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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION, 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

REPORT ON:-

THE RATIFICATION OF THE MINAMATA CONVENTION ON MERCURY

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

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TABLED BY:	Hon. David Gitaria (Chairperson, Environment, Forestry and Mining Committee)
CLERK-AT THE TABLE:	Miriam Mado







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## LIST OF ABBREVIATIONS AND ACRONYMS

BAT	-	Best Available Technology
BEP	-	Best Environmental Practice
NEMA-		National Environment Management Authority
GEF	-	Global Environment Facility
KEBs	-	Kenya Bureau of Standards
ASGM-		Artisanal and Small-scale Gold Mining
SIP	-	Specific International Program
MTEF	-	Medium-Term Expenditure Framework

## ANNEXURES

- Annexure 1: Adoption list
- Annexure 2: Minutes
- Annexure 3: Newspaper advertisement on public participation
- Annexure 4: Submissions by the Ministries and Office of the Attorney General
- Annexure 5: The Memorandum and the Minamata Convention on Mercury

## CHAIRPERSON'S FOREWORD

The Cabinet Secretary, Ministry of Foreign Affairs, submitted a memorandum to the National Assembly dated 23<sup>rd</sup> February, 2023 regarding the Minamata Convention on Mercury. The Convention and the Memorandum were committed to the Departmental Committee on Environment, Forestry and Mining on 19<sup>th</sup> April, 2023.

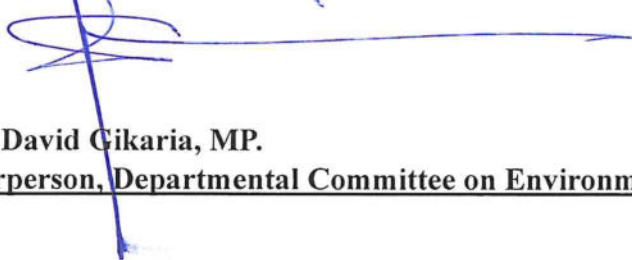
The Minamata Convention is the first worldwide environmental treaty negotiated in the twenty-first century that demonstrates an innovative and comprehensive method to handling mercury throughout its life cycle, from mining to waste disposal. The Convention came into force on August 16, 2017, 90 days after the 50th document of ratification, acceptance, approval, or accession was deposited. On October 10, 2013, Kenya signed the Minamata Convention on Mercury. The Minamata Convention currently has 128 signatories and 140 State Parties. 39 out of the 140 State Parties are African States.

Pursuant to Article 118(1)(b) of the Constitution and section 8(3) of the Treaty Making and ratification Act of 2012, the Committee placed advertisements in two local dailies of nationwide circulation, on 16<sup>th</sup> March, 2023 requesting for submission of memoranda on the subject. The Committee did not receive a memorandum in support or not supporting the Convention by close of business on 22<sup>nd</sup> March, 2023.

Further, the Committee discussed the Convention with the Ministry of Environment, Climate Change and Forestry, Ministry of Foreign and Diaspora Affairs and the Office of the Attorney General.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings. I appreciate all the Members of the Committee for their patience, sacrifice and commitment which enabled us to complete the task and compile this report. I also thank the Committee Secretariat for the technical and logistical support to the Committee and good work. Finally, I thank the Ministry of Environment, Climate Change and Forestry; Ministry of Foreign and Diaspora Affairs and the Office of the Attorney General for their time and submissions to the Committee.

Pursuant to Section 8(4) of the Treaty Making and Ratification Act, 2012 and Standing Order 199, it is my pleasant duty to present to the House the Report of the Departmental Committee on Environment, Forestry and Mining on its consideration of the Minamata Convention on Mercury.



**Hon. David Gikaria, MP.**

**Chairperson, Departmental Committee on Environment, Forestry and Mining**

## CHAPTER ONE

### 1. PREFACE

#### 1.1. Establishment and Mandate of the Committee

1. The Departmental Committee on Environment, Forestry and Mining is one of the fifteen Departmental Committees of the National Assembly established under National Assembly Standing Order 216 whose functions pursuant to the **Standing Order 216 (5)** are as follows:
  - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
  - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
  - iii. *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
  - iv. *To study and review all legislation referred to it;*
  - v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
  - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
  - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
  - viii. ***To examine treaties, agreements and conventions;***
  - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
  - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
  - xi. *To examine any questions raised by Members on a matter within its mandate.*

#### 1.2. Subjects under the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, the following Subject: Climate change, environment management and conservation, forestry, mining and natural, pollution, waste management.
3. In executing its mandate, the Committee oversees the Ministry of Environment and Forestry, and the State Department for Mining.

#### 1.3. Committee Membership

4. The Committee was constituted by the House on 27<sup>th</sup> October, 2022 and comprises of the following Members:

### **Chairperson**

Hon. David Gikaria, MP  
Nakuru Town East Constituency

### **UDA Party**

### **Vice-Chairperson**

Hon. Charles Kamuren, MP  
Baringo South Constituency

### **UDA Party**

### **Members**

Hon. Mbalu Jessica Nduku Kiko, CBS, MP  
Kibwezi East Constituency

### **WDP Party**

Hon. Mwanyanje Gertrude Mbeyu, MP  
Kilifi County

### **ODM Party**

Hon. Hiribae Said Buya, MP  
Galole Constituency

### **ODM Party**

Hon. Salim Feisal Bader, MP  
Msambweni Constituency

### **UDA Party**

Hon. Emathe Joseph Namuar, MP  
Turkana Central Constituency

### **UDA Party**

Hon. Joseph Wainaina Iraya, MP  
Nominated

### **UDA Party**

Hon. Kemei Beatrice Chepngeno, MP  
Kericho County

### **UDA Party**

Hon. Kururia Elijah Njore Njoroge, MP  
Gatundu North Constituency

### **Independent Member**

Hon. Masito Fatuma Hamisi, MP  
Kwale County

### **ODM Party**

Hon. Nguro Onesmus Ngogoyo, MP  
Kajiado North Constituency

### **UDA Party**

Hon. Titus Lotee, MP  
Kachaliba Constituency

### **KUP Party**

Hon. Mohamed Tubi Bidu, MP  
Isiolo South Constituency

### **Jubilee Party**

Hon. Yakub Adow Kuno, MP  
Bura Constituency

### **UPIA Party**



#### **1.4. Committee Secretariat**

5. The Committee is facilitated by the following staff:

Mr. Fredrick O. Otieno  
**Clerk Assistant II/Head of Secretariat**

Ms. Mercy Wanyonyi  
**Senior Legal Counsel**

Mr. Hamdi Hassan Mohamed  
**Clerk Assistant III**

Mr. Joseph Kuria  
**Research Officer III**

Ms. Nancy Chamunga  
**Fiscal Analyst III**

Ms. Catherine Wangui  
**Senior Sergeant-At-Arms**

Ms. Edith Chepngeno  
**Media Relations Officer III**

Ms. Maryan Gabow  
**Public Communications Officer III**

Mr. Boniface Mushila  
**Sergeant-At-Arms**

Mr. Muchiri Mwangi  
**Audio Recording Officer**

## CHAPTER TWO

### 2. ANALYSIS OF THE AGREEMENT

#### 2.1. Background

6. The Objective of the Minamata Convention is to protect human health and the environment from anthropogenic emissions and releases of mercury and its compounds.
7. The Convention also seeks to provide controls on all lifecycle stages of mercury; control on the supply and on international trade in mercury; phase-out and phase-down of mercury use in products and processes; control on artisanal and small-scale gold mining; control measures on air emissions and releases to water and storage, waste and contaminated sites.
8. For these mercury emission sources, the Convention recommends the use of Best Available Technology/Best Environmental Practices (BAT/BEP) as a way of reducing emissions and exposure.
9. Additionally, there is an obligation to Member States to use their existing administrative powers as provided for in their domestic laws to implement the obligations of the Convention.
10. The Convention requires that by 2020, all Parties to cease to manufacture, import and export mercury-containing products listed in it according to the prescribed standards in Annex A. In Kenya, these products include batteries, switches and relays, certain types of lamps, cosmetics, pesticides, biocides and topical antiseptics, and certain types of measuring devices such as thermometers and manometers that have mercury.
11. The Parties to the Convention are Kenya's trading partners and to protect Kenya's national interests, it is necessary to enforce the Annex to ensure Kenya does not become a dumping ground of these harmful products.

#### 2.2. Clause by Clause Analysis of the Protocol

12. **Article 1** states the objective of the convention, which is "to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds".
13. **Article 2** sets out definitions used in more than one Article of the convention, including.
14. **Article 3** addresses the question of mercury supply sources and trade does not apply to mercury compounds used for laboratory research, naturally occurring trace quantities of mercury or mercury compounds present, mercury-added products. It prohibits parties from allowing mercury mining that was not being conducted prior to the date of entry into force of the Convention. It also encourages countries to identify individual stocks of mercury or mercury compounds exceeding 50 metric tons and provides for disposal in accordance with the guidelines for environmentally sound management using operations that do not lead to recovery, recycling, reclamation, direct re-use or alternative uses.

Parties are not allowed to export mercury without the written consent of the importing Party and only for either environmentally sound interim storage or a use allowed.

15. **Article 4** addresses the question of mercury-added products. The Convention employs two approaches to controlling mercury in products, namely setting a phase-out date for some, and specifying measures to be taken in allowing continued use for others.
16. **Article 5** deals with manufacturing processes in which mercury or mercury compounds are used. Sets out measures either to phase out or to restrict such existing processes. It also does not allow the development of new facilities that would use manufacturing processes listed in Annex B and discourages the development of new manufacturing processes in which mercury or mercury compounds are intentionally used.
17. **Article 6** relates to exemptions available to a Party upon request. A State or regional economic integration organization can register for one or more exemptions from the phase out dates listed in Parts I of Annexes A and B.

They do so on becoming a Party, or in the case of a product or process that is added by amendment to the list, no later than the date upon which that amendment enters into force for it. Exemptions can be registered for a listed category or an identified sub-category. The registration is made by notifying the Secretariat in writing, and must be accompanied by a statement explaining the Party's need for the exemption.

18. **Article 7** deals with the question of artisanal and small-scale gold mining and processing in which mercury amalgamation is used to extract gold from ore.

Each Party that has small-scale gold mining and processing within its territory has the general obligation to take steps to reduce the use of mercury and mercury compounds in such mining and processing needs to reduce, and where feasible eliminate, the use of mercury and mercury compounds in mining and processing, as well as the emissions and releases to the environment of mercury from such activities.

Additional obligations, including the development and implementation of a national action plan, are laid out for a Party that determines that artisanal and small-scale gold mining and processing in its territory is more than insignificant.

19. **Article 8** concerns emissions of mercury and mercury compounds. It aims at controlling and, where feasible, reducing emissions of mercury and mercury compounds to the atmosphere, through measures to control emissions from the point sources listed in Annex D.

The Article differentiates between measures required for new sources and those required for existing sources. Releases to land and water are not addressed in Article 8 – they are addressed in Article 9 of the convention.

20. **Article 9** addresses the releases of mercury and mercury compounds to land and water. Aims at controlling and where feasible reducing releases of mercury and mercury compounds from significant anthropogenic point sources that are not addressed in other provisions of the convention.

Each state should within three years after of date of entry into force of the Convention identify the relevant point source categories of releases of mercury into land and water.

21. **Article 10** applies to the environmentally sound interim storage of mercury other than waste mercury.

Parties are requested to take measures to ensure that mercury and mercury compounds that are intended for a use allowed under the convention are stored in an environmentally sound manner, taking into account any guidelines and in accordance with any requirements that the Conference of Parties adopts.

22. **Article 11** deals with mercury wastes, including their definition, their management in an environmentally sound manner and transportation across international boundaries.

23. **Article 12** deals with contaminated sites. Each state needs to endeavor to develop appropriate strategies for identifying and assessing sites contaminated by mercury or mercury compounds.

When taking action to reduce the risks posed by sites contaminated by mercury or mercury compounds, each Party is required to ensure that actions are performed in an environmentally sound manner, and actions incorporate, where appropriate, an assessment of the risks to human health and the environment from mercury or mercury compounds contained in these sites.

24. **Article 13** relates to the question of financial resources and mechanism. Establishes a mechanism for the provision of adequate, predictable and timely financial resources, comprising the Global Environment Facility Trust Fund and a specific international programme to support capacity building and technical assistance.

25. **Article 14** addresses the issues of capacity-building, technical assistance and technology transfer. Calls for cooperation between Parties to provide timely and appropriate capacity-building and technical assistance to developing country Parties, including through regional, sub regional and national arrangements.

26. **Article 15** establishes an Implementation and Compliance Committee to promote implementation of, and compliance with, all provisions of this convention.

The Committee comprises 15 members nominated by Parties and elected by the Conference of the Parties. Issues can be taken up by the committee on self-referral by a Party, on the basis of information submitted under the reporting provisions, or upon request from the Conference of the Parties.

27. **Article 16** relates to health aspects. It encourages Parties to promote the development and implementation of strategies and programmes to identify and protect populations at risk. It encourages Parties to adopt and implement science based educational and preventive programmes on occupational exposure to mercury and mercury compounds.

It encourages Parties to promote appropriate health-care services for prevention, treatment and care for populations affected by the exposure to mercury or mercury compounds. Finally, it encourages Parties to establish and strengthen institutional and health professional capacities.

28. **Article 17** deals with information exchange. Each party shall facilitate the exchange of information.

29. **Article 18** stresses on the importance of public information, awareness and education.

30. **Article 19** relates to research, development and monitoring.

31. **Article 20** deals with the possibility for parties to develop an implementation plan.

32. **Article 21** parties shall report to the Conference of the Parties, through the secretariat on the measures taken to implement the provisions of the convention and the effectiveness of those measures as well as the possible challenges in meeting the objectives of the convention.

Parties shall include in their reporting the information called for in the different articles of the convention.

33. **Article 22** deals with effectiveness in evaluation. The Conference of the Parties needs to evaluate the effectiveness of the Convention no later than six years after the date of entry into force and periodically thereafter.

34. **Article 23** establishes the Conference of the Parties.

35. **Article 24** establishes the Secretariat, which is to be provided by the United Nations Environment Programme.

36. **Article 25** deals with the settlement of disputes between Parties.

37. **Article 26** sets the rules for the amendments to the convention. Amendments to the Convention may be proposed by any Party, and they must be adopted at a meeting of the Conference of the Parties. Ratification (acceptance or approval) of an amendment shall be notified to the Depositary in writing.

38. **Article 27** sets the rules for adoption and amendment of annexes.

39. **Article 28** establishes the rules for the right to vote: one party, one vote, except in the case of a regional economic integration organization, which, on matters within its competence, shall exercise its right to

vote with a number of votes equal to the number of its members States that are Parties to the convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote and vice versa.

40. **Article 29** relates to the signature of the Convention, which was open for one year until 9 October 2014.

41. **Article 30** deals with the ratification, acceptance, and approval of the convention or accession thereto.

42. **Article 31** deals with the Convention's entry into the force, which will take place on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

43. **Article 32** states that no reservations may be made to the Convention.

44. **Article 33** gives the right to Parties to withdraw from the Convention at any time after three years from the date on which the Convention has entered into force for them, through written notification to the Depository.

Any such withdrawal shall take effect one year after the receipt of the notification by the depository or any later specified date.

45. **Article 34** names the Secretary-General of the United Nations as the depository of the Convention.

46. **Article 35** states that the Arabic, Chinese, English, French, Russian and Spanish texts of the Convention are equally authentic.



### **CHAPTER THREE**

#### **3. ANALYSIS OF THE MEMORANDUM SUBMITTED BY THE MINISTRY OF FOREIGN AND DIASPORA AFFAIRS**

47. The Ministry of Foreign Affairs submitted that the ratification process was approved by the Cabinet during its meeting held on 12<sup>th</sup> May 2022.
48. The Minamata Convention on Mercury entered into force on 16<sup>th</sup> August, 2017, as provided for in Article 31, the ninetieth day (90<sup>th</sup>) day after the date of deposit of the fiftieth (50<sup>th</sup>) instrument of ratification, acceptance, approval or accession.
49. The Convention has One hundred and thirty-seven (137) parties. Kenya was an active participant in the aforementioned process and became a signatory to the Convention on 10<sup>th</sup> October, 2013.

##### **3.1. Object and Subject Matter of the Convention**

50. The Convention seeks to protect human health and the environment from the anthropogenic emissions and releases of mercury and its compounds.
51. The Convention also addresses:
  - a) Controls on all lifecycle stages of mercury covered by different articles of the Convention;
  - b) Controls on supply and on international trade in mercury;
  - c) Phase-out and phase-down for mercury use in products and processes;
  - d) Controls in artisanal and small-scale gold mining;
  - e) Control measures on air emissions and releases to water; and
  - f) Storage, waste and contaminated sites.

##### **3.2. Obligations imposed by the convention**

52. Upon the ratification of the Convention, Kenya shall be required to:
  - a) Take measures to prohibit export of mercury except to a Party that has provided the exporting Party with written consent, and only for the purpose of use allowed or environmentally sound interim storage;
  - b) Prohibit the manufacturing, import or export of mercury-added products listed in part I of Annex A of the Convention after the phase out date;
  - c) Take steps to reduce, and where feasible, eliminate the use of mercury and mercury compounds and the emissions and releases of mercury to the environment; and
  - d) Minimize emissions from relevant sources at least 75% of the emissions in the categories listed in Annex D namely coal-fired power plants, coal-fired industrial boilers, smelting and roasting processes used in the production of non-ferrous metals, waste incineration facilities and cement clinker production facilities.



### **3.3. Justification for accession**

53. The benefits of ratifying the Convention on Mercury for Kenya include:

- a) Benefits from the Global Environment Facility (GEF), a financial instrument under the Convention. Kenya will qualify for financial support to implement the convention;
- b) Benefits of technical assistance, technology transfer from the Convention's Secretariat and other partners to help improve capacity of institutions such as the Kenya Bureau of Standards (KEBS), the National Environment Management Authority (NEMA) among others;
- c) The obligation to phase out mercury and mercury products offers benefits to the environment and the health of the population from exposure from mercury which is a neurotoxin; and
- d) The Constitution obligates the Government to guarantee a clean and healthy environment for its citizens which the Convention aims to achieve.

54. Kenyans are currently exposed to mercury from artisanal and small-scale gold mining (ASGM), as well as mercury-containing products and trash. Ratification also provides a foundation for reviewing current legislation, thereby safeguarding citizens from exposure to mercury and mercury-containing items.

### **3.4. Constitutional and legislative implications**

55. The Convention is consistent with the Constitution of Kenya 2010 and promotes all the constitutional values and objectives and does not allude to an amendment of the Constitution.

56. Kenya will have to enact a domestic legislation or amend existing relevant legislation and other national policies to enable implementation of the Convention. Some of the relevant legislations include: the Environmental Management and Co-ordination Act, 1999 (Rev 2015); the Public Health Act; the Occupational Safety and Health Act, 2007; the Factories and Other Places of Work (Hazardous Substances) Rules; the Pharmacy and Poisons Act; the Pharmacy and Poisons (Control of Drugs) Rule; the Customs and Excise Act; the Mining Act 2016; and the Petroleum Act, 2019.

57. The implementation of the Convention will require review of some existing national policies which include: the Kenya Health Policy 2012-2030; the Ministry of Health Ministerial Strategic and Investment Plan; the Kenya National Pharmaceutical Policy, 2008; and the National Environmental Policy, 2013.

### **3.5. Problem Analysis**

58. The Convention required that by 2020 all parties to cease the manufacturer, imports and export of mercury-containing products listed in the Convention according to standards in annex A of the Convention. In Kenya, these products include batteries, switches and relays, certain types of measuring devices such thermometers and manometers that have mercury.

59. The Parties to the Convention are Kenya's trading partners. Therefore, to protect Kenya's national interests, it necessary to enforce the Annex to ensure Kenya does not become a dumping ground of theses harmful products.

60. It is paramount for Kenya to ratify the Convention to enjoy the benefit that the Parties to the Convention have in order to protect its citizens from adverse effects of mercury and mercury products.

### **3.6. Implications relating to counties**

61. The obligations under the Convention are concurrent functions of both the National and County governments under the Constitution.

### **3.7. Financial Implication**

62. Financial requirements for the implementation of the Convention will be provided for under normal budgetary estimates of the relevant institutions

63. The Convention, under Article 13, sets up a financial mechanism to support developing country Parties in implementing their obligations. The mechanism is composed of:

- i. The Global Environment Facility Trust Fund (GEF); and
- ii. The Specific International Program (SIP) to support capacity-building and technical assistance.

### **3.8. Ministerial responsibility**

64. The implementation of the Convention will be under the collective responsibility of the Ministries of Environment, Climate Change and Forestry; Mining, Blue Economy and Maritime Affairs; Industrialisation, Trade and Enterprise Development; Health; and Energy and Petroleum.

65. The Office of the Attorney General and Department of Justice and the Ministry of Foreign Affairs will coordinate the reporting process on State obligations pursuant to the Treaty Making and Ratification Act No 45 of 2012.

### **3.9. Reservations**

66. The Convention does not provide for reservations.

## CHAPTER FOUR

### 4. SUBMISSION BY THE MINISTRIES AND OFFICE OF THE ATTORNEY-GENERAL

67. On the 25<sup>th</sup> May, 2023, the Cabinet Secretary, Ministry of Foreign and Diaspora Affairs, Principal Secretary State Department for Environment and Climate Change and the Solicitor General appeared before the Committee and made a joint submission on the Minamata Convention on Mercury as follows:

#### 4.1. Background and Problem Statement

68. The Minamata Convention is the first worldwide environmental treaty negotiated in the twenty-first century that demonstrates an innovative and comprehensive method to handling mercury throughout its life cycle, from mining to waste disposal.
69. The Minamata Convention is a continuation and expansion of the Basel, Rotterdam, and Stockholm conventions. It establishes the same basic substantive obligations for all countries while providing some targeted differentiation and flexibility in specific substantive provisions, as well as provisions to mobilise financial resources for implementation in developing countries by all, within their capabilities. Together with the Basel, Rotterdam, and Stockholm conventions, it forms a comprehensive global system for chemical and hazardous waste management.
70. Minamata Convention on Mercury is a multilateral treaty aimed at protecting human health and the environment against mercury's harmful effects.
71. Minamata Convention provides for the ban on new mercury mines, the phase-out of existing ones, the phase-out and phase-down of mercury use in a variety of products and processes, emission control measures for air, land, and water, and regulation of the informal sector of artisanal and small-scale gold mining. The Convention also handles intermediate mercury storage and disposal once it has become waste, mercury-contaminated places, and health concerns.
72. Mercury is a common, naturally occurring metal. It is widely used in everyday products, artisanal mining, and dental amalgam, and it is emitted into the atmosphere, soil, and water from a variety of sources, including cement plants, coal-fired utilities, and trash. When used incorrectly, mercury can be dangerous. Coal-fired thermal processes account for 46% of emissions, followed by artisanal gold mining (18%), cement production (10%), ferrous and nonferrous metals (10%), waste incineration (7%), and chlor-alkali manufacturing (2%).
73. Mercury is an extremely hazardous heavy metal that endangers human health and the environment worldwide. It has a variety of serious health effects when combined with its numerous constituents, including harm to the central nervous system, thyroid, kidneys, lungs, immune system, eyes, gums, and skin. Victims may experience memory loss or linguistic difficulties, and brain damage cannot be restored. There is no known safe limit of elemental mercury exposure in humans, and effects can be

evident at extremely low levels. Foetuses, new-borns, and children are among the most vulnerable and sensitive to mercury's harmful effects.

74. The global mobility of mercury in the environment was a major factor in the decision to take global action to address the problem of mercury pollution. No single country can manage mercury's transboundary impacts. Only worldwide cooperation can effectively combat it. With the passage of the Minamata Convention, governments from all over the globe have made a significant step towards addressing global mercury emissions and releases, which endanger the environment and the health of millions.
75. The coordinated implementation of the Convention's obligations is expected to result in an overall reduction in mercury levels in the environment over time, thus meeting the Convention's goal of protecting human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.
76. The Minamata Convention entered into force on August 16, 2017, 90 days after the 50th document of ratification, acceptance, approval, or accession was deposited. On October 10, 2013, Kenya signed the Minamata Convention on Mercury.
77. Minamata Convention currently has 128 signatories and 140 State Parties. 39 out of the 140 State Parties are African States namely: Algeria, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Swaziland, Eswatini (Kingdom of), Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Lesotho, Madagascar, Mali, Mauritania, Mauritius, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Togo, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

#### **4.2. Convention Objectives**

78. The Convention's goal is to protect human health and the environment against anthropogenic emissions and releases of mercury and mercury compounds, and it outlines a variety of measures to achieve that objective.
79. These include measures to control the supply and trade of mercury, such as limiting specific sources of mercury, such as primary mining, and controlling mercury-added products and manufacturing processes that use mercury or mercury compounds, as well as artisanal and small-scale gold mining. The language of the Convention includes separate sections on mercury emissions and releases, with controls aimed at lowering mercury levels while giving flexibility to suit national development plans. It also includes methods for environmentally sound interim mercury storage, mercury trash, and polluted locations.

80. The Convention includes provisions for financial and technical assistance to developing nations and countries in transition, as well as a financial system for the deployment of adequate, predictable, and timely financial resources.

#### 4.3. Specific Obligations under the Convention

81. The convention has the following specific obligations;

- 1) **Mercury supply sources and trade:** each party shall not allow the export of mercury except to a Party that has provided the exporting Party with its written consent, and only for a use allowed or environmentally sound interim storage;
- 2) **Manufacturing:** each party shall not allow manufacture, import or export of mercury-added products;
- 3) **Manufacturing processes in which mercury or mercury compounds are used:** each party shall not allow the use of mercury or mercury compounds and shall take measures to restrict the use of mercury or mercury compounds;
- 4) **Mercury-added products:** Each Party shall not allow primary mercury mining that was not being conducted within its territory at the date of entry into force of the Convention for it.
- 5) Each Party shall not allow, by taking appropriate measures, the manufacture, import or export of mercury-added products;
- 6) **Artisanal and small-scale gold mining:** Each Party that has artisanal and small-scale gold mining and processing subject to this Article within its territory shall take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the emissions and releases to the environment of mercury from, such mining and processing; and
- 7) **Minimize emissions from relevant sources:** at least 75% of the emissions in the categories listed in Annex D namely Coal-fired power plants, Coal-fired industrial boilers, smelting and roasting processes used in the production of non-ferrous metals, waste incineration facilities and cement clinker production facilities. For these mercury emission sources, the convention recommends the use of the Best Available Techniques/Best Environmental Practices as a way of reducing emissions and exposure.
- 8) Parties are encouraged to exchange information on relevant new technological developments, economically and technically feasible mercury-free alternatives, and possible measures and techniques to reduce and where feasible to eliminate the use of mercury and mercury compounds in, and emissions and releases of mercury and mercury compounds from, the manufacturing processes.
- 9) **Capacity-building, technical assistance and technology transfer:** Parties shall cooperate to provide, within their respective capabilities, timely and appropriate capacity-building and technical assistance to developing country Parties, in particular Parties that are least developed countries or small island developing States, and Parties with economies in transition, to assist them in implementing their obligations under this Convention.
- 10) **Health aspects:** Parties are encouraged to promote the development and implementation of strategies and programmes to identify and protect populations at risk, particularly vulnerable populations, and which may include adopting science-based health guidelines relating to the



exposure to mercury and mercury compounds, setting targets for mercury exposure reduction, where appropriate, and public education, with the participation of public health and other involved sectors;

11) **Public Information, awareness and Education:** Each Party shall, within its capabilities, promote and facilitate:

- a) Provision to the public of available information on:
  - i) The health and environmental effects of mercury and mercury compounds;
  - ii) Alternatives to the mercury and mercury compounds;
  - iii) The results of its research, development and monitoring activities; and
  - iv) Activities to meet its obligations under this Convention.
- b) Education, training and public awareness related to the effects of exposure to mercury and mercury compounds on human health and the environment in collaboration with relevant intergovernmental and non-governmental organizations and vulnerable populations, as appropriate.

#### **4.4. Implementation of the Minamata Convention upon Ratification**

82. Implementation Plans: Following an initial assessment, each Party may prepare and implement an implementation plan for achieving its obligations under this Convention, taking into consideration its domestic circumstances.
83. Reporting: Each Party shall report to the Conference of the Parties, through the Secretariat, on the steps it has taken to implement the provisions of this Convention, as well as the effectiveness of those steps and any challenges to fulfilling the Convention's objectives.
84. Conference of Parties: The Conference of the Parties shall put the implementation of this Convention under constant review and evaluation. It shall carry out the duties delegated to it by this Convention.

#### **4.5. Relevance of the Convention to Kenya**

85. It should be noted as follows:

- i. Kenya does not mine mercury and there are no proven mercury reserves;
- ii. The import and export of mercury are not well-defined or coordinated;
- iii. The controlled mercury-added products including measuring and control devices such as thermometers, manometers; button cell batteries; dental amalgam; electrical and electronic devices; Lamps/lighting devices are extensively in use in Kenya;
- iv. There are manufacturing processes in which mercury or mercury compounds are used e.g. in paper mill factories;
- v. The extensive use of artisanal gold mining is of special significance in Kakamega, Perkerra, Pokot, Transmara and Migori; and
- vi. There is a prevalence of mercury wastes and mercury-contaminated sites.

#### **4.6. Justification for ratification**

86. The benefits of ratifying the Convention on Mercury for Kenya include:

- a) Benefits from the Global Environment Facility (GEF), a financial instrument under the Convention. Kenya will qualify for financial support to implement the Convention;
- b) Benefits of technical assistance, technology transfer from the Convention's Secretariat and other partners to help improve capacity of institutions such as the Kenya Bureau of Standards (KEBS), the National Environment Management Authority (NEMA) among others;
- c) The obligation to phase out mercury and mercury products offers benefits to the environment and the health of the population from exposure from mercury which is a neurotoxin; and
- d) The Constitution obligates the Government to guarantee a clean and healthy environment for its citizens which the Convention aims to achieve.

87. Kenyans are currently exposed to mercury from artisanal and small-scale gold mining (ASGM), as well as mercury-containing products and trash. Ratification also provides a foundation for reviewing current legislation, thereby safeguarding citizens from exposure to mercury and mercury-containing items.

#### **4.7. Legal Implications**

88. The Convention adheres to the Constitution and promotes constitutional ideals and goals. It makes no reference to a constitutional amendment.
89. It is possible that domestic legislation and policy, such as the Pharmacy and Poisons Act and the Environmental Management and Co-ordination Act, may need to be reviewed in order to align with the objectives of the Convention and allow for safeguards and prevent exposure to mercury and its products.

#### **4.8. Financial Implications**

90. The Global Environment Facility (GEF) is the financing mechanism for the Convention. In line with GEF policies, for every 1 USD, the counterpart funding is 4 USD in cash or kind. Implementation of this Convention will therefore require the allocation of resources through the Medium-Term Expenditure Framework (MTEF) under the Ministry's allocation.
91. Financial requirements for the implementation of the Convention will be provided for under normal budgetary estimates of the relevant institutions.

#### **4.9. Ministerial Responsibility**

92. The implementation of the Convention will be under the collective responsibility of the Ministries of Environment and Forestry, Energy and Petroleum, Mining, Blue Economy and Maritime Affairs, Investment, Trade and Industry, and Health.



93. The Office of the Attorney General and Department of Justice and the Ministry of Foreign Affairs and Diaspora will coordinate the reporting process on State obligations pursuant to the Treaty Making and Ratification Act No 45 of 2012.

#### **4.10. Reservations**

94. No reservations may be made to the Convention but it permits declarations under Article 25 wherein, a party may deposit a declaration accepting either arbitration or determination by ICJ in the event a dispute arises from interpretation or application of the Convention.

#### **4.11. Withdrawal**

95. A Party may withdraw from the Convention at any time after three years from the date on which the Convention entered into force for that Party, by giving written notification to the Depositary.

#### **4.12. Depositary**

96. The Secretary-General of the United Nations shall be the Depositary of the Convention.

## CHAPTER FIVE

### 5. COMMITTEE OBSERVATIONS

97. The Committee having considered the Convention observed the following:

- 1) **That**, the memorandum submitted by the Cabinet Secretary, Ministry of Foreign and Diaspora affairs dated 23<sup>rd</sup> March, 2023 indicated that the ratification process of the Minamata Convention on Mercury was approved by the Cabinet during its meeting held on 12<sup>th</sup> May 2022;
- 2) **That**, the Minamata Convention on Mercury entered into force on 16<sup>th</sup> August, 2017, as provided for in Article 31, the ninetieth day (90<sup>th</sup>) day after the date of deposit of the fiftieth (50<sup>th</sup>) instrument of ratification, acceptance, approval or accession;
- 3) That the Minamata Convention currently has 128 signatories and 140 State Parties. 39 out of the 140 State Parties are African States namely: Algeria, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Swaziland, Eswatini (Kingdom of), Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Lesotho, Madagascar, Mali, Mauritania, Mauritius, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Togo, Uganda, United Republic of Tanzania, Zambia and Zimbabwe;
- 4) **That**, the objective of the Minamata Convention is to protect human health and the environment from anthropogenic emissions and releases of mercury and its compounds;
- 5) **That**, the Convention also addresses controls on all lifecycles stages of mercury; control on the supply and on international trade in mercury; phase-out and phase-down of mercury use in products and processes; control on artisanal and small scale gold mining; control measures on air emissions and releases to water and storage, waste and contaminated sites;
- 6) **That**, upon ratification of the Convention, Kenya shall be required to:
  - a) Take measures to prohibit export of mercury except to a Party that has provided the exporting Party with written consent and only for the purpose of a use allowed or environmentally sound interim storage;
  - b) Prohibit the manufacturing, import or export of mercury-added products listed in part 1 of Annex A of the Convention after the phase out date;
  - c) Take steps to reduce, and where feasible, eliminate the use of mercury and mercury compounds and the emissions and releases of mercury to the environment; and
  - d) Minimize emissions from relevant sources to at-least 75% of the emissions in the categories listed in Annex D namely coal-fired plants, coal-fired industrial boilers, smelting and roasting processes used in the production of non-ferrous metals, waste incineration facilities and cement clinker production facilities.
- 7) **That**, the Convention required that by 2020 all Parties to cease to manufacture, import and export mercury-containing products listed in the Convention according to the prescribed standards in

Annex A of the Convention. In Kenya, these products include batteries, switches and relays, certain types of lamps, cosmetics, pesticides, biocides and topical antiseptics, and certain types of measuring devices such as thermometers and manometers that have mercury;

- 8) **That**, the Parties to the Convention are Kenya's trading partners and to protect Kenya's national interests, it is necessary to enforce the Annex to ensure Kenya does not become a dumping ground of these harmful products;
- 9) **That**, the benefits of ratifying the Convention on Mercury for Kenya include:
  - a) Benefits from the Global Environment Facility (GEF), a financial instrument under the Convention to enable Kenya qualify for financial support to implement the Convention;
  - b) Benefits of technical assistance, technology transfer from the Convention's Secretariat and other partners to help improve capacity of institutions such as the Kenya Bureau of Standards, the National Environment Management Authority among others;
  - c) The obligation to phase out mercury and mercury products offers benefits to the environment and the health of the population from exposure from mercury which is a neurotoxin; and
  - d) Article 42 of the Constitution obligates the government to guarantee a clean and healthy environment for its citizens which the Convention aims to achieve.
- 10) **That**, the implementation of the Convention will be under the collective responsibility of the Ministries of Environment and Forestry, Energy and Petroleum, Mining, Blue Economy and Maritime Affairs, Investment, Trade and Industry, and Health;
- 11) **That**, the Global Environment Facility (GEF) is the financing mechanism for the Convention. In line with GEF policies, for every 1 USD, the counterpart funding is 4 USD in cash or kind. Implementation of this Convention will therefore require the allocation of resources through the Medium-Term Expenditure Framework (MTEF) under the Ministry's allocation;
- 12) **That**, the financial requirements for the implementation of the Convention will be provided for under normal budgetary estimates of the relevant institutions;
- 13) **That**, the Convention adheres to the Constitution and promotes constitutional ideals and goals. It makes no reference to a constitutional amendment;
- 14) **That**, Kenya will have to enact a domestic legislation or amend existing relevant legislation and other national policies to enable implementation of the Convention. Some of the relevant legislations include: the Environmental Management and Co-ordination Act, 1999 (Rev 2015); the Public Health Act, Cap 242 Laws of Kenya; the Occupational Safety and Health Act, 2007; the Factories and other Places of Work (Hazardous Substances) Rules, 2007; the Pharmacy and Poisons Act, Cap 244, Laws of Kenya; the Pharmacy and Poisons (Control of Drugs) Rule, 2002; the Customs and Excise Act, Cap 499, Laws of Kenya; the Mining Act 2016; and the Petroleum Act, 2019;

- 15) **That**, the implementation of the Convention will require review of some existing national policies which include: the Kenya Health Policy 2012-2030; the Ministry of Health Ministerial Strategic and Investment Plan; the Kenya National Pharmaceutical Policy, 2008; and the National Environmental Policy, 2013;
- 16) **That**, Article 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the laws of Kenya while Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the laws of Kenya;
- 17) **That**, Pursuant to section 8(4) of the Treaty Making and Ratification Act, No. 45 of 2012, the National Assembly may approve the ratification of a treaty with or without reservations. However, the Convention does not permit reservations;
- 18) **That**, the procedure for approval of Treaties as outlined in section 8 of the Treaty Making and Ratification Act, 2012 was adhered to; and
- 19) **That**, the Convention is consistent with Article 69(1)(g) of the Constitution which provides that the State has an obligation to eliminate processes and activities that are likely to endanger the environment.

## CHAPTER SIX

### 6. RECOMMENDATIONS

98. Having considered the submissions, and analysed documents tabled, and pursuant to Section 8 of the Treaty Making and Ratification Act, the Committee recommends that the House **APPROVES the Ratification of the Minamata Convention on Mercury.**

SIGNED..... DATE.....  
HON. DAVID GIKARIA, MP  
CHAIRPERSON  
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

# **ADOPTION LIST**







REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION, 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

ADOPTION OF THE REPORT ON CONSIDERATION OF THE MINAMATA CONVENTION ON MERCURY

We, the undersigned Honorable Members of the Departmental Committee on Environment, Forestry and Mining today Tuesday, 20<sup>th</sup> June 2023 do hereby affix our signatures to the Report on consideration of the Minamata Convention on Mercury to affirm our approval and confirm its accuracy, validity and authenticity:

NO.	NAME	SIGNATURE
1.	The Hon. Gikaria David, MP - Chairperson	
2.	The Hon. Charles Kamuren, MP - Vice-Chairperson	
3.	The Hon. Mbalu Jessica Nduku Kiko, CBS, MP.	
4.	The Hon. Hiribae Said Buya, MP.	
5.	The Hon. Mwanyanje Gertrude Mbeyu, MP.	
6.	The Hon. Salim Feisal Bader, MP.	
7.	The Hon. Emathe Joseph Namuer, MP.	
8.	The Hon. Joseph Wainaina Iraya, MP.	
9.	The Hon. Kemei Beatrice Chepngeno, MP.	
10.	The Hon. Kururia Elijah Njore Njoroge, MP.	
11.	The Hon. Masito Fatuma Hamisi, MP.	
12.	The Hon. Mohamed Tubi Bidu, MP.	
13.	The Hon. Nguro Onesmus Ngogoyo, MP.	
14.	The Hon. Yakub Adow Kuno, MP.	
15.	The Hon. Titus Lotee, MP.	

11/11/11

# MINUTES





**REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
13<sup>TH</sup> PARLIAMENT - SECOND SESSION, 2023  
DIRECTORATE OF DEPARTMENTAL COMMITTEES**

**MINUTES OF THE 21<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
ENVIRONMENT, FORESTRY, AND MINING HELD ON TUESDAY 20<sup>TH</sup> JUNE, 2023  
IN COMMITTEE ROOM ON SECOND FLOOR, CONTINENTAL HOUSE,  
PARLIAMENT BUILDINGS. AT 12:00 NOON**

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**PRESENT.**

- |  |                   |
|--|-------------------|
| 1. The Hon. Gikaria David, MP.                 | -Chairperson      |
| 2. The Hon. Charles Kamuren, MP                | -Vice-Chairperson |
| 3. The Hon. Mbalu, Jessica Nduku Kiko, CBS, MP |                   |
| 4. The Hon. Mwanyanje Gertrude Mbeyu           |                   |
| 5. The Hon. Salim Feisal Bader, MP             |                   |
| 6. The Hon. Titus Lotee, MP                    |                   |
| 7. The Hon. Emathe Joseph Namuar, MP           |                   |
| 8. The Hon. Masito Fatuma Hamisi, MP           |                   |
| 9. The Hon. Joseph Wainaina Iraya, MP          |                   |
| 10. The Hon. Tubi Bidu Mohamed, MP             |                   |
| 11. The Hon. Onesmus Ngogoyo Nguro, MP         |                   |

**APOLOGY**

1. The Hon. Kemei, Beatrice Chepngeno MP
2. The Hon. Yakub Adow Kuno, MP
3. The Hon. Elijah Njore Njoroge, MP

**ABSENT**

The Hon. Hiribae Said Buya, MP.

**IN-ATTENDANCE; THE COMMITTEE SECRETARIAT**

- |                         |   |                      |
|-------------------------|---|----------------------|
| 1. Mr. Fredrick Otieno  | - | Clerk Assistant I    |
| 2. Mr. Hamdi H. Mohamed | - | Clerk Assistant III  |
| 3. Ms. Mercy Wanyonyi   | - | Senior Legal Counsel |
| 4. Dr. Joseph Kuria     | - | Research Officer III |
| 5. Ms. Nancy Camunga    | - | Fiscal Analyst       |
| 6. Ms. Edith Chepngeno  | - | Audio Officer        |

## **MIN/NO.NA/DC-EF&M/2023/134: PRELIMINARIES & ADOPTION OF AGENDA**

The Chairperson called the meeting to order at ten minutes past twelve O'clock followed by a prayer said by Hon. Charles Kamuren, MP. The agenda of the meeting was adopted as hereunder having been proposed and seconded by the Hon. Titus Lotee, MP and Hon. Onesmus Ngogoyo, MP respectively.

### **AGENDA:**

1. Prayers
2. Introductions/preliminaries
3. Communication from the Chair
4. Confirmation of Previous Minutes
5. Matters arising
6. Pending Bills: None
7. Pending Petition(s): None
8. Questions: None
9. Statements: None
10. *Adoption of the Report on Consideration of the Minamata Convention on Mercury.*
11. Any Other Business; and

Adjournment

## **MIN/NO.NA/DC-EF&M/2023/135: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.**

The minutes of the 20<sup>th</sup> sitting held on Thursday, 15<sup>th</sup> June, 2023 were confirmed as a true record of the proceedings having been proposed by the Hon. Titus Lotee, MP and seconded by Hon. Gertrude Mbeyu, MP.

## **MIN/NO.NA/DC-EF&M/2023/136: CONSIDERATION OF THE REPORT ON THE MINAMATA CONVENTION ON MERCURY**

The Committee considered the report on the Minamata Convention on Mercury made the following observations:

- 1) **That**, the memorandum submitted by the Cabinet Secretary, Ministry of Foreign and Diaspora affairs dated 23<sup>rd</sup> March, 2023 indicated that the ratification process of the Minamata Convention on Mercury was approved by the Cabinet during its meeting held on 12<sup>th</sup> May 2022;
- 2) **That**, the Minamata Convention on Mercury entered into force on 16<sup>th</sup> August, 2017, as provided for in Article 31, the ninetieth day (90<sup>th</sup>) day after the date of deposit of the fiftieth (50<sup>th</sup>) instrument of ratification, acceptance, approval or accession;
- 3) That the Minamata Convention currently has 128 signatories and 140 State Parties. 39 out of the 140 State Parties are African States namely: Algeria, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire,

Djibouti, Equatorial Guinea, Eritrea, Swaziland, Eswatini (Kingdom of), Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Lesotho, Madagascar, Mali, Mauritania, Mauritius, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Togo, Uganda, United Republic of Tanzania, Zambia and Zimbabwe;

- 4) **That**, the objective of the Minamata Convention is to protect human health and the environment from anthropogenic emissions and releases of mercury and its compounds;
- 5) **That**, the Convention also addresses controls on all lifecycles stages of mercury; control on the supply and on international trade in mercury; phase-out and phase-down of mercury use in products and processes; control on artisanal and small scale gold mining; control measures on air emissions and releases to water and storage, waste and contaminated sites;
- 6) **That**, upon ratification of the Convention, Kenya shall be required to:
  - a) Take measures to prohibit export of mercury except to a Party that has provided the exporting Party with written consent and only for the purpose of a use allowed or environmentally sound interim storage;
  - b) Prohibit the manufacturing, import or export of mercury-added products listed in part 1 of Annex A of the Convention after the phase out date;
  - c) Take steps to reduce, and where feasible, eliminate the use of mercury and mercury compounds and the emissions and releases of mercury to the environment; and
  - d) Minimize emissions from relevant sources to at-least 75% of the emissions in the categories listed in Annex D namely coal-fired plants, coal-fired industrial boilers, smelting and roasting processes used in the production of non-ferrous metals, waste incineration facilities and cement clinker production facilities.
- 7) **That**, the Convention required that by 2020 all Parties to cease to manufacture, import and export mercury-containing products listed in the Convention according to the prescribed standards in Annex A of the Convention. In Kenya, these products include batteries, switches and relays, certain types of lamps, cosmetics, pesticides, biocides and topical antiseptics, and certain types of measuring devices such as thermometers and manometers that have mercury;
- 8) **That**, the Parties to the Convention are Kenya's trading partners and to protect Kenya's national interests, it is necessary to enforce the Annex to ensure Kenya does not become a dumping ground of these harmful products;
- 9) **That**, the benefits of ratifying the Convention on Mercury for Kenya include:
  - a) Benefits from the Global Environment Facility (GEF), a financial instrument under the Convention to enable Kenya qualify for financial support to implement the Convention;
  - b) Benefits of technical assistance, technology transfer from the Convention's Secretariat and other partners to help improve capacity of institutions such as the Kenya Bureau of Standards, the National Environment Management Authority among others;



- c) The obligation to phase out mercury and mercury products offers benefits to the environment and the health of the population from exposure from mercury which is a neurotoxin; and
  - d) Article 42 of the Constitution obligates the government to guarantee a clean and healthy environment for its citizens which the Convention aims to achieve.
- 10) **That**, the implementation of the Convention will be under the collective responsibility of the Ministries of Environment and Forestry, Energy and Petroleum, Mining, Blue Economy and Maritime Affairs, Investment, Trade and Industry, and Health;
  - 11) **That**, the Global Environment Facility (GEF) is the financing mechanism for the Convention. In line with GEF policies, for every 1 USD, the counterpart funding is 4 USD in cash or kind. Implementation of this Convention will therefore require the allocation of resources through the Medium-Term Expenditure Framework (MTEF) under the Ministry's allocation;
  - 12) **That**, the financial requirements for the implementation of the Convention will be provided for under normal budgetary estimates of the relevant institutions;
  - 13) **That**, the Convention adheres to the Constitution and promotes constitutional ideals and goals. It makes no reference to a constitutional amendment;
  - 14) **That**, Kenya will have to enact a domestic legislation or amend existing relevant legislation and other national policies to enable implementation of the Convention. Some of the relevant legislations include: the Environmental Management and Co-ordination Act, 1999 (Rev 2015); the Public Health Act, Cap 242 Laws of Kenya; the Occupational Safety and Health Act, 2007; the Factories and other Places of Work (Hazardous Substances) Rules, 2007; the Pharmacy and Poisons Act, Cap 244, Laws of Kenya; the Pharmacy and Poisons (Control of Drugs) Rule, 2002; the Customs and Excise Act, Cap 499, Laws of Kenya; the Mining Act 2016; and the Petroleum Act, 2019;
  - 15) **That**, the implementation of the Convention will require review of some existing national policies which include: the Kenya Health Policy 2012-2030; the Ministry of Health Ministerial Strategic and Investment Plan; the Kenya National Pharmaceutical Policy, 2008; and the National Environmental Policy, 2013;
  - 16) **That**, Article 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the laws of Kenya while Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the laws of Kenya;
  - 17) **That**, Pursuant to section 8(4) of the Treaty Making and Ratification Act, No. 45 of 2012, the National Assembly may approve the ratification of a treaty with or without reservations. However, the Convention does not permit reservations;

18) **That**, the procedure for approval of Treaties as outlined in section 8 of the Treaty Making and Ratification Act, 2012 was adhered to; and

19) **That**, the Convention is consistent with Article 69(1)(g) of the Constitution which provides that the State has an obligation to eliminate processes and activities that are likely to endanger the environment.

**MIN/NO.NA/DC-EF&M/2023/137: ADOPTION OF THE REPORT ON CONSIDERATION OF THE MINAMATA CONVENTION ON MERCURY**

The Committee considered and unanimously adopted the Report having been proposed and seconded by the Hon. Charles Kamuren, MP and the Hon. Gertrude Mbeyu, MP respectively.

**MIN/NO.NA/DC-EF&M/2023/138: ADJOURNMENT AND DATE OF THE NEXT SITTING.**

There being no other business, the meeting was adjourned at fifteen minutes past one O'clock. The date and time of the next meeting to be communicated.

Signed..... Date: .....

(HON. GIKARIA DAVID, M.P.)  
(CHAIRPERSON)





**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**  
**13<sup>TH</sup> PARLIAMENT - SECOND SESSION, 2023**  
**DIRECTORATE OF DEPARTMENTAL COMMITTEES**

**MINUTES OF THE 18<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
ENVIRONMENT, FORESTRY, AND MINING HELD ON THURSDAY 25<sup>TH</sup> MAY 2023  
IN COMMITTEE ROOM, 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT  
BUILDINGS. AT 10:00AM.**

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**PRESENT.**

- |                                       |              |
|---------------------------------------|--------------|
| 1. The Hon. Gikaria David, MP.        | -Chairperson |
| 2. The Hon. Salim Feisal Bader, MP    |              |
| 3. The Hon. Tubi Bidu Mohamed, MP.    |              |
| 4. The Hon. Joseph Wainaina Iraya, MP |              |
| 5. The Hon. Onesmus Ngogoyo Nguro, MP |              |

**APOLOGY**

- |  |                   |
|--|-------------------|
| 1. The Hon. Charles Kamuren, MP                | -Vice-Chairperson |
| 2. The Hon. Mbalu, Jessica Nduku Kiko, CBS, MP |                   |
| 3. The Hon. Mwanyanje Gertrude Mbeyu, MP       |                   |
| 4. The Hon. Kemei, Beatrice Chepngeno MP       |                   |
| 5. The Hon. Titus Lotee, MP                    |                   |
| 6. The Hon. Yakub Adow Kuno, MP                |                   |
| 7. The Hon. Emathe Joseph Namuar, MP           |                   |
| 8. The Hon. Masito Fatuma Hamisi, MP           |                   |
| 9. The Hon. Elijah Njore Njoroge, MP           |                   |

**ABSENT**

The Hon. Hiribae Said Buya, MP.

**IN-ATTENDANCE; THE COMMITTEE SECRETARIAT**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Mr. Hamdi H. Mohamed | - | Clerk Assistant III         |
| 2. Ms. Mercy Wanyonyi   | - | Legal Counsel 1             |
| 3. Dr. Joseph Kuria     | - | Research Officer III        |
| 4. Ms. Nancy Chamunga   | - | Fiscal Analyst III          |
| 5. Ms. Edith Chepngeno  | - | Media Relations Officer III |
| 6. Mr. Mwangi Muchiri   | - | Audio Officer               |



**IN-ATTENDANCE-MINISTRIES OF ENVIRONMENT, CLIMATE CHANE AND FORESTRY, FOREIGN AND DIASPOARA AFFAIRS AND OFFICE OF THE ATTORNEY-GENERAL.**

1. Dr. Alfred Mutua, EGH	-	Cabinet Secreatry, Ministry of Foreign and Diaspora Affairs
2. Eng. Festus Ng'eno	-	PS, State Department for Environment and Climate Change
3. Hon. Shadrack Mose	-	Solicitor-General
4. Mr. Njeru Wachira	-	Deputy Solicitor-gENERAL
5. Amb. James Wawer	-	Director of Treaties
6. Mr. Victor Musembi	-	Assistant Director,MF&DA
7. Ms. Annie Syombua	-	Head of Legal, MECC&F
8. Ms. Magret Maina	-	Communication Officer, MECC&F
9. Mr. Cyrus Mageria	-	Head of MEAs
10. Mr. Rodney Omari	-	Parliamentary Liaison Officer, MECC&Mr.
11. Mr. Abdirahman Ali	-	Advisor, Cabinet Secretary, MF&DA
12. Mr. Mabwai Eliazer	-	PA, PS MECC&F
13. Ms. Annie Syombua	-	Legal Officer, MECC&F
14. Ms. Sarah Mueni	-	Advocate Treaties, MF&DA
15. Ms. Anastacia Kamande	-	Principal State Counsel, OAG&DO
16. Ms. Linda Kosgei	-	Head of legal,NEEMA
17. Mr. Maingi Emmanuel	-	Treaty Officer, MF&DA
18. Mr. Victor Amingo	-	PA, SG
19. Ms. Annastacia Osondoa	-	Ag.Director, Multilateral, MF&DA

**MIN/NO.NA/DC-EF&M/2023/114: PRELIMINARIES & ADOPTION OF AGENDA**

The Chairperson called the meeting to order at ten O'clock followed by a prayer. The agenda of the meeting was adopted as hereunder having been proposed and seconded by the Hon. Joseph Iraya MP and the Hon. Feisal Bader MP respectively. Then everyone present introduced themsevels.

**AGENDA:**

1. Prayers
2. Introductions/preliminaries
3. Communication from the Chair
4. Confirmation of Previous Minutes
5. Matters arising
6. Pending Bills: None
7. Pending Petition(s): None
8. Questions: None
9. Statements: None
10. Meeting with the Ministries of Environment, Climate Change and Forestry, Ministry of Foreign and Diaspora Affairs and Attorney-General to consider the Minamata Convention on Mercury.



11. Any Other Business; and  
Adjournment

#### MIN/NO.NA/DC-EF&M/2023/115: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed everyone to the meeting and underscored it was a privilege to the visitors to be in the precincts of Parliament.

Thereafter, the Chairperson apprised the meeting on the provisions of Standing Order 216(fa) which states that Departmental Committees shall; *examine treaties, agreements and conventions*; and highlighted that the Meeting was in concurrent with the provisions of the National Assembly Standing Orders.

#### MIN/NO.NA/DC-EF&M/2023/116: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

Confirmation of the minutes of the previous sitting was deferred to the next sitting

#### MIN/NO.NA/DC-EF&M/2023/117: CONSIDERATION OF THE MINAMATA CONVENTION ON MERCURY

The Cabinet Secretary, Ministry of Foreign and Diaspora Affairs, Principal Secretary for State Departments for Environment and Climate Change and the Office of the Solicitor-General appeared before the Committee and made a joint submission on the Agreement as follows:

- i. THAT, On the 12<sup>th</sup> May 2022, the Cabinet approved a Cabinet Memorandum on the Minamata Convention on Mercury. The Objective of the Minamata Convention is to protect human health and the environment from anthropogenic emissions and releases of mercury and its compounds-
- ii. The Minamata Convention is the first worldwide environmental treaty negotiated in the twenty-first century that demonstrates an innovative and comprehensive method to handling mercury throughout its life cycle, from mining to waste disposal.
- iii. The Minamata Convention is a continuation and expansion of the Basel, Rotterdam, and Stockholm conventions. It establishes the same basic substantive obligations for all countries while providing some targeted differentiation and flexibility in specific substantive provisions, as well as provisions to mobilize financial resources for implementation in developing countries by all, within their capabilities. Together with the Basel, Rotterdam, and Stockholm conventions, it forms a comprehensive global system for chemical and hazardous waste management.
- iv. Minamata Convention on Mercury is a multilateral treaty aimed at protecting human health and the environment against mercury's harmful effects.
- v. Minamata Convention provides for the ban on new mercury mines, the phase-out of existing ones, the phase-out and phase-down of mercury use in a variety of products and processes, emission control measures for air, land, and water, and regulation of the informal sector of artisanal and small-scale gold mining. The Convention also handles



- intermediate mercury storage and disposal once it has become waste, mercury-contaminated places, and health concerns.
- vi. Mercury is a common, naturally occurring metal. It is widely used in everyday products, artisanal mining, and dental amalgam, and it is emitted into the atmosphere, soil, and water from a variety of sources, including cement plants, coal-fired utilities, and trash. When used incorrectly, mercury can be dangerous. Coal-fired thermal processes account for 46% of emissions, followed by artisanal gold mining (18%), cement production (10%), ferrous and nonferrous metals (10%), waste incineration (7%), and chlor-alkali manufacturing (2%).
  - vii. Mercury is an extremely hazardous heavy metal that endangers human health and the environment worldwide. It has a variety of serious health effects when combined with its numerous constituents, including harm to the central nervous system, thyroid, kidneys, lungs, immune system, eyes, gums, and skin. Victims may experience memory loss or linguistic difficulties, and brain damage cannot be restored. There is no known safe limit of elemental mercury exposure in humans, and effects can be evident at extremely low levels. Fetuses, newborn newborns, and children are among the most vulnerable and sensitive to mercury's harmful effects.
  - viii. The global mobility of mercury in the environment was a major factor in the decision to take global action to address the problem of mercury pollution. No single country can manage mercury's transboundary impacts. Only worldwide cooperation can effectively combat it. With the passage of the Minamata Convention, governments from all over the globe have made a significant step towards addressing global mercury emissions and releases, which endanger the environment and the health of millions.
  - ix. The coordinated implementation of the Convention's obligations is expected to result in an overall reduction in mercury levels in the environment over time, thus meeting the Convention's goal of protecting human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.
  - x. The Minamata Convention entered into force on August 16, 2017, 90 days after the 50th document of ratification, acceptance, approval, or accession was deposited. On October 10, 2013, Kenya signed the Minamata Convention on Mercury.
  - xi. Minamata Convention currently has 128 signatories and 140 State Parties. 39 out of the 140 State Parties are African States namely: Algeria, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Swaziland, Eswatini (Kingdom of), Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Lesotho, Madagascar, Mali, Mauritania, Mauritius, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Togo, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

#### **MIN/NO.NA/DC-EF&M/2023/118: COMPLIANCE**

- i. The procedure for approval of Treaties is outlined in section 8 of the Treaty Making and Ratification Act, 2012 (hereinafter referred to as "the Act").
- ii. Section 8 (1) provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.

- iii. Subsection (3) provides that the relevant committee shall ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

#### MIN/NO.NA/DC-EF&M/2023/119 COMMITTEE OBSERVATIONS

- i. The Convention and its memoranda were submitted to the Speaker in accordance with section 8(1) of the Act;
- ii. Pursuant to section 8(3) of the Act, the Committee conducted public participation on the three Conventions vide print media on the 13<sup>th</sup> March, 2023
- iii. The Convention is consistent with Article 69(1)(g) of the Constitution which provides that the State has an obligation to eliminate processes and activities that are likely to endanger the environment;
- iv. The Convention does not provide for reservations; and
- v. The obligations imposed under the Conventions are under the purview of both the National and County governments.

#### MIN/NO.NA/DC-EF&M/2023/119 COMMITTEE RESOLUTIONS.

The Committee resolved to consider the Agreement and recommend its approval by the National Assembly with or without reservations pursuant to section 8(4) of the Treaty Making and Ratification Act (No. 45 of 2012).

#### MIN/NO.NA/DC-EF&M/2023/120: ADJOURNMENT AND DATE OF THE NEXT SITTING.

There being no other business, the meeting was adjourned at half past Eleven O'clock. The date and time of the next meeting to be communicated.

Signed..... Date: 15.6.2023

*for*

(HON. GIKARIA DAVID, M.P.)  
(CHAIRPERSON)

NEWSPAPER  
ADVERTISEMENT ON  
PUBLIC PARTICIPATION



## TEACHERS SERVICE COMMISSION



## INVITATION TO TENDER

The Teachers Service Commission was established under Article 237 of the Constitution 2010 as a Constitutional Commission with the mandate to register trained teachers, recruit and employ registered teachers, promote and transfer teachers, assign teachers employed by the Commission for teaching services in any public school, exercise disciplinary control over employed teachers.

To achieve its constitutional mandate through effective and efficient service delivery, the Commission invites interested and eligible bidders/tenders to bid for the tenders listed below:

S/NO	TENDER NO.	TENDER DESCRIPTION	BID / TENDER SECURITY (KSHS)	CATEGORY	PRE BID / SITE VISIT	CLOSING / OPENING DATE
1.	TSC/T/28/2022-2023	Supply, Delivery and Installation of 48 Port Cisco Switches.	Tender Security Declaration Form	Reserved for Youth only	N/A	Friday 31 <sup>st</sup> March 2023 at 9.00a.m
2.	TSC/T/30/2022-2023	Outsourcing of Printing and Photocopying Services in the TSC Headquarters, 7 Regional and 47 County Offices. (Three years frame work contract)	340,000	Citizen Contractors	N/A	Friday 31 <sup>st</sup> March 2023 at 9.00a.m
3.	TSC/T/32/2022-2023	Comprehensive Maintenance of Telephony & PABX (ALCATEL - LUCENT OMNI PCX Enterprise System) at TSC Headquarters (Two years frame work contract)	25,000	Citizen Contractors	Tuesday 21 <sup>st</sup> March 2023 at 10.00a.m.	Friday 31 <sup>st</sup> March 2023 at 9.00a.m
4.	TSC/T/33/2022-2023	Provision of Group Life Assurance for TSC Commissioners and Secretariat Staff. (Two years frame work contract)	1,000,000	Citizen Contractors	N/A	Friday 31 <sup>st</sup> March 2023 at 9.00a.m
5.	TSC/T/37/2022-2023	Provision of Motor Private Vehicle Insurance Services (Two years frame work contract)	400,000	Citizen Contractors	N/A	Friday 31 <sup>st</sup> March 2023 at 9.00a.m
6.	TSC/T/39/2022-2023	Provision of Motor Private Cycle Insurance Services. (Two years frame work contract)	10,000	Citizen Contractors	N/A	Friday 31 <sup>st</sup> March 2023 at 9.00a.m
7.	TSC/T/39/2022-2023	Development, Upgrade and Maintenance of Bulk SMS Portal, USSD and Short Codes (Three years frame work contract)	600,000	Citizen Contractors	Tuesday 21 <sup>st</sup> March 2023 at 10.00a.m	Friday 31 <sup>st</sup> March 2023 at 9.00a.m
8.	TSC/T/40/2022-2023	Provision for leasing of office space for TSC at Homabay County (Three years frame work contract)	-	Citizen Contractors	N/A	Friday 31 <sup>st</sup> March 2023 at 9.00a.m
9.	TSC/T/009/2022-2023	Supply, Delivery and Installation of Scanners. (Digitization of TSC Records)	60,000	Citizen Contractors	N/A	Monday 3 <sup>rd</sup> April, 2023 at 9.00a.m.
10.	TSC/T/020/2022-2023	Comprehensive Maintenance, Repair and Servicing of Air Conditioning System. (Two years frame work contract)	Tender Security Declaration Form	Reserved for Youth only	Tuesday 21 <sup>st</sup> March 2023 at 10.00a.m	Monday 3 <sup>rd</sup> April, 2023 at 9.00a.m.
11.	TSC/T/26/2022-2023	Supply and Delivery of Photocopying Papers A4 White 80GMS (Two years frame work contract)	Tender Security Declaration Form	Reserved for Women only	N/A	Monday 3 <sup>rd</sup> April, 2023 at 9.00a.m.
12.	TSC/OISP/T/027/2022-2023	Disposal of obsolete and unserviceable store items and boarded motor vehicles	-	Citizen Contractors	Between 20 <sup>th</sup> March 2023 to 30 <sup>th</sup> March 2023 from 10.00am to 4.00pm.	Monday 3 <sup>rd</sup> April, 2023 at 9.00a.m.
13.	TSC/T/34/2022-2023	Supply and Delivery of General Stationery. (Two years frame work contract)	Tender Security Declaration Form	Reserved for Women only	N/A	Monday 3 <sup>rd</sup> April, 2023 at 9.00a.m
14.	TSC/T/035/2022-2023	Supply and Delivery of Uniforms	Tender Security Declaration Form	Reserved for Women only	N/A	Monday 3 <sup>rd</sup> April, 2023 at 9.00a.m
15.	TSC/REG/001/2023-5	Registration of suppliers for Supply of Goods Works, Provision of Services & General Consultancies for a period of three (3) years.	-	Citizen Contractors	N/A	Tuesday 4 <sup>th</sup> April, 2023 at 9.00a.m

Detailed Tender documents may be obtained from Supply Chain Management Services Division, the TSC House 2<sup>nd</sup> floor Podium Wing, Kilimanjaro Road, Upper hill during normal working hours upon payment of non-refundable fee of Kshs. 1,000.00 (One Thousand Shillings) payable to Teachers Service Commission at National Bank of Kenya Account No. 01001000305000, Harambee Avenue Branch or Bankers Cheque and present the bank slip to TSC Cash office for official receipt.

Interested bidders may also access the tender documents from TSC website: [www.tsc.go.ke](http://www.tsc.go.ke) or the Public Procurement Information Portal (PPIP) [www.tenders.go.ke](http://www.tenders.go.ke) free of charge. Bidders are required to register and forward their particulars to SCMS through email to [ddprocurement@tsc.go.ke](mailto:ddprocurement@tsc.go.ke). The particulars should include: Name of the firm, address, Tender Name and Telephone number.

Complete bid documents (as per the instructions provided in the tender documents) enclosed in plain sealed envelopes and clearly marked with the Tender Number and tender description should be addressed to The Secretary, Teachers Service Commission, TSC House, Upper Hill, Kilimanjaro Road, Private Bag, 00100, NAIROBI and deposited in the Tender Box located at TSC Headquarters, TSC House, Podium Wing, ground floor to be received on or before closing/opening dates and time indicated in each tender document.

Bulky documents shall be delivered and registered at the office of the Head of Procurement, Supply Chain Management Services on 2<sup>nd</sup> Floor, Podium Wing, TSC House. Tenders will be opened immediately thereafter at TSC House 3<sup>rd</sup> Floor Podium Wing in the presence of tenderers or their representatives who choose to attend.

The Tender closing/opening will be as per the dates indicated above. Late tenders will be rejected.

All enquiries and clarifications should be sent via email to: [ddprocurement@tsc.go.ke](mailto:ddprocurement@tsc.go.ke)

COMMISSION SECRETARY/CHIEF EXECUTIVE



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY  
13<sup>TH</sup> PARLIAMENT - SECOND SESSIONIn the Matter of Article 118(1) (b) of the Constitution  
and

In the Matter of Consideration by the National Assembly of:-

1. The Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022);
2. The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 62 of 2022);
3. The Public Service Internship Bill (National Assembly Bill No. 63 Of 2022); and
4. The National Rating Bill (National Assembly Bill No. 55 of 2022)

And further

In the Matter of Articles 2(5) &amp; (6) and 118 (1) (b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012

And

In the Matter of Consideration by the National Assembly of the Minamata Convention on Mercury

## PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

## A. BILLS

The Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the Bills listed below pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders.

1. The Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022) sponsored by Hon. David Gikaria, M.P. (Nakuru Town East).  
The principal object of the Bill is to amend the Penal Code Cap. 63 by repealing section 182 which prescribes the offence of idle and disorderly persons. The law enforcers have often used section 182 to harass innocent members of the public.
2. The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 62 of 2022) sponsored by Hon. Benjamin Gathiru Mijadonk, M.P. (Embakasi Central).  
The principal objective of the Bill is to amend the Public Procurement and Asset Disposal Act, 2015 to enhance the amount for tenders where Kenya citizens are given exclusive preference from the sum of five hundred million shillings to twenty billion shillings. This is to protect the Kenyan traders from foreign competitors.

3. The Public Service Internship Bill (National Assembly Bill No. 63 Of 2022); Sponsored by Hon. Nalsula Lesuuda, M.P. (Samburu West).  
This is a Bill for an act of Parliament to make provision for internship of college and university graduates in the public sector; to provide hands-on training and acquisition of skills by graduates and for connected purposes.
4. The National Rating Bill (National Assembly Bill No. 55 of 2022) sponsored by Hon. Kimani Ichung'uwa, MP (Leader of the Majority Party).

The Bills were Read a First Time on Wednesday, 8<sup>th</sup> March, 2023 and Pursuant to Standing Order 127(1), committed to Departmental Committees of the National Assembly as set out in the schedule hereunder:-

## SCHEDULE

No.	Bill	Committee
1.	The Penal Code (Amendment) Bill (National Assembly Bill No. 56 of 2022)	Justice and Legal Affairs
2.	The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 62 Of 2022)	Finance and National Planning
3.	The Public Service Internship Bill (National Assembly Bill No. 63 Of 2022)	Labour
4.	The National Rating Bill (National Assembly Bill No. 55 of 2022)	Lands

Copies of the Bills are available at the National Assembly Table Office, or on [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills)

## B. CONVENTION

The Minamata Convention on Mercury was submitted to the National Assembly on 23<sup>rd</sup> February, 2023 and subsequently committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House in accordance with Section 8 of the Treaty Making and Ratification Act, 2012.

The Minamata Convention on Mercury seeks to protect human health and the environment from anthropogenic emissions and releases of mercury and its compounds.

Pursuant to Articles 2(5) & (6) and 118 (1)(b) of the Constitution, the Departmental Committee on Environment, Forestry and Mining invites members of the public and relevant stakeholders to submit memoranda they may have on the Minamata Convention on Mercury.

The full text of the Minamata Convention on Mercury and its accompanying Memorandum to Parliament may be accessed at [www.parliament.go.ke](http://www.parliament.go.ke).

The memoranda should be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [en@parliament.go.ke](mailto:en@parliament.go.ke); to be received on or before Wednesday, 22<sup>nd</sup> March 2023 at 5.00 p.m.

SAMUEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY  
16<sup>th</sup> March, 2023

"For the Welfare of Society and the just Government of the People"











SUBMISSIONS BY THE  
MINISTRIES AND OFFICE OF THE  
ATTORNEY-GENERAL





**MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY;  
MINISTRY OF FOREIGN AND DIASPORA AFFAIRS; AND OFFICE OF THE  
ATTORNEY GENERAL & DEPARTMENT OF JUSTICE**

**JOINT BRIEF ON THE MINAMATA CONVENTION ON MERCURY**

**1.0. BACKGROUND AND PROBLEM STATEMENT**

- 1.1. The Minamata Convention is the first worldwide environmental treaty negotiated in the twenty-first century that demonstrates an innovative and comprehensive method to handling mercury throughout its life cycle, from mining to waste disposal.
- 1.2. The Minamata Convention is a continuation and expansion of the Basel, Rotterdam, and Stockholm conventions. It establishes the same basic substantive obligations for all countries while providing some targeted differentiation and flexibility in specific substantive provisions, as well as provisions to mobilise financial resources for implementation in developing countries by all, within their capabilities. Together with the Basel, Rotterdam, and Stockholm conventions, it forms a comprehensive global system for chemical and hazardous waste management.
- 1.3. Minamata Convention on Mercury is a multilateral treaty aimed at protecting human health and the environment against mercury's harmful effects.
- 1.4. Minamata Convention provides for the ban on new mercury mines, the phase-out of existing ones, the phase-out and phase-down of mercury use in a variety of products and processes, emission control measures for air, land, and water, and regulation of the informal sector of artisanal and small-scale gold mining. The Convention also

handles intermediate mercury storage and disposal once it has become waste, mercury-contaminated places, and health concerns.

- 1.5. Mercury is a common, naturally occurring metal. It is widely used in everyday products, artisanal mining, and dental amalgam, and it is emitted into the atmosphere, soil, and water from a variety of sources, including cement plants, coal-fired utilities, and trash. When used incorrectly, mercury can be dangerous. Coal-fired thermal processes account for 46% of emissions, followed by artisanal gold mining (18%), cement production (10%), ferrous and nonferrous metals (10%), waste incineration (7%), and chlor-alkali manufacturing (2%).
- 1.6. Mercury is an extremely hazardous heavy metal that endangers human health and the environment worldwide. It has a variety of serious health effects when combined with its numerous constituents, including harm to the central nervous system, thyroid, kidneys, lungs, immune system, eyes, gums, and skin. Victims may experience memory loss or linguistic difficulties, and brain damage cannot be restored. There is no known safe limit of elemental mercury exposure in humans, and effects can be evident at extremely low levels. Foetuses, newborn newborns, and children are among the most vulnerable and sensitive to mercury's harmful effects.
- 1.7. The global mobility of mercury in the environment was a major factor in the decision to take global action to address the problem of mercury pollution. No single country can manage mercury's transboundary impacts. Only worldwide cooperation can effectively combat it. With the passage of the Minamata Convention, governments from all over the globe have made a significant step towards addressing global mercury emissions and releases, which endanger the environment and the health of millions.

- 1.8. The coordinated implementation of the Convention's obligations is expected to result in an overall reduction in mercury levels in the environment over time, thus meeting the Convention's goal of protecting human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.
- 1.9. The Minamata Convention entered into force on August 16, 2017, 90 days after the 50th document of ratification, acceptance, approval, or accession was deposited. On October 10, 2013, Kenya signed the Minamata Convention on Mercury.
- 1.10. Minamata Convention currently has 128 signatories and 140 State Parties. 39 out of the 140 State Parties are African States namely: Algeria, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Swaziland, Eswatini (Kingdom of), Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Lesotho, Madagascar, Mali, Mauritania, Mauritius, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Togo, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

## **2.0. CONVENTION OBJECTIVES.**

- 2.1. The Convention's goal is to protect human health and the environment against anthropogenic emissions and releases of mercury and mercury compounds, and it outlines a variety of measures to achieve that objective.
- 2.2. These include measures to control the supply and trade of mercury, such as limiting specific sources of mercury, such as primary mining, and controlling mercury-added products and manufacturing processes that use mercury or mercury compounds, as well as artisanal and small-scale gold mining. The language of the Convention includes separate sections on mercury emissions

and releases, with controls aimed at lowering mercury levels while giving flexibility to suit national development plans. It also includes methods for environmentally sound interim mercury storage, mercury trash, and polluted locations.

- 2.3. The Convention includes provisions for financial and technical assistance to developing nations and countries in transition, as well as a financial system for the deployment of adequate, predictable, and timely financial resources.

### 3.0. **SPECIFIC OBLIGATIONS UNDER THE CONVENTION**

- 3.1. The convention has the following specific obligations;
- 3.1.1 **Mercury supply sources and trade:** each party shall not allow the export of mercury except to a Party that has provided the exporting Party with its written consent, and only for a use allowed or environmentally sound interim storage;
  - 3.1.2 **Manufacturing:** each party shall not allow manufacture, import or export of mercury-added products;
  - 3.1.3 **Manufacturing processes in which mercury or mercury compounds are used:** each party shall not allow the use of mercury or mercury compounds and shall take measures to restrict the use of mercury or mercury compounds;
  - 3.1.4 **Mercury-added products:** Each Party shall not allow primary mercury mining that was not being conducted within its territory at the date of entry into force of the Convention for it.
  - 3.1.5 Each Party shall not allow, by taking appropriate measures, the manufacture, import or export of mercury-added products;
  - 3.1.6 **Artisanal and small-scale gold mining:** Each Party that has artisanal and small-scale gold mining and processing subject to this Article within its territory shall take steps to reduce, and where feasible eliminate, the use of mercury and mercury



compounds in, and the emissions and releases to the environment of mercury from, such mining and processing; and

- 3.1.7 **Minimize emissions from relevant sources:** at least 75% of the emissions in the categories listed in Annex D namely Coal-fired power plants, Coal-fired industrial boilers, smelting and roasting processes used in the production of non-ferrous metals, waste incineration facilities and cement clinker production facilities. For these mercury emission sources, the convention recommends the use of the Best Available Techniques/Best Environmental Practices as a way of reducing emissions and exposure.
- 3.1.8 Parties are encouraged to exchange information on relevant new technological developments, economically and technically feasible mercury-free alternatives, and possible measures and techniques to reduce and where feasible to eliminate the use of mercury and mercury compounds in, and emissions and releases of mercury and mercury compounds from, the manufacturing processes.
- 3.1.9 **Capacity-building, technical assistance and technology transfer:** Parties shall cooperate to provide, within their respective capabilities, timely and appropriate capacity-building and technical assistance to developing country Parties, in particular Parties that are least developed countries or small island developing States, and Parties with economies in transition, to assist them in implementing their obligations under this Convention.
- 3.1.10 **Health aspects:** Parties are encouraged to promote the development and implementation of strategies and programmes to identify and protect populations at risk, particularly vulnerable populations, and which may include

adopting science-based health guidelines relating to the exposure to mercury and mercury compounds, setting targets for mercury exposure reduction, where appropriate, and public education, with the participation of public health and other involved sectors;

3.1.11 **Public Information, awareness and Education:** Each Party shall, within its capabilities, promote and facilitate:

- a) Provision to the public of available information on:
  - i) The health and environmental effects of mercury and mercury compounds;
  - ii) Alternatives to the mercury and mercury compounds;
  - iii) The results of its research, development and monitoring activities; and
  - iv) Activities to meet its obligations under this Convention.
- b) Education, training and public awareness related to the effects of exposure to mercury and mercury compounds on human health and the environment in collaboration with relevant intergovernmental and non-governmental organizations and vulnerable populations, as appropriate.

#### **4.0. IMPLEMENTATION OF THE MINAMATA CONVENTION UPON RATIFICATION**

##### **4.1. Implementation Plans**

4.1.1. Following an initial assessment, each Party may prepare and implement an implementation plan for achieving its obligations under this Convention, taking into consideration its domestic circumstances.

##### **4.2. Reporting**

4.2.1. Each Party shall report to the Conference of the Parties, through the Secretariat, on the steps it has taken to implement the provisions of this Convention, as well as the effectiveness of those steps and any challenges to fulfilling the Convention's objectives.

4.3. Conference of Parties

4.3.1. The Conference of the Parties shall put the implementation of this Convention under constant review and evaluation. It shall carry out the duties delegated to it by this Convention.

**5.0. RELEVANCE OF THE CONVENTION TO KENYA**

5.1. It should be noted that:

- i. Kenya does not mine mercury and there are no proven mercury reserves;
- ii. The import and export of mercury are not well-defined or coordinated;
- iii. The controlled mercury-added products including measuring and control devices such as thermometers, manometers; button cell batteries; dental amalgam; electrical and electronic devices; Lamps/lighting devices are extensively in use in Kenya;
- iv. There are manufacturing processes in which mercury or mercury compounds are used e.g. In paper mill factories.
- v. The extensive use of artisanal gold mining is of special significance in Kakamega, Perkerra, Pokot, Transmara and Migori.
- vi. There is a prevalence of mercury wastes and mercury-contaminated sites.

5.2. The Ministry consulted with the then line Ministries following the written advice from the Attorney General. The said line ministries namely: The Ministry of Health, Ministry of Petroleum and Mining, Ministry of Trade, Industrialization and Entrepreneur Development have given their concurrence to the ratification of the Convention.

## **6.0. JUSTIFICATION FOR KENYA RATIFYING MINAMATA CONVENTION**

6.1 The benefits of ratifying the Convention on Mercury for Kenya include:

- a) Benefits from the Global Environment Facility (GEF), a financial instrument under the Convention. Kenya will qualify for financial support to implement the convention;
- b) Benefits of technical assistance, technology transfer from the Convention's Secretariat and other partners to help improve capacity of institutions such as the Kenya Bureau of Standards (KEBS), the National Environment Management Authority (NEMA) among others;
- c) The obligation to phase out mercury and mercury products offers benefits to the environment and the health of the population from exposure from mercury which is a neurotoxin; and
- d) The Constitution obligates the Government to guarantee a clean and healthy environment for its citizens which the Convention aims to achieve.

6.2. Kenyans are currently exposed to mercury from artisanal and small-scale gold mining (ASGM), as well as mercury-containing products and trash. Ratification also provides a foundation for reviewing current legislation, thereby safeguarding citizens from exposure to mercury and mercury-containing items.

## **7.0. LEGAL IMPLICATIONS**

7.1. The Convention adheres to the Constitution and promotes constitutional ideals and goals. It makes no reference to a constitutional amendment.

7.2. It is possible that our domestic legislation and policy, such as the Pharmacy and Poisons Act and the Environmental Management

and Coordination Act, may need to be reviewed in order to line with the objectives of the Convention and allow for safeguards and prevent exposure to mercury and its products.

## **8.0. FINANCIAL IMPLICATIONS**

- 8.1. The Global Environment Facility (GEF) is the financing mechanism for the Convention. In line with GEF policies, for every 1 USD, the counterpart funding is 4 USD in cash or kind. Implementation of this Convention will therefore require the allocation of resources through the Medium Term Expenditure Framework (MTEF) under the Ministry's allocation.
- 8.2. Financial requirements for the implementation of the Convention will be provided for under normal budgetary estimates of the relevant institutions.

## **9.0 MINISTERIAL RESPONSIBILITY**

The implementation of the Convention will be under the collective responsibility of the Ministries of Environment and Forestry, Energy and Petroleum, Mining, Blue Economy and Maritime Affairs, Investment, Trade and Industry, and Health.

The Office of the Attorney General and Department of Justice and the Ministry of Foreign Affairs and Diaspora will coordinate the reporting process on State obligations pursuant to the Treaty Making and Ratification Act No 45 of 2012.

## **9.0. RESERVATIONS**

- 9.1. No reservations may be made to the Convention but it permits declarations under Article 25 wherein, a party may deposit a declaration accepting either arbitration or determination by ICJ in the event a dispute arises from interpretation or application of the Convention.

**10.0. WITHDRAWAL**

10.1. A Party may withdraw from the Convention at any time after three years from the date on which the Convention entered into force for that Party, by giving written notification to the Depositary.

**11.0. DEPOSITORY**

11.1. The Secretary-General of the United Nations shall be the Depositary of the Convention.

**MEMORANDUM AND THE MINAMATA  
CONVENTION ON MERCURY**







OFFICE OF THE CABINET SECRETARY

THE NATIONAL ASSEMBLY

DATE: 39 MAR 2023

23rd February, 2023

MFA/RT/ADM/33

Mr. Samuel Njoroge  
Clerk of the National Assembly  
Parliament Buildings  
NAIROBI

Hon. Naomi Waga  
Deputy Majority Whip

Joyce Lemelette

Thursday  
To Hon. Naomi Waga  
Deputy Majority Whip  
Joyce Lemelette  
To acceptance and  
accession and cover  
rejection to  
committee  
9/3/23

Dear *Bwana Njoroge,*

RE: RATIFICATION, ACCEPTANCE AND ACCESSION OF MINAMATA  
CONVENTION ON MERCURY

The above subject matter refers.

The Cabinet, during a meeting held on 12<sup>th</sup> May, 2022, approved the ratification, acceptance, and accession of Minamata Convention on Mercury.

Pursuant to Section 8 of the Treaty Making and Ratification Act, 2014, I hereby submit the Memoranda and copies of the Convention for consideration by the National Assembly

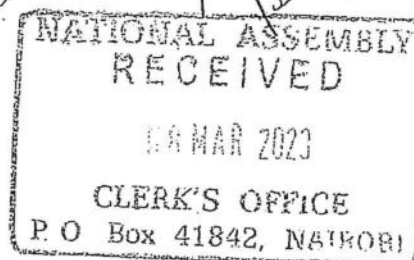
Submitted for your further guidance.

Yours

*Sincerely,*  
*[Signature]*

DR. ALERED N. MUTUA EGH,  
CABINET SECRETARY

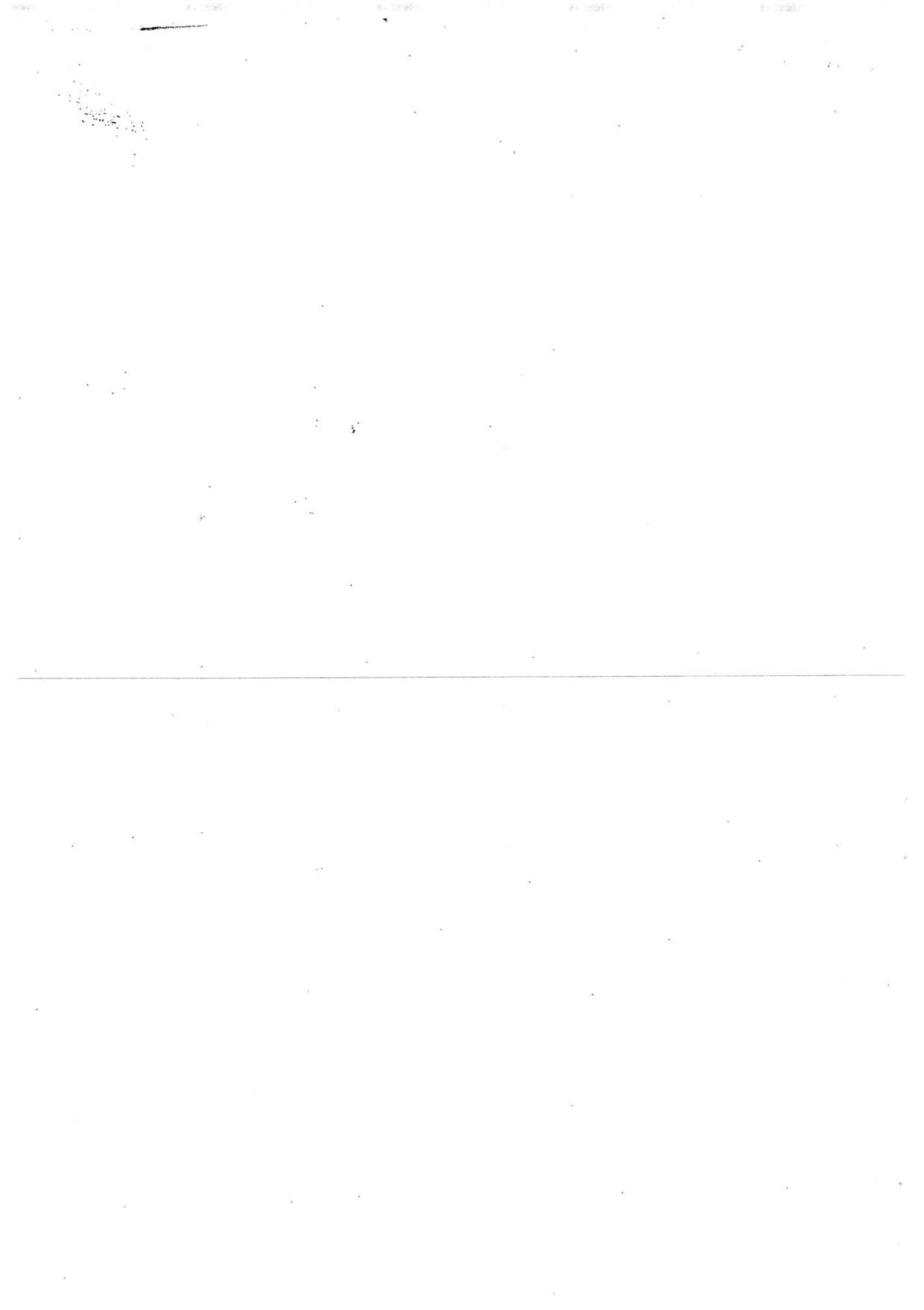
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*In Pursuit of a Peaceful, Prosperous and Globally Competitive Kenya*

Ministry of Foreign Affairs, Harambee Avenue, P. O. Box 30551-00100, NAIROBI, KENYA, Tel: +254-20-3318888

Mail: cabinetsecretary@mfa.go.ke, Website: www.mfa.go.ke



		NATIONAL ASSEMBLY	
DATE:		00 MAR 2020	Thursday
TABLED BY:	Hon. Naomi Wago, MP (Deputy Majority Whip)		
CLERK AT THE TABLE:	Joyce Lemelele		

MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

PARLIAMENTARY MEMORANDUM

ON THE RATIFICATION OF

THE MINAMATA CONVENTION ON MERCURY

PARLIAMENTARY MEMORANDUM ON THE RATIFICATION OF THE  
MINAMATA CONVENTION ON MERCURY

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**1.0 OBJECTIVE OF THE MEMORANDUM**

- 1.1 The objective of this Memorandum is to seek approval for Kenya's Ratification of The Minamata Convention on Mercury.
- 1.2 The ratification process was approved by the Cabinet during its meeting held on 12<sup>th</sup> May, 2022.

**2.0 BACKGROUND**

- 2.1 Mercury is recognized as a substance producing significant adverse neurological and other health effects, with particular concerns expressed about its harmful effects on unborn children and infants.
- 2.2 Controlling the anthropogenic releases of mercury throughout its lifecycle has been a key factor in shaping the global mercury exposure obligations. Recognizing that long-term international action was required to reduce the risks posed by mercury, both to human health and to the environment, the- Governing Council of the United Nations Environment Programme (UNEP) adopted decision 24/3 at its Twenty fourth session in February 2007, calling for negotiations on a globally binding legal instrument on mercury to address the risks to human health and the environment.
- 2.3 In 2001, the Governing Council of the United Nations Environment Programme (UNEP) invited the Executive Director of UNEP to undertake a global assessment of mercury and its compounds, including information on the chemistry and health effects, sources, long-range transport, and prevention and control technologies relating to mercury.
- 2.4 In 2003, the Governing Council considered this assessment and found that there was sufficient evidence of significant global adverse impacts from mercury and its

compounds to warrant further international action to reduce the risks to human health and the environment from the release of mercury and its compounds to the environment. Subsequently, Governments were urged to adopt goals for the reduction of mercury emissions and releases. UNEP initiated technical assistance and capacity building activities to meet these goals.

- 2.5 A mercury programme to address these concerns was thus established and was further strengthened by governments in decisions of the Governing Council in 2005 and in 2007. In the decision of 2007, the Governing Council concluded that the options of enhanced voluntary measures and new or existing international legal instruments would be reviewed and assessed in order to make progress in addressing the mercury issue.
- 2.6 In 2009, following extensive consideration of the issue, the Governing Council agreed that voluntary actions to date had not been sufficient to address the concerns on mercury, and decided on the need for further action on mercury, including the preparation of a global legally binding instrument.
- 2.7 Accordingly, UNEP formed an Intergovernmental Negotiating Committee (INC) to negotiate a Legally Binding Instrument on Mercury that commenced its work in 2010 with the mandate to conclude negotiations prior to the twenty-seventh (27<sup>th</sup>) session of the Governing Council in 2013.
- 2.8 In January 2013, the INC, at its fifth (5<sup>th</sup>) session, agreed on the text of the Convention on Mercury. A Diplomatic Conference was held in Minamata, Japan, where the text of the Convention was adopted by the Conference of Plenipotentiaries on 10<sup>th</sup> October, 2013, and opened for signature thereafter.
- 2.9 The Convention entered into force on 16<sup>th</sup> August 2017, as provided for in Article 31, the ninetieth (90<sup>th</sup>) day after the date of deposit of the fiftieth (50<sup>th</sup>) instrument of ratification, acceptance, approval or accession.
- 2.10 The Convention had One hundred and thirty seven (137) parties. Kenya was an active participant in the aforementioned processes and became a signatory to the Convention on 10<sup>th</sup> October, 2013.

### **3.0 OBJECT AND SUBJECT MATTER OF THE CONVENTION**

3.1 The Convention seeks to protect human health and the environment from anthropogenic emissions and releases of mercury and its compounds.

3.2 The Convention also addresses:

- a) Controls on all lifecycle stages of mercury covered by different articles of the Convention;
- b) Controls on supply and on international trade in mercury;
- c) Phase-out and phase-down for mercury use in products and processes;
- d) Controls on artisanal and small scale gold mining;
- e) Control measures on air emissions and releases to water; and
- f) Storage, waste and contaminated sites.

### **4.0 OBLIGATIONS IMPOSED BY THE PROTOCOL**

4.1 Upon the ratification of the Convention Kenya shall be required to:

- a) Take measures to prohibit export of mercury except to a Party that has provided the exporting Party with written consent, and only for the purpose of a use allowed or environmentally sound interim storage;
- b) Prohibit the manufacturing, import or export of mercury-added products listed in part 1 of Annex A of the Convention after the phase out date;
- c) Take steps to reduce, and where feasible, eliminate the use of mercury and mercury compounds and the emissions and releases of mercury to the environment; and
- d) Minimize emissions from relevant sources at least 75% of the emissions in the categories listed in Annex D namely coal-fired power plants, coal-fired industrial boilers, smelting and roasting processes used in the production of non-ferrous metals, waste incineration facilities and cement clinker production facilities.

4.2 For these mercury emission sources, the convention recommends the use of Best Available Technology/Best Environmental Practices (BAT/BEP), as a way of reducing emissions and exposure.



- 4.3 Additionally, there is an obligation to Member States to use their existing administrative powers as provided for in their domestic laws to implement the obligations of the Convention.

## **5.0 PROBLEM ANALYSIS**

- 5.1 The convention required that by 2020 all Parties to cease the manufacture, import and export of mercury-containing products listed in the Convention according to standards in annex A of the convention. In Kenya, these products include batteries, switches and relays, certain types of lamps, cosmetics, pesticides, biocides and topical antiseptics, and certain types of measuring devices such as thermometers and manometers that have mercury.
- 5.2 The Parties to the Convention are Kenya's trading partners. Therefore to protect Kenya's national interests, it is necessary to enforce the Annex to ensure Kenya does not become a dumping ground of these harmful products.
- 5.3 It is paramount for Kenya to ratify the Convention to enjoy the benefits that the Parties to the Convention have in order to protect its citizens from the adverse effects of mercury and mercury products.

## **6.0 JUSTIFICATION FOR RATIFICATION**

- 6.1 The benefits of ratifying the Convention on Mercury for Kenya include:
- a) Benefits from the Global Environment Facility (GEF), a financial instrument under the Convention. Kenya will qualify for financial support to implement the convention;
  - b) Benefits of technical assistance, technology transfer from the Convention's Secretariat and other partners to help improve capacity of institutions such as the Kenya Bureau of Standards (KEBS), the National Environment Management Authority (NEMA) among others;
  - c) The obligation to phase out mercury and mercury products offers benefits to the environment and the health of the population from exposure from mercury which is a neurotoxin; and
  - d) The Constitution obligates the Government to guarantee a clean and healthy environment for its citizens which the Convention aims to achieve.

- 6.2 Currently Kenyans are exposed to Mercury from artisanal and small Gold Mining (ASGM), and mercury added products and waste. An auxiliary, but equally important, benefit of ratification is the provision of a framework to review existing legislation thereby protecting citizens from exposure to mercury and mercury products.

## 7.0 CONSTITUTIONAL AND LEGISLATIVE IMPLICATIONS

- 7.1 The Convention is consistent with the Constitution and promotes constitutional values and objectives. It does not allude to an amendment of the Constitution.
- 7.2 Kenya will have to enact a domestic legislation or amend existing relevant legislation and other national policies to enable implementation of the Convention. Some of the relevant legislation include:-

a) **Environmental Management and Co-ordination Act, 1999 (Rev. 2015).**

The regulations to be formulated and reviewed to ensure the sound management of mercury and mercury added products include:- *the Environment Management and Coordination (Toxic and Hazardous Chemicals and Materials) Regulations 2006; the Environment Management and Coordination (Waste management) Regulations 2006; the Environment Management and Coordination (Water Quality) Regulations 2006.*

b) **The Public Health Act**

Review the Public Health Act to provide for the protection of the public from the effects of exposure to chemicals and chemical compounds such as mercury added products.

c) **The Occupational Safety and Health Act 2007**

Review to incorporate provisions on mercury and mercury added products within the places of work.

d) **The Factories and Other Places of Work (Hazardous Substances) Rules**

Develop rules and guidelines regarding the use, handling and storage of mercury and mercury added products within places of work in order to minimize exposure.

e) **The Pharmacy and Poisons Act**

Review the Act to incorporate provisions manufacture, importation, handling, storage, distribution and use of mercury and mercury added products.

f) **The Pharmacy and Poisons (Control of Drugs) Rules**

Update the list of prohibited and/or restricted products to include mercury added products in line with the provisions of Article 4 and Annex A of the Convention.

g) **The Customs and Excise Act**

Review the Act to incorporate provision on prohibitions and/or restrictions of mercury added products in Kenya.

h) **The Mining Act 2016**

Review the Act to incorporate provisions for prohibitions on mercury use in mining sector.

i) **The Petroleum Act, 2019**

Review of the Act to incorporate provisions on minimising release of mercury Releases

7.3 The implementation of the Convention will require review of some existing national policies. These include:

a) **The Kenya Health Policy 2012 – 2030**

This policy should be reviewed to incorporate mitigation measure to mercury and mercury added products.

b) **The Ministry of Health Ministerial Strategic and Investment Plan**

Review the strategic and investment plan to incorporate hazardous chemicals and wastes including mercury and mercury added products.

c) **The Kenya National Pharmaceutical Policy, 2008**

Review to identify and prohibit as appropriate medicines and other pharmaceuticals products that have mercury or mercury added products as listed in Annex A.

d) **The National Environmental Policy, 2013**

Review to ensure safe and sound management of mercury and mercury added products.

**8.0 IMPLICATIONS RELATING TO COUNTIES**

8.1 The obligations under the Convention are concurrent functions of both the National and County governments under the Constitution.

**9.0 FINANCIAL IMPLICATIONS**

9.1 Financial requirements for the implementation of the Convention will be provided for under normal budgetary estimates of the relevant institutions.

9.2 The Convention, under Article 13, sets up a financial mechanism to support developing country Parties in implementing their obligations. The Mechanism is composed of:

- i. The Global Environment Facility Trust Fund (GEF); and
- ii. The Specific International Programme (SIP) to support capacity-building and technical assistance.

**10. MINISTERIAL RESPONSIBILITY**

10.1 The implementation of the Convention will be under the collective responsibility of the Ministries of Environment and Forestry, Petroleum and Mining Industrialisation Trade and Enterprise Development, Health, Energy.

10.2 The Office of the Attorney General and Department of Justice and the Ministry of Foreign Affairs will coordinate the reporting process on State obligations pursuant to the Treaty Making and Ratification Act No 45 of 2012.

**11. RESERVATIONS**


The Minamata Convention does not provide for reservations.

**12. RECOMMENDATION TO THE NATIONAL ASSEMBLY**

12.1 In consideration of the aforementioned facts, the National Assembly is invited to:

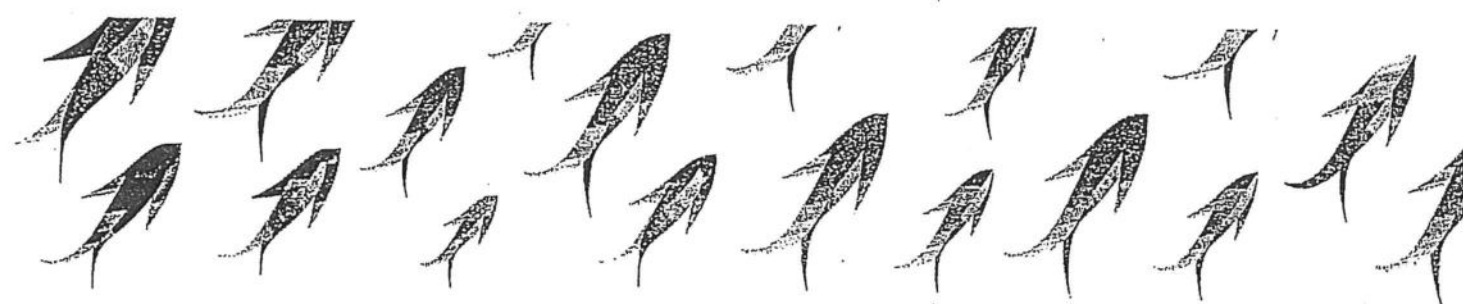
1. Note the contents of the Memorandum;
2. Consider and approve Kenya's Ratification of the Minamata Convention on Mercury; and

3. Direct the Cabinet Secretary of Foreign Affairs to prepare and deposit the relevant instruments to the Depository.

SIGNED..........DATED.....23<sup>rd</sup>.....FEBRUARY, 2023

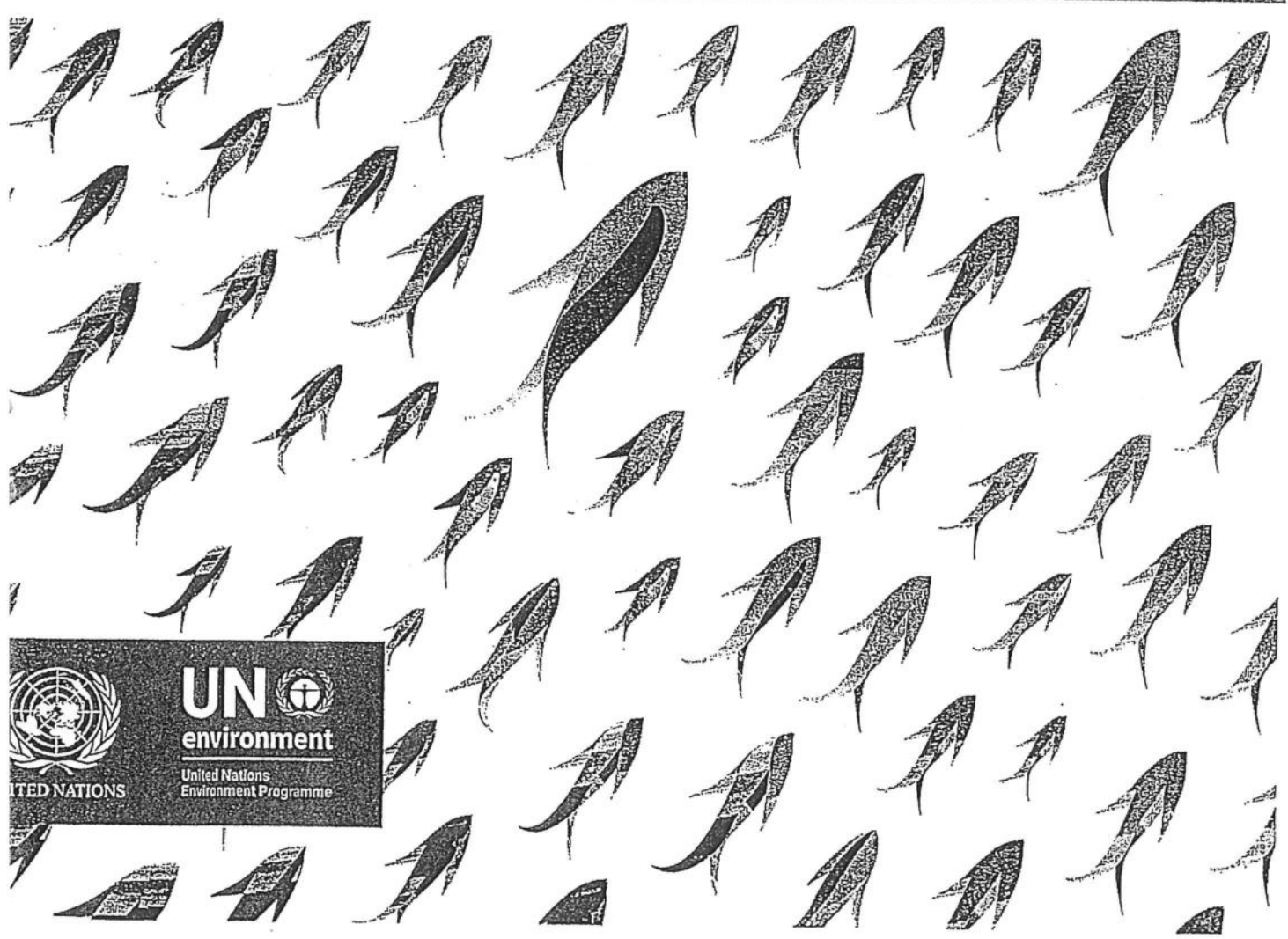
DR. ALFRED N. MUTUA, EGH  
CABINET SECRETARY  
MINISTRY OF FOREIGN AND DIASPORA AFFAIRS



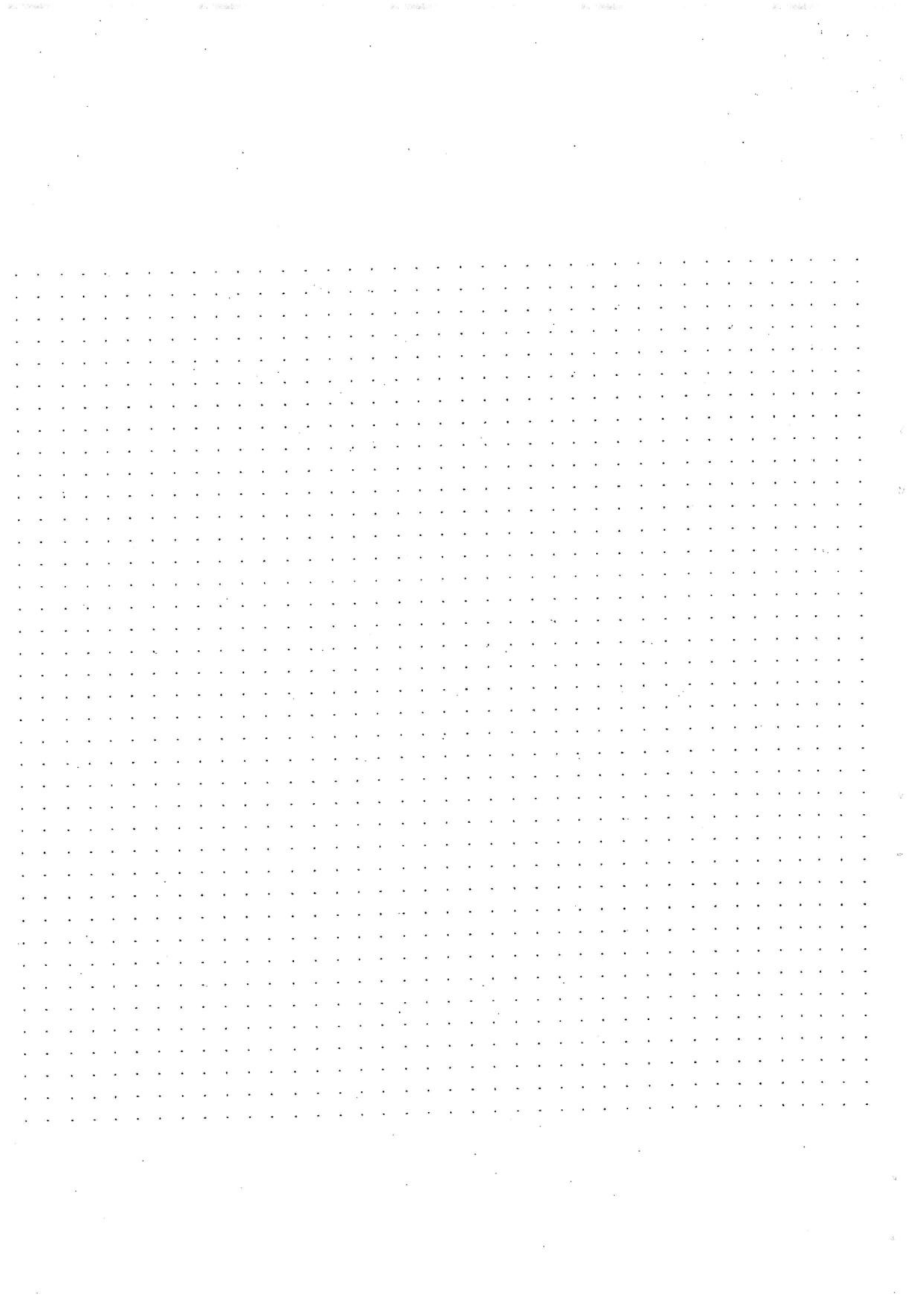


# MINAMATA CONVENTION ON MERCURY

## TEXT AND ANNEXES







# MINAMATA CONVENTION ON MERCURY

## TEXT AND ANNEXES

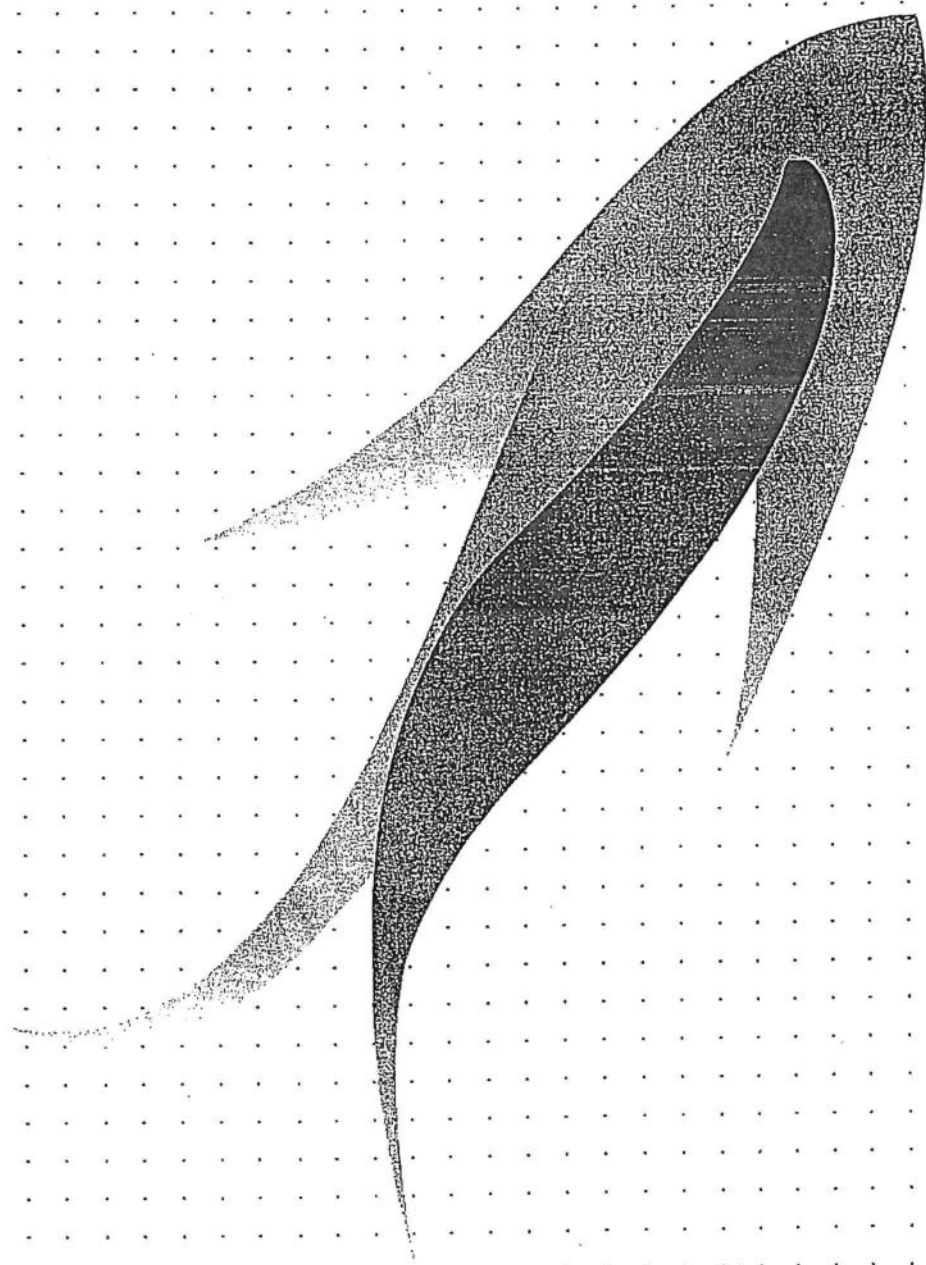
This booklet is published for information only. It does not substitute the original authentic texts of the Minamata Convention on Mercury as deposited with the Secretary-General of the United Nations acting as the Depositary of the Convention

[www.mercuryconvention.org](http://www.mercuryconvention.org)

September 2019



United Nations  
Environment Programme



## **FOREWORD BY THE SECRETARY-GENERAL OF THE UNITED NATIONS ANTÓNIO GUTERRES**

In 1956, two sisters, aged two and five, were diagnosed in Minamata Bay, Japan, with the crippling, untreatable and stigmatizing effects of mercury poisoning. In the decades that followed, their story would be retold many times, becoming synonymous with the tens of thousands of adults, children and unborn infants to suffer from what is now known as Minamata disease.

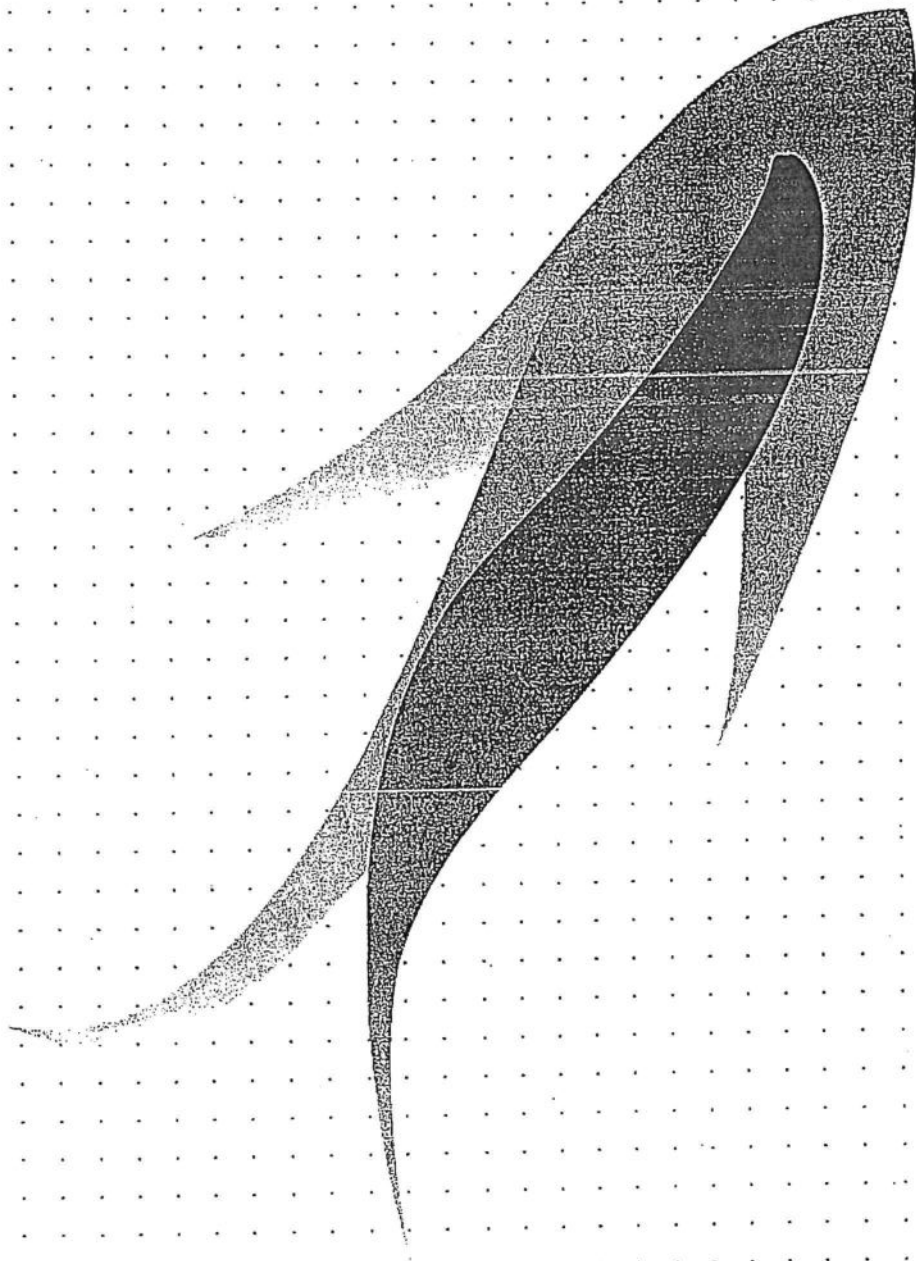
Unfortunately, it is a story that we still need to tell because, decades on, too many people still think of mercury simply as a fascinating element safely contained in thermometers. Too few understand that it is lethal, indestructible and present in everything from coal-fired power generation to certain mascaras and fluorescent lights. Likewise, too many are unaware that just a fraction of the 130,000 chemicals and other substances on the market are properly assessed, labelled and tracked. Even fewer suspect that items as mundane as pizza boxes, microwave popcorn or electronic waste pollute our air, land, water, food chains and ecosystems for generations. It still takes far too long to identify, accept and act on such risks to human health.

We need to reinforce the right of scientists to pursue their work for the greater good and for medical experts and citizens to access that knowledge easily. And we need to insist on the right and responsibility of judiciaries and governments to act on such knowledge and the right of the media to report on the outcomes and implications of all these efforts. These are basic rights highlighted by the tragic past and optimistic future that the Minamata Convention symbolizes.

Like so many contaminants, mercury doesn't just damage individual victims. It damages entire communities. It fuels poverty, feeds conflict and pushes equality further out of reach. Take the example of a young mother working as an artisanal gold miner. While she is poisoned from handling mercury at work, countless others, including her children, are harmed by its impact on the environment.

The Minamata Convention is our chance to break that cycle of misery. It represents an opportunity to not only improve the health of people around the world, but to accelerate the transition to a fairer, greener economy. People can benefit from technology that offers safer, more effective alternatives for communities to build a more stable, sustainable future. The legal waste market, which is already worth \$400 billion a year, can create more jobs to securely handle the 90 per cent of electronic waste currently left to pollute our health and our environment. Quite simply, the potential benefits are enormous.

I thank everyone who has already worked so hard to ratify this Convention. But the hardest work still lies ahead, because now we must implement it swiftly and effectively to minimize the risks posed to communities in all regions by the toxic threat of mercury poisoning.



**FOREWORD BY UN UNDER-SECRETARY-GENERAL AND EXECUTIVE  
DIRECTOR OF UN ENVIRONMENT  
INGER ANDERSEN**

Surrounded by forests and blue sea, Minamata Bay, in Japan, gives the impression of an idyllic place. But it was not always like this. A memorial erected a few meters from the coast serves as a reminder of the local communities that were poisoned by mercury in the late 1950s.

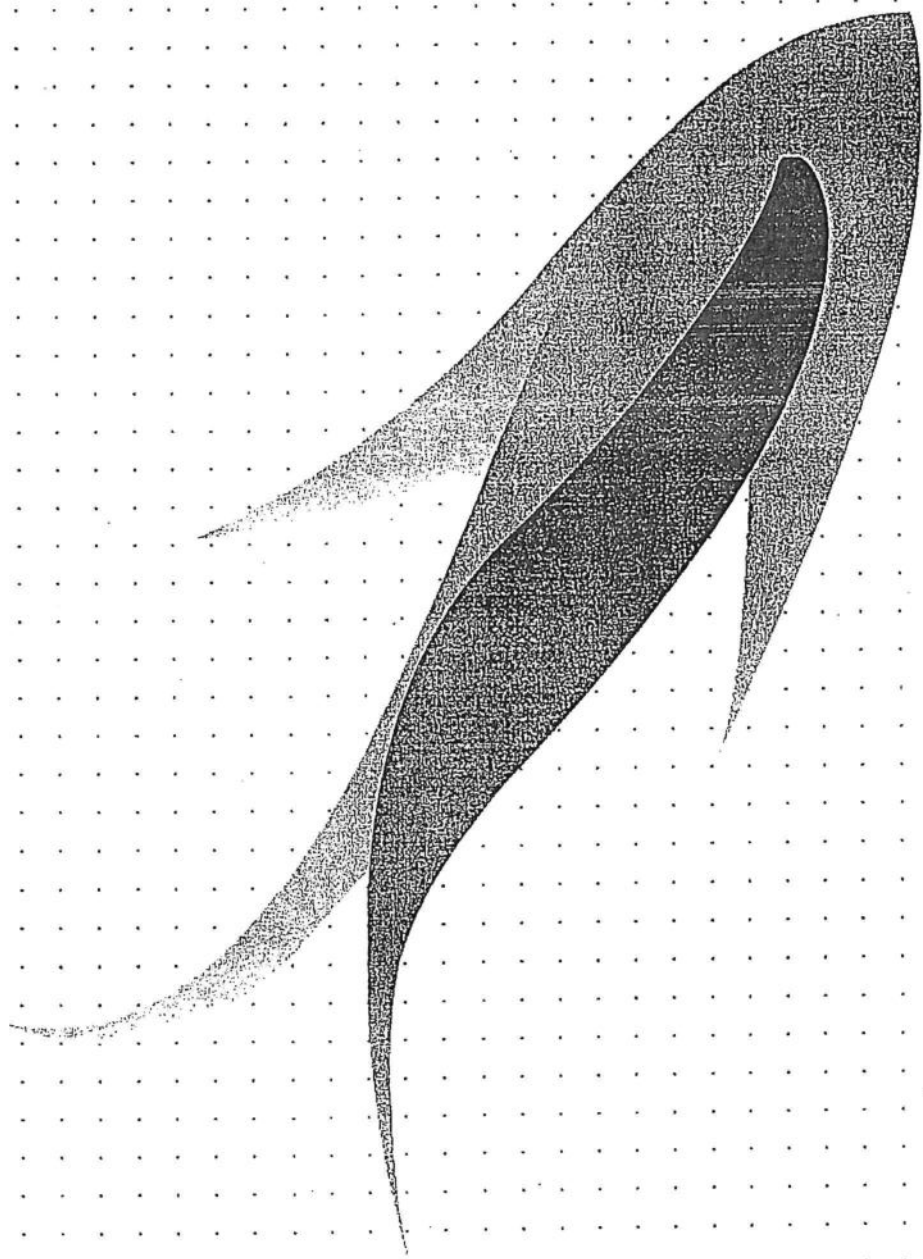
Through the Minamata Convention on Mercury, the global community remembers the many lives already lost to mercury poisoning and commits to preventing similar catastrophes. It is the first global environmental agreement addressing one of the biggest challenges to human health and the environment, from anthropogenic emissions and the release of mercury and mercury compounds.

Mercury exposure is a global concern. Every year, as much as 9,000 tons of mercury are released into the atmosphere, in water and on land. The largest source of mercury emissions is artisanal and small-scale gold mining, followed closely by coal combustion, non-ferrous metal production and cement production. And we still find mercury in many commercial products such as batteries, fluorescent lamps, cosmetics, pesticides, thermometers and dental amalgams. Everyone is exposed to some amount of mercury and high amounts of mercury can lead to long-term and sometimes permanent neurological damages.

The Minamata Convention which entered into force in August 2017, provides a powerful impetus to global efforts to reduce and eliminate the use of mercury and mercury compounds. The international community is working hard to comply with the measures established in the Convention as well as with the related Sustainable Development Goals to move towards our common goal of prosperity for people and the planet.

A key priority in coming years is to shift investments from mercury polluting industries, in favour of investments in renewable energy, nature, research and development. In doing so, we must capture the opportunities of affordable technologies and innovations that can move markets in the right direction. With greater ambition we will all step up and step in with new solutions to ensure the effective implementation of the Minamata Convention on Mercury.

For the good of our planet, for our future generations, it is time to take action and make mercury history!





**FOREWORD BY HER EXCELLENCY (MRS.) DORIS LEUTHARD, PRESIDENT OF THE SWISS CONFEDERATION AND MINISTER FOR THE ENVIRONMENT, TRANSPORT, ENERGY AND COMMUNICATIONS ON THE OCCASION OF THE FIRST MEETING OF THE CONFERENCE OF THE PARTIES TO THE MINAMATA CONVENTION (GENEVA, 24-29 SEPTEMBER 2017)**

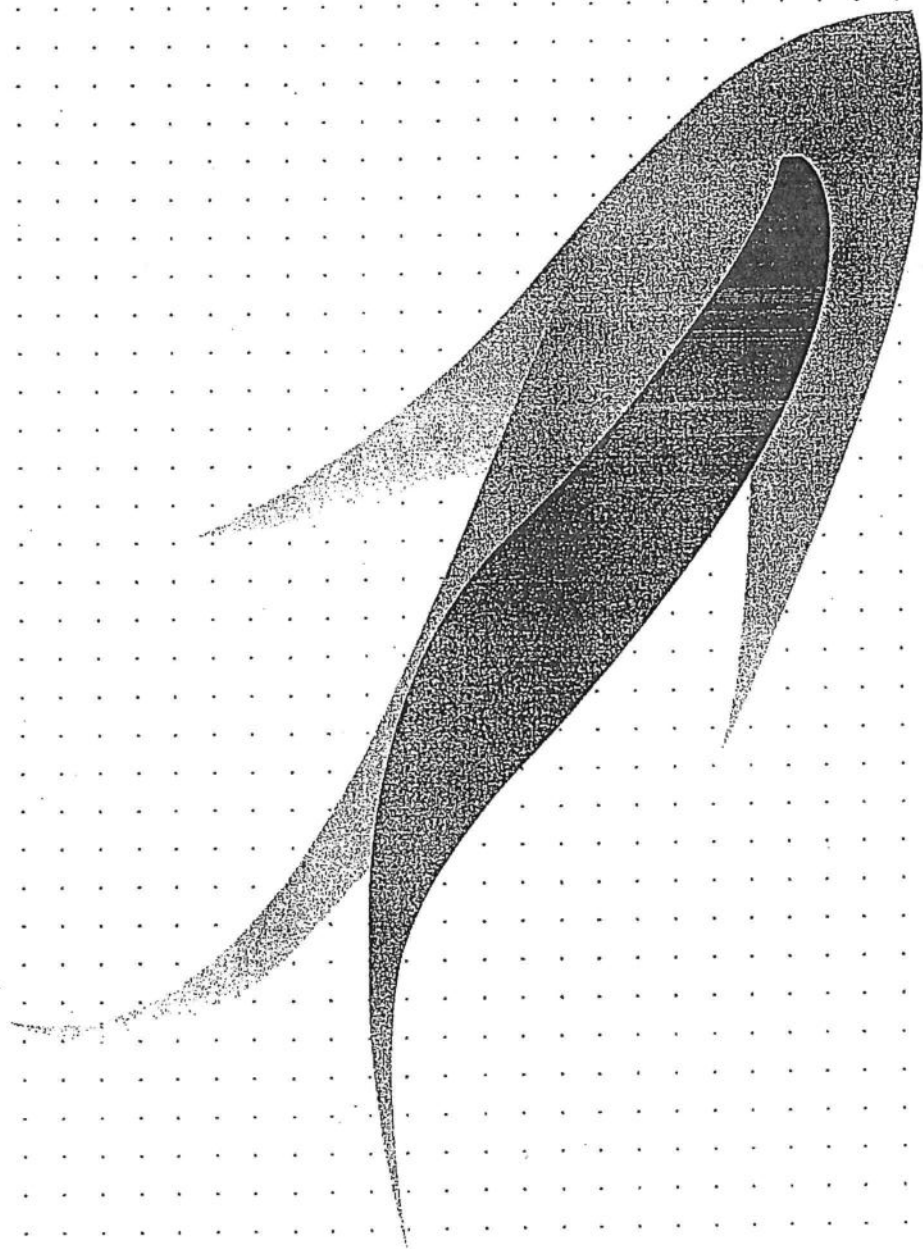
The Minamata Convention is the first global environmental agreement negotiated in the 21st millennium. It reflects an innovative and comprehensive approach, addressing mercury throughout its life cycle from its mining to its management as waste. It is a privilege and honor for me to host the first Conference of the Parties to the Minamata Convention in Geneva, Switzerland.

In 2003, the Global Mercury Assessment was presented to the 22nd UNEP Governing Council. It concluded that there is significant global adverse impacts from mercury and its compounds to warrant further international action. In response, Switzerland, together with Norway, proposed to develop a comprehensive legally binding instrument on mercury. It took 6 years and many efforts of formal and informal discussions and outreach until the UNEP Governing Council decided in 2009 at its 25th session to launch negotiations for a global mercury convention. These negotiations were well organized and prepared by UNEP Chemicals. They benefitted from substantive input from competent intergovernmental institutions as well as nongovernmental organizations. And, they were guided by the president of the negotiation process, ambassador Fernando Luján from Uruguay, in a diligent, wise and solution oriented manner.

In 2013, 10 years after Switzerland's and Norway's call for a legally binding instrument for mercury, the 5th session of the Intergovernmental Negotiation Committee concluded its negotiations in Geneva. I very well remember the final negotiations in Geneva and the pride and satisfaction, when on Saturday morning, 19 January 2013, at 7 am, after a long week of intensive negotiations, agreement on the text of the Minamata Convention on Mercury was achieved. The convention was formally adopted and opened for signature at the Diplomatic Conference of Plenipotentiaries in Kumamoto, Japan, on 10 October 2013, it entered into force on 16 August 2017, and its first Conference of the Parties meets in September 2017 in Geneva.

The Minamata Convention follows and builds on the Basel, Rotterdam and Stockholm conventions. It sets out the same basic substantive obligations for all countries, while providing some targeted differentiation and flexibility in specific substantive provisions, as well as provisions to mobilize financial resources by all, within their capabilities, for implementation in developing countries. Together with the Basel, Rotterdam and Stockholm conventions, it forms a comprehensive global regime for the sound management of chemicals and hazardous wastes.

The Minamata Convention is a 21st century response to the catastrophic pollution in Minamata, Japan, where industrial releases of methyl mercury caused the epidemic known as the Minamata disease in the 1950s and onwards. By naming the convention 'Minamata Convention', the name Minamata will not only be associated with a problem, but also with a solution. It is both an impressive and stimulating proof of how successful multilateralism can be to solve global problems and challenges. I would like to thank wholeheartedly all those who have contributed to that success.



## INTRODUCTION

In 2001, the Governing Council of the United Nations Environment Programme<sup>1</sup> (UNEP) invited the Executive Director of UNEP to undertake a global assessment of mercury and its compounds, including information on the chemistry and health effects, sources, long-range transport, and prevention and control technologies relating to mercury. In 2003, the Governing Council considered this assessment and found that there was sufficient evidence of significant global adverse impacts from mercury and its compounds to warrant further international action to reduce the risks to human health and the environment from the release of mercury and its compounds to the environment. Governments were urged to adopt goals for the reduction of mercury emissions and releases and UNEP initiated technical assistance and capacity building activities to meet these goals.

Mercury is recognized as a substance producing significant adverse neurological and other health effects, with particular concerns expressed about its harmful effects on infants and unborn children. The global transport of mercury in the environment was a key reason for taking the decision that global action to address the problem of mercury pollution was required. A mercury programme to address these concerns was thus established and was further strengthened by governments in decisions of the Governing Council in 2005 and in 2007. In the decision of 2007, the Governing Council concluded that the options of enhanced voluntary measures and new or existing international legal instruments would be reviewed and assessed in order to make progress in addressing the mercury issue.

In 2009, following extensive consideration of the issue, the Governing Council agreed that voluntary actions had not been sufficient to address the concerns on mercury, and decided on the need for further action on mercury, including the preparation of a global legally binding instrument. An intergovernmental negotiating committee to prepare a global legally binding instrument on mercury was therefore established, to commence its work in 2010 and conclude its negotiations prior to the twenty-seventh session of the Governing Council in 2013. The committee was provided with a detailed mandate setting out specific issues to be covered in the text of the instrument, as well as a number of other elements to be taken into account while negotiating the text.

In January 2013, the intergovernmental negotiating committee concluded its fifth session by agreeing on the text of the Minamata Convention on Mercury. The text was adopted by the Conference of Plenipotentiaries on 10 October 2013 in Japan and was opened for signature for one year until 9 October 2014. During this period, it was signed by 127 states and one regional economic integration organization, bringing to 128 the total number of signatories.

The Conference of Plenipotentiaries also mandated the intergovernmental negotiating committee to meet during the interim period preceding the opening of the first meeting of the Conference of the Parties to the Convention to facilitate the rapid entry into force of the Convention and its effective implementation upon entry into force. Two sessions of the committee were held, in November 2014 in Bangkok, Thailand and in March 2016 at the Dead Sea in Jordan.

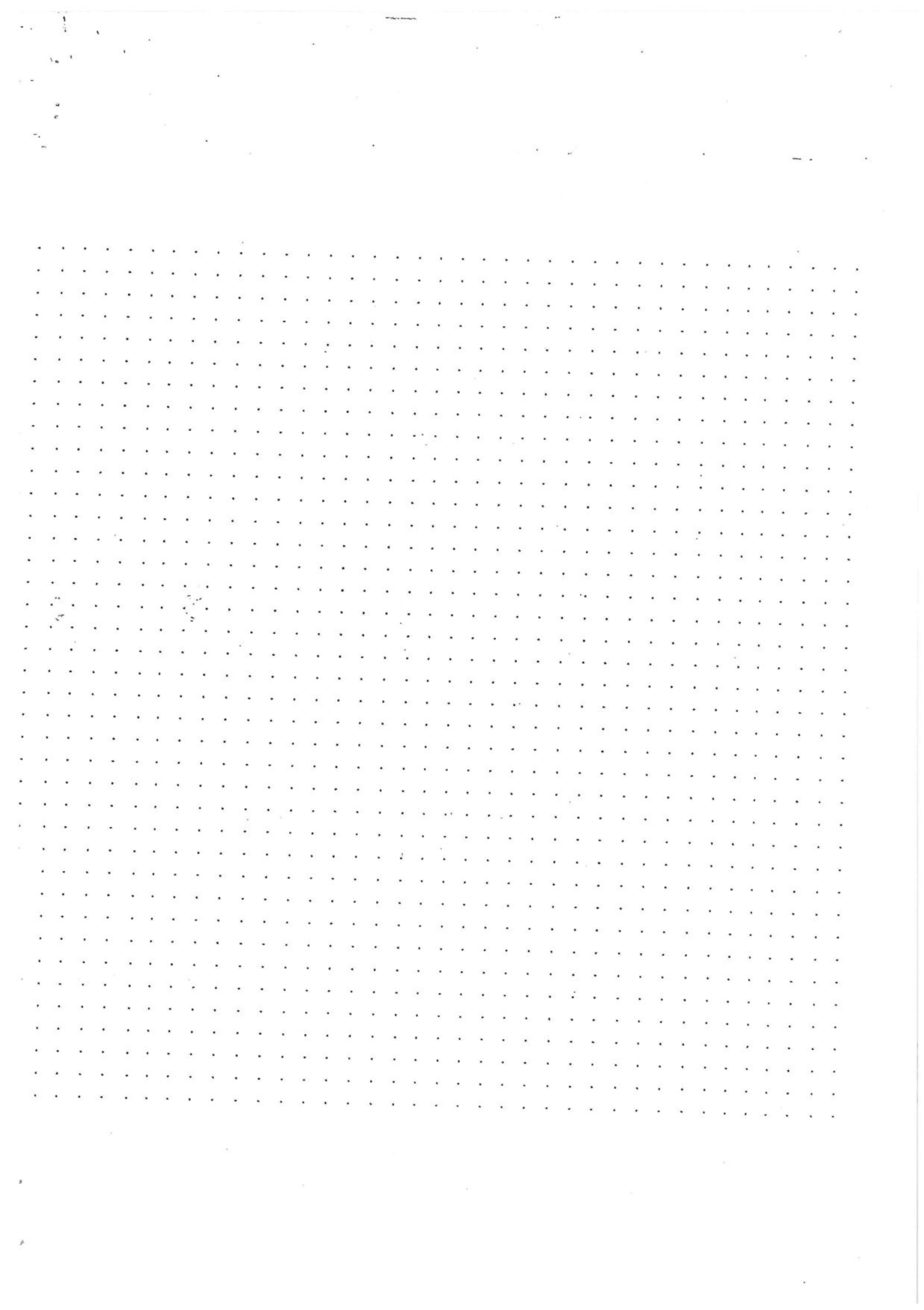
The objective of the Convention is to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds and it sets out a range of measures to meet that objective. These include measures to control the supply and trade of mercury, including setting limitations on specific sources of mercury such as

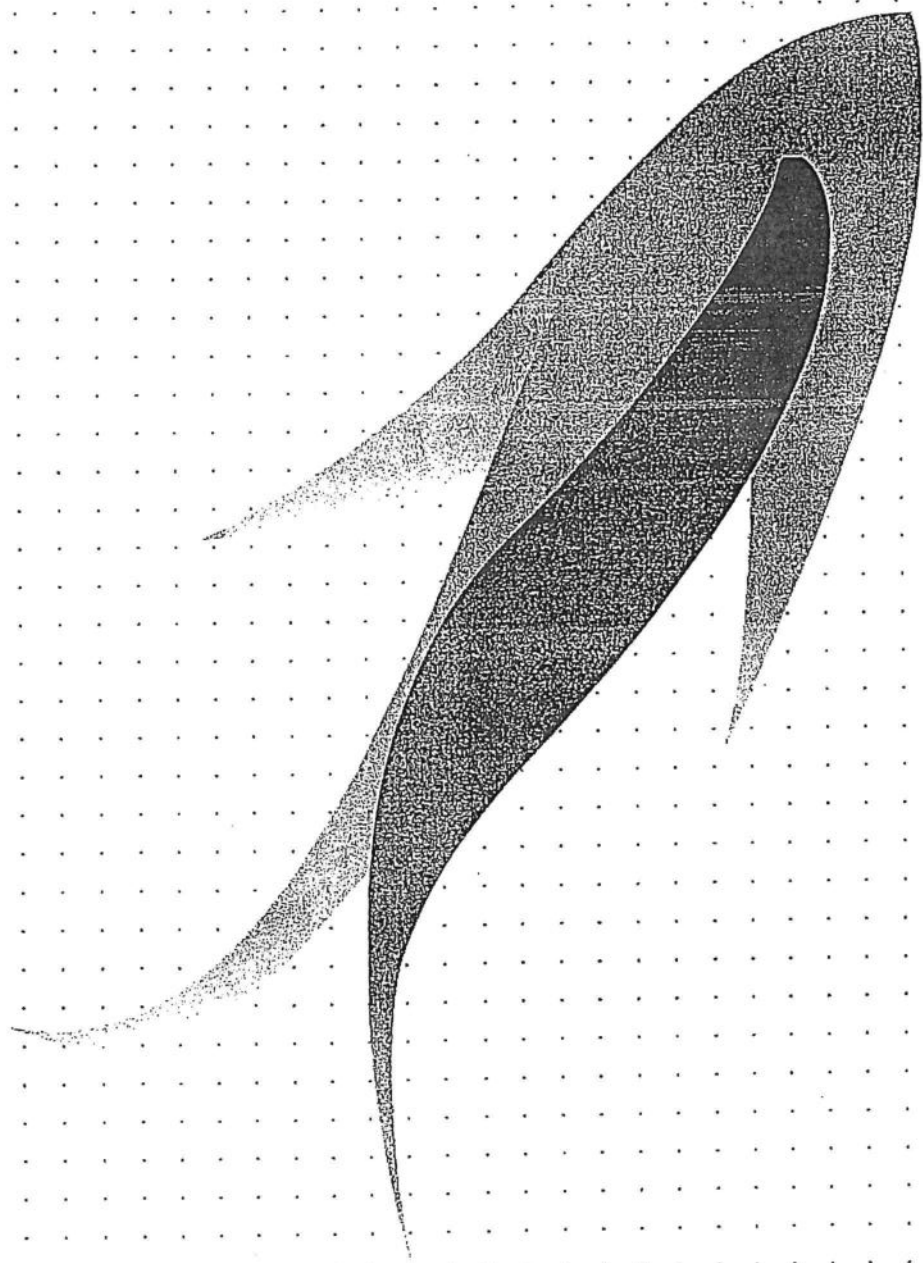
<sup>1</sup> As of February 2013, the designation of the Governing Council of UNEP has been changed to the United Nations Environment Assembly.

primary mining, and to control mercury-added products and manufacturing processes in which mercury or mercury compounds are used, as well as artisanal and small scale gold mining. The text of the Convention includes separate articles on emissions and releases of mercury, with controls directed at reducing levels of mercury while allowing flexibility to accommodate national development plans. In addition, it contains measures on the environmentally sound interim storage of mercury and on mercury wastes, as well as contaminated sites. Provision is made in the text for financial and technical support to developing countries and countries with economies in transition, and a financial mechanism for the provision of adequate, predictable and timely financial resources is defined.

The Minamata Convention provides that it shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession. That milestone was reached on 18 May 2017, allowing the Convention to enter into force on 16 August 2017 and the holding of the first meeting of its Conference of the Parties from 24 to 29 September 2017 in Geneva, Switzerland.

It is expected that coordinated implementation of the obligations of the Convention will lead to an overall reduction in mercury levels in the environment over time, thus meeting the objective of the Convention to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.





## MINAMATA CONVENTION ON MERCURY

The Parties to this Convention,

*Recognizing* that mercury is a chemical of global concern owing to its long-range atmospheric transport, its persistence in the environment once anthropogenically introduced, its ability to bioaccumulate in ecosystems and its significant negative effects on human health and the environment,

*Recalling* decision 25/5 of 20 February 2009 of the Governing Council of the United Nations Environment Programme to initiate international action to manage mercury in an efficient, effective and coherent manner,

*Recalling* paragraph 221 of the outcome document of the United Nations Conference on Sustainable Development "The future we want", which called for a successful outcome of the negotiations on a global legally binding instrument on mercury to address the risks to human health and the environment,

*Recalling* the United Nations Conference on Sustainable Development's reaffirmation of the principles of the Rio Declaration on Environment and Development, including, inter alia, common but differentiated responsibilities, and acknowledging States' respective circumstances and capabilities and the need for global action,

*Aware* of the health concerns, especially in developing countries, resulting from exposure to mercury of vulnerable populations, especially women, children, and, through them, future generations,

*Noting* the particular vulnerabilities of Arctic ecosystems and indigenous communities because of the biomagnification of mercury and contamination of traditional foods, and concerned about indigenous communities more generally with respect to the effects of mercury,

*Recognizing* the substantial lessons of Minamata Disease, in particular the serious health and environmental effects resulting from the mercury pollution, and the need to ensure proper management of mercury and the prevention of such events in the future,

*Stressing* the importance of financial, technical, technological, and capacity-building support, particularly for developing countries, and



countries with economies in transition, in order to strengthen national capabilities for the management of mercury and to promote the effective implementation of the Convention,

*Recognizing also* the activities of the World Health Organization in the protection of human health related to mercury and the roles of relevant multilateral environmental agreements, especially the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,

*Recognizing* that this Convention and other international agreements in the field of the environment and trade are mutually supportive,

*Emphasizing* that nothing in this Convention is intended to affect the rights and obligations of any Party deriving from any existing international agreement,

*Understanding* that the above recital is not intended to create a hierarchy between this Convention and other international instruments,

*Noting* that nothing in this Convention prevents a Party from taking additional domestic measures consistent with the provisions of this Convention in an effort to protect human health and the environment from exposure to mercury in accordance with that Party's other obligations under applicable international law,

Have agreed as follows:

## **Article 1**

### **Objective**

The objective of this Convention is to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.



## Article 2

### Definitions

For the purposes of this Convention:

(a) "Artisanal and small-scale gold mining" means gold mining conducted by individual miners or small enterprises with limited capital investment and production;

(b) "Best available techniques" means those techniques that are the most effective to prevent and, where that is not practicable, to reduce emissions and releases of mercury to air, water and land and the impact of such emissions and releases on the environment as a whole, taking into account economic and technical considerations for a given Party or a given facility within the territory of that Party. In this context:

(i) "Best" means most effective in achieving a high general level of protection of the environment as a whole;

(ii) "Available" techniques means, in respect of a given Party and a given facility within the territory of that Party, those techniques developed on a scale that allows implementation in a relevant industrial sector under economically and technically viable conditions, taking into consideration the costs and benefits, whether or not those techniques are used or developed within the territory of that Party, provided that they are accessible to the operator of the facility as determined by that Party; and

(iii) "Techniques" means technologies used, operational practices and the ways in which installations are designed, built, maintained, operated and decommissioned;

(c) "Best environmental practices" means the application of the most appropriate combination of environmental control measures and strategies;

(d) "Mercury" means elemental mercury (Hg(0), CAS No. 7439-97-6);

(e) "Mercury compound" means any substance consisting of atoms of mercury and one or more atoms of other chemical elements that can be separated into different components only by chemical reactions;

(f) "Mercury-added product" means a product or product component that contains mercury or a mercury compound that was intentionally added;

(g) "Party" means a State or regional economic integration organization that has consented to be bound by this Convention and for which the Convention is in force;

(h) "Parties present and voting" means Parties present and casting an affirmative or negative vote at a meeting of the Parties;

(i) "Primary mercury mining" means mining in which the principal material sought is mercury;

(j) "Regional economic integration organization" means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention; and

(k) "Use allowed" means any use by a Party of mercury or mercury compounds consistent with this Convention, including, but not limited to, uses consistent with Articles 3, 4, 5, 6 and 7.

### **Article 3**

#### **Mercury supply sources and trade**

1. For the purposes of this Article:

(a) References to "mercury" include mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 per cent by weight; and

(b) "Mercury compounds" means mercury (I) chloride (known also as calomel), mercury (II) oxide, mercury (II) sulphate, mercury (II) nitrate, cinnabar and mercury sulphide.

2. The provisions of this Article shall not apply to:

(a) Quantities of mercury or mercury compounds to be used for laboratory-scale research or as a reference standard; or

(b) Naturally occurring trace quantities of mercury or mercury compounds present in such products as non-mercury metals, ores, or mineral products, including coal, or products derived from these materials, and unintentional trace quantities in chemical products; or

(c) Mercury-added products.

3. Each Party shall not allow primary mercury mining that was not being conducted within its territory at the date of entry into force of the Convention for it.

4. Each Party shall only allow primary mercury mining that was being conducted within its territory at the date of entry into force of the Convention for it for a period of up to fifteen years after that date. During this period, mercury from such mining shall only be used in manufacturing of mercury-added products in accordance with Article 4, in manufacturing processes in accordance with Article 5, or be disposed in accordance with Article 11, using operations which do not lead to recovery, recycling, reclamation, direct re-use or alternative uses.

5. Each Party shall:

(a) Endeavour to identify individual stocks of mercury or mercury compounds exceeding 50 metric tons, as well as sources of mercury supply generating stocks exceeding 10 metric tons per year, that are located within its territory;

(b) Take measures to ensure that, where the Party determines that excess mercury from the decommissioning of chlor-alkali facilities is available, such mercury is disposed of in accordance with the guidelines for environmentally sound management referred to in paragraph 3 (a) of Article 11, using operations that do not lead to recovery, recycling, reclamation, direct re-use or alternative uses.

6. Each Party shall not allow the export of mercury except:

(a) To a Party that has provided the exporting Party with its written consent, and only for the purpose of:

- (i) A use allowed to the importing Party under this Convention;  
or
  - (ii) Environmentally sound interim storage as set out in Article 10;  
or
- (b) To a non-Party that has provided the exporting Party with its written consent, including certification demonstrating that:
- (i) The non-Party has measures in place to ensure the protection of human health and the environment and to ensure its compliance with the provisions of Articles 10 and 11; and
  - (ii) Such mercury will be used only for a use allowed to a Party under this Convention or for environmentally sound interim storage as set out in Article 10.

7. An exporting Party may rely on a general notification to the Secretariat by the importing Party or non-Party as the written consent required by paragraph 6. Such general notification shall set out any terms and conditions under which the importing Party or non-Party provides its consent. The notification may be revoked at any time by that Party or non-Party. The Secretariat shall keep a public register of all such notifications.

8. Each Party shall not allow the import of mercury from a non-Party to whom it will provide its written consent unless the non-Party has provided certification that the mercury is not from sources identified as not allowed under paragraph 3 or paragraph 5 (b).

9. A Party that submits a general notification of consent under paragraph 7 may decide not to apply paragraph 8, provided that it maintains comprehensive restrictions on the export of mercury and has domestic measures in place to ensure that imported mercury is managed in an environmentally sound manner. The Party shall provide a notification of such decision to the Secretariat, including information describing its export restrictions and domestic regulatory measures, as well as information on the quantities and countries of origin of mercury imported from non-Parties. The Secretariat shall maintain a public register of all such notifications. The Implementation and Compliance Committee shall review and evaluate any such notifications and supporting information in accordance with Article 15 and may make recommendations, as appropriate, to the Conference of the Parties.

10. The procedure set out in paragraph 9 shall be available until the conclusion of the second meeting of the Conference of the Parties. After that time, it shall cease to be available, unless the Conference of the Parties decides otherwise by simple majority of the Parties present and voting, except with respect to a Party that has provided a notification under paragraph 9 before the end of the second meeting of the Conference of the Parties.

11. Each Party shall include in its reports submitted pursuant to Article 21 information showing that the requirements of this Article have been met.

12. The Conference of the Parties shall at its first meeting provide further guidance in regard to this Article, particularly in regard to paragraphs 5 (a), 6 and 8, and shall develop and adopt the required content of the certification referred to in paragraphs 6 (b) and 8.

13. The Conference of the Parties shall evaluate whether the trade in specific mercury compounds compromises the objective of this Convention and consider whether specific mercury compounds should, by their listing in an additional annex adopted in accordance with Article 27, be made subject to paragraphs 6 and 8.

## **Article 4**

### **Mercury-added products**

1. Each Party shall not allow, by taking appropriate measures, the manufacture, import or export of mercury-added products listed in Part I of Annex A after the phase-out date specified for those products, except where an exclusion is specified in Annex A or the Party has a registered exemption pursuant to Article 6.

2. A Party may, as an alternative to paragraph 1, indicate at the time of ratification or upon entry into force of an amendment to Annex A for it, that it will implement different measures or strategies to address products listed in Part I of Annex A. A Party may only choose this alternative if it can demonstrate that it has already reduced to a de minimis level the manufacture, import, and export of the large majority of the products listed in Part I of Annex A and that it has implemented measures or strategies to reduce the use of mercury in additional products not listed in

Part I of Annex A at the time it notifies the Secretariat of its decision to use this alternative. In addition, a Party choosing this alternative shall:

- (a) Report at the first opportunity to the Conference of the Parties a description of the measures or strategies implemented, including a quantification of the reductions achieved;
- (b) Implement measures or strategies to reduce the use of mercury in any products listed in Part I of Annex A for which a de minimis value has not yet been obtained;
- (c) Consider additional measures to achieve further reductions; and
- (d) Not be eligible to claim exemptions pursuant to Article 6 for any product category for which this alternative is chosen.

No later than five years after the date of entry into force of the Convention, the Conference of the Parties shall, as part of the review process under paragraph 8, review the progress and the effectiveness of the measures taken under this paragraph.

3. Each Party shall take measures for the mercury-added products listed in Part II of Annex A in accordance with the provisions set out therein.
4. The Secretariat shall, on the basis of information provided by Parties, collect and maintain information on mercury-added products and their alternatives, and shall make such information publicly available. The Secretariat shall also make publicly available any other relevant information submitted by Parties.
5. Each Party shall take measures to prevent the incorporation into assembled products of mercury-added products the manufacture, import and export of which are not allowed for it under this Article.
6. Each Party shall discourage the manufacture and the distribution in commerce of mercury-added products not covered by any known use of mercury-added products prior to the date of entry into force of the Convention for it, unless an assessment of the risks and benefits of the product demonstrates environmental or human health benefits. A Party shall provide to the Secretariat, as appropriate, information on any such product, including any information on the environmental and human

health risks and benefits of the product. The Secretariat shall make such information publicly available.

7. Any Party may submit a proposal to the Secretariat for listing a mercury-added product in Annex A, which shall include information related to the availability, technical and economic feasibility and environmental and health risks and benefits of the non-mercury alternatives to the product, taking into account information pursuant to paragraph 4.

8. No later than five years after the date of entry into force of the Convention, the Conference of the Parties shall review Annex A and may consider amendments to that Annex in accordance with Article 27.

9. In reviewing Annex A pursuant to paragraph 8, the Conference of the Parties shall take into account at least:

(a) Any proposal submitted under paragraph 7;

(b) The information made available pursuant to paragraph 4; and

(c) The availability to the Parties of mercury-free alternatives that are technically and economically feasible, taking into account the environmental and human health risks and benefits.

## **Article 5**

### **Manufacturing processes in which mercury or mercury compounds are used**

1. For the purposes of this Article and Annex B, manufacturing processes in which mercury or mercury compounds are used shall not include processes using mercury-added products, processes for manufacturing mercury-added products or processes that process mercury-containing waste.

2. Each Party shall not allow, by taking appropriate measures, the use of mercury or mercury compounds in the manufacturing processes listed in Part I of Annex B after the phase-out date specified in that Annex for the individual processes, except where the Party has a registered exemption pursuant to Article 6.



3. Each Party shall take measures to restrict the use of mercury or mercury compounds in the processes listed in Part II of Annex B in accordance with the provisions set out therein.

4. The Secretariat shall, on the basis of information provided by Parties, collect and maintain information on processes that use mercury or mercury compounds and their alternatives, and shall make such information publicly available. Other relevant information may also be submitted by Parties and shall be made publicly available by the Secretariat.

5. Each Party with one or more facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex B shall:

(a) Take measures to address emissions and releases of mercury or mercury compounds from those facilities;

(b) Include in its reports submitted pursuant to Article 21 information on the measures taken pursuant to this paragraph; and

(c) Endeavour to identify facilities within its territory that use mercury or mercury compounds for processes listed in Annex B and submit to the Secretariat, no later than three years after the date of entry into force of the Convention for it, information on the number and types of such facilities and the estimated annual amount of mercury or mercury compounds used in those facilities. The Secretariat shall make such information publicly available.

6. Each Party shall not allow the use of mercury or mercury compounds in a facility that did not exist prior to the date of entry into force of the Convention for it using the manufacturing processes listed in Annex B. No exemptions shall apply to such facilities.

7. Each Party shall discourage the development of any facility using any other manufacturing process in which mercury or mercury compounds are intentionally used that did not exist prior to the date of entry into force of the Convention, except where the Party can demonstrate to the satisfaction of the Conference of the Parties that the manufacturing process provides significant environmental and health benefits and that there are no technically and economically feasible mercury-free alternatives available providing such benefits.



8. Parties are encouraged to exchange information on relevant new technological developments, economically and technically feasible mercury-free alternatives, and possible measures and techniques to reduce and where feasible to eliminate the use of mercury and mercury compounds in, and emissions and releases of mercury and mercury compounds from, the manufacturing processes listed in Annex B.

9. Any Party may submit a proposal to amend Annex B in order to list a manufacturing process in which mercury or mercury compounds are used. It shall include information related to the availability, technical and economic feasibility and environmental and health risks and benefits of the non-mercury alternatives to the process.

10. No later than five years after the date of entry into force of the Convention, the Conference of the Parties shall review Annex B and may consider amendments to that Annex in accordance with Article 27.

11. In any review of Annex B pursuant to paragraph 10, the Conference of the Parties shall take into account at least:

- (a) Any proposal submitted under paragraph 9;
- (b) The information made available under paragraph 4; and
- (c) The availability for the Parties of mercury-free alternatives which are technically and economically feasible taking into account the environmental and health risks and benefits.

## **Article 6**

### **Exemptions available to a Party upon request**

1. Any State or regional economic integration organization may register for one or more exemptions from the phase-out dates listed in Annex A and Annex B, hereafter referred to as an "exemption", by notifying the Secretariat in writing:

- (a) On becoming a Party to this Convention; or
- (b) In the case of any mercury-added product that is added by an amendment to Annex A or any manufacturing process in which mercury is used that is added by an amendment to Annex B, no later than the date

upon which the applicable amendment enters into force for the Party.

Any such registration shall be accompanied by a statement explaining the Party's need for the exemption.

2. An exemption can be registered either for a category listed in Annex A or B or for a sub-category identified by any State or regional economic integration organization.

3. Each Party that has one or more exemptions shall be identified in a register. The Secretariat shall establish and maintain the register and make it available to the public.

4. The register shall include:

- (a) A list of the Parties that have one or more exemptions;
- (b) The exemption or exemptions registered for each Party; and
- (c) The expiration date of each exemption.

5. Unless a shorter period is indicated in the register by a Party, all exemptions pursuant to paragraph 1 shall expire five years after the relevant phase-out date listed in Annex A or B.

6. The Conference of the Parties may, at the request of a Party, decide to extend an exemption for five years unless the Party requests a shorter period. In making its decision, the Conference of the Parties shall take due account of:

(a) A report from the Party justifying the need to extend the exemption and outlining activities undertaken and planned to eliminate the need for the exemption as soon as feasible;

(b) Available information, including in respect of the availability of alternative products and processes that are free of mercury or that involve the consumption of less mercury than the exempt use; and

(c) Activities planned or under way to provide environmentally sound storage of mercury and disposal of mercury wastes.

An exemption may only be extended once per product per phase-out date.

7. A Party may at any time withdraw an exemption upon written notification to the Secretariat. The withdrawal of an exemption shall take effect on the date specified in the notification.

8. Notwithstanding paragraph 1, no State or regional economic integration organization may register for an exemption after five years after the phase-out date for the relevant product or process listed in Annex A or B, unless one or more Parties remain registered for an exemption for that product or process, having received an extension pursuant to paragraph 6. In that case, a State or regional economic integration organization may, at the times set out in paragraphs 1 (a) and (b), register for an exemption for that product or process, which shall expire ten years after the relevant phase-out date.

9. No Party may have an exemption in effect at any time after 10 years after the phase-out date for a product or process listed in Annex A or B.

## **Article 7**

### **Artisanal and small-scale gold mining**

1. The measures in this Article and in Annex C shall apply to artisanal and small-scale gold mining and processing in which mercury amalgamation is used to extract gold from ore.

2. Each Party that has artisanal and small-scale gold mining and processing subject to this Article within its territory shall take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the emissions and releases to the environment of mercury from, such mining and processing.

3. Each Party shall notify the Secretariat if at any time the Party determines that artisanal and small-scale gold mining and processing in its territory is more than insignificant. If it so determines the Party shall:

(a) Develop and implement a national action plan in accordance with Annex C;

(b) Submit its national action plan to the Secretariat no later than three years after entry into force of the Convention for it or three years after the notification to the Secretariat, whichever is later; and

(c) Thereafter, provide a review every three years of the progress made in meeting its obligations under this Article and include such reviews in its reports submitted pursuant to Article 21.

4. Parties may cooperate with each other and with relevant intergovernmental organizations and other entities, as appropriate, to achieve the objectives of this Article. Such cooperation may include:

(a) Development of strategies to prevent the diversion of mercury or mercury compounds for use in artisanal and small-scale gold mining and processing;

(b) Education, outreach and capacity-building initiatives;

(c) Promotion of research into sustainable non-mercury alternative practices;

(d) Provision of technical and financial assistance;

(e) Partnerships to assist in the implementation of their commitments under this Article; and

(f) Use of existing information exchange mechanisms to promote knowledge, best environmental practices and alternative technologies that are environmentally, technically, socially and economically viable.

## **Article 8**

### **Emissions**

1. This Article concerns controlling and, where feasible, reducing emissions of mercury and mercury compounds, often expressed as "total mercury", to the atmosphere through measures to control emissions from the point sources falling within the source categories listed in Annex D.

2. For the purposes of this Article:

(a) "Emissions" means emissions of mercury or mercury compounds to the atmosphere;

(b) "Relevant source" means a source falling within one of the source categories listed in Annex D. A Party may, if it chooses, establish criteria to

identify the sources covered within a source category listed in Annex D so long as those criteria for any category include at least 75 per cent of the emissions from that category;

(c) "New source" means any relevant source within a category listed in Annex D, the construction or substantial modification of which is commenced at least one year after the date of:

- (i) Entry into force of this Convention for the Party concerned; or
- (ii) Entry into force for the Party concerned of an amendment to Annex D where the source becomes subject to the provisions of this Convention only by virtue of that amendment;

(d) "Substantial modification" means modification of a relevant source that results in a significant increase in emissions, excluding any change in emissions resulting from by-product recovery. It shall be a matter for the Party to decide whether a modification is substantial or not;

(e) "Existing source" means any relevant source that is not a new source;

(f) "Emission limit value" means a limit on the concentration, mass or emission rate of mercury or mercury compounds, often expressed as "total mercury", emitted from a point source.

3. A Party with relevant sources shall take measures to control emissions and may prepare a national plan setting out the measures to be taken to control emissions and its expected targets, goals and outcomes. Any plan shall be submitted to the Conference of the Parties within four years of the date of entry into force of the Convention for that Party. If a Party develops an implementation plan in accordance with Article 20, the Party may include in it the plan prepared pursuant to this paragraph.

4. For its new sources, each Party shall require the use of best available techniques and best environmental practices to control and, where feasible, reduce emissions, as soon as practicable but no later than five years after the date of entry into force of the Convention for that Party. A Party may use emission limit values that are consistent with the application of best available techniques.

5. For its existing sources, each Party shall include in any national plan, and shall implement, one or more of the following measures, taking into account its national circumstances, and the economic and technical feasibility and affordability of the measures, as soon as practicable but no more than ten years after the date of entry into force of the Convention for it:

(a) A quantified goal for controlling and, where feasible, reducing emissions from relevant sources;

(b) Emission limit values for controlling and, where feasible, reducing emissions from relevant sources;

(c) The use of best available techniques and best environmental practices to control emissions from relevant sources;

(d) A multi-pollutant control strategy that would deliver co-benefits for control of mercury emissions;

(e) Alternative measures to reduce emissions from relevant sources.

6. Parties may apply the same measures to all relevant existing sources or may adopt different measures in respect of different source categories. The objective shall be for those measures applied by a Party to achieve reasonable progress in reducing emissions over time.

7. Each Party shall establish, as soon as practicable and no later than five years after the date of entry into force of the Convention for it, and maintain thereafter, an inventory of emissions from relevant sources.

8. The Conference of the Parties shall, at its first meeting, adopt guidance on:

(a) Best available techniques and on best environmental practices, taking into account any difference between new and existing sources and the need to minimize cross-media effects; and

(b) Support for Parties in implementing the measures set out in paragraph 5, in particular in determining goals and in setting emission limit values.

9. The Conference of the Parties shall, as soon as practicable, adopt guidance on:

- (a) Criteria that Parties may develop pursuant to paragraph 2 (b);
- (b) The methodology for preparing inventories of emissions.

10. The Conference of the Parties shall keep under review, and update as appropriate, the guidance developed pursuant to paragraphs 8 and 9. Parties shall take the guidance into account in implementing the relevant provisions of this Article.

11. Each Party shall include information on its implementation of this Article in its reports submitted pursuant to Article 21, in particular information concerning the measures it has taken in accordance with paragraphs 4 to 7 and the effectiveness of the measures.

## **Article 9**

### **Releases**

1. This Article concerns controlling and, where feasible, reducing releases of mercury and mercury compounds, often expressed as "total mercury", to land and water from the relevant point sources not addressed in other provisions of this Convention.

2. For the purposes of this Article:

(a) "Releases" means releases of mercury or mercury compounds to land or water;

(b) "Relevant source" means any significant anthropogenic point source of release as identified by a Party that is not addressed in other provisions of this Convention;

(c) "New source" means any relevant source, the construction or substantial modification of which is commenced at least one year after the date of entry into force of this Convention for the Party concerned;

(d) "Substantial modification" means modification of a relevant source that results in a significant increase in releases, excluding any change in releases resulting from by-product recovery. It shall be a matter for the Party to decide whether a modification is substantial or not;

(e) "Existing source" means any relevant source that is not a new source;

(f) "Release limit value" means a limit on the concentration or mass of mercury or mercury compounds, often expressed as "total mercury", released from a point source.

3. Each Party shall, no later than three years after the date of entry into force of the Convention for it and on a regular basis thereafter, identify the relevant point source categories.

4. A Party with relevant sources shall take measures to control releases and may prepare a national plan setting out the measures to be taken to control releases and its expected targets, goals and outcomes. Any plan shall be submitted to the Conference of the Parties within four years of the date of entry into force of the Convention for that Party. If a Party develops an implementation plan in accordance with Article 20, the Party may include in it the plan prepared pursuant to this paragraph.

5. The measures shall include one or more of the following, as appropriate:

(a) Release limit values to control and, where feasible, reduce releases from relevant sources;

(b) The use of best available techniques and best environmental practices to control releases from relevant sources;

(c) A multi-pollutant control strategy that would deliver co-benefits for control of mercury releases;

(d) Alternative measures to reduce releases from relevant sources.

6. Each Party shall establish, as soon as practicable and no later than five years after the date of entry into force of the Convention for it, and maintain thereafter, an inventory of releases from relevant sources.

7. The Conference of the Parties shall, as soon as practicable, adopt guidance on:

(a) Best available techniques and on best environmental practices, taking into account any difference between new and existing sources and the need to minimize cross-media effects;

(b) The methodology for preparing inventories of releases.



8. Each Party shall include information on its implementation of this Article in its reports submitted pursuant to Article 21, in particular information concerning the measures it has taken in accordance with paragraphs 3 to 6 and the effectiveness of the measures.

### **Article 10**

#### **Environmentally sound interim storage of mercury, other than waste mercury**

1. This Article shall apply to the interim storage of mercury and mercury compounds as defined in Article 3 that do not fall within the meaning of the definition of mercury wastes set out in Article 11.

2. Each Party shall take measures to ensure that the interim storage of such mercury and mercury compounds intended for a use allowed to a Party under this Convention is undertaken in an environmentally sound manner, taking into account any guidelines, and in accordance with any requirements, adopted pursuant to paragraph 3.

3. The Conference of the Parties shall adopt guidelines on the environmentally sound interim storage of such mercury and mercury compounds, taking into account any relevant guidelines developed under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and other relevant guidance. The Conference of the Parties may adopt requirements for interim storage in an additional annex to this Convention in accordance with Article 27.

4. Parties shall cooperate, as appropriate, with each other and with relevant intergovernmental organizations and other entities, to enhance capacity-building for the environmentally sound interim storage of such mercury and mercury compounds.

### **Article 11**

#### **Mercury wastes**

1. The relevant definitions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal shall apply to wastes covered under this Convention for Parties to the Basel Convention. Parties to this Convention that are not Parties to the Basel

Convention shall use those definitions as guidance as applied to wastes covered under this Convention.

2. For the purposes of this Convention, mercury wastes means substances or objects:

- (a) Consisting of mercury or mercury compounds;
- (b) Containing mercury or mercury compounds; or
- (c) Contaminated with mercury or mercury compounds,

in a quantity above the relevant thresholds defined by the Conference of the Parties, in collaboration with the relevant bodies of the Basel Convention in a harmonized manner, that are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law or this Convention. This definition excludes overburden, waste rock and tailings from mining, except from primary mercury mining, unless they contain mercury or mercury compounds above thresholds defined by the Conference of the Parties.

3. Each Party shall take appropriate measures so that mercury waste is:

(a) Managed in an environmentally sound manner, taking into account the guidelines developed under the Basel Convention and in accordance with requirements that the Conference of the Parties shall adopt in an additional annex in accordance with Article 27. In developing requirements, the Conference of the Parties shall take into account Parties' waste management regulations and programmes;

(b) Only recovered, recycled, reclaimed or directly re-used for a use allowed to a Party under this Convention or for environmentally sound disposal pursuant to paragraph 3 (a);

(c) For Parties to the Basel Convention, not transported across international boundaries except for the purpose of environmentally sound disposal in conformity with this Article and with that Convention. In circumstances where the Basel Convention does not apply to transport across international boundaries, a Party shall allow such transport only after taking into account relevant international rules, standards, and guidelines.

4. The Conference of the Parties shall seek to cooperate closely with the relevant bodies of the Basel Convention in the review and update, as appropriate, of the guidelines referred to in paragraph 3 (a).

5. Parties are encouraged to cooperate with each other and with relevant intergovernmental organizations and other entities, as appropriate, to develop and maintain global, regional and national capacity for the management of mercury wastes in an environmentally sound manner.

## **Article 12**

### **Contaminated sites**

1. Each Party shall endeavour to develop appropriate strategies for identifying and assessing sites contaminated by mercury or mercury compounds.

2. Any actions to reduce the risks posed by such sites shall be performed in an environmentally sound manner incorporating, where appropriate, an assessment of the risks to human health and the environment from the mercury or mercury compounds they contain.

3. The Conference of the Parties shall adopt guidance on managing contaminated sites that may include methods and approaches for:

- (a) Site identification and characterization;
- (b) Engaging the public;
- (c) Human health and environmental risk assessments;
- (d) Options for managing the risks posed by contaminated sites;
- (e) Evaluation of benefits and costs; and
- (f) Validation of outcomes.

4. Parties are encouraged to cooperate in developing strategies and implementing activities for identifying, assessing, prioritizing, managing and, as appropriate, remediating contaminated sites.

## **Article 13**

### **Financial resources and mechanism**

1. Each Party undertakes to provide, within its capabilities, resources in respect of those national activities that are intended to implement this Convention, in accordance with its national policies, priorities, plans and programmes. Such resources may include domestic funding through relevant policies, development strategies and national budgets, and bilateral and multilateral funding, as well as private sector involvement.
2. The overall effectiveness of implementation of this Convention by developing country Parties will be related to the effective implementation of this Article.
3. Multilateral, regional and bilateral sources of financial and technical assistance, as well as capacity-building and technology transfer, are encouraged, on an urgent basis, to enhance and increase their activities on mercury in support of developing country Parties in the implementation of this Convention relating to financial resources, technical assistance and technology transfer.
4. The Parties, in their actions with regard to funding, shall take full account of the specific needs and special circumstances of Parties that are small island developing States or least developed countries.
5. A Mechanism for the provision of adequate, predictable, and timely financial resources is hereby defined. The Mechanism is to support developing country Parties and Parties with economies in transition in implementing their obligations under this Convention.
6. The Mechanism shall include:
  - (a) The Global Environment Facility Trust Fund; and
  - (b) A specific international Programme to support capacity-building and technical assistance.
7. The Global Environment Facility Trust Fund shall provide new, predictable, adequate and timely financial resources to meet costs in support of implementation of this Convention as agreed by the Conference of the Parties. For the purposes of this Convention, the Global

Environment Facility Trust Fund shall be operated under the guidance of and be accountable to the Conference of the Parties. The Conference of the Parties shall provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources. In addition, the Conference of the Parties shall provide guidance on an indicative list of categories of activities that could receive support from the Global Environment Facility Trust Fund. The Global Environment Facility Trust Fund shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities.

8. In providing resources for an activity, the Global Environment Facility Trust Fund should take into account the potential mercury reductions of a proposed activity relative to its costs.

9. For the purposes of this Convention, the Programme referred to in paragraph 6(b) will be operated under the guidance of and be accountable to the Conference of the Parties. The Conference of the Parties shall, at its first meeting, decide on the hosting institution for the Programme, which shall be an existing entity, and provide guidance to it, including on its duration. All Parties and other relevant stakeholders are invited to provide financial resources to the Programme, on a voluntary basis.

10. The Conference of the Parties and the entities comprising the Mechanism shall agree upon, at the first meeting of the Conference of the Parties, arrangements to give effect to the above paragraphs.

11. The Conference of the Parties shall review, no later than at its third meeting, and thereafter on a regular basis, the level of funding, the guidance provided by the Conference of the Parties to the entities entrusted to operationalize the Mechanism established under this Article and their effectiveness, and their ability to address the changing needs of developing country Parties and Parties with economies in transition. It shall, based on such review, take appropriate action to improve the effectiveness of the Mechanism.

12. All Parties, within their capabilities, are invited to contribute to the Mechanism. The Mechanism shall encourage the provision of resources from other sources, including the private sector, and shall seek to leverage such resources for the activities it supports.

## **Article 14**

### **Capacity-building, technical assistance and technology transfer**

1. Parties shall cooperate to provide, within their respective capabilities, timely and appropriate capacity-building and technical assistance to developing country Parties, in particular Parties that are least developed countries or small island developing States, and Parties with economies in transition, to assist them in implementing their obligations under this Convention.

2. Capacity-building and technical assistance pursuant to paragraph 1 and Article 13 may be delivered through regional, subregional and national arrangements, including existing regional and subregional centres, through other multilateral and bilateral means, and through partnerships, including partnerships involving the private sector. Cooperation and coordination with other multilateral environmental agreements in the field of chemicals and wastes should be sought to increase the effectiveness of technical assistance and its delivery.

3. Developed country Parties and other Parties within their capabilities shall promote and facilitate, supported by the private sector and other relevant stakeholders as appropriate, development, transfer and diffusion of, and access to, up-to-date environmentally sound alternative technologies to developing country Parties, in particular the least developed countries and small island developing States, and Parties with economies in transition, to strengthen their capacity to effectively implement this Convention.

4. The Conference of the Parties shall, by its second meeting and thereafter on a regular basis, and taking into account submissions and reports from Parties including those as provided for in Article 21 and information provided by other stakeholders:

(a) Consider information on existing initiatives and progress made in relation to alternative technologies;

(b) Consider the needs of Parties, particularly developing country Parties, for alternative technologies; and

(c) Identify challenges experienced by Parties, particularly developing country Parties, in technology transfer.

5. The Conference of the Parties shall make recommendations on how capacity-building, technical assistance and technology transfer could be further enhanced under this Article.

## Article 15

### Implementation and Compliance Committee

1. A mechanism, including a Committee as a subsidiary body of the Conference of the Parties, is hereby established to promote implementation of, and review compliance with, all provisions of this Convention. The mechanism, including the Committee, shall be facilitative in nature and shall pay particular attention to the respective national capabilities and circumstances of Parties.

2. The Committee shall promote implementation of, and review compliance with, all provisions of this Convention. The Committee shall examine both individual and systemic issues of implementation and compliance and make recommendations, as appropriate, to the Conference of the Parties.

3. The Committee shall consist of 15 members, nominated by Parties and elected by the Conference of the Parties, with due consideration to equitable geographical representation based on the five regions of the United Nations; the first members shall be elected at the first meeting of the Conference of the Parties and thereafter in accordance with the rules of procedure approved by the Conference of the Parties pursuant to paragraph 5; the members of the Committee shall have competence in a field relevant to this Convention and reflect an appropriate balance of expertise.

4. The Committee may consider issues on the basis of:

(a) Written submissions from any Party with respect to its own compliance;

(b) National reports in accordance with Article 21; and

(c) Requests from the Conference of the Parties.

5. The Committee shall elaborate its rules of procedure, which shall be subject to approval by the second meeting of the Conference of the Parties; the Conference of the Parties may adopt further terms of reference for the Committee.

6. The Committee shall make every effort to adopt its recommendations by consensus. If all efforts at consensus have been exhausted and no consensus is reached, such recommendations shall as a last resort be adopted by a three-fourths majority vote of the members present and voting, based on a quorum of two-thirds of the members.

## **Article 16**

### **Health aspects**

1. Parties are encouraged to:

(a) Promote the development and implementation of strategies and programmes to identify and protect populations at risk, particularly vulnerable populations, and which may include adopting science-based health guidelines relating to the exposure to mercury and mercury compounds, setting targets for mercury exposure reduction, where appropriate, and public education, with the participation of public health and other involved sectors;

(b) Promote the development and implementation of science-based educational and preventive programmes on occupational exposure to mercury and mercury compounds;

(c) Promote appropriate health-care services for prevention, treatment and care for populations affected by the exposure to mercury or mercury compounds; and

(d) Establish and strengthen, as appropriate, the institutional and health professional capacities for the prevention, diagnosis, treatment and monitoring of health risks related to the exposure to mercury and mercury compounds.



2. The Conference of the Parties, in considering health-related issues or activities, should:

(a) Consult and collaborate with the World Health Organization, the International Labour Organization and other relevant intergovernmental organizations, as appropriate; and

(b) Promote cooperation and exchange of information with the World Health Organization, the International Labour Organization and other relevant intergovernmental organizations, as appropriate.

## Article 17

### Information exchange

1. Each Party shall facilitate the exchange of:

(a) Scientific, technical, economic and legal information concerning mercury and mercury compounds, including toxicological, ecotoxicological and safety information;

(b) Information on the reduction or elimination of the production, use, trade, emissions and releases of mercury and mercury compounds;

(c) Information on technically and economically viable alternatives to:

(i) Mercury-added products;

(ii) Manufacturing processes in which mercury or mercury compounds are used; and

(iii) Activities and processes that emit or release mercury or mercury compounds;

including information on the health and environmental risks and economic and social costs and benefits of such alternatives; and

(d) Epidemiological information concerning health impacts associated with exposure to mercury and mercury compounds, in close cooperation with the World Health Organization and other relevant organizations, as appropriate.

2. Parties may exchange the information referred to in paragraph 1 directly, through the Secretariat, or in cooperation with other relevant organizations, including the secretariats of chemicals and wastes conventions, as appropriate.

3. The Secretariat shall facilitate cooperation in the exchange of information referred to in this Article, as well as with relevant organizations, including the secretariats of multilateral environmental agreements and other international initiatives. In addition to information from Parties, this information shall include information from intergovernmental and non-governmental organizations with expertise in the area of mercury, and from national and international institutions with such expertise.

4. Each Party shall designate a national focal point for the exchange of information under this Convention, including with regard to the consent of importing Parties under Article 3.

5. For the purposes of this Convention, information on the health and safety of humans and the environment shall not be regarded as confidential. Parties that exchange other information pursuant to this Convention shall protect any confidential information as mutually agreed.

## **Article 18**

### **Public information, awareness and education**

1. Each Party shall, within its capabilities, promote and facilitate:

(a) Provision to the public of available information on:

(i) The health and environmental effects of mercury and mercury compounds;

(ii) Alternatives to mercury and mercury compounds;

(iii) The topics identified in paragraph 1 of Article 17;

(iv) The results of its research, development and monitoring activities under Article 19; and

(v) Activities to meet its obligations under this Convention;

(b) Education, training and public awareness related to the effects of exposure to mercury and mercury compounds on human health

and the environment in collaboration with relevant intergovernmental and non-governmental organizations and vulnerable populations, as appropriate.

2. Each Party shall use existing mechanisms or give consideration to the development of mechanisms, such as pollutant release and transfer registers where applicable, for the collection and dissemination of information on estimates of its annual quantities of mercury and mercury compounds that are emitted, released or disposed of through human activities.

## Article 19

### Research, development and monitoring

1. Parties shall endeavour to cooperate to develop and improve, taking into account their respective circumstances and capabilities:

(a) Inventories of use, consumption, and anthropogenic emissions to air and releases to water and land of mercury and mercury compounds;

(b) Modelling and geographically representative monitoring of levels of mercury and mercury compounds in vulnerable populations and in environmental media, including biotic media such as fish, marine mammals, sea turtles and birds, as well as collaboration in the collection and exchange of relevant and appropriate samples;

(c) Assessments of the impact of mercury and mercury compounds on human health and the environment, in addition to social, economic and cultural impacts, particularly in respect of vulnerable populations;

(d) Harmonized methodologies for the activities undertaken under subparagraphs (a), (b) and (c);

(e) Information on the environmental cycle, transport (including long-range transport and deposition), transformation and fate of mercury and mercury compounds in a range of ecosystems, taking appropriate account of the distinction between anthropogenic and natural emissions and releases of mercury and of remobilization of mercury from historic deposition;

(f) Information on commerce and trade in mercury and mercury compounds and mercury-added products; and

(g) Information and research on the technical and economic availability of mercury-free products and processes and on best available techniques and best environmental practices to reduce and monitor emissions and releases of mercury and mercury compounds.

2. Parties should, where appropriate, build on existing monitoring networks and research programmes in undertaking the activities identified in paragraph 1.

## **Article 20**

### **Implementation plans**

1. Each Party may, following an initial assessment, develop and execute an implementation plan, taking into account its domestic circumstances, for meeting the obligations under this Convention. Any such plan should be transmitted to the Secretariat as soon as it has been developed.

2. Each Party may review and update its implementation plan, taking into account its domestic circumstances and referring to guidance from the Conference of the Parties and other relevant guidance.

3. Parties should, in undertaking work in paragraphs 1 and 2, consult national stakeholders to facilitate the development, implementation, review and updating of their implementation plans.

4. Parties may also coordinate on regional plans to facilitate implementation of this Convention.

## **Article 21**

### **Reporting**

1. Each Party shall report to the Conference of the Parties, through the Secretariat, on the measures it has taken to implement the provisions of this Convention and on the effectiveness of such measures and the possible challenges in meeting the objectives of the Convention.

2. Each Party shall include in its reporting the information as called for in Articles 3, 5, 7, 8 and 9 of this Convention.

3. The Conference of the Parties shall, at its first meeting, decide upon the timing and format of the reporting to be followed by the Parties, taking into account the desirability of coordinating reporting with other relevant chemicals and wastes conventions.

## **Article 22**

### **Effectiveness evaluation**

1. The Conference of the Parties shall evaluate the effectiveness of this Convention, beginning no later than six years after the date of entry into force of the Convention and periodically thereafter at intervals to be decided by it.

2. To facilitate the evaluation, the Conference of the Parties shall, at its first meeting, initiate the establishment of arrangements for providing itself with comparable monitoring data on the presence and movement of mercury and mercury compounds in the environment as well as trends in levels of mercury and mercury compounds observed in biotic media and vulnerable populations.

3. The evaluation shall be conducted on the basis of available scientific, environmental, technical, financial and economic information, including:

(a) Reports and other monitoring information provided to the Conference of the Parties pursuant to paragraph 2;

(b) Reports submitted pursuant to Article 21;

(c) Information and recommendations provided pursuant to Article 15; and

(d) Reports and other relevant information on the operation of the financial assistance, technology transfer and capacity-building arrangements put in place under this Convention.

## **Article 23**

### **Conference of the Parties**

1. A Conference of the Parties is hereby established.

2. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme no later than one year after the date of entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be decided by the Conference.

3. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

4. The Conference of the Parties shall by consensus agree upon and adopt at its first meeting rules of procedure and financial rules for itself and any of its subsidiary bodies, as well as financial provisions governing the functioning of the Secretariat.

5. The Conference of the Parties shall keep under continuous review and evaluation the implementation of this Convention. It shall perform the functions assigned to it by this Convention and, to that end, shall:

(a) Establish such subsidiary bodies as it considers necessary for the implementation of this Convention;

(b) Cooperate, where appropriate, with competent international organizations and intergovernmental and non-governmental bodies;

(c) Regularly review all information made available to it and to the Secretariat pursuant to Article 21;

(d) Consider any recommendations submitted to it by the Implementation and Compliance Committee;

(e) Consider and undertake any additional action that may be required for the achievement of the objectives of this Convention; and

(f) Review Annexes A and B pursuant to Article 4 and Article 5.

6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not a Party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or international,

governmental or non-governmental, that is qualified in matters covered by this Convention and has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

## **Article 24**

### **Secretariat**

1. A Secretariat is hereby established.
2. The functions of the Secretariat shall be:
  - (a) To make arrangements for meetings of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;
  - (b) To facilitate assistance to Parties, particularly developing country Parties and Parties with economies in transition, on request, in the implementation of this Convention;
  - (c) To coordinate, as appropriate, with the secretariats of relevant international bodies, particularly other chemicals and waste conventions;
  - (d) To assist Parties in the exchange of information related to the implementation of this Convention;
  - (e) To prepare and make available to the Parties periodic reports based on information received pursuant to Articles 15 and 21 and other available information;
  - (f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
  - (g) To perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.

3. The secretariat functions for this Convention shall be performed by the Executive Director of the United Nations Environment Programme, unless the Conference of the Parties decides, by a three-fourths majority of the Parties present and voting, to entrust the secretariat functions to one or more other international organizations.

4. The Conference of the Parties, in consultation with appropriate international bodies, may provide for enhanced cooperation and coordination between the Secretariat and the secretariats of other chemicals and wastes conventions. The Conference of the Parties, in consultation with appropriate international bodies, may provide further guidance on this matter.

## **Article 25**

### **Settlement of disputes**

1. Parties shall seek to settle any dispute between them concerning the interpretation or application of this Convention through negotiation or other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party that is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, with regard to any dispute concerning the interpretation or application of this Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) Arbitration in accordance with the procedure set out in Part I of Annex E;

(b) Submission of the dispute to the International Court of Justice.

3. A Party that is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with paragraph 2.

4. A declaration made pursuant to paragraph 2 or 3 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.



5. The expiry of a declaration, a notice of revocation or a new declaration shall in no way affect proceedings pending before an arbitral tribunal or the International Court of Justice, unless the parties to the dispute otherwise agree.

6. If the parties to a dispute have not accepted the same means of dispute settlement pursuant to paragraph 2 or 3, and if they have not been able to settle their dispute through the means mentioned in paragraph 1 within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to a conciliation commission at the request of any party to the dispute. The procedure set out in Part II of Annex E shall apply to conciliation under this Article.

## **Article 26**

### **Amendments to the Convention**

1. Amendments to this Convention may be proposed by any Party.
2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate the proposed amendment to the signatories to this Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.
4. An adopted amendment shall be communicated by the Depositary to all Parties for ratification, acceptance or approval.
5. Ratification, acceptance or approval of an amendment shall be notified to the Depositary in writing. An amendment adopted in accordance with paragraph 3 shall enter into force for the Parties having consented to be bound by it on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least three-fourths of the Parties

that were Parties at the time at which the amendment was adopted. Thereafter, the amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance or approval of the amendment.

## **Article 27**

### **Adoption and amendment of annexes**

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.

2. Any additional annexes adopted after the entry into force of this Convention shall be restricted to procedural, scientific, technical or administrative matters.

3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:

(a) Additional annexes shall be proposed and adopted according to the procedure laid down in paragraphs 1–3 of Article 26;

(b) Any Party that is unable to accept an additional annex shall so notify the Depositary, in writing, within one year from the date of communication by the Depositary of the adoption of such annex. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time notify the Depositary, in writing, that it withdraws a previous notification of non-acceptance in respect of an additional annex, and the annex shall thereupon enter into force for that Party subject to subparagraph (c); and

(c) On the expiry of one year from the date of the communication by the Depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification of non-acceptance in accordance with the provisions of subparagraph (b).

4. The proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to the Convention, except that an amendment to an annex shall not enter into

force with regard to any Party that has made a declaration with regard to amendment of annexes in accordance with paragraph 5 of Article 30, in which case any such amendment shall enter into force for such a Party on the ninetieth day after the date it has deposited with the Depositary its instrument of ratification, acceptance, approval or accession with respect to such amendment.

5. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force.

## **Article 28**

### **Right to vote**

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2.

2. A regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

## **Article 29**

### **Signature**

This Convention shall be opened for signature at Kumamoto, Japan, by all States and regional economic integration organizations on 10 and 11 October 2013, and thereafter at the United Nations Headquarters in New York until 9 October 2014.

## **Article 30**

### **Ratification, acceptance, approval or accession**

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration

organizations from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization that becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organization shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification of the extent of its competence.

4. Each State or regional economic integration organization is encouraged to transmit to the Secretariat at the time of its ratification, acceptance, approval or accession of the Convention information on its measures to implement the Convention.

5. In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with regard to it, any amendment to an annex shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.

### **Article 31**

#### **Entry into force**

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization that ratifies, accepts or approves this Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of that organization.

### **Article 32**

#### **Reservations**

No reservations may be made to this Convention.

### **Article 33**

#### **Withdrawal**

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

## **Article 34**

### **Depositary**

The Secretary-General of the United Nations shall be the Depositary of this Convention.

## **Article 35**

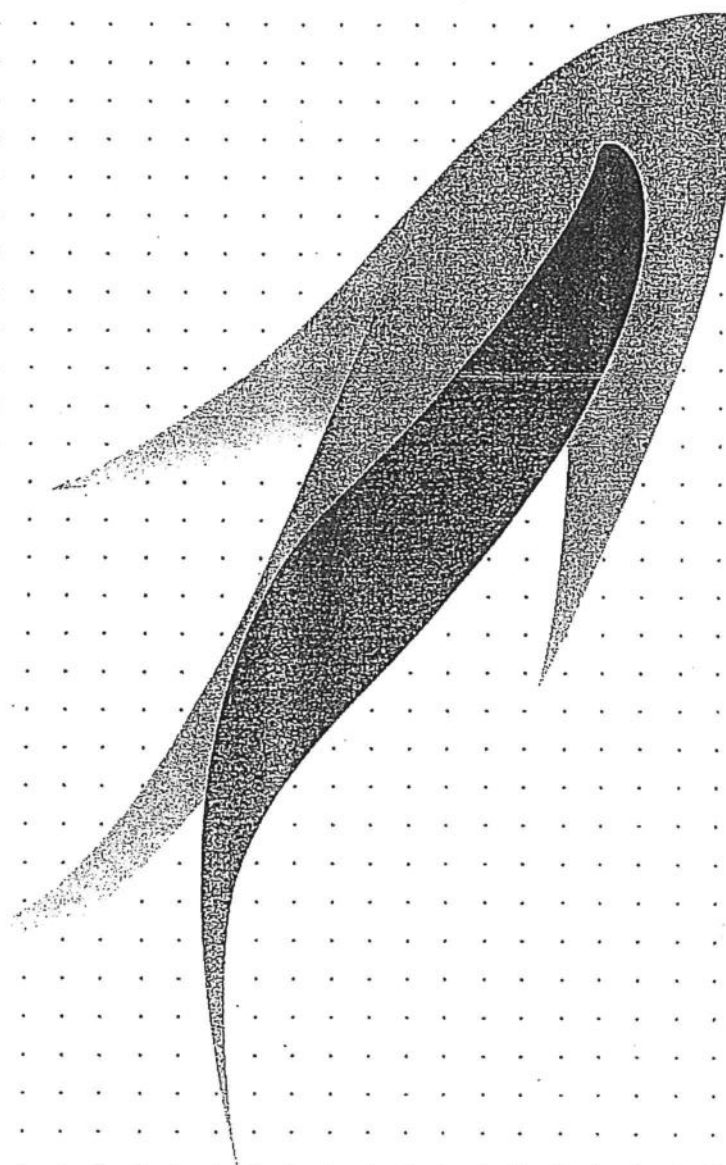
### **Authentic texts**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Depositary.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Kumamoto, Japan, on this tenth day of October, two thousand and thirteen.

ANNEXES



## Annex A

### Mercury-added products

The following products are excluded from this Annex:

- (a) Products essential for civil protection and military uses;
- (b) Products for research, calibration of instrumentation, for use as reference standard;
- (c) Where no feasible mercury-free alternative for replacement is available, switches and relays, cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays, and measuring devices;
- (d) Products used in traditional or religious practices; and
- (e) Vaccines containing thiomersal as preservatives.

#### Part I: Products subject to Article 4, paragraph 1

Mercury-added products	Date after which the manufacture, import or export of the product shall not be allowed (phase-out date)
Batteries, except for button zinc silver oxide batteries with a mercury content < 2% and button zinc air batteries with a mercury content < 2%	2020
Switches and relays, except very high accuracy capacitance and loss measurement bridges and high frequency radio frequency switches and relays in monitoring and control instruments with a maximum mercury content of 20 mg per bridge, switch or relay	2020
Compact fluorescent lamps (CFLs) for general lighting purposes that are ≤ 30 watts with a mercury content exceeding 5 mg per lamp burner	2020



Linear fluorescent lamps (LFLs) for general lighting purposes: (a) Triband phosphor < 60 watts with a mercury content exceeding 5 mg per lamp; (b) Halophosphate phosphor ≤ 40 watts with a mercury content exceeding 10 mg per lamp	2020
High pressure mercury vapour lamps (HPMV) for general lighting purposes	2020
Mercury in cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays: (a) short length (≤ 500 mm) with mercury content exceeding 3.5 mg per lamp (b) medium length (> 500 mm and ≤ 1 500 mm) with mercury content exceeding 5 mg per lamp (c) long length (> 1 500 mm) with mercury content exceeding 13 mg per lamp	2020
Cosmetics (with mercury content above 1ppm), including skin lightening soaps and creams, and not including eye area cosmetics where mercury is used as a preservative and no effective and safe substitute preservatives are available <sup>17</sup>	2020
Pesticides, biocides and topical antiseptics	2020
The following non-electronic measuring devices except non-electronic measuring devices installed in large-scale equipment or those used for high precision measurement, where no suitable mercury-free alternative is available: (a) barometers; (b) hygrometers; (c) manometers; (d) thermometers; (e) sphygmomanometers.	2020

<sup>17</sup>The intention is not to cover cosmetics, soaps or creams with trace contaminants of mercury.

## Part II: Products subject to Article 4, paragraph 3

Mercury-added products	Provisions
Dental amalgam	<p>Measures to be taken by a Party to phase down the use of dental amalgam shall take into account the Party's domestic circumstances and relevant international guidance and shall include two or more of the measures from the following list:</p> <ul style="list-style-type: none"> <li>(i) Setting national objectives aiming at dental caries prevention and health promotion, thereby minimizing the need for dental restoration;</li> <li>(ii) Setting national objectives aiming at minimizing its use;</li> <li>(iii) Promoting the use of cost-effective and clinically effective mercury-free alternatives for dental restoration;</li> <li>(iv) Promoting research and development of quality mercury-free materials for dental restoration;</li> <li>(v) Encouraging representative professional organizations and dental schools to educate and train dental professionals and students on the use of mercury-free dental restoration alternatives and on promoting best management practices;</li> <li>(vi) Discouraging insurance policies and programmes that favour dental amalgam use over mercury-free dental restoration;</li> <li>(vii) Encouraging insurance policies and programmes that favour the use of quality alternatives to dental amalgam for dental restoration;</li> <li>(viii) Restricting the use of dental amalgam to its encapsulated form;</li> <li>(ix) Promoting the use of best environmental practices in dental facilities to reduce releases of mercury and mercury compounds to water and land.</li> </ul>

## Annex B

### Manufacturing processes in which mercury or mercury compounds are used

#### Part I: Processes subject to Article 5, paragraph 2

Manufacturing processes using mercury or mercury compounds	Phase-out date
Chlor-alkali production	2025
Acetaldehyde production in which mercury or mercury compounds are used as a catalyst	2018

#### Part II: Processes subject to Article 5, paragraph 3

Mercury using process	Provisions
Vinyl chloride monomer production	<p>Measures to be taken by the Parties shall include but not be limited to:</p> <ul style="list-style-type: none"><li>(i) Reduce the use of mercury in terms of per unit production by 50 per cent by the year 2020 against 2010 use;</li><li>(ii) Promoting measures to reduce the reliance on mercury from primary mining;</li><li>(iii) Taking measures to reduce emissions and releases of mercury to the environment;</li><li>(iv) Supporting research and development in respect of mercury-free catalysts and processes;</li><li>(v) Not allowing the use of mercury five years after the Conference of the Parties has established that mercury-free catalysts based on existing processes have become technically and economically feasible;</li><li>(vi) Reporting to the Conference of the Parties on its efforts to develop and/or identify alternatives and phase out mercury use in accordance with Article 21.</li></ul>

Sodium or Potassium Methylate or Ethylate	<p>Measures to be taken by the Parties shall include but not be limited to:</p> <ul style="list-style-type: none"> <li>(i) Measures to reduce the use of mercury aiming at the phase out of this use as fast as possible and within 10 years of the entry into force of the Convention;</li> <li>(ii) Reduce emissions and releases in terms of per unit production by 50 per cent by 2020 compared to 2010;</li> <li>(iii) Prohibiting the use of fresh mercury from primary mining;</li> <li>(iv) Supporting research and development in respect of mercury-free processes;</li> <li>(v) Not allowing the use of mercury five years after the Conference of the Parties has established that mercury-free processes have become technically and economically feasible;</li> <li>(vi) Reporting to the Conference of the Parties on its efforts to develop and/or identify alternatives and phase out mercury use in accordance with Article 21.</li> </ul>
Production of polyurethane using mercury containing catalysts	<p>Measures to be taken by the Parties shall include but not be limited to:</p> <ul style="list-style-type: none"> <li>(i) Taking measures to reduce the use of mercury, aiming at the phase out of this use as fast as possible, within 10 years of the entry into force of the Convention;</li> <li>(ii) Taking measures to reduce the reliance on mercury from primary mercury mining;</li> <li>(iii) Taking measures to reduce emissions and releases of mercury to the environment;</li> <li>(iii) Encouraging research and development in respect of mercury-free catalysts and processes;</li> <li>(iv) Reporting to the Conference of the Parties on its efforts to develop and/or identify alternatives and phase out mercury use in accordance with Article 21.</li> </ul> <p>Paragraph 6 of Article 5 shall not apply to this manufacturing process.</p>

## Annex C

### Artisanal and small-scale gold mining

#### National action plans

1. Each Party that is subject to the provisions of paragraph 3 of Article 7 shall include in its national action plan:

- (a) National objectives and reduction targets;
- (b) Actions to eliminate:
  - (i) Whole ore amalgamation;
  - (ii) Open burning of amalgam or processed amalgam;
  - (iii) Burning of amalgam in residential areas; and
  - (iv) Cyanide leaching in sediment, ore or tailings to which mercury has been added without first removing the mercury;
- (c) Steps to facilitate the formalization or regulation of the artisanal and small-scale gold mining sector;
- (d) Baseline estimates of the quantities of mercury used and the practices employed in artisanal and small-scale gold mining and processing within its territory;
- (e) Strategies for promoting the reduction of emissions and releases of, and exposure to, mercury in artisanal and small-scale gold mining and processing, including mercury-free methods;
- (f) Strategies for managing trade and preventing the diversion of mercury and mercury compounds from both foreign and domestic sources to use in artisanal and small scale gold mining and processing;
- (g) Strategies for involving stakeholders in the implementation and continuing development of the national action plan;
- (h) A public health strategy on the exposure of artisanal and small-scale gold miners and their communities to mercury. Such a strategy

should include, inter alia, the gathering of health data, training for health-care workers and awareness-raising through health facilities;

(i) Strategies to prevent the exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in artisanal and small-scale gold mining;

(j) Strategies for providing information to artisanal and small-scale gold miners and affected communities; and

(k) A schedule for the implementation of the national action plan.

2. Each Party may include in its national action plan additional strategies to achieve its objectives, including the use or introduction of standards for mercury-free artisanal and small-scale gold mining and market-based mechanisms or marketing tools.

## Annex D

### List of point sources of emissions of mercury and mercury compounds to the atmosphere

#### Point source category:

Coal-fired power plants;

Coal-fired industrial boilers;

Smelting and roasting processes used in the production of non-ferrous metals;<sup>1/</sup>

Waste incineration facilities;

Cement clinker production facilities.

<sup>1/</sup> For the purpose of this Annex, "non-ferrous metals" refers to lead, zinc, copper and industrial gold.



## **Annex E**

### **Arbitration and conciliation procedures**

#### **Part I: Arbitration procedure**

The arbitration procedure for purposes of paragraph 2 (a) of Article 25 of this Convention shall be as follows:

##### **Article 1**

1. A Party may initiate recourse to arbitration in accordance with Article 25 of this Convention by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of claim, together with any supporting documents. Such notification shall state the subject matter of arbitration and include, in particular, the Articles of this Convention the interpretation or application of which are at issue.

2. The claimant party shall notify the Secretariat that it is referring a dispute to arbitration pursuant to Article 25 of this Convention. The notification shall be accompanied by the written notification of the claimant party, the statement of claim, and the supporting documents referred to in paragraph 1 above. The Secretariat shall forward the information thus received to all Parties.

##### **Article 2**

1. If a dispute is referred to arbitration in accordance with Article 1 above, an arbitral tribunal shall be established. It shall consist of three members.

2. Each party to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by agreement the third arbitrator, who shall be the President of the tribunal. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement. The President of the tribunal shall not be a national of any of the parties to the dispute, nor have his or her usual place of residence in the territory of any of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.



3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

#### **Article 3**

1. If one of the parties to the dispute does not appoint an arbitrator within two months of the date on which the respondent party receives the notification of the arbitration, the other party may inform the Secretary-General of the United Nations, who shall make the designation within a further two-month period.

2. If the President of the arbitral tribunal has not been designated within two months of the date of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

#### **Article 4**

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

#### **Article 5**

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

#### **Article 6**

The arbitral tribunal may, at the request of one of the parties to the dispute, recommend essential interim measures of protection.

#### **Article 7**

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

#### **Article 8**

The parties to the dispute and the arbitrators are under an obligation to protect the confidentiality of any information or documents that they receive in confidence during the proceedings of the arbitral tribunal.

#### **Article 9**

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs and shall furnish a final statement thereof to the parties.

#### **Article 10**

A Party that has an interest of a legal nature in the subject matter of the dispute that may be affected by the decision may intervene in the proceedings with the consent of the arbitral tribunal.

#### **Article 11**

The arbitral tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

#### **Article 12**

Decisions of the arbitral tribunal on both procedure and substance shall be taken by a majority vote of its members.

#### **Article 13**

1. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its decision. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings.
2. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

#### **Article 14**

The arbitral tribunal shall render its final decision within five months of the date on which it is fully constituted, unless it finds it necessary to extend the time limit for a period that should not exceed five more months.

#### **Article 15**

The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

#### **Article 16**

The final decision shall be binding on the parties to the dispute. The interpretation of this Convention given by the final decision shall also be binding upon a Party intervening under Article 10 above insofar as it relates to matters in respect of which that Party intervened. The final decision shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

#### **Article 17**

Any disagreement that may arise between those bound by the final decision in accordance with Article 16 above, as regards the interpretation or manner of implementation of that final decision, may be submitted by any of them for decision to the arbitral tribunal that rendered it.

## Part II: Conciliation procedure

The conciliation procedure for purposes of paragraph 6 of Article 25 of this Convention shall be as follows:

### Article 1

A request by a party to a dispute to establish a conciliation commission pursuant to paragraph 6 of Article 25 of this Convention shall be addressed in writing to the Secretariat, with a copy to the other party or parties to the dispute. The Secretariat shall forthwith inform all Parties accordingly.

### Article 2

1. The conciliation commission shall, unless the parties to the dispute otherwise agree, comprise three members, one appointed by each party concerned and a President chosen jointly by those members.
2. In disputes between more than two parties, parties in the same interest shall appoint their member of the commission jointly by agreement.

### Article 3

If any appointment by the parties to the dispute is not made within two months of the date of receipt by the Secretariat of the written request referred to in Article 1 above, the Secretary-General of the United Nations shall, upon request by any party, make such appointment within a further two-month period.

### Article 4

If the President of the conciliation commission has not been chosen within two months of the appointment of the second member of the commission, the Secretary-General of the United Nations shall, upon request by any party to the dispute, designate the President within a further two-month period.

### Article 5

The conciliation commission shall assist the parties to the dispute in an independent and impartial manner in their attempt to reach an amicable resolution.

#### Article 6

1. The conciliation commission may conduct the conciliation proceedings in such a manner as it considers appropriate, taking fully into account the circumstances of the case and the views the parties to the dispute may express, including any request for a swift resolution. It may adopt its own rules of procedure as necessary, unless the parties otherwise agree.

2. The conciliation commission may, at any time during the proceedings, make proposals or recommendations for a resolution of the dispute.

#### Article 7

The parties to the dispute shall cooperate with the conciliation commission. In particular, they shall endeavour to comply with requests by the commission to submit written materials, provide evidence and attend meetings. The parties and the members of the conciliation commission are under an obligation to protect the confidentiality of any information or documents they receive in confidence during the proceedings of the commission.

#### Article 8

The conciliation commission shall take its decisions by a majority vote of its members.

#### Article 9

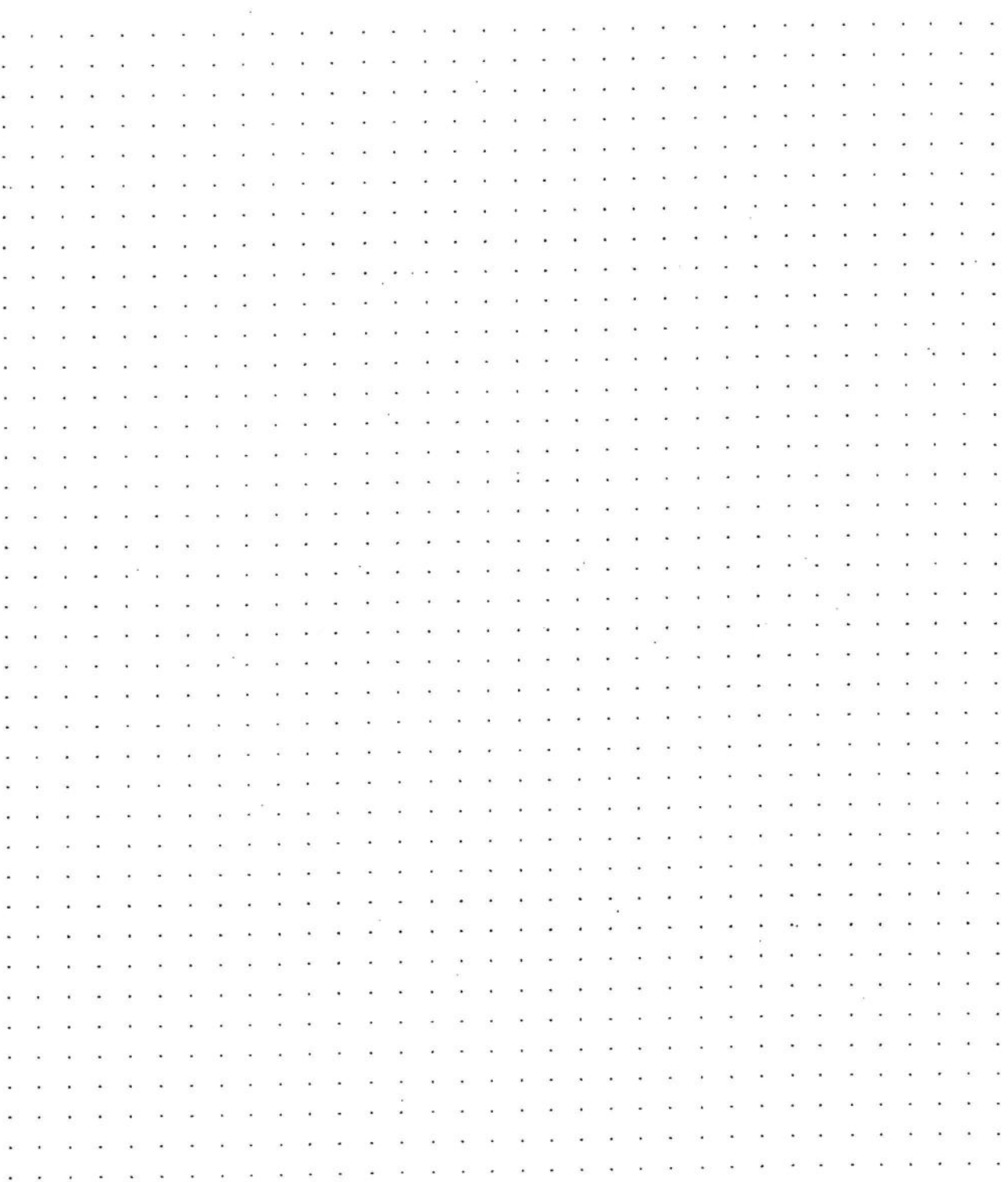
Unless the dispute has already been resolved, the conciliation commission shall render a report with recommendations for resolution of the dispute no later than twelve months of being fully constituted, which the parties to the dispute shall consider in good faith.

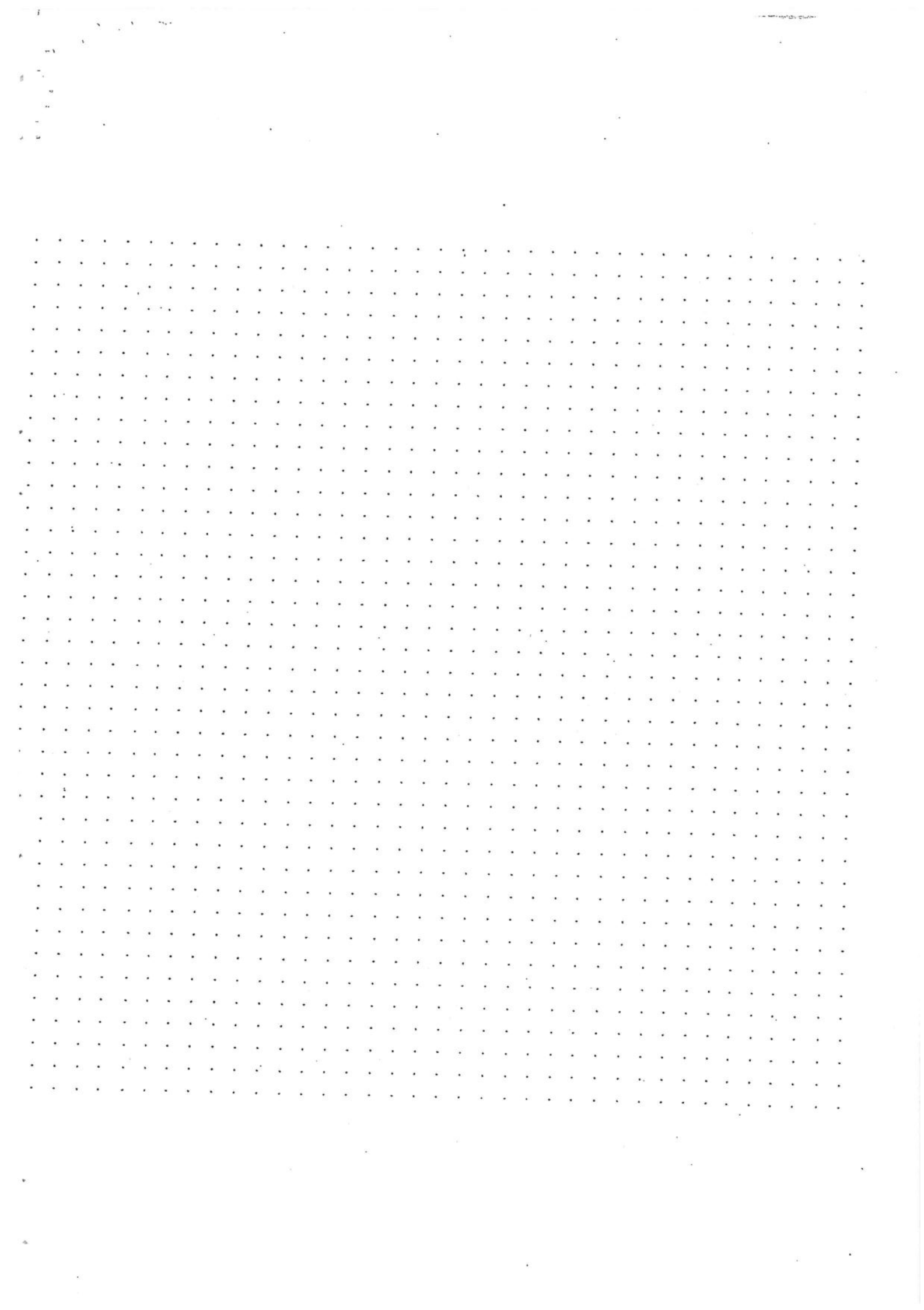
#### Article 10

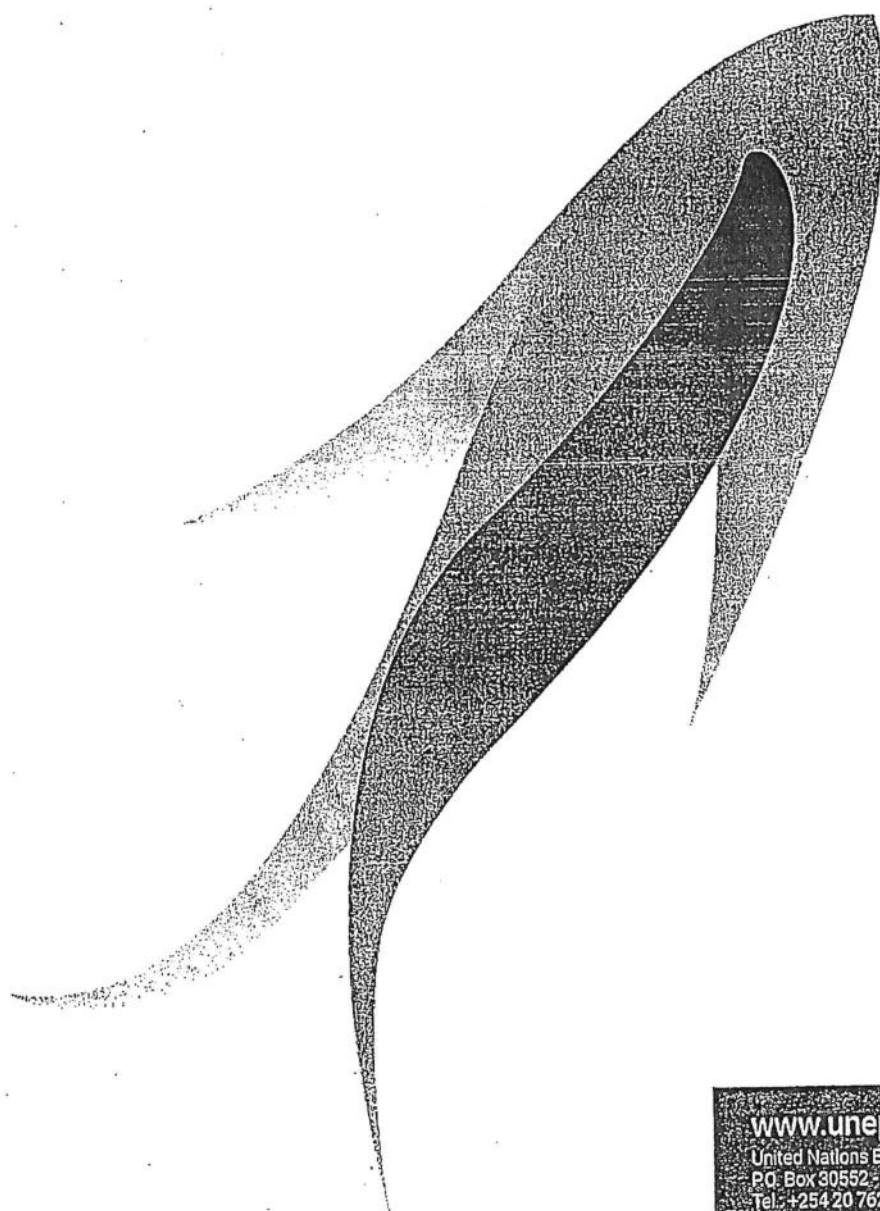
Any disagreement as to whether the conciliation commission has competence to consider a matter referred to it shall be decided by the commission.

#### Article 11

The costs of the conciliation commission shall be borne by the parties to the dispute in equal shares, unless they agree otherwise. The commission shall keep a record of all its costs and shall furnish a final statement thereof to the parties.







[www.mercuryconvention.org](http://www.mercuryconvention.org)

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## SUMMARY OF THE COTONOU AGREEMENT

### WHAT IS THE AIM OF THE PARTNERSHIP AGREEMENT?

The Cotonou Agreement is the backbone of the partnership between the European Union (EU), EU Member States and 79 African, Caribbean and Pacific (ACP) countries.

It aims to contribute to the eradication of poverty, to support the sustainable economic, cultural and social development of the partner countries and to help the progressive integration of their respective economies into the world economy.

### KEY POINTS

#### Main principles

The Cotonou Agreement is a close partnership based on a series of principles:

- the partners to the agreement are equal;
- the ACP countries determine their own development policies;
- cooperation is not only among governments – parliaments, local authorities, civil society, the private sector and economic and social partners play a role as well;
- Cooperation arrangements and priorities vary according to aspects such as countries' levels of development.

#### Organisation

Joint institutions are in place to support the implementation of the Cotonou Agreement.

- The ACP-EU Council of Ministers, assisted by the Committee of Ambassadors:
  - conducts political dialogue;
  - adopts policy guidelines; and
  - takes decisions to implement the agreement.
- The council presents an annual progress report to the ACP-EU Joint Parliamentary Assembly. This consultative body makes recommendations on the achievement of the agreement's objectives.
- The Joint ACP-EU Ministerial Trade Committee discusses trade-related issues of concern to all ACP countries. It monitors the negotiation and implementation of economic partnership agreements. It also examines the

impact of the multilateral trade negotiations on ACP–EU trade and the development of ACP economies.

- The ACP–EU Development Finance Cooperation Committee examines the implementation of development finance cooperation and monitors its progress.

### Political dimension

The political dimension of the Cotonou Agreement is important and includes:

- a comprehensive political dialogue on national, regional and global issues;
- promoting human rights and democratic principles;
- developing peacebuilding policies, conflict prevention and resolution;
- addressing migration issues and security issues, including the fight against terrorism and countering the proliferation of weapons of mass destruction.

### Activities

The agreement includes cooperation activities to boost:

- economic development focusing on the industrial, agricultural or tourism sectors of ACP countries;
- social and human development to improve health, education and nutrition services; and
- regional cooperation and integration to promote and expand trade among ACP countries.

These activities are funded through the European Development Fund and, since 2021, by the Neighbourhood, Development and International Cooperation Instrument.

The agreement complies with World Trade Organization rules and enables ACP countries to play a full part in international trade.

### Revision of the agreement

The agreement was signed in 2000.

It was most recently revised in 2017 by Decision (EU) 2017/435. In 2010, the agreement was adapted to focus on issues such as:

- climate change;
- food security;
- HIV/AIDS;
- sustainability of fisheries;
- strengthening security in fragile regions; and

- meeting the millennium development goals (replaced, in 2016, by 17 sustainable development goals).

Negotiations on a new agreement started in September 2018.

A communication was adopted in 2016 on a renewed partnership for the post-2020 period. It:

- builds on the UN's 2030 agenda for sustainable development;
- supports the global strategy for the EU's foreign and security policy, which provides strategic guidance on the EU's external interests and ambitions;
- is coherent with the European consensus on development.

## DATE OF ENTRY INTO FORCE

It entered into force on 1 April 2003 and was initially due to expire by 29 February 2020.

Decision No 1/2022 extends the application of the agreement until 30 June 2023, or until the entry into force (or the provisional application) of the new agreement replacing Partnership Agreement 2000/483/EC.


## BACKGROUND

A new agreement between the EU and ACP countries started to be negotiated in 2018 and will replace Partnership Agreement 2000/483/EC.


## ISSUES ARISING

The successor to the 2000 Cotonou Agreement, the pact promises greater political dialogue and development cooperation, though it will not change trading arrangements between the EU and ACP, which will continue to be based on the regional economic partnership agreements and the Anything But Arms agreement. It also includes chapters on security and migration, one of the most controversial issues throughout the talks, including new commitments from the ACP countries on return and re-admission of failed economic migrants, and new text on agreeing "circular migration" and legal pathways into Europe.

However, Hungary, which had urged the Commission to demand tougher commitments on return and readmission of migrants throughout the negotiating process, continues to block attempts by the EU executive to ratify the agreement. The European Parliament, meanwhile, has repeated its demands that EU states break the logjam and finalise the agreement.

 THE NATIONAL ASSEMBLY	
DATE: 09 MAR 2020	DAY: Thursday
TABLED BY:	Hon. Naomi Wago, M.P. (Deputy Majority Whip)
	Joyce Lemelette

PARTNERSHIP AGREEMENT  
 BETWEEN THE MEMBERS OF THE AFRICAN,  
 CARIBBEAN AND PACIFIC GROUP OF STATES  
 OF THE ONE PART, AND THE EUROPEAN COMMUNITY  
 AND ITS MEMBER STATES, OF THE OTHER PART,  
 SIGNED IN [...] ON [...]  
 ([...] AGREEMENT)

 THE NATIONAL ASSEMBLY	
DATE: 09 MAR 2020	DAY: Thursday
TABLED BY:	
CLERK-AT THE TABLE:	

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## PREAMBLE

HAVING REGARD TO the Treaty establishing the European Community, on the one hand, and the Georgetown Agreement establishing the Group of African, Caribbean and Pacific States (ACP), on the other;

AFFIRMING their commitment to work together towards the achievement of the objectives of poverty eradication, sustainable development and the gradual integration of the ACP countries into the world economy;

ASSERTING their resolve to make, through their cooperation, a significant contribution to the economic, social and cultural development of the ACP States and to the greater well-being of their population, helping them facing the challenges of globalisation and strengthening the ACP-EU Partnership in the effort to give the process of globalisation a stronger social dimension;

REAFFIRMING their willingness to revitalise their special relationship and to implement a comprehensive and integrated approach for a strengthened partnership based on political dialogue, development cooperation and economic and trade relations;

ACKNOWLEDGING that a political environment guaranteeing peace, security and stability, respect for human rights, democratic principles and the rule of law, and good governance is part and parcel of long term development; acknowledging that responsibility for establishing such an environment rests primarily with the countries concerned;

ACKNOWLEDGING that sound and sustainable economic policies are prerequisites for development;

REFERRING to the principles of the Charter of the United Nations, and recalling the Universal Declaration of Human Rights, the conclusions of the 1993 Vienna Conference on Human Rights, the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the 1949 Geneva Conventions and the other instruments of international humanitarian law, the 1954 Convention relating to the status of stateless persons, the 1951 Geneva Convention relating to the Status of Refugees and the 1967 New York Protocol relating to the Status of Refugees;

CONSIDERING the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, the African Charter on Human and Peoples' Rights and the American Convention on Human Rights as positive regional contributions to the respect of human rights in the European Union and in the ACP States;

RECALLING the Libreville and Santo Domingo declarations of the Heads of State and Government of the ACP countries at their Summits in 1997 and 1999;

CONSIDERING that the development targets and principles agreed in United Nations Conferences and the target, set by the OECD Development Assistance Committee, to reduce by one half the proportion of people living in extreme poverty by the year 2015 provide a clear vision and must underpin ACP-EU cooperation within this Agreement;



PAYING particular attention to the pledges made at the Rio, Vienna, Cairo, Copenhagen, Beijing, Istanbul and Rome UN conferences and acknowledging the need for further action to be taken in order to achieve the goals and implement the action programmes which have been drawn up in those fora;

ANXIOUS to respect basic labour rights, taking account of the principles laid down in the relevant conventions of the International Labour Organisation;

RECALLING the commitments within the framework of the World Trade Organisation,

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

## PART 1

### GENERAL PROVISIONS

#### TITLE I

#### OBJECTIVES, PRINCIPLES AND ACTORS

##### CHAPTER 1

##### OBJECTIVES AND PRINCIPLES

##### ARTICLE 1

##### Objectives of the partnership

The Community and its Member States, of the one part, and the ACP States, of the other part, hereinafter referred to as the "Parties" hereby conclude this Agreement in order to promote and expedite the economic, cultural and social development of the ACP States, with a view to contributing to peace and security and to promoting a stable and democratic political environment.

The partnership shall be centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy.

These objectives and the Parties' international commitments shall inform all development strategies and shall be tackled through an integrated approach taking account at the same time of the political, economic, social, cultural and environmental aspects of development. The partnership shall provide a coherent support framework for the development strategies adopted by each ACP State.

Sustained economic growth, developing the private sector, increasing employment and improving access to productive resources shall all be part of this framework. Support shall be given to the respect of the rights of the individual and meeting basic needs, the promotion of social development and the conditions for an equitable distribution of the fruits of growth. Regional and sub-regional integration processes which foster the integration of the ACP countries into the world economy in terms of trade and private investment shall be encouraged and supported. Building the capacity of the actors in development and improving the institutional framework necessary for social cohesion, for the functioning of a democratic society and market economy, and for the emergence of an active and organised civil society shall be integral to the approach. Systematic account shall be taken of the situation of women and gender issues in all areas – political, economic and social. The principles of sustainable management of natural resources and the environment shall be applied and integrated at every level of the partnership.

## ARTICLE 2

### Fundamental principles

ACP-EC cooperation, underpinned by a legally binding system and the existence of joint institutions, shall be exercised on the basis of the following fundamental principles:

- equality of the partners and ownership of the development strategies: for the purposes of implementing the objectives of the partnership, the ACP States shall determine the development strategies for their economies and societies in all sovereignty and with due regard for the essential elements described in Article 9; the partnership shall encourage ownership of the development strategies by the countries and populations concerned;
- participation: apart from central government as the main partner, the partnership shall be open to different kinds of other actors in order to encourage the integration of all sections of society, including the private sector and civil society organisations, into the mainstream of political, economic and social life;
- the pivotal role of dialogue and the fulfilment of mutual obligations: the obligations assumed by the Parties in the framework of their dialogue shall be central to their partnership and cooperation relations;
- differentiation and regionalisation: cooperation arrangements and priorities shall vary according to a partner's level of development, its needs, its performance and its long-term development strategy. Particular emphasis shall be placed on the regional dimension. Special treatment shall be given to the least-developed countries. The vulnerability of landlocked and island countries shall be taken into account.

### ARTICLE 3

#### Achievement of this Agreement's objectives

The Parties shall, each as far as it is concerned in the framework of this Agreement, take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from this Agreement and to facilitate the attainment of the objectives thereof. They shall refrain from any measures liable to jeopardise these objectives.

### CHAPTER 2

#### THE ACTORS OF THE PARTNERSHIP

### ARTICLE 4

#### General approach

The ACP States shall determine the development principles, strategies and models of their economies and societies in all sovereignty. They shall establish, with the Community, the cooperation programmes provided for under this Agreement. However, the parties recognise the complementary role of and potential for contributions by non-State actors to the development process. To this end, under the conditions laid down in this Agreement, non-State actors shall, where appropriate:

- be informed and involved in consultation on cooperation policies and strategies, on priorities for cooperation especially in areas that concern or directly affect them, and on the political dialogue;
- be provided with financial resources, under the conditions laid down in this Agreement in order to support local development processes;
- be involved in the implementation of cooperation project and programmes in areas that concern them or where these actors have a comparative advantage;
- be provided with capacity-building support in critical areas in order to reinforce the capabilities of these actors, particularly as regards organisation and representation, and the establishment of consultation mechanisms including channels of communication and dialogue, and to promote strategic alliances.

## ARTICLE 5

### Information

Cooperation will support operation to provide more information and create greater awareness of the basic features of ACP-EU Partnership. Cooperation will also:

- encourage partnership and build links between ACP and EU actors;
- strengthen networking and exchange of expertise and experience among the actors.

## ARTICLE 6

### Definitions

1. The actors of cooperation will include:

(a) State (local, national and regional);

(b) Non-State:

- Private sector;
- Economic and social partners, including trade union organisations;
- Civil Society in all its forms according to national characteristics.

2. Recognition by the parties of non-governmental actors shall depend on the extent to which they address the needs of the population, on their specific competencies and whether they are organised and managed democratically and transparently.

## ARTICLE 7

### Capacity building

The contribution of civil society to development can be enhanced by strengthening community organisations and non-profit non-governmental organisations in all spheres of cooperation. This will require:

- encouraging and supporting the creation and development of such organisations;
- establishing arrangements for involving such organisations in the design, implementation and evaluation of development strategies and programmes.

## TITLE II

### THE POLITICAL DIMENSION

## ARTICLE 8

### Political dialogue

1. The Parties shall regularly engage in a comprehensive, balanced and deep political dialogue leading to commitments on both sides.



2. The objective of this dialogue shall be to exchange information, to foster mutual understanding, and to facilitate the establishment of agreed priorities and shared agendas, in particular by recognising existing links between the different aspects of the relations between the Parties and the various areas of cooperation as laid down in this Agreement. The dialogue shall facilitate consultations between the Parties within international fora. The objectives of the dialogue shall also include preventing situations arising in which one Party might deem it necessary to have recourse to the non-execution clause.
3. The dialogue shall cover all the aims and objectives laid down in this Agreement as well as all questions of common, general, regional or sub-regional interest. Through dialogue, the Parties shall contribute to peace, security and stability and promote a stable and democratic political environment. It shall encompass cooperation strategies as well as global and sectoral policies, including environment, gender, migration and questions related to the cultural heritage.
4. The dialogue shall focus, inter alia, on specific political issues of mutual concern or of general significance for the attainment of the objectives of this Agreement, such as the arms trade, excessive military expenditure, drugs and organised crime, or ethnic, religious or racial discrimination. The dialogue shall also encompass a regular assessment of the developments concerning the respect for human rights, democratic principles, the rule of law and good governance.
5. Broadly based policies to promote peace and to prevent, manage and resolve violent conflicts shall play a prominent role in this dialogue, as shall the need to take full account of the objective of peace and democratic stability in the definition of priority areas of cooperation.

6. The dialogue shall be conducted in a flexible manner. Dialogue shall be formal or informal according to the need, and conducted within and outside the institutional framework, in the appropriate format, and at the appropriate level including regional, sub-regional or national level.
7. Regional and sub-regional organisations as well as representatives of civil society organisations shall be associated with this dialogue.

## ARTICLE 9

### Essential Elements and Fundamental Element

1. Cooperation shall be directed towards sustainable development centred on the human person, who is the main protagonist and beneficiary of development; this entails respect for and promotion of all human rights.

Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development.

2. The Parties refer to their international obligations and commitments concerning respect for human rights. They reiterate their deep attachment to human dignity and human rights, which are legitimate aspirations of individuals and peoples. Human rights are universal, indivisible and inter-related. The Parties undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural. In this context, the Parties reaffirm the equality of men and women.

The Parties reaffirm that democratisation, development and the protection of fundamental freedoms and human rights are interrelated and mutually reinforcing. Democratic principles are universally recognised principles underpinning the organisation of the State to ensure the legitimacy of its authority, the legality of its actions reflected in its constitutional, legislative and regulatory system, and the existence of participatory mechanisms. On the basis of universally recognised principles, each country develops its democratic culture.

The structure of government and the prerogatives of the different powers shall be founded on rule of law, which shall entail in particular effective and accessible means of legal redress, an independent legal system guaranteeing equality before the law and an executive that is fully subject to the law.

Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.

3. In the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption.

Good governance, which underpins the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute a fundamental element of this Agreement. The Parties agree that only serious cases of corruption, including acts of bribery leading to such corruption, as defined in Article 97 constitute a violation of that element.

4. The Partnership shall actively support the promotion of human rights, processes of democratisation, consolidation of the rule of law, and good governance.

These areas will be an important subject for the political dialogue. In the context of this dialogue, the Parties shall attach particular importance to the changes underway and to the continuity of the progress achieved. This regular assessment shall take into account each country's economic, social, cultural and historical context.

These areas will also be a focus of support for development strategies. The Community shall provide support for political, institutional and legal reforms and for building the capacity of public and private actors and civil society in the framework of strategies agreed jointly between the State concerned and the Community.

## ARTICLE 10

### Other elements of the political environment

1. The Parties consider the following elements as contributing to the maintenance and consolidation of a stable and democratic political environment:

- sustainable and equitable development involving, inter alia, access to productive resources, essential services and justice;
- greater involvement of an active and organised civil society and the private sector.

2. The Parties recognise that the principles of the market economy, supported by transparent competition rules and sound economic and social policies, contribute to achieving the objectives of the partnership.

## ARTICLE 11

### Peace-building policies, conflict prevention and resolution

1. The Parties shall pursue an active, comprehensive and integrated policy of peace-building and conflict prevention and resolution within the framework of the Partnership. This policy shall be based on the principle of ownership. It shall in particular focus on building regional, sub-regional and national capacities, and on preventing violent conflicts at an early stage by addressing their root-causes in a targeted manner, and with an adequate combination of all available instruments.
2. The activities in the field of peace-building, conflict prevention and resolution shall in particular include support for balancing political, economic, social and cultural opportunities among all segments of society, for strengthening the democratic legitimacy and effectiveness of governance, for establishing effective mechanisms for the peaceful conciliation of group interests, for bridging dividing lines among different segments of society as well as support for an active and organised civil society.



3. Relevant activities shall also include, inter alia, support for mediation, negotiation and reconciliation efforts, for effective regional management of shared, scarce natural resources, for demobilisation and reintegration of former combatants into the society, for addressing the problem of child soldiers, as well as for suitable action to set responsible limits to military expenditure and the arms trade, including through support for the promotion and application of agreed standards and codes of conduct. In this context, particular emphasis shall be given to the fight against anti-personnel landmines as well as to addressing an excessive and uncontrolled spread, illegal trafficking and accumulation of small arms and light weapons.

4. In situations of violent conflict the Parties shall take all suitable action to prevent an intensification of violence, to limit its territorial spread, and to facilitate a peaceful settlement of the existing disputes. Particular attention shall be paid to ensuring that financial resources for cooperation are used in accordance with the principles and objectives of the Partnership, and to preventing a diversion of funds for belligerent purposes.

5. In post-conflict situations, the Parties shall take all suitable action to facilitate the return to a non-violent, stable and self-sustainable situation. The Parties shall ensure the creation of the necessary links between emergency measures, rehabilitation and development cooperation.

## ARTICLE 12

### Coherence of Community policies and their impact on the implementation of this Agreement

Without prejudice to Article 96, where the Community intends, in the exercise of its powers, to take a measure which might affect the interests of the ACP States, as far as this Agreement's objectives are concerned, it shall inform in good time the said States of its intentions. Towards this end, the Commission shall communicate simultaneously to the Secretariat of the ACP States its proposal for such measures. Where necessary, a request for information may also take place on the initiative of the ACP States.

At their request, consultations shall be held promptly so that account may be taken of their concerns as to the impact of those measures before any final decision is made.

After such consultations have taken place, the ACP States may, in addition, transmit their concerns in writing to the Community as soon as possible and submit suggestions for amendments indicating the way their concerns should be met.

If the Community does not accede to the ACP States' submissions, it shall advise them as soon as possible giving its reasons.

The ACP States shall also be provided with adequate information on the entry into force of such decisions, in advance whenever possible.

## ARTICLE 13

### Migration

1. The issue of migration shall be the subject of in-depth dialogue in the framework of the ACP-EU Partnership.

The Parties reaffirm their existing obligations and commitments in international law to ensure respect for human rights and to eliminate all forms of discrimination based particularly on origin, sex, race, language and religion.

2. The Parties agree to consider that a partnership implies, with relation to migration, fair treatment of third country nationals who reside legally on their territories, integration policy aiming at granting them rights and obligations comparable to those of their citizens, enhancing non-discrimination in economic, social and cultural life and developing measures against racism and xenophobia.

3. The treatment accorded by each Member State to workers of ACP countries legally employed in its territory, shall be free from any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals. Further in this regard, each ACP State shall accord comparable non-discriminatory treatment to workers who are nationals of a Member State.



4. The Parties consider that strategies aiming at reducing poverty, improving living and working conditions, creating employment and developing training contribute in the long term to normalising migratory flows.

The Parties will take account, in the framework of development strategies and national and regional programming, of structural constraints associated with migratory flows with the purpose of supporting the economic and social development of the regions from which migrants originate and of reducing poverty.

The Community shall support, through national and regional Cooperation programmes, the training of ACP nationals in their country of origin, in another ACP country or in a Member State of the European Union. As regards training in a Member State, the Parties shall ensure that such action is geared towards the vocational integration of ACP nationals in their countries of origin.

The Parties shall develop cooperation programmes to facilitate the access of students from ACP States to education, in particular through the use of new communication technologies.

5.(a) In the framework of the political dialogue the Council of Ministers shall examine issues arising from illegal immigration with a view to establishing, where appropriate, the means for a prevention policy.

(b) In this context the Parties agree in particular to ensure that the rights and dignity of individuals are respected in any procedure initiated to return illegal immigrants to their countries of origin. In this connection the authorities concerned shall extend to them the administrative facilities necessary for their return.

(c) The Parties further agree that:

- (i) each Member State of the European Union shall accept the return of and readmission of any of its nationals who are illegally present on the territory of an ACP State, at that State's request and without further formalities;

each of the ACP States shall accept the return of and readmission of any of its nationals who are illegally present on the territory of a Member State of the European Union, at that Member State's request and without further formalities.

The Member States and the ACP States will provide their nationals with appropriate identity documents for such purposes.

In respect of the Member States of the European Union, the obligations in this paragraph apply only in respect of those persons who are to be considered their nationals for the Community purposes in accordance with Declaration No 2 to the Treaty establishing the European Community. In respect of ACP States, the obligations in this paragraph apply only in respect of those persons who are considered as their nationals in accordance with their respective legal system.

- (ii) at the request of a Party, negotiations shall be initiated with ACP States aiming at concluding in good faith and with due regard for the relevant rules of international law, bilateral agreements governing specific obligations for the readmission and return of their nationals. These agreements shall also cover, if deemed necessary by any of the Parties, arrangements for the readmission of third country nationals and stateless persons. Such agreements will lay down the details about the categories of persons covered by these arrangements as well as the modalities of their readmission and return.

Adequate assistance to implement these agreements will be provided to the ACP States.

- (iii) for the purposes of this point (c), the term "Parties" shall refer to the Community, any of its Member States and any ACP State.

## PART 2

### INSTITUTIONAL PROVISIONS

#### ARTICLE 14

##### The joint institutions

The institutions of this Agreement are the Council of Ministers, the Committee of Ambassadors and the Joint Parliamentary Assembly.

## ARTICLE 15

### The Council of Ministers

1. The Council of Ministers shall comprise, on the one hand, the members of the Council of the European Union and members of the Commission of the European Communities and, on the other, a member of the government of each ACP State.

The office of the President of the Council of Ministers shall be held alternately by a member of the Council of the European Union and a member of the government of an ACP State.

The Council shall meet as a rule once a year on the initiative of the President and whenever it seems necessary, in a form and a geographical composition appropriate to the issues to be addressed.

2. The functions of the Council of Ministers shall be to:

- (a) conduct the political dialogue;
- (b) adopt the policy guidelines and take the decisions necessary for the implementation of the provisions of this Agreement, in particular as regards development strategies in the specific areas provided for by this Agreement or any other area that should prove relevant, and as regards procedures;
- (c) examine and resolve any issue liable to impede the effective and efficient implementation of this Agreement or present an obstacle to achieving its objectives;

(d) ensure the smooth functioning of the consultation mechanisms.

3. The Council of Ministers shall take its decisions by common agreement of the Parties. The proceedings of the Council of Ministers shall be valid only if half the members of the Council of the European Union, one member of the Commission and two-thirds of the members representing the governments of the ACP States are present. Any member of the Council of Ministers unable to attend may be represented. The representative shall exercise all the rights of that member.

It may take decisions that are binding on the Parties and frame resolutions, recommendations and opinions. It shall examine and take into consideration resolutions and recommendations adopted by the Joint Parliamentary Assembly.

The Council of Ministers shall conduct an ongoing dialogue with the representatives of the social and economic partners and other actors of civil society in the ACP and the EU. To that end, consultations may be held alongside its meetings.

4. The Council of Ministers may delegate powers to the Committee of Ambassadors.

5. The Council of Ministers shall adopt its rules of procedure within six months of the entry into force of this Agreement.

## ARTICLE 16

### The Committee of Ambassadors

1. The Committee of Ambassadors shall comprise, on the one hand, the permanent representative of each Member State to the European Union and a representative of the Commission and, on the other, the head of mission of each ACP State to the European Union.

The office of Chairman of the Committee of Ambassadors shall be held alternately by a Permanent Representative of a Member State designated by the Community, and a head of mission representing an ACP State, designated by the ACP States.

2. The Committee shall assist the Council of Ministers in the fulfilment of its tasks and carry out any mandate entrusted to it by the Council. In this context, it shall monitor implementation of this Agreement and progress towards achieving the objectives set therein.

The Committee of Ambassadors shall meet regularly, in particular to prepare the Council sessions and whenever it proves necessary.

3. The Committee shall adopt its rules of procedure within six months of the entry into force of this Agreement.

## ARTICLE 17

### The Joint Parliamentary Assembly

1. The Joint Parliamentary Assembly shall be composed of equal numbers of EU and ACP representatives. The members of the Joint Parliamentary Assembly shall be, on the one hand, members of the European Parliament and, on the other, members of parliament or, failing this, representatives designated by the parliament of each ACP State. In the absence of a parliament, the attendance of a representative from the ACP State concerned shall be subject to the prior approval of the Joint Parliamentary Assembly.
2. The role of the Joint Parliamentary Assembly, as a consultative body, shall be to:
  - promote democratic processes through dialogue and consultation;
  - facilitate greater understanding between the peoples of the European Union and those of the ACP States and raise public awareness of development issues;
  - discuss issues pertaining to development and the ACP-EU Partnership;
  - adopt resolutions and make recommendations to the Council of Ministers with a view to achieving the objectives of this Agreement.

3. The Joint Parliamentary Assembly shall meet twice a year in plenary session, alternately in the European Union and in an ACP State. With a view to strengthening regional integration and fostering cooperation between national parliaments, meetings between EU and ACP members of parliament may be arranged at regional or subregional level.

The Joint Parliamentary Assembly shall organise regular contacts with representatives of the ACP-EU economic and social partners and the other actors of civil society in order to obtain their views on the attainment of the objectives of this Agreement.

4. The Joint Parliamentary Assembly shall adopt its rules of procedure within six months of the entry into force of this Agreement.

### PART 3

## COOPERATION STRATEGIES

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### ARTICLE 18

The cooperation strategies shall be based on development strategies and economic and trade cooperation which are interlinked and complementary. The Parties shall ensure that the efforts undertaken in both aforementioned areas are mutually reinforcing.



## TITLE I

### DEVELOPMENT STRATEGIES

#### CHAPTER 1

#### GENERAL FRAMEWORK

#### ARTICLE 19

##### Principles and objectives

1. The central objective of ACP-EC cooperation is poverty reduction and ultimately its eradication; sustainable development; and progressive integration of the ACP countries into the world economy. In this context, cooperation framework and orientations shall be tailored to the individual circumstances of each ACP country, shall promote local ownership of economic and social reforms and the integration of the private sector and civil society actors into the development process.
2. Cooperation shall refer to the conclusions of United Nations Conferences and to the objectives, targets and action programmes agreed at international level and to their follow up as a basis for development principles. Cooperation shall also refer to the international development cooperation targets and shall pay particular attention to putting in place qualitative and quantitative indicators of progress.

3. Governments and non-State actors in each ACP country shall initiate consultations on country development strategies and community support thereto.

## ARTICLE 20

### The Approach

The objectives of ACP-EC development cooperation shall be pursued through integrated strategies that incorporate economic, social, cultural, environmental and institutional elements that must be locally owned. Cooperation shall thus provide a coherent enabling framework of support to the ACP's own development strategies, ensuring complementarity and interaction between the various elements. In this context and within the framework of development policies and reforms pursued by the ACP States, ACP-EC cooperation strategies shall aim at:

- (a) achieving rapid and sustained job-creating economic growth, developing the private sector, increasing employment, improving access to productive economic activities and resource, and fostering regional cooperation and integration;
- (b) promoting human and social development helping to ensure that the fruits of growth are widely and equitably shared and promoting gender equality;
- (c) promoting cultural values of communities and specific interactions with economic, political and social elements;

- (d) promoting institutional reforms and development, strengthening the institutions necessary for the consolidation of democracy, good governance and for efficient and competitive market economies; and building capacity for development and partnership; and
- (e) promoting environmental sustainability, regeneration and best practices, and the preservation of natural resource base.

2. Systematic account shall be taken in mainstreaming into all areas of cooperation the following thematic or cross-cutting themes : gender issues, environmental issues and institutional development and capacity building. These areas shall also be eligible for Community support.

3. The detailed texts as regards development cooperation objectives and strategies, in particular sectoral policies and strategies shall be incorporated in a compendium providing operational guidelines in specific areas or sectors of cooperation. These texts may be revised, reviewed and/or amended by the Council of Ministers on the basis of a recommendation from the ACP-EC Development Finance Cooperation Committee.

## CHAPTER 2

### AREAS OF SUPPORT

#### SECTION 1

#### ECONOMIC DEVELOPMENT

#### ARTICLE 21

##### Investment and private sector development

1. Cooperation shall support the necessary economic and institutional reforms and policies at national and/or regional level, aiming at creating a favourable environment for private investment, and the development of a dynamic, viable and competitive private sector. Cooperation shall further support:

- (a) the promotion of public-private sector dialogue and cooperation;
- (b) the development of entrepreneurial skills and business culture;
- (c) privatisation and enterprise reform; and
- (d) development and modernisation of mediation and arbitration systems.

2. Cooperation shall also support improving the quality, availability and accessibility of financial and non-financial services to private enterprises, both formal and informal; by:

- (a) catalysing and leveraging flows of private savings, both domestic and foreign, into the financing of private enterprises by supporting policies for developing a modern financial sector including a capital market, financial institutions and sustainable microfinance operations;
- (b) the development and strengthening of business institutions and intermediary organisations, associations, chambers of commerce and local providers from the private sector supporting and providing non-financial services to enterprises such as professional, technical, management, training and commercial support services; and
- (c) supporting institutions, programmes, activities and initiatives that contribute to the development and transfer of technologies and know-how and best practices on all aspects of business management.

3. Cooperation shall promote business development through the provision of finance, guarantee facilities and technical support aimed at encouraging and supporting the creation, establishment, expansion, diversification, rehabilitation, restructuring, modernisation or privatisation of dynamic, viable and competitive enterprises in all economic sectors as well as financial intermediaries such as development finance and venture capital institutions, and leasing companies by:

- (a) creating and/or strengthening financial instruments in the form of investment capital;
- (b) improving access to essential inputs such as business information and advisory, consultancy or technical assistance services;

- (c) enhancement of export activities, in particular through capacity building in all trade-related areas; and
  - (d) encouraging inter-firm linkages, networks and cooperation including those involving the transfer of technology and know-how at national, regional and ACP-EU levels, and partnerships with private foreign investors which are consistent with the objectives and guidelines of ACP-EC Development cooperation.
4. Cooperation shall support microenterprise development through better access to financial and non-financial services; an appropriate policy and regulatory framework for their development; and provide training and information services on best practices in microfinance.
5. Support for investment and private sector development shall integrate actions and initiatives at macro, meso and micro economic levels.

## ARTICLE 22

### Macroeconomic and structural reforms and policies

1. Cooperation shall support ACP efforts to implement:
- (a) macroeconomic growth and stabilisation through disciplined fiscal and monetary policies that result in the reduction of inflation, and improve external and fiscal balances, by strengthening fiscal discipline, enhancing budgetary transparency and efficiency, improving the quality, the equity and composition of fiscal policy; and

- (b) structural policies designed to reinforce the role of the different actors, especially the private sector and improve the environment for increases in business, investment and employment, as well as:
    - (i) liberalise trade and foreign exchange regimes and current account convertibility, having regard to the particular circumstances of each country;
    - (ii) strengthen labour and product-market reforms;
    - (iii) encourage financial systems reforms which help to develop viable banking and non-banking systems, capital markets and financial services, including micro-finance;
    - (iv) improve the quality of private and public services; and
    - (v) encourage regional cooperation and progressive integration of macroeconomic and monetary policies.
2. The design of macroeconomic policies and structural adjustment programmes shall reflect the socio-political background and institutional capacity of the countries concerned, ensure a positive impact on poverty reduction and social services access and shall be based on the following principles:
- (a) the ACP States shall bear primary responsibility for the analysis of the problems to be solved, the design and the implementation of the reforms;

- (b) support programmes shall be adapted to the different situation in each ACP State and be sensitive to the social conditions, culture and environment of these States;
- (c) the right of the ACP States to determine the direction and the sequencing of their development strategies and priorities shall be recognised and respected;
- (d) the pace of reforms shall be realistic and compatible with each ACP State's capacities and resources; and
- (e) strengthening the communication and the information of populations on economic and social reforms and policies.

## ARTICLE 23

### Economic sector development

Cooperation shall support sustainable policy and institutional reforms and the investments necessary for equitable access to economic activities and productive resources, particularly:

- (a) the development of training systems that help increase productivity in both the formal and the informal sectors;
- (b) capital, credit, land, especially as regards property rights and use;



- (c) development of rural strategies aimed at establishing a framework for participatory decentralised planning, resource allocation and management;
- (d) agricultural production strategies, national and regional food security policies, sustainable development of water resources and fisheries as well as marine resources within the economic exclusive zones of the ACP States. Any fishery agreement that may be negotiated between the Community and the ACP States shall pay due consideration to consistency with the development strategies in this area;
- (e) economic and technological infrastructure and services, including transport, telecommunication systems, communication services and the development of information society;
- (f) development of competitive industrial, mining and energy sectors, while encouraging private sector involvement and development;
- (g) trade development, including the promotion of fair trade;
- (h) development of business, finance and banking; and other service sectors;
- (i) tourism development; and

- (j) development of scientific, technological and research infrastructure and services; including the enhancement, transfer and absorption of new technologies;
- (k) the strengthening of capacities in productive areas, especially in public and private sectors.

## ARTICLE 24

### Tourism

Cooperation will aim at the sustainable development of the tourism industry in ACP countries and sub-regions, recognising its increasing importance to the growth of the services sector in ACP countries and to the expansion of their global trade, its ability to stimulate other sectors of economic activity, and the role it can play in poverty eradication.

Cooperation programmes and projects will support the efforts of ACP countries to establish and improve the countries legal and institutional framework and resources for the development and implementation of sustainable tourism policies and programmes, as well as inter alia, improving the competitive position of the sector, especially small and medium-sized enterprises (SMEs), investment support and promotion, product development including the development of indigenous cultures in ACP countries, and strengthening linkages between tourism and other sectors of economic activity.

## SECTION 2

### SOCIAL AND HUMAN DEVELOPMENT

#### ARTICLE 25

##### Social sector development

1. Cooperation shall support ACP States' efforts at developing general and sectoral policies and reforms which improve the coverage, quality of and access to basic social infrastructure and services and take account of local needs and specific demands of the most vulnerable and disadvantaged, thus reducing the inequalities of access to these services. Special attention shall be paid to ensuring adequate levels of public spending in the social sectors. In this context, cooperation shall aim at:
  - (a) improving education and training, and building technical capacity and skills;
  - (b) improving health systems and nutrition, eliminating hunger and malnutrition, ensuring adequate food supply and security;
  - (c) integrating population issues into development strategies in order to improve reproductive health, primary health care, family planning; and prevention of female genital mutilation;
  - (d) promoting the fight against HIV/AIDS;
  - (e) increasing the security of household water and improving access to safe water and adequate sanitation;

- (f) improving the availability of affordable and adequate shelter for all through supporting low-cost and low-income housing programs and improving urban development; and
- (g) encouraging the promotion of participatory methods of social dialogue as well as respect for basic social rights.

2. Cooperation shall also support capacity-building in social areas such as programmes for training in the design of social policies and modern methods for managing social projects and programmes; policies conducive to technological innovation and research; building local expertise and promoting partnerships; and round-table discussions at national and/or regional level.

3. Cooperation shall promote and support the development and implementation of policies and of systems of social protection and security in order to enhance social cohesion and to promote self-help and community solidarity. The focus of the support shall, inter-alia, be on developing initiatives based on economic solidarity, particularly by setting-up social development funds adapted to local needs and actors.

## ARTICLE 26

### Youth issues

Cooperation shall also support the establishment of a coherent and comprehensive policy for realising the potential of youth so that they are better integrated into society to achieve their full potential. In this context, cooperation shall support policies, measures and operations aimed at:

- (a) protecting the rights of children and youth, especially those of girl children;

- (b) promoting the skills, energy, innovation and potential of youth in order to enhance their economic, social and cultural opportunities and enlarge their employment opportunities in the productive sector;
- (c) helping community-based institutions to give children the opportunity to develop their physical, psychological, social and economic potential; and
- (d) reintegrating into society children in post-conflict situations through rehabilitation programmes.

## ARTICLE 27

### Cultural development

Cooperation in the area of culture shall aim at:

- (a) integrating the cultural dimension at all levels of development cooperation;
- (b) recognising, preserving and promoting cultural values and identities to enable inter-cultural dialogue;
- (c) recognising, preserving and promoting the value of cultural heritage; supporting the development of capacity in this sector; and
- (d) developing cultural industries and enhancing market access opportunities for cultural goods and services.

## SECTION 3

### REGIONAL COOPERATION AND INTEGRATION

#### ARTICLE 28

##### General approach

Cooperation shall provide effective assistance to achieve the objectives and priorities which the ACP States have set themselves in the context of regional and sub-regional cooperation and integration, including inter-regional and intra-ACP cooperation. Regional Cooperation can also involve Overseas Countries and Territories (OCTs) and outermost regions. In this context, cooperation support shall aim to:

- (a) foster the gradual integration of the ACP States into the world economy;
- (b) accelerate economic cooperation and development both within and between the regions of the ACP States;
- (c) promote the free movement of persons, goods, services, capital, labour and technology among ACP countries;
- (d) accelerate diversification of the economies of the ACP States; and coordination and harmonisation of regional and sub-regional cooperation policies; and
- (e) promote and expand inter and intra-ACP trade and with third countries.

## ARTICLE 29

### Regional economic integration

Cooperation shall, in the area of regional economic integration, support:

- (a) developing and strengthening the capacities of:
  - (i) regional integration institutions and organisations set up by the ACP States to promote regional cooperation and integration, and
  - (ii) national governments and parliaments in matters of regional integration;
- (b) fostering participation of Least Developed Countries (LDC) ACP States in the establishment of regional markets and sharing the benefits therefrom;
- (c) implementation of sectoral reform policies at regional level;
- (d) liberalisation of trade and payments;
- (e) promoting cross-border investments both foreign and domestic, and other regional or sub-regional economic integration initiatives; and
- (f) taking account of the effects of net transitional costs of regional integration on budget revenue and balance of payments.

## ARTICLE 30

### Regional Cooperation

1. Cooperation shall, in the area of regional cooperation, support a wide variety of functional and thematic fields which specifically address common problems and take advantage of scale of economies, including:

- (a) infrastructure particularly transport and communications and safety thereof and services, including the development of regional opportunities in the area of Information and Communication Technologies (ICT);
- (b) the environment; water resource management and energy;
- (c) health, education and training;
- (d) research and technological development;
- (e) regional initiatives for disaster preparedness and mitigation; and
- (f) other areas, including arms control, action against drugs, organised crimes, money laundering, bribery and corruption.

2. Cooperation shall also support inter and intra-ACP cooperation schemes and initiatives.



3. Cooperation shall help promote and develop a regional political dialogue in areas of conflict prevention and resolution; human rights and democratisation; exchange, networking, and promotion of mobility between the different actors of development, in particular in civil society.

## SECTION 4

### THEMATIC AND CROSS-CUTTING ISSUES

#### ARTICLE 31

##### Gender issues

Cooperation shall help strengthen policies and programmes that improve, ensure and broaden the equal participation of men and women in all spheres of political, economic, social and cultural life. Cooperation shall help improve the access of women to all resources required for the full exercise of their fundamental rights. More specifically, cooperation shall create the appropriate framework to:

- (a) integrate a gender-sensitive approach and concerns at every level of development cooperation including macroeconomic policies, strategies and operations; and
- (b) encourage the adoption of specific positive measures in favour of women such as:
  - (i) participation in national and local politics;

- (ii) support for women's organisations;
- (iii) access to basic social services, especially to education and training, health care and family planning;
- (iv) access to productive resources, especially to land and credit and to labour market; and
- (v) taking specific account of women in emergency aid and rehabilitation operations.

## ARTICLE 32

### Environment and natural resources

1. Cooperation on environmental protection and sustainable utilisation and management of natural resources shall aim at:
  - (a) mainstreaming environmental sustainability into all aspects of development cooperation and support programmes and projects implemented by the various actors;
  - (b) building and/or strengthening the scientific and technical human and institutional capacity for environmental management for all environmental stakeholders;

- (c) supporting specific measures and schemes aimed at addressing critical sustainable management issues and also relating to current and future regional and international commitments concerning mineral and natural resources such as:
  - (i) tropical forests, water resources, coastal, marine and fisheries resources, wildlife, soils, biodiversity;
  - (ii) protection of fragile ecosystems (e.g. coral reef);
  - (iii) renewable energy sources notably solar energy and energy efficiency;
  - (iv) sustainable rural and urban development;
  - (v) desertification, drought and deforestation;
  - (vi) developing innovative solutions to urban environmental problems; and
  - (vii) promotion of sustainable tourism.
- (d) Taking into account issues relating to the transport and disposal of hazardous waste.

2. Cooperation shall also take account of:

- (a) the vulnerability of small island ACP countries, especially to the threat posed by climate change;

- (b) the worsening drought and desertification problems especially of least developed and land-locked countries; and
- (c) institutional development and capacity building.

### ARTICLE 33

#### Institutional development and capacity building

1. Cooperation shall pay systematic attention to institutional aspects and in this context, shall support the efforts of the ACP States to develop and strengthen structures, institutions and procedures that help to:
  - (a) promote and sustain democracy, human dignity, social justice and pluralism, with full respect for diversity within and among societies;
  - (b) promote and sustain universal and full respect for and observance and protection of all human rights and fundamental freedoms;
  - (c) develop and strengthen the rule of law; and improve access to justice, while guaranteeing the professionalism and independence of the judicial systems; and
  - (d) ensure transparent and accountable governance and administration in all public institutions.
2. The Parties shall work together in the fight against bribery and corruption in all their societies.

3. Cooperation shall support ACP States' efforts to develop their public institutions into a positive force for growth and development and to achieve major improvements in the efficiency of government services as they affect the lives of ordinary people. In this context, cooperation shall assist the reform, rationalisation and the modernisation of the public sector. Specifically, cooperation support shall focus on:

- (a) the reform and modernisation of the civil service;
- (b) legal and judicial reforms and modernisation of justice systems;
- (c) improvement and strengthening of public finance management;
- (d) accelerating reforms of the banking and financial sector;
- (e) improvement of the management of public assets and reform of public procurement procedures; and
- (f) political, administrative, economic and financial decentralisation.

4. Cooperation shall also assist to restore and/or enhance critical public sector capacity and to support institutions needed to underpin a market economy, especially support for:

- (a) developing legal and regulatory capabilities needed to cope with the operation of a market economy, including competition policy and consumer policy;

- (b) improving capacity to analyse, plan, formulate and implement policies, in particular in the economic, social, environmental, research, science and technology and innovation fields;
- (c) modernising, strengthening and reforming financial and monetary institutions and improving procedures;
- (d) building the capacity at the local and municipal levels which is required to implement decentralisation policy and to increase the participation of the population in the development process; and
- (e) developing capacity in other critical areas such as:
  - (i) international negotiations; and
  - (ii) management and coordination of external aid.

5. Cooperation shall span all areas and sectors of cooperation to foster the emergence of non-State actors and the development of their capacities; and to strengthen structures for information, dialogue and consultation between them and the national authorities, including at regional level.

## TITLE II

### ECONOMIC AND TRADE COOPERATION

#### CHAPTER 1

#### OBJECTIVES AND PRINCIPLES

#### ARTICLE 34

##### Objectives

1. Economic and trade cooperation shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.
2. The ultimate objective of economic and trade cooperation is to enable the ACP States to play a full part in international trade. In this context, particular regard shall be had to the need for the ACP States to participate actively in multilateral trade negotiations. Given the current level of development of the ACP countries, economic and trade cooperation shall be directed at enabling the ACP States to manage the challenges of globalisation and to adapt progressively to new conditions of international trade thereby facilitating their transition to the liberalised global economy.

3. To this end economic and trade cooperation shall aim at enhancing the production, supply and trading capacity of the ACP countries as well as their capacity to attract investment. It shall further aim at creating a new trading dynamic between the Parties, at strengthening the ACP countries trade and investment policies and at improving the ACP countries' capacity to handle all issues related to trade.

4. Economic and trade cooperation shall be implemented in full conformity with the provisions of the WTO, including special and differential treatment, taking account of the Parties' mutual interests and their respective levels of development.

## ARTICLE 35

### Principles

1. Economic and trade cooperation shall be based on a true, strengthened and strategic partnership. It shall further be based on a comprehensive approach which builds on the strengths and achievements of the previous ACP-EC Conventions, using all means available to achieve the objectives set out above by addressing supply and demand side constraints. In this context, particular regard shall be had to trade development measures as a means of enhancing ACP States' competitiveness. Appropriate weight shall therefore be given to trade development within the ACP States' development strategies, which the Community shall support.

2. Economic and trade cooperation shall build on regional integration initiatives of ACP States, bearing in mind that regional integration is a key instrument for the integration of ACP countries into the world economy.



3. Economic and trade cooperation shall take account of the different needs and levels of development of the ACP countries and regions. In this context, the Parties reaffirm their attachment to ensuring special and differential treatment for all ACP countries and to maintaining special treatment for ACP LDCs and to taking due account of the vulnerability of small, landlocked and island countries.

## CHAPTER 2

### NEW TRADING ARRANGEMENTS

#### ARTICLE 36

##### Modalities

1. In view of the objectives and principles set out above, the Parties agree to conclude new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade.
2. The Parties agree that the new trading arrangements shall be introduced gradually and recognise the need, therefore, for a preparatory period.

3. In order to facilitate the transition to the new trading arrangements, the non-reciprocal trade preferences applied under the Fourth ACP-EC Convention shall be maintained during the preparatory period for all ACP countries, under the conditions defined in Annex V to this Agreement.

4. In this context, the Parties reaffirm the importance of the commodity protocols, attached to Annex V of this Agreement. They agree on the need to review them in the context of the new trading arrangements, in particular as regards their compatibility with WTO rules, with a view to safeguarding the benefits derived therefrom, bearing in mind the special legal status of the Sugar Protocol.

## ARTICLE 37

### Procedures

1. Economic partnership agreements shall be negotiated during the preparatory period which shall end by 31 December 2007 at the latest. Formal negotiations of the new trading arrangements shall start in September 2002 and the new trading arrangements shall enter into force by 1 January 2008, unless earlier dates are agreed between the Parties.

2. All the necessary measures shall be taken so as to ensure that the negotiations are successfully concluded within the preparatory period. To this end, the period up to the start of the formal negotiations of the new trading arrangements shall be actively used to make initial preparations for these negotiations.

3. The preparatory period shall also be used for capacity-building of ACP countries, including measures to enhance competitiveness of organisations and for support to regional trade integration in addition to assistance to budgetary adjustment and fiscal reform, as well as economic development, and for investment promotion.

4. The Parties will regularly review the progress of the preparatory work. In 2006 carry out a formal and comprehensive review of the progress to ensure that no further time is needed for preparations or negotiations.

5. Negotiations of the economic partnership agreements will be conducted by those ACP States which consider themselves in a position to do so, at the level of Heads of State or Government in accordance with the procedures agreed by the ACP Group, taking into account the process within the ACP.

6. In 2004, the Community will assess the situation of the negotiations and with the Community decide that they are not in a position to conclude the agreements and will examine all alternative possibilities, in order to establish a new framework for trade which is equivalent to their existing WTO rules.

7. Negotiations of the economic partnership agreements shall aim notably at establishing the timetable for the progressive removal of barriers to trade between the Parties, in accordance with the relevant WTO rules. On the Community side trade liberalisation shall build on the acquis and shall aim at improving current market access for the ACP countries through inter alia, a review of the rules of origin. Negotiations shall take account of the level of development and the socio-economic impact of trade measures on ACP countries, and their capacity to adapt and adjust their economies to the liberalisation process. Negotiations will therefore be as flexible as possible in establishing the duration of a sufficient transitional period, the final product coverage, taking into account sensitive sectors, and the degree of asymmetry in terms of timetable for tariff dismantlement, while remaining in conformity with WTO rules then prevailing.

8. The Parties shall closely cooperate and collaborate in the WTO with a view to defending the arrangements reached, in particular with regard to the degree of flexibility available.

9. The Community will start by the year 2000, a process which by the end of multilateral trade negotiations and at the latest 2005 will allow duty free access for essentially all products from all LDC building on the level of the existing trade provisions of the Fourth ACP-EC Convention and which will simplify and review the rules of origin, including cumulation provisions, that apply to their exports.



2. They agree to cooperate closely in identifying and furthering their common interests in international economic and trade cooperation in particular in the WTO, including participation in setting and conducting the agenda in future multilateral trade negotiations. In this context, particular attention shall be paid to improve access to the Community and other markets for products and services originating in the ACP countries.
3. They also agree on the importance of flexibility in WTO rules to take account of the ACP's level of development as well of the difficulties faced in meeting their obligations. They further agree on the need for technical assistance to enable the ACP countries to implement their commitments.
4. The Community agrees to assist the ACP States in their efforts, in accordance with the provisions set out in this Agreement, to become active members of these organisations, by developing the necessary capacity to negotiate, participate effectively, monitor and implement these agreements.

## ARTICLE 40

### Commodities

1. The Parties recognise the need to ensure a better operation of international commodity markets and to increase market transparency.
2. They confirm their willingness to step up consultations between them in the international fora and organisations dealing with commodities.
3. To this end, exchange of views shall take place at the request of either Party:





3. In the framework of the negotiations for progressive liberalisation in trade and services, as provided for in Article XIX of GATS, the Community undertakes to give sympathetic consideration to the ACP States' priorities for improvement in the EC schedule, with a view to meeting their specific interests.

4. The Parties further agree on the objective of extending under the economic partnership agreements, and after they have acquired some experience in applying the Most Favoured Nation (MFN) treatment under GATS, their partnership to encompass the liberalisation of services in accordance with the provisions of GATS and particularly those relating to the participation of developing countries in liberalisation agreements.

5. The Community shall support the ACP States' efforts to strengthen their capacity in the supply of services. Particular attention shall be paid to services related to labour, business, distribution, finance, tourism, culture and construction and related engineering services with a view to enhancing their competitiveness and thereby increasing the value and the volume of their trade in goods and services.

## ARTICLE 42

### Maritime Transport

1. The Parties acknowledge the importance of cost-effective and efficient maritime transport services in a safe and clean marine environment as the main mode of transportation facilitating international trade and thereby constituting one of the forces behind economic development and the development of trade.





2. They therefore reconfirm their respective commitments under existing multilateral agreements, in particular the protocol on Basic Telecommunications attached to the GATS, and invite those ACP countries, which are not yet members of these agreements, to accede to them.

3. They furthermore agree to participate fully and actively in any future international negotiation, which might be conducted in this area.

4. The Parties will therefore take measures that will enable inhabitants of ACP countries easy access to information and communication technologies, through, amongst other, the following measures:

- the development and encouragement of the use of affordable renewable energy resources;
- the development and deployment of more extensive low-cost wireless networks.

5. The Parties also agree to step up cooperation between them in the area of information and communication technologies, and the Information Society. This cooperation shall, in particular, be directed towards greater complementarity and harmonisation of communication systems, at national, regional and international level and their adaptation to new technologies.



2. To ensure the elimination of distortions to sound competition and with due consideration to the different levels of development and economic needs of each ACP country, they undertake to implement national or regional rules and policies including the control and under certain conditions the prohibition of agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition. The Parties further agree to prohibit the abuse by one or more undertakings of a dominant position in the common market of the Community or in the territory of ACP States.

3. The Parties also agree to reinforce cooperation in this area with a view to formulating and supporting effective competition policies with the appropriate national competition agencies that progressively ensure the efficient enforcement of the competition rules by both private and state enterprises. Cooperation in this area shall, in particular, include assistance in the drafting of an appropriate legal framework and its administrative enforcement with particular reference to the special situation of the least developed countries.

## ARTICLE 46

### Protection of Intellectual Property Rights

1. Without prejudice to the positions of the Parties in multilateral negotiations, the Parties recognise the need to ensure an adequate and effective level of protection of intellectual, industrial and commercial property rights, and other rights covered by TRIPS including protection of geographical indications, in line with the international standards with a view to reducing distortions and impediments to bilateral trade.



6. The Parties further agree to strengthen their cooperation in this field. Upon request and on mutually agreed terms and conditions cooperation shall inter alia extend to the following areas: the preparation of laws and regulations for the protection and enforcement of intellectual property rights, the prevention of the abuse of such rights by rightholders and the infringement of such rights by competitors, the establishment and reinforcement of domestic and regional offices and other agencies including support for regional intellectual property organisations involved in enforcement and protection, including the training of personnel.

## ARTICLE 47

### Standardisation and Certification

1. The Parties agree to cooperate more closely in the field of standardisation, certification and quality assurance to remove unnecessary technical barriers and to reduce differences between them in those areas, so as to facilitate trade.

In this context, they reaffirm their commitment under the Agreement on Technical Barriers to trade, annexed to the WTO Agreement (TBT Agreement).

2. Cooperation in standardisation and certification shall aim at promoting compatible systems between the Parties and in particular include:

- measures, in accordance with the TBT Agreement, to promote greater use of international technical regulations, standards and conformity assessment procedures, including sector specific measures, in accordance with the level of economic development of ACP countries,



2. They further undertake to reinforce coordination, consultation and information as regards notification and application of proposed sanitary and phytosanitary measures, in accordance with the SPS-Agreement whenever these measures might affect the interests of either Party. They also agree on prior consultation and coordination within the CODEX ALIMENTARIUS, the International Office of Epizootics and the International Plant Protection Convention, with a view to furthering their common interests.

3. The Parties agree to strengthen their cooperation with a view to reinforcing the capacity of the public and the private sector of the ACP countries in this field.

## ARTICLE 49

### Trade and Environment

1. The Parties reaffirm their commitment to promoting the development of international trade in such a way as to ensure sustainable and sound management of the environment, in accordance with the international conventions and undertakings in this area and with due regard to their respective level of development. They agree that the special needs and requirements of ACP States should be taken into account in the design and implementation of environment measures.

2. Bearing in mind the Rio Principles and with a view to reinforcing the mutual supportiveness of trade and environment, the Parties agree to enhance their cooperation in this field. Cooperation shall in particular aim at the establishment of coherent national, regional and international policies, reinforcement of quality controls of goods and services related to the environment, the improvement of environment-friendly production methods in relevant sectors.





## ARTICLE 51

### Consumer Policy and Protection of Consumer Health

1. The Parties agree to step up their cooperation in the area of consumer policy and consumer health protection, having due regard to domestic legislation to avoid barriers to trade.
2. Cooperation shall, in particular, aim at improving the institutional and technical capacity in this area, establishing rapid-alert systems of mutual information on dangerous products, exchanging information and experiences on the establishment and operation of post market surveillance of products and product safety, improving information provided to consumers on prices, characteristics of products and services offered, encouraging the development of independent consumer associations and contacts between consumer interest representatives, improving compatibility of consumer policies and systems, notifying enforcement of the legislation and promoting cooperation in investigating harmful or unfair business practices and implementing exports prohibitions in the trade between the Parties of goods and services the marketing of which has been prohibited in their country of production.

## ARTICLE 52

### Tax Carve-out Clause

1. Without prejudice to the provisions of Article 31 of Annex IV, the Most Favoured Nation treatment granted in accordance with the provisions of this Agreement, or any arrangement adopted under this Agreement, does not apply to tax advantages which the Parties are providing or may provide in the future on the basis of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation.



2. In the conclusion or implementation of such agreements, the ACP States shall not discriminate against the Community or among the Member States, without prejudice to special arrangements between developing States within the same geographical area, including reciprocal fishing arrangements, nor shall the Community discriminate against ACP States.

## ARTICLE 54

### Food security

1. With regard to available agricultural products, the Community undertakes to ensure that export refunds can be fixed further in advance for all ACP States in respect of a range of products drawn up in the light of the food requirements expressed by those States.
2. Advance fixing shall be for one year and shall be applied each year throughout the life of this Agreement, it being understood that the level of the refund will be determined in accordance with the methods normally followed by the Commission.
3. Specific agreements may be concluded with those ACP States which so request in the context of their food security policies.
4. The specific agreements referred to in paragraph 3 shall not place in jeopardy production and trade flows in ACP regions.



2. In such cases either Party may invite the other to enter into consultations. Such consultations shall begin no later than 21 days after the invitation and shall last no longer than 60 days.

3. If the consultations do not lead to a solution acceptable to both Parties or if consultation is refused, the Parties shall take the appropriate measures. In all cases, it is above all incumbent on the Party where the serious cases of corruption have occurred to take the measures necessary to remedy the situation immediately. The measures taken by either Party must be proportional to the seriousness of the situation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort.

4. Within the meaning of this Article, the term "Party" refers to the Community and the Member States of the European Union, of the one part, and each ACP State, of the other part.

## ARTICLE 98

### Dispute settlement

1. Any dispute arising from the interpretation or application of this Agreement between one or more Member States or the Community, on the one hand, and one or more ACP States on the other, shall be submitted to the Council of Ministers.

Between meetings of the Council of Ministers, such disputes shall be submitted to the Committee of Ambassadors.



## ARTICLE 99

### Denunciation clause

This Agreement may be denounced by the Community and its Member States in respect of each ACP State and by each ACP State in respect of the Community and its Member States, upon six months' notice.

## ARTICLE 100

### Status of the texts

The Protocols and Annexes attached to this Agreement shall form an integral part thereof. Annexes II, III, IV and VI may be revised, reviewed and/or amended by the Council of Ministers on the basis of a recommendation from the ACP-EC Development Finance Cooperation Committee. This Agreement, drawn up in two copies in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union and the Secretariat of the ACP States, which shall both transmit a certified copy to the government of each of the Signatory States.