

REPUBLIC OF KENYA



MINISTRY OF ENVIRONMENT AND MINERAL RESOURCES

**DRAFT POLICY ON
CHEMICALS MANAGEMENT**

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EXECUTIVE SUMMARY

Recognizing the challenges in production, use and disposal of chemicals as well as concerns raised by stakeholders in many forums on chemicals, Kenya has developed a draft policy on chemical management. This Policy covers aspects of sound management of chemicals at all stages of their life cycle with emphasis on social, economic, health, labour and environment protection. In particular, it considers risk reduction, knowledge and information, governance, capacity building and technical cooperation, and illegal international traffic. It also commits Kenya to regularly review and to incorporate new data and information arising from research and monitoring of impacts of chemicals and hazardous waste. This Policy does not address chemical weapons and Genetically Modified Organisms since they are covered under respective policy documents.

This Policy is guided by the principle of a right to a clean and healthy environment, and a duty to safeguard and enhance the state of good environment as enshrined in the Constitution of Kenya, 2010. Further, it draws from the Overarching Policy Strategy of Strategic Approach to International Chemicals Management and the Global Plan of Action.

The Policy proposes mainstreaming of sound management of chemicals in national development planning. It therefore calls for multi-stakeholder coordination in overcoming challenges in chemical management and the need for public private partnership in addressing cross-cutting issues. In this regard, the private sector is encouraged to use its resources in undertaking activities that are economically sustainable for the benefit of us all.

Successful implementation of this Policy calls for sustainable funding. This will be achieved through increased budgetary allocation to public institutions with harnessing of additional funding from multilateral financing mechanisms, development partners, private sector and civil society. In addition, it proposes reviewing management options and introduction of incentives and disincentives to ensure appropriate management of chemicals.

In developing this Policy, the guidelines provided by the United Nations Institute for Training and Research were followed. In addition, the process involved a multi-stakeholder consultation driven by the Ministry of Environment and Mineral Resources under the SAICM Quick Start Programme. It also benefited from the activities of implementing the Libreville Declaration on Linkages between Health and Environment as a parallel action driven by the World Health Organisation- Kenya Country Office, the UNEP Regional Office for Africa, through joint activities of the ministries of Public Health and Sanitation and Environment and Mineral Resources. It also involved the civil society led by iLima which is implementing an East African regional project on law review for chemicals management.

ACRONYMS AND ABBREVIATIONS

AAK	Agricultural Association of Kenya
BAT	Best Available Techniques
BEP	Best Environmental Practices
CMP	Chemicals Management Policy
CSR	Corporate Social Responsibility
DOHSS	Department of Occupational Health and Safety Services
EAC	East African Community
EIA	Environment Impact Assessment
EMCA	Environmental Management and Coordination Act
FAO	Food Agricultural Organization
GATT	General Agreement on Trade and Tariffs
GCD	Government Chemists Department
GDP	Gross Domestic Product
GEF	Global Environment facility
GoK	Government of Kenya
GHS	Globally Harmonized System of Classification and Labelling of Chemicals
GPA	Global Plan of Action
ICCM	International Conference on Chemicals Management
ILO	International Labour Organization
IMO	International Maritime Organization
IOMC	Inter-organization Programme for the Sound Management of Chemicals
IPM	Integrated Pest Management
IVM	Integrated Vector Management
JPOI	Johannesburg Plan of Implementation
KAM	Kenya Association of Manufacturers
MDGs	Millennium Development Goals
MEAs	Multilateral Environment Agreements
MEMR	Ministry of Environment and Mineral Resources
MOE	Ministry of Education
MoF	Ministry of Finance
NEC	National Environment Council
NEMA	National Environment Management Authority
NET	National Environment Tribunal
NETFUND	National Environment Trust Fund
NGOs	Non-Governmental Organizations
ODSs	Ozone Depleting Substances
OPS	Overarching Policy Strategy
PCPB	Pest Control Products Board
PIC	Prior Informed Consent Procedure of the Rotterdam Convention
POPs	Persistent Organic Pollutants
PPP	Public Private Partnership
PRTR	Pollutant Release and Transfer Register
SAICM	Strategic Approach to International Chemicals Management

SERC	Standards and Enforcement Review Committee
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNIDO	United Nations Industrial Development Organization
UNITAR	United Nations Institute for Training and Research
WHO	World Health Organization
WSSD	World Summit on Sustainable Development

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DEFINITION OF TERMS

“Community” refers to a clearly defined group of users, which may, but need not be, a clan or ethnic community. These groups of users hold a set of clearly defined rights and obligations.

“Ecosystem” means a dynamic complex of plant, animal, micro-organism communities and their non-living environment interacting as a functional unit.

“Environment Impact Assessment” means the definition assigned to it under the EMCA.

“Multilateral environment agreement” means international legal instruments for the regulation of activities affecting the environment particularly wildlife resources to which Kenya is a Party.

“Stakeholder” refers to an individual or group having a vested interest in environment and natural resources.

“Sustainable use” means present use of natural resources, which does not compromise the ability to use the same by future generations or degrade the carrying capacity of ecosystems and habitats.

“Lead Agency” as defined by the Environmental Management and Coordination Act.

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1. INTRODUCTION

1.1 Overview

In Kenya, the high rate of population growth coupled with increased consumption has exerted pressure on natural resources and the ecosystem. The use of chemicals escalates with increased production and consumption. Their impact on health and the environment is not restricted to particular regions, territories, countries or even continents. At the global level, the destruction of the Ozone layer and transportation of Persistent Organic Pollutants (POPs) by marine currents are examples of impacts that pose serious risks to life on a global scale. Inappropriate use of chemicals, their trans-boundary movement and disposal of hazardous wastes creates risks, both actual and potential, to human health and the environment. The Kenya national chemicals profile, Chapter 10 documents the destruction of property, injuries and death associated with chemical incidents and accidents. It also highlights the danger to Kenya's economy due to chemical risks.

As a net importer and a transit point for manufactured industrial products, Kenya is a recipient of some end of life items such as cars, tyres, computers, vehicle batteries, mobile phones and consumables, which become hazardous waste within a short period of time. Upon becoming waste, they produce toxic chemicals that require environmentally sound disposal methods which are not currently available in the country. The contamination caused by the improper management of hazardous wastes can have serious long term consequences on human health and the environment. Industrial, household or hazardous wastes are often disposed of in undesignated areas where they become a source of air, water and land pollution.

In addition, Kenya being a transit state for trade in the East African region, has made a commitment to address illegal transboundary trade in chemicals and trans-boundary movement of hazardous wastes in the region. Moreover, Kenya recognizes the different levels of capacity in the neighbouring countries of the region to manage chemicals safely and the need to use regional instruments to improve synergies between existing instruments and processes in a multi stakeholder environment.

In the absence of a comprehensive policy on chemicals management, Kenya is socially, economically, technically and scientifically vulnerable to risks associated with chemicals. The Chemicals Management Policy (CMP) will therefore establish a mechanism to minimize adverse negative effects of chemicals on human health and the environment. Successful implementation of this CMP will also promote practices that minimize the generation of hazardous wastes, and ensure their environmentally sound disposal. Finally, this CMP will address the critical issues of mitigating international trade as well as illegal trans-boundary movement of chemicals and hazardous waste across Kenya.

In developing this Policy, the guidelines provided by the United Nations Institute for Training and Research (UNITAR) were followed. In addition, the process involved a multi-stakeholder consultation driven by the Ministry of Environment and Mineral Resources (MEMR) under the SAICM Quick Start Programme. It also benefited from the activities of implementing the Libreville Declaration on Linkages

between Health and Environment as a parallel action driven by the World Health Organisation (WHO) Kenya Country Office, the UNEP Regional Office for Africa (UNEP-ROA), through joint activities of the ministries of Public Health and Sanitation and Environment and Mineral Resources. It also involved the civil society lead by iLima which is implementing an East African regional project on law review for chemicals management.

1.2 International Background

At the international level, Agenda 21, the Plan of Action for Sustainable Development was adopted during the United Nations Conference on Environment and Development (UNCED), in Rio de Janeiro, Brazil, in 1992. Chapter 19 of Agenda 21 addresses global commitment on management of toxic chemicals.

In follow-up to the adoption of Agenda 21 and building on progress made since UNCED, a World Summit on Sustainable Development (WSSD) was convened in Johannesburg, South Africa, in 2002. The main outcome of this Summit was the Johannesburg Plan of Implementation (JPOI) for promoting sustainable development. Regarding chemicals management, the goal of this Plan is, that by 2020, chemicals are used and produced in ways that lead to the minimal adverse effects on human health and the environment. It provides a global and national framework for action on sound management of chemicals.

Under the framework of Agenda 21 and the JPOI, the Strategic Approach to International Chemicals Management (SAICM) was developed during the First International Conference on Chemicals Management (ICCM), held in Dubai, in 2006. The SAICM is an international agreement that provides a framework for supporting efforts towards achieving the 2020 goal, as agreed upon during the WSSD. The SAICM is a voluntary international agreement to streamline, integrate and build on ongoing efforts to safely manage chemicals and associated hazardous wastes.

The SAICM is comprised of the Dubai Declaration, which is the political commitment to reduce chemical risks; the Overarching Policy Strategy (OPS), that sets out scope, statement of needs, objectives, financial considerations, principles and approaches, modalities for implementation; and the Global Plan of Action (GPA), that provides guidance on work areas and activities that may be undertaken by stakeholders in implementing SAICM.

One of the principal requirements of SAICM is to develop a SAICM implementation policy through a process of country self assessment and appraisal on interventions to reduce risks in the chemicals life cycle, including production, import, export, use, transport and disposal.

The CMP will assist Kenya in addressing the above mentioned SAICM requirement and assess and manage chemicals more effectively to achieve the WSSD goal in Kenya. The Government will integrate SAICM into her development plans and programmes through a SAICM national implementation plan, contributing to national efforts in promoting sound use of chemicals, pollution prevention and control and, cleaner production, particularly in small and medium-sized enterprises.

Finally, at the international level, the 18th Session of the Commission on Sustainable Development (CSD) of 2011 has emphasized that there is a clear link between sound management of chemicals and sustainable development. This is because chemicals production and consumption can be a driving force for economic

development. At the same time, unsound management of chemicals can generate direct and indirect cost to the society. Development therefore cannot be achieved without understanding sound management of chemicals. Hence the need to incorporate chemical issues into development policies, plans and budget.

The Government of Kenya, recognizing the importance of managing risks posed by chemicals in order to achieve sustainable development, has undertaken actions on many of the above mentioned international commitments, which is reflected in several sectoral policies and legal instruments.

1.3 National Background

The environment policy framework for Kenya is the Sessional Paper No.6 of 1999 on Environment and Development. It was formulated as an outcome of Kenya's commitment to implementation of Agenda 21. The Sessional Paper recognizes that chemicals can be a risk to human health and the environment. It created the overarching policy framework that informed development of subsequent legislations governing chemicals regulations, guidelines, management tools, data, information, illegal trade and commitment to abide to international agreements. Since then, key international regulatory instruments on chemicals and waste have been developed.

In addition, the enactment of the Environmental Management and Coordination Act (EMCA), in 1999, provided legal and institutional frameworks for sustainable management of the environment, as well as for coordination and regulation of activities on the sound management of chemicals.

Several other legislations addressing environmental health and occupational safety include Public Health Act (Cap. 242), the Radiation Protection Act (Cap 243), the Occupational Safety and Health Act (2007), Pharmacy and Poisons Act (Cap 244), and the Water Act 2002 (Cap. 372), among others. These legislations are administered by ministries responsible for health, labour, agriculture, local government, and water resources, respectively.

1.4 Scope of the Policy

The scope of this Policy includes chemical use in agriculture, industry, services, energy and transport sectors. Specifically, it addresses highly toxic pesticides and hazardous industrial chemicals, POPs, lead in fuel, and persistent bio-accumulative substances. These also include carcinogens, mutagens and reproductive toxins. It recognizes that many of the chemicals currently in use have not been comprehensively assessed to ascertain the risk they present as well as potential toxicity which may emerge. The policy commits Kenya to regularly review and to incorporate new data and information arising from research and monitoring of impacts of chemicals and hazardous waste as well as possible alternatives and safer chemicals and technologies. Though there are regulations on waste, it seeks to bring them to the total chemicals life cycle in the future.

This Policy covers aspects of sound management of chemicals at all stages of their life cycle with emphasis placed on social, economic, health, labour and environment matters. In particular, it considers risk reduction, knowledge and information, governance, capacity building and technical cooperation, and illegal international traffic.

In addition, it considers population at risk, safety of workers, public safety, information and hazard data generation, introduction of cleaner production and chemical packaging, trade, transport. It also covers the

implementation of the Multilateral Environmental Agreements (MEAs) Strategy, policy and operational measures, trade controls, information and possibly introduction of a Pollutant Release and Transfer Register (PRTR), emergency response and waste remediation of sites contaminated by toxic chemicals.

It is important to note here that this Policy does not address chemical weapons and Genetically Modified Organisms (GMO) since they are covered under respective policy documents.

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2. GOALS, OBJECTIVES AND GUIDING PRINCIPLES

2.1 Goal

The goal of this Policy is that by 2020 chemicals are produced and used in ways that minimize adverse risks on human, animal, plant health and the environment.

2.2 Mission

To be a global leader in the management of chemicals across all sectors for safety of human, animal, plant health and the environment.

2.3 Objectives

The overall objective of the SAICM policy is to achieve the sound management of chemicals throughout their lifecycle so that by 2020 chemicals are used and produced in ways that lead to the minimal adverse effects on human, animal, plant health and the environment.

The objectives of this Policy are derived from those of SAICM namely risk reduction, knowledge and information, governance, Capacity-building and technical cooperation and illegal international traffic. The objectives will be achieved through activities detailed in the SAICM implementation plan of action.

2.4 Specific Objectives

The specific objectives of this Policy are to:

- (a) Provide a framework for integration of chemicals management considerations into the various sectoral policies, national development planning and decision making processes;
- (b) Strengthen the legal and institutional framework for effective coordination and management of chemicals in relation to social economic and natural activities;
- (c) Ensure sustainable management of the chemicals for national economic growth and improved people's livelihood and well-being;
- (d) Promote and support the provision of incentives, disincentives and other tools that enhance sustainable consumption and production as well as sound environment management practices;
- (e) Promote and enhance collaboration, synergy, partnerships and stakeholder participation in the protection of human health and the environment from risk, hazards, toxic, carcinogenic and mutagenic policies of chemical;
- (f) Promote compliance with international agreements on chemicals and hazardous waste especially the multilateral environmental agreements and processes on chemicals including protection of ozone layer, climate change, toxic waste dumping among others.

2.5 Principles

The following guiding principles underpin this Policy:

- (a) Every person in Kenya has a right to a clean and healthy environment¹.
- (b) Each person has a duty to safeguard and enhance the state good of environment².
- (c) Coordinated and participatory approach to sustainable management of chemicals for the protection of human animal, plant health and environment.
- (d) Multilateral Environmental Agreements (MEAs) and regional instruments that Kenya is party to be domesticated and fully implemented for better environmental management.

2.6 Approaches Specific to Chemicals

Measures to address specific chemical risks identified under multilateral environmental agreements, national and international programmes and regional actions will be considered in the following:

- Mainstreaming chemicals management issues into development plans and strategies;
- Undertaking risk assessment to ensure informed decision-making on social, health and environmental protection, linkages and synergy;
- Availing information and research and health data utilizing appropriate scientific information on chemical safety, chemicals use and their hazards, mitigation, preparedness for emergencies and follow up;
- Respecting proprietary information where it does not affect human health;
- Adopting appropriate best available techniques (BATs) and best environmental practices (BEPs) and guidelines developed by the inter- organization programme for the sound management of chemicals (IOMC) to minimize chemical risks;
- Respecting proprietary information but sharing with stakeholders, essential information on health and environment protection;
- Full consideration of emergency and contingency planning in the management of chemicals risks, and incidences and
- Promoting international cooperation and coordination in trans-boundary management of chemicals through timely and comprehensive compliance with the international agreements that Kenya is party to or has committed itself to be party to.

¹ Para 40 of the Kenya constitution

² Para 70 of the Kenya constitution

3. WORK AREAS AND POSSIBLE MILESTONES

This Policy is based on SAICM Overarching Policy Strategy (OPS) its five objectives and the Global Plan of Action (GPA) work areas. Kenya has been investing in financial resources, technology and human resources for sustainable management of chemicals, but has insufficient tools for management of chemicals in the following subject areas:

- i) Chemical hazard identification;
- ii) Exposure assessment;
- iii) Risk characterization;
- iv) Management of pesticide risks;
- v) Management of obsolete chemicals or pesticides;
- vi) Prevention and control of chemical pollution and waste;
- vii) Management of media-specific risks (e.g., water quality, air quality);
- viii) Identification and use of less hazardous alternative substances; and
- ix) Chemical accidents.

3.1 Mechanisms to address key categories of chemicals

The implementation of this Policy will build on the ongoing initiatives on chemicals e.g. Mercury, lead, POPs, among others. Kenya has participated in many international activities that address risks posed by chemicals such as the phasing out of Ozone Depleting Substances (ODSs) and persistent organic pollutants (POPs). Stakeholders have prioritized the following areas:

- a) Persistent organic pollutants listed under the Stockholm Convention;
- b) Ozone depleting substances
- c) Carcinogenic, mutagenic or teratogenic reproductive toxic substances;
- d) Chemicals subject to wide dispersive uses such as pesticides and industrial chemicals
- e) Chemical contaminants in consumer products,
- f) Mercury, lead, arsenic and cadmium, and
- g) Electronic and electrical waste

Future initiatives will be built on synergy developed and lessons learnt.

3.2 Priority issues to be addressed

The following are the priority issues that will be addressed:

3.2.1 Risk Reduction

Chemical risk reduction action will involve;

- i. Use of chemicals management preventive tools;
- ii. Adopting universal mechanisms to address key categories of chemical risks and hazards.
- iii. Applying hazardous waste management strategies;
- iv. Adopting methods of setting priorities in risk reduction; and
- v. Research and monitoring activities for selected environmental and health priorities.

In this effort, Kenya will avoid reinventing the wheel. Though ongoing research in chemicals will continue, it will use the opportunity provided by SAICM to access data and information generated by IOMC for decision making and by applying the internationally accepted and applied tools.

- a) International Code of Conduct for the Distribution and Use of Pesticides by Food and Agriculture Organization (FAO);
- b) Guidance documents on Developing a Risk Management Plans for Priority Chemicals developed by United Nations Institute for Training and research (UNITAR);
- c) Air Quality Guidelines by World Health Organization(WHO) and NEMA;
- d) Drinking Water Quality Guidelines by WHO; and NEMA;
- e) Recommended Classification of Pesticides by Hazard by WHO;
- f) Waste guidelines developed by the Basel Convention and domesticated by NEMA and
- g) Best available techniques (BATs) and best environmental practices (BEPs) developed under the Stockholm convention on persistent organic pollutants among others.

3.2.2 Policy statement- This heading is repeated a no of times?

For risk reduction, the Government shall endeavourto:

- (a) Develop standard regulation on lead in paint and other products;
- (b) Review risk policy to highly toxic pesticides ;
- (c) Promote integrated vector management(IVM)and integrated pest management(IPM);
- (d) Create awareness on pesticides risk management and reduction by small stakeholders;
- (e) Adopt use of BAT/BEP guidelines Article 5 category of sources³;
- (f) Develop partnership projects on reduction of mercury emissions (exposure such as in artisanal gold mining, dental amalgams, fluorescent tubes and products containing mercury);
- (g) Develop cadmium emission inventory from solid waste;
- (h) Create awareness on priority global chemicals such as cadmium, lead, arsenic; and
- (i) Develop risk management guidelines of mercury containing products such as fluorescent bulbs.
- (j) Put in place a mechanism to adopt emerging information on risks by chemicals products and technologies

3.2.3 Hazardous waste management strategies

The Policy recognizes inefficient production processes, importation of low quality products, low durability of goods and unsustainable consumption patterns that lead to excessive waste generation especially plastics. Despite efforts that encourage reuse, recycling and recovery, the amount of solid waste generated continues to rise.

In addition to solid wastes, wastewater effluents represent one of the largest threats to the quality of surface and ground waters. There are a variety of wastewater management challenges in the country, from large urban centres where wastewater collection and treatment facilities exist, to smaller urban areas where they are non-existent. However, most of the wastewater treatment facilities are outdated, overloaded and inefficient. They cannot achieve the national water quality standards. Some of them release pollutants with many known health and ecological consequences. The Water Policy (2002),

³ Of the Stockholm Convention

while addressing effluent discharge standards, it does not explicitly call for application of waste reduction strategies.

Of special consideration are electronic wastes and spills from oil tankers which may have adverse health and environmental consequences more profoundly on coastal and marine ecosystems. The hazardous waste management cycle is addressed by the Environmental Management and Coordination (Waste Management Regulations), 2006 on reduction in generation, recovery, recycling, storage, transportation and disposal. There is need to keep updating these regulations in light of new scientific evidence of the risks they pose to human health and the environment

Kenya is developing guidelines for the management of plastic wastes, lead-acid batteries, and has developed those of biomedical and healthcare wastes. It needs to develop those of persistent organic pollutants, contaminated waste, dioxin-related substances and pesticide contaminated wastes.

3.2.4 Policy statement

Hazardous waste management

The Government, in collaboration international agencies, development partners, the private sector and relevant stakeholders, shall endeavor to:

- a. Develop and implement criteria and regulations for classification, registration, labeling, packaging, advertisement, distribution, storage, transportation and handling of toxic and hazardous substances;
- b. Establish toxic and hazardous substances disposal facilities; and
- c. Adopt environmentally sound ways to treat hazardous waste.

3.2.5 Research and pollutant monitoring programmes

Research will investigate risks, safety of workers, environmental safety; human health effects and exposure; availability of safer alternatives and cleaner production technologies. Monitoring programmes are in place but need to be strengthened and accelerated, the key focus being increased research on the implications to Kenya's social economic concerns. It will be critical that investments are made for research in the following areas;

- Priority chemicals as defined in SAICM GPA;
- Facilitating human bio monitoring such as blood, serum and urine such as the global POPs monitoring;
- Follow up on cases of human poisoning by programmes on mitigation and rehabilitation especially the prevalent alcohol poisoning and
- Documenting cases of occupational related diseases linked to chemical exposure and using them for compensation and redress.

3.2.5.1 Policy Statement

To address research in light of the above, the Government shall endeavour to:

- (a) Corroborate on research for priority chemicals with local and international partners

- (b) Develop research activities in aspects of chemical life cycle relevant to Kenya
- (c) Develop human capacity in research institutions to respond to new health and environment issues
- (d) Strengthen laboratory infrastructure for research in the government institutions
- (e) Promote cooperation and coordination with the private sector on analytical facilities sharing data and information.

3.2.6 Knowledge and Information

The environment will continue to be threatened in the absence of well packaged information on risks and dangers posed to it. Knowledge management is therefore critical in building capacity for chemicals risk reduction. Strategies will be put in place to collect, collate, analyze and disseminate information to all stakeholders and especially vulnerable groups and communities.

These will be in form of:

a) Provision of information in accordance with internationally harmonized standards

Product and gaseous emission standards and regulations for labeling potential hazards posed by chemicals in production, occupational uses, transportation and disposal are available and are being availed in hard copy and in specialized websites.

b) Conformity with the Globally Harmonized System for the Classification and Labeling of Chemicals (GHS)

Kenya agreed to implement GHS by 2008, however this has not been done. There is an urgent need to assess conformity with the labeling requirements as per the GHS for dangerous goods, pesticides, consumer products, occupational health and safety and industrial chemicals by 2013.

c) Communication to vulnerable groups

Kenya has undertaken awareness and information dissemination activities such as training and awareness creation on chemical safety issues to vulnerable groups. The private sector specialized organizations such as Kenya Association of Manufacturers(KAM) and Agrochemicals Association of Kenya (AAK) will be facilitated to communicate chemical risks to reach worker and the public.

d) Research programmes

Data and information gathered by research, documentation and monitoring will prioritize chemical safety; human health effects and exposure; environmental effects; safer alternatives and cleaner production technologies. This will target universities, government institutions and intergovernmental organizations.

e) Websites on chemicals

Some organizations in Kenya maintain websites that provide information on chemicals in use, chemicals safety laws, hazards and risks. This could be expanded to address knowledge and information objectives of SAICM.

3.2.6.1 Policy Statement

To address the objective of knowledge and information, the Government shall endeavour to:

- Strengthen chemical data management systems and
- Establish and maintain websites that provide readily available chemical information to the public in the most reader friendly manner in the aspects detailed above.

3.2.7 Governance

Kenya will encourage vulnerable groups, the indigenous, the civil society and all other stakeholders, to cooperate with government institutions in advocating sound management of chemicals and implementing safety measures.

Since the regulations on chemicals management are provided for in various legislations it is imperative that these sectoral regulations conform to this Policy to overcome conflicts and contradictions.

3.2.7.1 Policy Statement

The Government shall endeavour to:

- i. Adopt an interministerial charter with terms of reference for interministerial coordination in matters of chemicals and hazardous waste
- ii. Review existing legislation to make it more comprehensive in light of new international instruments that govern chemical's and hazardous waste and risk management
- iii. Build capacity for institutions and agencies to enforce those regulations and implement guidelines that touch on extracted minerals, industrial chemicals, petroleum products, consumer goods and electrical and electronic waste

3.2.8 Capacity-Building and Technical Cooperation

As part of SAICM implementation, capacity assessment has been done and for SAICM work areas, capacity is low. There is need for development of technical and human capacities in the areas of compliance and strengthening infrastructure for monitoring chemicals risks. Short and long term training activities could enhance skills in sound management of chemicals across sectors.

Priority areas include; identification and prioritization of capacity building needs; mobilization of financial and technical resources; regional cooperation on chemicals management and promoting development assistance programmes that include sound chemicals management.

For worker safety, provisions of International Labour Organizations (ILO) are being implemented by Kenya Ports Authority and DOHSS, through relevant policies and legislation: Further with regard to reducing worker exposure; ILO Convention 139: Prevention and Control of Occupational Hazards caused

by Carcinogenic Substances and Agents (1974). ILO Convention 148: Protection of Workers against Occupational Hazards in the Working Environment due to Air Pollution, Noise and Vibration (1977), and ILO Convention 170: Safety in the Use of Chemicals at Work (1990)

Safety in transport is also critical with regard to international transport in the sea, the international chemicals provisions of the IMO are being implemented by Kenya such as; IMO Convention for the Prevention of Pollution from Ships (1973, 1978); IMO Convention on Oil Pollution Preparedness, Response and Cooperation (1990); IMO Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances (2000).

For mainstreaming precautionary and sustainable development components, the following international chemicals instruments of UNEP, UNIDO, WHO, UNDP, and GTZ are being implemented by Kenya through policies and legislation such as:

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989);
- Stockholm Convention on Persistent Organic Pollutants (2001);
- Montreal Protocol on Substances that Deplete the Ozone Layer (1985) under the Vienna Convention on the Protection of the Ozone Layer (1985);
- The Rotterdam Convention on the Prior Informed Consent(PIC) procedure for certain hazardous chemicals and pesticides in international trade (FAO and UNEP 1998,);
- The convention on the prohibition of the development, production, stockpiling and use of chemical weapons and their destruction (1992), and
- The International Health Regulations (2005) of the World Health Organization (WHO).

3.2.8.1 Policy Statement

The Government shall endeavour to:

- (a) Strengthen the capacity of NEMA as the Designated National Authority responsible for chemicals management.
- (b) Strengthen the capacity of institutions with SAICM components in their mandate to achieve effective management of chemicals and hazardous wastes.
- (c) Develop appropriate training modules in chemicals management incorporating gender equity and emerging chemical issues.
- (d) Enhance networking arrangements between centers of excellence in chemicals management at the national, regional and international levels.

3.2.9 Illegal International Traffic on Chemicals Transboundary Dumping of Hazardous Wastes and Chemicals:

Generally, there is inadequate technical expertise necessary for the proper identification of the elements of imported chemical hazardous and waste and their human health and environmental impacts. The exporting companies are aware of this weakness on the part of these destination countries; hence they

often disguise the hazardous wastes as useful commodities that are relatively harmless. The wastes are often shipped or labeled as “*recyclables*” liquid fertilizers, road construction or brick making materials or donations.

Regarding chemicals, far reaching measures have been taken to implement the Rotterdam Convention⁴. The dumping of hazardous waste in developing countries is usually shrouded in secrecy on the part of both the exporters and destination countries. The exporters’ clandestine activities often include falsification of custom papers and invoices. The Ministry of Trade and the Kenya Revenue Authority are working hard to control or reduce international shipment of hazardous waste, and its effects in Kenya.

The Basel Convention and the Bamako Conventions prohibit exporting hazardous waste to countries that lack the technical, administrative and legal capability to manage the waste in an environmentally- safe manner. The implementations of the Basel Convention may be hampered by the requirements of International Trade laws such as General Agreement on Tariffs and Trade (GATT).

Illegal traffic in chemicals and hazardous wastes or other wastes is criminal and Parties are under an obligation to “introduce appropriate national/domestic legislation to prevent and punish illegal traffic” (Articles 4 and 9 of the Basel Convention). Illegal traffic occurs if the transboundary movement of hazardous wastes takes place under the following conditions:

- Without notification pursuant to the provisions of the Basel Convention to all States concerned (i.e. Parties which are States of export or import, or transit States, whether or not Parties to the Basel Convention); or
- Without the consent of a State concerned; or
- Through consent obtained by falsification, misinterpretation or fraud; or
- When the movement does not conform in a material way with the documents; or
- When the movement results in deliberate disposal of hazardous wastes in contravention of the Convention and of general principles of international law (Article 9).

3.2.9.1 Policy Statement

The Government shall endeavour to:

- Implement provisions of EMCA with regard to controlling illegal trade;
- Implement the provision of the Rotterdam Convention on pesticides and industrial chemicals in international trade;
- Enhance public information and awareness on illegal trade and remedial actions and have responsibility to report related cases;
- Strengthen capacity of officers to monitor and enforce regulations on ODSs, and pesticides and cooperation and legal agreements with neighbouring countries under the East African Community and

⁴ Prior Informed Consent procedures for toxic industrial chemicals and pesticides on the international trade

- Put in place measures for controlling illegal international traffic in hazardous wastes and communicating to neighbouring countries information on movements of hazardous waste in conformity with the Basel and Bamako conventions.

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4. Emergency preparedness

Kenya's capacity to respond to chemical emergency is inadequate. This is in spite of recurrent occurrences of fire related incidences in informal settlements, factories (including chemical industries), and accidents during storage and transportation of petroleum products. The Kenyan public is increasingly concerned about inadequacies in capacity for disaster management with respect to chemical emergencies and associated risks and hazards. There is need to build capacity for emergency preparedness, response and mitigation of impacts to human health and the environment.

4.1 Policy statement

The Government shall endeavour to:

- (a) Collaborate with internationally established institutions on emergency and disaster response in controlling, response and mitigation of chemical emergencies occurring due to international traffic;
- (b) Formulate contingency plans for response and mitigation of environmental and health impacts involving chemicals for all enterprises and local authorities;
- (c) Implement inter-institution plans of joint action in consonance with the Libreville Declaration of Health and Environment Linkages;
- (d) Provide state of the art equipment for emergency preparedness, response and mitigation;
- (e) Promote education and training on emergency response for chemical incidences and the need to follow up especially for vulnerable groups;
- (f) Ensure compliance with occupational health and safety regulations during emergence operation;
- (g) Ensure that chemical enterprises have adequate personal protective equipment to manage chemical fires and explosions, injuries and contaminations;
- (h) Strengthen emergency response and coordination by all stakeholders in chemical disaster risk reduction;
- (i) Rehabilitate contaminated sites after accidents and incidence;
- (j) Provide medical services to victims as well as monitor further their health and social impacts of the poisoned persons and
- (k) Develop guidelines for compensation and redress mechanisms as provided for under the Basel Protocol on compensation and redress.

5. Financial Considerations and Implementation Mechanisms

Most institutions addressing risks posed by chemicals and waste are publicly funded. In an endeavour to attain the 2020 Goal, sustainable funding will be required. This calls for increased budgetary allocation to public institutions with harnessing of additional funding from multilateral financing agencies, development partners, private sector and civil society. The following options for addressing the financial requirements will be explored:

- reviewing management options and budgetary requirements against possible resources from the private sector;
- mobilising national and international financing mechanisms; and
- introducing environmental economic instruments, incentives and disincentives.

5.1 Policy Statement

In order to address inadequacy in funding due to low budgetary provisions, the Government shall endeavour to:

- (a) Provide adequate budgetary resources for chemicals risk management activities through the regular GOK budgetary allocation;
- (b) Promote participation of individuals, civil society and private sector in SAICM activities through fiscal incentives and voluntary/negotiated agreements;
- (c) Broaden the financial resources base to ensure the financial sustainability of institutions implementing SAICM;
- (d) Create chemicals management programs at the National Environment Trust Fund (NETFUND) and
- (e) Review the Policy on co-financing multilateral funds.

6. Linkages with other sectors

To achieve sound chemicals management, it is imperative that SAICM develops linkages with all sectors of the economy so as to benefit and create synergy with the ongoing as well as the emerging programmes. This will be achieved through mainstreaming chemicals management into development activities and into technical cooperation programme activities. It will exploit new initiatives such as corporate social responsibility and the green economy

6.1 Mainstreaming sound chemicals management at the national level

In Kenya, the national development planning process offers important entry points for mainstreaming sound management of chemicals and hazardous waste into national and local priorities, plans and programmes, through institutional strategic plans. It is important to understand the process of developing planning documents in order to find the entry points for mainstreaming management interventions in chemicals and hazardous wastes. For example, Kenya's Vision 2030 is the Government blue print. Although chemical issues are not explicitly covered in the Vision, the implementation of the programmes contained in it should take cognizance of chemicals issues by incorporating them in the implementation plans and strategies.

Coordinated strategies and instruments are essential in order to overcome management problems and develop more comprehensive solutions to achieve the goal of sound chemicals management⁵. Taking cross-sectoral impacts into account and approaching chemical problems in an integrated manner is vital to improving the effectiveness of related legislation and administrative decisions and activities. It is therefore critical to include chemical risk considerations in sectoral policy formulation and strengthening chemicals management institutions.

Four important elements will be instrumental in mainstreaming chemicals management into development process. They are:

- (a) National strategies and activities aimed at achieving the Millennium Development Goals (MDGs);
- (b) The MDG goals on poverty and on environmental protection will be leveraged to provide support for chemicals and hazardous wastes activities;
- (c) Support for SAICM OPS and GPA can influence strategies supporting chemicals and hazardous waste programs through technology transfer and supporting initiatives of sustainable production and consumption and
- (d) Ratification and implementation of MEAs on chemicals and hazardous wastes will be used to provide the basis for mainstreaming chemicals and hazardous waste for specialized areas in agriculture, industry, health and services.

⁵ Integrating the Sound Management of Chemicals into MDG – Based Development Planning, UNDP 2010

6.2 Regional and International Cooperation

Kenya is honoured to host two of the leading United Nations agencies responsible for environment and human settlement matters, namely, the United Nations Environment Programme (UNEP) and United Nations Centre for Human Settlement. Kenya also hosts other international organizations whose activities promote proper environmental management, all the institutions that deal with chemicals management such as FAO, UNIDO, WHO, UNDP have offices in Kenya. For this reason therefore, Kenya will continue to participate in the process of formulating and implementing regional and international treaties, conventions, agreements, and protocols relevant to the environment.

6.2.1 Policy Statement

In consideration of the above, the Government shall endeavour to:

- a) Eliminate or reduce subsidies, incentives and other measures that create or increase chemical risks and hazards;
- b) Ensure cross and inter-sectoral coordination as well as policy integration of SAICM considerations into sectoral policies, programmes and plans;
- c) Ensure that all development activities, by government, foreign direct investors or otherwise, undertake environment impact assessment before approval, implementation and decommissioning and
- d) Will support partnership activities currently being supported by IOMC in a cross sector mining, agriculture, health and other related policies and strategies.

For the regional cooperation, the Government shall endeavour to:

- a) Establish and strengthen coordination mechanisms to ensure consistent negotiations, implementation and reporting of the chemicals MEAs and regional agreements;
- b) Promote and support the establishment of transboundary and transfrontier environment protection, conservation and management initiatives as a basis of enhancing the monitoring and research of shared resources and their ecosystems through mechanisms and instruments provided by relevant MEAs and regional instruments;
- c) Keep a register of all MEAs and regional instruments to which Kenya is a party and ensure their domestication and effective implementation and
- d) Mobilize resources from MEAs financing mechanisms, such as the Global environment Facility (GEF), to support sound environment management and sustainable development through regional initiatives such as the East African Community, regional projects such as Lake Victoria Environmental Management Programme

7. Partnerships and Stakeholder Involvement

Public-Private Partnership (PPP) encompasses a wide range of relationships between the public and private sectors. The fundamental characteristic of this partnership is that it exists to provide direct mutual benefit between the public and the private sectors. As a result, PPP, by its inherent nature, is well suited to address crosscutting chemical issues.

Corporate voluntary measures, such as the Corporate Social Responsibility (CSR), are undertaken by the private sector to provide benefits not only to their shareholders but also to other stakeholders. These initiatives are expected to encourage substitution of toxic chemicals with less toxic ones and non chemical alternatives. The private sector is encouraged to use its resources in undertaking activities, where it has specific expertise, that are economically sustainable but have high start up costs, or that otherwise can only be achieved by partnership. These activities may include phase-out of lead in paint, biodegradable plastics, and human exposure monitoring. In addition, CSR is aimed at aligning commercial interests with social interests, which can be achieved through incentives and disincentives.

7.1 Policy Statement

To promote partnerships, the Government in collaboration with IOMC shall endeavour to:

- a) Develop and Implement a Strategy on Partnerships and Stakeholder Involvement to enhance sound chemical management;
- b) Promote investments in efforts and programmes by providing appropriate fiscal and economic incentives that encourage phase out of chemicals with significant short and long term negative impacts and,
- c) Develop and implement mechanisms for conflict resolution and management in the conservation of the environment and natural resources.

8. Implementation

A SAICM implementation plan has been developed along the SAICM work areas Global Action Plan. It proposes priority objectives, activities, and timelines actors, measures of progress and implementation modalities. The plan has a short (2011-2015) and long term component (2011-2019). Its framework represents what the stakeholders view as a realistic and attainable time scale building onto the already-existing programmes, strategies, capacities and initiatives related to the GPA already ongoing or are planned in Kenya. The policy will drive other programmes that allow Kenya's main chemicals management needs to be met and to monitor impacts of SAICM implementation in Kenya in line with Kenya's international commitments.

8.1 Policy Statement

The Government of Kenya shall endeavour to:

- a) obtain its diffusion and acceptance by all stakeholders the proposed activities at all levels of Government, organizations and disciplines that take part in chemicals management to processes in Kenya;
- b) adopt indicators that will measure the effectiveness of the implementation tools developed for this Policy, taking into consideration indicators recommended by the International Conferences on Chemicals Management (ICCM) as provided for in the SAICM text and
- c) report based on specific activities as provided for in the public performance contracting system.