

# BAN and IPEN Quick Views of Basel COP14

April 2019

The following is a summary of views on issues that the Basel COP14 will be called upon to address:

## Technical assistance and regional centres

- The monitoring and evaluation of the technical assistance plan should include space for narrative information since “the number Parties” while easy to measure, really does not reflect impact.
- Considering the large remaining stockpiles of PCBs, DDT and other POPs, Regional Centres should conduct trainings on non-combustion methods of destruction that meet Convention requirements as a high priority.
- COP14 should welcome the report of the marine litter topic group of the Stockholm Convention (UNEP/POPS/COP.9/INF/28/Add.1) and its key approaches to tackle the issue and encourage further work by regional centres on this issue.
- Regional centres should increase the involvement of public interest NGOs and civil society in their work through direct participation in the design and implementation of projects. This criterion should be included in their evaluations and reporting.

## Financial resources

- Partnerships are not a substitute for a functioning financial mechanism or the need to internalize costs within the chemicals and wastes industry.
- The BRS conventions should implement a recommendation of the UNEP evaluation of the integrated approach to financing to, “make a formal request to donors to make an overt signal that chemicals and waste are a fundable component of development plans.”<sup>1</sup>
- The UNEP evaluation of the integrated approach to financing recommends that UNEP should “propose solutions to address civil society financing” including “changing Special Programme grants to include the possibility of sub-grants to CSOs.”<sup>1</sup>
- Since needs for funding outlined in Article 14 have not materialized, other sources of funding should be explored including economic instruments to recover costs from companies that have produced hazardous wastes and/or countries in which they are based, to operationalize Rio Principle 16, the polluter pays principle.<sup>2</sup> This is supported for PCBs in para 45 – 47 of UNEP/CHW.13/INF/40. The UNEP evaluation of the integrated approach to financing recommends to, “commission studies on market-based instruments for cost internalisation and incentives for sustainable consumption and production, particularly for green chemistry investments.”<sup>1</sup>

## Compliance

- Convention compliance needs to be substantially improved. As of June 2018, 75 Parties had not submitted their reports for the year 2014 and 81 Parties had not submitted their reports for the year 2015. Only 50% of Parties complied with reporting obligations for 2016 and only 10% were complete and on time.<sup>3</sup>
- Treaty violations that are not resolved or even reported to the compliance mechanism need to be urgently addressed. For example, two countries exported wastes to the Philippines in violation of the Convention. One recognized the violation and has begun repatriation.<sup>4</sup> The other has left their wastes in the Philippines for five years<sup>5</sup> and a new legal opinion finds numerous Convention violations.<sup>6</sup>

<sup>1</sup> SAICM/OEWG.3/INF/11 <http://www.saicm.org/Portals/12/Documents/meetings/OEWG3/inf/OEWG3-INF-11-Financing-.pdf>

<sup>2</sup> Rio Principle 16: “National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”

<sup>3</sup> UNEP/CHW.14/INF/21

<sup>4</sup> Republic of Korea [http://overseas.mofa.go.kr/ph-en/brd/m\\_20312/view.do?seq=14](http://overseas.mofa.go.kr/ph-en/brd/m_20312/view.do?seq=14)

<sup>5</sup> Canada <https://www.ctvnews.ca/politics/canadian-garbage-rotting-in-manila-violates-international-law-experts-say-1.4384296>

<sup>6</sup> <https://rightoncanada.ca/wp-content/uploads/2019/04/Legal-Opinion-re-Canadas-Violations-of-the-Basel-Convention-2019-04-10.pdf>

- Parties should be able to receive financial assistance to prepare national reports and technical assistance from the secretariat and regional centres. Montreal Protocol, CBD, and UNFCCC provide financial assistance with reporting and this is strongly associated with higher reporting rates.<sup>7</sup>
- COP14 should amend paragraph 20 of the terms of reference of the mechanism for promoting implementation and compliance with the Basel Convention by adding a new subparagraph (c) as follows: “(c) Deciding upon additional measures as a last resort when a Party has not submitted its national report for two or more years since the report due for 2016.”

## POPS waste

- Current low POPs content limits and proposals for weak limits (high values) allow the recycling of POPs in wastes into new products and their dumping in developing and transition countries with insufficient ESM.
- Products containing POPs should be labelled in order to effectively manage them in waste streams and in inventories. This should include products recycled under currently permitted exemptions.
- Work to establish levels of destruction, low POPs content, and other POPs wastes issues for newly listed POPs should be carried out collaboratively by appropriate bodies of both the Basel and Stockholm Conventions including the POPRC, BAT/BEP Dioxin Toolkit expert groups and not simply handed to Basel Convention bodies.
- The COP should urge Parties to also apply the BAT/BEP guidelines to source categories listed in Annex C of the Convention, particularly those listed among environmentally sound management (ESM) technologies in the Basel General technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with POPs.
- COP9 should adopt the following low POP content levels. Note that most POPs have a limit of 50 m/kg.

Substance	Limit supported by IPEN	Current limit
Dioxins and furans (PCDD/F) <sup>8</sup>	1 ppb (1 µg TEQ/kg) <sup>9</sup>	15 ppb
Hexabromocyclododecane (HBCD)	100 mg/kg <sup>10</sup>	1000 mg/kg Promoted and used by EU and other developed countries
Polybrominated diphenyl ethers (PBDEs)	50 mg/kg as a sum of listed PBDEs. Includes: TetraBDE, PentaBDE, HexaBDE HeptaBDE DecaBDE <sup>10</sup>	1000 mg/kg Promoted and used by EU and other developed countries
Short-chain chlorinated paraffins (SCCP)	100 mg/kg <sup>11</sup>	10,000 mg/kg Proposed by the EU

- The 10,000 mg/kg proposal for SCCPs is the weakest limit in the history of the Basel and Stockholm Conventions and should not be supported.
- In these technical guidelines, POPs waste destruction options should not only list incineration and cement kiln co-incineration technologies but should highlight non-combustion techniques<sup>12</sup> such as Gas Phase Chemical Reduction (GPCR) and/or Base Catalysed Decomposition (BCD) and should include new non-combustion technologies such as Copper Mediated Destruction and Mechano-Chemical Destruction.

<sup>7</sup> UNEP/POPS/COP.6/INF/28

<sup>8</sup> Includes dioxin-like PCBs

<sup>9</sup> Processing/disposal of waste containing PCDD/Fs between 0.02 and 12 pg TEQ/g ( ) [led to contamination](#) of the food chain (eggs or poultry meat) up to levels >20-times higher than the suggested EU limit for PCDD/Fs in food (2.5 pg TEQ/g fat) ), and up to 280-times background levels in eggs. The last major dioxin contamination incident in Germany was [caused](#) by uncontrolled use of waste from biodiesel production containing 0.123 TEQ ppb PCDD/F for feed production, which clearly shows that the existing legislative limits for PCDD/Fs content in wastes are neither strict enough nor protective enough.

<sup>10</sup> This recommendation is consistent with the conclusions of the extensive [report](#) by consultants for the EU. There is widespread evidence that brominated POPs are entering the recycling chain for plastics and undermining attempts to transition to a circular economy in which clean plastics can be recycled.

<sup>11</sup> This proposal is based on a [report](#) prepared for the German Federal Environment Agency.

<sup>12</sup> <https://ipen.org/news/new-briefing-paper-non-combustion-techniques-pops-waste-destruction>

- Thermal and metallurgical production of metals should be removed from the General Technical Guidelines on POPs Waste as this technology has not demonstrated any destruction efficiencies for POPs and is listed in Annex A Part 2 as a source of unintentionally-produced POPs (UPOPS).
- Preference should be given to non-combustion techniques for POPs destruction to avoid undermining treaty objectives through promotion of technologies that create wastes, releases and emissions contaminated by unintentionally-produced POPs.
- Any reference to small-scale mobile incineration units suggesting they are environmentally sound technology, BAT or BEP, should be removed from all Stockholm and Basel Convention guidance as these units are physically incapable of controlling UPOPS emissions.

### **Technical guidelines on incineration, engineered landfill, hazardous waste physico-chemical treatment and biological treatment**

- Since Basel OEWG11 a Basel Small Intersessional Working Group called the “D5 and D10 SIWG” has been updating the guidelines. IPEN participates in this group. One of the limitations of the D10 guidance revision is that it only refers to “incinerators” under the proposed new scope and does not address pyrolysis and gasification (the other types of incinerators) which are being pushed globally and fall under EU and US definitions of incineration.
- The mandate of the small intersessional working group should be extended to further update the technical guidelines on incineration on land (D10) and the technical guidelines on specially engineered landfill (D5).
- The scope of the D10 review should be extended to include detail on gasification and pyrolysis forms of incineration, climate change impacts of all forms of incineration and costs relative to other waste management systems and disadvantages associated with incineration of waste.
- The D10 review should promote semi-continuous monitoring for dioxins and furans to ensure that excess UPOPS emissions during start up, shut down, stack dumping, stack bypass and other non-standard operating procedures are recorded and subject to appropriate enforcement measures.

### **Technical guidelines on waste lead-acid batteries**

- The technical guidelines on waste lead-acid batteries should be updated.
- A small intersessional working group should be established to update the guidelines.

### **The technical guidelines on mercury wastes should be updated.**

- A small intersessional working group should be established to update the guidelines.
- The Basel guideline revision should recognize and be consistent with guidance being developed on mercury waste by the expert group under the Minamata Convention on Mercury and include harmonization of mercury waste definition thresholds between the conventions.

### **E-waste guideline**

- Paragraph 31(b) of the interim guideline allows broken electronic equipment to be exported as non-waste (in other words completely outside of the Basel Control procedures) no matter how hazardous this waste might be as long as the exporter claims it is to be repaired. This is despite the impossibility of determining or ensuring that such "repair" even takes place nor whether such "repair" generates hazardous residues in the receiving country.<sup>13</sup> This is a new loophole which was inconceivable just a few years ago. Earlier partnerships of on mobile phones (MPPI) and computing equipment (PACE) determined that as a fundamental rule, if equipment is non-functional or its functionality is untested, then that electronic equipment must be considered waste. The Electronics Manufacturers in the last few years have been successful in getting the EU to press for this massive and extraordinary loophole, that is contrary to the Bamako Convention (African waste treaty) decisions and even EU law itself.
- While the EU has made some small concessions about criteria under which such a loophole could be exercised (e.g. there needs to be a contract etc.) it is far too little to truly protect developing countries from a new onslaught of e-waste exports, this time under the name of "Repairables".
- Further, redefining the Basel waste definitions via Guideline is not legally acceptable.

<sup>13</sup> For more information see <file:///Users/jimpuckett/Downloads/UNEP-CHW-SUBM-GUID-TGsEWaste-Comment-2-BAN.English.pdf>

- For these reasons, the interim guideline should NOT be finally adopted without fundamental return to these basic party rights.
- Rather, as this debate has churned on for 9 years now and the document keeps getting weaker as the EU promotes industry's fundamental undermining of the Convention, BAN has proposed an alternative new compromise Guideline known as [The Responsible Guideline for the Transboundary Movement of Used Electronic Equipment to Promote an Ethical Circular Economy Under the Basel Convention](#).
- In this new Responsible Guideline, BAN still allows manufacturers and Parties to opt-in to a properly controlled means to conduct foreign repair operations but reasserts the basic Basel principles of full transparency of the operations and exporters, and the right of refusal or consent.
- We must call for the use and promotion of BAN's Responsible Guideline.

### **Ban Amendment**

- The BAN Amendment, once in legal force will add a new Article to the Convention which will ban the export of hazardous wastes from developed (Annex VII: OECD, EU or Liechtenstein) to developing countries (non-Annex VII) for any reason.
- 95 countries have ratified the Ban Amendment, but for the Amendment to go into force it must be ratified by 3/4 of the 90 Parties that were present and voting at COP3. 3/4 of 90 is 67.5, or rounded up, 68. Currently we have 66 Parties from this list of 90. Thus, we need but 2 more!
- 23 countries that were present in 1995 that have yet to ratify the Ban Amendment include:
  - Africa: Comoros, DR Congo, Senegal
  - Asia-Pacific: Bangladesh, India, Japan, Philippines, Pakistan, Republic of Korea, United Arab Emirates, Vietnam
  - CEE: Croatia, Russia,
  - GRULAC: Bahamas, Brazil, Costa Rica, Cuba, Mexico, St. Kitts and Nevis
  - WEOG: Australia, Canada, Israel, New Zealand
- An announcement by two of these countries that ratification is in process or completed will be cause for a major celebration at COP14.

### **Marine plastic litter and microplastics: Preamble and general part**

- The Norway proposal should be welcomed and adopted at COP14. Some adjustments to the text would make things clearer as to when plastic scrap should be listed in the three annexes (II, VIII, IX), however these minor clarifications if not concluded at COP14 can be provided in guidance created following adoption.
- No delay on adoption or implementation (6 months following adoption) can be tolerated.
- The preamble should acknowledge that that the current approaches to producing and using plastics and managing their wastes pose a significant threat to the environment, to livelihoods and potentially to human health and represent a significant loss of value, resources and energy; references to Article 15 para 4; and references to SDGs 12.5 and 14.1.
- The general part of the resolution should maintain language emphasizing the role of the Basel Convention in addressing the high and rapidly increasing levels of marine plastic litter and microplastics by preventing plastic wastes from land-based sources from entering the marine environment and committing to support efforts to achieve the minimization and the environmentally sound management of plastic waste, as well as the effective control of its transboundary movement.
- The general part of the resolution should also take note of the UNEA4 resolution, “Addressing single-use plastic products pollution.”

### **Marine litter and microplastics: Preventing and minimizing generation of plastic wastes**

- The resolution should maintain text underlining the general obligations of the Convention; the importance of the waste management hierarchy; and the relevance of the Cartagena Declaration and its road map for action on implementation.
- Further efforts to prevent and minimize the generation of plastic waste (para 11) should include development and implementation of environmentally sound alternatives to plastic products including substitution of such products where alternatives are available, the reduction of plastics consumption, the setting of specific collection targets and obligations for producers to cover the costs of waste management, clean-up and awareness-raising measures, including through extended producer responsibility.

- Language in para 11 on taking the whole lifecycle into account and ensure that transboundary movements of plastic wastes are undertaken in accordance with the Convention should be maintained.
- Parties and others should be invited to set a 2030 target of ensuring that all packaging, including plastic packaging is designed to be recyclable.

### **Marine litter and microplastics: Reducing the risk from hazardous constituents**

- Text on plastics containing potentially hazardous substances (para 13) and their harm to human health and the environment should be maintained.
- Parties and others should be encouraged to remove hazardous constituents in design and before recycling.
- The work of SAICM and the Stockholm Convention should be welcomed. Further engagement with the Stockholm Convention should be performed to clarify roles, responsibilities, and links between the two treaties.

### **Marine litter and microplastics: Review of Annexes I and III for plastic wastes**

- COP14 should request the expert working group to assess the applicability of categories of waste in Annex I and the hazardous characteristics in Annex III and suggest modifications to better control plastic wastes and to consider whether any additional characteristics or constituents should be added to Annex I or Annex III.

### **Marine litter and microplastics: Technical guidelines on plastic wastes**

- COP14 should decide to establish a a small intersessional working group to update the Technical Guidelines for the Identification and Environmentally Sound Management of Plastic Wastes and for their Disposal.

### **Marine litter and microplastics: Plastics Partnership**

- Partnerships have been shown to be plagued by an imbalance between environmental NGOs (often lacking sufficient budget to attend) and industrial representatives (with ample budgets), and have in the past lacked the equity and funding to accomplish goals due to lack of member fees based on organizational size and budget, and a lack of translation for participants not speaking English. The TOR must properly address these issues.
- The goal of the partnership should be to prevent, minimize and eliminate the generation of plastic wastes by implementing a whole life cycle approach at the national level so as to, among other things, reduce and eliminate the discharge of plastic wastes and microplastics into the environment, in particular the marine environment.
- The scope of the partnership should cover all plastic wastes, including wastes containing plastics, generated nationally and disposed of at the national level as well as transboundary movements of plastic wastes.
- Tasks include:
  - a) Collect information and undertake analysis on environmental, economic and social impacts and gaps of national and regional policy frameworks and strategies relevant to plastic waste prevention and management.
  - b) Undertake analysis and, within the capability of the Partnership, disseminate widely the possible solutions to barriers to plastic waste reduction and recycling.
  - b\_bis) Undertake research to assess the environmental soundness of plastics recycling from a life-cycle perspective, including the impact of recycling plastic on global warming, occupational safety and health, other negative externalities, and in comparison to plastics-use reductions.
  - c) Inform stakeholders about the development of policy, regulation and strategies on the prevention and minimization of plastic wastes, inter alia, via prohibitions on certain plastics, better design and innovation to improve reuse, repair and recyclability of plastics and to avoid hazardous substances in plastics and on environmentally sound management of plastic wastes, taking into account the entire life cycle of plastics;
  - d) Undertake pilot projects, for example on private sector engagement on non-plastic alternatives, environmentally sound management of plastic wastes, extended producer responsibility, internalization of costs, policy and strategy development, and experience and information-sharing;
  - e) Develop options to facilitate the monitoring of transboundary movements of plastic wastes, for example by collecting information from existing sources and use of GPS technology
  - f) Transfer knowledge, experiences and information to facilitate Convention objectives, for example by facilitating capacity building and technology transfer to strengthen and implement policies, strategies and regulations to improve lifecycle management of plastics at the national level.
  - g) Undertake and/or contribute to outreach, education and awareness raising activities on the contribution of the lifecycle of plastics to marine litter, especially the youth, to enhance public participation in management activities and decision-making at the national level;

- h) Encourage relevant innovation, research and development, including the environmental impacts of single-use plastics and the development of environmentally sound alternatives to plastics.

**Marine litter and microplastics: Public awareness, education and information exchange**

- The text in UNEP/CHW.14/11, para 31 should recognize that changes by the private sector also play an important role in waste prevention strategies.
- Measures to enhance public awareness, education, and information exchange should also include reduced production of plastics, development of environmentally sound alternatives, and national prohibitions on single-use plastics.
- COP14 should request the Secretariat to develop options on ways to effectively make available information on environmental and health effects, non-plastic alternatives, best practices, socioeconomic considerations and expertise related to the prevention, reduction and environmentally sound management of plastic wastes.

**Marine litter and microplastics: Further considerations on plastics**

- The work programme of the OEWG for 2020 – 2021 should consider what information and data should be gathered, and by whom, related to the generation, disposal, and transboundary movement of plastic wastes in different waste streams; the constituents present in plastic waste; the impact of the mismanagement of plastic waste on human health and the environment; and national policies on plastics and progress towards the environmentally sound management of plastic wastes.
- The work programme of the OEWG for 2020 – 2021 should consider how and when the Conference of the Parties should assess the effectiveness of the measures taken under the Convention to address plastic wastes, including those contributing to marine plastic litter and microplastics.
- The work programme of the OEWG for 2020 – 2021 should consider how the Convention may respond to regulatory initiatives and developments in scientific knowledge and environmental information related to plastic wastes as a source of marine plastic litter and microplastics, as a basis for consideration under the Convention of the need to enhance waste-related response measures.