

TABLE OF CONTENTS

INTRODUCTION	1
How To Use This Guide	3
I. OVERVIEW OF THE ROTTERDAM CONVENTION	4
A. Legal Status	4
B. Objective	4
C. Obligations	4
D. Ratification	8
II. OTHER RELEVANT INSTRUMENTS AND OPPORTUNITIES FOR INTEGRATION	9
A. FAO Code of Conduct on the Distribution and Use of Pesticides	9
B. Stockholm Convention on Persistent Organic Pollutants	11
C. The Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal	12
D. Other International Instruments	13
E. Capacity-Building Initiatives	14
III. NATIONAL LAWS ON CHEMICALS AND PESTICIDES	15
A. Different Legal Traditions in Different Countries	15
B. Basic Foundations of Effective Laws	15
(1) National Circumstances and Existing Legal Framework	15
(2) Rule of Law and Issues of Capacity	17
(3) Structure and Design of Laws; Clarity	17
(4) Basic Concepts and Principles relevant to Environmental Laws	18
(5) International Instruments in the Field of Chemicals Management	19
(6) Institutional Basis	20
C. Possible Elements of National Laws on Chemicals Management	21
(1) Goals, Priorities and Desired Level of Protection	21
(2) Pesticides versus Chemicals	22
(3) Regulatory and Other Tools: Pesticides	23
(4) Regulatory and Other Tools: Other Chemicals	27
(5) Institutions Responsible for Chemicals Management	30
(6) Enabling Civil Society Participation	32

IV.	IMPLEMENTING TREATY OBLIGATIONS THROUGH NATIONAL LAWS	35
A.	The Role and Importance of Implementing Laws	35
B.	The Structure and Design of Implementing Laws	36
C.	Cooperation at the Regional Level	37
V.	IMPLEMENTING THE SPECIFIC OBLIGATIONS OF THE ROTTERDAM CONVENTION THROUGH NATIONAL LAWS	38
A.	Objectives (Article 1)	38
B.	Definitions and Scope (Articles 2 and 3)	38
C.	Obligations relevant to Administration of the Treaty (Article 4)	40
D.	Obligation to Notify Final Regulatory Actions (Article 5)	41
E.	Proposals to List Severely Hazardous Pesticide Formulations (Article 6)	43
F.	Obligations in Relation to Imports (Article 10)	44
G.	Obligations in Relation to Exports (Article 11)	47
H.	Obligations relevant to Export Notification and Information to Accompany Exported Chemicals (Articles 12-13)	50
I.	Obligations on Information Exchange and Implementation (Articles 14 and 15)	52
J.	Obligations relevant to Domestic Production for Domestic Use, and Import from Any Source (Article 10.9)	53
K.	Obligations relevant to Technical Assistance	54
VI.	METHODS TO PROMOTE OBSERVANCE OF NATIONAL IMPLEMENTING LAWS	56
	ANNEX I - Reference List	58

INTRODUCTION

This Guide is designed as a reference document and training tool to assist in the development of national laws to implement the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (hereinafter the "Rotterdam Convention"). It may be used as:

a stand-alone reference and training tool for technical assistance activities relating to the Rotterdam Convention;

a supplementary document for use in other technical assistance initiatives in the area of chemicals management, to help ensure that Rotterdam Convention issues are reflected appropriately in these other initiatives.

The Guide is intended for use by countries that are Parties to the Rotterdam Convention, or aiming to become Parties. It has been developed especially for officials and experts working on laws and regulations to implement the Convention, or to enhance the basis for implementation. These may include legal advisers, regulators, customs officials, enforcement officials, technical experts from relevant ministries (e.g., environment, agriculture, health, trade/customs), legislators, judges and interested stakeholders

The Guide suggests possible actions to implement the Rotterdam Convention in the context of national laws on the management of pesticides and chemicals. It also includes suggestions on ways to link such actions to the implementation of other international instruments on chemicals, in support of an integrated approach. It builds upon a variety of existing reference and training materials, listed in Annex I.

The guidance is designed to be flexible to fit the variety of existing legal approaches to chemicals management, and to assist countries in tailoring their implementation actions to national circumstances, traditions and priorities. To promote the exchange of ideas, a series of questions is posed. The discussion is divided into six main parts, as follows:

Part I - - Overview of the Rotterdam Convention. This section provides a general overview of key obligations and provisions of the Convention.

Part II - - Other Relevant International Instruments and Opportunities for Integration. This section reviews other instruments in the field of chemicals management, including the Stockholm Convention on Persistent Organic Pollutants (POPs), the Basel Convention on Transboundary Movement of Hazardous and Other Wastes, and the FAO Code of Conduct on the Distribution and Use of Pesticides. It also highlights opportunities to implement the Rotterdam Convention in concert with these other instruments.

Part III - - National Laws on Chemicals Management. This section identifies basic foundations of effective national laws on chemicals and pesticides, as well as key elements that might be included in such laws. The discussion provides a framework for the more specific guidance on how to implement Rotterdam Convention obligations, set forth in Parts IV and V. It includes a series of questions to help focus consideration.

Part IV - - Observations on the Use of National Laws to Implement Treaty Obligations. This section considers the role and importance of national laws in implementing treaties, and highlights the need to

tailor action to the legal situation and traditions within each country. It notes various methods by which treaty obligations may be integrated into national laws, and considerations regarding the structure and design of these laws.

Part V - - Implementing the Specific Obligations of the Rotterdam Convention through National Laws. This section offers guidance on specific elements that may be included in national laws to implement the Rotterdam Convention. The discussion is divided according to the different types of obligations in the Convention. Institutional aspects relevant to national implementation also are addressed, and suggestions are provided with regard to real-world scenarios and practical problems.

Part VI - - Methods to Promote Observance of National Laws. This section offers guidance on approaches and actions to promote observance of (compliance with) implementing laws at the national level.

How To Use This Guide

The six parts of this Guide may be considered individually or collectively. In considering actions to enhance implementing laws, it is suggested that officials, experts and others follow the steps indicated below:

Step 1: review basic information on the Rotterdam Convention and other international instruments, provided in Parts I and II. This review is intended to set the stage for the specific consideration of national implementing laws.

Step 2: consider and identify basic foundations and key elements of national laws on chemicals and pesticides, on the basis of the guidance and information provided in Part III. The purpose is to identify the legal context within which obligations of the Rotterdam Convention may be implemented, and to highlight elements of national laws that will be important to implementation and enforcement. A series of questions is included to facilitate a national dialogue and the identification of country needs.

Step 3: review how treaties can be implemented through national laws. Part IV provides general observations on this subject, and explains why it might not be enough simply to incorporate the provisions of the Rotterdam Convention into national law. Part IV also provides suggestions on the structure of implementing laws.

Step 4: consider and identify possible enhancements to national laws to implement each relevant obligation of the Rotterdam Convention. In this regard, Part V offers specific suggestions on possible elements that could be included in national laws, while Part VI provides guidance on ways to promote observance of such laws.

I. OVERVIEW OF THE ROTTERDAM CONVENTION

A. Legal Status

The Rotterdam Convention is a relatively new international treaty in the field of chemicals management. It was opened for Signature at a Diplomatic Conference in Rotterdam, the Netherlands, in September 1998. It entered into force on 24 February 2004, following the 50th deposit of an instrument of ratification. As of the opening of the first Conference of the Parties in September 2004, it had 73 Parties.

Between September 1998 and February 2004, the Rotterdam Convention operated on the basis of “interim arrangements” established at the 1998 Rotterdam Diplomatic Conference. The interim arrangements were designed to continue to operate the existing voluntary procedure on Prior Informed Consent (PIC) relating to the international trade of certain hazardous chemicals, modified to incorporate the new features introduced by the Convention, and to lay the groundwork for the effective operation of the Convention upon entry into force.

B. Objective

The objective of the Rotterdam Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals, in order to protect human health and the environment from potential harm and contribute to their environmentally sound use, by facilitating information exchange about the characteristics of such chemicals, by providing for a national decision-making process on their import and export, and by disseminating these decisions to Parties (Article I).

Stated in other terms, the Convention provides an “early warning system” for countries to help protect themselves against certain hazardous chemicals moving in international trade. As described more fully in Part II of this Guide, the Convention is designed to complement other international instruments by addressing this key element (international trade) in the life-cycle of chemicals management.

C. Obligations

The Convention sets forth several mechanisms and obligations to achieve its stated objective. Some of these relate to how it operates at the international level, such as the role of the Secretariat in the listing process. Others consist of obligations that must be implemented by Parties, such as the requirements to designate DNAs, notify final regulatory actions, provide import responses, and so forth. The discussion below provides an overview of the mechanisms and obligations of the Convention.

(I) Scope and Definitions

As set forth in its provisions on scope and in its definitions of terms, the Convention applies to two types of chemicals.¹ The first is “banned or severely restricted chemicals.” These are industrial chemicals and pesticides that have been banned or severely restricted by final regulatory action at the national level in order to protect human health or the environment.² The second is “severely hazardous pesticide formulations.” These are pesticide formulations found to cause health or

¹ The term “chemical” is defined to consist of two categories: industrial chemicals and pesticides, including severely hazardous pesticide formulations.

² See Article 3 (Scope); Article 2 (definitions).

environmental problems under the conditions of use in a developing country or a country with an economy in transition.³ Both of these types of chemicals are eligible to be listed under the Convention. The Convention also specifies substances to which it does not apply.⁴

(2) Listing of Chemicals (including Notifications)

At the time the Convention was opened for signature in Rotterdam in September 1998, there were 27 chemicals listed in Annex III. Of these, seventeen were listed in the category of "pesticide," five in the category of "severely hazardous pesticide formulation", and five in the category of "industrial chemical." For the current list of chemicals in Annex III of the Convention, see the Rotterdam Convention internet site at www.pic.int.

The Convention establishes specific procedures and criteria for including additional chemicals. Different procedures govern "banned or severely restricted chemicals" and "severely hazardous pesticide formulations," as described below.

Process to List Banned or Severely Restricted Chemicals. Article 5 and Annex I address the listing of "banned or severely restricted chemicals." Under Article 5, a Party is required to notify the Secretariat when it has adopted a final regulatory action to ban or severely restrict a chemical. The Secretariat must verify whether the notifications meet the information requirements in Annex I. Once the Secretariat has received two verified notifications from Parties in at least two different "Prior Informed Consent regions" for a particular chemical, it must forward them to the Chemical Review Committee ("CRC") for consideration.⁵ The CRC then reviews the information, in accordance with criteria in Annex II, recommend to the COP whether to list the chemical.

Process to List Severely Hazardous Pesticide Formulations. Article 6 and Annex IV set forth separate procedures for severely hazardous pesticide formulations. Under these provisions, any Party that is a developing country or country with an economy in transition may propose to the Secretariat the listing of a severely hazardous pesticide formulation that is causing problems under conditions of use in its territory. The Secretariat must verify whether the proposal meets the information requirements in Part I of Annex IV. If so, the Secretariat forwards to the Parties a summary of the information received, collect certain additional information, and then forward the proposal and the related information to the CRC. The CRC shall review the information and, in accordance with the criteria set out in Part 3 of Annex IV, recommend to the COP whether to list the formulation.

Decision Guidance Documents. For each chemical that the CRC has decided to recommend for listing, it shall prepare a draft decision guidance document (DGD) with information relating to the chemical. This draft DGD shall be forwarded to the COP together with the recommendation on listing (see Articles 5-7; Article 18.6).

³ Id.

⁴ The following are specifically not included within the terms of the Convention: narcotic drugs and psychotropic substances; radioactive materials; wastes; chemical weapons; pharmaceuticals, including human and veterinary drugs; chemicals used as food additives; chemicals in quantities not likely to affect human health or the environment, provided they are imported for the purpose of research or analysis, or by an individual for his or her own personal use in quantities reasonable for such use. (See Article 3, Scope of the Convention)

⁵ See Article 5.5. The composition of Prior Informed Consent regions is defined by the Conference of the Parties (COP). The CRC is established by the COP in accordance with Article 18.

Listing Decision by the Conference of the Parties. The Conference of the Parties makes the final decision on whether to list a chemical, in accordance with the procedure laid down in Article 22.5, and on whether to approve the related DGD. When a chemical is listed in Annex III of the Convention, it must be indicated whether it is listed as a “pesticide”, an “industrial chemical” or a “severely hazardous pesticide formulation.”

(3) The Prior Informed Consent (PIC) Procedure

The Convention establishes a procedure requiring the “prior informed consent” of importing Parties to the import of the chemicals listed in Annex III. This may be referred to as the PIC procedure. The key obligations relevant to the PIC procedure include the following:

Communication of DGD to Parties. Once a decision has been taken to list a chemical and the related DGD has been approved, the Secretariat must forthwith communicate this information to all Parties (see Article 7.3).

Import Responses. Each Party must, no later than nine months after the date of dispatch of a DGD, transmit to the Secretariat a response indicating whether or not it consents to the import of the listed chemical and, if so, under what conditions (see Article 10).

The PIC Circular. Every six months, the Secretariat is required to inform all Parties of the responses it has received. It does this through the “PIC Circular” (see Article 10). The PIC Circular includes, *inter alia*, information on notifications of final regulatory actions under Article 5.4.

Exporter Obligation to Comply with Import Responses. Each Party must implement the measures necessary to ensure that its exporters comply with decisions communicated in import responses under Article 10. Provision is also made to address circumstances where an import response has not been made within a certain time period (see Article 11).

(4) Export Notification and Information Exchange

The Convention contains various provisions for the exchange of information about chemicals, including but not limited to those listed in Annex III. Key provisions include the following:

Export Notification. Where a chemical that is banned or severely restricted by a Party is exported from its territory, that Party is required to provide an export notification to importing Parties in line with the information set out in Annex V (see Article 12.1). This obligation ceases when such a chemical is listed in Annex III, or under certain other specific conditions. Further details with respect to this obligation are provided in Article 12.2-5.

Information to Accompany Exports: Customs Codes, Labels, Safety Data Sheets. Article 13 sets forth requirements to use customs codes and labels in conjunction with the export of chemicals listed in Annex III or covered by Article 12.1 (see Article 13.1-2). Where such chemicals are to be used for occupational purposes, each exporting Party must require that a safety data sheet is sent to each importer (see Article 13.4-5). In addition, each Party may require that chemicals subject to environmental or health labelling in its territory are, when exported, subject to specified labelling requirements (see Article 13.3).

Information on Chemicals and Regulatory actions. Article 14 contains provisions for the exchange of scientific, technical and other information on chemicals within the scope of the Convention, and on domestic regulatory actions that ban or substantially restrict one or more uses of the chemicals.

Information Initiatives at the National Level. Article 15 provides for actions at the national level to support implementation. In addition to measures required to implement the Convention, these may include the establishment of national registers and databases on chemicals, as well as the encouragement of initiatives by industry to promote chemical safety. In addition, each Party is required to ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in Annex III.

Decision Guidance Documents (DGD). The preparation and circulation of DGDs constitutes a key means to exchange of information under the Convention. A DGD contains a variety of information regarding the properties of the chemical to which it relates, the basis for final regulatory actions (in the case of a banned or severely restricted chemicals), information on incidents associated with the chemical (in the case of severely hazardous pesticide formulations), and so forth.⁶ As such, the DGDs are intended to assist countries in making informed decisions regarding whether and under what conditions to import chemicals listed in Annex III of the Convention and subject to the PIC procedure.

The PIC Circular. The PIC Circular, noted in the preceding section, also provides information to Parties including, *inter alia*, information on notifications and proposals under Articles 5 and 6.

(5) Domestic Production

The Convention contains an important provision relevant to the regulation of domestic production of listed chemicals for domestic use. This provision, Article 10.9(b), and its companion provision, Article 10.9(a), correspond to the provisions for national treatment and most-favored nation treatment embodied in international trade rules.

In particular, Article 10.9(b) specifies that where a Party decides not to consent to import of a chemical, or to consent only under specified conditions, it must, if it has not done so already, simultaneously prohibit or make subject to the same conditions the import of the chemical from any other source, as well as domestic production for domestic use.

This provision has significant implications for the development of national laws to implement the Convention. By providing that any limits on import must be applied simultaneously on domestic production for domestic use, it extends the scope of the Convention beyond export/import and into the realm of domestic regulatory controls over domestic production.

(6) Technical Assistance

The Convention sets forth certain obligations and provisions on technical assistance. In particular, Article 16 requires Parties to cooperate in promoting technical assistance to support implementation of the Convention, and indicates that Parties with more advanced programmes for regulating chemicals should provide technical assistance to other Parties to develop their capacity to manage chemicals throughout their life-cycle. Other provisions call for the Secretariat to provide assistance to Parties, including Article 10.3 (help with import responses, as appropriate).

In addition, the operational provisions of the Convention, such as the PIC procedure, are by their nature designed to assist countries to make informed decisions and act more effectively to address problems of unwanted and illegal imports.

⁶ Under Article 7, the DGD should, at a minimum, be based on information specified in Annex I (for banned or severely restricted chemicals) or Annex IV (for severely hazardous pesticide formulations).

(7) Administration; Designated National Authorities

Finally, the Convention contains provisions relevant to Parties' performance of their administrative functions under the Convention. In particular, Article 4 requires each Party to designate one or more national authorities (the "DNA") to act on its behalf in the performance of the administrative functions required by the Convention, and to ensure that such authority or authorities have sufficient resources to perform their tasks effectively.

D. Ratification

The Rotterdam Convention Secretariat previously has published a document entitled "How to Become a Party to the Rotterdam Convention." This document, located at www.pic.int, identifies a number of general steps to become a Party, recognizing that specific approaches vary among countries at the national level. Among other things, it notes that legislative and/or administrative actions may be needed as a basis for a country to be in a position to become a Party. The present Guide provides a basis to identify and consider such actions.

II. OTHER RELEVANT INSTRUMENTS AND OPPORTUNITIES FOR INTEGRATION

In addition to the Rotterdam Convention, there are a number of other international instruments in the field of chemicals management. Between them, these instruments provide key elements of an overall normative framework to assist countries to address risks from chemicals and pesticides throughout their life-cycle. In some cases, they specify legally-binding obligations for specified subsets of chemicals and pesticides of particular concern. They form the basis for ongoing technical assistance activities.

As countries develop or enhance implementing legislation for the Rotterdam Convention, it is recommended that they consider opportunities to implement these other instruments (to which they are parties) in combination with the Rotterdam Convention. First, the instruments address related matters and, taken together, provide a more complete approach to chemicals management than any one individually. Second, it is often no easy task to develop new or revised implementing legislation for international instruments. Accordingly, once an initiative to develop implementing laws is commenced, with a focus on chemicals and pesticides, there may be significant efficiency gains in pursuing an integrated approach.

Set forth below is a brief review of three instruments: the FAO Code of Conduct on the Distribution and Use of Pesticides; the Stockholm Convention on Persistent Organic Pollutants; and the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal. The discussion considers how their implementation may interrelate with implementation of the Rotterdam Convention.

A. FAO Code of Conduct on the Distribution and Use of Pesticides

Since its adoption in 1985, the International Code of Conduct on the Distribution and Use of Pesticides (the "Code") of the United Nations Food and Agriculture Organization (FAO) has served as a guiding normative framework on the subject of pesticides. The Code establishes voluntary standards of conduct for all public and private entities engaged in, or associated with, the distribution and use of pesticides, including governments, the pesticide industry and international organizations. It highlights the role of NGOs in monitoring and calling attention to departures from the Code.⁷

The Code served as predecessor to the Rotterdam Convention. In 1989, the Code was amended to include provisions for the Prior Informed Consent (PIC) procedure for trade in pesticides. These provisions, and those for industrial chemicals in the Amended London Guidelines of UNEP, served as the basis for developing the legally-binding obligations on PIC that are now contained in the Rotterdam Convention.

In 2002, FAO's governing body adopted a revised and modernized version of the Code. The Revised Version consists of twelve articles and a new annex that identifies international policy instruments related to the Code. The recent revisions were designed to build on past lessons and experience, take into account new developments in the field, and shape the Code into an up-to-date standard for pesticide management. The revisions also deleted the sections of the Code on the PIC procedure, as these are now governed by the legally-binding Rotterdam Convention.

A key feature of the Code is that it provides specific guidance on the development of national laws to address pesticides. For example, Article 5 of the Code (Reducing health and environmental risks) states that governments should implement a pesticide registration and control system, and periodically review

⁷ For the text of the Code and further information, see www.fao.org/AG/AGP/AGPP/Pesticid/.

pesticides marketed in their country and their acceptable uses. It also calls for governments to monitor occupational exposure, poisonings and residues in foods, and to establish poison information centers.

Article 6 of the Code (Regulatory and technical requirements) sets forth specific norms and guidance relating to the establishment of a national regulatory system on pesticides. Among other things, it provides as follows:

Legislation. Governments should introduce the necessary legislation to regulate pesticides, and make provisions for effective enforcement of such legislation, taking into account local conditions

Registration scheme. Governments should develop a pre-market pesticide registration scheme, based on risk evaluation and management and a specified approach to equivalency assessment

Re-registration procedure. Governments should establish a re-registration procedure to ensure the periodic review of pesticides

Monitoring/Data. Governments should collect and record data on the import, export, manufacture, formulation, quality, quantity and use of pesticides in order to assess possible effects on human health or the environment, and to follow trends

Compliance. Governments should permit pesticide application and personal protective equipment to be marketed only if they comply with established standards

Illegal trade. Governments should detect and control illegal trade

The Code also contains provisions and guidance on a range of other topics which should be considered when developing national laws. These include: definition of terms relevant to pesticide regulation (Article 2); testing of pesticides (Article 4); a system to ensure that active ingredients and formulated products for pesticides conform to relevant FAO and WHO specifications (Article 6); distribution and trade (Article 8); information exchange (Article 9); labelling, packaging, storage and disposal (Article 10); advertising (Article 11); and monitoring and observance (Article 12).

Prior to the 2002 Revision, the Code also contained provisions on the handling of proprietary information. Due to lack of agreement during the revision process, however, the Revised Code no longer contains provisions on this topic.

A number of Guidelines have been developed to elaborate the provisions of the Code. One of particular relevance to implementing legislation is entitled: Initial Introduction and Subsequent Development of a Simple National Pesticide Registration and Control Scheme. These and other Guidelines are currently being reviewed and updated by the FAO Panel of Experts for the Code.⁸

In sum, the Code indicates an overarching structure for pesticide management at the national level, as well as specific approaches for national laws. As discussed further in Part III of this Guide, these are basic foundations to implement the Rotterdam Convention. Accordingly, it is recommended that countries consider the FAO Code of Conduct in combination with actions to further develop national laws to implement the Rotterdam Convention.

⁸ These and other Guidelines may also be found at www.fao.org/AG/AGP/AGPP/Pesticid/.

B. Stockholm Convention on Persistent Organic Pollutants

Like the Rotterdam Convention, the Stockholm Convention on Persistent Organic Pollutants (the "Stockholm Convention") is a relatively new treaty in the field. The negotiation of the Convention was completed in Johannesburg, South Africa in December 2000, and the treaty entered into force on 17 May 2004.⁹

The Stockholm Convention sets forth obligations to reduce and/or eliminate the production and use of certain listed pesticides and industrial chemicals that are persistent organic pollutants (POPs). It also specifies obligations relating to the import and export of those substances. The ten pesticides and/or industrial chemicals presently listed are aldrin, chlordane, dieldrin, endrin, heptachlor, HCB, mirex, toxaphene and DDT and PCBs. They are listed in Annex A (the elimination annex) and/or Annex B (the restricted use annex). All but one, endrin, are also listed under the Rotterdam Convention.

The Stockholm Convention also contains obligations and provisions to reduce or eliminate releases from the unintentional production of certain substances, including through the application of measures for release reduction and source elimination, and the use of best available techniques and best environmental practices for specified sources. These substances, listed in Annex C, include PCBs and HCBs (as unintended by-products of industrial combustion and other activities), dioxins and furans. The Convention contains additional obligations regarding stockpiles and wastes from substances listed in its annexes, and a mechanism to enable substances to be added in the future.

The Stockholm and Rotterdam Conventions are designed to address complementary aspects of efforts to address harms and risks of chemicals and pesticides. Some important comparisons may be highlighted:

Coverage: the Stockholm Convention focuses on "persistent organic pollutants". It specifies obligations both for intentionally produced substances (certain pesticides and chemicals) and the release of unintentionally produced by-products (e.g., dioxins and furans). The Rotterdam Convention, by comparison, applies to chemicals that have been banned or severely restricted at the national level, and certain severely hazardous pesticide formulations. It does not contain specific measures addressed to the release of unintended by-products, such as those of the Stockholm Convention..

Obligations on production and use. The Stockholm Convention contains prohibitions or restrictions on the production and use of the chemicals listed in its Annexes A and B. By comparison, the Rotterdam Convention focuses mainly on international trade aspects of the chemicals that it covers, rather than on their production and use. However, Article 10.9 of the Rotterdam Convention, which requires equivalent prohibitions or restrictions on domestic production where imports are prohibited or restricted, is relevant to production and use.

Trade. The Rotterdam Convention sets forth many provisions relevant to the trade of chemicals covered by the Convention, establishing a PIC procedure and other obligations as described in Part I of this Guide. The Stockholm Convention also contains certain obligations relating to trade. For example, it disallows - - except for the purposes of environmentally sound disposal - - export of substances listed in Annex A which are not subject to a specific exemption under the Convention. See Stockholm Convention, Article 3(2)(c). For substances still subject to specific exemptions under Annex A, or for Annex B substances, export is allowed only under certain specified conditions. See Stockholm Convention, Article 3(2)(b).

⁹ For the text of the Stockholm Convention and further information, see www.pops.int.

Listing of new substances. Both the Rotterdam Convention and the Stockholm Convention contain mechanisms to add substances in the future. The procedures and criteria for new listings, however, differ substantially. Under the Stockholm Convention, factors include level of persistence, bioaccumulation, potential for long-range transport, and adverse effects (Stockholm Convention, Annex D), information on the risk profile (Stockholm Convention, Annex E) and information on socio-economic effects (Stockholm Convention, Annex F). The Rotterdam Convention, by comparison, considers whether a chemical has been “banned or severely restricted” by two or more Parties in two “PIC regions”, or whether it is causing problems as a severely hazardous pesticide formulation under conditions of use in a developing country or country with economy in transition (see Part I of this Guide).

As suggested above, whilst there are differences between the Rotterdam and Stockholm Conventions, there are also close complementarities between them. Because the listing process under the Rotterdam Convention flows in part from final regulatory actions by Parties, it may be expected that at least some of the chemicals listed under the Stockholm Convention will be listed first under the Rotterdam Convention. Many chemicals are already listed under both conventions.

In national actions to implement the two Conventions it will be important to consider these closely related sets of obligations and procedures in an integrated manner to ensure complementarity and avoid duplication and overlap.

C. The Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal

The Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal (the Basel Convention) sets forth obligations relevant to the transboundary movement of hazardous wastes as defined under that Convention. It also includes a prior informed consent procedure, under which an exporter of wastes covered by the Convention shall not allow a generator or exporter (the “notifier”) to commence transboundary movement until the following conditions are met:

The notifier has received the written consent of the State of import; and
The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.¹⁰

Wastes covered by the Basel Convention will include those containing or resulting from chemicals listed under the Rotterdam and Stockholm Conventions. See Articles 1 and 2 (scope and definitions); Annex I (Categories of Wastes to be Controlled) and Annex III (List of Hazardous Characteristics). The Basel Convention also contains a separate provision specifying practices that constitute “illegal traffic” in wastes. See Article 9 (Illegal Traffic). Where one of its exporters or generators has engaged in illegal traffic, the State of export must ensure that the wastes in question are taken back or, if impracticable, are otherwise disposed of in accordance with the Convention. See Article 9.2 (other conditions also are specified).

¹⁰ See Article 6 (also specifying other conditions relevant to the Basel PIC procedure).

In sum, there are also close complementarities between the Basel Convention and the Rotterdam Convention. The Basel Convention may be viewed as addressed to later stages in the life-cycle of chemicals - - i.e., once they become wastes. In addition, Basel Convention obligations may apply to chemicals (as wastes) covered by the Rotterdam Convention and the Stockholm Convention, and the Basel Convention contains mechanisms (e.g., its PIC procedure) that are similar to those in the Rotterdam Convention.

The question of whether to combine implementation of these instruments into a single national legislative package or to act upon them separately is, of course, a decision to be taken by individual countries in light of their own circumstances and priorities. However that decision is taken, it will be important to consider the inter relations among instruments in the development of implementing laws for the Rotterdam Convention, to ensure complementarity and to avoid duplication and overlap.

D. Other International Instruments

There are certain other international instruments that address issues relevant to chemicals and/or pesticides. These include:

The Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in 1987 and entered into force in 1989 (focusing on chemicals that deplete the ozone layer), as amended in 1990, 1992, 1997 and 1999 and adjusted in 1990, 1992, 1995, 1997 and 1999 (further information and text at www.unep.org/ozone)

The *Codex Alimentarius* and its Committee on Pesticide Residues (standards for pesticide residues in foods) (further information and database on Codex maximum residue limits, or MRLs, at www.fao.org/AG/AGP/AGPP/Pesticid)

The ILO Convention concerning Safety in the Use of Chemicals at Work, adopted in 1990 and entered into force in 1993 (text at <http://www.ilo.org/ilolex/english/convdisp2.htm> - document 170)

Agenda 21, Chapter 14 (Promoting Sustainable Agriculture and Rural Development) and Chapter 19 (Environmentally Sound Management of Chemicals) (further information/text at www.un.org/esa/sustdev/agenda21)

The Rome Declaration on World Food Security and the World Food Summit Plan of Action, adopted in 1996 (further information and text at www.fao.org/wfs/homepage.htm)

The World Health Declaration and Health-for-all in the 21st Century, adopted in 1998 (further information and text at www.who.int/archives/hfa/policy.htm)

The Plan of Implementation of the World Summit on Sustainable Development, paragraph 23, adopted in 2002 (further information and text at www.un.org/esa/sustdev)

Some of these instruments are conventions with legally binding obligations. Others consist of declarations, commitments and action plans adopted by heads of state or ministers on behalf of governments from around the world. In general, they establish standards of conduct (some binding, some not) for action to address various types of risks associated with chemicals. Each of them also embodies ongoing programs of work that relate to important aspects of the management of chemicals.

In developing actions to implement the Rotterdam Convention it is recommended that consideration be given to how these instruments and their related initiatives might also be reflected in national laws and programs in an integrated manner.

E. Capacity-Building Initiatives

There are a number of capacity-building initiatives to promote implementation of the instruments listed in the previous section. Under the Stockholm Convention, for example, many countries are working to develop National Implementation Plans to implement the Convention. One component of these Plans will be to strengthen national legislation, as needed. Under the Basel Convention, there are various initiatives, including a program to train customs officials to help them address transboundary movement issues covered by the Convention.¹¹

Other important initiatives include FAO programs on Integrated Pest Management (IPM) and obsolete pesticides and UNEP training programmes, workshops and environmental law publications which provide capacity building on the implementation and enforcement of, and compliance with, multilateral environmental agreements (MEAs). UNITAR also carries out training and capacity building programs on chemicals management.¹²

These initiatives have strong potential connections to the development of implementing legislation under the Rotterdam Convention. For example, there are significant opportunities to advance the implementation and enforcement of Rotterdam Convention obligations in the context of developing implementing laws and actions under Stockholm Convention National Implementation Plans. The Basel Convention program to train customs officials could also be applied or drawn upon to conduct similarly important training to help implement the Rotterdam Convention.

Further information on opportunities for synergies between various technical assistance initiatives is contained in documentation prepared by the Rotterdam Secretariat for the first meeting of the Conference of the Parties (see especially UNEP/FAO/RC/COP.1/28 - Proposal for the Regional Delivery of Technical Assistance). Countries are encouraged to consider these opportunities.

¹¹ Further information on these programs is available at www.pops.int (Stockholm Convention) and www.basel.int (Basel Convention).

¹² For additional information on FAO programs, see www.fao.org/AG/AGP/AGPP. For information on UNEP programs and activities, see www.unep.org. For information on UNITAR capacity-building initiatives on chemicals management, see www.unitar.org

III. NATIONAL LAWS ON CHEMICALS AND PESTICIDES

This section identifies possible elements of an overall national legal framework on pesticides and chemicals. It considers both basic foundations and key elements that might be included in such laws. The purpose is to assist countries to identify the legal context within which obligations of the Rotterdam Convention may be implemented, and to highlight elements of their national legal framework that will be important in order to achieve full and effective implementation. The section also provides brief notes on how the instruments identified in Part II of this Guide may relate to this national legal framework.

A. Different Legal Traditions in Different Countries

An essential starting point in considering national laws on chemicals and pesticides is the fact that different countries have different legal systems, traditions and approaches. This is an important reason why many treaties refrain from specifying how to implement particular obligations at the national level. The development or enhancement of national laws needs to take place within the framework of these traditions and approaches, as determined by each country for itself.

This Guide is designed so that it can be adapted to any particular system of law and institutional framework. It does not provide a specific “model” law or approach, nor would that be appropriate, given that each country needs to develop an approach that best fits its social, political, cultural and legal traditions.

Rather, the discussion identifies possible core elements of an effective legal framework at the national level to implement the Rotterdam Convention. For purposes of this text, references to “national laws” or “legal frameworks at the national level” may encompass legislation, regulations, or other types of instruments having a legally-binding effect, as well as the institutions established to promote implementation and enforcement of, and compliance with, such instruments.

B. Basic Foundations of Effective Laws

This section reviews basic foundations of effective national laws relevant to the area of chemicals management. Part C which follows focuses more specifically on possible elements of such laws. In order to promote discussion at the national level, a number of questions are posed and suggestions provided on how these laws might be enhanced to support implementation of the Rotterdam Convention.

(I) National Circumstances and Existing Legal Framework

As noted above, the development of implementing laws for the Rotterdam Convention needs to be tailored to national circumstances. Each country should work within the context of its own basic legal framework and traditions, as well as its social, political and environmental conditions, and adapt the guidance suggested in this Guide to that context.

Many countries already have in place a basic legal and institutional framework to address chemicals management. The Rotterdam Convention, focused on matters relating to chemicals and pesticides, may most appropriately fit within this framework, in combination with other instruments noted in Part II of this Guide.

The extent to which these legal frameworks have been developed varies among countries. In addition, while many countries have legal structures designed to address risks from pesticides, fewer structures

are in place to address risks from industrial chemicals. Moreover, with respect to pesticides, FAO surveys indicate that while important progress has been made in recent years, many difficulties remain. For example, the surveys suggest that national legislation is not widely enforced due to lack of technical expertise and resources, that highly hazardous and sub-standard pesticide formulations are still widely used, and that often end-users are insufficiently trained and protected to ensure that pesticides can be handled with minimum risk.¹³

Set forth below and in the following sections are questions that officials and experts may wish to address as they consider developing or enhancing national laws to implement and enforce the Rotterdam Convention. These questions are intended to facilitate dialogue and the identification of country needs relevant to the development of fully effective implementing laws. They are set forth in boxes, and grouped according to topic.

Please note that consideration of some of the questions may help to highlight problems that hamper the effective development or application of national laws. It is hoped that discussion of such matters will facilitate progress and further action, as appropriate, by promoting a fuller understanding of the national situation.

Questions - - National Circumstances:

Is there already in place a specific legal and institutional framework on chemicals management?
Does this framework address both pesticides and industrial chemicals?
Does it address issues relating to the import and export of hazardous chemicals? How?
Is this framework functioning adequately? If not, what difficulties have been encountered?
Does the framework already contain provisions to implement the Rotterdam Convention? The other instruments described in Part II of this Guide?
What would be involved if the country decides to amend or enhance existing laws (including regulations) to implement the Rotterdam Convention, and other related instruments?

¹³ See Responses to FAO Surveys conducted under the FAO Code of Conduct, as www.fao.org.

(2) Rule of Law and Issues of Capacity

An important premise of this Guide is that implementing laws will be developed within the context of institutional and other conditions that help to support a rule of law. This may include, among other things, a sense that laws will be respected and will be applied fairly according to their terms, in the national context, in support of their basic aims. In developing implementing legislation, countries should consider whether there are any obstacles to this that need to be addressed.

In addition, as discussed in more detail below, it is recognized that a lack of capacity and resources may be a significant restraint to the implementation and enforcement of national laws.

Questions - - Rule of Law and Issues of Capacity:

Are there any basic obstacles to the implementation of national laws to regulate chemicals and pesticides? If so, what are they?

For example, is there a lack of capacity and resources to implement the laws?

Is there a problem of fragmentation in these laws? A lack of clarity in terms of what they require, by whom, etc.?

Is there a lack of political will to implement the laws?

Are there problems in generating public awareness of the laws, or a sense of commitment to follow the laws?

What specific actions should be taken to address these issues that might assist the implementation of the Rotterdam Convention?

(3) Structure and Design of Laws; Clarity

The structure and design of national laws will vary according to the practices and traditions of each country. Part IV of this Guide provides a brief discussion of various types of instruments used at the national level.

Whatever type of instrument is used, a key factor for its effectiveness is whether its provisions are clear and understandable. It should be clear, for example, how to respond to the following questions:

Questions - - Structure and Design of Laws:

What is covered (regulated products, activities)

What exactly are the objectives, definitions of key terms, basic standards and obligations

Who is subject to the various obligations (e.g., for proper labelling of pesticides?)

When has a violation occurred? Who is responsible for it? (e.g., for mislabelled pesticides?)

Who is responsible for taking actions to enforce the laws in cases of non-observance? With what methods? And what penalties for violations?

Are rights available to seek compensation if harmed? By what methods? How is compensation measured? Does it include economic loss? Environmental harm?

(4) Basic Concepts and Principles relevant to Environmental Laws

Over the past 30 years, the international community has emphasized a number of themes, principles and concepts relevant to the development of policies and laws to protect human health and the environment, and to address the inter-related needs of economic and social development. These reflect years of experience, trial and error, successes and mistakes (and negotiating dynamics). They are relevant to the area of chemicals management as well as to other areas of health and environmental policy.

In the development of laws to implement the Rotterdam Convention, countries may wish to consider the extent to which these concepts and principles have already been integrated into their legal frameworks, and whether any further action needs to be taken in this regard. Relevant concepts and principles include, among others: notions of sustainable development; linkages between environmental protection, human health and poverty; public participation and community right to know about the presence and emissions of toxic chemicals; pollution prevention; common but differentiated responsibilities; science and precaution; special issues relevant to developing countries; issues of equity and elevated risk for indigenous communities and other groups and sub-populations; and the use of a life-cycle approach to address environmental harms.¹⁴

Questions - - Application of Key Concepts and Principles:

Do national laws reflect these key concepts and principles?

Does the legal framework at the national level include effective means to operationalize these in practice?

For example:

Does this framework provide a basis to address potential harms from toxic chemicals throughout the life-cycle, from extraction and development through use, trade, handling, storage and disposal?

Does the framework help to prevent harms from chemicals before they occur? For example, does it provide incentives to use substances or practices that are less harmful to health and the environment?

Does it provide for a science-based process, and a precautionary approach? Is there adequate legal authority to gather good scientific information?

Does it provide a system to inform the public and communities about the presence and release of toxic chemicals?

Does it recognize the possibility that certain communities (e.g., indigenous communities), groups or sub-populations (e.g., children, the elderly) are particularly at risk? How does it address this concern?

By which means is public participation achieved in the law and policy process?

¹⁴ References for these are found in a variety of sources, including the 1992 Rio Declaration and Agenda 21, the 2001 Millenium Declaration, the Johannesburg Plan of Action of the 2002 World Summit on Sustainable Development, the 1987 Brundtland Commission Report, the 1972 Stockholm Declaration, and documents of the Central American Alliance for Sustainable Development. Issues relating to particular risks from toxic chemicals faced by indigenous communities are recognized, for example, in the Stockholm Convention.

(5) International Instruments in the Field of Chemicals Management

As described in Part II of this Guide, there are a number of international instruments in the field of chemicals management, such as the FAO Code of Conduct on the Distribution and Use of Pesticides. These instruments establish key elements of a basic normative framework, and highlight certain key principles and concepts relevant to the management of chemicals. In addition, there are a variety of ongoing capacity-building initiatives to support chemicals management.

Questions - - Implementation of International Instruments:

Have efforts been made to implement the FAO Code of Conduct into national legal systems? What is the status of these efforts?

Have efforts been made to implement the Stockholm Convention into the national legal system? What is the status of these efforts?

Have efforts been made to implement the Basel Convention, and other instruments mentioned in Part II? What is the status of these efforts?

Have efforts been made to develop an improved chemicals management system under existing capacity building initiatives, including those of FAO, UNEP, UNITAR and other organizations? What is the status of these efforts?

(6) Institutional Basis

The institutional framework is another key factor which will influence the implementation of the type of regulatory scheme indicated above and, more specifically, the obligations of the Rotterdam Convention. The relevant institutions will need to develop and implement national programs and activities to enforce the laws and ensure their observance. They will also have responsibilities to participate in the international activities under the Convention (e.g., Conferences of the Parties, processes for adding chemicals).

A number of general elements of an effective institutional framework may be identified. These include the following:

Sufficient legal authority. National administrative authorities generally operate on the basis of legal mandates and authorities contained in relevant laws. These institutions need to be given sufficient authority to perform the responsibilities assigned to them in the laws. This should include authority for the relevant Ministry or authority to perform actions such as:

- Propose and draft regulations;
- Establish or implement policies and priorities;
- Establish and administer programs;
- Gather information and perform needed technical analysis; and
- Take enforcement and other actions to promote and ensure observance of the laws.

Identifying primary administrative responsibility. It may assist with the administration of laws to identify an administrative entity that shall have primary responsibility to implement the various elements of a regulatory program. Part III.D of this Guide considers how this might apply in the context of laws on chemicals

Adequate funding and resources. Many countries face severe constraints in the resources and capacity available to implement laws to address risks from pesticides and chemicals. Recognizing this, sufficient levels of funding and resources will need to be made available for these purposes. Otherwise, even well-written laws may have little practical effect.

Coordination. Regulatory programs in the area of pesticides and chemicals are designed to protect human health and the environment, but in so doing they affect a range of activities, including agriculture and trade. As a result, several administrative authorities may have an interest in at least some aspects of the regulatory system (e.g., ministries of environment, agriculture, public health). Accordingly, it is important to have appropriate procedures for coordination among these entities.

Transparency and civil society participation. As discussed above, transparency and public participation are considered key elements of an effective law and policymaking process. Consideration should be given as to how these are reflected in the way in which the responsible administrative entities operate. Possible approaches are described in Part III.C.6 of this Guide.

Questions - - Institutional Basis:

Are there adequate financial and other resources to implement and enforce national laws on chemicals? If not, how should the shortfalls be addressed? What steps could be taken to ensure sufficient resources to implement the Rotterdam Convention?

Does the legal framework establish a sufficiently clear division of responsibility among national authorities responsible to implement and enforce the relevant laws? If not, in what respect are there overlaps and gaps?

Is there a sufficiently clear division of responsibility between national and sub-national authorities in these regards? If not, where are the overlaps and gaps?

What steps could be taken to resolve any problems in these regards?

Is there transparency and public participation in the work of the responsible institutions?

C. Possible Elements of National Laws on Chemicals Management

Building on the above foundations, and taking into consideration various other studies and references, this section identifies a number of potential elements of effective national laws on chemicals management. Please note that in some cases the discussion differentiates between pesticides and other chemicals, taking into consideration difference between the two sets of substances.

(I) Goals, Priorities and Desired Level of Protection

An important step in the development of effective laws on chemicals management is to establish specific goals and priorities. Doing this also provides an important basis to operate despite limitations of resources and capacity, by putting a focus on those actions of most importance.

Concepts of civil society participation suggest that the process to establish goals and priorities should occur through a process which involves the public and stakeholders as well as government decision makers. The results may be reflected in national laws in various ways, and elaborated through ongoing programs to implement these laws.

The following sets of questions may be considered to assist in the process to identify goals and priorities.

Questions - - Problems, Goals and Priorities:

What is the problem? Examples:

Effects on farm workers from use of pesticides

Effects on public from pesticide residues on foods

Effects of factory workers from exposure to toxics

Effects on people and wildlife of water and air contamination produced by industrial emissions/discharge, runoff from agriculture or urban areas, emissions from transport, handling and disposal, accidents

What are the sources of this problem? Examples:

Lack of an adequate legal framework to prevent or control these problems?

Inability - - or lack of political will - - to implement and enforce existing legal framework?

Illegal trade in regulated substances?

Problems of observance of conditions of use (e.g., protective equipment is unavailable or not used; users cannot read label instructions; mislabelling; etc.)?

Underlying social and economic factors (methods of production and agriculture, other)?

Do the national laws intend to cover all of only some of these problems?

How is civil society involved in the development of goals and priorities?

Do the laws integrate goals, priorities and commitments from international instruments (see Part II of this Guide)?

Do the laws specify a chosen level of protection against potential harms? What is this level of protection? Does it take into account particular risks for certain groups, e.g., children, others?

(2) Pesticides versus Chemicals

The discussion below identifies a number of tools and techniques that may be included in national laws to address risks posed by pesticides and chemicals. As will be seen, pesticides and for other chemicals are considered separately.

One reason for this distinction is that pesticides are poisonous by design, and so can be expected to pose risks to human health and the environment by their very nature (though this varies in degree). By comparison, while some other chemicals pose serious risks to human health and the environment, they generally are not intended to have toxic effects as products, and serve very different uses than pesticides.¹⁵ Accordingly, while there are many areas of overlap in the regulation of pesticides and other chemicals, in some cases different tools and techniques are suggested.

¹⁵ [Legislating Chemicals: an Overview](#) (UNEP 1995) reviews the evolution of laws on different types of chemicals over time (pages 20-24).

(3) Regulatory and Other Tools: Pesticides

Building on the FAO Code of Conduct and other sources, the following items may be considered important elements of an effective system to regulate pesticides. The discussion focuses on pesticides as products, and notes more briefly other aspects of a life-cycle-based approach to the regulation of pesticides.

(a) A Registration System.

As suggested by the FAO Code of Conduct and other sources, a pre-market registration system is considered a key starting point to address risks from pesticides. The system should ensure that pesticide products are not produced, sold, used, and/or imported (see below for export) in the country unless they are first registered according to specified criteria designed to protect human health and the environment. The registration system may include the following elements:

Applications for Registration; Data Requirements. A process should be established by which applications may be presented for registration. The process should specify data requirements, which may address:

- Chemical and physical properties
- Toxicology
- Environmental fate (e.g., persistence, bioaccumulation)
- Residues in foods and food communities
- Ecological hazards and exposure (including endangered species)
- Efficacy for intended purpose

Basis for Regulatory Decisions; Science and Risk. Decisions on registration should be designed to achieve the chosen level of health and environmental protection. This may be determined on the basis of risk evaluations and risk management, based on available data or information and a precautionary approach, as appropriate. Consideration should be given to:

- Hazard: acute and chronic toxicity (e.g., carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive, other)
- Exposure: dietary, drinking water, occupational, residential; children, other groups particularly at risk
- Risk (hazard combined with exposure) to human health (including various populations, e.g., workers, children, elderly), and ecological risks (e.g., wildlife; endangered species)
- How to address scientific uncertainty; margins for error
- How to address costs versus benefits of regulatory decisions
- Existing data, information and classifications

Using Existing Data and Information. The analysis of pesticides can be resource intensive, and has already been performed for many substances. It is, accordingly, suggested that countries take advantage, as appropriate, of existing data and information. These include:

- Decision guidance documents (DGDs) under the Rotterdam Convention, and information on regulatory actions in other countries in the Rotterdam Convention PIC Circular
- Classifications of chemicals by hazard of the World Health Organization (see www.who.int/pcs_act.htm)¹⁶

¹⁶ The FAO Code of Conduct (Article 7.2) provides that governments should, where appropriate, use the WHO classification of pesticides by hazard as the basis of their regulatory measures and associate

Other international assessments and evaluations of hazardous chemicals. These include WHO EHC studies, WHO/OECD Screening Information Data sheets for HPV chemicals, and the FAO JMPR program on pesticide residues.¹⁷

Possible Types of Decisions. Regulatory decisions may include, for example:

Refusal to register

Registration but with enforceable conditions. Examples:

Use only allowed when accompanied by protective equipment (assuming available);

Use limited to certified, highly trained applicators (assuming feasible);

Workers not to re-enter field before a specified time period (to allow toxicity to dissipate);

Restrictions on amount, frequency and/or location of use

Labels, Packaging, Handling, Disposal. The domestic law may include a requirement (on producers/others) for clear labels regarding hazards, and (upon farmers/users) that use be in accordance with the label. There could also be specific requirements for packaging, handling and disposal. See relevant provisions of FAO Code of Conduct (especially Article 10 of the Code).

Tailoring the Registration System to Local Conditions of Use

As indicated by the FAO Code of Conduct, rules and regulatory decisions on pesticides should be compatible with existing levels of user training and expertise (Article 7.1 of the Code).

For example, in order to achieve a desired level of protection, it might be that certain pesticides may only be used with certain types of protective equipment and by highly trained applicators. If, however, the equipment or trained applicators are not likely to be available in the country or in areas of use, then registration of the pesticide may result in unacceptable levels of harm or risk.

This also suggests the need to be cautious in using regulatory approvals and conditions in other countries as a model for the domestic approval process. It might be that some regulatory conditions implemented in one country would not be feasible to implement in another. This concept also is reflected in the provisions of the Rotterdam Convention on severely hazardous pesticide formulations under conditions of use, where it is recognized that conditions of use in some countries pose special problems justifying a separate basis to list chemicals under that Convention.

(c) Post-Registration Review.

Procedures may also be established to review the use of pesticides under existing registrations to ensure that prompt and effective measures can be taken as issues or problems arise. This should include, for example, the possibility of removal of the pesticide from the market if relevant conditions are not being met, or if new information or data on the performance or risks indicate that such action is needed.

the hazard class with well-recognized hazard symbols. When determining the risk and degree of restriction, the type of formulation and method of application should be taken into account.

¹⁷ See www.who.int (WHO programs); www.oecd.org (WHO-OECD program); www.fao.org (FAO programs).

(d) Civil Society Involvement

Interested members of the public should have an appropriate opportunity to participate in the process leading to registration and post-registration decisions. Possible approaches are described in Part III.C.6 of this Guide.

(e) Legislative Bans or Controls

Specific legislative bans or other controls may also be applied on especially hazardous pesticides, including those subject to international agreements. These could be applied in conjunction with regulatory decisions under a registration system, in order to single out through legislation pesticides of particular concern. Any further regulatory action on such chemicals would need to be in accord with such legislation.

(f) Measures on Import and Export

Specific measures to address import and export of regulated pesticides may be adopted, including measures to ensure that customs officials and others are able to establish and implement the necessary controls. These should include provisions to implement the various obligations on exports and imports in the Rotterdam and Stockholm Conventions and other legally-binding instruments (as applicable).

(g) Provisions for Proprietary Information

Provisions may be included to address issues relating to confidential or proprietary information supplied in support of an application under a registration system.

(h) Data Collection, Monitoring and Reporting

Building on the FAO Code of Conduct, a framework may be established to monitor data relating to the production, use, import and export of pesticides, actual conditions of use of pesticides, and impacts on human health and the environment. This may include: reporting requirements upon, for example, producers, importers and exporters as a means to gather needed information; and incident reporting and follow-up.

(i) Provisions to Promote and Ensure Observance of Laws

A framework may be developed to monitor observance of (compliance with) with relevant national laws and regulations, and to take actions to promote observance and penalize violations. This may include, among other actions, vesting specific powers in responsible regulatory agencies to monitor practices, investigate circumstances of potential non-observance, promote observance, and penalize violations.

An approach should be developed to guide these efforts, including the inspection process, appeals procedures, and related matters. Appropriate reporting requirements on regulated entities may also be an important tool to gather information on compliance. Tools of compliance, including the application of appropriate penalties for violations, should apply to both procedural and substantive elements of the laws. (see also Part VI of this Guide - - Methods to Promote Observance of Laws).

(j) International Instruments

Specific provisions should be developed to implement the specific obligations in international instruments that are in force for each country, including those from the Rotterdam Convention, the Stockholm Convention and others. Part V of this Guide provides detailed guidance on provisions to implement the Rotterdam Convention.

(k) Non-Regulatory Actions (e.g., Integrated Pest Management)

The FAO Code of Conduct sets forth guidance on a range of other actions that may be taken, in support of a life-cycle approach. Emphasis is placed on initiatives to promote improved agricultural practices that are less reliant on pesticides and reduce or minimize risk to human health and the environment, such as Integrated Pest Management (IPM). Actions may take a variety of forms, including work with farmers, encouragements in the food-supply chain, programs on obsolete stockpiles, and so forth. Initiatives to promote education and public awareness, as well as advisory, extension and health care services, should also be developed.

Questions - - Regulatory System for Pesticides:

Does the legal framework provide for a registration system?

Is it functioning effectively? How so or how not?

Are the conditions on the use of pesticides being observed by users? If not, or if it is not feasible or possible to enforce these conditions, is effective action being taken to redress the situation? Is consideration given to precautionary action?

Does the legal framework contain provisions to implement the obligations of the Rotterdam Convention?

Other international instruments?

Does it provide a supportive framework to pursue other actions noted above, such as IPM?

(4) Regulatory and Other Tools: Other Chemicals

Tools and techniques that may be used to regulate chemicals other than pesticides are described in this section. The discussion builds on “Legislating Chemicals: An Overview” (UNEP, 1995), among other sources. It identifies possible elements of an effective domestic system to address risks from chemicals. It focuses upon chemicals as products, and notes more briefly other aspects of a life-cycle-based approach.

(a) A Registration or Licensing System?

For industrial chemicals, one option would be to institute a pre-market licensing system, similar to a registration system used for pesticides. From a practical point of view, however, it might be difficult to administer such a system given the number of chemicals potentially in production. Also, as noted above, the differences between pesticides and other chemicals might suggest a somewhat different regulatory approach for each.

(b) Pre-Market or Pre-Manufacture Notification (New Chemicals)

An alternative for new chemicals is to establish a pre-market or pre-manufacture notification system, which could consist of the following:

Notification. Manufacturers would be required to notify new chemicals to the responsible administrative authority prior to their introduction in the market;

Relevant information. The notification should include information relevant to whether a chemical poses any potential risks to human health or the environment

Regulatory review process. The authority would review the chemicals and determine whether the chemical should be allowed for introduction, should not be allowed, or should be allowed only with conditions (conditions might include, e.g., monitoring by the applicant to determine if any adverse effects arise).

Use of existing information. During the review period, the authority could seek to determine whether controls have been imposed on the chemical in any other jurisdictions, and whether it is subject to any international instruments. The Rotterdam Convention PIC Circular provides one important source of such information.

(c) Legislative Bans or Controls (Existing Chemicals of Concern)

In combination with the above notification system, the domestic law could impose specific bans or other controls by legislation on especially hazardous industrial chemicals, such as PCBs, lead and others. Any further regulatory action on such chemicals would need to be in accordance with the relevant provisions of the legislation.

(d) Product Lists or Registers

Domestic law could also require development of an inventory of existing chemicals (this is very resource intensive) or a more limited list with information on chemicals in certain products. Under this latter system, producers and importers may be called upon to submit information periodically on potentially harmful chemicals in use.

(e) Measures on Import and Export

Specific measures to address import and export of regulated chemicals may be adopted, including measures to ensure that customs officials and others are able to establish and implement the necessary

controls. These should include provisions to implement the export and import obligations contained in the Rotterdam and Stockholm Conventions, and other legally-binding instruments as applicable.

(f) Using Existing Data and Information

The analysis of chemicals can be resource intensive, and has already been performed for many substances. It is suggested that countries take advantage, as appropriate, of existing data and information. Key sources of information include the Rotterdam Convention DGDs and PIC Circular, and information available from WHO, OECD and FAO (see page 24 and note 17 of this Guide).

(g) Provisions for Proprietary Information

Provisions may be included to address issues relating to confidential or proprietary information supplied under the licensing and/or notification system.

(h) Data Collection, Monitoring and Reporting

A framework may be developed to monitor data relating to the production, use, import and export of industrial chemicals, and impacts on health and the environment. This may be done through various means, such as: reporting requirements (e.g., upon producers, importers and exports) to gather needed information.; incident reporting and follow-up; and so forth.

(i) Provisions to Promote and Ensure Observance of Laws

A framework may be developed to monitor observance of (compliance with) relevant laws and regulations, and to take actions to promote observance and penalize violations. This may include, among other actions, vesting specific powers in responsible regulatory agencies to monitor practices, investigate circumstances of potential non-observance, promote observance, and penalize violations.

An approach should be developed to guide these efforts, including the inspection process, appeals procedures, and related matters. Appropriate reporting requirements on regulated entities may also be an important tool to gather information on compliance. Tools of compliance, including the application of appropriate penalties for violations, should apply to both procedural and substantive elements of the laws. See also Part VI of this Guide (Methods to Promote Observance of Laws).

(j) International Instruments

Specific provisions should be developed to implement the specific obligations in international instruments that are in force for each country, including those from the Rotterdam Convention, the Stockholm Convention and others. Part V of this Guide provides guidance on provisions to implement the Rotterdam Convention.

(k) Other Life-Cycle Aspects

In addition to a system to address chemicals as products, national laws should also address other life-cycle aspects of chemicals. These may, of course, be addressed in laws other than those relating to the implementation of the Rotterdam Convention - - and are mentioned here for information. Key life-cycle stages include:

Extraction activities (e.g., mining of heavy metals);

Production and processing activities (e.g., occupational exposure; release of unintended by-products that pollute air, water or soil);

Handling and use (e.g., consumers);

Storage and disposal (e.g., obsolete stocks, etc.);

Accidents and unintended releases (all stages of the life-cycle)

(l) Stewardship

National laws and programs may identify means to recognize and support private initiatives for good stewardship of chemicals

Questions - - Regulatory System for Other Chemicals:

Does the legal framework provide for a notification and/or licensing system for chemicals other than pesticides?

Is it functioning effectively?

Have specific provisions been adopted to address existing chemicals of particular concern? What are these?

Does the legal framework include provisions covering the other main items identified above? Are these being effectively applied?

Are there sufficient provisions to promote compliance? How are they working in practice?

Does the legal framework include provisions to implement the obligations of the Rotterdam Convention?

Other international instruments?

(5) Institutions Responsible for Chemicals Management

(a) Responsibilities and Functions

National administrative authorities will need to be able to fulfil a number of responsibilities to implement the regulatory system on pesticides and chemicals, such as a registration system for pesticides, a pre-market notification system (with other measures) for chemicals, and so forth.

One such responsibility will be to establish priorities for action in the light of resource limitations. While the provisions of the law generally will set the basic objectives, obligations and requirements, responsible authorities will likely be called upon to chart the means for implementation. Establishing priorities is key to this task.

A second responsibility will be to develop and implement the regulatory scheme and related requirements set forth in relevant laws. This may include, for example, the development of regulations, initiatives and programs to implement the laws.

For example, the responsible authority or authorities may need to further elaborate and implement the type of registration and notification systems described above, as well as relevant international commitments. For this purpose, they may need to specify additional procedures and criteria, e.g., through regulations or other instruments. They will also need to develop staff capacity to implement these measures: e.g., to review registration proposals, analyze available information, monitor conditions relevant to post-registration decisions, and so forth.

A third responsibility will be to participate in activities relating to the implementation of the Rotterdam Convention (and other instruments). International instruments, such as the Rotterdam Convention, do much more than set norms and standards of conduct. They provide a forum for ongoing international cooperation to best achieve their goals and implement their obligations. They are also dynamic legal systems and may be amended by the Parties over time in response to changing conditions and priorities. For example, both the Rotterdam and Stockholm Convention have processes for adding new chemicals. It is important that all Parties are able to participate effectively in these activities.

A fourth responsibility is to take actions to promote and ensure observance of national laws to address pesticides and chemicals, including those that give effect to the Rotterdam Convention. As described in other places in this Guide, these include actions to monitor observance (e.g., through reporting requirements, inspections and other means) and respond effectively to instances of non-compliance.

A fifth task for national administrative authorities is to coordinate amongst themselves in order to promote efficiencies, take advantage of relative mandates and expertise, and avoid duplication. There are many ways of accomplishing this task: through inter-Ministerial understandings; processes to review proposals; and so forth. However these are arranged, a key ingredient generally is to ensure that there is as much clarity as possible in the system as to who has responsibility for what. Absent this, there is a significant likelihood of overlap, duplication and confusion in administrative and regulatory process.

Finally, the importance of enabling civil society participation may be highlighted. This may include devising methods for effective and appropriate participation by civil society in the law and policymaking process, as suggested by the questions set forth below. It may also include developing approaches (e.g., reporting systems on toxic releases) to promote public and community awareness of the presence and risks of toxic chemicals.

National authorities also will be key to implementation of the Rotterdam Convention. As discussed in Part V of this Guide, the Convention contains specific provisions for the designation of national authorities to perform certain administrative functions under the Convention. More generally, the designated national authority (DNA) and/or other authorities will need to have responsibility for promoting implementation and observance of the various elements of national laws that give effect to the Convention at the national level.

(b) Identifying the Institutions with Primary Responsibility

Countries need to determine which national administrative authority or ministry will have responsibility to carry out these responsibilities and, more specifically, implement laws relevant to the Rotterdam Convention. Primary responsibility may be vested in one administrative authority, such as a Ministry of Environment, or it might be shared among several. In the case of pesticides, consideration may be given to the establishment of a special inter-ministerial committee to help implement the registration system.

Questions - - Institutions Responsible for Chemicals Management:

Who is the DNA in your country (if there is one)?

Which national administrative authority or authorities has primary responsibility to implement regulatory systems relevant to pesticides? chemicals?

Which administrative authority or authorities has primary responsibility to implement national laws and regulations relevant to the Rotterdam Convention? Possibilities:

Environmental Ministry

Ministry of Agriculture

Ministry of Health

Inter-Ministerial Committee represented by various ministries

Does this administrative authority have adequate authority and status to carry out its responsibilities? For example, is it responsible for:

Developing and coordinating relevant policy matters?

Drafting regulations, as needed, to enable implementation?

Administering and implementing the relevant laws and regulations to carry out the various obligations of the Rotterdam Convention?

Monitoring observance of these laws and regulations?

Enforcing those laws and regulations?

Are other administrative authorities involved? Who are they? Possibilities:

Ministry of Industry/Commerce

Ministry of Trade

Customs officials; Other

Is there a clear division of responsibility between the authorities? Is it followed in practice? Are there adequate means to coordinate among the responsible authorities?

Are any sub-national authorities involved in activities to implement the Rotterdam Convention? If so, is there a clear division of responsibility between the national and sub-national authorities? Are there adequate means to coordinate among the responsible authorities?

(6) Enabling Civil Society Participation

There are many ways in which civil society (the public in general, non-governmental organizations, industry, labour, and many others) may participate in the law and policy process relating to chemicals and pesticides. Civil society, and especially non-governmental organizations, for example, has played an important role in identifying and highlighting human health and environmental problems that arise.

A number of tools and approaches have been used in recent years to promote participation by civil society in the law and policy process relating to chemicals management. In this regard, countries may wish to consider the following:

Questions - - Enabling Civil Society Participation:

Does the legal framework provide civil society with notice and an opportunity to comment on:

Proposed regulations relevant to chemicals management?

Proposed decisions relating to the registration or re-registration of pesticides? Or the licensing for use of industrial chemicals?

Are there other means by which civil society can participate in this law and policy process, e.g., through advisory bodies or commissions? If so, do these promote effective public participation?

Do those injured by exposures to pesticides and/or industrial chemicals, including those covered by the Rotterdam Convention and other instruments, have legal rights to bring claims for recovery? Are these effective?

Is there a means by which members of the public can challenge action or inaction by the government, such as a failure to enforce protective laws relating to pesticides and chemicals?

Are there systems to require polluters to provide public information about toxic substances and emissions in communities (based on community right to know)?

Are there sufficient mechanisms and procedures to enable effective participation in the decision making process by groups that might be at particular risk from pesticides and industrial chemicals?

IV. IMPLEMENTING TREATY OBLIGATIONS THROUGH NATIONAL LAWS

This section provides observations on the use of national laws to implement treaty obligations. It considers the role and importance of national laws in this regard and highlights factors relevant to the structure and design of national laws to achieve effective implementation.

A. The Role and Importance of Implementing Laws

The manner by which a treaty takes legal effect within countries differs by country. In some countries, it might be necessary to submit a treaty to the national legislative body for approval, before it may have legal effect under national law. For others, a treaty may apply directly at the national level upon entry into force for that country, without any need for prior approval by the domestic legislative body.¹⁸

Different methods also have been used to transpose the obligations of an international treaty into national law. These include the following:

Treaty obligations take effect directly and become part of domestic law upon entry into force of the treaty for that country;

Treaty obligations are incorporated by reference into national laws;

Treaty obligations are transposed directly into national laws;

National laws are adjusted so that they are consistent with, and provide the necessary authority and mandate, to implement the treaty obligations.

Crucially, however, specific alterations and enhancements to national laws are often essential to implement a treaty - - irrespective of the manner by which a treaty takes effect in national law. This is so because treaties often place obligations upon Parties without specifying how these obligations should be carried out at the national level, by whom, and with what penalties for non-observance.

As a result, even a treaty with direct effect at the national level may not provide guidance on the types of regulatory or other actions needed to implement it and enforce it at the national level. Similarly, simply incorporating the obligations of a treaty into domestic law, or establishing the basic legal authority to implement them, may not provide a sufficient legal basis for a fully effective implementation. Rather, it is up to each Party to develop a sufficient legal basis and set of requirements and procedures to give effect to the obligations at the national level, within the context of their national laws.

The Rotterdam Convention is an example of such a treaty. It contains a number of obligations that must be implemented by each Party, but it is left to individual Parties to determine how to do so.

For example, two of its core provisions relevant to the PIC procedure require each Party to “. . .

implement appropriate legislative or administrative measures . . .” to meet the relevant obligation.

(Articles 10.1 and 11.1). Many other key obligations refrain from providing guidance on the implementing measures to be taken at the national level. It is, accordingly, up to each Party to develop such measures for itself.

¹⁸ In some countries, the determination of whether a treaty takes direct effect depends on the terms of the treaty itself. Legal experts also distinguish between so-called “monist” and “dualist” approaches. A monistic approach views national and international law as part of a single whole, while under a dualistic approach they are separated and (usually) the relationship between the two is determined by domestic law. See, e.g., Brown Weiss, McCaffrey, Magraw, Szasz and Lutz, *International Environmental Law and Policy* (Aspen, 1998) at 196.

B. The Structure and Design of Implementing Laws

A few general observations are offered below regarding the structure and design of implementing laws, for consideration during the development of these laws.

1. Authority versus mandate

There is a difference between providing the “authority” to take an action (e.g., the DNA is authorized to carry out the following function) and specifying a “mandate” to take an action (e.g., the DNA shall carry out the following function). In implementing provisions of the Convention, consideration should be given to specifying both the authority and the mandate to take the required action, taking into account the nature of the obligation in question.

2. Harmonized terminology

It is important to ensure that there is overall consistency or harmonization in the use of terminology within the implementing laws.

3. Specificity and clarity

While the need for specificity depends on context, there is much value to developing laws that are clear and understandable. It is important to be specific and clear regarding the actions that may or must be taken to implement the Convention as, *inter alia*, this will promote understanding of the law and even-handed application.

4. Legislation, regulations or other instruments

Each country will have its own set of practices and approaches to determine the appropriate combination of legislation, regulation or some other instrument to implement treaty obligations. As a general matter, legislation fixes the basic obligations, standards, institutional arrangements, and so forth, while regulations or other subsidiary instruments set forth more specific methods and programs to implement the provisions of the legislation. As noted above, the Rotterdam Convention refers generally to obligations upon Parties to implement “appropriate legislative or administrative measures . . .” leaving it up to the Party to determine the exact nature of these measures. Whatever instrument or instruments are used, it may be considered important that the provisions have a legally-binding effect so as to strengthen the Party’s ability to meet its obligations under general international law to fulfil all its commitments under the Convention.¹⁹

The following is a checklist of items for consideration when designing and drafting legislation. Individual countries will wish to consider how actions to implement the Rotterdam Convention, set forth in Part V of this Guide, fit within this checklist in the context of their national approaches and circumstances.

Possible elements of national legislation:

Appropriate title

Definitions and scope

Objectives and Principles

Basic obligations, standards and regulatory tools

Other, non-regulatory mechanisms; programs (may also be developed outside the legal framework)

Institutional authority and responsibilities

¹⁹ As stated in Article 30 of the Vienna Convention on the Law of Treaties (1969): “Every treaty in force is binding on the parties to it and must be performed by them in good faith.”

Compliance and enforcement, including penalties for violations
Provisions to enable civil society involvement
Participation in international initiatives
Provision for repeal of contradictory or obsolete laws

5. Function and role of regulations

It is important also to consider the function and purpose of regulations. Generally, primary legislation is used to establish basic legal authority and obligations, while regulations elaborate upon the legislation. To this end, regulations may provide further specificity on matters such as definitions, obligations, standards, and procedures, and so clarify how the law will be put into operation

In the context of pesticides and chemicals, regulations may be used to elaborate upon the detail of many of the items noted in Part III of this Guide in a way that clarifies how these items will be implemented in practice, and how the requirements of the Rotterdam Convention will be given effect. In view of their different legal traditions and approaches, different countries may take different approaches in determining how much detail to put into their laws versus as opposed to their regulations.

6. Process to draft regulations

It is also important to consider the process for drafting regulations to support implementation. The following steps and actions may be considered:

Develop a mechanism for appropriate coordination among relevant authorities;
Develop a mechanism for civil society participation and input (e.g., notice of draft regulations; opportunity to comment; use of advisory bodies);
Involve technical and legal expertise;
Establish an official “record”, including data and evaluations considered, public comments and other items;
Ensure that legal authority exists in the legislation to support the approaches in the regulation, and that regulations are internally consistent.

Cooperation at the Regional Level

There are also opportunities to support national implementation through cooperative actions among neighbouring countries at the regional level. It needs to be recognized that ultimately each Party is responsible for meeting its international obligations, in accordance with the terms of those obligations. Nevertheless, regional cooperation may support efforts by Parties to fulfil their commitments under the Rotterdam Convention and other instruments.

In the area of pesticides, for example, there are a number of ongoing regional initiatives in the area of data collection, registration, and so forth. Such efforts expand the pool of expertise and resources from that which would otherwise be available to individual countries. Future technical assistance activities under the Rotterdam Convention may present opportunities to enhance regional coordination and efforts. It is recommended that individual countries consider the means by which action at the regional level may assist them to meet their international commitments.

V. IMPLEMENTING THE SPECIFIC OBLIGATIONS OF THE ROTTERDAM CONVENTION THROUGH NATIONAL LAWS

This section suggests possible elements to include in national laws to implement the obligations contained in the Rotterdam Convention. It considers the various types of obligations in the Convention, and how these may fit within the context of national laws on chemicals and pesticides. It also notes issues of a practical nature that may arise, and considers possible ways to address them.

These suggestions may be considered in the development of implementing laws by countries aiming to become Parties. They may also be used as a resource for Parties, to determine if further adjustments to national laws, regulations or institutional arrangements might be of value in promoting more effective implementation.

The section builds upon the guidance contained in earlier sections of this Guide on international instruments (Part II) national laws on chemicals and pesticides (Part III) and the use and design of national laws to implement treaties (Part IV). It includes cross-references to these earlier sections, where applicable.

A. Objectives (Article 1)

The objective of the Rotterdam Convention is set forth in Article 1, as follows:

“The objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision making process on their import and export and by disseminating these decisions to Parties.”

This objective may be integrated into national laws either directly or by reference.

B. Definitions and Scope (Articles 2 and 3)

Article 2 of the Rotterdam Convention defines a number of terms used in the Convention. Article 3 sets forth its scope, by identifying which substances are and which are not covered by the Convention. These provisions provide an essential foundation for an accurate understanding of the obligations of the Convention.

Some of the definitions, and the provisions on scope, relate to the process to list new substances under the Convention. Because the listing process operates at the international level, these terms may appear to be one step removed from the level of national laws. However, several are of direct relevance to obligations that must be implemented by Parties at the national level.

In support of implementation, the following steps are suggested:

Examine whether there is any inconsistency between terms used in the Convention and terms as used in national laws

Incorporate, as appropriate, the key definitions into national laws (see Table 1)

Table I. Definitions and Scope

<u>Definitions and Scope</u>	<u>Implementing Laws</u>
<p>“‘Chemical’ means a substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature, but does not include any living organism. It consists of the following categories: pesticide (including severely hazardous pesticide formulation) and industrial.” (Article 2(a))</p>	<p>- Important to ensure that the terms used in national laws that implement the Convention encompass the substances contained in this definition. Otherwise, the implementing entity may lack the necessary authority to address violations and non-observance.</p>
<p>“‘Banned chemical’ means a chemical all uses of which within one or more categories have been prohibited by final regulatory action, in order to protect human health or the environment. It includes a chemical that has been refused approval for first-time use or has been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process and where there is clear evidence that such action has been taken in order to protect human health or the environment.” (Article 2(b))</p> <p>“‘Severely restricted chemical’ means a chemical virtually all uses of which within one or more categories have been prohibited by final regulatory action in order to protect human health or the environment, but for which certain specific uses remain allowed. It includes a chemical that has, for virtually all use, been refused approval or been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process, and where there is clear evidence that such action has been taken in order to protect human health or the environment.” (Article 2 (c))</p> <p>“‘Final Regulatory Action’ means an action taken by a Party, that does not require subsequent regulatory action by that Party, the purpose of which is to ban or severely restrict a chemical.” (Article 2(e))</p>	<p>- Because these terms are key to understanding several obligations of the Convention, including the obligations in Article 5 (notify final regulatory action) and Article 12 (export notification), it is important to ensure that these definitions are reflected in national laws.</p> <p>- - <u>Practical note</u>: the definitions of banned chemical and severely restricted chemical both include chemicals withdrawn by industry, in addition to those subject to specific regulatory action. (see text). This concept needs to be reflected in national laws, to ensure all relevant situations are covered.</p>
<p>“‘Severely hazardous pesticide formulation’ means a chemical formulated for pesticidal use that produces severe health or environmental effects observable within a short period of time after single or multiple exposure, under conditions of use.” (Article 2(d))</p>	<p>- Because this term is key to understanding the obligations and provisions of the Convention, including Article 6 (proposals to list severely hazardous pesticide formulations), it is important to ensure that the definition of this term is reflected in national implementing laws.</p>
<p>“‘Export’ and ‘import’ mean, in their respective connotations, the movement of a chemical from one Party to another Party, but exclude mere transit operations.” (Article 2(f))</p>	<p>- Because these terms are used in obligations to be implemented by Parties (e.g., importer and exporter obligations of Articles 10 and 11), it is important that they be reflected in national laws.</p>
<p>Article 3 (<u>Scope of the Convention</u>). This article specifies that the Convention applies to: (a) banned or severely restricted chemicals; and (b) severely hazardous pesticide formulations. It also specifies a number of substances to which the Convention does not apply.</p>	<p>- This Article indicates the substances to which the Convention does and does not apply. Implementing laws need to encompass those that are covered. The provisions of Article 15.4 on the right to take action that it more stringently protective than that called for in the Convention should also be considered.</p>

It may also be important to define certain other terms in national law, even if these are not defined terms of the Convention. However, in such a case, care must be taken to ensure that the definitions adopted reflect accurately the spirit and intention of the Convention. These terms might include: designated national authority; distributors; exporters; formulators; importers; manufacturers; purchasers; the Chemical Review Committee; the Rotterdam Convention (as a term); and others. Several of these are noted in the discussion below.

C. Obligations relevant to Administration of the Treaty (Article 4)

The Convention specifies that each Party shall designate one or more national authorities to carry out the administrative functions required by the Convention, and shall seek to ensure that such authority or authorities have sufficient resources to perform their tasks effectively. These obligations are indicated in the box below (actual treaty provisions are in italics), followed by suggestions on actions to implement them at the national level.

Article 4 (Designated National Authorities, or DNA)

Article 4.1 (Designation of DNA): *“Each Party shall designate one or more national authorities that shall be authorized to act on its behalf in the performance of the administrative functions required by the Convention.”*

Article 4.2 (Sufficient resources for DNA): *“Each Party shall seek to ensure that such authority or authorities have sufficient resources to perform their tasks effectively.”*

Article 4.3 (Notification to Secretariat): *“Each Party shall, no later than the date of the entry into force of this Convention for it, notify the name and address of such authority or authorities to the Secretariat. It shall forthwith notify the Secretariat of any changes in the names and address of such authority or authorities.”*

In support of implementation, the following steps and approaches may be considered:

I. Assess current legal framework

As a first step, countries may wish to examine whether the obligations to designate a DNA have already been met. If not, the country should:

Identify through an internal process which entity or entities of the national government will act as DNA;
Ensure that this entity is vested with the necessary authority, responsibilities and resources to carry out the functions of a DNA (see below)

Submit the completed form on DNA nomination to the Rotterdam Secretariat. This form is located at www.pic.int/forms.

2. Institutional authority and responsibilities

National legislation or regulations may specify that the selected entity is authorized to, and shall, perform the functions and carry out the responsibilities assigned to the DNA under the Rotterdam Convention, and participate in meetings of the Convention. These responsibilities may also be identified in further detail in the national laws and regulations, as discussed in Parts D – K, below.

3. Integrated overall mandate

The responsibilities of the DNA should be integrated into its own overall mandate in a consistent manner.

4. Specify coordination mechanism

It should be clarified, either in regulations or - - more likely - - by other administrative means, how the DNA will coordinate with other governmental entities and the public in carrying out the specified functions

5. Specify resources.

In accordance with the Convention, it should be specified either in legislation, regulations or by other administrative means that the DNA shall be provided with the resources needed to carry out these responsibilities. This will need to be reflected in an appropriate manner in the regular budget process within each country

6. Document on Guidance to DNAs

The document “Guidance to DNAs,” at www.pic.int, sets forth detailed guidance on the actions that should be taken by DNAs under the Convention. The present Guide suggests a possible legal framework at the national level for these actions.

D. Obligation to Notify Final Regulatory Actions (Article 5)

As described in Part I of this Guide, the Convention contains a number of provisions relating to the listing of additional chemicals. Different procedures govern “banned or severely restricted chemicals” and “severely hazardous pesticide formulations.”

Several of these provisions specify the operation of the international process to list new chemicals. Others are specific obligations that must be met by Parties. These are set forth below in the following sections, beginning with the obligation to notify final regulatory actions, followed by suggestions on actions that may be taken to implement them through national laws.

Article 5 (Procedures for banned or severely restricted chemicals)

Article 5.1 (Notification of final regulatory actions). Article 5.1 provides that “[e]ach Party that has adopted a final regulatory action shall notify the Secretariat in writing of such action. Such notification shall be made as soon as possible, and in any event no later than ninety days after the date on which the final regulatory action has taken effect, and shall contain the information required by Annex I, where available.”

Article 5.2 (Notification upon entry into force). Article 5.2 provides that “[e]ach Party shall, at the date of entry into force of this Convention for it, notify the Secretariat in writing of its final regulatory actions in effect at that time, except that each Party that has submitted notifications of final regulatory actions under the Amended London Guidelines or the International Code of Conduct need not resubmit those notifications.”

Information requirements for notifications (Annex I). Annex I specifies information requirements for notifications made pursuant to Article 5. These cover information on the properties, identification and uses of the chemical, and on the basis and other details of the final regulatory action.

(1) Assess current legal framework

Countries aiming to become Parties may wish to examine whether their existing laws contain sufficient provisions authorizing and requiring Article 5 notifications. Countries may also wish to review how such provisions are working and being applied. Key elements that may be included in national laws to support implementation are indicated below, for consideration.

(2) Institutional authority and responsibility

National laws may specify that the DNA has the authority to, and shall, provide notifications of final regulatory actions, in accordance with Article 5 and Annex I of the Convention. The national law may either incorporate the provisions of Article 5 and Annex I by reference, or transpose them directly into the national law.

In this regard, it should be noted that Article 5 requires Parties to notify final regulatory actions that they have taken, but it does not require Parties to take such actions. The taking of final regulatory actions depends on the national system. The elements of a regulatory approach on pesticides and chemicals, indicated in Part III, above, offer a basic framework for this purposes.

(3) Basic obligations; regulatory tools

It is important to have a sufficient regulatory framework to gather and submit the type of information on final regulatory actions identified in Annex I of the Convention. Tools that may be used for this purpose are described in Part III of this Guide.

(4) Observance of laws, and civil society role

National laws may specify, among other things: consequences for non-observance, taking into consideration that this obligation is a responsibility of an administrative authority; and means of recourse by the public to obtain or enforce observance (e.g., petitions, legal actions)

(5) Procedures and forms

National laws may include or refer to the form for notifications of final regulatory actions (see www.pic.int), and specify that this form may be used for notifications

E. Proposals to List Severely Hazardous Pesticide Formulations (Article 6)

The structure of Article 6 differs in many ways from Article 5. First, it applies only to Parties that are developing countries or countries with an economy in transition. Second, it indicates that such a Party “may” propose a new listing, but is not required to do so. Finally, if a Party does submit a proposal, then the proposal “shall” include the information specified in Part I of Annex IV.

Set forth in the box below are excerpts of provisions of Article 6 of the Rotterdam Convention, relating to proposals by Parties to list severely hazardous pesticide formulations, followed by suggestions for actions that may be taken to implement these provisions through national laws.

Article 6 (Procedures for severely hazardous pesticide formulations)

Article 6.1 (Proposals to list severely hazardous pesticide formulations).

Article 6.1 provides that “[a]ny Party that is a developing country or a country with an economy in transition and that is experiencing problems caused by a severely hazardous pesticide formulation under conditions of use in its territory, may propose to the Secretariat the listing of the severely hazardous pesticide formulation in Annex III. In developing a proposal, the Party may draw upon technical expertise from any relevant source. The proposal shall contain the information required by Part I of Annex IV.”

(1) Assess current legal framework

Those aiming to become Parties, that are developing countries or countries with an economy in transition, may wish to examine whether their existing laws contain provisions for implementing Article 6. Countries may also wish to review how such provisions are working and being applied. In light of this, it may be considered whether the following elements are or should be included in national laws to support implementation:

(2) Data gathering, monitoring and reporting

National laws may establish a process to identify whether any pesticide formulations are causing health or environmental problems under conditions of use in the country. This process may include:

Reporting obligations upon producers and purchasers of pesticide formulations linked to the information needs of Part I of Annex IV;

Monitoring and data gathering provisions to identify potential problems under conditions of use, linked to the information needs of Annex IV. These provisions should be developed to take best advantage of available and potential sources of information in each country, including in the places where the formulations are used (e.g., clinics, poison centres, others).

(3) Institutional authority and responsibility.

National laws may confer upon the DNA the authority and responsibility to take the necessary actions to:

Ensure implementation of provisions on data gathering, monitoring and reporting, and otherwise obtain and prepare the information related to severely hazardous pesticides formulations in Annex IV; and

Submit any proposals to list a severely hazardous pesticide formulation in the Convention, in accordance with Article 6 and Annex IV

(4) Procedures and forms

National laws may include or refer to the incident report forms for Article 6 proposals (see www.pic.int), and specify that these forms may be used for such proposals.

(5) Additional definitions.

To implement these provisions, it may be felt desirable to define additional terms such as “formulator” and “purchaser”.

F. Obligations in Relation to Imports (Article 10)

Articles 10 (obligations on importers) and Article 11 (obligations on exporters) of the Rotterdam Convention set forth the key provisions relating to the Convention's PIC procedure. Set forth in the box below are key obligations of Article 10, followed by suggestions on actions that could be taken to implement these provisions through national laws.

Article 10 (Obligations in relation to imports of chemicals listed in Annex III)

Article 10.1 (Implement appropriate measures). Article 10.1 provides that “[e]ach Party shall implement appropriate legislative or administrative measures to ensure timely decisions with respect to the import of chemicals listed in Annex III.”

Article 10.2 (Transmit import responses). Article 10.2 provides that “[e]ach Party shall transmit to the Secretariat, as soon as possible, and in any event not later than nine months after the date of dispatch of the DGD, a response concerning the future import of the chemical concerned. If a Party modifies this request, it shall forthwith submit the revised response to the Secretariat.”

Article 10.3 (Secretariat communication to Parties if no response). Article 10.3 provides that “[t]he Secretariat shall, at the expiration of the time period in Article 10.2, forthwith address to a Party that has not provided a response a written request to do so. Should the Party be unable to provide a response the Secretariat shall, where appropriate, help it to do so within the time period specified in the last sentence of paragraph 2 of Article 11.”

Article 10.4 (Content of import response). Article 10.4 specifies that “[a] response under paragraph 2 shall consist of either:

- (a) A final decision, pursuant to legislative or administrative measures:
 - (i) To consent to import
 - (ii) Not to consent to import
 - (iii) To consent to import only subject to specified conditions
- (b) An interim response, which may include [items listed thereunder]. . .”

Article 10.5 (Import response must relate to categories). Article 10.5 provides that “[a] response under Article 10.4 shall relate to the category or categories specified for the chemical in Annex III.”

Article 10.6 (Accompanying information). Article 10.6 provides that “[a] final decision should be accompanied by a description of any legislative or administrative measures upon which it is based.”

Article 10.7 (Import responses upon entry into force for each Party). Article 10.7 provides that “[e]ach Party shall, no later than entry into force of the Convention for it, transmit to the Secretariat responses with respect to each chemical listed in Annex III. A Party that has provided such responses under the Amended London Guidelines or the International Code of Conduct need not submit those responses.”

Article 10.8 (Import responses to be made available within jurisdiction). Article 10.8 provides that “[e]ach Party shall make its responses under [Article 10] available to those concerned within its jurisdiction, in accordance with its legislative or administrative measures.”

Article 10.9 (Imports from other sources; domestic production). Article 10.9 sets forth provisions for non-discrimination in the treatment of chemicals. This provision is discussed separately in Part F, below.

Article 10.10 (Information compiled by Secretariat; the PIC Circular). Article 10.10 provides that “[e]very six months the Secretariat shall inform all Parties of the responses it has received. Such information shall include a description of the legislative or administrative measures on which the decisions have been based, where available. The Secretariat shall, in addition, inform the Parties of any cases of failure to transmit a response.”

(1) Assess current legal framework

The obligations set forth above are a core element of the Convention PIC procedure. Countries aiming to become Parties may wish to examine whether their existing laws already contain sufficient provisions to authorize and require submission of import responses, consistent with Article 10. Countries may also wish to review how such provisions are working and being applied. In light of this, the following approaches to implement these obligations through national laws may be considered:

(2) Institutional authority and responsibility

National laws may specify that the DNA has the authority to, and shall, submit import responses to the Secretariat consistent with the provisions of Article 10.

(3) Basic obligations: regulatory tools

National laws may include provisions to ensure that the DNA has a sufficient basis upon which to make decisions regarding import responses, and to gather the type of information specified in Article 10.6 that must accompany the import response. Consideration should be given to whether:

The responsible authorities are able to use effectively the information contained in the DGD to help make informed import decisions;

National laws on pesticides and chemicals otherwise provide a sufficient basis to make such decisions.

In this regard, the elements of national laws on pesticides and chemicals described in Part III of this Guide, especially on risk analysis and regulatory decisions, provide a basic framework for this purpose

National laws may also specify that it shall be unlawful for any person or entity to import an Annex III chemical except in accordance with the decision indicated in the import response. This needs to be implemented in conjunction with Article 10.9, in the context of provisions in existing laws that regulate the production, sale, use, import and export of chemicals, and in harmony with obligations to implement other international instruments on chemicals.

(4) Procedures and forms

National laws may include or refer to the form for submission of import responses to the Secretariat, and specify that this form may be used for notifications.

National laws may also specify that import decisions shall be communicated to authorities responsible for controlling import, including customs officials. In this regard, a harmonized customs code has been developed by the World Customs Organisation for chemicals listed under the Rotterdam Convention.²⁰ This should be noted in the relevant regulations or procedures, and regulatory and customs officials should be aware of this as a basis to check and control imports at the border (www.wcoomd.org).

National laws may further specify that such import decisions shall be made available to “those concerned within its jurisdiction,” in accordance with Article 10.8. One means to accomplish this would be to establish and publish a list of all import responses transmitted to the Secretariat, with regular updates. This list may be posted on an official internet site and indicated by some other appropriate means. It should also be noted that the PIC Circular, distributed by the Secretariat every six months, contains a listing of import responses and other information from all Parties.

Monitoring and reporting

National laws may specify a system to monitor whether any Annex III substances are entering the country contrary to import responses. They may include the authority and mandate for customs officials to gather and compile this information, and a requirement upon importers to report the import of any Annex III substance, with an indication of the exact nature of the information to be reported

(6) Observance of laws, and civil society role

National laws may specify, among other things: consequences for failure to meet the obligation to submit import responses, taking into consideration that this is a responsibility of an administrative authority; means of recourse by the public to obtain or enforce observance; and consequences in case of import contrary to the terms and conditions of import responses. These may apply to the importer and perhaps others. Part VI of this Guide provides further guidance on these topics.

²⁰ Information on the harmonized system is available at www.wcoomd.org.

(7) Relationship to Article 10.9

National laws may include provisions to ensure that the DNA and the responsible regulatory authorities are able to implement the non-discrimination requirements of Article 10.9. These are discussed in Part V. J, below.

(8) Additional definitions

To implement these provisions, it may be felt desirable to define additional terms such as “importers”.

G. Obligations in Relation to Exports (Article 11)

Article 11 sets forth obligations in relation to exports of chemicals listed in Annex III. Set forth in the box below are excerpts from Article 11 relevant to the obligations of Parties, followed by suggestions on actions that may be taken to implement these provisions through national laws:

Article 11 (Obligations in relation to exports of chemicals listed in Annex III)

Article 11.1 (Compliance with import responses). Article 11.1 provides that “[e]ach exporting Party shall:

- (a) *Implement appropriate legislative or administrative measures to communicate the responses forwarded by the Secretariat in accordance with paragraph 10 of Article 10 to those concerned within its jurisdiction*
- (b) *Take appropriate legislative or administrative measures to ensure that exporters within its jurisdiction comply with decisions in each response no later than six months after the date on which the Secretariat first informs the Parties of such response in accordance with paragraph 10 of Article 10*
- (c) *Advise and assist importing Parties, upon request and as appropriate:*
 - (i) *To obtain further information to help them to take action in accordance with paragraph 4 of Article 10 and paragraph 2(c) below; and*
 - (ii) *To strengthen their capacities and capabilities to manage chemicals safely during their life-cycle.”*

Article 11.2 (Exporter obligations in cases of failure of a Party to transmit an import response). Article 11.2 provides that “[e]ach Party shall ensure that a chemical listed in Annex III is not exported from its territory to any importing Party that, in exceptional circumstances, has failed to transmit a response or has transmitted an interim response that does not contain an interim decision, unless:

- (a) *It is a chemical that, at the time of import, is registered as a chemical in the importing Party; or*
- (b) *It is a chemical for which evidence exists that it has previously been used in, or imported into, the importing Party and in relation to which no regulatory action to prohibit its use has been taken; or*
- (c) *Explicit consent to the import has been sought and received by the exporter through a designated national authority of the importing Party. The importing Party shall respond to such a request within sixty days and shall promptly notify the Secretariat of its decision*

The obligations of exporting Parties under this paragraph shall apply with effect from the expiration of a period of six months from the date on which the Secretariat first informs the Parties, in accordance with paragraph 10 of Article 10, that a Party has failed to transmit a response or has transmitted an interim response that does not contain an interim decision, and shall apply for one year.”

(1) Assess current legal framework

These obligations on Parties as exporters also are a core element of the Convention PIC procedure. Countries aiming to become Parties may wish to examine whether existing laws already contain provisions authorizing and requiring compliance with these obligations. Countries may also wish to review how such provisions are working and being applied. In light of this, countries may wish to consider the following approaches to implement these Article 11 obligations through national laws.

(2) Institutional authority and responsibility

National laws may confer upon the DNA the authority and the responsibility to oversee observance of the obligations of Article 11.

(3) Basic obligation

National laws may specify a legal obligation that any export of a substance listed in Annex III of the Rotterdam Convention shall not be allowed unless done in conformity with Article 11 and other relevant provisions of the Convention. This would include, among other things, the obligation that exporters comply with decisions contained in the import responses of Parties under Article 10 regarding whether or not they consent to import, and if so under what conditions.

(4) Procedures and reporting

National laws may include a clear indication in domestic law of what are the import responses of other Parties. This could be done by reference to the PIC Circular, which is the mechanism used in the Convention to inform Parties of import responses (see Article 10.10).

In this regard, it should be noted that the PIC Circular of June 2004 includes a list of all import responses received up to that date, including those from the Interim Procedure. The first session of the Conference of the Parties will clarify the status of these earlier responses. This should be reflected in the national laws. Later PIC Circulars will contain a continuing update of import responses by Parties

National laws may also include a further procedure to ensure that, in cases where an importing Party has failed to provide an import response, the conditions upon export specified in Article 11.2 shall be met. This procedure may include:

A requirement that the exporter notifies the DNA of its intention to export an Annex III substance to a Party that has failed to provide an import response in accordance with Article 10;

A procedure for the DNA to determine whether the obligations of Article 11.2 have been fulfilled with respect to such potential export.

Compliance: a Tracking System

National laws may also include provisions to ensure that the DNA has a sufficient basis upon which to oversee compliance. Building on the provisions relating to labelling and safety information in Article 13 (see below), these may include:

A requirement upon manufacturers and formulators to include a label on the container/package of any chemical it produces or formulates that is listed in Annex III or is subject to a final regulatory action under which it is banned or severely restricted. The label could indicate:

The chemical is (either) a “Rotterdam Convention Annex III chemical” or “Banned or severely restricted in [country]”;

The harmonized customs code (see Article 13.1 below);

Data and information explaining the risks and/or hazards associated with the chemical;

Other information requirements, such as the “safety data sheet” are noted below (see discussion of Article 13).

A requirement that all other persons or entities engaged in the distribution or sale of the chemical, including for export, shall maintain this label or, if it is missing, re-include a label with this information before export is allowed. Note: Article 13.2 requires labels for both Annex III chemicals and banned or severely restricted chemicals “when exported”.

A requirement that exporters report all exports of Annex III pesticides to the DNA, and related specified information such as date, quantities, country of destination. Note: some types of information may be considered proprietary in some countries.

A mechanism to request other governments to provide information on the import of Annex III substances from exporters of the Party, where a question exists about whether the export is consistent with Article 11.

National laws may also include provisions to ensure that import decisions are communicated to authorities responsible for controlling import, including customs officials. In this regard, a harmonized customs code has been developed for chemicals listed under the Rotterdam Convention. This should be noted in the relevant regulations or procedures, and regulatory and customs officials should be aware of this as a basis to check and control imports at the border.

National laws may further include provisions authorizing the DNA and/or some other specialized enforcement authority to take actions in the event of non-observance or potential non-observance of these obligations, and specify consequences for violations. See Part VI of this Guide for further guidance.

(6) Additional definitions

To implement these provisions, it may be felt desirable to define additional terms, such as “exporters”.

H. Obligations relevant to Export Notification and Information to Accompany Exported Chemicals (Articles 12-13)

Articles 12 and 13 contain requirements relating to export notification and information to accompany exports. Excerpts of these are set forth below, followed by suggestions on possible actions to implement them through national laws.

Article 12 (Export Notification) and Article 13 (Information to accompany exported chemicals)

Article 12 (Export notification). Article 12.1 provides that “[w]here a chemical that is banned or severely restricted by a Party is exported from its territory, that Party shall provide an export notification to the importing Party. The export notification shall include the information set out in Annex V.” Further details with respect to this obligation are provided in sub-paragraphs 2-5 of Article 12 (e.g., this obligation ceases when such chemical is listed under Annex C, or under certain other conditions).

Article 13.1 (Harmonized customs code). Article 13.1 provides that “[t]he Conference of the Parties shall encourage the World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III, as appropriate. Each Party shall require that, whenever a code has been assigned to such a chemical, the shipping document for that chemical bears the code when exported.”

Article 13.2 (Labelling chemicals in Annex III or that have been banned or severely restricted). Article 13.2 provides that “[w]ithout prejudice to any requirements of the importing Party, each Party shall require that both chemicals listed in Annex III and chemicals banned or severely restricted in its territory are, when exported, subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.”

Article 13.3 (Chemicals subject to national labelling requirements). Article 13.3 provides that “[w]ithout prejudice to any requirements of the importing Party, each Party may require that chemicals subject to environmental or health labelling requirements in its territory are, when exported, subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.”

Article 13.4 (Safety data sheets for chemicals to be used for occupational purposes). Article 13.4 provides that “[w]ith respect to the chemicals referred to in paragraph 2 [of Article 13] that are to be used for occupational purposes, each exporting Party shall require that a safety data sheet that follows an internationally recognized format, setting out the most up-to-date information available, is sent to each importer.”

Article 13.5 (Languages of labels and safety data sheets). Article 13.5 provides that “[t]he information on the label and on the safety data sheet should, as far as practicable, be given in one or more of the official languages of the importing Party.”

(1) Assess current legal framework

Countries aiming to become Parties may wish to examine whether their existing laws already contain sufficient provisions to meet the requirements for export notification, use of customs codes, labelling and safety data sheets set forth in Articles 12 and 13. Countries may also wish to review how such provisions are working and being applied. In light of this, countries may wish to consider the following approaches to implement these obligations through national laws:

(2) Institutional authority and responsibility

National law may confer upon the DNA the authority and the responsibility to oversee observance of the obligations of Article 12 and 13. It may also include provisions to ensure that the DNA has a sufficient basis upon which to carry out its responsibilities. In addition, many countries may place responsibility for enforcement in the hands of a specialist enforcement agency. The provisions that may be reflected in national law include:

Provisions to enable the DNA to include “information on precautionary measures to reduce exposure to, and emission of, the chemical” in the export notification, as called for in paragraph 1.(e) of Annex V. The discussion of national laws on pesticides and chemicals in Part III, above, identifies elements of a legal framework that may assist in this regard;

Provisions authorizing the DNA and/or some other specialized enforcement authority to take actions in the event of non-observance or potential non-observance (see Part VI of this Guide for further guidance);

A mechanism to request other governments to provide information on the export/import of any chemicals covered under Article 12.

(3) Basic obligations (export notification)

National laws may specify that the DNA shall provide export notifications, on behalf of the Party, to importing Parties in accordance with Article 12 and Annex V of the Convention.

(4) Procedures (export notification).

National laws may specify that an exporter shall notify the DNA when it intends to export from the territory of the Party any substance that has been banned or severely restricted by the Party, and shall provide information relevant to each item in Annex V that the DNA may draw upon in developing the export notification. This requirement may be designed to take into account the nature and timing of export notification requirements of Article 12. Note: the Secretariat has not developed a standard form for this purpose.

(5) Basic obligations (customs code, labelling, safety data sheets).

National laws may specify the labelling requirements noted in Article 11, above, as a means to help implement Articles 13.1 and 13.2. The laws may also specify that exporters and others shall meet the requirements for labelling and data safety sheets in Articles 13.3 and 13.4.

(6) Observance of laws, and civil society role

National laws may specify consequences for non-observance, including means by which civil society may seek recourse to obtain or enforce observance of the national implementing laws. See Part VI of this Guide for further guidance on this topic.

I. Obligations on Information Exchange and Implementation (Articles 14 and 15)

Articles 14 and 15 contain additional provisions on the subject of information exchange, implementation and related items. These are noted in the box below, followed by suggestions on elements to implement them through national laws.

Article 14 (Information exchange) and Article 15 (Implementation of the Convention)

Article 14 - - Information on Chemicals and Regulatory actions. Article 14 contains provisions for the exchange of scientific, technical and other information on chemicals within the scope of the Convention, and on domestic regulatory actions that substantially restrict one or more uses of the chemicals.

Article 15 - - Information and Initiatives at the National Level. Article 15 calls for actions at the national level to support implementation. In addition to measures required to implement the Convention, these may include the establishment of national registers and databases, the encouragement of initiatives by industry to promote chemical safety, and others. In addition, each Party is required, to the extent practicable, to ensure that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in Annex III.

Countries may wish to examine whether existing laws already contain sufficient provisions to cover the information exchange requirements set forth in Articles 14 and 15, and whether they have been used effectively. In light of this, Parties may wish to incorporate these provisions into national law, either directly or by reference, and authorize the DNA to oversee their implementation. The discussion of national laws on pesticides and chemicals in Part III of this Guide identifies elements that may be used to help implement these provisions.

J. Obligations relevant to Domestic Production for Domestic Use, and Import from Any Source (Article 10.9)

As noted in Part I of this Guide, the Convention contains provisions that correspond to provisions for national treatment and most-favored nation treatment embodied in international trade rules. They are indicated in the box below, followed by suggestions on elements to implement them through national laws:

Article 10:9 (on domestic production and import from any source)

This Article provides that “[a] Party that, pursuant to paragraphs 2 and 4 [of Article 10] and paragraph 2 of Article 11, takes a decision not to consent to import of a chemical or to consent to its import only under specified conditions shall, if it has not already done so, simultaneously prohibit or make subject to the same conditions:

- (a) Import of the chemical from any source; and
- (b) Domestic production of the chemical for domestic use.”

(1) Assess current legal framework

Countries aiming to become Parties may wish to examine whether existing laws already contain sufficient provisions to cover their implementation of Article 10.9. Countries may also wish to review how such provisions are working and being applied. In light of this, Parties may wish to consider the following approaches to implement these provisions through national laws:

(2) Basic obligations and provisions

National laws may include provisions to ensure that controls on import of a chemical from one source are simultaneously applied to imports from all other sources, in accordance with Article 10.9(a). This may be implemented by applying the system established to control imports, noted above (see discussion of Article 10) to imports from all sources. As applicable, it may be done in conjunction with laws implementing the corresponding provision of international trade rules (on “most favored nation” treatment).

The implementation of Article 10.9(b), however, poses additional considerations. This provision has significant implications for the development of national laws to implement the Convention. By providing that any limits on import must be accompanied by corresponding limits on domestic production for domestic use, it extends the scope of the Convention into the realm of domestic regulatory controls over domestic production. Stated another way, a Party will not be able to impose conditions upon the import of Annex III substances unless at the same time it meets the requirements of Article 10.9(b) relating to the control of domestic production.

Accordingly, in the development of national law to implement this provision, two points need to be highlighted.

The national law should include a provision to ensure that the same conditions imposed on import of an Annex III chemical are also applied to domestic production of the chemical for domestic use.

The national law should provide a sound basis to ensure that such conditions will, in reality, be imposed upon domestic production of the chemical for domestic use.

This is an important point. In effect, it highlights the need to have an effectively functioning regulatory system at the national level, as a basis to impose such controls. The discussion of elements of national laws on pesticides and chemicals in Part III of this Guide provides a framework for this purpose. It is suggested that countries review this framework to consider whether any additional actions may be needed to develop the desired national legal framework.

K. Obligations relevant to Technical Assistance

The Convention sets forth certain obligations and provisions on technical assistance. These are noted in the box below, followed by suggestions on elements to implement them through national laws.

Article 16 (Technical Assistance) and other related provisions

Technical Assistance. Article 16 provides that “[t]he Parties shall, taking into account in particular the needs of developing countries and countries with economies in transition, cooperation in promoting technical assistance for the development of the infrastructure and the capacity necessary to manage chemicals to enable implementation of this Convention. Parties with more advanced programmes for regulating chemicals should provide technical assistance, including training, to other Parties in developing their infrastructure and capacity to manage chemicals throughout their life-cycle.”

Certain other provisions call for the Secretariat to provide assistance to Parties, including Article 10.3 (help with import responses, as appropriate).

(1) Assess current legal framework

Countries aiming to become Parties may wish to examine whether their existing laws and administrative practice will enable them to fulfil this obligation. Countries may also wish to review how such laws and practices are working and being applied. In this regard, the following approaches and actions may be considered:

(2) Institutional authority and responsibility

National laws may include provisions conferring upon DNAs and others, as appropriate, the authority and responsibility to cooperate in promoting technical assistance, in accordance with Article 16 of the Convention.

(3) Basic obligations and provisions (technical assistance program)

National laws may specify a commitment to cooperate in promoting technical assistance, in accordance with Article 16. Parties with more advanced programmes for regulating chemicals may wish to include provisions to continue and enhance activities to provide technical assistance to other Parties to develop their infrastructure and capacity to manage chemicals throughout their life-cycle.

In this regard, the first session of the Conference of the Parties (COP 1) will consider for adoption a Proposal on the Regional Delivery of Technical Assistance under the Rotterdam Convention. It is suggested that Parties design their own activities to fit within and support, as appropriate, the decision of COP 1 on this matter.

VI. METHODS TO PROMOTE OBSERVANCE OF NATIONAL IMPLEMENTING LAWS

A detailed review of practices to promote observance of national implementing laws is beyond the scope of this Guide. Rather, a few general considerations are noted below. Further guidance is included in [Legislating Chemicals: an Overview](#), pages 68-74 (UNEP 1995). Parties and others may wish to consider these items in reviewing their national laws to implement the Rotterdam Convention.

Drafting Laws to Promote Observance and Enforceability. A key means to promote and achieve observance of national laws is to ensure that factors relating to enforceability are addressed in the design and development of such laws. Factors to consider include:

The importance of having clear and specific provisions, obligations and penalties, especially for criminal penalties. This involves being clear about:

- What actions are required?
- When has a violation occurred
- By whom?
- What is the scope and nature of the liability?
- What are the available remedies and penalties?
- Who is responsible for enforcement?
- What is the mechanism for review or appeal of enforcement actions?

The importance of tailoring laws to national circumstances, conditions and realities:

This can be done while still ensuring that the obligations in the Convention are fully implemented.

Institutional Basis. As highlighted throughout this Guide, a key element to promote and achieve observance of national laws, including those to implement the Rotterdam Convention, is to develop a sufficient institutional basis and mandate for this purpose. Countries will develop this basis in light of their own traditions and circumstances. Relevant institutions that may act to promote and ensure observance of laws, and respond to violations, may include, *inter alia*: administrative authorities with primary responsibility to implement relevant laws and regulations (e.g., the DNA for the Rotterdam Convention); specialized enforcement agencies; judicial bodies; and subnational authorities. The role of civil society also has been highlighted.

Monitoring Observance. A number of tools and methods may be used to monitor observance of the obligations, and to help leverage resources in light of existing constraints. These may include:

- Establish priorities on the basis of risk of harm (e.g., highest risks assume highest priority)
- Requirements of record-keeping and reporting
- Self-monitoring combined with environmental auditing
- Responding to complaints
- Inspections (including spot checks);
- Training of existing inspectors (agricultural, health, labour, customs) to recognize violations
- Requiring that licenses be subject to renewal, to allow an opportunity to inspect records, activities, practices
- Enabling involvement by the public (see Part III, above, for possible means)

Tools to Promote Observance. There is a range of tools to promote observance and punish violations. These may be considered as appropriate to the context. These include:

Warnings, citations and orders, as appropriate to the situation;

Fines and penalties (administrative, civil, criminal); revocation of license; corporate liability; barring an individual or company from future government contracts; agency or court mandate to take or refrain from specific action; imprisonment (for criminal offences);

Positive incentives and technical cooperation initiatives with regulated entities. These may include: provision of information; training on observance or compliance-related matters; building environmental management and auditing capacity; new approaches in settlement arrangements that allow commitments to pollution prevention to help meet penalties; field-support and education, and other methods;

Enabling public participation and awareness, recognizing the importance of public opinion and dialogue in shaping policy and behaviour. This may occur: through publicizing non-observance; implementing community-right-to-know measures to inform the public of the presence and release of toxic chemicals; and enabling interested members of the public to bring petitions or legal actions to obtain implementation;

Supporting industry initiatives to protect against risks, and for good stewardship; publicize positive actions.

Penalties Tailored to Violation. Consideration may be given to designing a policy on observance and enforcement to ensure consistency and fairness, and to ensure that penalties are tailored appropriately to the nature of the violation.

ANNEX I - Reference List

Documents, studies, guidelines and training materials

Legislating Chemicals: An Overview (UNEP 1995)

Strengthening Pesticide Regulations: FAO and Asian Development Bank (1989)

Guidelines for Legislation on the Control of Pesticides, FAO, Rome (1989), at www.fao.org/AG/AGP/AGPP/Pesticid

FAO Surveys on Implementation of the FAO Code of Conduct on the Distribution and Use of Pesticides, at www.fao.org/AG/AGP/AGPP/Pesticid

Documents on management of chemicals prepared by UNITAR, at www.unitar.org.

International instruments

The FAO Code of Conduct on the Distribution and Use of Pesticides (Revised Version), www.fao.org

The Stockholm Convention on Persistent Organic Pollutants, at www.pops.int

The Basel Convention on the Transboundary Movements of Wastes and Their Disposal, at www.basel.org

The Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in 1987 and entered into force in 1989 (focusing on chemicals that deplete the ozone layer) (further information and text at www.unep.org/ozone)

The *Codex Alimentarius* and its Committee on Pesticide Residues (standards for pesticide residues in foods) (further information and database on Codex maximum residue limits, or MRLs, at www.fao.org/AG/AGP/AGPP/Pesticid)

The Convention concerning Safety in the Use of Chemicals at Work, adopted in 1990 and entered into force in 1993 (text at <http://www.ilo.org/ilolex/english/convdisp2.htm> - document 170)

Agenda 21, Chapter 14 (Promoting Sustainable Agriculture and Rural Development) and Chapter 19 (Environmentally Sound Management of Chemicals) (further information/text at www.un.org/esa/sustdev/agenda21)

The Rome Declaration on World Food Security and the World Food Summit Plan of Action, adopted in 1996 (further information and text at www.fao.org/wfs/homepage.htm)

The World Health Declaration and Health-for-all in the 21st Century, adopted in 1998 (further information and text at www.who.int/archives/hfa/policy.htm)

The Plan of Implementation of the World Summit on Sustainable Development, adopted in 2002 (further information and text at www.un.org/esa/sustdev)

Note

The present Guide is authored by Peter L. Lallas, working for the Secretariat of the Rotterdam Convention, in consultation with officers and experts in FAO and UNEP. It has been reviewed by, and has incorporated input from, a range of officers and experts working for FAO and UNEP.