

IPEN Thoughts about Preparing for INC4

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IPEN would like to share some thoughts and observations as delegates prepare for the 4th Inter-governmental Negotiating Committee to prepare a global legally binding instrument on mercury (INC4). The treaty negotiation is occurring against a backdrop of rapidly increasing mercury levels. Scientists note that mercury levels in the Pacific Ocean have increased by 30% over the last 20 years and if no measures are taken, mercury levels will rise by 50% in the next few decades. In fact, without measures to reverse this trend, scientists estimate that the Pacific Ocean will be twice as contaminated with mercury in 2050 as in 1995. This will adversely affect mercury content in fish, a primary source of human exposure. While some progress was made at INC3, weak measures on important treaty elements along with the complete stalemate on emissions and financial considerations raise concerns about whether the treaty will affect the rising trend in mercury levels. Without authentic action to address mercury sources the treaty may actually legitimize the rising emissions while failing to protect human health and the environment.

Releases to all media

IPEN believes that it is very important that the future instrument be an all-media mercury control treaty. A treaty focusing only on controlling air emissions will encourage operators to reduce their mercury air emissions by shifting these releases to land, to water systems, and into products. This could lead to a global treaty that actually intensifies local mercury pollution and exposure. In addition, mercury released to land or water may volatilize and enter air. At INC3, there was strong support for a combined article to address releases to air, land, and water. However, some countries support separate articles or even eliminating some media from the treaty. INC3 also revealed proposals for voluntary measures or removing sources from consideration by countries that happened to have a particular source.

For the treaty to be meaningful and address rising mercury levels, binding measures will be required for human sources of mercury. These may be phased in over time to address capacity concerns using BAT developed by an expert committee. BAT guidelines should control mercury releases to water, land or products, give priority to alternatives, and be strengthened over time to be more stringent. In order to be efficient, a single set of BAT guidelines should address releases from a source to all media instead of having three BAT documents; one for air, one for water, and one for land.

Releases to all media from VCM production need to be addressed. At this advanced stage of the negotiations there still appears to be no publicly available data on mercury emissions and environmental releases from mercury-catalyzed VCM production. This process was estimated by UNEP in 2008 to consume 770 metric tons of mercury. Since only approximately half of this consumed mercury has been accounted for, VCM production might be among the highest contributors to global anthropogenic mercury pollution. Because the experts who prepared the report had no emissions data to work with, UNEP's *Global Atmospheric Mercury Assessment* treats VCM plants as if they release zero mercury emissions into the atmosphere. This needs to be urgently addressed at INC4. At INC3, some preliminary information about an alternative to the mercury catalyst was presented at the technical session. IPEN would like to encourage governments to request the Secretariat to present a detailed update on alternative mercury catalysts at INC4 so delegates can utilize the information in discussions on this important mercury source.

The treaty should act to reduce emissions by having a clear cut-off date prohibiting the introduction of mercury-using manufacturing processes listed in Annex D. The entry into force of the treaty should not be used as the date since this merely allows Parties to expand the number of these facilities without limit before the treaty enters into force. There should be clear limits and restrictions on the construction of new facilities of these kinds and on the expansion of existing ones. If a cut-off date is needed to allow countries with pre-existing facilities to continue operation, the date to use should be the date of the Diplomatic Conference that adopts the Convention and not the date of the Convention's entry into force.

Finally, the two tier "significant aggregate emitter" approach should be eliminated. Under this approach, only a relatively small number of developing countries and countries with economy in transition will receive significant support from the financial mechanism to address their mercury emission sources. For other countries, national efforts to address these sources may be largely voluntary and unsupported. We believe that if the Convention is to be successful, it will need to stimulate full participation from all interested governments in all regions. The article should be amended to require each Party to adopt a national goal for reducing and eliminating its mercury sources, emission, and releases; to develop a national plan to reduce and eliminate these emission sources; and then to implement its plan.

Financial mechanism

IPEN believes that an adequately funded and predictable financial mechanism is critical for treaty implementation. Important convention provisions must be obligatory since voluntary provisions will probably not be eligible to receive financial support under an arrangement which links access to funds with compliance. There are different views on the modality of the financial mechanism, however before selecting a specific mechanism we think it would be useful to discuss and agree what characteristics and features the financial mechanism should contain. Desirable characteristics include a responsive institution, the ability to access large and small amounts of money, financial contribution from the private sector, ability to address complex social and economic factors, ability to fulfill treaty obligations without compromising poverty reduction goals, and funding for enabling activities before countries ratify the treaty. We also believe that the convention financial mechanism should provide privileged access to Least Developed Countries (LDCs) 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. At INC3, many countries supported a stand-alone fund due to frustrations with the GEF and good experience with the MLF. However, for a stand-alone fund to be successful it must receive sufficient funds and be sustainable in the long-term. A stand-alone fund under control of the COP that rapidly distributes insufficient funds and runs out of money would greatly undermine developing and transition country efforts to address mercury. An additional concern is the viability of establishing a stand-alone fund for a treaty addressing a single substance when there is strong pressure toward synergies and resource efficiency.

National implementation plans (NIPs)

For many countries, preparing a NIP is essential for establishing a comprehensive understanding of national sources. The Stockholm Convention experience showed that the availability of NIP preparation funds was critical in enabling Convention ratification and implementation. However, at INC3 some countries proposed that NIP preparation itself should be voluntary. If this is approved, NIP preparation may not be considered a compliance activity and may not automatically be eligible for financial support. This will likely negatively impact the ability of developing countries to set priorities, prevent them from bringing critically important treaty provisions into the treaty compliance regime, and make them ineligible for support from the financial mechanism. NIPs can play a critical role in sensitizing government ministries to mercury issues and enhancing the priority of sound chemicals management through establishment of focal points and development of a national panel of experts. NIPs should include an inventory of mercury supplies, sources, wastes, and contaminated sites. An improved UNEP Toolkit could be useful to Parties in identifying and quantifying their mercury sources and releases. The various National Action Plans required under various articles could be chapters in the NIP. In addition, enabling activities will be a critical part of the mercury treaty. NIPs are a tangible, logical output from enabling

activities that help set country priorities and pave the way for meaningful treaty implementation. Technical assistance to countries in preparation of their NIP could help establish a country-driven plan with tangible outputs. Finally, NIPs also have a role in helping the wider public understand and support the goals of national implementation by involving civil society in their formulation and execution.

Contaminated sites

The original Minamata disaster resulted from the contamination of Minamata Bay by a mercury-catalyzed acetaldehyde production plant resulting in a large contaminated site with devastating results. Despite this sad lesson from history, INC3 proposed a completely voluntary approach to dealing with mercury-contaminated sites and appeared to ignore the issue of compensation for victims of mercury contamination. This undermines efforts to control global mercury pollution, since contaminated sites harm both local communities and contribute to global mercury exposure. In addition, a voluntary approach places Party efforts to address contaminated sites outside the Convention compliance regime and thus likely makes them ineligible for support from the financial mechanism. IPEN believes that Parties should be obligated to identify contaminated sites and perform some initial characterization of them. 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 and technology. Under the current draft treaty text, a contaminated site such as occurred in Minamata Bay could be ignored since there would be no obligation to identify it, clean it up, or deal with victims. It would be dishonorable to name a global mercury control treaty the *Minamata Convention* if the text itself allowed future Minamata disasters to occur.

ASGM and large-scale mining

While described as the “success story” of INC3, significant work is still needed to address this major mercury source. Currently there is confusion about whether Parties “should” or “shall” take actions to address ASGM. The current text ignores the extensive contamination that ASGM leaves behind and the practice was removed as a mercury source from Annex F and G. Considering the magnitude of exposure and emissions from ASGM, a voluntary approach is not meaningful action under the treaty. Each Party should be obligated to phase-out the practices in paragraph 1b of Annex E since these are the worst practices that release the largest amounts of mercury pollution. Obligatory measures should include a national action plan which includes prevention of exposure of vulnerable populations and a public health strategy. Mercury import for ASGM should be prohibited to prevent further poisoning of miners, children, women, and others such as fisherfolk whose occupations are damaged by mercury. Country actions on ASGM should be identified and implemented according to a national action plan which is part of the country NIP.

Large-scale mining appeared to receive little attention at INC3 despite its potentially large contribution to mercury emissions. UNEP estimates that approximately 15 percent of all anthropogenic mercury emissions come from unintentional mercury releases associated with industrial-scale metals mining and refining operations and facilities. For this reason, UNEP developed a Toolkit for identification and quantification of mercury releases that includes primary metal production as a source to be identified in a national mercury inventory. It is likely that mercury pollution that results directly from metal ore mining has been underestimated. For example in the USA, the 2008 total of reported mercury releases and transfers from all metal ore mining facilities was 2,486 metric tons. Most of this pollution stayed on site and was released to land. This suggests that the global total of mercury contained in all dumped mining wastes at all past and present metal ore mining operations must be extremely large. These dumped wastes are continuously subject to weathering activities and other natural processes that certainly result in high but unrecorded air emissions, water discharges, and other mercury releases from mining waste dumps. Mining of ferrous and nonferrous metals should be included as a source category in Annex F and acted upon in a treaty that addresses releases to all media as described above

Wastes

IPEN believes the mercury treaty should have specific mandatory provisions on mercury wastes and not simply delegate its responsibility on this important issue to the Basel Convention. Protection of human health and the environment is not a specific objective of the Basel Convention and it does not fully address issues related to the domestic handling, collection, disposal, or transport of mercury wastes. The treaty should retain a listing of appropriate techniques to treat mercury-containing wastes and define performance levels for these techniques in BAT/BEP guidelines. Limit values should be defined including a health-protective value that defines waste as hazardous. Additional provisions should include requirements to minimize and prevent the generation of mercury-containing wastes; liability and compensation measures; requirement for a national action plan incorporated in the country NIP; and application of the polluter pays principle since many countries acknowledge that the private sector has an important financial role to play in the treaty. Waste transfer from developed to developing countries should be prohibited and transfer between other countries should only occur with the consent of the importing country to ensure sufficient capacity exists to handle the wastes and prevent waste dumping and subsequent harm to human health and the environment.

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://ipen.org/minamata/wp-content/uploads/2011/04/Honoring-Minamata-Solidarity-Statement-English.pdf>

Daily Yomiuri Online February 5, 2012; *Minamata deadline July 31 / Groups supporting sufferers of mercury poisoning criticize limit*; <http://www.yomiuri.co.jp/dy/national/T120204003375.htm>

The Japan Times / Kyodo Tuesday, Feb. 28, 2012; *Minamata victim's exclusion overturned. In recognizing woman, court faults '77 criteria*; <http://www.japantimes.co.jp/text/nn20120228a2.html>

Note: On March 7, 2012, Kumamoto Prefecture, after consultation with Ministry of the Environment, announced that it will appeal the case to the Supreme Court to try to avoid classifying this woman as a Minamata victim.

The Japan Times / Kyodo Thursday, March 1, 2012; *Mercury pact falls short on Minamata*

<http://www.japantimes.co.jp/text/nn20120301f1.html>