

## EEB/ZMWG Input on [Access to Justice to inform the preparation of the thematic report](#) of the Special Rapporteur on Toxics and Human Rights

Brussels, 24 March 2025

### Introduction

The European Environmental Bureau<sup>1</sup> and the Zero Mercury Working Group<sup>2</sup> (ZMWG) appreciate the opportunity to provide input to the thematic report of the Special Rapporteur, focusing on Access to Justice and effective remedies in the context of toxic.

Skin Lightening Products, or services, to make the skin appear lighter, is a symbol of societies grappling with internalized racism and colourism. Much of this comes from the normalization of Euro-centric beauty standards around the world, coupled with deliberate marketing of harmful products to people of color to fulfill these standards. It's a big industry and predominantly targets women of color in every region of the world.

Mercury and its compounds are sometimes used in skin lightening products (SLPs) as bleaching agent, inhibiting the formation of melanin, to produce the whitening and anti-freckles effect. Due to the common lack of full disclosure of ingredients on the labels, users are often unaware of the toxic substances in these products and the risks they may pose to their health and to those in their households.

Mercury-added SLPs present significant health risks. The World Health Organization (WHO) recognizes mercury as a “major public health concern.” Mercury can be easily absorbed through the skin and lungs. Long-term use of mercury-added SLPs can damage the skin, eyes, lungs, kidneys, digestive system, immune system, and nervous system<sup>3</sup>. Due to its ability to vaporize and spread through contact, mercury in SLPs is not only a risk to the user but may also expose other household members. Infants, children, and developing foetuses are particularly vulnerable to the developmental health effects of mercury.

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<sup>1</sup> The **European Environmental Bureau (EEB)** is the largest network of environmental citizens' organisations in Europe, founded in 1974. It currently consists of over 185 member organisations in 41 countries, including a growing number of networks, and representing some 30 million individual members and supporters. The EEB stands for sustainable development, environmental justice, global equity, transparency and participatory democracy. It promotes the principles of prevention, precaution and the polluter-pays.

<sup>2</sup> The EEB together with the Mercury Policy Project launched in 2005 the **Zero Mercury Working Group (ZMWG)** and are co-coordinating it since then. The ZMWG is an international coalition of more than 110 non-governmental organizations (NGOs) from over 55 countries. It strives towards reducing and eliminating anthropogenic mercury emissions and the use of mercury in products and processes and supports the implementation of the Minamata Convention on Mercury.

In 2017, the [ZMWG started a global NGO campaign](#), focusing on supporting national government efforts to ban the manufacture, import, export and use of mercury-added cosmetics. Over 1000 skin lightening creams have been analysed, from local markets and mainly purchased from over 20 countries and more than 40 online platforms, available from [our database](#). In the six reports published, findings show the high mercury content in many of these products, discussing the continuous mercury crisis especially in this sector.

<sup>3</sup> [Online Marketing of Toxic Skin Lighteners, ZMWG, 2023, https://www.zeromercury.org/wp-content/uploads/2023/10/ZMWG-SLP-Oct-2023-Full-Report.pdf](https://www.zeromercury.org/wp-content/uploads/2023/10/ZMWG-SLP-Oct-2023-Full-Report.pdf)

Additionally, beyond the mercury exposure through SLPs, the entire life cycle of mercury—from source to final release or disposal—may have cumulative and disproportionate impacts on human health and the environment, especially when combined with other toxic substances in the daily living environment.

Mercury added cosmetics, including SLPs, are banned by the Minamata Convention and many countries' legislation. Yet they are widely available both in local markets and in online marketplaces, promoted online on social media sites, and sold through mobile apps, as it can be seen from our campaign since 2017 in our ZMWG [database](#).

In our most recent testing study, “Online Marketing of Toxic Skin Lighteners: Mercury cosmetics marketed as a 'solution' to dark skin”<sup>4</sup>, a total of 213 SLP samples were purchased by our partner NGOs from 23 online platforms in 12 countries. Of the 213 SLPs purchased and analyzed, 191 (90%) were found to contain mercury levels that exceeded the widely accepted legal threshold of 1 ppm. The mercury concentration for these samples ranged between just over 1 ppm to 74800 ppm.

We estimate that 66 million Hg/SLPs are sold each year containing 112.5 metric tons of mercury compounds.<sup>5</sup>

## 1. Parameters hindering access to justice & remedies for mercury-added SLPs

Toxic product cases can be considered harder to litigate than environmental disasters because victims suffer individually, often over time, with symptoms that can appear sometimes years after exposure. Despite mercury-added SLPs (Hg/SLPs) being banned in many countries and their effects being well documented, legal action against manufacturers remains rare. While regulatory mechanisms exist to detect, recall, and ban unsafe products, these systems do not always lead to justice or compensation for affected consumers. Several legal and procedural barriers make it difficult to hold manufacturers accountable.

### Legal consumer safety framework

#### 1. Lack of enforcement of consumer safety laws

As it is a provision of the Minamata Convention, many governments have already legislation in place aimed at tackling the issue of mercury-added cosmetics. Examples of government controls, regulations and cooperation schemes may be found in the ZMWG 2019 Enforcement report<sup>6</sup>. Other countries have joined this effort since then.

However, enforcement is difficult to achieve. Reasons can be low awareness on the issue, as well as difficulty in identifying the needs and eventual gaps. Important reason is also the lack of resources for better planning, coordination, scientific instruments as well as market monitoring to conduct regular

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<sup>4</sup> ZMWG October 2023, [Online Marketing of Toxics Skin Lighteners: Mercury cosmetics marketed as a “solution” to dark skin](#)

<sup>5</sup> Bender, M., Engaging E-Commerce (and Others) in Eliminating Toxic Trade in Mercury Added Cosmetics, International Conference on Mercury as a Global Pollutant, Cape Town, South Africa, 22 July 2024 , [https://www.mercurycapetown.com/wp-content/uploads/2024/10/6-Michael-Bender-ICMGP\\_ZMWG\\_July\\_2024\\_Final\\_draft\\_rev-17-July.pdf](https://www.mercurycapetown.com/wp-content/uploads/2024/10/6-Michael-Bender-ICMGP_ZMWG_July_2024_Final_draft_rev-17-July.pdf)

<sup>6</sup> ZMWG 2019 [Enforcement measures to restrict high mercury cosmetic products under the Minamata Convention](#)

inspections of beauty shops, street markets, or online platforms where illegal SLPs are sold. Furthermore, penalties and sanctions may not be sufficient to achieve the expected results. Intergovernmental coordination within agencies can also be a challenge. Porous borders can hinder efforts while interregional cooperation may also not be easy.

[Since 2017](#), the ZMWG has gathered evidence by sampling SLPs from local markets and in the recent years purchasing from online platforms. Overall, over 1000 products have been tested from around the world, from over 20 countries and around 40 platforms, available at our [database](#). Non-compliant mercury SLPs are not only widely available, but the same brands, have been found in different platforms, around the world and in different years, with very high mercury content showing the extend of the problem.

Same brands may reappear on the markets even though they are part of detention lists or after products have been seized.

The legal product safety framework of some countries can also present gaps, such as lack of specialized consumer protection agencies or the necessary frameworks to enforce bans and recalls effectively. Some countries do not have dedicated consumer protection agencies or strong legal procedures to punish manufacturers, or sellers of toxic SLPs. Even when products are banned, manufacturers and distributors face minimal penalties, allowing them to continue selling harmful creams with little consequence.

Online marketplaces provide another important loophole—sellers can quickly relist banned products under different names, making enforcement even more difficult. For example, in the Philippines, the Food and Drug Administration (FDA) regularly **issues public health warnings in the form of advisories** against SLP brands that contain mercury. However, even such products can still be found in markets or on online stores, as [reported](#) by the NGO Ban Toxics.

So far, due to lack of liability in legislation, e-commerce giants have failed to ensure that cosmetics sold through their sites directly or by third-party sellers are free of toxic and illegal substances like mercury, along with many other hazardous products.

## 2. Countries' product seizure is often not followed by litigation and justice for consumers

In the EU with the EU Safety Gate, in the Philippines, in the US, countries have detention list and alert systems to flag illegal products. However, **flagging those products does not mean reparation for consumers having previously purchased goods** – or the way to do so may not be evident.

### **Case example: Liability for skin-lightening products in the EU**

The EU is often recognized as having a strong consumer protection system in place. However, access to justice and remedies remains difficult for cases related to cosmetics containing toxics. While mercury is banned from cosmetics under the Cosmetic Products Regulation (1223/2009), two pieces of legislation address specifically product safety and liability: the Product Liability Directive (PLD) and the General Products Safety Regulation (GPSR).

### **EU Product Liability Directive (PLD) [2024/2853](#)**

The 1985 Product liability directive has been revised in 2024 and will be transposed into national law in December 2026. The Product Liability Directive ensures that victims can claim compensation from manufacturers when they suffer damage caused by a defective product. This directive is based on 2 main principles:

- the manufacturer has to compensate the damage caused by a defective product of theirs
- the victim has to prove the product's defectiveness, the damage that was caused and establish that this defectiveness was the cause of the damage

#### How the PLD applies to toxic cosmetics:

- If a cosmetic product contains banned toxic substances (e.g., mercury, asbestos, lead), and a consumer suffers **health issues**, they can sue for damages.
- Example: A consumer could claim **compensation for medical costs and pain** caused by mercury poisoning from a skin-lightening product.
- The revision includes a provision on burden on proof. If injured consumers facing excessive difficulties to prove the defectiveness of the product or the causal link between its defectiveness and the damage, a court may decide that the claimant is only required to prove the likelihood that the product was defective or that its defectiveness is a likely cause of the damage.

#### Limitations:

- The consumer must prove the defect and **link it to their harm, which can be difficult if symptoms appear over time, as it might be the case with mercury intoxication**. Also, due to low awareness and lack of labelling on packaging, consumers might not know the cosmetic contains mercury and may not realise that the hazardous effects come from the exposure to this specific product. If a product contains a banned toxic ingredient but the user has no proven harm, a personal compensation claim is unlikely to succeed.
- Online platforms are not part of the liability chain of products, contrary to manufacturers, importers or distributors, except when they act like one.

Source: [European Commission](#)

### **General Product Safety Regulation (GPSR) [2023/988](#)**

The GPSR goal is to ensure that all products sold in the EU are safe, establishing responsibilities for economic operators and empowering national authorities to recall products.

#### How the GPSR applies to toxic cosmetics:

- It complements the Cosmetic Products Regulation 1223/2009
- If authorities find a product being made available on the EU market with **toxic substances**, they can **ban sales and recall** products, as well as impose fines. The alerts are published on

the [EU Safety Gate](#). This is the case of mercury-added skin lightening products caught by market surveillance authorities or customs.

- **Consumers can now report unsafe products through the [Consumer Safety Gateway](#)**, triggering investigations, but this does **not** guarantee individual compensation.

Limitations:

- The GPSR does not aim at providing remedies or compensation to individuals.
- **Manufacturers** located outside the EU may face challenges in enforcement, as it can be difficult to reach companies based in third countries. However, the **EU can fine operators** (importers, distributors) who bring these products into the market, even if they aren't the manufacturers.
- While mercury-added SLPs remain illegally available online, online platforms still escape most responsibilities as they are not recognized as an economic operator.

Source: [EU Commission](#)

## Lack of access to information

### 1. Low awareness about risks and advertising of SLPs

As our ZMWG reports have shown, mercury-added products can be easily found on the EU or global market and purchased by consumers, not aware of the risks involved. This is an issue of growing concern, as the sale of skin-lightening products is a fast growing multi-billion-dollar industry, spurred on by increased advertising and online sales during the pandemic. \

Overall awareness about the health risks from mercury may be limited. Awareness that mercury might be used in cosmetics may be even lower.

On the other hand, billboards advertising SLPs can be seen across continents. Billboard advertising in Africa for over 50 years has portrayed lighter skinned women as icons of beauty, as did the electronic and print media industries. Such advertising reinforces the belief that lighter/fairer skin is more desirable, and in turn feeds colorism and the continued use of risky SLPs, particularly for low-income people<sup>7</sup>.

Advertisements for skin lighteners often depict darker skinned people as less apt to achieve professional success or personal happiness. Such promotional campaigns through the media (and especially television) help boost their business, resulting in substantial profit to the fairness cream industry. According to a report issued by the Pakistan Standards and Quality Control Authority (PSQCA), the largest producer in Pakistan is M/s Poonia Brothers who have "...invested millions in advertisement for Faiza Beauty Cream."<sup>8</sup>

<sup>7</sup> [Online Marketing of Toxic Skin Lighteners, ZMWG, 2023, https://www.zeromercury.org/wp-content/uploads/2023/10/ZMWG-SLP-Oct-2023-Full-Report.pdf](https://www.zeromercury.org/wp-content/uploads/2023/10/ZMWG-SLP-Oct-2023-Full-Report.pdf)

<sup>8</sup> [Online Marketing of Toxic Skin Lighteners, ZMWG, 2023, https://www.zeromercury.org/wp-content/uploads/2023/10/ZMWG-SLP-Oct-2023-Full-Report.pdf](https://www.zeromercury.org/wp-content/uploads/2023/10/ZMWG-SLP-Oct-2023-Full-Report.pdf)

National detention lists, advisories and alert systems banning certain SLPs, are often not well known by consumers. Governments rarely carry out awareness campaigns.

The EEB/ZMWG has published five reports showcasing its sampling results and has been carrying out several activities in different countries to raise awareness. The 2022 report “Skin Lighteners still online despite mercury findings” was published by [CNN, which had an exclusive article about it](#). Other examples include but are not limited to: Bangladesh (ESDO) - monitoring of beauty parlours using a Lumex mercury analyser and survey among dermatologists, Pakistan (SDPI) – meeting and survey among dermatologists, survey of medical students, round tables and conferences on the issue, Nigeria (SRADEV) and Kenya (CEJAD) investigative reports, articles published, videos and multistakeholder meetings with main authorities in the countries to identify challenges.

## 2. No labelling of ingredients

The amount or concentration of mercury in a product is hardly ever labelled on the packaging or listed in the ingredients list, although directions to avoid contact with silver, gold, rubber, aluminum and jewelry may indicate the presence of mercury. The one noted exception is a product manufactured in Jamaica, “Deluxe Silken Beauty Cream,” which indicates on the packaging that it contains “Ammoniated Mercury 3%.” This is illegal, as most countries have obligations to disclose on the labelling the content of cosmetics.

As a result, users might not know that mercury is harmful and contained in SLPs.

### **Women and people of colour most lacking resources may also be the most affected.**

While also men use these products, the majority of SLP users are women and especially women of colour, particularly in regions where lighter skin is associated with social or economic advantages as discussed above.

This is deeply rooted in colorism and supported by advertisements. Over the past few decades, skin-whitening cosmetics have increasingly been advertised in online platforms, shops, glossy magazines, health centres and wellness boutiques, among many others. Beauty standards promoted by the media, advertising, and marketing reinforce the bias towards lighter skin tone. It is important to note that the globalisation of skin whitening is based on more than a desire for lightness<sup>9</sup>. The commonly transmitted message favours skin that is youthful looking and lighter.

This kind of marketing has intentionally (or not) added to the prejudice or discrimination against people, particularly women, with darker skin tones. In fact, manufacturers are well-aware of the colonial patterns they tend to reproduce. Recently, Unilever and L’Oréal announced they would remove references to ‘white’, ‘light’ or ‘fair’ from their product name.<sup>10</sup> Yet, renaming such skin lightening products is not sufficient considering how deeply colourism is now culturally, historically and socially enshrined.

These women often have lower income and also less access to legal structures and resources.

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<sup>9</sup> Amina Mire, “[What you need to know about rebranded skin-whitening creams](#)”, The conversation, Original publication July 27, 2020 (accessed June 15, 2021)

<sup>10</sup> Rachel Ramirez, “[Beauty companies are changing skin-whitening products. But the damage of colorism runs deeper.](#)”, Vox, Original publication July 1, 2020 (accessed June 15, 2021)

## Barriers from justice: The difficulty to prove mercury exposure from SLPs

### 1. Burden of proof lays with the victims or governments

Proving harm caused by mercury in skin-lightening products is a major legal challenge for consumers. The responsibility to demonstrate that a specific product led to health damage falls on the person making the claim, or sometimes on the regulator. This means that an individual who has suffered from mercury poisoning, or related health issues must provide clear evidence that they used a particular cream, that it contained harmful levels of mercury, and that this exposure was the direct cause of their condition. This would require time, resources, a level of expertise and eventually legal support. Also, companies would often argue that other factors caused health issues, making legal action harder.

Furthermore, in the case where a product has been found to contain mercury contrary to national laws, it is in many cases up to the regulator to act, remove it from markets or ask that it is removed from online platforms. Such a notification may come late however for consumers who may have already purchased such a dangerous and illegal product.

### 2. Delayed effects of mercury poisoning

Establishing a direct link between cause and effect in the case of mercury is often difficult. While some effects can appear quickly after having used a cream, like dermatological effects, some others can take more time, especially to kidneys, or if the mercury intoxication was on pregnant women. So many users may not realise that they have been exposed to mercury until they develop serious health issues, which can be months or years later. Also, symptoms like kidney damage, neurological issues, and skin problems can be misdiagnosed, delaying legal action.

In 2019, a California woman got in semi-comatose state due to mercury poisoning from a Mexican skin cream. In California alone, there have been over 60 poisonings in the last nine years linked to foreign-brand, unlabeled or homemade skin creams that contained a less toxic form of mercury, mercurous chloride or calomel.<sup>11</sup> Whether remedy or some form of compensation was ever provided is not known.

### 3. Fragmentation of the affected community

Unlike pollution scandals, where entire communities are affected and can organize collectively, mercury poisoning from SLPs happens to individual users, often in isolation. There's no single catastrophic event (like an oil spill) that brings victims together, making class-action lawsuits harder to organize. This is a common issue also with other types of cosmetics or products being purchased by individuals and which contain toxics.

### 4. Technical and financial resources needed to prove the harm of products

Proving that a skin-lightening product contains mercury and that it has caused harm to a consumer requires scientific evidence, which comes at a high cost and can take time. Some scientific screening or laboratory testing is essential both to confirm the presence of mercury in a specific product and to measure mercury levels in the body of the affected consumer. However, chemical screening and toxicology tests are

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<sup>11</sup> <https://www.nbcnews.com/news/us-news/california-woman-semi-comatose-state-due-mercury-poisoning-mexican-skin-n1052961>

expensive, and most consumers, especially in low- and middle-income countries where these products are widely sold—do not have the financial means to pay for independent testing.

This process requires knowledge, resources and time to collect evidence which victims may not have.

## Case study: Plaintiff and NGO / California Attorney General settlement with Amazon.com on sale of mercury-added SLPs

A landmark legal case against Amazon.com resulted in a significant settlement addressing the sale of mercury-added skin-lightening products (HgSLPs) on its platform.

### Background

The lawsuit was initiated by plaintiff Larry Lee and the non-profit organization As You Sow, which filed legal action against Amazon for allowing the sale of skin-lightening creams containing mercury. The plaintiffs later partnered with California's Attorney General (AG), Rob Bonta, who filed a separate lawsuit under [Proposition 65](#) and California's Unfair Competition Law (UCL). Proposition 65, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986, requires businesses to provide warnings if their products contain chemicals known to cause cancer, birth defects, or other reproductive harm. The lawsuit accused Amazon of failing to disclose the risks associated with mercury exposure and of violating state laws by enabling the sale of these hazardous products.

### Legal outcome

After nearly a decade of litigation, a [settlement was reached](#) in 2023, requiring Amazon to take corrective actions to prevent the continued sale of mercury-added skin-lightening creams. The key provisions of the settlement include:

- Amazon agreed to pay \$600,000 in civil penalties, attorneys' fees, and litigation costs to the California Attorney General's Office. The fine serves as both a deterrent and a means to fund further enforcement efforts.
- Amazon.com, [changed their policy](#). Sellers of skin-lightening products on Amazon must have their items tested for mercury and other hazardous substances. Testing must be conducted by Amazon-approved accredited laboratories, ensuring that products meet legal safety standards before being listed for sale.
- The settlement establishes a series of compliance requirements for any seller offering skin-lightening creams on Amazon's platform, including label verification; good manufacturing practice certificate; facility registration and product listing; and product testing
- It bans the sale on hazardous products that have been subject to a product recall, a market withdrawal a stop-sale request issued by regulatory authorities.

### Legal and environmental implications

As underlined by [As you Sow](#), this case highlights the responsibility of online platforms under consumer safety and environmental law. While Amazon did not manufacture the toxic skin-lightening products, it profited from their sale, making it accountable for ensuring safe commerce practices. The lawsuit and settlement reinforce several legal principles, like the precautionary principle and the polluter-pays



principle. Although Amazon is not the direct polluter, the financial penalties impose accountability for allowing the distribution of hazardous substances. This principle dictates that companies profiting from the sale of harmful products bear the cost of remediation.

However, the case focused on sales in California, meaning that similar hazardous products could still be sold in other states and countries unless broader enforcement measures are introduced.

## Recommendations

Despite the Convention's ban on the manufacture and trade of mercury-added SLPs, our data, along with many other studies conducted throughout the world, demonstrate the continued proliferation and global availability of mercury-added SLPs worldwide. Governments should take additional measures to reduce the availability of mercury-added SLPs including:

- Aligning national laws with the Minamata Convention's related provisions banning the manufacture and trade of mercury-added SLPs.
- Curtailing the merchandising of mercury-added SLPs, including sales, offering of sales, marketing, advertising and display.
- Coordinating inter-ministerial, bilateral and/or regional measures to phase-out mercury-added SLPs.
- Enhancing public awareness about the hazards of mercury-added SLPs, especially among physicians, dermatologists and beauty centers, as well as the general public.
- Since the Minamata Convention does not yet regulate all mercury compounds, and considering that mercury compounds are an essential ingredient in mercury-added SLPs that some claim are legal to trade, it is imperative that the Convention considers regulating mercury compounds, subject to the Treaty's trade restrictions. Such a recommendation would also apply to national governments.

Efforts are needed at the EU level and globally, to enact laws and regulations and to strengthen enforcement measures, as outlined in our ZMWG enforcement report.<sup>12</sup> In addition, a liability regime for online marketplaces should be enacted and coordination promoted between Parties to the Minamata Convention on Mercury, given the high proportion of illegal activities online, such as the often illegal and unsafe products ZMWG purchased. Furthermore, internet platforms should be regulated in a manner similar to local markets, including the obligation to require product labeling and country of origin, verify traders and conduct random checks on services and products offered.

Such measures could be better complemented if trends towards skin lightening is reversed and if the media, beauty, film and modeling industry put an end to advertising the superiority of white/fair skin. For this to happen, a change of mindset is needed and movements - such as 'Women of Worth' in India and the 'Dark is Beautiful Campaign', 'Unfair & Lovely' in Austin, USA or 'Dark is Divine' in Pakistan - have been playing a key role on that matter. They all seek to bring cultural change and make today's societies more inclusive, with this common message that all colours are equally beautiful.

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<sup>12</sup> ZMWG 2019 [Enforcement measures to restrict high mercury cosmetic products under the Minamata Convention](#)

For more information:

- The [ZMWG Skin lightening campaign page](#), gathering all reports (testing) made between 2017 until now among others.
- Online Marketing of Toxic Skin Lighteners: Mercury cosmetics marketed as a 'solution' to dark skin (October 2023): <https://www.zeromercury.org/wp-content/uploads/2023/10/ZMWG-SLP-Oct-2023-Full-Report.pdf>
- Enforcement measures to restrict high mercury cosmetic products under the Minamata Convention (November 2019): <https://www.zeromercury.org/wp-content/uploads/2019/11/Enforcement-measures-to-restrict-high-mercury-cosmetic-products-under-the-Minamata-Convention.pdf>
- The [CNN White Lies Series](#) as part of [#AsEquals](#)
- Chapter 17 on *Toxic substances reinforcing racist and sexist norms: a case study of mercury in skin lightening products* from "[Why the European Green Deal needs ecofeminism: Moving from gender-blind to gender-transformative environmental policies](#)".