

New Mechanism of Action: elevation of obligations to progress SAICM Issues of Concerns (IoCs) in the post 2020 multilateral regime for chemicals and waste¹

Introduction

In connection with the third meeting in the SAICM post 2020 intersessional process (IP3) in Bangkok, a coalition of stakeholders² submitted an information document with a proposal for a new mechanism of action, to elevate obligations of SAICM Issues of Concern (IoC)³ in the post 2020 multilateral regime for chemicals and waste.⁴ The information document was presented in Bangkok in connection with a lunch event. The need for a new mechanism to advance the work on Issues of Concern was illustrated for a selection of existing IoCs.^{5, 6, 7}

This information document contains an update and further elaboration of the idea, in response to feedback from a number of stakeholders.

To date eight chemicals-related issues have been formally recognized by the International Conferences on Chemicals Management (ICCM), the SAICM decision-making process, as issues in need of global action: lead in paint (ICCM2), chemicals in products (ICCM2), hazardous substances in electrical and electronic products (ICCM2), nanomaterials (ICCM2), perfluorinated chemicals (ICCM2), endocrine disrupters (ICCM3), environmentally persistent pharmaceutical pollutants (ICCM4) and highly hazardous pesticides (ICCM4).⁸ At IP3 we urged that the successor to SAICM continue to recognize these decisions taken by previous ICCMs.

It is clear that the work to address the present IoCs has not progressed as expected under the present SAICM. Although the independent evaluator of SAICM 2006-2015 reported that the SAICM stakeholders see some progress in addressing the IoCs⁹, these advances are mainly limited to information collection, and few concrete risk elimination or risk reduction measures have been undertaken. Even lead in paint -- the IoC which has received the most attention and funding to date -- remains an issue in too many countries. This lack of progress suggests that the SAICM voluntary

¹ This information document updates and elaborates on the similarly titled [information document](#) submitted at IP3 in Bangkok.

² 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, Right OnCanada.ca, Citizens' Network on Waste Management, Women Engage for a Common Future (WEFC), Public Eye, Women's Healthy Environments Network, Friends of the Earth Germany.

³ The collective word that we use for the present SAICM Emerging Policy Issues and other Issues of Concern.

⁴ http://www.saicm.org/Portals/12/documents/meetings/IP3/stakeholders/NGO_Information-On-IoC-criteria_Update30Sept.pdf

⁵ <http://www.saicm.org/Portals/12/documents/meetings/IP3/stakeholders/IPEN-Case-CiP.pdf>

⁶ <http://www.saicm.org/Portals/12/documents/meetings/IP3/stakeholders/IPEN-Case-HHPs.pdf>

⁷ <http://www.saicm.org/Portals/12/documents/meetings/IP3/stakeholders/IPEN-Case-PFAS.pdf>

⁸ At the IP3 in Bangkok, some stakeholders suggested dropping the IoCs recognized to date and starting a new process of IoC identification. This was opposed by the stakeholders mentioned in footnote 2.

⁹ http://www.saicm.org/Portals/12/documents/meetings/IP3/INF/SAICM_IP3_INF3_Final-IndependentEvaluation.pdf

approach has not been as efficient as hoped¹⁰ and a higher level of obligation is necessary to protect human health and the environment. Other challenges identified by SAICM country representatives and stakeholders were discussed in our previous information document.

SAICM stakeholders envision that the successor for SAICM, at a minimum, will provide roadmaps with targets, milestones and indicators for the IoCs.¹¹ This will be a necessary and important improvement for the work with any future IoC. However, some of the already identified IoCs are crucially important for meeting the Agenda 2030 goals and related targets, as well as a number of targets under other international agreements such as the Convention on Biological Diversity (CBD)¹² and the UN Framework Convention on Climate Change (UNFCCC).¹³

Three key IoCs were highlighted at IP3 as examples of why a new mechanism of action is needed: Chemicals in Products (CiP)¹⁴, Highly Hazardous Pesticides (HHPs)¹⁵, and Per- and Poly-fluoroalkyl Substances (PFAS).¹⁶

With respect to CiP, transparency is essential to support the Sustainable Development Goals (SDGs), including targets to SDG 3 on healthy lives and well-being; SDG 8 on safe work; SDG 16 on the provision of information on the adverse effects of all chemicals in commerce. SDG 12 on responsible production and consumption is of particular relevance as it is related to a circular economy that is safe to human health and the environment. Advancing a non-toxic circular economy could contribute to a responsible consumption culture, be a driver for phase-out of particularly hazardous chemicals from material flows to allow safe reuse and recycling, and lower the need for virgin raw materials. These actions will help reduce pressure on ecosystems and promote justice and poverty reduction, as well as promote decent job creation and lower the climate impact.

International restrictions of HHPs are urgently needed to ensure safe food, safe working and living conditions for millions of people, and for reducing pollution of ecosystems and preserving biodiversity. They would affect targets to the SDGs for good health and well-being (SDG 3), zero hunger (SDG 2), clean water and sanitation (SDG 6), life below water and on land (SDGs 14 and 15), and in the end have implications for justice (SDG 16) and poverty reduction (SDG 1).

PFAS are particularly problematic, due to their extreme persistence and ubiquity, and in many cases their toxicity. Resolution II/5 adopted at ICCM2 called for their eventual elimination, but instead their production and use has increased. Because they do not break down naturally, they will continue to

¹⁰ As of September 30th 2018, only 36% of the countries in the world have confirmed that they have legally binding controls on the production, import, sale and use of lead in paints (https://www.who.int/gho/phe/chemical_safety/lead_paint_regulations/en/).

¹¹ http://www.saicm.org/Portals/12/Documents/meetings/Bureau/ICCM5B8/SAICM-ICCM5-Bureau_8-4_Compilation-of-recommendations-for-consideration-of-ICCM5.pdf

¹² These targets relate to the Aichi target 8 under CBD (<https://www.cbd.int/doc/strategic-plan/targets/T8-quick-guide-en.pdf>).

¹³ The CiP work via its connection to circular economy relates to the UNFCCC overarching goal of reduced climate change. Transparency for and regulation of at least chemicals of global concern may unleash the true potential of the circular economy, with reduced CO₂ emissions from less extraction/production of virgin raw materials, refining of raw materials, and manufacturing of materials and products. Less use of HHPs implies less use of petroleum-based chemicals, with reduced CO₂ emissions from oil and gas extraction.

¹⁴ <http://www.saicm.org/Portals/12/documents/meetings/IP3/stakeholders/IPEN-Case-CiP2.pdf>

¹⁵ <http://www.saicm.org/Portals/12/documents/meetings/IP3/stakeholders/IPEN-Case-HHPs.pdf>

¹⁶ <http://www.saicm.org/Portals/12/documents/meetings/IP3/stakeholders/IPEN-Case-PFAS.pdf>

accumulate in the environment and to expose humans and other biota around the globe, unless they are phased out. SDG 6 and SDG 12 are particularly relevant for PFAS.

Triggers for the mechanism of elevated obligation

Under the successor to SAICM, the progress of the work for the IoCs will be evaluated against a work plan with targets, milestones and indicators. However, we have no retrospective time-bound plans with targets, milestones and indicators for the IoCs identified to date. Indeed, we already have enough information on the IoCs highlighted above to know that further action is needed.

This was the rationale behind the evaluation criteria presented in our IP3 information document.¹⁷

Because the wording “criteria” caused confusion among some of the SAICM stakeholders at IP3, this updated information document suggests instead they be called “triggers” for elevated obligation. In this updated version one additional trigger has been added.

These triggers should be general enough to be applicable to all potential IoCs – present and future. **In our view, elevated action on an Issue of Concern is justified by a) meeting one of the triggers below, and b) if the IoC at the same time contributes to key strategies¹⁸ for the fulfillment of at least one SDG target in one UN region.**

Below the triggers are listed:

- 1 Failure to reduce acute poisoning and/or chronic effects by chemicals that are IoCs.¹⁹
- 2 Failure to reduce the levels of chemicals that are IoCs in human and environmental samples.¹⁹
- 3 Failure to reduce the volume of the production, use and disposal of substances of very high concern relevant to an IoC.²⁰
- 4 Insufficient monitoring of human and environmental impacts by an IoC.¹⁹
- 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

¹⁷ http://www.saicm.org/Portals/12/documents/meetings/IP3/stakeholders/NGO_Information-On-IoC-criteria_Update30Sept.pdf

¹⁸ One example is circular economy that could be a key strategy for fulfilment of at least the SDG targets 3:9, 6:3, 8.4, 9.2, 11:6, 12:2, 12:4, 12:5, 14:1, 14:3, 15:1 and 15:5. However, to unlock the true potential of a circular economy as a key strategy, it is first necessary to secure transparency for at least chemicals of global concern in supply chains for materials, product components and products, so that such chemicals can be managed properly, restricted or banned. Otherwise circular economy cannot be safe to human health and the environment. Increased action for the IoC CiP is necessary for the key strategy circular economy to advance fulfilment of a number of SDG targets. Circular economy can help reduce the need for virgin raw materials, save water, processing chemicals and energy for refining raw materials, manufacturing of materials and products, as well as help us to partly decouple economic growth from environmental degradation. Overall, circular economy can reduce ecosystem destruction by reducing climate change, addressing the waste issue, and reducing toxic emissions to the environment.

¹⁹ Data sources include primary data from academic research and national and international monitoring programmes, as well as peer reviewed review articles, and UN documents, such as the Global Chemicals Outlook.

²⁰ Statistics from the OECD, national governmental statistics agencies, and industry trade organizations, etc.

chemical contamination of natural resources, such as air, soil and water including but not limited to large-scale environmental clean-up and remediation costs.¹⁹

- 6 National regulations have failed to achieve sufficient improvement in the IoC.²¹
- 7 Regional regulations for addressing an IoC are in place, or under development.²²
- 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 IoC.²³
- 10 Failure to reduce the level of disposal and contamination of waste of relevance to an IoC.^{19, 24}

If adopted, and if needed, the ICCM could in the future revise or update them.

Even for IoCs that have undergone a cycle of evaluation against the work plan with targets, milestones, and indicators under the successor to SAICM, the above suggested “triggers” complement to the evaluation. The work plan evaluation is used for deciding if the work on an IoC should continue under the successor to SAICM; the “triggers” will clarify if the work on an IoC should be moved to a higher level of obligation.

Evaluation

Ideas for how to set up the evaluation of an IoC against its work plan could be drawn from the Universal Periodic Review (UPR) model²⁵ used by the UN Human Rights Council, which has proven efficient in triggering actions based on the review recommendations.²⁶ The evaluation panel could be formulated to mirror the multi-stakeholder approach of SAICM, composed of experts from governments, business, civil society, trade unions, and academia.

We suggest the IoC evaluation using the suggested “triggers” be performed by an *ad hoc* expert group with equal multi-stakeholder participation, in order to ensure complete independence and to avoid lengthy and potentially difficult discussions among the stakeholders in the ICCM.

²¹ 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.

²² 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.

²³ 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.

²⁴ This could, for example, be plastic waste, or waste that mainly end up in and is handled by informal sectors, and hence may be handled improperly and spread in the environment in an uncontrolled fashion.

²⁵ <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>

²⁶ 48 percent of UPR recommendations triggered action by mid- term, meaning that the recommendations were either fully or partially implemented only 2.5 years after the initial review.” (https://www.upr-info.org/sites/default/files/general-document/pdf/2014_beyond_promises.pdf)

Mechanism leading to increased obligation

In the post 2020 regime, we envision that the ICCM (or another multilateral body) under an Enabling Framework will be mandated to adopt resolutions, based on the outcome of a “trigger” evaluation of an IoC, recommending that obligations to act on the IoC (or a key aspect²⁷) be elevated to a higher level.

For example, the IoC (or a key aspect of it) could be addressed via an amendment or a protocol to an existing treaty, where a treaty provides for this option. For instance, addressing the need for transparency with respect to chemicals in products and their subsequent disposal or recycling through the UNEP Basel Convention²⁸, or the UNECE Aarhus Convention.²⁹ The Stockholm Convention already covers two PFAS; coverage of PFAS as a group could be explored together with an associated protocol on binding disclosure of substances of global concern in products under the Basel or Aarhus Conventions.³⁰ Mandatory full disclosure of the concentration of Substances of Global Concern in all materials and constituent components of products could be considered in line with a new European Chemicals Agency (ECHA) database on the presence of hazardous chemicals in articles.³¹

Both already provide good examples, e.g. the 2019 amendments of the Basel Convention on plastics waste, the Basel Protocol on liability and compensation, and the Aarhus Protocol on pollutant release and transfer registers. The Aarhus Convention, an instrument developed through the UN Economic Commission for Europe, serves as an ‘open’ global treaty.

In such cases, a forum already exists; the Parties would decide under the treaty procedures to initiate negotiations for a protocol. If there is no suitable treaty under which to incorporate a protocol, as is the case with most HHPs, a new one may have to be initiated. As long as the IoC is not moved to a higher obligation like a protocol or treaty, the IoC remains under the framework of the successor to SAICM and is followed up and monitored as any other IoC under the framework.

However, if the successor to SAICM remains voluntary, as seems likely, future ICCMs will still not have sufficient legal authority to request the governing body of another treaty to start negotiations for a protocol, nor initiate negotiations of a new treaty. We, therefore, suggest that the ICCM resolution calling for an IoC (or a key aspect of it) to be moved to a higher level of obligation is forwarded to a higher decision making body in the UN system for adoption/endorsement, following a similar kind of reasoning as for the prospective ICCM5 decision on the enabling framework.³² This body could be the United Nations General Assembly (UNGA).

²⁷ An example of a key aspect for work with the IoC CiP could be chemicals of global concern in international supply chains. It may be necessary to make transparency for them to be mandatory. Work with the remaining chemicals that are not considered of “global concern”, or not key aspects, could continue as voluntary work with the IoC CiP against a time-bound workplan with targets, milestones, and indicators under the successor to SAICM.

²⁸ <http://www.basel.int/>

²⁹ <https://ec.europa.eu/environment/aarhus/index.htm>

³⁰ <https://www.unece.org/env/pp/prtr.html>

³¹ <https://echa.europa.eu/-/scip-database-will-improve-transparency-on-hazardous-substances-in-articles>

³²

http://www.saicm.org/Portals/12/documents/meetings/IP3/INF/SAICM_IP3_INF4_EnhancingGovernanceSMC_W.pdf