Mercury Supply Sources and Trade: Concerns regarding effectiveness of Article 3 and Recommendations

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IPEN welcomes the opportunity to comment on issues arising from mercury supply and trade and global controls in the form of the implementation of article 3 and their interaction with article 7.

IPEN has strong concerns that the current controls arising from article 3 are inadequate to prevent large quantities of mercury from entering ASGM operations globally through both legal and illicit channels. The assessment of both the OESG and the EEG is that the levels of mercury entering ASGM regions for use in gold extraction have not materially reduced since 2010 and may have *increased*. The data assessed to come to this determination was only analysed up until 2022. Since then, gold prices have increased by more than 120% according to the World Gold Council. This has led to a dramatic increase in global ASGM activity and a commensurate increase in mercury use to extract that gold. A proxy indicator of this increase is mercury emissions from the sector rising by 49% since 2010.

It is clear that the requirements of article 3 have little to no effect in controlling the amount of mercury directed to ASGM. Analysis of national reporting by parties also indicated that the required prior informed consent documentation for trade in mercury between parties has been poorly implemented. Further, the required documentation for trade of mercury between parties and non-parties has been poorly implemented.

It has now been more than ten years since the Minamata Convention entered legal force and it has become clear that the controls under article 3 have been too weak to prevent the widespread supply of mercury to ASGM. However, other uses of mercury globally, both industrial processes and products, have declined significantly in the past decade according to the work of the OESG and EEG. As a result, it would be expected that a significant decline in the trade and supply of mercury would eventuate due to lower demand from these activites, but that has not been the case as surplus mercury from these declining uses has been diverted to ASGM.

It is IPEN's view that the single greatest factor in the decline of these uses of mercury has been the widely adopted phase out of industrial technologies and products requiring mercury. However, the largest use of the mercury in the world is ASGM, for which no phase out date as an allowable use has ever been proposed. This leads to a perception that mercury use in ASGM is to be tolerated by the international community while any reduction in mercury use is left in the hands of individual countries through National Action Plans. The findings of the OESG and EEG suggest that NAPs have not

had a strong impact on reductions in mercury use in ASGM – indeed, it is likely to have increased.

While ASGM remains an allowable use of mercury under the Minamata Convention and supply and trade of mercury continues to be diverted to ASGM in increasing quantities, it is not realistic to expect that there will be any significant reduction in mercury use in ASGM.

Unfortunately, this is resulting in very heavy pollution impacts in ASGM regions of Africa, Latin America and parts of southeast Asia – especially Indonesia. In turn, this mercury pollution is resulting in significant impacts on vulnerable populations with Indigenous communities in riverine locations most heavily impacted due to their reliance on freshwater fish for dietary protein. Many key rivers and tributaries in the Amazon are reporting elevated levels of mercury contamination from ASGM activity with local fish stocks increasingly impacted. This is leading to unavoidable human exposures and potentially significant impacts on biodiversity that are part of the food chain reliant on fish.

Recommendation

The Minamata Convention should be amended and strengthened in accordance with the recommendation of the former UN Special Rapporteur on Toxics and Human Rights, Dr Marcos Orellana in his 2022 report[1] to the Human Rights High Commission. His recommendation was to establish **a phase out date for ASGM as an allowable use of mercury by *2032***. Phase out dates for other mercury uses have proven effective with global support and it should be expected that a phase out date for ASGM in combination with several other supporting measures will start to make inroads into the ASGM situation and improve the effectiveness of the convention.

Mercury Sources

There are several sources of mercury that are currently poorly controlled or unregulated by the convention resulting in significant sources of mercury available for global trade.

<u>Mining by-product versus primary mercury mining</u>

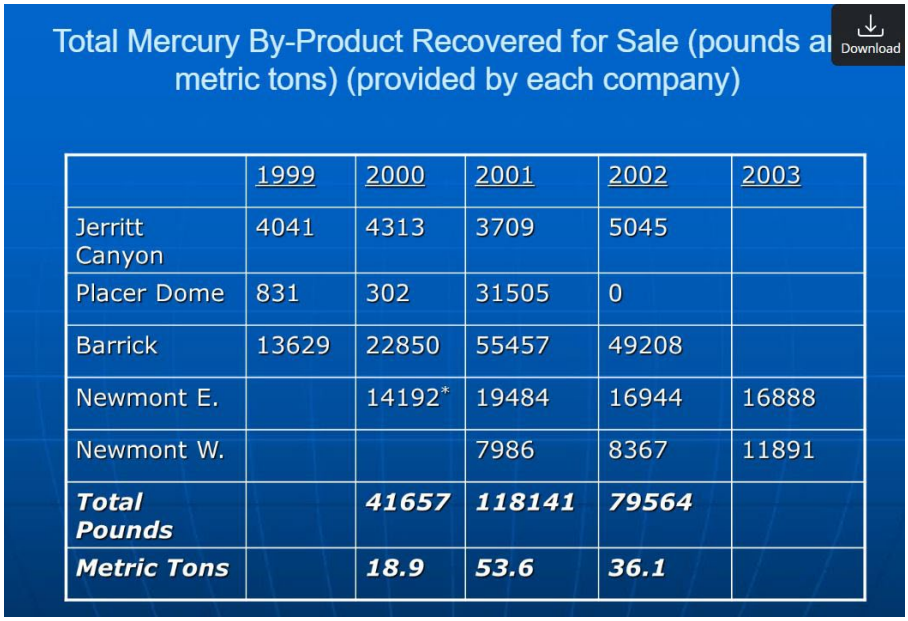
Parties are not permitted to export mercury for use in ASGM if that mercury has arisen from primary mercury mining. However, the definition of primary mining under article 2 as '*mining in which the principal material is sought is mercury'* leaves a significant loophole that impacts mercury supply and allows for under-reporting of mercury production in national reporting.

Mercury is often found in conjunction with other minerals that are the principal material sought. These include gold, antimony and zinc mines among others. Mercury obtained

[1] https://www.ohchr.org/en/documents/thematic-reports/ahrc5135-mercury-small-scale-gold-mining-and-human-rights-report-special

from these mines has little to no control in terms of its export and final use. Fortunately, some parties, such as the EU and US, have blanket prohibitions on mercury exports preventing byproduct mercury from reaching the global market and supplying ASGM. Most other countries do not have this policy and allow byproduct mercury to be traded globally without the same restrictions as mercury sourced from primary mercury mines.

An example, the quantities of byproduct mercury produced by five Nevada gold mines, between 2000 and 2002 amounted to 108.6 tonnes[2]. While this data is clearly dated it shows the scale of mercury arising from a handful of gold mines in one country. When other industrial gold mines, antimony mines and zinc mines are considered the total byproduct globally may exceed 1000 tonnes per annum with few impediments to reaching the global market for trade and diversion to ASGM.



Total Mercury By-Product Recovered for Sale (pounds a
metric tons) (provided by each company)

	1999	2000	2001	2002	2003
Jerritt Canyon	4041	4313	3709	5045	
Placer Dome	831	302	31505	0	
Barrick	13629	22850	55457	49208	
Newmont E.		14192*	19484	16944	16888
Newmont W.			7986	8367	11891
Total Pounds		***41657***	***118141***	***79564***	
Metric Tons		***18.9***	***53.6***	***36.1***	

Figure 1 Extract from Jones and Miller (2005) showing mercury by-product recovered from Nevada gold mines.

Oil and gas

The oil and gas industry do not publicise accurate figures on the amount of mercury byproduct they produce but several researchers have attempted to estimate the amount of mercury recovered globally from the oil and gas sector.

Researchers Parajuli and Maxson in their *Draft report on Mercury Trade, Supply and Demand (2023)* noted:

"Qa3 has estimated (Qa3 2021) that approximately 300 metric tons of mercury were mobilized as a by-product by the oil and gas sector in 2019, of which roughly 125 metric tons were recovered from the gas sector for either resale or disposal (Maxson 2019)."

[2] Jones, G., & Miller, G. (2005). *Mercury and modern gold mining in Nevada*. University of Nevada, Department of Natural Resources and Environmental Sciences.

Other estimates suggest that a maximum of 200 tonnes of mercury is generated annually by the oil and gas sector. Other evidence suggests this is a significant underestimate.

Recently, INPEX, a gas production company in Australia provided documentation to regulatory authorities that their mercury removal units (which are common to most gas extraction facilities) would require renewal every 2 to 3 years per train and would generate around 250 tonnes of mercury each time[3]. In another Australian gas operation, a worker was contaminated with mercury during the clean out of a slug catcher which contained 35 tonnes of mercury. The Chevron gas extraction facility in Barrow Island, Western Australia, removed 35 tonnes of mercury in a single maintenance operation in 2021[4]. Such cleaning operations are conducted on a regular basis at this facility suggesting this single cleaning at this facility contributes almost 30% of the global estimates cited in Parajuli and Maxson, 2023.

The withholding of information by oil and gas interests limits the amount of data researchers have been able to access and has resulted in what is almost without doubt a significant underestimate of mercury recovered by the global oil and gas and placed on the commercial market boosting supply.

Contaminated sites

There is currently no data available on the amount of mercury recovered from contaminated site remediation. The volume may currently be relatively minor but will become a significant future source of mercury as ASGM tailing sites are increasingly remediated. Thousands of tonnes of mercury are contained in contaminated sites and the most effective remediation methods seek to recover as much as possible from the soil and sediment. IPEN suggests that mercury arising from such remediation activity be prevented from entering the global market and diverted to ASGM where it will yet again contaminate more sites continuing the cycle of exposure and pollution.

Recommendations

Mining byproduct: Apply the same export controls on any mined mercury as apply to mercury from primary mercury mining to prevent byproduct mercury from being used in ASGM.

Oil and gas: Require byproduct mercury from oil and gas sector to be reported by parties who, in turn, must obtain that information from oil and gas operations under their jurisdiction. Classify mercury recovered by oil and gas operations to be deemed

[3] https://ntepa.nt.gov.au/_media/waste-and-pollution/register/wdl/dredging/ichthys-lng/onshore-operations-environmental-management-plan.pdf

[4] Energy News Bulletin. (2021) Mark Tilly. Chevron contractor suffers mercury poisoning on Barrow Island. Accessed online June 30, 2021 at https://www.energynewsbulletin.net/workforce/news/1409032/chevron-contract-worker-suffers-mercury-poisoning-on-barrow-island

mercury waste requiring disposal and/or subject to export prohibition unless destined for ESM disposal.

Contaminated sites: Classify mercury recovered from contaminated sites to be deemed mercury waste requiring disposal and/or subject to export prohibition unless destined for ESM disposal.

Post-importation mercury tracking

IPEN has identified in many of the country status reports[5] on ASGM produced by our participating organisations, that even where there are registers of mercury importers in place, there is little to no follow-up of the fate of that mercury once imported. The lack of mercury tracking and controls post-importation allows for diversion of mercury to ASGM through legal and illegal trade. IPEN recommends that the Convention develop guidance for parties on the tracking and control of mercury post-importation and methods for preventing illicit re-export/smuggling.

Amending the convention to prohibit mercury exports

A final point that IPEN would seek to make is that the effectiveness of the convention on reducing and eliminating mercury in ASGM has been undermined by the ongoing availability of mercury supply from many sources.

While removing ASGM as an allowable use of mercury from the convention (i.e. establishing a phase out date) is a key measure for increasing effectiveness it would need to be complemented by strong action on mercury supply. Orellana detailed the amendment required to strengthen the convention in this regard in his 2022 report recommendations[6] which entails the prohibition of mercury exports by parties to the convention (unless destined for ESM disposal). The EU and the US have already taken this step and no longer export mercury.

If all parties to the convention were to be required to end mercury exports – attempts to identify, quantify and place new controls on a myriad of mercury sources would not be necessary as no exports would be permitted. For the small volume requirements of mercury in some countries, mercury could be sourced from domestic byproduct supplies. Many countries have already banned mercury imports to deter its use in ASGM, and the international community could support them through such an amendment to the convention.

A further measure to prevent free riders from taking advantage of this amendment would be to ensure that parties cannot import mercury from non-parties – several of whom are primary mercury mining countries.

[5] https://ipen.org/publication/mercury-and-gold-mining-asgm/

[6] https://www.ohchr.org/en/documents/thematic-reports/ahrc5135-mercury-small-scale-gold-mining-and-human-rights-report-special