
Severely Restricted	A pesticide for which virtually all registered uses has been prohibited by final government regulatory action but certain specific registered use or uses remain authorized.

Terms marked * might be defined in delegated (secondary) legislation.

Establishment of Regulatory Body

Regulatory Body/Registrar

Inspectors/Authorised Officers

Registration of Pesticides

Licensing and Certification

Regulatory Body/Registrar

Pesticides (Control) Board

Namibia (Draft)

Registrar of Pesticides

2. (1) The Minister shall appoint a Registrar of Pesticides who shall be a staff member of the Ministry of Agriculture, Water, and Rural Development.

(2) The Registrar shall keep a Register of Pesticides in which shall be entered the trade name, common name, chemical name, and concentration of each registered pesticide, and the name and address of the applicant [as registered by the Ministry of Trade and Industry].

Board & Composition

4. (1) The Minister shall appoint members of the Board, to be selected based on their technical competence, to consist of:--

(a) five representatives of the Ministry of Agriculture, Water, and Rural Development namely:--

(i) the Registrar;

(ii) one other staff member from the Directorate of Extension and Engineering Services;

(iii) one from the Directorate of Research and Training;

(iv) one from the Directorate of Veterinary Services; and

(v) one from the Directorate of Water Affairs.

(b) one representative from each of the following Directorates and/or Ministries, each to be nominated by his or her respective Minister:--

(i) Directorate of Environmental Affairs, Ministry of Environmental Affairs and Tourism;

(ii) Ministry of Fisheries and Marine Affairs;

(iii) Ministry of Health and Social Services;

(iv) Directorate of the National Forensic Science Institute, Ministry of Home Affairs;

(v) Customs Service, Ministry of Finance, Customs, and Excise; and

(vi) Ministry of Trade and Industry.

(2) Appointed members of the Board shall serve for a term of three years, and shall be eligible for reappointment.

(3) An appointed member of the Board may resign at any time by notice in writing to the Minister.

(4) Where a Board member is convicted of a crime or found mentally incompetent by a court of law, or is absent from two consecutive Board meetings without excuse, the Minister may notify that Board member in writing of his intention to cancel the membership of that Board member, stating in detail the reasons for the proposed termination and inviting a written reply of justification before the cancellation will be effected.

(5) Subject to the other provisions of this Act, the Board shall regulate its own procedure and may request such persons as technical advisers as may be necessary to attend and take part, without voting, in the meetings of the Board, or to form Committees with or without

Board members also included, to deliberate on specific issues and make recommendations to the Board.

Board Responsibilities

5. The Board:--

- (a) shall assess and evaluate every application for registration of a pesticide, considering at least the following:--**
 - (i) environmental factors, including affected non-targeted species**
 - (ii) health hazards;**
 - (iii) efficacy;**
 - (iv) quality;**
 - (v) the proposed label and leaflet, and, as the Board so requires, a description, photograph, or exemplar of the proposed container(s); and**
 - (vi) residues;**

of the pesticide.

- (b) shall register pesticides and issue certificates, permits, and licences provided for under this Act;**
- (c) shall collect levies to be assessed under this Act;**
- (d) shall manage the Development Fund established under this Act and determine priorities for expenses made from the Fund;**
- (e) shall apply or, in certain cases based on considerations of the public interest, waive, the conditions for granting, renewal, suspension, or revocation of any registration, licence, or permit granted under this Act;**
- (f) shall consider, advise on, or propose regulations to be made under this Act; and**
- (g) shall advise the Minister in connection with all matters relating to pesticides in Namibia.**

6. The Board shall establish procedures and rules relating to which information shall be considered confidential, how confidential records shall be maintained and stored, and who shall have access to them.

7. No member of the Board shall be liable for the consequences of anything which that member, acting in good faith in the course of his or her duties, did or failed to do.

Advisory Committee

Botswana

Registrar of Pesticides

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- (ii) one other staff member from the Directorate of Extension and Engineering Services;**
- (iii) one from the Directorate of Research and Training;**
- (iv) one from the Directorate of Veterinary Services; and**
- (v) one from the Directorate of Water Affairs.**

(b) one representative from each of the following Directorates and/or Ministries, each to be nominated by his or her respective Minister:--

- (i) Directorate of Environmental Affairs, Ministry of Environmental Affairs and Tourism;**
- (ii) Ministry of Fisheries and Marine Affairs;**
- (iii) Ministry of Health and Social Services;**
- (iv) Directorate of the National Forensic Science Institute, Ministry of Home Affairs;**
- (v) Customs Service, Ministry of Finance, Customs, and Excise; and**
- (vi) Ministry of Trade and Industry.**

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(5) Subject to the other provisions of this Act, the Board shall regulate its own procedure and may request such persons as technical advisers as may be necessary to attend and take part, without voting, in the meetings of the Board, or to form Committees with or without Board members also included, to deliberate on specific issues and make recommendations to the Board.

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- (vi) residues;

of the pesticide.

- (b) shall register pesticides and issue certificates, permits, and licences provided for under this Act;
- (c) shall collect levies to be assessed under this Act;
- (d) shall manage the Development Fund established under this Act and determine priorities for expenses made from the Fund;
- (e) shall apply or, in certain cases based on considerations of the public interest, waive, the conditions for granting, renewal, suspension, or revocation of any registration, licence, or permit granted under this Act;
- (f) shall consider, advise on, or propose regulations to be made under this Act; and
- (g) shall advise the Minister in connection with all matters relating to pesticides in Namibia.

6. The Board shall establish procedures and rules relating to which information shall be considered confidential, how confidential records shall be maintained and stored, and who shall have access to them.

7. No member of the Board shall be liable for the consequences of anything which that member, acting in good faith in the course of his or her duties, did or failed to do.

Registrar Appointment

3. The Minister may, by notice published in the Gazette, appoint, subject to the laws governing the public service, any officer to be the Registrar

National Agrochemicals Committee

6. (1) The Minister shall appoint an advisory and review committee to be known as the National Agrochemicals Committee.

Functions of the Registrar

4. (1) The Registrar, shall subject to the control of the Minister, be responsible for the administration of this Act.

(2) Without derogating from the generality of subsection (1) the functions of the Registrar shall be to -

- (a) establish the appropriate facility of registration of agrochemicals, quality control and the analysis of their residues;
- (b) register agrochemicals in accordance with this Act;
- (c) monitor the sale, use and test residues of agrochemicals;
- (d) collect and maintain statistical and other information concerning the importation, manufacture, distribution, sale, and use of agrochemicals and their residues;
- (e) issue licences to persons for the importation, manufacture, distribution, sale or disposal of agrochemicals;
- (f) produce a code of practice for the management of and dealings in agrochemicals;
- (g) conduct public awareness campaigns on agrochemicals; and

- (h) perform any other function in relation to agrochemicals as the Minister may require.

Delegation by Registrar

5. The Registrar may, subject to such conditions as he or she may determine, delegate or assign any power or duty assigned to him or her under this Act to an Inspector.

Committee Composition

(2) The Committee shall be composed of twelve members consisting of the following or their representatives -

- (a) Director of Crop Production and Forestry who shall be the chairperson;**
- (b) Director of Animal Health and Production;**
- (c) Director of Agricultural Research;**
- (d) Director of Wildlife and National Parks;**
- (e) Director of Quality Assurance, Botswana Bureau of Standards;**
- (f) Dean of Faculty of Agriculture, Botswana College of Agriculture;**
- (g) Government Chemist, Ministry of Health;**
- (h) Head of the Chemistry Department, University of Botswana;**
- (i) Chief Chemist, Department of Water Affairs;**
- (j) Representative of National Conservation Strategy (Coordinating) Agency;**
- (k) Representative of the farming community; and**
- (l) Representative of the agrochemicals industry.**

Functions of the Committee

8. The functions of the Committee shall be to -

- (a) do all things as are necessary to control or regulate the importation, distribution, use and disposal of agrochemicals in terms of this Act;**
- (b) ensure compliance with the provisions of this Act including to make recommendations to and advise the Registrar, in respect of a certificate or licence sought to be issued in terms of this Act; and**
- (c) review the registration and licensing of agrochemicals.**

Committee meetings

(3) The Registrar shall be the secretary of the Committee, entitled to attend and take part in the proceedings of every meeting of the Committee but shall have no vote.

(4) Half of the members of the Committee shall hold office for a period of two years and the other half shall hold office for a period of three years, as the Minister shall direct.

(5) A member shall be eligible for re-appointment at the expiration of his or her term of office as may be determined in accordance with sub-regulation (4).

(6) The Minister may co-opt two other members who, in his or her opinion, have knowledge and experience likely to contribute to the carrying out of the Committee's functions.

(7) A member co-opted under subsection (6) shall be entitled to take part in the proceedings of the Committee but shall have no vote.

7. (1) Subject to the provisions of this Act, the Committee shall regulate its own procedure.

(2) The Committee shall meet at such times and places as the chairperson, or, if he or she is absent, the vice-chairperson, may determine, provided the Committee shall meet for not less than three times in a year.

(3) The chairperson, or, if he or she is absent, the vice-chairperson, shall preside at all meetings of the Committee and if both the chairperson and vice-chairperson are absent from a meeting, the members present shall elect a person from among themselves to preside at such meeting.

(4) The decision of a majority of the members of the Committee present at a meeting of the Committee shall constitute a decision of the Committee and in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote.

(5) Six members of the Committee shall form a quorum.

Notes:

(i) Refer to the Definitions

(ii) Two models are given above: (a) Pesticides (Control) Board; (b) An Advisory Committee on Pesticides.

(iii) Some of the details of the working of the Board/Committee would be better given in a Schedule [Annex] to the Act.

Inspectors/Authorised Officers

Eritrea (Draft)

Article 26. Appointment of Inspectors.

The Minister of Agriculture shall appoint duly qualified public officers as may be necessary, to be inspectors for the purposes of this Law.

Article 27. Powers and Duties of Inspectors

1. An inspector or any other officer specifically authorised for that purpose by the Minister of Agriculture shall, for the purpose of enforcing the provisions of this Law and the regulations made thereunder, have the power at all reasonable times to:

(a) enter, without a warrant, any premises or land - other than premises used exclusively as a dwelling house - aircraft, vessel or vehicle, at or in which any pesticide is or may be reasonably suspected to be manufactured, stored, transported, sold, distributed or used to determine whether the provisions of this Law are being complied with;

(b) require the production of, examine and copy licences, registers, records and other documents relating to this Law;

(c) inspect any pesticide, substance, label or other thing in respect of which this Law applies and take and keep samples of such pesticide, substance, label or other thing and, as may be prescribed, submit such samples for test and analysis;

(d) carry out periodic inspections of all establishments which manufacture, import, export, store, sell, distribute or use pesticides, to determine whether the provisions of this Law are being complied with;

(e) enter and inspect farmers' fields to ensure that only registered pesticides are used on specific crops and according to prescribed procedures;

(f) seize any equipment, pesticide, document, record or other things which the inspector believes has been used in, or which appears to afford evidence of, the commission of an offence under this Law or any regulations made thereunder;

2. No person shall be entitled to charge or claim compensation for any reasonable amount of a pesticide taken as a sample under this Article.
3. An inspector shall produce identification when exercising any of the powers under Section 2 of this Article.

Article 36. Customs Officers Assistance

1. It shall be the duty of every customs officer to assist in the enforcement of this Law, and on the regulations thereunder, and to prevent the importation into Eritrea of any pesticide where such importation is contrary to the provisions of this Law.
2. The Board shall provide the Customs services with a list of registered, restricted and prohibited pesticides.
3. The Customs services shall keep a record of all imported pesticides and, on regular basis transmit a copy to the Board.

Notes: (i) In Common Law jurisdictions, a warrant is normally needed to search a *dwelling* [house].

(ii) Legal and practical relationship with Customs is very important.

Registration of Pesticides

Botswana

10. No person shall own, use, possess, import, manufacture, to be registered advertise, distribute or sell an agrochemical unless such agrochemical is registered under this Act: Provided that this section shall not apply in the case of an unregistered agrochemical -
 - (a) intended to be used for experimental or research purposes; or
 - (b) on direct transit to another country and the Registrar is satisfied that the agrochemical will be permitted to enter a country outside Botswana.

Agrochemicals Register

11. (1) The Registrar shall establish and maintain a register of agrochemicals containing the names of agrochemicals registered under this Act, the conditions of the certificate and other particulars, as may be prescribed.
 - (2) Any proprietary information submitted in connection with an application under section 12, shall not be entered in the register referred to under subsection (1), except as provided under this Act or as required by a court of law.
 - (3) Any person may, upon payment of the prescribed fee, and in accordance with the conditions which may be prescribed, inspect or make a copy of, or obtain an extract from the register referred to in subsection (1).

Application for registration

12. (1) An application for registration of an agrochemical shall be made to the Registrar, in writing, in the prescribed form and accompanied by the following -
 - (a) the prescribed fee, and
 - (b) information, samples and materials as may be required by the Registrar.
- (2) Upon receipt of an application for registration, the Registrar shall examine the application to determine whether an agrochemical for which application is being made, is effective and suitable for use in Botswana or complies with regulations made in pursuance of this Act.

- (3) The Registrar may, in considering an application under this section, consult the Committee.**
- (4) The Registrar may, after examining an application and consulting the Committee -**
- (a) register an agrochemical;**
 - (b) refuse to register the agrochemical;**
 - (c) defer decision making to require further information; or**
 - (d) if the agrochemical is registered in another country, register the agrochemical subject to the conduct of further tests to ensure its effectiveness and suitability in Botswana.**

Certificate of Registration

- (5) Where the Registrar registers an agrochemical, he or she may issue a certificate to the applicant and thereby -**
- (a) attach, to the certificate issued such conditions concerning the importation, manufacture, labelling, advertising, distribution, sale and use of the agrochemical to ensure its effectiveness and suitability in Botswana;**
 - (b) classify the agrochemical as a restricted agrochemical to be handled with particular care so as not to cause pollution to the, environment, or harm to human, animal or plant life; or**
 - (c) require the agrochemical to be used under the supervision of the person authorised by the Registrar.**

13. (1) A certificate shall be valid for a period of five years.

(2) A certificate may be renewed by the Registrar after consultation with the Committee, if the Registrar is satisfied that the agrochemical remains effective and suitable for use in Botswana and upon payment of such renewal fee as may be prescribed.

(3) The Registrar may in deciding to renew the certificate, require such information as appears necessary to determine the conditions of renewal.

14. (1) While a certificate issued, by the Registrar is in force, the Registrar may, after consultation with the Committee-

(a) if he or she is satisfied that a registered agrochemical is not effective or suitable for use in Botswana, serve a notice on the holder modifying the conditions specified therein to ensure its effectiveness and suitability in Botswana; or

(b) cancel the certificate if it can be shown that the registered agrochemical is no longer effective nor suitable for Botswana.

(2) In subsection (1), "holder" means a holder of a certificate.

Appeal to the Minister

29. Any person aggrieved by the -.

(a) refusal to grant a certificate or deferral of decision making to register the agrochemical; or

(b) variation of a condition of a certificate or cancellation of a licence;

may, within thirty days of the decision of the Registrar, appeal to the Minister in the manner prescribed or to the court on a matter of law.

Notes:

If Judicial Review is available (or equivalent in Civil Law jurisdiction), the Ministers decision on appeal may still be subject to appeal in the courts.

Licensing and certification

Seychelles

General provisions

10. Subject to the Act, no person shall manufacture, import, export, sell, offer for sale, supply, use, store, transport, possess, dispose or otherwise deal with any pesticide unless -

- (a) the pesticide is a registered pesticide under and for the purposes of this Act;**
- (b) where this Act or any other written law requires a permit or licence for any such activity, the person holds a licence or permit under this Act or such other law; and**
- (c) subject to and in accordance, with any conditions specified in the licence or permit.**

23. The Minister may for a breach of any condition in a licence or permit in relation to pesticides granted under any other written law suspend the licence or permit for a period of 21 days where the Minister is of opinion that such action is necessary in the public interest or for the protection of public health and the environment and shall inform the authority granting the licence or permit of such action.

Importation

11.(1) No pesticide shall be imported or exported except at any point of entry or exit designated by the Minister by notice published in the Gazette.

(2) A person who imports or exports a pesticide shall declare and offer for inspection the pesticide at the time of import or export to an authorised under written law to inspect goods imported or exported.

Sale

(3) Where a licence to trade in pesticides granted under the Licences (Trade) Regulations prohibits the sale of a pesticide to any person or class of persons, the holder of the licence shall not sell or supply such pesticide to such person or class of persons. .

Storage

14. No person shall store any pesticide except –

- (a) in a locked room displaying a notice -**
 - (i) specifying that pesticides are stored therein;**
 - and.**
 - (ii) prohibiting access to unauthorised persons or children under 15 years of age;**
- (b) in a manner that the pesticide is not exposed to direct sunlight;**
- (c) in a leak-proof container; and**
- (d) at a level 45 centimetres above the ground level of the room.**

Transport

13. No person shall transport any pesticide in a vehicle transporting a commodity for human or animal consumption.

Disposal & accidental spillage

16. (1) No person shall mix or pour any pesticide on an open ground within 9 metres of a watercourse.

(2) Any person who mixes or pours any pesticide shall take precautions to prevent spillage of the pesticide on the soil or floor and shall report any spillage to the Registrar within 24 hours of such spillage.

Labelling and packaging

12. (1) No person shall sell, offer for sale or supply any pesticide unless it is labelled in accordance with this Act.

(2) Schedule 2 shall have effect to the labelling of pesticides.

Application

15. (1) No person shall, as a trade or business, engage or employ any other person to engage in a Scheduled Operation unless the person or the other person -

(a) in the case of an individual is the holder of a certificate of competence, approved by the Board, to engage in the Scheduled Operation;

(b) in the case of a corporate body, has in its employment persons who are the holders of a certificate of competence referred to in paragraph (a).

(2) A person engaged in any Scheduled Operation whether as a trade or business or otherwise, shall while so engaged wear protective clothing, approved by the Board, to prevent absorption of pesticide by skin or eye contact, inhalation or ingestion.

17. Any person engaged in the Scheduled Operation of spraying any ground crop, trees, bushes or climbing plant with a pesticide, other than a household biocide or any such operation where a household biocide in excess of 250 grammes or 1 litre is being used or dealt with, within an open area shall display in a conspicuous place in that area a notice -

(a) stating that the scheduled operation is being carried on in that area; and

(b) prohibiting access to the that area of any unauthorised person within the period specified in the notice.

Notes:

Many of the procedures, forms, etc. should be in delegated legislation (Regulations). This includes safety precautions, protective clothing, etc.

Sampling, analysis and confiscation

Kenya

Confiscation & Disposal

10. (1) Whenever an inspector believes, on reasonable grounds, that this Act or any regulations made thereunder has or have been contravened, he may seize and detain the pest control product by means of or in relation to which he reasonably believes the contravention was committed.

(2) Any pest control product seized and detained pursuant to subsection (1) shall not be detained after-

(a) such time not exceeding fourteen days as, in the opinion of the inspector, the provisions of this Act and the regulations made thereunder have been complied with; or

(b) the expiration of six months from the date of seizure, or such longer period as may be prescribed with respect to any pest control product, unless before that time proceedings have been instituted in respect of the contravention, in which case the pest control product may be detained until the proceedings are finally concluded.

(3) A court convicting any person for an offence under this Act or any regulations made thereunder may make such order as the court shall deem proper as to-

(a) the forfeiture or disposal of any pest control product; and

(b) the payment by the defendant of all or any fees and other expenses incidental to the analysis of a pest control product, in respect of which the conviction is obtained.

(4) Where an inspector has seized a pest control product and the owner 'thereof or the person in whose possession the pest control product was at the time of the seizure consents in writing to the disposal thereof, the pest control product shall thereupon be forfeited to the Government and shall be disposed of in such manner as the Minister may direct and at the expense of the person consenting to the disposal.

(5) Any person who hinders or obstructs an inspector acting in exercise of his powers under this section shall be guilty of an offence.

Sampling/Analyst's certificate

14. (1) Subject to this section, a certificate of an analyst stating that he has analysed or examined an article or a sample of a submitted to him by an inspector and stating the result of his examination shall be admissible in evidence in a prosecution for the contravention of this Act or any regulations made thereunder and shall be prima facie evidence of the statements contained therein.

(2) The party against whom a certificate of an analyst is produced under subsection (1) may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

(3) No certificate shall be received in evidence under subsection (1) unless the party intending to produce it has, before the trial, given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate.

Derogations

Eritrea (Draft)

Article 9. Permit to Import Unregistered Pesticides

1. The Board may issue a permit authorising the Importation of a pesticide which has not been registered provided that:

(a) the pesticide is imported in cases of overriding national interest, to be determined by the Minister of Agriculture;

(b) the pesticide is imported for experimental or research purposes and not for distribution; .

(c) the pesticide or a pesticide metabolite for use at a [registered] laboratory as an analytical standard is imported by such laboratory in a maximum of 5 grams per annum;

or

(d) the pesticide is in direct transit through Eritrea and the Board is satisfied that the pesticide is permitted to enter the country of destination.

2. An application for a permit under Section 1 shall be made to the Board in the prescribed manner and form and shall be accompanied by the prescribed fee.

3. A permit under Section I shall state:

(a) the period of validity;

(b) the maximum quantity of the pesticide covered by the permit; and

(c) any conditions which the Board considers appropriate to impose to protect human and animal health and the environment and to give effect to this Law.

4. A permit under Section 1 to import a pesticide shall only authorise the importation of a single consignment and shall be surrendered to an inspector at the place of importation.

Permit to Import Unregistered Pesticides

Phytosanitary emergencies

Article 34. Phytosanitary emergencies

1. If a phytosanitary emergency is declared by the Minister of Agriculture or any authorised organ of the Government, the Board may issue phytosanitary emergency permits if it considers it necessary to deal expeditiously with the emergency.

2. An application for a phytosanitary emergency permit shall be made to the Board in the manner and form prescribed by the Board and shall be accompanied by the prescribed fee.

3. A phytosanitary emergency permit:

(a) may authorise the importation and use of an unregistered pesticide;

(b) may authorise a registered pesticide to be used for uses other than those for which it has been registered;

(c) may exempt any pesticide from the requirements under this Law to be licensed, labelled, or to have fees levied on it;

(d) may restrict the use of a pesticide to specified geographical areas or crops;

(e) shall specify details of the pesticide concerned, the maximum quantity of pesticide to which it relates, and measures for dealing with unused pesticides after the expiry or lapsing of the permit;

(f) shall lapse when the phytosanitary emergency is officially terminated;

(g) shall contain whatever terms and conditions the Board considers appropriate to protect human and animal health and the environment and to achieve the purpose of this Law.

Notes:

Only two countries (Eritrea [Draft] and Seychelles) in those surveyed had provisions for Derogations.

Power to Issue Regulations

Eritrea (Draft)

Article 35. Power to make Regulations

The Minister of Agriculture, after consultation with the Board, may make regulations for carrying out the purposes and giving effect to the provisions of this Law.

Without prejudice to the generality of the foregoing, regulations under this Article may:

(a) prescribe the forms and contents of applications, certificates of registration, licences, permits, labels, registers and other documents and records required for the purposes of this Law, or authorise the Registrar to prescribe such forms and contents;

- (b) prescribe the procedure and information to be given in connection with applications or documents required under this Law and the evidence to be supplied in support;
- (c) prescribe the requirements for the licensing of pesticide dealers
- (d) regulate the advertising of pesticides;
- (e) regulate the maximum residue limits of pesticides in food and measures to minimise such residues such as dose rates, preharvest intervals and frequency of application;
- (f) prescribe the requirements for pesticide containers;
- (g) regulate the environmentally sound disposal of pesticides and their containers;
- (h) prescribe the qualifications required and duties of inspectors and analysts;
- (i) prescribe the contents of the special I.D. cards to be issued to inspectors in order to allow them to exercise the powers given to inspectors in Art.27;
- (k) prescribe the methods of sampling and analysis to be followed;
- (k) prescribe methods for safe trials of pesticides in the field;
- (l) provide for the implementation of the Prior Informed Consent Procedure including control over the export of, and notification procedures for, pesticides which are banned or severely restricted in other countries;
- (m) prescribe measures to ensure that the confidentiality of information submitted to the Board is maintained;
- (n) prescribe the fees and charges payable in respect of any application, registration, licence, permit, or document under this Law;
- (o) prescribe facilities and clothing which must be used or worn while handling pesticides;
- (p) provide that the contravention of any provision of the regulations constitutes an offence and may prescribe penalties for any offence under those regulations.

With the availability of Judicial Review (or its equivalent in Civil Law jurisdictions), a provision for regulations which simply say words to the effect of:

'The Minister may make such regulations as he thinks fit for the purposes of this Act'

are no longer adequate because any regulations made under this provision might be declared *ultra vires* (beyond the powers or scope of the Act) in a court of law. The example above is not meant to be comprehensive but is a guide to the list of matters that might be regulated.

Offences & Penalties

1. Because of wide variations in the form of the criminal law in different countries, and wide differences in the style of legislation in this area, it is not practicable to identify 'best practice' with the provisions for offences and penalties.

It can generally be noted that some penalties, particularly fines fixed in specific monetary terms, rapidly become out of date and they no longer act as a deterrent. To avoid this problem, it was recommended at the LWG meeting in Pretoria, April 2001, that penalties for offences under the Act should ideally be given with reference to a standard scale of penalties, according to how serious the offences are. Offences at the lowest end of the scale will attract only relatively small fines while offences at higher end of the scale might be punishable by fines and/or imprisonment with the severest penalties restricted to the worst offences. (Offences in the Pesticides Act might only go up to the middle of such a scale.)

Statutory provision for this scale and the penalties for each category of offence would be in a separate Act that applies to criminal offences generally (with the approval of the Attorney General). The advantage of this approach is that the actual penalties, such as the level of fines or term of imprisonment, can be changed to reflect inflation or society's views on the offences by amending one central piece of legislation; it is then not necessary to amend the Plant Protection (& Quarantine) Act.

2. Offences are generally of STRICT LIABILITY, i.e. not requiring intention or other forms of *mens rea* such as recklessness. There should, however, be DEFENCES such as that of 'acting reasonably'.