

Economic Commission for Europe
Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters

Working Group of the Parties

Twenty-second meeting

Geneva, 19–21 June 2018

Item 12 of the provisional agenda:

Thematic session on the promotion of the principles
of the Aarhus Convention in international forums

NOTE ON THE RULES OF PROCEDURE AND PRACTICES OF THE
MINAMATA CONVENTION ON MERCURY¹

Prepared by the Secretariat of the Aarhus Convention in consultation with the Secretariat of
the Minamata Convention on Mercury.²

Contents

	<i>Page</i>
I. Introduction	2
II. Access to information (paras. 19-27 Almaty Guidelines).....	3
Description	3
Assessment	3
III. Public Participation.....	4
A. Broad public participation (paras. 14 & 30-31 of the Almaty Guidelines).....	4
Description	4
Assessment	5
B. Modalities of public participation (paras. 29 and 32-37 of the Almaty Guidelines)	6
Description	6
Assessment	7
C. Capacity-building and financial assistance (paras. 17-18 and 38-39 Almaty Guidelines)	8
D. Review Procedures (para. 40 of the Almaty Guidelines).....	9
IV. Conclusions	9

¹ This document was not formally edited.

² The secretariat of the Minamata Convention on Mercury provided input on factual matters and details on existing rules and procedures.

I. Introduction

1. This note aims to provide a non-exhaustive commentary on compatibility of the rules of procedures and practices under the Minamata Convention on Mercury³ and the Almaty Guidelines on promoting the application of the principles of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) in international forums.⁴ The secretariat of the Minamata Convention on Mercury was consulted on factual information included in the note.

2. The Minamata Convention on Mercury was adopted on 10 October 2013 in Kumamoto, Japan and entered into force on 16 August 2017. The first meeting of the Conference of the Parties to the Minamata Convention took place from 24–29 September 2017 in Geneva, Switzerland.

3. Civil society organizations played a strong advocacy role both in gaining support for a global legally binding instrument on mercury and in promoting a strong instrument. They also supported the development of the Convention's provisions through the development of science and data as well as the collection and dissemination of information. Since the adoption of the Convention, they have also actively supported developing countries towards ratification and early implementation.

4. The Global Mercury Partnership⁵, which was initiated in 2005 by a decision of the United Nations Environment Programme (UNEP) Governing Council, played an important role in catalyzing global action on mercury and offering information, capacity-building, and awareness-raising in support of international negotiations to establish a legally-binding instrument on mercury. The Partnership consists of stakeholders from governments, industry, non-governmental organizations (NGOs), and academia who are dedicated to protecting human health and the environment from the impacts of mercury, and to reducing global environmental releases of mercury. It currently gathers 179 partners, 66 of which are NGOs (as of 7 May 2018). Today, the Partnership is focusing its work on ensuring timely and effective implementation of the Minamata Convention.

5. Due to the fact that the Minamata Convention has only just held the first meeting of its Conference of the Parties (COP1), and at that session adopted its rules of procedures, relevant practice is so far limited. Nonetheless, the present note provides some recommendations on how to develop the practice going forward.

³ For more information, see: <http://www.mercuryconvention.org/>.

⁴ Available online from: <https://www.unece.org/index.php?id=21464>.

⁵ See: <http://web.unep.org/chemicalsandwaste/global-mercury-partnership>.

II. Access to information (paras. 19-27 Almaty Guidelines)

Description

6. With regard to proactive information disclosure (paragraph 22 of the Almaty Guidelines), notifications under various provisions of the Convention, including exemptions from phase out dates for the products and processes listed in Part I of Annexes A and B to the Convention that have been registered by Parties are made publicly available on the Convention website.⁶ The Minamata Convention expressly calls for certain information to be made publicly available by the Secretariat, including general notifications of consent to import, registrations for exemptions, and information relating to mercury-added products, processes that use mercury or mercury compounds and their alternatives, as well as facilities that use mercury or mercury compounds for processes listed in Annex B. The website further includes information on the Global Mercury Partnership and a projects database, as well as relevant forms and guidance documents to facilitate implementation of the Convention. As called for under the financial rules of the Conference of the Parties, up-to-date information on the status of pledges and payments of contributions is also provided on the Convention website, and is updated on a monthly basis.⁷ Finally, the Convention website is made available and regularly updated in English, French and Spanish.

7. Pursuant to article 18 (public information, awareness and education), Parties to the Minamata Convention are requested to promote and facilitate, within their capabilities, the provision to the public of available information on a number of aspects, as well as 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.

8. While there are no specific contact points for obtaining environmental information (designation of information officers under paragraph 22 of the Almaty Guidelines), a general contact email for the Secretariat of the Convention is available online.⁸ Moreover, some of the Parties have by now designated National Focal Points under article 17 paragraph 4 of the Convention, and their contact information is available online.⁹ Neither the website nor other available documents specifies a set of policies or procedures on how to obtain access to environmental information (paragraph 19 of the Almaty Guidelines), nor indicates time limits (paragraph 24 of the Almaty Guidelines) or grounds for refusal (paragraph 25 of the Almaty Guidelines).

Assessment

9. While it is clearly apparent that the Secretariat has only just taken up its work, the efforts made to provide for active information disclosure are promising. The creation of the project database and “Mercury Learn”, an online training platform developed in collaboration with UNITAR, are also good examples of using electronic information tools such as clearing houses, databases and registers, which is a positive development consistent with paragraph 21 of the Almaty Guidelines. The widest proactive information disclosure possible should continue to be the goal going forward.

10. With respect to paragraph 22 of the Almaty Guidelines, only the general contact information for the Secretariat is made available. It may be useful to provide instructions on the website on how to obtain information on request (in line with paragraph 7 above), including by designating a responsible

⁶ See: <http://www.mercuryconvention.org/Countries/Parties/Notifications/tabid/3826/language/en-US/Default.aspx>; and <http://www.mercuryconvention.org/Countries/Parties/Exemptions/tabid/5967/language/en-US/Default.aspx>.

⁷ See: <http://www.mercuryconvention.org/Convention/Formsandguidance/tabid/5527/language/en-US/Default.aspx>.

⁸ See: <http://www.mercuryconvention.org/ContactUs/tabid/3442/Default.aspx>.

⁹ See: <http://www.mercuryconvention.org/Countries/Parties/Notifications/tabid/3826/language/en-US/Default.aspx>.

contact person within the Secretariat. Considering that implementation of the Convention is in its formative stages and the rather small size of the Secretariat, this may not constitute an urgent measure. However, as the practice of the Convention develops, this should be kept in mind and considered where relevant.

III. Public Participation

A. Broad public participation (paras. 14 & 30-31 of the Almaty Guidelines)

Description

11. According to rule 7 of the Rules of Procedure ('RoP') for the Conference of the Parties to the Minamata Convention, which reflect the provisions of article 23 paragraph 6, of the Minamata Convention:

1. "Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention and which has informed the Secretariat of its wish to be represented at a meeting as an observer, may be so admitted, unless at least one third of the Parties present object.

2. Such observers may, upon the invitation of the President, participate without the right to vote in the proceedings of any meeting in matters of direct concern to the body or agency they represent, unless at least one third of the Parties present at the meeting object."¹⁰

12. The Secretariat is tasked with notifying those that have expressed their wish to be represented of the dates and venues of the next meeting.¹¹

13. Prior to the first meeting of the Conference of the Parties (COP), an information document was made available online, which set out the application procedure for observers. Organizations were asked to submit at least one month before the meeting:

(a) A letter from the head office of the organization requesting admission, including information on contact person, geographical coverage and qualification of the organization in matters covered by the Minamata Convention;

(b) A copy of the organization's constitution, charter, statutes or by-laws, including any amendments to these documents, a list of affiliates (if any, including accreditation with the United Nations Environment Assembly or consultative status with the Economic and Social Council) and description of any network and/or membership system;

(c) A statement of the organization's mission and scope of work, including detailed accounts of the extent of outreach, indications of interactions within the community or other activities. Supporting documentation could include a published mission statement (available on a website or in brochures);

(d) Information on qualification in matters covered by the Minamata Convention, including description of activities undertaken by the organization over the last two years or more demonstrating its work in those matters. Such information could include annual reports,

¹⁰ UNEP/MC/COP.1/29, annex I, MC-1/1: Rules of Procedure. See also article 23, paragraph 6, of the Minamata Convention.

¹¹ Rules of Procedure, rule 8.

conference or seminar reports, project reports, press releases and copies of media statements, newsletters or other periodicals.”¹²

14. Requests for admission to the first meeting of the COP were received from nine Intergovernmental organizations other than the United Nations, its specialized agencies and the International Atomic Energy Agency, and 119 NGOs, and reviewed by the Secretariat. Additional information or clarification was sought, when necessary, from the concerned body or agency. A number of organizations requested admission, but were unable to provide suitable documentation in relation to their status, and on that basis, were not able to be approved. No organization which had been able to submit the required information was declined admission.

15. In addition to observers that had formally requested to be admitted as such, over sixty participants attended the first meeting of the Conference of the Parties as “other”. These participants included representatives from NGOs, local authorities, private companies, academia, media, as well as individuals interested in attending the meeting. Registration under the “other” category was made possible through the online registration process, however, representatives falling under the “observer” category were encouraged to formally request admission, as it allows a more “formalized” participation in the proceedings of the meeting. Participation under the “other” category is based on rule 34 of the Rules of Procedure, which states that “sessions of the Conference of the Parties shall be held in public, unless the Conference of the Parties decides otherwise”¹³.

16. A number of events were held on the side lines of the formal proceedings of the first meeting of the Conference of the Parties, including “Thematic Sessions” on technical issues, the outcomes of which were forwarded to the Ministerial Roundtables held during the High-Level Segment, “Minamata Convention Initial Assessment Clinics”, “Show Case Events”, “Knowledge Labs” as well as an exhibition on the premises of the meeting. In parallel with COP1, a week of activities – the “Mercury Week” – was organized in different places around Geneva city to raise the awareness of stakeholders and the public in general about mercury, its uses, its effects, and how the Minamata Convention contributes to a global solution. Certain observers were key participants in these events.

Assessment

17. The persons that may participate under the “observer” status as per paragraph 6 of article 23, of the Minamata Convention as well as rule 7 of the Rules of Procedure are limited to certain members of the public, namely to bodies and agencies that are qualified in relevant fields. While paragraph 31 of the Almaty Guidelines allows restriction of access to certain members of the public concerned where “this is necessary and unavoidable for practical reasons”, efforts should be undertaken to ensure that “agencies” and “bodies” representing the members of the public who are, or are likely to be, most directly affected (see paragraph 30(a) of the Almaty Guidelines) have a chance to participate.

18. The possibility for other members of the public, including interested individuals, to register as “others” in the meeting is a commendable measure to allow for wider participation of the public at large. It is also positive that these members of the public are listed in the List of Participants to ensure transparency. This is an important step for members of the public to be part of the session, while not being able to participate on an equal basis. To allow them to also provide input into the process, further potential measures could include forums and dialogues open to members of the public, webcasting of

¹² See:

http://www.mercuryconvention.org/Portals/11/documents/COP1/Participationof_observers_MinamataCOP_May%202017.pdf.

¹³ See list of participants of the first meeting of the Conference of the Parties, available online at:

http://mercuryconvention.org/Portals/11/documents/meetings/COP1/English/1_INF17_list_of_participants.pdf.

events and general calls for comments, including on selected issues (see paragraph 33 of the Almaty Guidelines). The call for comments on the draft guidelines on the interim storage of mercury and mercury compounds is a positive example in this regard.¹⁴

19. Concerning the accreditation procedures that are being applied, the information document made available before the first session gave clear and objective criteria in line with paragraph 31 of the Almaty Guidelines.¹⁵ It will be important to provide similarly transparent information for future meetings. As regards the accreditation criteria themselves, attention should be paid so that the requirement of providing the constitution, charter, statutes or by-laws of an organization (see paragraph 10 (b) above) does not have the effect that organizations which have problems obtaining official documentation in their country of origin are excluded from participating.

B. Modalities of public participation (paras. 29 and 32-37 of the Almaty Guidelines)

Description

Conferences of the Parties (COPs)

20. In accordance with rule 34 of the Rules of Procedure, COPs are to be held in public unless the COP decides otherwise. The first meeting in 2017 was indeed held in public with the participation of a range of observers.¹⁶ The meeting was held without closed sessions, allowing observers to participate throughout the COP, including the “Committee of the Whole” and its contact groups.

21. The Secretariat distributes documents of the meeting (rule 33, paragraph b, of the Rules of Procedure) and publishes and circulates official documents of the meeting (rule 33, paragraph c, of the Rules of Procedure). In practice, the meeting documents, including, as relevant, related draft decisions, are made available online prior to the meetings of the COP, and the report of meetings including adopted decisions, after the COP. During COP meetings, an intranet system is used to share working documents and other relevant information with all delegates.

22. In the lead up to the first meeting of the Conference of the Parties, the Secretariat was asked to seek input from Governments and a range of other interested stakeholders on a number of issues to be considered at that meeting. Submissions received have been published on the Convention website.¹⁷ Similarly, in the follow up to the COP1, both Parties and observers to the Conference of the Parties meeting have been invited to submit information on a range of key areas required for the effective implementation of the Convention, and submissions received will be made available online.

Bureau

23. The Bureau of the Convention consists of representatives of the Parties¹⁸ and the meetings are held in closed sessions. Reports of the Bureau meetings are, however, made available online.

Subsidiary bodies

24. In accordance with rule 27 paragraph 2 of the Rules of Procedure, meetings of subsidiary bodies shall be held in public unless the COP or the subsidiary body itself decides otherwise. In practice,

¹⁴ See: <http://www.mercuryconvention.org/Meetings/Intersessional%20work/tabid/6325/language/en-US/Default.aspx>.

¹⁵ See: http://www.mercuryconvention.org/Portals/11/documents/COP1/Participationof_observers_MinamataCOP_May%202017.pdf.

¹⁶ See: http://mercuryconvention.org/Portals/11/documents/meetings/COP1/English/1_INF17_list_of_participants.pdf.

¹⁷ See: <http://mercuryconvention.org/Negotiations/submissionsforCOP1/tabid/5535/Default.aspx>.

¹⁸ Rules of Procedure, rule 22.

differences exist between the practices of the different subsidiary bodies under the Convention, as set out below. As a follow up to the first meeting of the Conference of the Parties, a letter was circulated inviting input and nomination of experts, as relevant, from Parties and other stakeholders to the Convention.¹⁹

i. Ad hoc group of experts

25. An ad hoc group of experts on the arrangements for providing the COP with comparable monitoring data, and elements of an effectiveness evaluation framework under article 22 of the Minamata Convention, was set up by decision MC-1/9 of the first meeting of the COP. The ad hoc group consists of 25 governmental experts. Ten experts from civil society, indigenous communities, intergovernmental organizations, industry and the UNEP Global Mercury Partnership are invited to participate as observers. The ad hoc group will also “invite input from other Governments, intergovernmental organizations, indigenous communities, industry and civil society organizations to assist it in completing its work.”

ii. Preparation of draft guidance on the management of contaminated sites

26. Decision MC-1/20 of the first meeting of the COP envisages the setting up of an expert working group to prepare draft guidance on the management of contaminated sites. The call for membership of the group was sent out to all stakeholder inviting nominations of interested experts. A number of experts from civil society are participating in the work.

Implementation and Compliance Committee

27. The first meeting of the COP elected the first 15 members of the Implementation and Compliance Committee in accordance with article 15 paragraph 3, of the Minamata Convention on the basis of nominations by Parties.²⁰ In accordance with article 15 paragraph 5, of the Convention, the Committee is to elaborate its rules of procedure.

Assessment

28. According to paragraph 29, of the Almaty Guidelines, public access may only be restricted if there is a reasonable basis to exclude participation according to transparent and clearly stated standards that are made available, if possible, in advance. In that regard, the openness to observers of the COP, including contact groups during the session, and of the ad-hoc group of experts are positive examples. Attention should be paid so that meetings of all subsidiary bodies become open to observers in this way as far as possible.

29. With regard to the Implementation and Compliance Committee, measures should also be taken to ensure that observers can take part as much as possible. This includes publishing all relevant documents of the work of the Committee, making meetings of the Committee open to observers, inviting submissions and comments on issues arising from national reports (article 15, paragraph 4(b), of the Convention), ongoing cases before the Committee and in the follow-up on how to improve the situation. In that regard, a distinction may be drawn between phases where the Committee is deliberating or drafting decisions and open sessions in which the Committee informs about its work and is open to receive comments from observers. Moreover, attention should be paid to act as transparently as possible

¹⁹ A copy of the letter is available online at:

<http://mercuryconvention.org/Portals/11/documents/meetings/COP1/COP1%20follow%20up%20letter%20and%20actions%20list.pdf>.

²⁰ Decision MC-1/7 on Membership of the Implementation and Compliance Committee, UNEP/MC/COP.1/29.

in the appointment of members of the Committee, including by providing information on the expertise and professional history of proposed candidates.

30. While the main reason to hold meetings of the Bureau without wider participation of the public, it could be explored whether a representative of a non-governmental organization qualified in matters related to the Convention could become an observer representative of the Bureau. This representative could be chosen from among registered observers at the COP.

31. Concerning paragraphs 32 and 36 of the Almaty Guidelines, agenda-setting is principally a prerogative of the Parties which agree to the agenda at COPs, adopt the programme of work and relevant decisions. Going forward, measures should be explored to involve observers in the development of the work programme of the Convention, including by consulting observers during or prior to the COP, and by involving them in the work of subsidiary bodies tasked with developing the work programme in the intersessional period.

32. As regards disclosure of “documents relevant to the decision-making” (paragraph 34 of the Almaty Guidelines), disclosure of information and working documents for the COP on the Convention website appears to have been done very effectively. The same should apply to the work of all subsidiary bodies, including the Implementation and Compliance Committee, as well as to the Bureau meetings, as far as possible.

33. As regards paragraph 37 of the Almaty Guidelines, observers generally have no right to participate in formal decision-making processes; but certain documents are made available to them for written comments, as demonstrated by the call for comments on the draft guidelines on the interim storage of mercury and mercury compounds,²¹ and previously on revised guidance document on the preparation of national action plan on artisanal and small-scale gold mining.²² It is also positive that these are put in one place on the website to allow observers to get a quick overview.²³ Timeframes for participation modalities also appear to be adequate (paragraph 36 of the Almaty Guidelines). Nonetheless, further ways should be explored to collect and take into account input of members of the public, including on priority actions under the Convention, election of officers and important decisions.

C. Capacity-building and financial assistance (paras. 17-18 and 38-39 Almaty Guidelines)

Description

34. The Secretariat has worked on extending the information on the website by including relevant guidance material, factsheets and arranging for the translation of the website into French and Spanish.²⁴ An online training platform, “MercuryLearn”, has been created, and an online introductory course on InforMEA is offered.²⁵

35. Concerning paragraph 39 of the Almaty Guidelines, the Parties have not agreed on arrangements for financial assistance to support the travel and subsistence costs of observers to facilitate their participation in meetings of the COP and subsidiary bodies.

²¹ See: <http://www.mercuryconvention.org/Meetings/Intersessionalnnbsp;work/tabid/6325/language/en-US/Default.aspx>.

²² Report of the Meeting of the Parties, UNEP/MC/COP.1/17, paragraph 79.

²³ See: <http://www.mercuryconvention.org/Meetings/Intersessionalnnbsp;work/tabid/6325/language/en-US/Default.aspx>.

²⁴ Progress report on the work of the interim secretariat in the period since the seventh session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury, UNEP/MC/COP.1/20, paragraphs 19 and 21.

²⁵ *ibid*, paragraph 20.

Assessment

36. As regards paragraph 38 of the Almaty Guidelines, the creation of InforMEA and “MercuryLearn” as online e-learning tools are good practices. Capacity-building work should continue to be a focus in the ongoing work of the Convention, including through regional mechanisms.

37. With regard to paragraph 39 of the Almaty Guidelines, possibilities for funding, in particular by the Parties to the Convention, for observers to participate in the meetings of the COP and subsidiary bodies of the Convention should be explored, and relevant information made available online.

D. Review Procedures (para. 40 of the Almaty Guidelines)***Description***

38. No specific review procedure relating to application of the rules of the Minamata Convention regarding access to information and public participation appears to have been established.

Assessment

39. Some situations in which review procedures could be of use in the work of the Convention are (a) denial of access to environmental information and (b) refusal of an organization to obtain observer status. In such instances where an individual or an entity wishes to complain about the actions of the Secretariat, a complaint letter could be sent to the Executive Director of UNEP. Whether or not one or both of these situations in fact require a review mechanism will depend on the practice of the Convention and should be kept in mind and considered as the practice develops.

IV. Conclusions

40. Overall, the practice to date is generally consistent with the Almaty Guidelines. It will be important to keep this up, and further develop the procedures under the Convention with as much transparency and participation as possible. To that end, the following are examples of measures that could be considered going forward:

- Continue to expand the provision of relevant environmental information online;
- As the practice of the Convention develops, consider whether instructions on how to obtain information on request could be useful;
- Ensure that meetings of subsidiary bodies remain or become open to observers;
- Develop the rules of procedures and practice of the Implementation and Compliance Committee with maximum transparency and participation of observers and the public, in line with paragraph 20 above;
- Explore the possibility of an observer representative on the Bureau, chosen by observers;
- Arrange for further participation procedures for observers and the wider public, including by inviting written comments, on important topics under the Convention, such as priority actions and decisions to implement the Convention;
- Continue the development of relevant capacity-building mechanisms, including through regional mechanisms;
- Encourage provision of financial support by Parties for observers lacking the financial means to assist them to attend meetings of the bodies of the Conventions; and

- As the practice of the Convention develops, consider whether the creation of specific review procedures in cases of refusals of access to information requests and admission of observers would be useful.
