NRDC
NATURAL RESOURCES
DEFENSE COUNCIL

NOVEMBER 2016
16-11-A

GUIDE TO CHECKLIST OF MINAMATA CONVENTION ON MERCURY OBLIGATIONS WHICH MAY REQUIRE NEW LEGAL AUTHORITY

Guide to Checklist of Minamata Convention on Mercury Obligations Which May Require New Legal Authority

This guide provides a simplified list of legal authorities[1] needed to comply with the Minamata Convention on Mercury,[2] and brief accompanying explanations. It is intended to facilitate Minamata Convention legal capacity assessments, including those performed as part of Minamata Initial Assessments (MIAs). The guide should be used in conjunction with the Convention text, and related materials providing additional details regarding Convention obligations.[3] For easy reference, the checklist of authorities by itself is reproduced at the end of the guide.[4]

ARTICLE 3: SUPPLY AND TRADE

Article 3 contains control measures aimed at limiting the global supply of mercury, to complement and reinforce the demand reduction control measures in Articles 4-7. The Article 3 provisions limit the sources of mercury available for use and trade, and specify procedures to follow where such trade is still allowed.

Article 3 restricts potential mercury supplies from primary mercury mining and decommisioning chlor-alkali plants, and seeks to identify any remaining large stocks of mercury.[5]

Legal authorities to implement the following Article 3 obligations are required:

- ☐ Not allow new primary mercury mining
- ☐ Phase out existing primary mercury mining within 15 years[6]

This authority to restrict primary mercury mining may be found in national environmental protection, hazardous substance control, and/or mining laws.

- ☐ Restrict the export and use of mercury from primary mercury mining, so that the mercury is not available for use in artisanal and small scale gold mining (ASGM)[7]
- ☐ In accordance with Article 3.5(b), severely restrict the use of excess mercury from the decommissioning of chlor-alkali plants[8]

These control measures are expected to reduce the global supply of mercury available for ASGM. The legal authority to implement these control measures may be found in national environmental protection, trade, hazardous substance control and/or mining laws, including laws implementing trade restrictions under the Montreal Protocol[9] and/or the Stockholm Convention.[10] Countries with closing or converting chlor-alkali plants may consider national planning and reporting requirements related to the management of the mercury at these plants upon closure or conversion. Such authorities may be found under environmental protection or hazardous substance control laws.

- ☐ Obtain information on stocks of mercury or mercury compounds exceeding 50 metric tons (MT), and mercury supply generating stocks exceeding 10 MT/yr[11]

This control measure will identify the large mercury sources contributing to the global mercury supply. Guidance for implementing this obligation was adopted at INC 7.[12]

Countries may consider reporting or licensing requirements for significant mercury supply sources within their borders to implement this obligation. Legal authorities to support reporting or licensing may be found under environmental protection, hazardous substance control, pollution registry, or emergency response laws.

- ☐ Not allow the export of mercury unless the importing country provides written consent,[13] the mercury is for an allowed use or environmentally sound storage, and all other conditions of Article 3.6 are met
- ☐ Not allow the import of mercury without consent by the relevant government official, ensuring both the mercury source and proposed use are allowed under the Convention (and applicable domestic law)

The Convention allows for Parties to issue consent either on an import by import basis or through a general notification of consent provided to the Secretariat. A general notification of consent may include terms and conditions, and may be revoked at any time by that Party or non-Party. Guidance on implementing the consent obligations was adopted at INC 7.[14]

The legal authority to implement these control measures may be found in national environmental protection, trade, and hazardous substance control laws, including laws implementing trade restrictions under the Montreal Protocol and/or the Stockholm Convention. Governments may consider adoption of a mercury trade licensing system to meet the prior informed consent (PIC) requirements, the source/use restrictions, and the reporting obligations of Article 3, similar to those adopted under the Montreal Protocol for ozone depleting chemicals.[15]

ARTICLE 4: MERCURY-ADDED PRODUCTS

The Convention seeks to reduce global mercury pollution through complementary measures to minimize mercury supply and demand. One important demand for mercury is use in products. Under Article 4, the Convention will reduce mercury demand in products through a combination of measures which phase out mercury uses in many key products, phase down mercury use in dental amalgam, and discourage the manufacture of new products using mercury. The products covered by the Convention phase-out mandate are specified in Part 1 of Annex A.[16] The phase-out date for these products is 2020, unless additional time is sought under Article 6.

The Convention does provide an alternative compliance pathway under Article 4.2, but Parties wishing to avail themselves of this option will need to be able to demonstrate that they have already reduced to *de minimis* levels the manufacture, import and export of a large majority of the products listed in Part I of Annex A.

The measures for phasing down dental amalgam are in Part II of Annex A; countries must implement at least two of the nine measures specified.

Governments will need legal authorities to implement the following Article 4 obligations:

- ☐ Not allow the manufacture, import, and export of products listed in Part I of Annex A, following the phase out date in Annex A[17]
- ☐ Phase down the use of dental amalgam through two or more measures listed in Part II of Annex A

It should be noted that certain products or product applications are excluded from the Annex. In addition, the use of the products is not affected, but only the import, export and manufacture.

The list of products identified in Annex A includes medical devices (fever thermometers, sphygmomanometers or blood pressure cuffs), cosmetics, topical antiseptics, and dental amalgam which may fall under the purview of the Ministry of Health. Accordingly, the legal authorities necessary to implement Article 4 may be found in multiple sources, such as the Party's environmental law, hazardous substances control law, and the law(s) governing the import, safety, licensing and distribution of medical products and cosmetics. The authorities used to implement the Montreal Protocol or the Stockholm Convention should be reviewed for their applicability to mercury-added products. The dental amalgam phase down measures may also involve insurance, medical education, and water pollution laws, depending upon the phase down measures chosen by the government.

- ☐ Prevent the incorporation of products listed in Part I of Annex A (i.e., switches and relays, batteries) into larger, assembled products

Switches and relays are often components of larger products.[18] Under Paragraph 5 of Article 4, a Party must take measures to prevent mercury-added switches and relays from being incorporated into

larger products. It is the responsibility of Parties who are manufacturing larger products to verify that any components used are allowed under Annex A, either through their import controls or controls on the manufacturer. Similar issues may arise with respect to batteries and lamps identified for phase-out in Annex A. The authority to discharge this Convention obligation should be the same as the authority relied upon to phase-out the applicable products.

- ☐ Discourage the manufacture and distribution of mercury-added products not covered by any known use before the Convention entered into force

The Convention does not define "discourage", but restrictions on new mercury product types without demonstrated environmental or human health benefits would meet this Convention obligation. Again, the same legal authorities relied up on to phase out the Annex A products may provide a similar legal basis to discourage new products.

ARTICLE 5: MANUFACTURING PROCESSES

The Convention will reduce mercury demand in the manufacturing sector utilizing similar measures for products under Article 4. The Convention will phase out mercury uses in two manufacturing processes, restrict mercury use in three others, and discourage mercury use in new manufacturing processes. To avoid duplication, Article 5 of the Convention does not cover processes using or producing mercury-added products (covered under Article 4) or processes managing mercury-containing wastes (covered under Article 11).

The manufacturing processes covered by the Convention are specified in Annex B. Part 1 of Annex B specifies the two manufacturing processes subject to the phase-out requirements. The acetylene production process has a 2018 phase-out date, but this should not be an issue since there are no factories in the world using mercury to produce acetylene, according to experts involved in the negotiations. Mercury use in chlor-alkali production is subject to a 2025 phase-out date, unless an extension of time is provided under Article 6.

The three industrial processes subject to restriction requirements are identified in Part II of Annex B.

Governments should carefully consider whether they have sufficient legal authority to implement the control measures specified in Article 5 and Part II of Annex B. Where there are no existing factories using one or more of these processes, governments may simply not allow mercury use in these processes moving forward, and ensure they have sufficient legal authority to issue the prohibition(s).

The authorities needed to implement Article 5 are as follows:

- ☐ Not allow the use of mercury or mercury compounds in the manufacturing processes listed in Part I of Annex B, following the Annex B phase out date[19]
- ☐ Restrict (as specified in the Annex) the use of mercury in the processes listed in Part II of Annex B
- ☐ Not allow new facilities to use mercury in the regulated processes under Article 5, as specified in Annex B[20]

These legal authorities may be found in the nation's environmental law or hazardous substances control law. The authorities used to implement the Montreal Protocol or the Stockholm Convention should be reviewed for their applicability to these industrial processes.

- ☐ For facilities with processes listed in Annex B, identify and obtain information on mercury or mercury compound use; and control mercury emissions to air, and releases to land and water

The required control measures to reduce mercury emissions and releases may be covered by air and water pollution laws. In addition to the authorities applicable to the phase out or phase down provisions, release reporting or pollution registry laws may provide the authority to require reporting on mercury use and releases.

- ☐ Discourage new uses of mercury in industrial processes

The Convention does not define "discourage", but restrictions on new mercury processes would meet this Convention obligation. Again, the same authorities relied up on to phase out the Annex B processes may provide similar authorities to discourage new processes.

ARTICLE 6: EXEMPTIONS (EXTENSIONS OF TIME)

Should a Party require more time to meet their obligations under Article 4 or Article 5, or both, they may register for an exemption for up to five years from the phase-out dates listed in Annex A or Annex B by notifying the Secretariat in writing. Forms for notifying the Secretariat were agreed at INC 6.[21] This notification must be submitted on becoming a Party.[22] The registration must be accompanied by a statement explaining the Party's need for an exemption. Since the legal authority to register for the exemption will flow from the legal bases to implement the Article 4 and 5 Convention obligations, and their associated effective dates, no additional checklist item is included here.

ARTICLE 7: ASGM

Article 7 applies to artisanal and small-scale gold mining (ASGM), in which mercury is used to extract gold. ASGM is defined in Article 2 as "gold mining conducted by individual miners or small enterprises with limited capital investment and production."

Mercury is used to extract gold from ore by forming a mercury-gold mixture called an amalgam. Heating the mixture evaporates the mercury, leaving only gold and other precious metals that were present in the ore. This mercury-based process is preferred by many ASGM miners to other methods of gold extraction because mercury is currently affordable relative to the price of gold, accessible, simple to use and can be processed anywhere, and allows miners to produce gold quickly.

Article 7 acknowledges the challenge of addressing mercury use in ASGM, especially for developing countries that rely on the economic benefits of mining, by providing these countries the flexibility to tailor their approach to the conditions of the sector in their jurisdiction. The mechanism for providing this flexibility is the National Action Plan.

The legal authorities necessary to implement Article 7 for all governments are as follows:

- ☐ Reduce, and where feasible, eliminate mercury and mercury compound use, emissions (to air), and releases (to land and water) associated with ASGM

Under Paragraph 2 of Article 7, all governments have this obligation, even where the level of activity may not be "significant" enough to warrant preparation of a National Action Plan, as discussed immediately below. The necessary legal authorities may be found in the country's environmental, hazardous substances control, air and water pollution, and mining laws.

Legal authorities will be necessary to implement the following Article 7 obligations for governments where ASGM activity is "more than insignificant":

- ☐ Establish a coordinating mechanism and delineate agency roles for development/implementation of an ASGM National Action Plan (NAP)[23]
- ☐ Define and formalize[24] or regulate[25] ASGM consistent with the Convention[26]
- ☐ Eliminate whole ore amalgamation, open burning of amalgam or processed amalgam, burning of amalgam in residential areas, and cyanide leaching of mercury-laden sediment, ore or tailings (the "worst practices")
- ☐ Set mercury use reduction goals or targets consistent with the timely elimination of the worst practices and other use reduction efforts[27]
- ☐ Reduce mercury emissions, releases, and exposures associated with ASGM,[28] and prevent mercury exposures of vulnerable populations (particularly women of child-bearing age and children)[29]
- ☐ Prevent the diversion of mercury and mercury compounds from other sectors to ASGM, and manage mercury trade consistent with the NAP[30]
- ☐ Implement a public health strategy to address mercury exposures to ASGM miners and communities

The term "more than insignificant" is undefined in the Convention itself. A country may utilize various metrics or criteria to make this determination, such as the amount of mercury used, the number of miners, the volume or value of gold produced, the number or size of mining sites, and/or the ASGM impacts on public health and the environment.

As listed above, the required elements of the NAP involve trade, mining licensing and regulation, law enforcement, finance, hazardous substance use, air and water pollution, waste management, education, labor, and public health components. The existing authorities in all these areas should be evaluated

for their applicability to Article 7 obligations. The new and existing authorities ultimately relied upon to implement Article 7 should reflect the roles and responsibilities of the various ministries in developing and implementing the NAP. Accordingly, to the extent possible, the Article 7 legal assessment should take into account both the existence and the alignment of authorities, in anticipation of NAP preparation.

ARTICLE 8: AIR EMISSIONS

The purpose of Article 8 is to reduce mercury emissions to air from five of the most significant source categories identified during the Convention negotiations. The sources covered are listed in Annex D (coal-fired power plants, coal-fired industrial boilers, non-ferrous metal smelting and roasting processes,[31] waste incineration,[32] and cement production[33]).

Coal and other fossil fuels contain mercury as a natural impurity. A significant amount of mercury is released into the atmosphere and environment from coal combusted in coal-burning power plants and industrial boilers, mainly due to the volume of coal burnt. Metal ores and limestone also contain naturally occurring mercury, which can be emitted during metal smelting and cement manufacturing, in addition to mercury which may be released from their fuel sources. Mercury is also released to air during the incineration of wastes.

Countries will need legal authority to implement the following Convention obligations under Article 8:

- ☐ Require best available techniques/best environmental practices (BAT/BEP) or associated emission limit values (ELVs) for new facilities (as defined in Article 8.2(c))[34]
- ☐ Require one or more measures identified in Article 8.5 to control/reduce mercury emissions from existing sources listed in Annex D, which shall be operational at the source within 10 years[35]
- ☐ Require monitoring/reporting and/or otherwise establish a mercury emissions inventory for sources listed in Annex D[36]

National environmental and air pollution laws are the most like sources of relevant authorities. The reporting obligations may be covered by release reporting or pollution registry laws.

ARTICLE 9: RELEASES TO LAND AND WATER

Under Article 9, each Party must identify and then control significant point sources of mercury releases to land and water that are not addressed by other provisions of the Convention. There is no required list of sources like in Article 8, so the sources controlled under Article 9 may vary from country to country.

The Convention does not specify which sources are addressed by other parts of the Convention. However, where other Articles of the Convention expressly require control of releases to land and water, governments may reasonably consider those sources "addressed" by other provisions of the Convention. Examples of such sources may include ASGM sites regulated under Article 7 and Annex C.1(e), and industrial process sites listed in Annex B and controlled under Article 5.5(a). In contrast, existing primary mercury mines are phased out over 15 years under Article 3, but releases to land and water from such mining sites are not addressed under Article 3 while the mines are in operation.

Countries will need legal authority to implement the following Convention obligations under Article 9:

- ☐ Require reporting and/or otherwise obtain information as needed to identify significant sources of mercury/mercury compound releases to land or water, and to maintain an inventory of releases from the sources identified
- ☐ Require one or more measures specified in Article 9.5 to control/reduce mercury and mercury compound releases to land and water from significant sources a country identifies

National environmental and water pollution laws are the most likely sources of relevant authorities. The reporting obligations may be covered by release reporting or pollution registry laws.

ARTICLE 10: INTERIM MERCURY STORAGE

Improper or inadequate care in the collection, handling, transport and storage of mercury and mercury compounds[37] can result in emissions and releases of the toxic material that can eventually harm humans and the environment. To prevent the possible adverse effects of mercury as it is held in various locations prior to its intended use, the Convention requires countries to take measures

to ensure the environmentally sound storage of mercury under Article 10.[38]

The Article 10 scope is limited to "interim" or temporary storage of mercury destined for an allowed use under the Convention. The environmentally sound management of waste mercury and mercury compounds is covered in Article 11. Since Article 11 addresses the long-term management/disposal of waste mercury and mercury compounds, it will become increasingly important as allowed uses are phased out over time.

To implement Article 10, governments will require the legal authority to:

- ☐ Ensure interim mercury storage is conducted in an environmentally sound manner, taking into account guidelines to be developed by the Conference of the Parties (COP)

Interim mercury storage standards may address areas such as location, quantity limits, duration, room temperature and humidity, containers, secondary containment and flooring, labeling, employee training, inspections and monitoring, release/spill response, security, financial responsibility (i.e., bonding, insurance) in the event of spills or facility abandonment, and reporting. The legal authority to impose these measures may be found in national environmental, emergency response, air pollution, and hazardous substance control laws.

ARTICLE 11: MERCURY WASTE MANAGEMENT

Mercury wastes can come in a variety of forms, depending upon the source. Industrial processes using mercury will create wastes from both the manufacturing process and pollution control operations, such as sludges and spent catalysts. Mercury-added products become wastes when discarded, typically at the end of their useful life. Products also become wastes if the product cannot be sold legally or lacks a market due to consumer preference. The cleanup of contaminated sites may generate mercury wastes, such as treatment residuals and contaminated soil. Overburden, waste rocks and tailing from mining (other than primary mercury mining) would be considered waste mercury if they have mercury or mercury compounds above the threshold levels defined. Finally, mercury and mercury compounds can and will become wastes when they are destined for disposal instead of an allowed use. The Convention anticipates mercury becoming waste as a consequence of restrictions on global supply and trade, and reduced global demand.

At the core of Article 11 is the focus on environmentally sound management (ESM) of mercury wastes and controls over its transboundary movement. The Convention provisions will prevent both improper management of the waste at the national level and unwanted mercury waste dumping internationally.

While both the Basel and Minamata Conventions address mercury wastes, they bring different strengths to the global management of mercury waste. The Minamata Convention may have a stronger impact on national implementation of ESM, while the Basel Convention may be the primary vehicle for regulating international mercury waste transportation and management.

To implement Article 11, governments will require the legal authority to:

- ☐ Use a definition of mercury waste consistent with Article 11.2
- ☐ Manage mercury wastes in an environmentally sound manner, taking into account guidelines developed under the Basel Convention and in accordance with COP requirements to be developed
- ☐ Restrict mercury derived from the treatment or re-use of mercury waste to allowed uses under the Convention or environmentally sound disposal

These authorities may be found in laws governing hazardous waste management and hazardous substance control. Mercury wastes may already be designated as hazardous wastes under domestic law, and subject to national hazardous waste management standards.

- ☐ Require transport across international boundaries in accordance with the Basel Convention, or if the Basel Convention does not apply, consistent with international rules, standards, and guidelines

Since the vast majority of countries are Parties to the Basel Convention, most governments can apply the authorities used to implement the Basel Convention to meet this Minamata Convention obligation.

ARTICLE 12: CONTAMINATED SITES

Contaminated sites come in many forms. They can be active, where existing processes or practices continue to contribute to the contamination, and historical, where such processes or practices have stopped but the pollution remains. The cause of the contamination can vary as well, from large industrial operations such as chlor-alkali facilities to smaller operations such as ASGM sites. Moreover, the sources of the contamination may be waste management activities, stack emissions, fugitive emissions, and/or spills and emergency incidents.

No matter which form the contaminated site may take, many similar matters need to be addressed, such as determining the nature and extent of contamination, the risks to exposed populations, remediation options, and the identity of entities or persons who should assume liability for some or all or the remediation costs. These can sometimes be complex issues, technically and legally, particularly where polluter liability in a particular situation is not clearly defined.

Article 12 calls for the creation and adoption of COP guidance to Parties for approaching the evaluation and remediation of contaminated sites, but contains no mandatory obligations to establish liability or propel progress in cleaning up contaminated sites. Article 12 allows governments to develop their own legal framework, within their financial and technical capability, to remediate mercury contaminated sites.

Countries will need legal authority to implement the following Convention obligations under Article 12:

- ☐ Develop strategies for identifying and assessing mercury/mercury compound contaminated sites
- ☐ If risk reduction activities are taken at contaminated sites, they are taken in an environmentally sound manner, incorporating risk assessment where appropriate[39]

Governments may find such authorities under national environmental, emergency response, site remediation, or hazardous substance control laws. As a legal matter, due to the non-binding nature of the Article 12 obligations, governments retain considerable flexibility regarding the legal authorities they may employ to meet Convention contaminated sites requirements.

ARTICLE 13: FINANCIAL RESOURCES

The first obligation under this Article is that a Party undertakes to provide resources for national implementation activities within its capabilities (including through domestic funding, bilateral and multilateral funding and private sector involvement). Notwithstanding, the Convention recognizes that providing financial assistance to developing countries will improve the effective implementation of the Convention. As a formal mechanism to provide this assistance, Article 13 establishes a Financial Mechanism with two components: (1) the Global Environment Facility Trust Fund, and (2) an International Programme to support capacity building and technical assistance.

Governments will need the authority to:

- ☐ Access domestic resources as may be needed to implement Convention obligations
- ☐ Particularly for developing countries, access financial resources available under the Convention financial mechanism and other resources available from multilateral, regional, and bilateral funding sources

Since these are basic functions associated with international agreement participation generally, authorities relied upon for other Conventions may apply here as well, including but not limited to the other chemical Conventions (Basel, Rotterdam, Stockholm).

ARTICLE 14: CAPACITY BUILDING

Under Article 14 of the Convention, Parties are required to cooperate to provide capacity building and technical assistance to developing countries, within their respective capabilities. A variety of mechanisms to deliver this assistance is anticipated. In addition, developed country Parties and other Parties, within their capabilities and supported by the private sector as appropriate, are required to facilitate and promote technology transfer to strengthen the capacity of developing countries to meet their obligations under the Convention. No checklist items are specified here because of the nature of the obligations ("cooperate to provide"), and because we anticipate governments already have the legal authority to conduct these technical assistance activities, since they are common with foreign aid/assistance programs, and with international agreements generally.

ARTICLE 16: PUBLIC HEALTH

Mercury adversely impacts both human health and the environment. Article 16 promotes program development related to the health aspects of mercury, recognizing the activities will involve the World Health Organization (WHO), national public health ministries, and other organizations involved in the delivery of health services. Article 16 provides non-binding guidance to the health ministries and other actors on the activities they can undertake to minimize the mercury exposure of vulnerable populations, and the adverse consequences of such exposures.[40]

Taking into account the nature of the Article 16 obligations, authorities are needed to:

- ☐ Promote the development and implementation of strategies to identify and protect populations at risk, such as developing fish consumption guidelines
- ☐ Promote occupational exposure educational and prevention programs
- ☐ Promote prevention, treatment, and care services for affected populations
- ☐ Strengthen institutional and professional capacities for addressing health risks associated with mercury exposure

These authorities can typically be found within national public health, labor protection, and hazardous substance control laws.

ARTICLES 17–21: INFORMATION EXCHANGE/AWARENESS-RAISING

The generation and sharing of information among countries, by governments to the public, and by countries and stakeholders through the Secretariat are important mechanisms for supporting effective implementation under the Convention. The Convention contains at least one Article dedicated to each of these information pathways: Articles 17 (Information Exchange), 18 (Public Information, Awareness, and Education) and 19 (Research, Development, and Monitoring). In addition, Article 21 contains obligations to report on measures each Party has taken to implement the provisions of the Convention.

To comply with Articles 17-21, governments need the authority to:

- ☐ Collect and disseminate information on annual quantities of mercury and mercury compounds emitted, released, or disposed; and other information specified in Article 18
- ☐ Share information on the health and safety of humans and the environment as non-confidential, in accordance with Article 17.5
- ☐ Report to the COP on progress in implementing Convention obligations under Article 21

The information sharing and gathering authorities may be found in national environmental, hazardous substance control, pollution registry, and air/water pollution laws. Since these information and reporting requirements are often found in international Conventions, the authorities relied upon for other Convention information sharing and reporting may apply here as well, including but not limited to the other chemical Conventions (Basel, Rotterdam, Stockholm).

ARTICLES 25–30: PARTICIPATION AS PARTY/ADMINISTRATIVE MATTERS

Finally, each government should ensure its representatives can fully participate as a Party to the Convention. These functions include the power to:

- ☐ Participate in the COP, including voting, if and when required
- ☐ Participate in one of the dispute resolution processes specified if needed, under Article 25 of the Convention
- ☐ Determine how future Convention annex amendments will be ratified under Article 30.5 of the Convention[41]

Again, domestic authorities relied upon to participate in other chemical/environmental MEAs are relevant for the Minamata Convention as well.

Checklist of Minamata Convention on Mercury Obligations Which May Require New Legal Authority

ARTICLE 3: SUPPLY AND TRADE

- ☐ Not allow new primary mercury mining
- ☐ Phase out existing primary mercury mining within 15 years
- ☐ Restrict the export and use of mercury from primary mercury mining, so that the mercury is not available for artisanal and small-scale gold mining (ASGM)
- ☐ In accordance with Article 3.5(b), severely restrict the use of excess mercury from the decommissioning of chlor-alkali plants
- ☐ Obtain information on stocks of mercury or mercury compounds exceeding 50 metric tons (MT), and mercury supply generating stocks exceeding 10 MT/yr
- ☐ Not allow the export of mercury unless the importing country provides written consent, the mercury is for an allowed use or environmentally sound storage, and all other conditions of Article 3.6 are met
- ☐ Not allow the import of mercury without consent by the relevant government official, ensuring both the mercury source and proposed use are allowed under the Convention (and applicable domestic law)

ARTICLE 4: MERCURY-ADDED PRODUCTS

- ☐ Not allow the manufacture, import, and export of products listed in Part I of Annex A, following the phase out date in Annex A
- ☐ Phase down the use of dental amalgam through two or more measures listed in Part II of Annex A
- ☐ Prevent the incorporation of products listed in Part I of Annex A (i.e., switches and relays, batteries) into larger, assembled products
- ☐ Discourage the manufacture and distribution of mercury-added products not covered by any known use before the Convention entered into force

ARTICLE 5: MANUFACTURING PROCESSES

- ☐ Not allow the use of mercury or mercury compounds in the manufacturing processes listed in Part I of Annex B, following the Annex B phase out date
- ☐ Restrict (as specified in the Annex) the use of mercury in the processes listed in Part II of Annex B
- ☐ Not allow new facilities to use mercury in the regulated processes under Article 5, as specified in Annex B
- ☐ For facilities with processes listed in Annex B, identify and obtain information on mercury or mercury compound use; and control mercury emissions to air, and releases to land and water
- ☐ Discourage new uses of mercury in industrial processes

ARTICLE 7: ASGM (FOR ALL GOVERNMENTS)

- ☐ Reduce, and where feasible, eliminate mercury and mercury compound use, emissions (to air), and releases (to land and water) associated with ASGM

ARTICLE 7: ASGM (FOR GOVERNMENTS WHERE ASGM ACTIVITY IS "MORE THAN INSIGNIFICANT")

- ☐ Establish a coordinating mechanism and delineate agency roles for development/implementation of an ASGM National Action Plan (NAP)
- ☐ Define and formalize or regulate ASGM consistent with the Convention

- ☐ Eliminate whole ore amalgamation, open burning of amalgam or processed amalgam, burning of amalgam in residential areas, and cyanide leaching of mercury-laden sediment, ore or tailings (the "worst practices")
- ☐ Set mercury use reduction goals or targets consistent with the timely elimination of the worst practices and other use reduction efforts
- ☐ Reduce mercury emissions, releases, and exposures associated with ASGM, and prevent mercury exposures of vulnerable populations (particularly women of child-bearing age and children)
- ☐ Prevent the diversion of mercury and mercury compounds from other sectors to ASGM, and manage mercury trade consistent with the NAP
- ☐ Implement a public health strategy to address mercury exposures to ASGM miners and communities

ARTICLE 8: AIR EMISSIONS

- ☐ Require best available techniques/best environmental practices (BAT/BEP) or associated emission limit values (ELVs) for new (as defined in Article 8.2(c)) sources listed in Annex D
- ☐ Require one or more measures identified in Article 8.5 to control/reduce mercury emissions from existing sources listed in Annex D, which shall be operational at the source within 10 years
- ☐ Require monitoring/reporting and/or otherwise establish a mercury emissions inventory for sources listed in Annex D

ARTICLE 9: RELEASES TO LAND AND WATER

- ☐ Require reporting and/or otherwise obtain information as needed to identify significant sources of mercury/mercury compound releases to land or water, and to maintain an inventory of releases from the sources identified
- ☐ Require one or more measures specified in Article 9.5 to control/reduce mercury and mercury compound releases to land and water from significant sources a country identifies

ARTICLE 10: INTERIM MERCURY STORAGE

- ☐ Ensure interim mercury storage is conducted in an environmentally sound manner, taking into account guidelines to be developed by the Conference of the Parties (COP)

ARTICLE 11: MERCURY WASTE MANAGEMENT

- ☐ Use a definition of mercury waste consistent with Article 11.2
- ☐ Manage mercury wastes in an environmentally sound manner, taking into account guidelines developed under the Basel Convention and in accordance with COP requirements to be developed
- ☐ Restrict mercury derived from the treatment or re-use of mercury waste to allowed uses under the Convention or environmentally sound disposal
- ☐ Require transport across international boundaries in accordance with the Basel Convention, or if the Basel Convention does not apply, consistent with international rules, standards, and guidelines

ARTICLE 12: CONTAMINATED SITES

- ☐ Develop strategies for identifying and assessing mercury/mercury compound contaminated sites
- ☐ If risk reduction activities are taken at contaminated sites, they are taken in an environmentally sound manner, incorporating risk assessment where appropriate

ARTICLE 13: FINANCIAL RESOURCES

- ☐ Access domestic resources as may be needed to implement Convention obligations
- ☐ Particularly for developing countries, access financial resources available under the Convention financial mechanism and other resources available from multilateral, regional, and bilateral funding sources

ARTICLE 16: PUBLIC HEALTH

- ☐ Promote the development and implementation of strategies to identify and protect populations at risk, such as developing fish consumption guidelines

- ☐ Promote occupational exposure educational and prevention programs
- ☐ Promote prevention, treatment, and care services for affected populations
- ☐ Strengthen institutional and professional capacities for addressing health risks associated with mercury exposure

ARTICLES 17–21: INFORMATION EXCHANGE/ AWARENESS-RAISING

- ☐ Collect and disseminate information on annual quantities of mercury and mercury compounds emitted, released, or disposed; and other information specified in Article 18
- ☐ Share information on the health and safety of humans and the environment as non-confidential, in accordance with Article 17.5
- ☐ Report to the COP on progress in implementing Convention obligations under Article 21

ARTICLES 25–30: PARTICIPATION AS PARTY/ ADMINISTRATIVE MATTERS

- ☐ Fully participate as a Party to the COP, including voting, if and when required
- ☐ Participate in one of the dispute resolution processes specified if needed, under Article 25 of the Convention
- ☐ Determine how future Convention annex amendments will be ratified under Article 30.5 of the Convention

ENDNOTES

1 We use the terms "legal authorities" or "authority" to mean the legal basis for implementing the Convention obligation(s) under a country's national law. This guidance recognizes the differing legal systems under which governments operate, thus it does not address how governments may revise their authorities to meet Convention obligations.

2 The Convention text may be found at http://www.mercuryconvention.org/Convention/tabid/3426/Default.aspx.

3 See e.g., http://www.nrdc.org/international/files/minamata-convention-on-mercury-manual.pdf for a detailed guide to the text of the Convention.

4 The Convention text sometimes contains phrases such as "take measures to" before specifying the particular Convention obligation. We do not reproduce such phrases in the Checklist, since the Checklist just addresses the need for authority to undertake the obligation (through the measures), not the substantive content of the measures.

5 Primary mercury mining is the extraction and production of mercury from naturally occurring ores where the principal material sought is mercury, as defined in Article 2.

6 Most countries do not have existing primary mercury mines, and thus can simply not allow any primary mercury mining to meet all Convention obligations related to phasing out this activity.

7 The export of mercury from primary mercury mining is allowed only for manufacturing mercury-added products in accordance with Article 4, manufacturing processes in accordance with Article 5, or disposal in accordance with Article 11 avoiding recovery, recycling, reclamation, direct re-use or alternative uses. Mercury from primary mining is therefore not available for use in artisanal and small-scale gold mining.

8 Under Article 5 and Annex B of the Convention, the use of mercury in chlor-alkali production must be phased out by 2025, unless an extension of time is provided under Article 6. Under Article 3.5(b), "excess" mercury must be disposed without recovery or reuse.

9 See http://ozone.unep.org/en/treaties-and-decisions/montreal-protocol-substances-deplete-ozone-layer.

10 See http://chm.pops.int/default.aspx.

11 See Article 3.1 for the definition of mercury compounds in this context. Note the Convention text requires that governments "endeavor" to identify these stocks, thus this provision is not a binding legal obligation like the other Article 3 requirements. However, identification of these stocks may become necessary to implement Articles 10 and 11 of the Convention, and there will be reporting requirements for Parties associated with this obligation.

12 See https://www.nrdc.org/sites/default/files/int_16032101b.pdf.

13 A national focal point for trade-related consent must be designated under Article 17.4 of the Convention.

14 See https://www.nrdc.org/sites/default/files/int_16032101a.pdf.

15 See http://ozone.unep.org/en/handbook-montreal-protocol-substances-deplete-ozone-layer/1370; http://ozone.unep.org/en/handbook-montreal-protocol-substances-deplete-ozone-layer/1382.

16 In some cases, the restricted product category description contains a mercury concentration or limit. In such cases, the prohibition applies to products exceeding the specified concentration or limit.

17 The phaseout date must be consistent with Articles 4 and 6 of the Convention.

18 See http://www.newmoa.org/prevention/mercury/imerc/factsheets/switches_relays_2014.pdf.

19 In this context, mercury compounds are defined broadly under Article 2(e). The choice of phase out date must be consistent with Articles 5 and 6 of the Convention.

20 As a technical matter, the restriction on the construction of new facilities using mercury does not apply to facilities used to produce polyurethane. However, Annex B aims to phase out this use within 10 years of entry into force of the Convention.

21 See https://www.nrdc.org/sites/default/files/int_14120401b.pdf.

22 For the first 50 governments ratifying the Convention and thereby triggering the Convention entering into force, they become Parties when the Convention enters into force, which is on the 90th day after the 50th government deposits its ratification documentation. Therefore, the first 50 governments must register for an exemption prior to this 90th day. For other governments, they become Parties 90 days after they submit their ratification documentation, so their registrations are required before this time.

23 The required NAP elements are specified in Annex C of the Convention. Checklist users required to prepare a NAP are encouraged to consult the Guidance for NAP Development for more detail on each of the NAP associated obligations, to ensure the legal authorities are appropriately tailored for the conditions in each country. This guidance was adopted at INC 7, and is available in English and Spanish at https://www.nrdc.org/resources/minamata-convention-mercury-contents-guidance-and-resources.

24 Formalization is a process to integrate ASGM into the official economy and society, and may address issues related to mining titles, royalties, access to credit and markets, etc.

25 Regulation is the development of legal requirements covering issues such as child labor and environmental protection.

26 Governments may also use tax or other incentive mechanisms to facilitate formalization.

27 These authorities may take the form of a phase-out date for mercury use, or requiring mercury free techniques by a date certain.

28 This authority may include management requirements for mercury storage and waste tailings.

29 This authority may include addressing the use of child labor.

30 The NAP should also address how the prohibitions against ASGM use applicable to primary mined mercury and mercury from the chlor-alkali sector, as discussed above under Article 3, will be enforced. Governments required to prepare a NAP may particularly benefit from a mercury trade licensing program, in order to prevent unauthorized diversions and otherwise manage mercury trade consistent with Article 3 and NAP obligations under Annex C.1(f) of the Convention. Significant civil and criminal penalties, and domestic mercury shipment tracking mechanisms (i.e., manifests), may also be considered to deter illegal mercury trade.

31 'Non-ferrous metals' refers to lead, zinc, copper and industrial gold production. ASGM is covered separately, as discussed above.

32 Includes medical waste, municipal waste, hazardous waste, and sewage sludge incinerators.

33 Includes the co-burning of wastes in cement plants.

34 Guidance as to what constitutes BAT/BEP for the covered sources was adopted on a provisional basis at INC 7. See http://www.mercuryconvention.org/Implementationsupport/Formsandguidance/tabid/5527.

35 Governments may choose not to regulate every facility within a source category, provided the sources they do regulate account for at least 75% of the emissions within the category. This flexibility may be particularly useful where the country has many sources of varying characteristics. Guidance regarding this option was adopted on a provisional basis at INC 7. See http://www.mercuryconvention.org/Implementationsupport/Formsandguidance/tabid/5527.

36 Inventory guidance was adopted on a provisional basis at INC 7. See http://www.mercuryconvention.org/Implementationsupport/Formsandguidance/tabid/5527.

37 Only the storage of those mercury compounds listed in Article 3.1(b) is covered under Article 10.

38 Note the link between this requirement and the Article 3 provision to identify large stocks of mercury and mercury compounds.

39 As discussed above, the Convention does not expressly require contaminated site remediation, nor does the Convention address liability or resource issues related to contaminated site remediation. Accordingly, governments may want to consider authorities related to contaminated sites more broadly.

40 The use of the term "encourage" in Paragraph 1 signifies the Article 16 obligations are non-binding.

41 See Article 27 for how annex amendments may come into force.

NRDC acknowledges the financial support of the United Nations Environmental Programme (UNEP) for the preparation of this document.