

**Call for written submissions – Proposed response template on the potential options for elements towards an international legally binding instrument**

Name of country (for Members of the committee)	N/A
Name of organization (for stakeholders to the committee)	<b>Office of the UN High Commissioner for Human Rights (OHCHR)</b>
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**I. Substantive elements**

**1. Objective(s)**

*a) What objective(s) could be set out in the instrument?*

**Proposed Objective:**

- Protect human rights, including the rights to health and a healthy environment, from hazards, risks and impacts of plastic production and pollution, with global commitments, timelines and targets to end plastic pollution in land, sea and air, and in doing so reaffirm States' duty to prevent exposure to pollution and toxic substances.
- Ensure the rights to access to information, public participation, and access to justice with respect to plastics.
- Safeguard the rights of those most affected by plastic production and pollution including children, women, Indigenous Peoples, coastal communities, people living in extreme poverty, surrounding communities affected by plastic production facilities, and workers at heightened risk of occupational exposure like waste-pickers.
- Eliminate problematic and avoidable plastics, develop and promote safe and sustainable alternatives, and ensure circularity throughout the plastics cycle (raw material extraction, design, production, distribution, use, recovery, and disposal), that is just and safeguards people's health and the environment.
- Ensure transparency and traceability across the value-chain of plastic products, plastic trade flows, supply chains and trade policies.
- Remediate plastic pollution that already exists in the environment
- Reinforce the corporate responsibility to respect human rights in the context of plastics (in line with the [UN Guiding Principles on Business and Human Rights](#)).

**Explanatory Text:**

All people everywhere have the right to a clean, healthy and sustainable environment as recently recognized by the Human Rights Council in its resolution 48/13 and the General Assembly in its resolution 76/300. Clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems are generally recognized as key elements of the right to a clean, healthy and sustainable environment ([OHCHR-UNEP/UNDP](#)).

Our planet is polluted by plastics which contain chemicals that are seriously harmful to people and the environment. Plastics are accumulating in food chains, contaminating water, soil, and air, and releasing hazardous substances into the environment. Most plastics originate as fossil fuels and

emit greenhouse gases from cradle to grave. Recent scientific studies have found microplastics in human blood, lungs, and placenta, as well as in livestock feed and milk and meat products. Exposure to toxic chemicals often found in plastics can also affect future generations, impacting fertility, shortening gestation periods, and lowering birth weights.

A human rights-based approach to plastics is based on legally binding human rights obligations. A human rights-based approach calls for a vision of plastics policy that aligns with scientific evidence, centres on principles of non-discrimination, accountability and informed participation and gives special attention to the needs of people in vulnerable situations. ([A/76/207](#))

UNEA Resolution 5/14 “End plastic pollution: towards an international legally binding instrument”, notes with concern “that the high and rapidly increasing levels of plastic pollution represent a serious environmental problem at a global scale, **negatively impacting the environmental, social and economic dimensions of sustainable development**”.

The same resolution also decided that the international legally binding instrument on plastic pollution, including in the marine environment, could include both binding and voluntary approaches, **based on a comprehensive approach that addresses the full life cycle of plastic**”. A treaty that addresses the full life cycle of plastics, closing governance gaps is crucial if we are to comprehensively address plastic pollution.

As noted by the Special Rapporteur on toxics and human rights, the whole cycle of plastics, at its various stages, has become a significant threat to human rights. This includes the extraction of oil and gas used as feedstock to make the chemicals (precursors) from which plastics materials and then plastics products are made; the release of toxic pollutants into the environment during production; the transportation of plastics and plastic pellets that contaminate coastal communities; waste mismanagement and dumping; and the release of hazardous emissions after disposal, including incineration and open burning. As a result, plastics are accumulating in food chains, contaminating water, soil and air, and releasing hazardous substances such as persistent organic pollutants into the environment. The true cost of plastic production and use is foisted on everyone, however these impacts often disproportionately affect individuals, groups and peoples in vulnerable situations. ([A/76/207](#))

Without prevention of further contamination, the technical and financial challenge of clean-up, particularly for low-income and middle-income countries, will continue to grow. Prevention of exposure is one of the most effective remedies in the context of toxic substances. States have an obligation to prevent exposure and related human rights harms from hazardous substances. Although legal liability can be a deterrent for preventing the use and release of toxic substances, a purely “damage and sue” model of protection that favours self-regulation in combination with the threat of legal liability, is inconsistent with a human rights-based approach. Mechanisms to access justice and remedies for victims exposed to hazardous substances are incomplete without strong regulatory regimes to protect life and health from exposure to toxics. ([A/74/480](#))

## 2. Core obligations, control measures and voluntary approaches

a. *What core obligations, control measures and voluntary approaches would provide a comprehensive approach to addressing plastic pollution, including in the marine environment, throughout the full life cycle in line with the future objective(s) of the instrument?*

**Core obligations:**

[As put forward](#) by the Special Rapporteur on human rights and the environment and the Special Rapporteur on toxics and human rights, “a new instrument on plastics must incorporate human rights standards”. A new treaty should ensure a transition towards a chemically safe circularity that addresses all stages of the plastics cycle and is guided by human rights laws, standards and principles.

In line with the right to a clean, healthy and sustainable environment (GA Resolution 76/300), the new instrument should include the following core obligations:

- **The duty to protect against harmful exposure to pollution and other hazardous substances, which include obligations to prevent exposure.** This obligation derives implicitly, but clearly, from any number of rights and duties enshrined within the global human rights framework, under which States are obligated to respect and fulfil recognized human rights, and to protect those rights, including from the implications of exposure to toxics. Those rights include the human rights to life, health, safe food and water, adequate housing, safe and healthy working conditions, and the right to a clean, healthy and sustainable environment. The existence of the State’s duty to prevent exposure is reinforced by the right to full respect for the bodily integrity of the person, which helps to provide context to the extent to which every person should have the right to control what happens to their body ([A/74/480](#)). The restoration of polluted or contaminated areas is critical to the prevention of exposure and the effective enjoyment of the human right to a clean, healthy and sustainable environment. As such, the new instrument should require remediation of pollution and efforts to prevent further pollution.
- **The duty to ensure public participation in the design and implementation of plastics policies.** Meaningful participation is vital in all stages of the plastics cycle, including with respect to plastic production, the use of additives in plastic mixtures, the safe use of plastic and management of plastic waste. State actions and decisions related to the use of hazardous substances, must involve the meaningful and effective participation of affected persons. The treaty should guarantee free, active, meaningful, and informed participation of concerned stakeholders and right holders and establish mechanisms for stakeholders and right holders to participate and channel their concerns, including at the national level.
- **The duty to ensure access to information, such as on chemicals in plastics and the harms caused by plastic production, use and breakdown.** States have the obligation and businesses have the responsibility to ensure access to information throughout the plastics cycle including information on the environmental and health hazards posed by toxic chemicals in plastics and generated by plastic production, and break down processes. State obligations to ensure access to information include taking affirmative regulatory action to generate, or compel responsible third parties to generate the information necessary to understand the hazards and risks of exposure, making that information accessible and ensuring its effective use in decision-making. ([A/74/480](#)) Environmental and social impact assessments should be a requirement for fossil and bio-based plastics. Further, corporate disclosure and reporting should include information about corporate lobbying related to plastics. Businesses should refrain from supporting public information campaigns based on inaccurate, misleading and unfounded assertions which may harm the ability of States and the public to make informed decisions.
- **The duty to ensure access to justice and effective remedy for harm caused by plastics.** All people have the right to access to justice including with respect to environmental matters. The new instrument should include effective measures to ensure remediation of environmental harms and compensation for human rights harms caused by plastics. Guarantees of non-repetition are also a form of remedy (i.e. prevention of exposure at both the individual and population levels). A significant challenge to accountability and access to remedies is the global

dimension of the plastics industry, along the various stages of the plastics cycle. According to the Special Rapporteur on toxics and human rights, this calls for a global liability and compensation mechanisms for pollution from plastics ([A/76/207](#)). The new instrument should also ensure accountability and remedy for business-related human rights harms connected to the plastics crisis. Effective measures should be agreed to hold plastics and chemical producers accountable for the damage caused, support environmental remediation, and safeguard access to effective remedies for those harmed, including in cross-border cases.

- **The duty to prevent harmful exposure related to business activities.** As recognized in the [UN Guiding Principles on Business and Human Rights](#), States must take appropriate steps to protect against business-related human rights harms, including those related to plastics, and, where such harms do occur, ensure access to effective remedies, including through judicial processes. All businesses, including those in the plastics sector, have a responsibility to respect human rights. Through policy commitments and human rights due diligence, businesses should identify and prevent any negative human rights impacts stemming from their use of plastics. The new instrument should require States to ensure that business enterprises (a) conduct effective human rights and environmental due diligence, including to avoid causing or contributing to human rights harms as a result of exposure to hazardous substances and to seek to prevent or mitigate such harms when they are directly linked to their operations, products or services by their business relationships, and (b) disclose the full chemical composition of their plastic materials and products, including additives.

#### **Control measures:**

To protect human health, human rights, and the environment, it is key that the new instrument includes control measures, such as a global cap and phase-down obligations in production of plastics precursors and materials with concrete timelines, and urgently address all chemicals and polymers of concern in the life cycle of plastics, as well as problematic and avoidable plastics (including nanoplastics and microplastics).

Strict controls must be instituted to prevent further pollution and to hold plastics and chemical producers accountable for the damage caused, including by requiring remediation (involving financial and non-financial compensation). The new instrument should include control measures for each stage of the life cycle of plastics.

Strict controls to prevent harmful plastic pollution and its contributions to the triple planetary crisis (climate change, biodiversity loss and pollution) should take into consideration the cross-cutting impact of plastics on human health, human and labour rights, and on the climate and biodiversity.

These types of controls could include:

- Global caps on production
- Global elimination of chemicals and polymers of concern across the life cycle of plastics
- Global elimination of problematic and avoidable plastics across the life cycle of plastics
- Global elimination of emissions, releases and leakages prohibited
- Global phase-out of single use plastics
- A moratorium on new facilities or expansion of plastics industrial facilities
- Phase-out on subsidies for plastic production
- Global reduction in waste (and cleaning up already existing plastic production)
- Control transboundary movements of waste (trade restrictions)
- Sustainable product design and waste management

(See also, Secretariat of the Basel, Rotterdam and Stockholm conventions, [Global governance of plastics and associated chemicals](#), Draft November 2022)

## II. Implementation elements

### 1. Implementation measures

- a) *How to ensure implementation of the instrument at the national level (eg. role national action plans contribute to meeting the objectives and obligations of the instrument?)*
- b) *How to ensure effectiveness of the instrument and have efficient national reporting?*
- c) *Please provide any other relevant proposals or priorities here on implementation measures (for example for scientific and technical cooperation and coordination as well as compliance).*

#### **a) How to ensure implementation at the national level?**

The plastics treaty should provide clear guidance for the development, through a rights-based approach, of national plans and policies for its effective implementation. Planning for national level implementation of the plastics treaty should be carried out in an inclusive manner, should provide for transparent and accountable processes for oversight, monitoring and review, should ensure adequate resources and technical support, and should advance policy coherence with other relevant laws and standards.

At a minimum, periodic reviews (monitoring) and updates on progress toward global objectives (data reporting) should be required from State parties. Other mechanisms should be considered to promote greater implementation of the instrument at the national level, including through the adoption of laws and policies, with adequate resource allocation, and regular reporting on progress (including of control measures). Mechanisms should also be in place to assess the sustainability of plastics and their alternatives, including prior environmental, health and human rights impact assessments. Transparency and information sharing mechanisms should also be required to be in place as a means of ensuring greater public oversight.

#### **b) How to ensure effectiveness of the instrument and have efficient national reporting**

The new instrument should include a mechanism for independently reviewing each country's implementation. Otherwise, failure to meet commitments under the instrument could be unchallenged and opportunities for improvement missed. The mechanism should also allow individuals, groups and communities to bring complaints.

International human rights monitoring mechanisms could provide a good model to ensure the effectiveness of the new instrument. These mechanisms include: the Universal Periodic Review (UPR) – a peer review by States; Special Procedures – independent experts who report and advise on country situations or thematic issues, and treaty bodies - committees of independent experts that monitor implementation of obligations in each treaty. ([OHCHR](#))

#### **c) Please provide any other relevant proposals or priorities here on implementation measures**

In line with their human rights obligations, the new instrument should require States to ensure comprehensive legal and policy measures, as well as effective, rights-based and transparent enforcement, monitoring, and accountability mechanisms, to prevent and minimize exposure to

hazardous substances that can be a threat to the health, life and dignity of individuals and their environment as well as groups, and communities, including exposure caused or contributed to by businesses.

Decision-making and action related to the protection of human health and the environment from hazardous substances must be guided by sound science, effective monitoring, and strong, independent regulatory mechanisms. According to the [Committee on Economic, Social and Cultural Rights](#), States should adopt mechanisms to align government policies and programmes with the best available, generally accepted scientific evidence.

States should publicly share resources, scientific knowledge and technology in order to address the impacts hazardous substances have on the enjoyment of human rights and guarantee all persons the right to benefit from scientific progress and its applications ([ICESCR Article 15](#)). Measures should be taken to ensure consumers have access to the information they need to make informed decisions about the potential use and disposal of hazardous substances. Further, States should use sound science to regulate hazardous substances, and support the development and dissemination of safe alternatives to essential products ensuring all persons the right to benefit from them. ([OHCHR-UNEP Key Messages on human rights and hazardous substances](#))

## 2. Means of Implementation

With respect to means of implementation, document UNEP/PP/INC.1/5 covers the following elements: capacity-building, technical assistance, technology transfer on mutually agreed terms and financial assistance.

a) *What measures will be required to support the implementation of the instrument?*

Article 15 of the International Covenant on Economic, Social and Cultural Rights guarantees all people the right to enjoy the benefits of scientific progress and its applications. This right imposes the obligation on States parties to take steps, to the maximum of their available resources, for the conservation, the development and the diffusion of science. Accurate and disaggregated data is also crucial to inform implementation, monitor progress, and contribute to stakeholders' engagement. Ensuring the rights to access information and enjoy the benefits of scientific progress for all people will be essential for effective implementation of the new plastics instrument.

The United Nations Charter, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Right to Development and other human rights instruments, impose upon States the duty to cooperate to ensure the realization of all human rights. This obligation extends to capacity-building, technical assistance, technology transfer and resource mobilization to prevent human rights harms caused by plastic pollution. The new instrument should have a mechanism to mobilize financial and other support, in particular to low-income countries.

This would be consistent with other global treaties and instruments, such as multilateral environmental agreements including the Basel, Rotterdam and Stockholm Conventions on hazardous chemicals and wastes, and the Minamata Convention on mercury, which provide guidance on how international cooperation and technical assistance efforts could effectively prevent or minimize, in an environmentally sound manner, the risks stemming from exposure to hazardous substances. This is made possible through, inter alia, sharing of experience and information, technical assistance and capacity building, harmonizing monitoring, reporting and assessment methodologies, strengthening the science-policy interface, including input from

academia and more effectively regulating the international trade of hazardous substances. ([OHCHR-UNEP Key Messages on human rights and hazardous substances](#))

### III. Additional input

Please provide any other relevant proposals or priorities here (for example introductory elements; awareness-raising, education and exchange of information; research; stakeholder engagement; institutional arrangements and final provisions).

- **Introductory elements:** The Plastic treaty needs to establish a clear link between plastics and the triple planetary crisis. It should recognize that: 1) plastic pollution is human-induced, and directly linked to climate change and biodiversity loss. 2) The rapidly increasing volume of plastic pollution and plastic related greenhouse gas emissions poses a grave threat to human health and wellbeing as well as biodiversity and ecosystem integrity. 3) The plastics cycle has become a global threat to the effective enjoyment of a wide range of human rights, including the rights to a clean, healthy and sustainable environment, life, health, food, water and sanitation, equality and non-discrimination, and housing.
- **The impact of plastics on our environment:** Systemic change is needed to stop the flow of plastic waste into the environment. The new instrument should explicitly recognize the role of plastics in enabling patterns of unsustainable production and consumption, and the defacement of our physical environment to the detriment of all life on our planet. Fulfilling the right to a clean, healthy and sustainable environment for all requires effective measures to realize change with respect to the production, use and disposal of plastics, to address and remediate the impacts of plastics on our physical environment, and to reimagine humanity's relationship with nature including through education with respect for nature at its core.
- **Corporate political engagement:** There are risks that irresponsible corporate engagement in the context of the new instrument may result in weakened text and human rights harms. Care should be taken to ensure that any engagement by the plastics industry is consistent with the corporate responsibility to respect human rights. To ensure that private interests do not exert undue influence, the treaty should include provisions for States to ensure that corporate political engagement at the national level (e.g., in relation to debates on domestic implementing legislation) is responsible and rights-respecting. The report of the Working Group on Business and Human Rights on corporate political engagement provides a roadmap of measures that should be considered ([A/77/201](#)). Such measures could, *inter alia*, require timely disclosure by business entities of political expenditures and activities, including spending on lobbying, political contributions, political advertising and third-party non-profit groups; ensure independently monitored conflict of interest laws and income and asset disclosure systems for government officials and regulators; and ensure that judicial and non-judicial State-based grievance mechanisms are free from undue influence by all actors, including business enterprises.
- **Scientific contribution and research:** As a pre-condition, there should be an enabling environment for the conduct of scientific inquiry on the risks and harms to human health and the environment from plastics, free from undue interference and conflict of interest.
- **Rights of Indigenous Peoples:** The new instrument should recognize the rights of indigenous peoples including with respect to their traditional knowledge, practices and innovations and their actions to restore landscapes and ecosystems and to address marine litter and plastic pollution. It should establish specific procedures to proactively engage with Indigenous

Peoples during negotiations and implementation phases. ([Permanent Forum on Indigenous Issues, 2022.](#))

- **Regulation of groups of chemicals in accordance with the precautionary principle:** A move from a chemicals-specific approach to addressing groups of chemicals of concern could prove more effective in light of the large number of chemicals currently in use. This could help ensure that restriction of one harmful chemical does not simply lead to substitution of another harmful chemical, and in doing so, better safeguard the rights that are compromised by toxic exposure. (Secretariat of the Basel, Rotterdam and Stockholm conventions, [Global governance of plastics and associated chemicals](#), Draft November 2022 and [A/76/207](#))
  - **Finance:** The treaty should effectively mobilize multiple sources of funding, in particular from those most responsible for the plastics crisis (advancing the polluter-pays principle) to those most affected by the crisis.
  - **Just transition:** The new treaty should advance efforts to achieve a just transition to a sustainable economy and ensure that its implementation does not translate into further negative impacts on people disproportionately impacted by plastic pollution. The improvement of working conditions and establishment of a framework for just transition for workers at heightened risk of occupational exposure including for the people informally collecting and recovering waste into safer roles should also be envisaged in the new instrument.
  - **Environmental human rights defenders:** Environmental human rights defenders play a critical role in efforts to protect the environment and human health. They must be protected from any reprisals, threats, harassment, violence or criminalization for exercising their rights and freedom of expression. ([OHCHR-UNEP Key Messages on human rights and hazardous substances](#)). At a minimum, the treaty should include a provision requiring States to guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, including those fighting pollution, so that they are able to act free from threat, restriction and insecurity.
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