

New Mechanism of Action: criteria for elevation of obligations to progress SAICM Issues of Concerns (IoCs) in the post 2020 multilateral regime for chemicals and waste

The paper is provided by the following organisations: Health and Environment Justice Support (HEJSupport), Swedish Society for Nature Conservation (SSNC), Pesticide Action Network (PAN International), European Environmental Bureau (EEB), German NGO Forum on Environment and Development, Health and Environment Alliance (HEAL), Canadian Environmental Law Association, Centre for Environmental Justice And Development (CEJAD), Confederación de Ecologistas en Acción, groundWork - Friends of the Earth South Africa, Društvo Ekologi brez meja, Gallifrey Foundation, ZERO – Associação Sistema Terrestre Sustentável, RighOnCanada.ca, Citizens' Network on Waste Management, Women Engage for a Common Future (WECF), Public Eye, Women's Healthy Environments Network, Friends of the Earth Germany

Introduction

The ICCM4 welcomed the 2030 Agenda for Sustainable Development, and it noted that there is a “*potential for the Strategic Approach multi-sectoral and multi-stakeholder platform to make a significant contribution to the implementation of that Agenda, in particular its goals and targets relating to chemicals and wastes.*” In fact, 13 out of 17 SDGs rely heavily on the sound management of chemicals and cannot be met unless the impacts of chemicals and waste on people and the environment are drastically reduced to effects well beyond those achieved under SAICM.

The summary report to the second edition of the Global Chemicals Outlook (GCO II)¹ indicates that, despite global agreements reached at several high-level UN conferences, and significant action already taken, the global goal to minimize adverse impacts of chemicals and waste will not be achieved by 2020.

This statement is illustrated, inter alia, by the Summary for Policymakers of the Global Assessment report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. This report highlights that many types of pollution are increasing and have significant negative effects on nature². This is leading to the global decline of biodiversity and ecosystem health at rates unprecedented in human history. The report further documents that air, water and soil pollution have continued to increase with marine plastic pollution increasing tenfold since 1980. This pollution adversely affects both human and non-human life through the food chain and the environment.

The findings from the Independent Evaluation of the Strategic Approach from 2006 – 2015³ indicate that for SAICM stakeholders, the vision of the 2020 goal – that by the year 2020, chemicals are produced and used in ways that minimize significant adverse impacts on the environment and human health – has the following two key components:

- Institutional strengthening of governments' ability to manage chemicals and waste
- Equality across countries

Stakeholders identified several pathways for achieving this vision:

- Effective & enforceable legislation

¹ <https://papersmart.unon.org/resolution/uploads/k1900123.pdf#overlay-context=pre-session-unea-4>

² Global Assessment Report on Biodiversity and Ecosystem Services

(https://www.ipbes.net/system/tdf/ipbes_7_10_add-1-_advance_0.pdf?file=1&type=node&id=35245)

³ SAICM/IP.2/4

- Integration across sectors
- Adaptive management regime
- Open and transparent information sharing

However, in many countries SAICM objectives, SAICM Emerging Policy Issues (EPIs) and Issues of Concern (IoCs)⁴ are not high on the political agenda. Furthermore, although the independent evaluator of SAICM 2006-2015 reported that the SAICM stakeholders see some progress in addressing the IoCs, these advances are mainly limited to information collection, and few concrete risk elimination or risk reduction measures have been undertaken.

Interviews with country representatives identified the following obstacles in addressing IoCs:

- IoCs are not mentioned in the national implementation plans on chemicals and waste
- Insufficient funds are allocated from the national budgets to address IoCs
- No institutional strengthening is in place to address IoCs
- No national legislative requirements needed to address IoCs are developed
- No national reporting on IoCs is available
- No monitoring of IoC implementation is conducted
- Inadequate or no control measures are in place to ensure effective work on IoCs⁵

These factors, plus poor enforcement of existing regulations, limit these country's ability to achieve sound chemicals and waste management and meaningfully contribute to the Sustainable Development Goals. They undermine efforts to protect the most vulnerable from exposure to toxic chemicals, including women, indigenous peoples, workers, and poor, with children suffering the most. They also undermine efforts to maintain ecological integrity, adequate resources such as clean water and good farmland needed to grow food, and ecosystem health.

Toxic chemical exposure is a burden that disproportionately harms low and middle-income countries and has a negative impact on sustainable economic growth. Today, children are born 'pre-polluted' with dozens, if not hundreds, of hazardous chemicals in their bodies⁶. Many of these chemicals harm the developing brains and bodies of children and have devastating lifelong and multi-generational consequences⁷. SAICM stakeholders have a duty to prevent children and other vulnerable groups from being exposed to toxic chemicals and pollution, including those substances the risks of which are not well understood. As the summary report to GCO II states, "solutions exist, but more ambitious worldwide action by all stakeholders is urgently required". Stakeholders should continue working together to ensure that chemical safety issues are part of global and national targets, development agendas and poverty eradication strategies.

⁴ Here Emerging Policy Issues and Other Issues of Concern are collectively referred to as Issues of Concern, in order to have a consistent name. It makes sense, post 2020, to have a consistent name to avoid possibly false descriptions of when an issue may have emerged, to whom and at what level.

⁵ Despite obvious problems faced by countries in addressing IoCs, some IoCs are addressed better than others. For example, many countries established national regulations to control lead in paint using 90 ppm standard. The Model Law developed by partners of the Global Lead Paint Alliance is used by many countries to develop their national legislation to control lead in paints.

⁶ <https://www.ewg.org/research/body-burden-pollution-newborns>

⁷ Bennett et al. 2016. Project TENDR: Targeting Environmental Neurodevelopmental Risks. The TENDR Consensus Statement. Environmental Health Perspectives 124(7):A118-!122

For these reasons, a number of stakeholders⁸ have agreed that the successor to SAICM⁹ should contain a new mechanism of action, a process whereby IoCs for which inadequate progress has been made should be progressed to mechanisms with increased levels of obligations on stakeholders.¹⁰ This paper addresses the criteria that could be used in such a process. They were developed with the existing IoCs in mind but would apply also to new IoCs acknowledged under ‘SAICM 2’.

In addition, ‘SAICM 2’ should provide for the development of indicators that match these criteria, include time-bound goals,¹¹ a process of critical evaluations against these goals and the associated indicators, and the process for progressing an IoC to an issue with increased obligations.

Criteria for moving Issues of Concern (IoC) to the level with increased obligations

Failure to comply with, or fulfilment of, any criterion in the list below warrants consideration of moving the IoC to an increased level of obligation.

- 1 Failure to reduce acute poisoning and/or chronic effects by chemicals that are IoCs
- 2 Failure to reduce the levels of chemicals that are IoCs in human and environmental samples
- 3 Failure to reduce the volume of the production, use and disposal of substances of very high concern relevant to an IoC
- 4 Insufficient monitoring of human and environmental impacts by an IoC
- 5 Significant costs for society in the absence of action to address an IoC, including healthcare costs for individuals and the state; loss of IQ and productivity; loss of pollinators, natural biological control of pests, and other ecosystem services; loss of biodiversity; and costs of chemical contamination of natural resources, such as air, soil and water including but not limited to large-scale environmental clean-up and remediation costs
- 6 National regulations have failed to achieve sufficient improvement in the IoC¹²
- 7 Regional regulations for addressing an IoC are in place, or under development¹³
- 8 Failure to establish an effective, transparent multi-stakeholder working platform on an IoC
- 9 Failure to make available the information necessary for addressing an IoC¹⁴

⁸ Health and Environment Justice Support (HEJSupport), Swedish Society for Nature Conservation (SSNC), Pesticide Action Network (PAN International), European Environmental Bureau (EEB), German NGO Forum on Environment and Development, Health and Environment Alliance (HEAL), Canadian Environmental Law Association, Centre for Environmental Justice And Development (CEJAD), Confederación de Ecologistas en Acción, groundWork - Friends of the Earth South Africa, Društvo Ekologi brez meja, Gallifrey Foundation, ZERO – Associação Sistema Terrestre Sustentável, RighOnCanada.ca, Citizens' Network on Waste Management, Women Engage for a Common Future (WECF), Public Eye, Women’s Healthy Environments Network, Friends of the Earth Germany

⁹ Here referred to as ‘SAICM 2’ until a new name is agreed.

¹⁰ For example, a legally binding protocol, a treaty, mandatory action plans and reporting, or other such agreement that places requirements on stakeholders.

¹¹ Time-bound goals should not be used to delay action for existing IoCs that have not progressed sufficiently under the present SAICM.

¹² IoC is not part of the national implementation plans; IoC is not included in national budgets; no national regulations developed to address particular IoC; no control measures are applied to monitor results on addressing IoC; the IoC has global dimensions and cannot be addressed efficiently by regulative measures in a single country, e.g. due to globalized trade.

¹³ Regulations in one or two regions advance the IoC beyond SAICM and move it to the next level with increased obligation at the regional level, for example, the EDCs regulation in the EU. Such regional regulation is an acknowledgement of the necessity of an obligatory approach. These criteria are necessary to create a level playing field for all countries, so that those that are proactive in protecting human health and the environment from chemical threats are not disadvantaged on the global market. It reflects the Rotterdam Convention where regulatory action in two UN regions stimulates the listing of a chemical or pesticide under the Convention.

While applying the criteria special attention should be paid to IoCs that are already recognised as being of global concern, in the sense that they are partially included in treaties and/or codes or agreements, but the mechanisms of which are inadequate to address the whole problem¹⁵.

We recommend:

1. that the above criteria are included in 'SAICM' as a basis for determining whether an IoC should be elevated to an increased level of obligation;
 2. that a multistakeholder working group is established with the request:
 - to review information and factors contributing to limited success in implementation in addressing IoCs;
 - to develop a mechanism of action under 'SAICM 2' for elevating an IoC that has not progressed sufficiently to an increased level of obligation based on the assessment using the above suggested criteria;
 - to establish time bound goals for IoCs while ensuring that such goals are not used to delay action for existing IoCs that have not progressed sufficiently under the present SAICM; and
 - to prepare recommendations to ICCM5 for consideration and decision on how to apply the above-mentioned criteria for moving IoCs to the level with increased obligations.
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¹⁴ Confidential business information currently takes precedence over transparency, despite the clear message in SAICM that information on chemicals relating to the health and safety of humans and the environment should not be regarded as confidential.

¹⁵ For example, only about 10% of Highly Hazardous Pesticides (HHPs) (and 3.5% of all pesticides) are listed under the Rotterdam and Stockholm Conventions. The voluntary International Code of Conduct on Pesticide Management, which has been in existence for 33 years, has failed to protect human health and the environment, as evidenced for example by the fourth International Conference on Chemicals Management (ICCM 4) that recognized HHPs as an IoC.