



Date: July 15, 2022

To: Executive Director of the UN Environment Programme, Inger Anderson and the international negotiating committee (INC)

From: Earth Law Center

Re: Comments on potential elements and principles of the future instrument

Earth Law Center (ELC) respectfully submits these comments regarding potential elements and priorities of the future instrument on plastic pollution. We thank UNEP Executive Director, Inger Anderson and the INC for their active efforts and consideration of key concepts to ensure the agreement is implemented effectively.

The UNEA draft resolution already acknowledges the need of both a full lifecycle approach and the development of an instrument that is legally binding.¹ We are confident, and there is wide consensus, that both approaches will help ensure an effective regulatory instrument with measurable, enforceable, and ambitious objectives.² From an analysis of the intersectional harms to both human and Nature's health from plastic pollution,³ we recommend Rights of Nature, as a guiding principle or suggested approach, also be a fundamental inclusion to the instrument. Doing so, will help initiate the transformative action needed to implement a robust, comprehensive, and equitable collective obligation to support a healthier Earth: reducing plastic and plastic exposure to humans and biodiversity, inherently protecting the ecosystems that support all life.

About Earth Law Center

Earth Law Center is a 501(c)3 non-profit organization working to advance Earth-centered laws and policies that restore Nature to health. We advocate for a transformation in our legal, governance and economic systems, and the relationships, values, ethics and beliefs that create their foundation. Earth Law Center is a member of the United Nations' Economic and Social Council (ECOSOC) and the IUCN's World Commission on Environmental Law, an expert and partner of the UN Harmony with Nature Initiative, member of the High Seas Alliance, and a Mission Blue partner.

Recommendation: Rights for Nature as a guiding principle and approach

The inclusion of novel rights-based and Earth-centered approaches in the plastic instrument, such as Rights of Nature, will facilitate a holistic and proactive remedy to plastic pollution by

¹ (UNEP/EA.5/L.23/Rev.1); Azoulay et al. "Plastic & Health" (2019); Carlini & Kleine "Advancing the International Regulation" (2018); Tessnow-von Wysocki & Le Billon "Plastics at Sea" (2019); Arkin "Governments Weigh New" (2022).

² Dauvergne "Why Is the Global" (2018); CIEL "Toward a New Instrument" (2022); GAIA "UNEA5 BRIEFING SERIES" (2022); WWF *Success Criteria* (2021).

³ E.g. 99% of plastic is sourced from fossil fuels, and extraction, refining, and transport processes are documented sources of environmental injustice cases; research indicates microplastics pollute every marine habitat; plastic waste exposure can impact biodiversity via chemical toxins, ingestion, entanglement, mortality; plastic is a vector for toxins and can transport invasive species across ecosystems or traverse toxins, threatening biodiversity and human health.

See: Bender "An Earth Law Solution" (2018); Farrelly et al. "How Seabirds and Indigenous" (2021); Immig and Lloyd-Smith "Toxic Threats to Human" (2021); UNEP "Neglected: Environmental Justice" (2021).

reimagining our systems of law and governance, as well as humanity's relationship with Nature. This is one solution that ensures a life-cycle approach and consistent principles shape patterns of production and consumption. Rights of Nature promotes a greater respect for all living things,⁴ thereby creating a shift in consumer values and requiring decision making to include externalities and the intrinsic value of Nature into cost-benefit analyses. These considerations would include impacts to human health as well as the health of other species and ecosystems, for present and future generations, and from extraction to disposal.

In the plastic instrument, this would acknowledge “the interdependence among humans and the environment,” and thus help create a paradigm shift from ‘business as usual’ plastic governance towards a circular economy. In practice, this approach is guided by principles of holism, resilience and mutual enhancement, amongst others principles including:

- Reciprocal responsibility: recognizing the interconnectedness of ecological processes with humans as embedded within Nature, and our duty to respect ecological and planetary boundaries alongside human interests to produce, use and waste plastic materials;
- Prevention, precaution, and the emerging principle of law ‘in dubio pro natura’ (“when in doubt, err in favor of Nature”)⁵ when governing the full plastic lifecycle. For example, researchers have increasingly documented “plastic microparticles” in human tissues and argue for a precautionary approach to limit production and use until there is a more informed risk assessment,⁶ and the severity of toxicant effects and their interactions with other contaminants at varying concentrations, distributions and ecosystem conditions to marine life is still in early stages of understanding;⁷
- Restoration to plastic polluted ecosystems, especially the Ocean, while recognizing freshwater and terrestrial habitats are also affected;⁸
- Intergenerational equity and ecological justice: “the fair sharing of the Earth’s sustaining capacity between present and future generations, not only of humans, but also of other beings,”⁹ and the inclusion of social and environmental externalities and the inherent value of Nature in analyses.¹⁰

Inherently, this includes encouraging humanity to live in harmony with Nature, a practice many Indigenous Peoples and Local Communities have known and manifested since time immemorial,¹¹ and which also is declared the 2050 vision of the Convention on Biological Diversity (CBD). In fact, the CBD [draft recommendation submitted by the Co-Chairs](#) at

⁴ Berry (2000). *The great work: Our way into the future*; Timmons (2011) "Earth Jurisprudence and Lockean Theory: Rethinking the American Perception of Private Property;" Boyd *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*; Borràs (2016). *New Transitions from Human Rights to the Environment to the Rights of Nature*.

⁵ Mason “One in All: Principles and Characteristics of Earth Jurisprudence.” (2011), pg. 38.

⁶ Azoulay et al. “Plastic & Health: The Hidden Costs of a Plastic Planet.” CIEL, 2019.

⁷ Farrelly et al. “How Seabirds and Indigenous Science Illustrate the Legacies of Plastics Pollution.” (2021).

⁸ Blettler, Martín & Wantzen “Threats Underestimated in Freshwater Plastic Pollution: Mini-Review.” (2019). <https://doi.org/10.1007/s11270-019-4220-z>.

⁹ Carlsson (2019). *Mining from the lens of ecological law: Obstacles and opportunities for re-formation* pg. 61

¹⁰ Rea & Munns “The Value of Nature: Economic, Intrinsic, or Both?” (2017).

¹¹ Cullinan (2011) *Wild law: A Manifesto for Earth Justice*; Burdon, (2012). *Exploring wild law the philosophy of Earth Jurisprudence*.

OEWG-4 includes Rights of Mother Earth language currently to be considered for adoption into the final Post-2020 Global Biodiversity Framework, such as:

- a. Target 15: (e) Follow a rights-based approach, including human rights and the **rights of Mother Earth**.
- b. Target 19.1 (which details financial resources for implementation): including financial resources for **Mother Earth-Centered Actions**:
 - i. to be defined in the glossary as a: Ecocentric and rights-based approach enabling the implementation of actions towards harmonic and complementary relationships between peoples and nature, promoting the continuity of all living beings and their communities and ensuring the non-commodification of environmental functions of **Mother Earth**.

Several other global frameworks have already embraced this approach, including IUCN Resolution 100 of 2021: “Incorporation of the Rights of Nature as the organizational focal point in IUCN’s decision making” and the UN Harmony with Nature Programme, “The Future We Want” (A/RES/66/288) which states “that some countries recognize the [R]ights of [N]ature in the context of the promotion of sustainable development.” Additionally, this will support diverse ontologies and a growing global movement of over 35 countries that have implemented Rights of Nature at the domestic level, either constitutionally, through legislation, or through the courts, such as Panama, Ecuador, Mexico, India, Colombia, Brazil, and the United States.¹²

These global frameworks reflect novel findings on the importance of how we value and define Nature. IPBES’s work on the valuation of Nature,¹³ for example, has found that the causes of and solutions for our global environmental challenges are tightly linked to the ways in which we value our environments (p.4). Their findings show that including a range of valuations of Nature into policy, such as through Rights of Nature, can advance both justice and sustainability by addressing the diverse ways in which people relate to and value Nature (p.6). The INC-1 is a similar opportunity to advance the 2030 Agenda for Sustainable Development by ensuring due consideration of the diverse values of nature (p.35).

Sincerely,



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¹² *Rights of Nature Law and Policy*. Harmony with Nature United Nations.
<http://www.harmonywithnatureun.org/rightsOfNaturePolicies/>.

¹³ IPBES/9/L.13 (2022).