IPEN Note to Mercury Treaty Delegates

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Dear Mr. Kharel,

As the mercury treaty negotiations advance to INC5, IPEN would like to share some thoughts regarding the proposed name of treaty and how it relates to the likely outcome of the discussions.

The proposal to name the global mercury treaty the *"Minamata Convention"* suggests that this treaty would – at least in part – commemorate and honor the victims of the Minamata Tragedy, the first documented incident of large-scale methyl mercury poisoning in a human population. A treaty with this name would be expected to be sufficient to prevent future outbreaks of Minamata disease (defined as acute human exposure to methyl mercury from the consumption of contaminated fish and sea food). In addition, one would expect such a treaty to mandate adequate responses to any future Minamata-like tragedy and to be sufficient to significantly reduce global levels of methyl mercury pollution in fish and sea food.

We are writing to express concern that the treaty now being negotiated will likely not be sufficient to prevent future outbreaks of Minamata disease, will not mandate adequate responses to any future Minamata-like tragedy, and will not reduce global levels of methyl mercury pollution in fish and sea food. For these reasons, we suggest the treaty be given a different name than the *Minamata Convention.*

Would the mercury treaty prevent a future Minamata-type tragedy?

The source of the Minamata Tragedy was an industrial chemical plant using a mercury catalyst that released mercury compounds into Minamata Bay. The current treaty text is very weak with regard to controls on the use of mercury catalysts, for example, in the production vinyl chloride monomer (VCM). The current negotiating text proposes no mandatory controls on this mercury use. Nor does it require reporting on the use of mercury catalysts for this purpose or on mercury releases and emissions from this source.

The largest current intentional use of mercury is in artisanal and small-scale gold mining (ASGM). ASGM causes extreme mercury pollution in areas where ASGM is practiced, is a source of significant human exposure to mercury, and contributes to high levels of methyl mercury pollution of fish in waterways nearby and downstream of ASGM sites. Currently proposed convention provisions to prevent or control the use of mercury in ASGM are very weak. For example, the current text allows import of unlimited quantities of mercury for use in ASGM with no phase-out date.

Minamata-like tragedies are already taking place in areas surrounding ASGM sites, though most are hidden from public view. Less is known about human mercury exposure in areas surrounding and downstream of VCM manufacturing sites where mercury catalysts are used. A treaty that lacks adequate, legally-binding measures to control mercury use in ASGM and as a catalyst in chemical production cannot be considered sufficient to prevent future Minamata-like tragedies.

How would the mercury treaty impact a future Minamata-type tragedy?

Based on analysis of the current text proposals, we find the following:

- No requirement to clean up a contaminated site because that is voluntary[1]
- No requirement for the polluter to pay for clean-up or compensation[2]
- No requirement to compensate the victims because the treaty does not contain any measures dealing with compensation of victims[3]
- No requirement for the existing facility to apply BAT/BEP under current proposals[4]
- No explanation currently required if a Party wants to extend an exemption and continue using a mercury-containing product or process (currently in brackets)[5]
- No halt to the process if the tragedy is caused by VCM production using mercury because there is no agreed upon time limit in current text proposals[6]
- No ability to characterize mercury wastes from the site as hazardous because there is no guidance on a health-protective value that defines waste as hazardous[7]
- No requirement for measures to address health, as the entire health section is currently in brackets[8]
- No obligation to include a mercury pollution or poisoning tragedy in a national plan, because National Implementation Plans are optional under current proposals[9]
- No predictable, sufficient, or timely funding to address the problem, as all three words are in brackets in current text[10]

Will the mercury treaty significantly reduce global levels of methyl mercury pollution in fish and sea food?

Many countries are rapidly expanding their national electricity generating capacity, including via the construction of many new coal-fired power plants. The treaty's proposed provisions will not likely result in a reduction of the number of coal-fired power plants in operation or even slow their growth. Nor are its mercury control provisions on coal-fired power plants likely to reduce mercury emissions from individual plants on a scale sufficient to offset the new mercury emissions that are likely to result from the rapid growth of this sector.

Mercury emissions from coal-fired power plants are the single largest source of global mercury pollution, and this source is likely to grow. Mercury emissions from ASGM are the second largest source of global mercury pollution. This source too has few mandatory controls. As a result, the treaty will not likely significantly reduce mercury emissions from ASGM, and these may continue to grow even after the treaty enters into force.

Taken together, the expected growth of global mercury emissions from the combination of coal-fired power plants and ASGM is likely to be greater than the total of declines of mercury emissions from other sources that may result from the treaty's provisions. This suggests global mercury pollution will likely continue to grow even after the new mercury treaty enters into force.

Other Concerns

Based on analysis of the current text proposals, we find the following:

- No explicit mention of precaution in the preamble or objectives; in fact the word "precaution" does not appear in the draft text. Instead, the bracketed preamble text "reaffirms" Rio Principle 15. In contrast, the Stockholm Convention states, "Acknowledging that precaution underlies the concerns of all the Parties and is embedded within this Convention"[11]
- No reaffirmation of Rio Principles 10 (access to information) or 13 (compensation) in the bracketed preamble text[12]
- No obligation to dispose of mercury from supply sources except for decommissioned chlor-alkali facilities[13]
- No complete ban on primary mercury mining as it is still permitted for VCM production[14]
- No ban on use of dental amalgam or process for implementing alternatives to mercury in vaccines[15]
- No ban on the use of mercury-containing products if the military deems them "essential"; for example, this could allow use of mercury-containing sphygmomanometers and thermometers in military hospitals[16]
- No ban on mercury-containing products except for ones on the treaty list[17]
- No prohibition of mercury use in VCM production because there is no agreed upon time limit in current text proposals [18]
- No clear prohibition of new facilities that use mercury[19]
- No explanation currently required if a Party wants to extend an exemption and continue using a mercury-containing product or process (currently in brackets)[20]
- No action on mercury for 10 years in developing countries in current text proposal[21]
- No requirement to address ASGM if a country does not admit it has ASGM or determines that it is not "more than insignificant"; as there are no guidelines to determine "significance", application of Article 9 is voluntary[22]
- No ban on import or use of mercury in ASGM; the largest deliberate use of mercury[23]
- No time or quantity limit on mercury import for use in ASGM[24]
- No overall reduction in mercury emissions to air; simply reductions on a per facility basis – so increasing the number of plants increases mercury pollution but complies with the treaty[25]
- No requirement for existing facilities to apply BAT/BEP[26]
- Ignores mercury emissions from burning waste dumps (including those that contain medical waste) – a situation highly relevant to developing countries[27]
- Ignores mercury pollution to land that results directly from metal ore mining; current text addresses only air emissions from processing of metals in smelters[28]
- No requirement to minimize and prevent the generation of mercury-containing waste[29]

Conclusion

IPEN suggests that delegates to the Diplomatic Conference select a name other than the *Minamata Convention* for the global mercury treaty.

This is because it appears to us that the new treaty will not likely be sufficient to:

1. Prevent future Minamata tragedies from happening in the world
2. Ensure that victims of future mercury tragedies will not suffer the same treatment and fate as the Minamata victims
3. Reverse the current and alarming trend of rising levels of global methyl mercury pollution.

Postscript – The Minamata Tragedy

Finally, there is consideration of the Minamata tragedy itself. 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.[30] 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. Finally, the Minamata victims' groups want a health and welfare system established that will enable residents to live secure lives. It appears that the mercury treaty will not mandate any of these things.

Mercury pollution represents a large and serious global threat to human health and the environment and a robust and ambitious global response to this threat is needed. IPEN stands dedicated to working toward protecting human health and the environment from mercury pollution regardless of the outcome of the negotiations.

Thank you for consideration of our views.

Best regards,

Dr. Olga Speranskaya
IPEN Co-chair

Mr. Manny Calonzo
IPEN Co-chair

Ram Charitra Sah, Executive Director, CEPHED

References

[1] **UNEP**(DTIE)/Hg/INC.5/3; Article 14 para 1 "Each Party shall endeavour to develop appropriate strategies for identifying and assessing sites contaminated by mercury or mercury compounds."
[2] **UNEP**(DTIE)/Hg/INC.5/3; Not present in Article 14 on Contaminated sites
[3]**UNEP**(DTIE)/Hg/INC.5/3; Not present in Article 14 on Contaminated sites
[4]**UNEP**(DTIE)/Hg/INC.5/3; Article 10 para 5 "For existing sources, each Party shall require the control of emissions by implementing at least one of the following measures: a. Adopt a goal for reducing emissions; b. Establish and require compliance with emission limit values, or equivalent technical measures; c. Require the use of best available techniques and best environmental practices."
[5]**UNEP**(DTIE)/Hg/INC.5/3; Article 8 para 1 "Any State or regional economic integration organization may register for one or more exemptions from the phase-out dates listed in Annex C or Annex D, 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 C or any manufacturing process in which mercury is used that is added by an amendment to Annex D, 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.]

[6]**UNEP**(DTIE)/Hg/INC.5/3; Article 7 para 3 "Each Party shall take measures to restrict the use of mercury or mercury compounds in the processes listed in Part II of Annex D in accordance with the provisions set out therein" and Annex D Part II
[7]**UNEP**(DTIE)/Hg/INC.5/3; Article 14 para 1 "Each Party shall endeavour to develop appropriate strategies for identifying and assessing sites contaminated by mercury or mercury compounds."
[8]**UNEP**(DTIE)/Hg/INC.5/3; Article 20bis Health aspects
[9]**UNEP**(DTIE)/Hg/INC.5/3; Article 21 para 1 "Each Party [in a position to do so] [may] [shall]: a. Develop and execute a plan for meeting its obligations under this Convention[, based on the template developed under paragraph 0,/ and according to its specific situation];"
[10]**UNEP**(DTIE)/Hg/INC.5/3; Article 15 para 5 "The fund shall provide [predictable, sufficient and timely] funds to meet those costs of implementation of the Convention as are agreed by the Conference of the Parties. The operation of the fund shall be entrusted to [the Global Environment Facility] [one or more entities]."
[11]**UNEP**(DTIE)/Hg/INC.5/3; Preamble; p 16; and Stockholm Convention preamble
[12]**UNEP**(DTIE)/Hg/INC.5/3; Preamble; p 16
[13]**UNEP**(DTIE)/Hg/INC.5/3; Article 3; para; "5b. "Require that mercury or mercury compounds produced from decommissioned chlor-alkali production facilities are disposed of in accordance with Article 13; c. "Require that all mercury or mercury compounds from supply sources other than those identified in paragraph 5 (b) are: i) Disposed of in accordance with Article 13; or ii) Used for the purpose of a use allowed to the Party under this Convention; or iii) Exported only in accordance with paragraph 6; and iv) Stored in an environmentally sound manner as set out in Article 12 if intended to be used or exported for the purposes of a use allowed to a Party under this Convention before such use or export"
[14]**UNEP**(DTIE)/Hg/INC.5/3; Article 3; para 4; "Each Party with primary mercury mining within its territory prior to the date of entry into force of this Convention shall not allow the export, sale or distribution in commerce of mercury or mercury compounds produced from this supply source except for a. Uses listed in Part II of Annex D; or b. Disposal in accordance with Article 13
[15]**UNEP**(DTIE)/Hg/INC.5/3; Annex C Part II for dental amalgam; vaccines not mentioned in text
[16] **UNEP**(DTIE)/Hg/INC.5/3; Annex C footnote a "The following categories of products are excluded from Part I: a) Products for essential military uses; b) Products for scientific research; and c) Products for cultural/heritage uses"
[17]**UNEP**(DTIE)/Hg/INC.5/3; Annex C Part I; the treaty text takes a positive list approach which makes all product legal except ones listed in the Annex
[18]**UNEP**(DTIE)/Hg/INC.5/3; Article 7 para 3 "Each Party shall take measures to restrict the use of mercury or mercury compounds in the processes listed in Part II of Annex D in accordance with the provisions set out therein" and Annex D Part II
[19] **UNEP**(DTIE)/Hg/INC.5/3; Article 7 para 5 and 5 alt; bracketed text offers two options: one that prohibits new facilities (5) and one (5alt) that allows them if, "the Party can demonstrate to the satisfaction of the Conference of the Parties that the manufacturing process provides an important societal benefit and that there are no economically viable mercury-free alternatives available to provide such benefit, taking into account the national and economic circumstances of that Party"
[20]**UNEP**(DTIE)/Hg/INC.5/3; Article 8 para 1 "Any State or regional economic integration organization may register for one or more exemptions from the phase-out dates listed in Annex C or Annex D, 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 C or any manufacturing process in which mercury is used that is added by an amendment to Annex D, 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.]
[21]**UNEP**(DTIE)/Hg/INC.5/3; Article 8 bis "[Any Party that is a developing country shall be entitled to delay for ten years its compliance with the control measures set out in Articles 3–14 of this Convention.]"
[22]Article 9 para 3 "Each Party shall report to the Secretariat if at any time it determines that artisanal and small-scale gold mining and processing in its territory is more than insignificant. If it so determines the Party shall:"
[23]**UNEP**(DTIE)/Hg/INC.5/3; Article 9 para 5 "Each Party that is subject to the provisions of paragraph 3 of this Article and determines that domestic sources of mercury are not available: a. May import mercury for use in artisanal and small-scale mining consistent with its action plan developed in accordance with paragraph 3 of this Article; and"
[24]**UNEP**(DTIE)/Hg/INC.5/3; Article 9 para 5 "Each Party that is subject to the provisions of paragraph 3 of this Article and determines that domestic sources of mercury are not available: a. May import mercury for use in artisanal and small-scale mining consistent with its action plan developed in accordance with paragraph 3 of this Article; and"
[25] **UNEP**(DTIE)/Hg/INC.5/3; Article 10 and Annexe F, List of sources of emissions of mercury and its compounds to the atmosphere
[26]**UNEP**(DTIE)/Hg/INC.5/3; Article 10 para 5 "For existing sources, each Party shall require the control of emissions by implementing at least one of the following measures: a. Adopt a goal for reducing emissions; b. Establish and require compliance with emission limit values, or equivalent technical measures; c. Require the use of best available techniques and best environmental practices."
[27]**UNEP**(DTIE)/Hg/INC.5/3; Not present in Annex F or G as an emission source
[28]**UNEP**(DTIE)/Hg/INC.5/3; Not present in Annex F or G as an emission source
[29]**UNEP**(DTIE)/Hg/INC.5/3; Not present in Article 13 on Wastes

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