

GLOBAL POPS TREATY AND QUALITY CRITERIA FOR INTERNATIONAL POPS MANAGEMENT

NEGOTIATING A GLOBAL POPS TREATY: A PUBLIC HEALTH NGO PERSPECTIVE

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Introduction

Since 1998, more than 120 governments have been negotiating a global Convention on persistent organic pollutants (POPs). POPs include pesticides such as DDT, industrial chemicals such as PCBs, and unintentionally produced pollutants such as dioxins and furans, which are by-products of various industrial processes including plastics manufacturing, paper bleaching, and municipal and medical waste incineration.

POPs are persistent, bioaccumulative, and toxic. They are found in food chains and human tissues around the world. In hundreds of scientific studies, POPs have been linked to a variety of health problems including reproductive, developmental, and immune disorders and some cancers.

When governments meet for the fifth and final round of POPs negotiations in Johannesburg, South Africa from December 4 – 9, they should be prepared to conclude an agreement that is strongly protective of public health and the environment.

Key Elements of a Public Health POPs Convention

As in medicine, prevention and precaution should be guiding principles of the POPs Convention. Physicians for Social Responsibility (PSR) and its 265 partners in the International POPs Elimination Network (IPEN) are urging governments to champion and support treaty provisions that:

- Name POPs elimination as the ultimate goal of the global agreement.
- Seek to minimize the creation of industrial by-products such as dioxin, with the ultimate aim of their elimination.
- Invoke the precautionary principle in a meaningful way.
- Avoid "loopholes" to elimination.
- Build the capacity of all countries to eliminate POPs and their sources, and to identify and implement safer, cost-effective alternatives that are not POPs.

These key elements are described in more detail below.

The Goal of POPs Elimination

Because POPs are inherently unmanageable substances, the Convention cannot seek merely to better manage the risks associated with POPs, or to attempt to control their release to the environment. The elimination of all significant POPs sources, and the remediation of POPs contaminated sites will, in many cases, be difficult and require management regimes on an interim basis. Nonetheless, many countries have voiced the desire for a long-term goal of POPs elimination, and this aspiration should be the dominant theme of the Convention.

The concept and language of elimination must appear throughout the text of the Convention. The Preamble (Article A) will be important in setting the tone for the entire agreement, and must therefore include reference to the need for global action to eliminate POPs. The Convention's stated Objective (Article B) should be articulated as the protection of human health and the

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environment through the elimination of POPs and their anthropogenic sources. Precedent for strong "elimination" language in preambular and objectives articles can be found in other international environmental agreements.

Elimination must also be the driving force in Article D, which includes subsections specifying obligations for the various types of POPs. Whether immediate or long-term, elimination must be the end result for each of the POPs at issue. For example, the POPs Convention must:

- *Reject the perpetual use of PCBs.* Allowed to be used and stored indefinitely, PCB-containing equipment will inevitably rupture and leak, releasing PCBs to the environment. In addition to ending the production and use of new PCBs, the Convention must drive a phaseout of PCBs currently in use, and their replacement with currently available alternatives, within a reasonable time frame.
- *Facilitate a safe, gradual DDT phase-out.* The Convention should seek to achieve an end to DDT production and use, and at the same time encourage development of safer, cost-effective alternatives for malaria control. Exemptions from a DDT ban should be granted on a country-specific basis and subject to regular review, for those countries with an interim need for DDT in malaria control. The treaty should direct sufficient financial and technical assistance toward the development and implementation of alternative means of vector and disease control.
- *Seek to minimize the creation of by-product POPs such as dioxin, with the ultimate aim of their elimination.* The Convention should take a source elimination approach to dioxin and other by-product POPs. It should emphasize the use of alternative products, processes, and materials as pollution prevention strategies, rather than relying only on pollution control techniques. And it should aim, over the long term, not just to minimize but ultimately to eliminate significant anthropogenic sources and releases of POPs by-products.

The Precautionary Principle

Since it was formally outlined in the Rio Declaration on Environment and Development (1992), the precautionary principle has begun to be considered a general principle of international environmental law. It states:

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

This principle was further elaborated in the Wingspread Statement of January 1998, which states:

"When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established. In this context the proponent of an activity rather than the public should bear the burden of proof. The process of applying the Precautionary Principle must be open, informed, and democratic and must involve potentially affected parties. The process must include a comprehensive, systematic examination of the full range of alternatives, including no action."

Direct references to this precautionary approach should appear in the preamble and objectives articles of the POPs Convention.

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In addition, there is a need for precautionary language to appear in Article F, which describes the scientific criteria for identifying additional POPs in the future and the process for adding these to the POPs Convention. Scientific certainty about the levels of some potential POPs that are likely to cause damage may be impossible to achieve. If the POPs treaty is to fulfill its mandate for those substances that may be identified in the future, action will be required, in some cases, without absolute scientific certainty. For this reason, precaution must guide efforts to add new POPs once the Convention is in force.

In recent international negotiations on the Biosafety Protocol, the Parties agreed to language in key articles that acknowledged that the lack of full scientific certainty should not prevent action under the agreement. Article F of the POPs Convention should include similar language.

Loopholes to Elimination

Unlike country-specific exemptions, so-called "general exemptions" to the treaty would apply across the board and would not be subject to periodic review and sunset provisions. Several such general exemptions have been proposed – including exemptions for POPs used in "closed system intermediates," "de minimus" releases of POPs, and the use of POPs already in the possession of end users. These exemptions would perpetuate the release of POPs indefinitely. Similarly, a provision to allow continuing trade with non-Parties in future restricted use (Annex B) POPs would also constitute a wide loophole to the treaty.

These and other loopholes would serve to undermine the goal of POPs elimination, and should be rejected.

Financial and Technical Assistance

Capacity building will be an essential element for the success of this Convention. Developing countries and economies in transition are in many cases severely contaminated with POPs. In addition, POPs pollution in Northern regions often results from continue use in developing countries. Yet these same countries are without the necessary infrastructure to effectively implement commitments made under a POPs elimination Convention, including the environmentally sound disposal of POPs stockpiles and the replacement of POPs and POPs-producing technologies with safer alternatives. Therefore, existing, innovative and new financial resources and technical assistance are essential if the treaty is to be effective.

All nations must provide financial support for POPs Convention implementation, according to their capabilities, but industrialized countries especially must commit to obligatory contributions of implementation assistance. The Convention must place a firm obligation on developed countries to provide technical assistance and financial resources. In addition, the Convention must establish a mechanism for delivery of these resources. The mechanism may be made up of a portfolio of existing and new institutions, including but not limited to the Global Environmental Facility.