

IPEN Follow-up to INC2:

Some Thoughts and Observations

February 2011

IPEN would like to share with delegates and others some of our thoughts and observations following the Second meeting of the Intergovernmental Negotiating Committee to prepare a global legally binding instrument on mercury (INC2). We think important progress was made at INC2, but discussions at the meeting also highlighted some concerns that we would like to raise.

Emissions to all media

A key issue which appears to remain unresolved is whether the future mercury instrument will be a treaty focused predominantly on the control of air emissions, or whether it will follow the precedent of the Stockholm Convention and control mercury releases to all media: air, water and land. IPEN believes it is very important that the future instrument be an all-media mercury control treaty. Mercury moves between media. When mercury is released to land or water, much of it ends up in the air. When mercury is released to the air, it subsequently deposits on the ground and into water systems. A treaty focusing only on controlling air emissions will encourage operators to reduce their mercury air emissions by shifting these releases to the ground, to water systems, and into products. This could lead to a global treaty that actually intensifies local mercury pollution and exposure. It would be ironic to name the treaty the *Minamata Convention* without it containing strong measures to control mercury water releases such as those that caused the Minamata disaster.

In the draft elements paper, measures to control mercury air emissions were placed in Article 10, while provisions to control mercury releases to water and land were placed in Article 11. Article 10 envisions establishing Best Available Techniques (BAT) standards to control mercury air emissions from the four major sources listed in Annex E:

- 1) Coal-fired power plants and industrial boilers;
- 2) Non-ferrous metals production facilities;
- 3) Waste incineration facilities; and
- 4) Cement production factories.

There is no indication that the BAT standards to be established for these sources should be designed to also control mercury releases to water, land or products. Article 11, on the other hand, purports to control mercury releases to land and water. However, this article applies only to sources in its own Annex (F), and does not apply to the important Annex E sources listed above.

Many governments at INC2 indicated support for a treaty that will control mercury releases to all media and one government proposed merging Articles 10 and 11 to achieve this objective. This proposal is supported by IPEN and would bring together and integrate measures to control mercury air emissions with measure to control mercury releases to water and land. Some other governments, however, appear to favor deleting Article 11 without expanding the scope of Article 10 to incorporate controls on mercury releases to water and land. IPEN encourages

government delegates to give full consideration to the potential negative impacts of a future treaty that fails to integrate controls on mercury air emissions with controls on water and land releases. Such a treaty would likely fail to adequately address important mercury polluting practices and could promote harmful media shifting practices.

Developing BAT/BEP Guidelines

The manner in which the BAT/BEP Guidelines are developed will be important. IPEN agrees that the preparation of detailed BAT Guidelines will need to go to an expert group with final adoption by the Conference of the Parties (COP). However, there presently exists no internationally accepted definition of what the term “best available techniques” means as applied to the control of mercury releases. The INC process must therefore come to an agreement on a general definition of BAT for the control of mercury releases and also on the objectives, guiding principles and policy framework that the treaty’s BAT Guidelines will incorporate. This agreement should be reflected in Article 10 or its annexes. If this is not done, government officials who sign the Convention at the Diplomatic Conference will likely have a range of very different views about the type and the nature of the convention’s BAT obligations. And then, the expert group charged with drafting BAT Guidelines will almost certainly become paralyzed and unable to produce a useful product.

ASGM

IPEN was pleased to see the general recognition among delegates that mandatory obligations are needed to address ASGM which is the second largest source of mercury air emissions. For developing countries and countries with economies in transition, these obligations should be closely linked to the availability of appropriate and adequate technical and financial assistance. Each Party with ASGM on its territory should be required to develop, implement, report upon, and periodically update a comprehensive plan of action aimed at minimizing and eliminating mercury use and mercury releases in ASGM. These plans should include:

- A statement of national objectives, reduction targets, and measures that will be used toward achieving the targets;
- Measures the Party will take to limit the mercury supply available to ASGM including how it will ban mercury imports and restrict other sources of mercury supply to this sector;
- Measures the Party will take to prohibit, restrict, or discourage the worst practices including whole ore amalgamation, using cyanide after mercury, open amalgam burning, and burning amalgam inside homes;
- Measures the Party will take to clean up and remediate mercury-contaminated land and water in ASGM areas and surrounding communities;
- Possible need for transition assistance and/or other aid to specific groups of workers or communities who currently depend for their livelihood on activities that release mercury to the environment.

Wastes

IPEN believes the mercury treaty should have specific provisions on waste and not simply delegate its responsibility on this important issue to the Basel Convention. We expect the future mercury control treaty will centrally include within its objectives the protection of human health and the environment. This is not a specific objective of the Basel Convention. Nor does the Basel Convention fully address issues relating to the domestic handling, collection, or transport of mercury wastes. On the other hand, since overlaps between the mandates of a mercury treaty and the Basel Convention will exist, concerns about overlapping authority should be addressed and the development of guidelines on wastes under the mercury treaty should be done in consultation with the Basel Convention.

Contaminated sites

At INC2, governments indicated support for convention provisions addressing contaminated sites. Different views were expressed, however, on whether such provisions should be voluntary or mandatory. Complicating factors in this discussion include: the extremely high costs associated with remediating mercury-contaminated sites; the challenges to developing countries and countries with economies in transition of finding the needed resources to remediate such sites; and concerns by donor countries and others that the costs of comprehensive programs to remediate all mercury-contaminated sites would overwhelm the capacity of any conceivable financial mechanism.

A way forward that IPEN supports would be treaty provisions that mandate Parties to prepare, implement, and report on plans for developing a comprehensive inventory of mercury contaminated sites on their territory including a full characterization and evaluation of each site. Where possible, the responsible party should be identified and in any case, the source of the mercury contamination should be identified. If the contamination is continuing, it should be stopped. Immediate and long-term potential health impacts should be identified and full information should be provided to potentially impacted communities. The plan should also include mechanisms for implementing Rio Principle 13: *Compensation for Victims of Pollution and other Environmental Damage*; and Rio Principle 16: *The Polluter Pays Principle*. The primary responsibility for compensation and site remediation should rest with the responsible parties, but the treaty should also include provisions to promote international cooperation to address the most problematic sites where the responsible party cannot be identified or where it lacks the necessary level of resources.

It would again be ironic to name a global mercury control treaty the Minamata Convention without it including any obligations on its Parties to protect the public from contaminated sites.

Financial mechanism and its linkage to compliance

Like many delegations at INC2, IPEN sees merit in a convention financial mechanism that links a Party's access to funds with the fulfillment of its compliance obligations. This approach, however, would cause serious problems if critically important convention provisions are made voluntary since the implementation of such provisions, arguably, would then not be eligible to receive support from the Convention financial mechanism.

The draft elements paper proposed that many important provisions would be voluntary. These included, among others: the preparation and implementation of National Implementation Plans; measures addressing ASGM and contaminated sites; and for most countries, the control of mercury emissions from power plants, metal refining; waste incinerators and cement plants. In these and similar areas, IPEN supports mandatory obligations to develop, implement, report on, and update plans (with details on what these plans should address spelled out in relevant articles). This approach brings critically important treaty provisions into its compliance regime making them open to support from the financial mechanism.

Regardless of the particular mechanism, however, IPEN believes that the convention financial mechanism should provide privileged access to Least Developed Countries (LCDs) and Small Island Developing States (SIDs). This might include, among others: relaxation of co-finance requirements, assistance in developing funding proposals, and broader latitude in project eligibility.

Naming the treaty

The proposal to name the global mercury treaty, the *Minamata Convention* is highly significant. IPEN believes that naming the global mercury control treaty the *Minamata Convention* would directly connect the Minamata tragedy to global efforts to protect human health and the environment from mercury pollution. Therefore, if the treaty is to bear the name *Minamata*, the victims and their legitimate demands must be honored and the lessons of the Minamata tragedy must be applied to the treaty.

More than fifty years have passed since Minamata disease was first diagnosed and victims' groups continue to have legitimate dissatisfaction with the responses to this tragedy. Victims' groups want all victims to be recognized and compensated. They want a comprehensive health study of people in the impacted areas (which has still never happened). They want to ensure that the Polluter Pays Principle is fully and properly implemented. They want the contaminated areas around Minamata Bay to be cleaned up so that the Convention signing ceremony does not take place at a location where massive mercury contamination is still being neglected. Finally, the Minamata victims' groups want a health and welfare system established that will enable residents to live secure lives.

IPEN stands in solidarity with the Minamata victims' groups who insist that the ongoing tragedy must be properly addressed by the Government of Japan and the Chisso Corporation before the Convention can take the name the *Minamata Convention*. This means that public commitment and concrete steps toward a genuine resolution of outstanding issues should be taken before the diplomatic conference in 2013.

Minamata groups' naming statement

http://www.ne.jp/asahi/kagaku/pico/mercury/INC2_NGO/Minamata_Statement_110123_en.pdf

IPEN Honoring Minamata Statement

<http://www.ipen.org/hgfree/media/honoring%20minamata%20statement.pdf>