

Part A

Name of country (for Members of the committee)	n/a
Name of organization (for observers to the committee)	Office of the United Nations High Commissioner for Human Rights (OHCHR)
Contact person and contact information for the submission	Ana Paula Souza Ana.souza@un.org
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Elements not discussed at INC-2

1. Scope

What is the proposed scope for the future instrument?

Which types of substances, materials, products and behaviors should be covered by the future instrument?

Proposed scope:

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 defined the scope of the treaty by calling for an international legally binding instrument on plastic pollution, including in the marine environment is to be “**based on a comprehensive approach that addresses the full life cycle of plastic**”.

In line with UNEA Resolution 5/14, a treaty that addresses the full life cycle of plastics, closing governance gaps and ensuring a transition towards a chemically safe circular economy is crucial if we are to comprehensively address plastic pollution. In doing so, the treaty should also protect 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 along the plastic value chain).

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](#)).

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](#))

2. Principles

What principles could be set out in the future instrument to guide its implementation?

Proposed principles:

States obligations under the treaty should be guided by key principles including a human rights-based approach, precaution, prevention, polluter pays, waste hierarchy, intergenerational equity and non-discrimination. Those principles should be reflected throughout the architecture of the treaty.

Explanatory Text:

UNEA Resolution 5/14 already decided that the new treaty should take into account, “among other things, the principles of the Rio Declaration on Environment and Development”. The treaty should be guided by the following principles:

- **Human rights-based approach (HRBA):** Plastic pollution is responsible for ongoing, massive human rights harms that negatively affect multiple aspects of human life. A HRBA ensures inclusive and informed decision-making aligned with scientific evidence and the needs of individuals, groups and Peoples that have experienced systemic discrimination in the enjoyment of their rights. It also ensures that alternatives are assessed regarding their implications for human rights and the environment, guaranteeing that they are not misleading, short sighted and do not lead to further harm.

The essential attributes of a HRBA are the following:

- As policies and programmes are formulated, the main objective should be to fulfil human rights.
- The rights-holders and their entitlements must be identified as well as the corresponding duty-bearers and their obligations in order to find ways to strengthen the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.
- Principles and standards derived from international human rights law – especially the Universal Declaration of Human Rights and the core universal human rights treaties, should guide all policies and programming in all phases of the process.

The human rights-based approach also guarantees all people the rights to participation, access to information and access to justice in environmental matters. This should be translated into the treaty as follows: 1) 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. 2) The treaty must ensure **transparency** and traceability across the value-chain of plastic products, plastic trade flows, supply chains and trade policies, making information accessible and widely available throughout the plastics cycle; 3) The treaty should establish and empower mechanisms for **accountability** and access to remedy for individuals and communities that have suffered harms as they are vital to ensuring that any global agreement on plastics is effective and legitimate; and 4) The treaty should reinforce the corporate responsibility to respect human rights throughout the plastics lifecycle, in line with the **UN Guiding Principles on Business and Human Rights** ([A/HRC/17/31](#)).

- **Prevention and precautionary principles:** The prevention and the precautionary principles are aimed at preventing environmental, human rights and health hazards, risks and harms. The main difference between the two principles is the degree of certainty/uncertainty of the possible damage. Where the harmful effects of an action or substance are already known, application of the principle of prevention ensures protection. However, where scientific evidence points to possible serious risks and harms, while identifying uncertainties, the application of the precautionary principle ensures protection. The implementation of those principles calls for a range of measures, such as avoiding false solutions, addressing classes of hazardous chemicals, and an emphasis on product design ([A/76/207](#)).
- **Waste hierarchy:** A more effective life-cycle approach requires a shift upstream. According to UNEP, the priority order, the first taking precedence over the other, of the waste hierarchy is: prevention, minimization, reuse, recycling, other recovery, and final disposal ([UNEP](#)).
- **Polluter-pays principle:** The polluter-pays principle means that the polluter should bear the costs of preventing and implementing control measures for pollution. Extended producer responsibility has emerged as an instrument to implement the polluter-pays principle ([A/76/207](#)).
- **Intergenerational equity/future generations:** The new treaty must be guided by the developmental, health and environmental needs of present and future generations. That is, to promote prosperity and quality of life for all, the needs of today's generations should be met without compromising the ability of future generations to meet their own needs.
- **Non-discrimination:** this principle would require States to adopt laws and policies to prevent exposure to hazardous substances, protect the most vulnerable and susceptible and prevent discrimination. These include children, women, Indigenous Peoples, coastal communities, people living in extreme poverty, communities living next to refineries and plastic production facilities, and workers throughout the plastic value chain, who are disproportionately impacted by chemicals in plastic and plastic waste. As plastic pollution imposes distinct and disproportionate harms on women and girls, the treaty should also require States to tackle gender-based discrimination and environmental injustices with urgent, gender transformative, rights-based environmental action ([A/HRC/52/33](#)).

3. Additional considerations

Provide any other relevant inputs, proposals or priorities here that have not been discussed at INC-2 (e.g. preamble; institutional arrangements, including governing body, subsidiary bodies, scientific and technical cooperation and coordination, and secretariat; final provisions including dispute settlements; and if appropriate annexes).

Proposed inputs and explanatory text:

- The **Preamble** should explicitly refer to human rights, including the rights to health and to a healthy environment. In doing so, it should take note of the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Declaration on the Rights of Indigenous Peoples, and the General Assembly Resolution 76/300 recognizing the right to a clean, healthy and sustainable environment, amongst other instruments.
- **International cooperation:** 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, including with respect to alternatives. 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](#))

- A **subsidiary body to support implementation and monitor compliance:** At a minimum, periodic reviews (monitoring) and updates on progress toward global objectives (data reporting) should be required from State parties. Transparency and information sharing mechanisms should also be required to be in place as a means of ensuring greater public oversight. Furthermore, 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](#))

- **Scientific subsidiary body:** Ensuring the rights to access to information and enjoyment of the benefits of scientific progress for all people¹ will be essential for effective implementation of the new plastics instrument. 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. Accurate and disaggregated data is also crucial to inform implementation, monitor progress, and inform meaningful and effective participation by rights-holders. Mechanisms should also be in place to assess the sustainability of plastics and their alternatives, including prior and ongoing environmental, health and human rights impact assessments. Indigenous Peoples should actively participate in these scientific assessments, in view of their traditional knowledge, practices and innovations.

The scientific body under the treaty should be complementary to the science-policy panel on chemicals, waste and pollution prevention. To ensure that private interests do not exert undue influence, the subsidiary body should include clear provisions on transparency and conflict of interest as a means to ensure that corporate political engagement is responsible and rights-respecting.

¹ 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 for the benefit of people's health and wellbeing. See [General Comment 25](#), Committee on Economic, Social and Cultural Rights.