



*Approved*  
*SNA*  
*21/6/23*

REPUBLIC OF KENYA

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

JUNE, 2023

THE NATIONAL ASSEMBLY PAPERS LAYD	
DATE:	21 JUN 2023 Wednesday
TABLED BY:	Hon. David Gitaria (Chairperson, Environment, Forestry and Mining Committee)
CLERK-AT THE TABLE:	Miriam Mado

## TABLE OF CONTENTS

	1
<b>LIST OF ABBREVIATIONS AND ACRONYMS .....</b>	<b>4</b>
<b>ANNEXURES.....</b>	<b>5</b>
<b>CHAIRPERSON’S FOREWORD .....</b>	<b>6</b>
<b>CHAPTER ONE .....</b>	<b>7</b>
<b>1. PREFACE.....</b>	<b>7</b>
1.1. Establishment and Mandate of the Committee	7
1.2. Subjects under the Committee	7
1.3. Committee Membership	7
1.4. Committee Secretariat	9
<b>CHAPTER TWO .....</b>	<b>10</b>
<b>2. ANALYSIS OF THE AGREEMENT .....</b>	<b>10</b>
2.1. Background	10
2.2. Clause by Clause Analysis of the Protocol	10
<b>CHAPTER THREE.....</b>	<b>15</b>
<b>3. ANALYSIS OF THE MEMORANDUM SUBMITTED BY THE MINISTRY OF FOREIGN AND DIASPORA AFFAIRS .....</b>	<b>15</b>
3.1. Object and Subject Matter of the Convention	15
3.2. Obligations imposed by the convention	15
3.3. Justification for accession	16
3.6. Implications relating to counties	17
3.7. Financial Implication	17
3.8. Ministerial responsibility	17
3.9. Reservations	17
<b>CHAPTER FOUR.....</b>	<b>18</b>
<b>4. SUBMISSION BY THE MINISTRIES AND OFFICE OF THE ATTORNEY GENERAL ....</b>	<b>18</b>
4.1. Background and Problem Statement	18
4.2. Convention Objectives	19
4.3. Specific Obligations under the Convention	20
4.4. Implementation of the Minamata Convention upon Ratification	21
4.5. Relevance of the Convention to Kenya	21
4.6. Justification for ratification	22
4.7. Legal Implications	22
4.8. Financial Implications	22

4.9. Ministerial Responsibility	22
4.10. Reservations	23
4.11. Withdrawal	23
4.12. Depository	23
<b>CHAPTER FIVE</b> .....	<b>24</b>
<b>5. COMMITTEE OBSERVATIONS</b> .....	<b>24</b>
<b>CHAPTER SIX</b> .....	<b>27</b>
<b>6. RECOMMENDATIONS</b> .....	<b>27</b>

## 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.

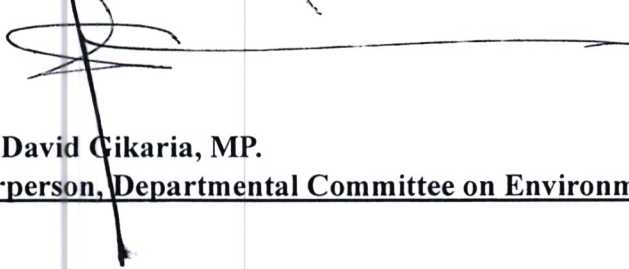
The Minamata Convention is the first worldwide environmental treaty negotiated in the twenty-first century that demonstrates an innovative and comprehensive method to handling mercury throughout its life cycle, from mining to waste disposal. The Convention came into force on August 16, 2017, 90 days 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. Masito Fatuma Hamisi, MP  
Kwale County

**ODM Party**

Hon. Mwanyanje Gertrude Mbeyu, MP  
Kilifi County

**ODM Party**

Hon. Nguro Onesmus Ngogoyo, MP  
Kajiado North Constituency

**UDA Party**

Hon. Hiribae Said Buya, MP  
Galole Constituency

**ODM Party**

Hon. Titus Lotee, MP  
Kachaliba Constituency

**KUP Party**

Hon. Salim Feisal Bader, MP  
Msambweni Constituency

**UDA Party**

Hon. Mohamed Tubi Bidu, MP  
Isiolo South Constituency

**Jubilee Party**

Hon. Emathe Joseph Namuar, MP  
Turkana Central Constituency

**UDA Party**

Hon. Yakub Adow Kuno, MP  
Bura Constituency

**UPIA 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**

#### 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 is necessary to enforce the Annex to ensure Kenya does not become a dumping ground of these 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;

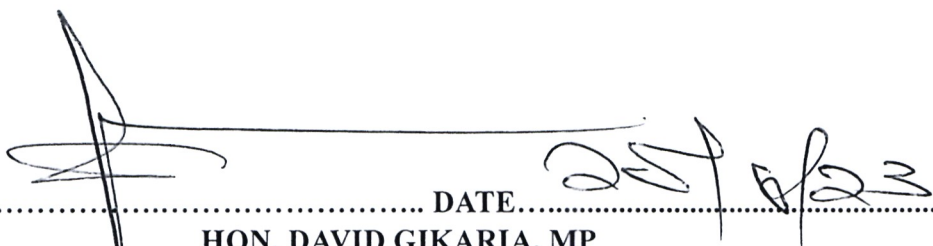
- 15) **That**, the implementation of the Convention will require review of some existing national policies which include: the Kenya Health Policy 2012-2030; the Ministry of Health Ministerial Strategic and Investment Plan; the Kenya National Pharmaceutical Policy, 2008; and the National Environmental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

Handwritten signature of Hon. David Gikaria, MP, and the date 25/1/23.

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 - <b>Chairperson</b>	
2.	The Hon. Charles Kamuren, MP - <b>Vice-Chairperson</b>	
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

		 NATIONAL ASSEMBLY
DATE: 00 MAR 2020		DAY: Thursday
TABLED BY:	Hon. Naomi Waqo, 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

---

**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**

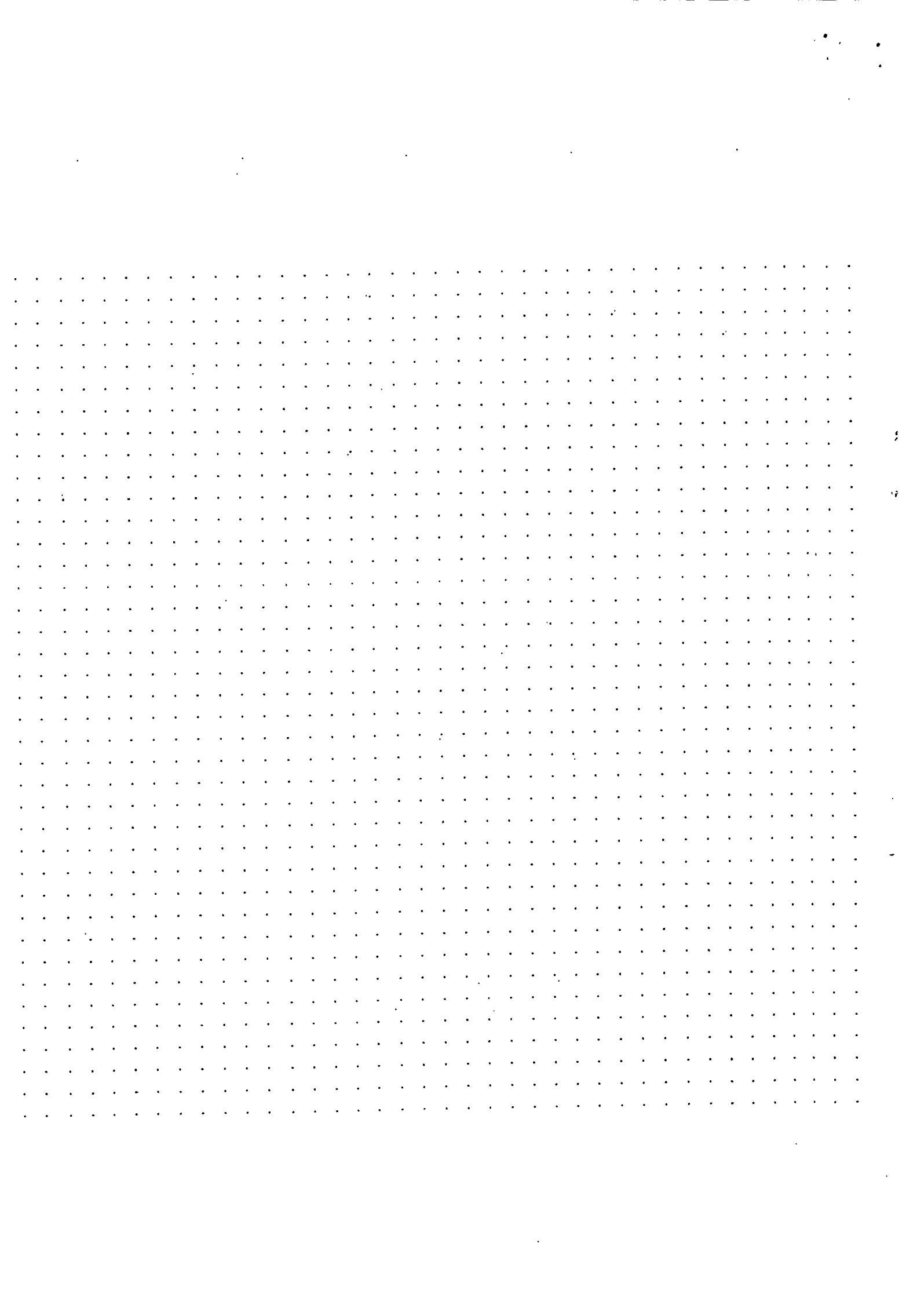


**MINAMATA CONVENTION ON MERCURY**  
TEXT AND ANNEXES



**UN**   
**environment**  
United Nations  
Environment Programme

UNITED NATIONS



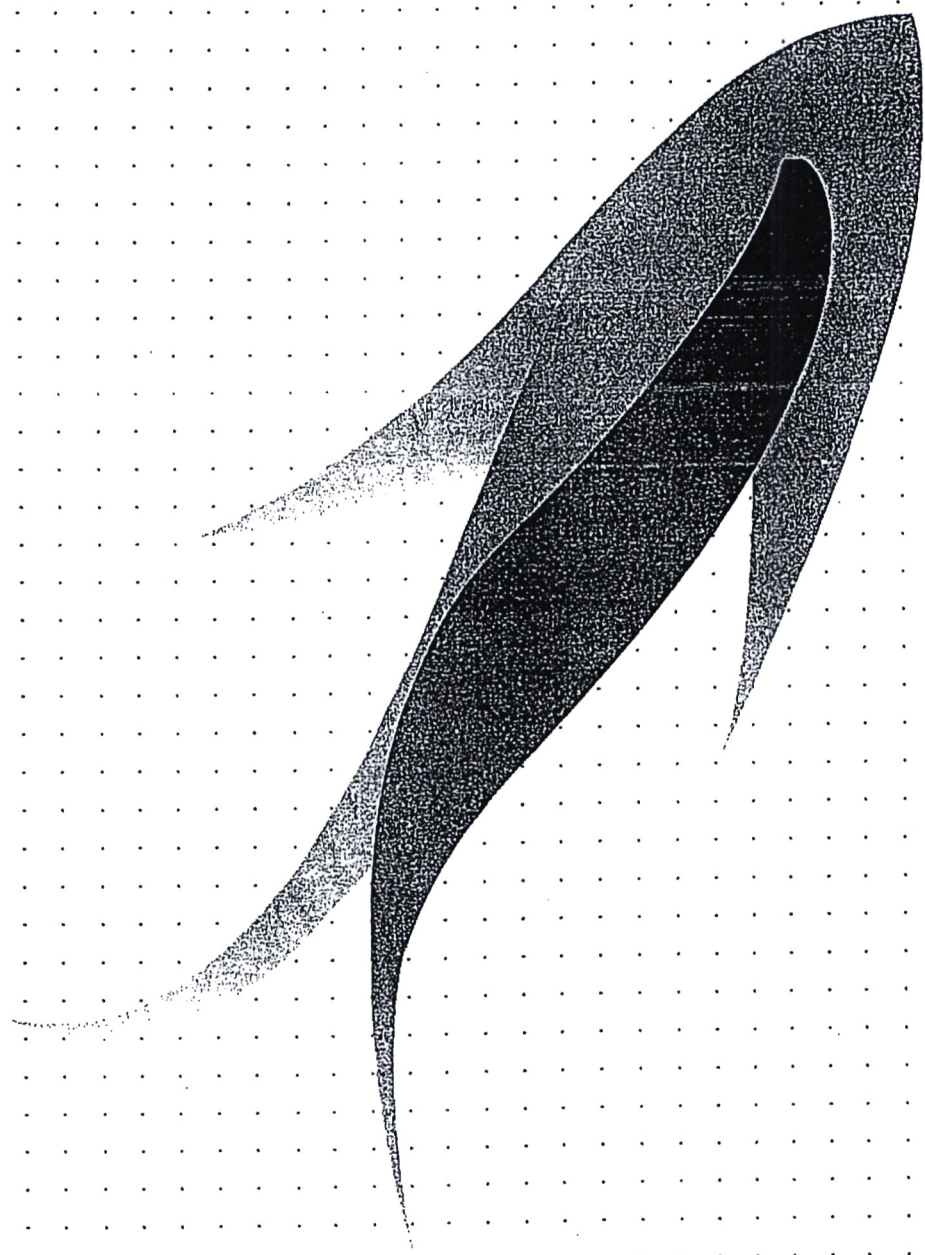
# MINAMATA CONVENTION ON MERCURY

## 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



## **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.

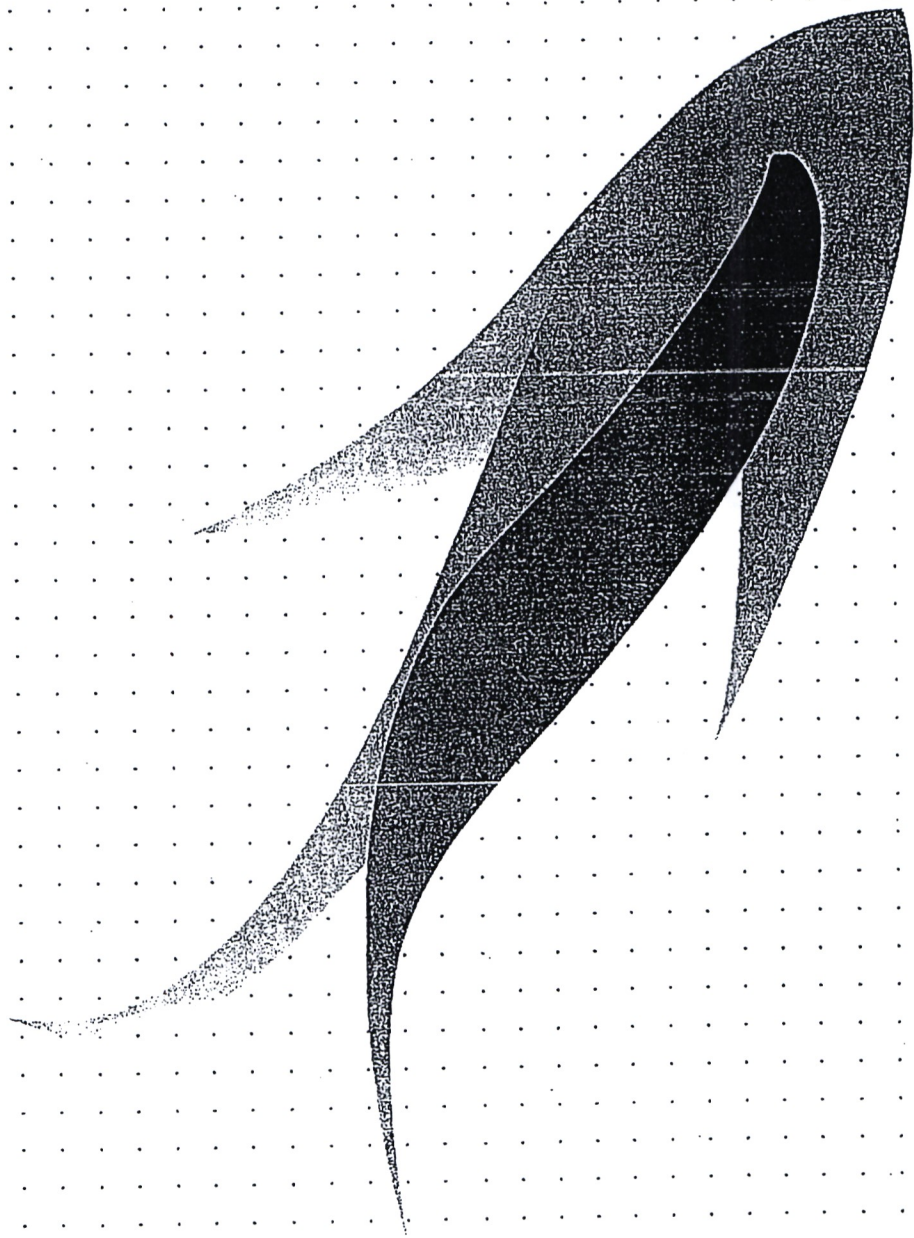
Unfortunately, it is a story that we still need to tell because, decades on, too many people still think of mercury simply as a fascinating element safely contained in thermometers. Too few understand that it is lethal, indestructible and present in everything from coal-fired power generation to certain 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.

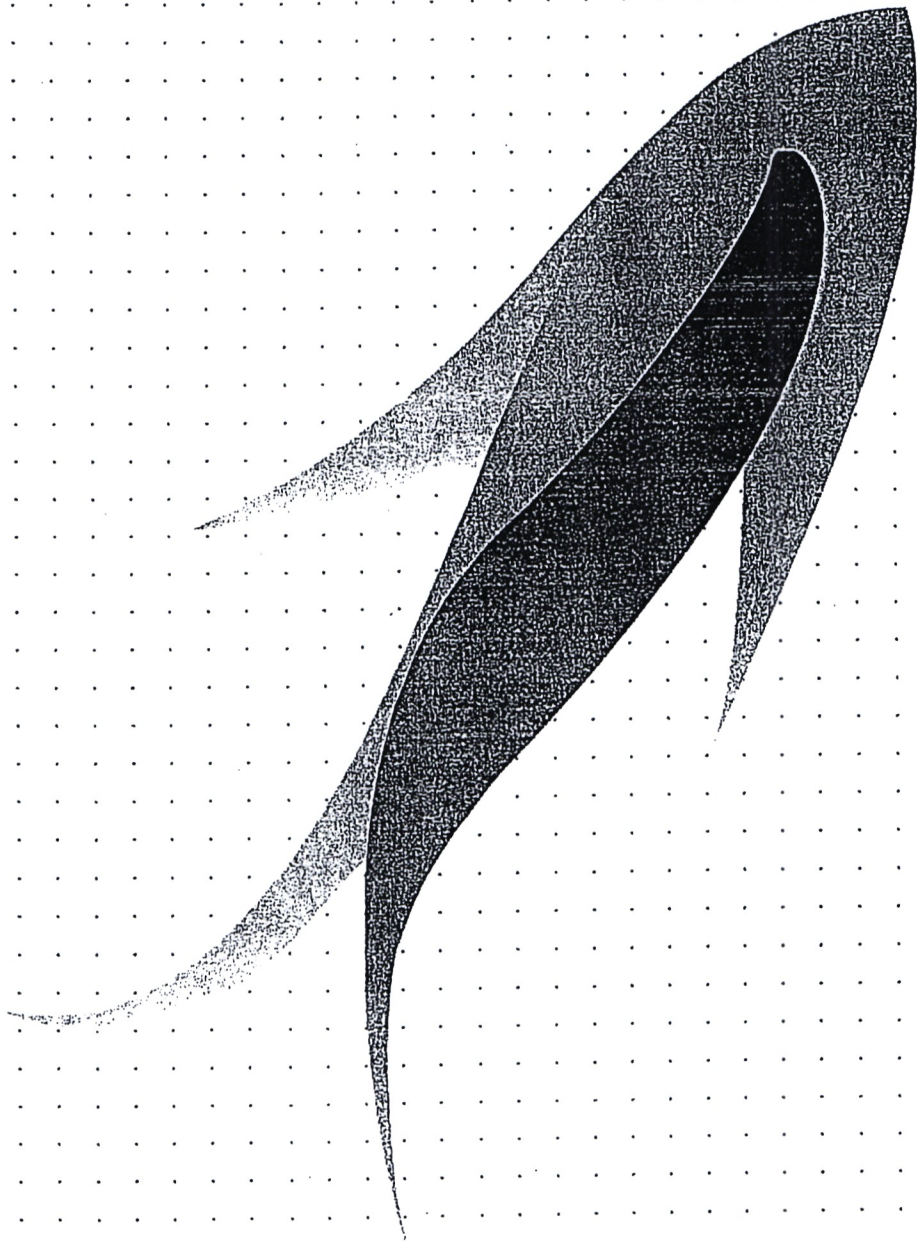
Through the Minamata Convention on Mercury, the global community remembers the many lives already lost to mercury poisoning and commits to preventing similar catastrophes. It is the first global environmental agreement addressing one of the biggest challenges to human health and the environment, from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

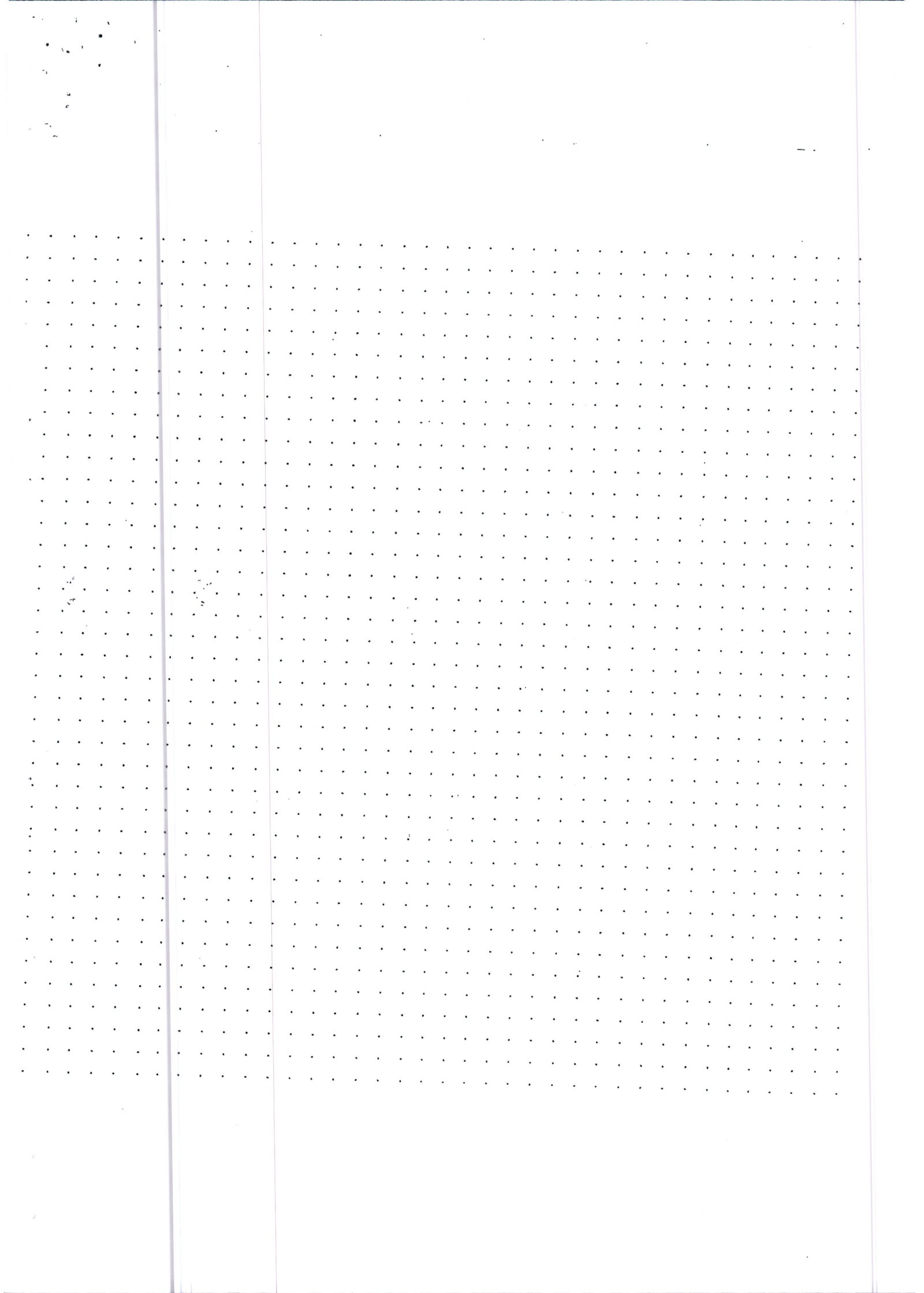
The objective of the Convention is to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds and it sets out a range of measures to meet that objective. These include measures to control the supply and trade of mercury, including setting limitations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

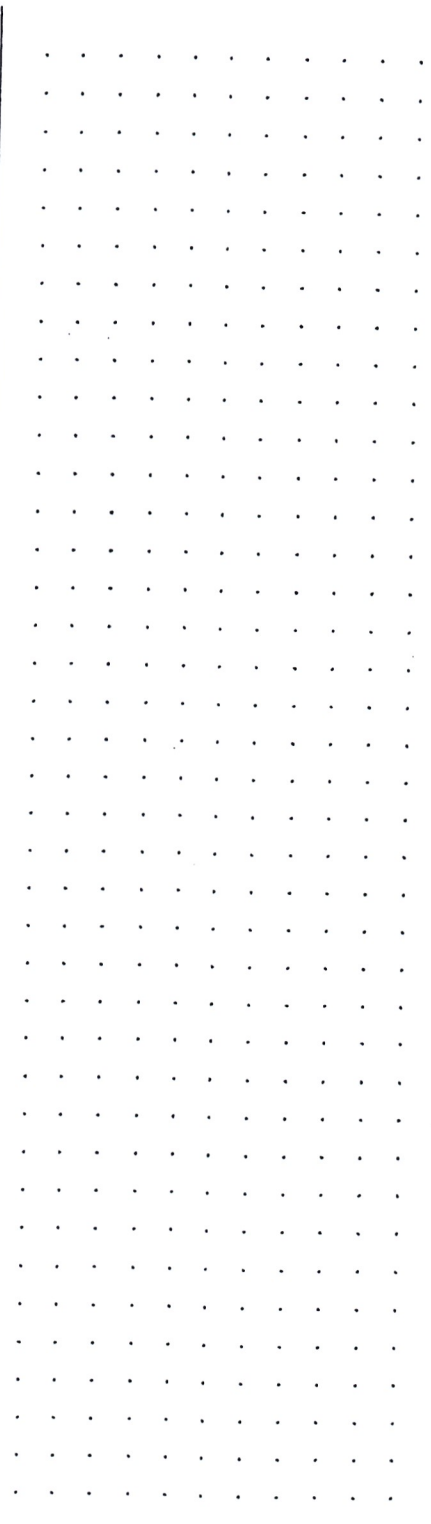
#### **Signature**

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.

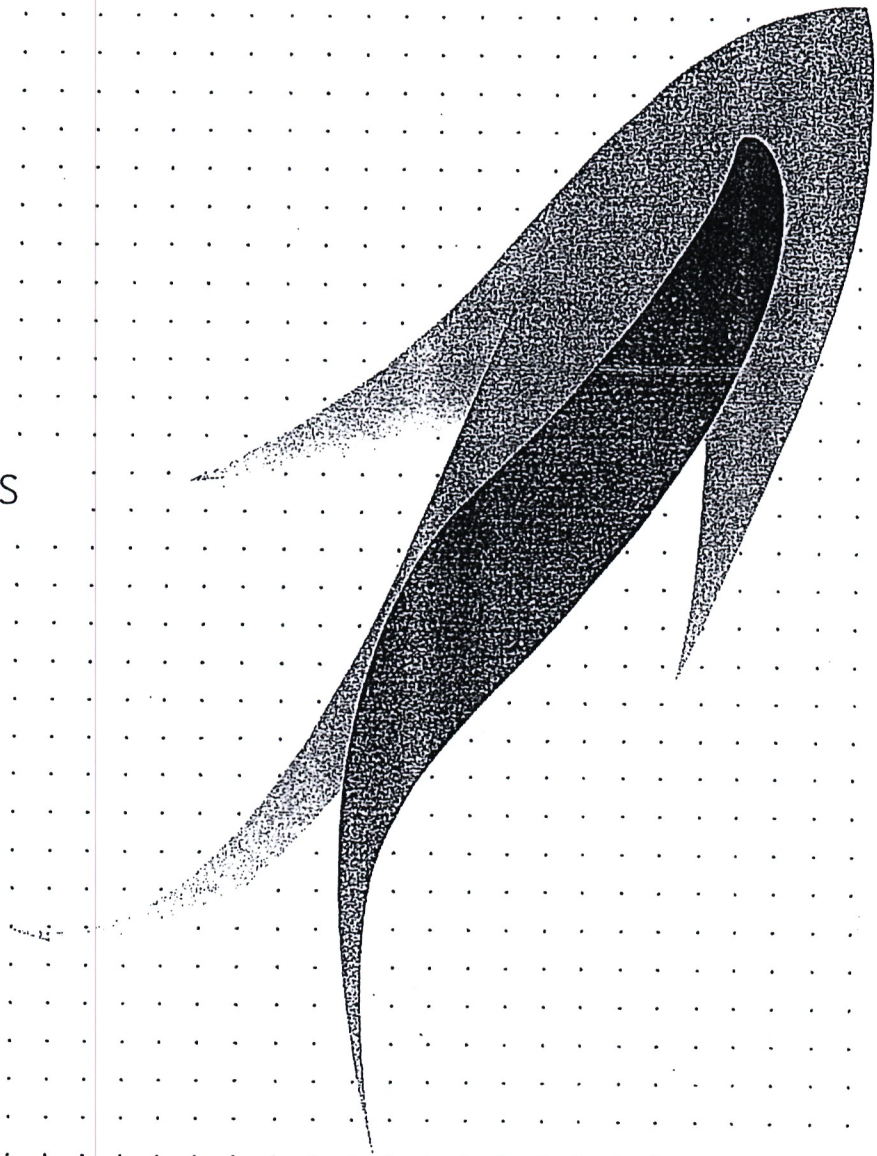
**Article 35**  
Authentic texts

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

<p>Linear fluorescent lamps (LFLs) for general lighting purposes:</p> <p>(a) Triband phosphor &lt; 60 watts with a mercury content exceeding 5 mg per lamp;</p> <p>(b) Halophosphate phosphor ≤ 40 watts with a mercury content exceeding 10 mg per lamp</p>	2020
<p>High pressure mercury vapour lamps (HPMV) for general lighting purposes</p>	2020
<p>Mercury in cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays:</p> <p>(a) short length (≤ 500 mm) with mercury content exceeding 3.5 mg per lamp</p> <p>(b) medium length (&gt; 500 mm and ≤ 1 500 mm) with mercury content exceeding 5 mg per lamp</p> <p>(c) long length (&gt; 1 500 mm) with mercury content exceeding 13 mg per lamp</p>	2020
<p>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>v</sup></p>	2020
<p>Pesticides, biocides and topical antiseptics</p>	2020
<p>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:</p> <p>(a) barometers;</p> <p>(b) hygrometers;</p> <p>(c) manometers;</p> <p>(d) thermometers;</p> <p>(e) sphygmomanometers.</p>	2020

<sup>v</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>

<p>Sodium or Potassium Methylate or Ethylate</p>	<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>
<p>Production of polyurethane using mercury containing catalysts</p>	<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**

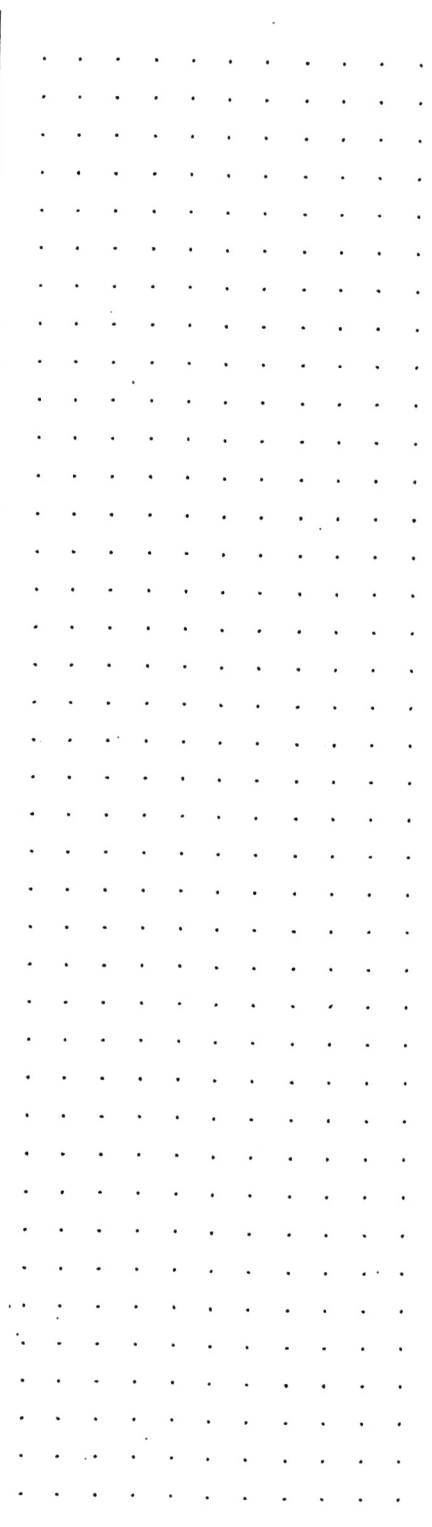
The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or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

