Dear Chair and Members of the Committee,

The David Suzuki Foundation appreciates the opportunity to participate as observers at this 4th session of the INC. We are deeply grateful to the Anishnaabe Algonquin Nation, on whose unceded territory we are gathered, for their longstanding stewardship of these lands and warm welcome. As an evidence-based research and advocacy organization working to conserve and protect the natural environment for current and future generations, the exponential rise of plastic pollution is one of our most pressing concerns and we advocate concerted domestic and global actions to end plastic pollution.

We commend UNEA for launching negotiations for the development of a legally binding instrument addressing the full lifecycle of plastic, and the many representations in support of concluding an ambitious instrument.

As negotiations have moved forward, it has become evident that this prospective treaty provides a rare and critical opportunity to address serious regulatory and governance gaps and the lack of an international regime for the protection of human and environmental health from plastic pollution.

Plastic is the new frontier of international environmental law, having only been addressed to a limited degree under the Basel Convention. Already 187 nations have significantly restricted international trade in plastic waste. Additionally, well over 100 countries have adopted some form of national control measures on various chemicals in plastics, and plastic products, in an effort to mitigate the harmful impacts of plastics and their toxic components. To complement these progressive developments at national and regional levels, a multilateral approach on the full lifecycle of plastic is urgently needed to limit global plastic production and consumption and end plastic pollution. The new treaty must promote sustainable development, and importantly, safeguard the universally recognized right to a healthy environment and the dignity and worth of all of humanity – fundamental rights and principles codified in international law.

The international community has longstanding experience in phasing out, banning or otherwise restricting toxic materials from international production and commerce for the protection of environmental and human health, while duly respecting the fundamental principles and rules of the global trading system.
This includes highly hazardous pesticides and other persistent organic pollutants under the Stockholm Convention, ozone depleting substances under the Montreal Protocol, hazardous waste under the Basel Convention and mercury under the Minamata Convention. Experience from these and other multilateral environmental agreements (MEAs) must be leveraged to address today’s global existential health threat of plastic pollution. Moreover, by aligning global plastics production, consumption and trade with universally recognized human and Indigenous rights, the Paris Agreement and the Global Biodiversity Framework, as well as other sources of international human rights and environmental law, the new instrument can overcome the common shortfalls of previous MEAs and contribute to bridging the fragmentation that currently characterizes the global environmental legal regime.

In the spirit of advancing an effective and inclusive instrument reflecting the highest level of ambition, we offer our recommendations to the Committee on three key elements: limiting primary polymer production, establishing inclusive compliance mechanisms, and adopting an inclusive approach to governance. Our focus on these three elements is intended to support other critical elements in the instrument, both substantive and procedural which, combined, will bolster its overall impact and effectiveness.

**Firstly, we urge the Committee to establish limits on global primary polymer production and use.** A lifecycle approach to ending plastic pollution necessarily requires limits on primary polymer production and use, among other actions - notably, the regulation and restriction of chemicals and polymers of concern currently used in plastic production. It is obvious that efforts to solve the plastic pollution crisis will not succeed if global plastic production and the use of hazardous chemicals in production continue to increase at current unsustainable levels. To be credible, the instrument must include meaningful and enforceable reduction targets for primary polymer production, as well as restrictions on chemicals and polymers of concern, and targets for reduction in use.

These control measures are also necessary to align the instrument with the goals of the Paris Agreement on climate change. Plastics are a significant and rising source of GHG emissions, with 90 per cent of their carbon footprint generated during production and conversion from fossil fuels. Reduction targets for primary polymer production should be set with a view to changing this trajectory – bending the curve – to support achievement of global GHG emission reduction targets.
Secondly, on compliance, the legally binding instrument should enable non-state observers to make a submission with respect to a party’s compliance. Submissions from observers should be given equal consideration to submissions from a party.

Compliance committees established under MEAs are generally composed of party-nominated and COP-appointed independent experts acting in their personal capacities. Most MEA compliance mechanisms can only be triggered at the request of parties or the MEA secretariat, only. Experience under MEAs shows parties lack incentives to use compliance mechanisms to address inadequate implementation, except where compliance mechanisms are associated with a fund to assist Parties in achieving compliance, or where there is a potential outcome of withdrawal of privileges for non-compliant Parties.

There exist some, but very few, treaties that allow non-state actors to report on a party’s non-compliance. Notable examples include the 1998 UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Given the important human rights impacts of chemical and plastic pollution, the instrument should follow these progressive examples and include the possibility for Parties, the Secretariat to the treaty, and observers to the treaty, to trigger the prospective compliance mechanism that is agreed upon.

An even more progressive approach would be to establish, in addition to a compliance mechanism, a mechanism for the submission of complaints alleging violations of fundamental human rights recognized and protected under the legally binding instrument, by actions or inactions of the member states in relation to the fulfillment of treaty obligations. Complaints could be brought against a member state by both human rights and Indigenous Peoples’ organizations. Conditions of receivability of complaints would lay out the criteria for access to such a mechanism so as to eliminate the risk of frivolous complaints. The complaint mechanism would be composed of a committee, consisting of an independent chairperson and an equal number of representatives each of governments, Indigenous Peoples’ organizations, and non-governmental organizations. When this committee finds, upon examination of a complaint, that there has been a violation of obligations, standards or principles enshrined in the instrument, it would recommend how the situation could be resolved. Recommendations would be made in a report submitted through the instrument’s Governing Body. Governments would be subsequently requested to report on the implementation of its recommendations. A similar mechanism established under the International Labour Organization in 1951 - the Committee on Freedom of Association (CFA) – has examined over 3000 cases on violations of fundamental labour rights.
since its inception. CFA recommendations have been implemented in over 60 countries on five continents.

Along the same lines as the right to freedom of association, the right to a healthy environment is universally recognized as a fundamental human right and deserves equivalent recognition, respect and monitoring. In July 2022, the United Nations Generally Assembly adopted a resolution recognizing the human right to a healthy environment (A/RES/76/300). This instrument is the first multilateral agreement to be negotiated since the UN resolution, a factor which must be taken into consideration in the development of its substantive and procedural aspects.

Given that chemical pollution from plastics has been identified as gravely compromising human rights, the instrument should establish a complaint mechanism similar to the CFA. We respectfully recall that deferring the critical issue of compliance has resulted in long delays in the full implementation of other multilateral environmental agreements. Under the Rotterdam Convention, it took 16 years after the treaty’s adoption to establish a compliance mechanism, and under the Stockholm Convention adopted in 2001, parties have been unable to establish a compliance mechanism after over a decade of negotiations. In both cases, the lack of effective compliance mechanisms has limited the effectiveness and success of the treaties.

Thirdly, we emphasize that an inclusive approach to membership (governance), as recommended below, is a necessary enabling condition for effective and inclusive compliance mechanisms. The instrument should allow accredited observers to participate in the governing body with the same voting and other decision-making rights as Parties.

Most MEAs allow non-state actors to participate in their governing body processes as observers only, not full members. Amongst multilateral institutions more generally, with the exception of the tripartite governing body of the International Labour Organization (ILO), rule-making within most international treaty-based institutions remains exclusive to member states only. This has created an exclusionary dynamic resulting in participational inequities that are perceived as stalling progress under many multilateral agreements. To overcome this inertia, certain multilateral organizations have built in more inclusive participational models.

In the context of a legally binding instrument addressing the full lifecycle of plastic, an inclusive approach to governance and compliance is needed to fulfill the right to a healthy environment. The UN resolution recognizing the human right to a clean, health and sustainable environment (A/RES/76/300) recognized in the preamble “that the exercise of human rights,
including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and to an effective remedy, is vital to the protection of clean, healthy and sustainable environment."

**With pollution from plastics having such grave implications for human rights at both sites of production and of disposal, the instrument should extend membership in the governing body, and associated decision-making rights, to organizations accredited as observers to the treaty.**

The instrument should also require the governing body to establish a scientific committee (similar to the persistent organic pollutants (POPs) review committee established under the Stockholm Convention) to recommend additional entries on the lists of chemicals and polymers of concern, and problematic and avoidable plastic products in the instrument’s Annexes. This committee, like the governing body, should include both state and accredited observer representatives with full participation rights.

Honourable Delegates, time is of essence, and planetary life at risk, from the converging threats of pollution, climate change and biodiversity loss. Protection of the rights, interests and quality of life of current and future generations depends intrinsically on the adoption of a robust and ambitious instrument that reflects the seriousness of the existential crisis we face from the unsustainable production and consumption of plastics.