**Call for submissions “Mercury, artisanal and small-scale gold mining, and human rights” by the distinguished Special Rapporteur on Toxic Substances and Human Rights,**

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**Introduction**

Under the current federal government, which took office in 2019, Brazil has seen an unprecedented dismantling of its environmental and indigenous policy. The federal agencies responsible for these policies, for their implementation and monitoring, have had several their structures formally deactivated, their budgets reduced, and programs cancelled, while staff have denounced cases of harassment and punishment in conducting their work. The weakening of these institutions and the dismantling of environmental and indigenist public policies has been proclaimed by the president himself and by the upper echelon of his government, including as a media strategy. This strategy is associated with public declarations and media appearances giving clear encouragement to illegal environmental actions by economic sectors and the public in general, among them ASGM and land grabbing in protected areas.

At the beginning of the Bolsonaro government, Decree 9759/2019[[1]](#footnote-1) dissolved hundreds of multiparticipative councils that ensured the participation of civil society. Among these councils was the National Commission for Chemical Safety (*Comissão Nacional de Segurança Química*: CONASQ), a multistakeholder commission chaired by the Environment Ministry (*Ministério do Meio Ambiente*: MMA) and co-chaired by the Ministry of Health. It was responsible for coordinating the implementation actions of the Brazilian government related to the Minamata Convention, specifically through its Working Group on Mercury. The dissolution of this commission impedes civil society’s control of government actions in this specific area, dialogues with technicians involved in the processes of the mercury agenda, the collective construction of these public policies involving diverse ministries, monitoring agencies and research institutions, and the debate with the private sector, responsible for the use of mercury on an industrial scale.

As part of this same strategy, the MMA and its monitoring agency, the Brazilian Institute of the Environment and Renewable Natural Resources (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*: IBAMA), took down webpages containing data about imports, exports and domestic commercialization of mercury. IBAMA is responsible for controlling these activities and should disclose the data to the public.

Unfortunately, similar strategies are repeated throughout government, also masking public policies for the territorial protection of indigenous peoples and promotion of their health. These strategies have also fueled the way in which state and municipal governments have acted in response to environmental offences, which are concentrated primarily in Amazonia. Overall, this scenario has hindered civil society’s monitoring of public policies relating to this topic.

It is important to highlight the fact that all processes of territorial recognition in Brazil are currently paralyzed, representing a grave precedent of disrespect for the text of the Brazilian constitution. And that the Bolsonaro government is an enthusiastic advocate of ASGM, including in Indigenous lands, illegal under Brazilian constitution. Brazil’s Congress is currently considering a law bill proposed by the federal executive that would authorize small-scale and industrial-scale mining in indigenous lands: considered one of the government’s priorities, the law bill aims to permit industrial-scale and artisanal mining, hydroelectric power generation, exploration of oil and gas, and large-scale agriculture in officially demarcated Indigenous Lands, removing the power of veto of these communities over decisions that impact their lands. The organizations of indigenous peoples of Brazil have positioned themselves vehemently against this project[[2]](#footnote-2). The Federal Public Prosecutor’s Office (*Ministério Público Federal:* MPF) has denounced the bill as unconstitutional[[3]](#footnote-3).

Finally, we draw attention to the fact that ASGM already occupies a larger area than industrial mining and has advanced over indigenous lands and conservation units in Amazonia in unprecedented form.[[4]](#footnote-4) According to MapBiomas, Amazonia concentrates 72.5% of the total area mined in the country (including industrial and ASGM): “*In total there are 149,393 ha; of these, 101,100 ha (67.6%) are ASGM (…) As well as being concentrated in Amazonia, ASGM has also undergone rapid expansion in recent years. ASGM activity overtook the area associated with industrial mining in 2020: 107,800 ha compared to 98,300, respectively*.*”* This expansion of ASGM, according to information collated by MapBiomas, has occurred in indigenous territories and conservation units: “*From 2010 to 2020, the area occupied by ASGM within indigenous lands grew 495%; in the case of conservation units, the growth was 301%.”*[[5]](#footnote-5)

The increase in ASGM in indigenous lands is associated with a rise in mercury contamination among these populations, as various recent studies demonstrate, constituting a serious public health problem and a violation of the human rights of these populations. Hence the importance of the initiative of the distinguished rapporteur to focus on this issue and alert the UN Human Rights Council about the seriousness of the situation in diverse regions of the world, in particular the Amazon.

Below we provide our contribution to this call, replying to some of the questions from the script.

***Controls on mercury***

1. Has your country prohibited the a) import or b) export of elemental mercury?

Brazil has not prohibited mercury imports. It is only regulated and requires registration of the parties involved[[6]](#footnote-6). But recent research and inquires within IBAMA have not resulted in any information, which lead us to believe that the process is currently not monitored or checked. This conclusion is also supported by one investigation, reported in response to question 8.

As in other countries, much of the importation and distribution of mercury is masked as dental use; reports in mining zones identify dentists as common sources in the distribution of the metal close to these regions.

7. What remedies are available to persons in your country for pollution damages related to mercury exposure from ASGM activities?

Brazil’s public health system is not prepared to take measures to prevent and to deal with mercury contamination, even less so in the Amazon region, which is the area most heavily affected by ASGM, where the State’s presence is quite fragile in every aspect. To respond adequately to the situation of contamination due to mercury exposure, we believe it is important for the country to follow a set of recommendations drafted and published by the team lead by Dr. Paulo Basta from the Osvaldo Cruz Foundation (Fiocruz), the leading government health research institution in Brazil. Among these recommendations are: (a) include testing of mercury levels in hair samples in the routine of actions developed in the prenatal care program and in the infant growth and development monitoring program within the Unified Health Service (*Sistema Único de Saúde*: SUS), Brazil’s public health system; (b) compulsory notification of cases of chronic mercury contamination, especially cases in those areas affected by ASGM in Amazonia, through the existing disease notification systems within Brazil’s health systems[[7]](#footnote-7); (c) elaborate a Protocol of Primary Care for Contaminated Persons, supported by specialists, to be incorporated into the SUS system; (d) elaborate a Risk Management Plan (RMP) for populations chronically exposed to mercury, with ample monitoring of mercury contamination levels in fish and guidance for the population living in affected areas; (e) develop more in-depth contamination studies.

***Illegal trade***

8. What actions has your country taken to prevent the illegal importation, smuggling and distribution of mercury to ASGM activities?

Brazil has not made any significant advance in controlling and curbing the illegal distribution of mercury in its territory. The rise in the metal’s price in mining regions seems to be more closely related to stronger control on the international market.

The federal resolution 173 of 2017[[8]](#footnote-8) prohibited the importation of metallic mercury for dental use starting in 2019, allowing only the fabrication, importation and commercialization of mercury as an ready to use amalgam in capsules, prioritizing dental worker’s safety, but that could also affect mercury diverted to ASGM. Unfortunately, non-encapsulated amalgam is freely sold in ebay like sites in Brazil.

In 2018,[[9]](#footnote-9) under the previous administration of the federal government, an inquiry conducted by IBAMA into Quimidrol, a company importing dental products and the country’s largest importer of mercury, identified serious irregularities and diversion of the product to fake companies in order to send mercury to ASGM. At the time, more than 2 tons of mercury were seized, the company having sold 6.8 tons over the previous 3 years.

9. What are the greatest challenges your country faces in preventing illegal mercury imports and smuggling?

The challenges to curbing the illegal importation and smuggling of mercury reside in the political field. Just as the illegally extracted gold is easily incorporated into the legal purchasing and exportation process[[10]](#footnote-10) through convenient loopholes in the established controls, allowing illegally mined gold to enter the international market,[[11]](#footnote-11) it can be asserted that the same convenience impedes stricter controls that would prevent deviations in mercury imports.

Brazilian civil society organizations[[12]](#footnote-12) have pressed the government to change the procedures for purchasing gold and exporting the metal legally, mainly under the argument of preventing the evasion of taxes that should be collected by legal mining, with clear benefits too in terms of closing the doors to illegal mining. Legal actions against the government were initiated by the MPF[[13]](#footnote-13) demanding changes along these lines.

Controls on the smuggling or illegal importation of mercury should occur at the few importing ports that Brazil possesses, through increased inspections and control of the quantity and destination of purchases, as well as of the companies that import and sell the metal. Preliminary studies presented at CONASQ’s Working Group on Mercury (see introduction) in 2018 estimate that up to 221 tons of mercury were used by illegal ASGM in Brazil. A portion of this mercury was legally imported by Brazil, alleging dental use, but this use is tiny compared to the amount imported. Greater commitment and control by exporting countries and companies could have a major impact on the circulation and sale of mercury in consumer countries and, consequently, on restricting its illegal use, as in the illegal mines in Amazonia.

10. Has your country established cooperative arrangements with bordering countries or at a regional level to combat illegal transboundary movement of mercury destined for ASGM activity?

Brazil has no cooperation agreement with neighbouring countries to combat the illegal cross-border movement of mercury, just as it has no agreement either to curb the illegal movement of gold, whether in terms of its mining or its sale.

***Minamata Convention***

13. Has your country ratified the Minamata Convention on Mercury and if yes, what measures have been taken to eliminate mercury from ASGM, including its diversion to ASGM?

Brazil ratified the Minamata Convention in August 2018 through Decree 9.470.[[14]](#footnote-14) According to the commitments assumed in this convention, in 2017 Brazil started an inventory of mercury emissions (Minamata Initial Assessment: MIA) partially financed by the GEF. Despite information that this survey was completed in the beginning of 2019, it has yet to be officially published and the results of the survey remain unknown.

Attempts to obtain information from government officials involved in the environmental policies on chemicals management and chemical conventions implementation, through official representatives of civil society on the now extinguished CONASQ, went unanswered.

According to the contract signed with the GEF, with UNDP as the implementing agency, the MMA should submit the inventory to CONASQ for its appreciation and possible validation. With CONASQ extinct in 2019, the inventory is still under secrecy and no measures are known to have been taken regarding the results of the inventory.

***Protection of Indigenous Peoples***

15. What specific actions has your country taken to directly protect the health of indigenous peoples from mercury contamination related to ASGM?

The Brazilian health system is not prepared to deal with mercury prevention and contamination. Brazil has a specific system for providing healthcare to indigenous peoples, which in general presents numerous operational weaknesses. There are no initiatives to test mercury levels in indigenous populations whose traditional territories are under invasion by illegal ASGM, nor any official system or database to compile and systemize information on contamination. There are also no care protocols established for populations chronically exposed to mercury. In sum, the Brazilian government has no specific measures to protect and treat indigenous peoples from mercury contamination.

16. Has any government or public forum for consultation with indigenous peoples about mercury pollution from ASGM been established?

The only forum combining government, workers, civil society and academia to dialogue e build public policies in a multistakeholder political space in relation to Minamata Convention Implementation was CONASQ, now dissolved (see introduction). The same decree that extinguished CONASQ also dissolved the National Council for Indigenist Policy (CNPI), formed by representatives from government, indigenous peoples and indigenist agencies in 2016[[15]](#footnote-15) with the objective of increasing the participation of indigenous peoples in Brazilian indigenist policy.

17. Have any mercury related health assessments or studies been conducted in your country that relate directly to the exposure of indigenous peoples to mercury pollution from ASGM activities and associated mercury pollution? Please describe or share.

Some environmental and indigenist NGOs in Brazil, including Iepé, have worked to shed light on the environmental and health impacts of ASGM and especially the impact on the health of indigenous peoples and other communities that depend on the forest. In a coordinated project with Fiocruz (see question 7), Iepé and other NGOs, along with other public organisations and research institutions, conducted surveys in the state of Amapá on the contamination of fish in the state’s river basins. The first study was undertaken in 2015.[[16]](#footnote-16) A second, broader study was published in 2020.[[17]](#footnote-17) Mercury contamination was found in all 428 samples taken from 18 locations distributed across the state. 28.7% of these samples showed levels above the limit established by the World Health Organisation.

Based on these results, studies of mercury contamination were conducted by Iepé among women in a ASGM region of Amapá and the results published along with those from other regions in Bolivia, Colombia and Venezuela by IPEN.[[18]](#footnote-18)

This joint venture prompted Fiocruz to conduct a much deeper assessment of mercury exposure among Munduruku communities[[19]](#footnote-19) heavily affected by ASGM. The research group identified high levels of contamination of fish stocks, a high risk to health due to consumption of local fish, significant neurological impacts among the 110 indigenous people analysed,[[20]](#footnote-20) serious neurological impacts among individuals with a high level of mercury contamination, serious levels of contamination among women of reproductive age and among children,[[21]](#footnote-21) and an 11-month girl with the highest level of mercury contamination, 19.6 µg/g, with serious motor deficiency and anaemia.

The continuation of these studies among other indigenous peoples heavily impacted by ASGM, such as the Yanomami in Roraima, was prohibited by the National Indian Foundation (*Fundação Nacional do Índio*: FUNAI), the government agency responsible for indigenist policy in Brazil.[[22]](#footnote-22) Despite the national mobilization in response to the humanitarian crisis experienced by the Yanomami, the prohibition has yet to be overturned and legal appeals are being evaluated.

Despite the wide dissemination of all these studies, and others that have been carried out in Brazil for decades, there is no known reaction from the government to address these challenges.

18. What health services and advice does your country provide to indigenous peoples to either treat high mercury levels or to minimise their exposure to mercury through diet (e.g. fish) or direct exposure via ASGM activity?

Unfortunately, Brazil lacks any health or advisory services for people or communities exposed to elevated levels of mercury contamination. Although information is available on contamination of fish stocks, these studies have not been considered by sanitary and health authorities responsible for establishing healthcare programs for indigenous peoples. Actions taken by civil society, for its part, to fill this vacuum have been ignored by the current government.

Iepé and other civil society institutions have mobilized to inform indigenous communities and the general public on the reality of mercury contamination in the Amazon. In conjunction with Fiocruz, WWF-Brasil and Greenpeace, we launched a study of contamination of the fish sold at markets in the large urban centres of the Amazon. Unfortunately, the preliminary data show the high level of contamination of the fish sold in these markets. We hope that publication of the results of this investigation will alert the general public to the risk of consuming contaminated fish as their main source of animal protein and increase the level of mobilization against ASGM, seen as a problem that affects not only forest regions and indigenous peoples, but the whole of Amazonia’s population.

1. What constitutional or legal rights do indigenous peoples have to prohibit mercury based ASGM in their traditional lands and territories?

Brazilian constitution came into force in 1988 and through its articles 49 and 231 established that mining in indigenous lands would be permitted pending regulatory law. Although many efforts have been done in the past, this law has yet to be decided by Congress. Confirmed by a presidential decree in 2004[[23]](#footnote-23), mining in indigenous territories is to be considered illegal until such a law comes to pass (see current government efforts to propose a law bill in the introduction). Paragraph 7 of article 231 clearly states that the only mention of ASGM in the constitution does not apply to indigenous lands). This is a strong constitutional base to bar any effort to legally permit ASGM inside indigenous lands in Brazil.

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1. <https://noticias.uol.com.br/colunas/jamil-chade/2020/06/15/relatoria-da-onu-questiona-acao-do-governo-bolsonaro-contra-sociedade-civil.htm> [↑](#footnote-ref-1)
2. Among these positionings, see:

   <https://apiboficial.org/2022/02/21/alerta-congresso-principais-ameacas-aos-povos-indigenas-e-ao-futuro-do-planeta/> [↑](#footnote-ref-2)
3. <http://www.mpf.mp.br/pgr/documentos/document20210622T105111.842.pdf> [↑](#footnote-ref-3)
4. <https://www.escolhas.org/escolhas-entrevista-larissa-rodrigues-o-brasil-virou-um-pais-garimpeiro-e-nao-minerador/> [↑](#footnote-ref-4)
5. <https://mapbiomas.org/area-ocupada-pela-mineracao-no-brasil-cresce-mais-de-6-vezes-entre-1985-e-2020> [↑](#footnote-ref-5)
6. Regulated by the following decree: <https://www.planalto.gov.br/ccivil_03/decreto/1980-1989/d97634.htm> and procedures: <http://www.ibama.gov.br/component/legislacao/?view=legislacao&force=1&legislacao=135696> [↑](#footnote-ref-6)
7. <https://pubmed.ncbi.nlm.nih.gov/30857438/> [↑](#footnote-ref-7)
8. <https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/19296892/do1-2017-09-18-resolucao-n-173-de-15-de-setembro-de-2017-19296796> [↑](#footnote-ref-8)
9. <https://g1.globo.com/sc/santa-catarina/noticia/ibama-apreende-430-kg-de-mercurio-em-sc-que-seriam-enviados-para-garimpos-ilegais-na-amazonia.ghtml>

   <https://g1.globo.com/sc/santa-catarina/noticia/ibama-apreende-17-tonelada-de-mercurio-no-porto-de-itajai.ghtml> [↑](#footnote-ref-9)
10. [https://brasildefatorj.com.br/2021/04/19/como-o-ouro-ilegal-do-garimpo-se-torna-legal-a-palavra-basta](https://brasildefatorj.com.br/2021/04/19/como-o-ouro-ilegal-do-garimpo-se-torna-legal-a-palavra-basta#.YH7ERjHAhoM.whatsapp) [↑](#footnote-ref-10)
11. <https://reporterbrasil.org.br/2021/06/hstern-ourominas-e-dgold-as-principais-compradoras-do-ouro-ilegal-da-ti-yanomami/>

    <https://www1.folha.uol.com.br/ambiente/2022/02/ouro-ilegal-de-terra-indigena-da-amazonia-termina-em-gigante-italiana.shtml> [↑](#footnote-ref-11)
12. <https://www.escolhas.org/novo-estudo-do-escolhas-revela-quase-metade-do-ouro-produzido-no-brasil-pode-ser-ilegal/> [↑](#footnote-ref-12)
13. <http://www.mpf.mp.br/pa/sala-de-imprensa/noticias-pa/acoes-do-mpf-no-para-apontam-provas-do-completo-descontrole-da-cadeia-economica-do-ouro-no-brasil/> [↑](#footnote-ref-13)
14. <http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/decreto/D9470.htm> [↑](#footnote-ref-14)
15. <https://www.justica.gov.br/news/governo-instala-conselho-nacional-de-politica-indigenista> [↑](#footnote-ref-15)
16. <https://thescipub.com/abstract/ajessp.2017.11.21> [↑](#footnote-ref-16)
17. Mercury Exposure through Fish Consumption in Traditional Communities in the Brazilian Northern Amazon <https://www.mdpi.com/1660-4601/17/15/5269> [↑](#footnote-ref-17)
18. Mercury exposure of women in Four Latin American gold mining countries <https://ipen.org/documents/mercury-exposure-women-four-latin-american-gold-mining-countries> [↑](#footnote-ref-18)
19. Health Risk Assessment of Mercury Exposure from Fish Consumption in Munduruku Indigenous Communities in the Brazilian Amazon <https://www.mdpi.com/1660-4601/18/15/7940/htm> [↑](#footnote-ref-19)
20. Neurological Impacts of Chronic Methylmercury Exposure in Munduruku Indigenous Adults: Somatosensory, Motor, and Cognitive Abnormalities <https://www.mdpi.com/1660-4601/18/19/10270> [↑](#footnote-ref-20)
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22. <https://g1.globo.com/rr/roraima/noticia/2021/11/21/funai-proibe-equipe-da-fiocruz-de-levar-assistencia-aos-yanomami-em-meio-a-desnutricao-surto-de-malaria-e-abandono-do-governo.ghtml> [↑](#footnote-ref-22)
23. <https://www2.camara.leg.br/legin/fed/decret_sn/2004/decreto-35209-17-setembro-2004-534106-publicacaooriginal-18334-pe.html> [↑](#footnote-ref-23)