



Submission to the SAICM Secretariat

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Thank you for the opportunity to provide input to the questions raised by the SAICM Secretariat in their email from April 30, 2019. Please, see our suggestions below.

Question 1: For follow-up by the co-chairs of the intersessional process, please share your inputs on other mechanisms to support implementation; additional measures to achieve multisectoral engagement; issues of concern; and ‘Principles and Approaches’ as set out in document (SAICM/OEWG3.3/4).

Other mechanisms to support implementation

Considerations

1. *Once the mechanisms addressed in subsections 1 to 6 above have been determined, other mechanisms to support implementation may be discussed, such as:*

- *Appropriate and effective mechanisms for taking stock of progress;*

Planning, knowledge management and capacity building are the key to enhance implementation and take stock of progress.

For taking stock of progress countries need to have mandatory national action plans (NAPs) for the 11 core elements in the Overall Orientation and Guidance Document, which includes to enhance implementation of existing and new legally binding and voluntary agreements and the Agenda 2030. NAPs should be assessed with the participation of all national stakeholders and scaled up periodically.

National reporting obligations on NAP implementation should become mandatory and should include reporting on all chemical legally binding and voluntary agreements and the Agenda 2030. To improve reporting, countries need to have legal and regulatory frameworks addressing the lifecycle of chemicals and waste developed and enforced.

Progress on national implementation should be reviewed at ICCM with decision made on funding and technical support needs based on the availability of regulatory frameworks, institutional capacity, stakeholder engagement, and measures to scale up NAP implementation.

- *Mechanisms for capacity-building;*

Mechanisms for capacity building should be incorporated into national action plans on chemicals and waste and international cooperation aimed at assisting developing countries and countries in transition in meeting their obligations under legally binding and voluntary agreements on chemicals and waste and the Agenda 2030. Country needs and priorities in meeting their legally binding and voluntary obligations should be

prioritised with the aim to strengthen human resources, technical and institutional capabilities.

Mechanisms for capacity-building should incorporate elements of SDG 17.9 and 17.8 of Agenda 2030 as they both mention capacity building. For example SDG 17.9 aims to "Enhance international support for implementing effective and targeted capacity-building in developing countries to support national plans to implement all the sustainable development goals, including through North-South, South-South and triangular cooperation".

Target 17.8 calls to ensure full operationalization of the "technology bank and science, technology and innovation capacity-building mechanism for least developed countries by 2017".

Mechanisms for capacity building should also reflect the 'The Future We Want' document in which Member States invite relevant UN agencies to support developing countries in capacity-building for developing resource-efficient and inclusive economies.

Capacity-building is a key element for implementation in the Johannesburg Plan of Implementation, which called for enhancing and accelerating human, institutional and infrastructure capacity building initiatives and for assisting developing countries in building capacity to access a larger share of multilateral and global research and development programmes. The Johannesburg Plan of Implementation also highlights the importance to "accelerate national and regional implementation of the Programme of Action, with adequate financial resources, including through Global Environment Facility focal areas, transfer of environmentally sound technologies and assistance for capacity - building from the international community".

In addition the Plan calls to assess health and environment linkages and the importance of building "the capacity of health-care systems to deliver basic health services to all in an efficient, accessible and affordable manner aimed at preventing, controlling and treating diseases, and to reduce environmental health threats, in conformity with human rights and fundamental freedoms and consistent with national laws and cultural and religious values".

- *A mechanism for updating the instrument over time;*

We believe that for the enabling framework to be effective it should

- become an umbrella framework for all existing legally binding agreements on chemicals and waste, including global agreements like BRS and the Minamata Conventions; and UN regional agreements like UNECE Protocol on Heavy Metals, the Aarhus convention, others.
- include SAICM as a multi-stakeholder multi-sectorial voluntary agreement and an inclusive platform for the discussion and addressing of existing and new issues of concern.

For the instrument to be effective, it is important to develop a mechanism that will provide an opportunity for its update as needed, for example to move issues of concern identified under SAICM, which have not been addressed adequately as well as new issues of concern as they emerge into agreements with increased obligations with well established time bound goals and targets. Governments and other stakeholders should consider defining criteria for nominating such issues with insufficient progress and move them to the next level with elevated obligations.

A mechanism for updating the instrument should also include

- mandatory requirement for the development of National Action Plans (NAPs) for all countries who approve the instrument. These NAPs should include countries' national implementation plans on the existing and new legally binding and voluntary chemical and waste agreements and Agenda 2030. NAPs should be revised and updated periodically based on new legally binding and voluntary agreements and increased obligations for issues of concern;
- periodic monitoring and assessment of NAPs with the participation of all stakeholders;
- a progressive financial scheme that incorporates previous and innovative approaches and that is based on the integrated approach to financing, including the internalisation of cost; a dedicated global fund on chemicals and waste based on the contribution from the chemical industry; an all inclusive analogue of the Quick Start Programme to ensure funds for all eligible stakeholders including the civil society organisations working on chemicals and waste issues; and mainstreaming to integrate the sound management of chemicals and waste into the general national budgets and in particular into the development budget.

- *Mechanisms for collaboration and multisectoral/multi-stakeholder engagement.*

According to definition from the Institute for Public Engagement California), *public engagement* is a general term for a broad range of methods through which members of the public become more informed about and/or influence public decisions. Public engagement includes:

Public Information/Outreach: This kind of public engagement is characterized by one-way local government communication to residents and other members of the community to inform them about a public problem, issue or policy matter.

Public Consultation: This kind of public engagement generally includes instances where local officials ask for the individual views or recommendations of residents about public

actions and decisions, and where there is generally little or no discussion to add additional knowledge and insight and promote an exchange of viewpoints.

Public Participation/Deliberation: This form of public engagement refers to those processes through which participants receive new information on the topic at hand and through discussion and deliberation jointly prioritize or agree on ideas and/or recommendations intended to inform the decisions of local officials.

Sustained Public Problem Solving: This form of public engagement typically takes place through the work of place-based committees or task forces, often with multi-sector membership, that over an extended period of time address public problems through collaborative planning, implementation, monitoring and/or assessment.

Taking into account that governments have a variety of obligations for consultation with stakeholders including civil society organisations (CSOs), it is important to note that engaged CSOs are highly valuable to the management of chemicals in a variety of ways. They bring expertise from academia, knowledge of technical issues, data from the ground, information and concerns from the vulnerable communities. Their activities lead to measurable improvements in human environmental health and the state of environment.

CSO engagement should not be limited to information dissemination and awareness raising. They should be partners in decision making on chemicals and waste and should be consulted in an equivalent manner to industry consultations. CSOs should be involved in providing comments to the draft national and international sound chemicals and waste management policies, regulations and programmes, including regulations on workplace right to know, health and safety.

Regular face-to-face meeting opportunities and webinars with CSO representatives prior to national and international meetings on chemicals and waste should facilitate CSO engagement, collection of information and recommendations from CSOs regarding the agenda items, meeting goals and objectives.

CSOs should be recognized for the rich expertise they can provide, including scientific expertise, connections with grassroot organisations and their lived experiences, their ability to connect face to face with people and affected communities to engage them and to learn from them.

Representatives of CSO organisations should be part of scientific committees and technical advisory bodies on chemicals and waste to share their scientific and technical expertise, provide recommendations and fill knowledge gaps based on the precautionary and prevention principles, and on their research and experiences of working with affected communities.

Data and information generated by CSOs should be recognised at all phases of chemicals assessment and management as well as during the identification of new and emerging

issues. Although CSOs may not have the same resources to produce the same amount of high quality data as an academic institution or the industry, their staff often have the corresponding academic merits as staff in academia and industry. A possibility of establishing an early warning system based on information from CSOs and other sources should be considered.

Governmental websites should provide better access to data for CSOs and other stakeholders, including the general public. The websites should be regularly updated and should include links to the relevant information and scientific resources. Ideally governmental websites should include links to the websites of CSOs working on chemicals and waste. Governments should allow access to all health and environment related information via freedom of information and access to information regulations.

Poor worker participation and involvement in decision making on chemicals and waste should be addressed. Consultations that will lead to better chemicals management at the workplace level, including ban on certain substances that cause cancer and other severe disorders are needed which will engage Trade Unions and other worker associations. The strength of the labour community is an important component of the mechanism of stakeholder engagement.

- **Issues of concern**

SAICM is currently the only approach that discusses emerging policy issues (EPIs). There is strong interest in continuing to work on those issues, which include lead in paint, highly hazardous pesticides, chemicals in products, hazardous substances in electronics, endocrine disrupting chemicals, nanomaterials and nanotechnologies, environmentally persistent pharmaceutical products. We believe that current EPIs should be carried forward into SAICM2.0 to continue working on the existing gaps and challenges. It is also reasonable to rename EPIs “issues of concern” as they are no longer emerging, but have not been addressed yet, on a global level.

In addition criteria could be developed to determine new issues of concern. The criteria could, inter alia, include interest and support from multi-stakeholder groups, a work programme and a timeline and commitment to achieve results. Each issue should also have a country and/or a “stakeholder champion” that would carry the issue forward, initiate implementation and monitoring of the results. Each new issue should contain expected concrete time bound outputs to better evaluate the effectiveness of the suggested activities, which should lead to measurable harm reduction on the ground. New issues could also be identified through the Global Chemical Outlook and through relevance to specific SDGs.

CSO stakeholders have identified new initiatives, which should be combined with current emerging policy issues/issues of concern and contribute measurable objectives in support

of the Agenda 2030. These new issues include, plastics, women and chemical safety, agroecology, workplace right to know, zero waste and toxic-free circularity.

The suggested new issues of concern are all linked to concrete SDGs and associated targets. For example, zero waste is relevant for SDGs 11 that calls on countries to address municipal and other waste management to make cities sustainable. Women and chemical safety is relevant to nearly all SDGs, including SDG 2, 3, 4, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17. Agroecology is relevant to all 17 SDGs. Workplace right to know is relevant to SDGs 3, 8, 16. Plastics is relevant SDGs 11, 12, 14. Circular economy is relevant to SDG 6, 8, 11, 12, 13, 14, 15.

Countries have already expressed interest in these new issues of concern. For example the recent agreement on plastic waste export achieved at the BRS COP in May, 2019 has made a significant impact on how countries address plastic waste export.

The issue of women and chemicals has become an important topic of work for the IGOs assisting countries in the implementation of their projects on chemicals and waste. For example, a recent UNDP Guidance Document on Gender and Chemicals provides detailed information on how to incorporate gender considerations into the national activities on chemicals and waste.

When ICCM 4 recognised HHPs as an issue of concern it recommended that emphasis should be on promoting agroecologically-based alternatives and many countries have expressed interest to support agroecology as an alternative to highly hazardous pesticide application. At the Conference of the Parties to the Stockholm Convention in May 2013, Parties agreed to give priority to ecosystem-based approaches to pest control to replace the insecticide endosulfan.

Workplace right to know is an important issue that was highlighted in the SAICM Dubai Declaration. Workers' safety both industrial workers and agricultural workers - should be the priority for any industry both at the point of production and also during waste management, recycling or recovery. Workers' right to know what chemicals they are exposed to during product manufacturing, handling or management in the end of life is an important component of occupational safety that helps to promote safe working environment.

Many countries are promoting circular economy as it reduces the need for raw materials and prevents the growth of waste stockpiles, due to reuse and recycle. The recently adopted resolutions UNEP/EA.4/L.8 and UNEP/EA.4/L.9 confirm the importance of circularity and managing hazardous chemicals in the material cycles. However, the way circularity is currently practiced includes toxic recycling that undermines sustainability. For example, a study, conducted by IPEN in 2017 revealed elevated concentrations of PBDEs (polybrominated diphenyl ethers) such as octabromodiphenyl ether (OctaBDE), decabromodiphenyl ether (DecaBDE); and SCCPs (short chain chlorinated paraffins) in toys made out of recycled materials and purchased in different stores in 25 countries globally. Levels of some chemicals were more than five times higher than the

recommended international limits. They are listed under the Stockholm Convention in Annex 3 as Persistent Organic Pollutants. However, their presence in new products, despite being banned or restricted, opens up the discussion of the serious problem of inadequate recycling regulations in a circular economy.

Question 2: For follow-up by the SAICM secretariat, please share your inputs on examples of successful mechanisms for cost recovery and implementation of the polluters pays principle (PPP).

The “polluter pays” principle means that enterprises that have a negative impact on the environment through their business activities and products must bear the costs of implementing measures to compensate for environmental damage to the environment. Industries, being a “de jure” pollutant, should bear all the costs of measures aimed at eliminating this pollution or reducing it to the level that most closely complies with environmental quality standards.

Often mechanisms for cost recovery and implementation of the polluter pays principle include taxes and charges applied at the national level. However, in many countries the principle “the polluter pays” in practice turns into the principle “pay for the right to pollute”, since it is easier for many industrial companies to pay a fine (or a fee) than to carry out expensive environmental activities.

Funding for projects to enhance chemicals management at the national level in developing countries and countries with economies in transition, as well as for international chemicals and waste policy development relies mainly on donor countries. Given the tremendous amount of money needed for policy implementation and the remediation of contaminated sites, funds that can be secured from donor countries are not enough to achieve a desirable progress. The costs for preventing and reducing pollution, including supporting non-chemical alternatives and managing hazardous chemicals, remediation and health and societal damage should not be borne by taxpayers, but should be paid by entities that caused the pollution and the associated cost in the first place, mainly industry.

Below are some examples of polluter pays principle implementation:

In the EU the Water Framework Directive (2000/60/EC) and the Directive on Industrial Emissions (IED) (2010/75/EU) recall the polluter pays principles, as enshrined in Article 191 of the Treaty on European Union.

The Ex'tax Policy Toolkit, <http://www.ex-tax.com/big-idea/>, by The Ex'tax Project gives some ideas how taxes can be shifted to tax resources instead of labor.

Extended Producer Responsibility (EPR) schemes are being introduced in several national or regional regulations. The new EU single use plastic directive of 2019 “extends responsibilities to producers to clean up litter. Manufacturers of fishing gear, for example, and not fishermen, will be required to bear the costs of collecting fishing nets that are lost at sea. The law also requires industries to include labels that state that

discarding products with plastics can have a negative environmental impact. For example, cigarette manufacturers will be required to place labels on cigarette products that state throwing cigarettes with plastic filters in the street has a negative consequence on the environment. Lead MEP Frédérique Ries (Belgium) said the legislation “will reduce the environmental damage bill by EUR 22 billion – the estimated cost of plastic pollution in Europe until 2030.”¹

Toxic Use Reduction Act from Massachusetts has been very successful to reduce both use of toxic chemicals and waste generation².

A good example of putting a polluter pays principle in practice is the implementation of the Environmental Liability Directive in Poland³. „In 2009, the renovation of a bridge in Szczecin, a busy port city in Western Poland, resulted in the destruction of 320 nests. Through an environmental NGO’s use of the ELD, the developers who had caused the destruction were forced to pay for a solution. Artificial nests were suspended from the bridge and other structural adjustments were made to help the swallows recover. In the longer term, the developers were required to observe the number of nests for four years, reporting on the progress of the swallows.“

Another example is from British Columbia, Canada⁴ where a Coal Mine Company Teck Resources pled guilty to three violations of the federal Fisheries Act for polluting a tributary of the Elk River and was sentenced to pay a \$1,425,000 penalty into the federal Environmental Damages Fund, which will help restore fish habitat in British Columbia’s Elk Valley.

In Sweden there is a non-disclosure tax under consideration that will be applied to all manufacturers, importers and retailers of PVC registered in Sweden. They will have to pay an environmental tax if their PVC products contain one or several of 11 phthalates. However, the more of the 11 phthalates in the products they disclose, the more they get in tax reduction. A similar approach is applied to brominated, chlorinated, and fluorinated compounds in electronics and electrical products. The more brominated, chlorinated, and fluorinated compounds in the products manufacturers, importers and retailers of electronics and electrical products disclose, the more they get in tax reduction. This does not necessarily immediately reduce sources of pollution but is a strong incentive for substitution and product design change.

¹ <https://sdg.iisd.org/news/european-parliament-passes-single-use-plastic-ban/>

² <https://turadata.turi.org/>

³ <https://www.clientearth.org/putting-polluter-pays-principle-practice/>

⁴ <https://thenarwhal.ca/b-c-coal-mine-company-teck-fined-1-4-million-polluting-b-c-river/>

A number of positive examples of polluter pays principle implementation in India are presented in the Polluter Pays Principle Case Study⁵. However, the paper concludes that “Even with all its success in the Indian scenario, the polluter pays principle is not a cure for all of the world’s environmental problems. It has a potential only for problems that stem from identifiable polluters, who have sufficient economic resources to pay their way and even under the broadest definitions of pollution, the PPP cannot assist with serious environmental issues such as declining biological diversity or destruction of ecologically critical habitats.”

We suggest:

- To conduct a study on market-based instruments to internalize cost due to pollution caused by chemicals and waste, to guide the application of the polluter pays principle at the national, regional and international levels;
- To extend sector specific economic accounting systems and governmental policies to include the impact on human health and the environment with the aim to protect people and ecosystems and ensure the internalization of cost;
- To provide financial and legal assistance that supports developing countries and countries with economies in transition to incorporate PPP into their national legislations and enforce implementation;
- To include both the “precautionary principle” and the polluter pays into the national and international environmental legislation and regulations to be further considered as a part of sustainable development;
- To increase accountability through mandatory hazardous product take-back (eg tech, batteries, CFLs, paints, textiles, plastics);
- To assist developing countries and countries in transition to devote revenues received from the PPP implementation, to stimulate the development and use of safer alternatives;
- To investigate the possibility to take industry tax for manufacturing substances of concern, which would be transferred to an international fund to support sound chemicals and waste management and remediation of contaminated sites.

⁵ <https://www.ukessays.com/essays/environmental-studies/polluter-pays-principle.php>