Proposed response template on written submissions prior to INC-3 (part a)

At its second session, the intergovernmental negotiating committee (INC) requested the secretariat to invite written submissions on:

- Elements not discussed at INC-2, such as principles and scope of the instrument

INC-2 further requested the secretariat to post any submissions received on the INC website and to prepare a synthesis report of the submissions.

The template below was prepared by the secretariat, in consultation with the Chair, and is meant as a guide to assist Members and Observers in preparing their written submissions.

A number of documents prepared by the secretariat for INC-1 and INC-2 are of relevance to this submission, including:

**UNEA resolution 5/14** on ‘End plastic pollution: towards an international legally binding instrument’

**UNEP/PP/INC.1/5** on ‘Potential elements, based on provisions in paragraphs 3 and 4 of United Nations Environment Assembly resolution 5/14, including key concepts, procedures and mechanisms of legally binding multilateral agreements that may be relevant to furthering implementation and compliance under the future international legally binding instrument on plastic pollution, including in the marine environment’

**UNEP/PP/INC.1/6** on ‘Glossary of key terms’

**UNEP/PP/INC.1/8** on ‘Description of standard articles on final provisions that are typically included in multilateral environmental agreements’

**UNEP/PP/INC.2/4** on ‘Potential options for elements towards an international legally binding instrument, based on a comprehensive approach that addresses the full life cycle of plastics as called for by United Nations Environment Assembly resolution 5/14’

**UNEP/PP/INC.2/INF/4** on ‘Additional information linked to the options for the potential elements towards an international legally binding instrument’

**UNEP/PP/INC.2/INF/7/REV.1** on ‘Information submitted by the Secretariat of the Basel, Rotterdam and Stockholm conventions’

All written submissions must be sent to unep-incplastic_secretariat@un.org. As detailed in the mandate, the submissions received will be made available on the INC webpage, a synthesis report of the submissions will also be developed in advance of INC-3.

Please note that not all fields in the template need to be answered in the submission.

**Deadline for submissions:**

I. By **15 August 2023** for written submissions from observer organizations.

II. By **15 September 2023** for written submissions from Members of the Committee.
### TEMPLATE FOR SUBMISSIONS (part a)

| Name of country (for Members of the committee) | 1. Nipe Fagio
2. Sustainable Research and Action for Environmental Development (SRADeV)
3. Centre for Environmental Justice and Development (CEJAD)
4. Green Africa Youth Organisation (GAYO)
5. Centre for Earth Works (CFEW)
6. groundWork South Africa (gW)
7. Young Volunteers for the Environment Gambia (YVE Gambia)
8. Development Indian Ocean Network (DION)
9. Association de l’Education Environnementale pour les Futures Générations (AEEFG)
11. Community Transformation Foundation Network (COTFONE)
12. Bio Vision Africa (BIVA)
13. End Plastic Pollution Uganda (EPP)
14. Centre de Recherche et d’Education Pour le Developpement (CREPD)
15. Pan African Vision for the Environment (PAVE)
16. Sustainable Environment Development Initiative (SEDI)
17. Greenish Foundation
18. Front Commun pour la Protection de l'Environnement et des Espaces Protégés (FCPEEP)
19. Zero Waste Tunisia
20. Zero Waste Durban
21. EcoJustice Ethiopia
22. Sustainable Network Egypt (SNE)
24. Kenya National Waste Pickers Welfare Association (KeNaWPWA) |
| Name of organization (for observers to the committee) |

| Contact person and contact information for the submission | Ana Rocha
[ana@no-burn.org / anale.moraes.rocha@gmail.com] |
| Date | 09 August 2023 |
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:

The UNEA Resolution 5/14 already clearly defines the mandate for the treaty’s scope to end plastic pollution across the full life cycle of plastics that includes all plastics and associated pollution with no exceptions, to which it should adhere to without further negotiations at INC3.

However, we wish to provide a common understanding of what is meant by full lifecycle and all plastics and associated pollution.

Explanatory Text:

- To fulfil the UNEA mandate of covering pollution across the lifecycle of plastics, a global treaty must regulate plastics as substances, materials and products, with adequate definitions to capture the full range of sources of plastic pollution across the lifecycle of plastics. We will regret omissions now, and it would only necessitate the reopening of the instrument for negotiations in the future, or creation of additional instruments.

- The lifecycle of plastics constitutes an entire system from the sourcing of feedstocks (fossil or biomass sources) to make plastics which is met by a suite of associated environmental and health impacts, to the waste management and pollution phases (including waste-management residues or by-products). It is only through the full lifecycle approach that the plastics crisis can be comprehensively addressed with priority to upstream actions to prevent production beyond sustainable levels and generation of hazardous materials and waste. False downstream solutions like open burning, incineration, firing in coal-fired power plants and other waste-to-energy processes, co-processing in cement kilns, and chemical recycling should be prohibited to protect human health and the environment.

- Plastics should include:

  All substances used for the production of plastics (including all feedstocks/raw materials used for the production of monomers that is in turn used in the production of polymers); all plastic polymers (including all synthetic polymers- organic, inorganic and hybrid - as well as all semi-synthetic polymers in their diverse states of matter, water solubility and water absorbency).

  All additives (used for the production of plastic materials, both unintentional and intentional, including manufacturing aids such as blowing agents, and fillers); plastic materials (consisting of plastic polymers and additives, both unintentional and intentional, including composites) and;
### All plastic products

All plastic products (products made wholly or partly from plastic materials, including multilayer products that are made with plastic layers or laminates). They also include intermediate products such as pellets, expanded polystyrene beads, rolls of film and primary microplastics used to manufacture other products.

- Plastic pollution should include all wastes, debris and pollution made wholly or partly of plastic materials (e.g. secondary microplastics, ash from incineration of waste containing plastics) and all intentional and non-intentional additives in all environments, including in human bodies.

## 2. Principles

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

### Proposed principles:

Global plastics treaty control measures and allocation of implementation resources may be informed by specific principles of international human rights and environmental law, some of which could be mentioned in the preamble to the future treaty. However, **treaty text does not need to specifically address principles** outside the preamble or separately from implementing them in control measures. We recommend that the **INC-3 time is focused on control measures** and that principles are discussed chiefly as rationales for specific control measures.

The UNEA Resolution 5/14 is underpinned by many principles of 1992 Rio Declaration on Environment and Development which includes among others:

- The principle of common but differentiated responsibilities (CBDPR)
- Liability and compensation
- Transboundary environmental justice, also known as the “no harm rule” protecting states from transboundary harm
- The Precautionary Principle
- The Polluter Pays Principle

In addition, human rights and environmental protection are interdependent, and as such human rights must be central in the global plastics treaty with reference to the universal right to access to information; health, and a clean and safe environment; social rights, particularly of the informal sector workers ensued through a Just Transition.
The principle of prevention & waste hierarchy is a fundamental principle of environmental law since its recognition in the 1972 Stockholm Declaration on the Human Environment at the conference that saw the founding of UNEP.

It is also worth highlighting the principle of non-regression that obliges states to not weaken the environmental protections that they have created in their domestic or national regulations. Upholding this principle will mean that the decisions of the prospective Conference of the Parties must not regress on matters that have already been established.

**Explanatory Text:**

Abuses of human rights to life, health, a toxic-free environment, information, participation and access to effective remedy occur at every stage of the plastics lifecycle and should be eliminated. Persons in vulnerable situations are particularly affected, including formal and informal workers in plastic manufacturing and recycling such as waste pickers, fenceline communities, children and women. It is therefore vital that the treaty adopts a human rights-based approach and commits to inter-generational equity, focusing on human rights principles as well as mechanisms for accountability and access to remedy. This also ties into principle 13 of the Rio Declaration on Liability and Compensation for the victims of pollution and environmental damage.

The universal right to access to information in a transparent manner is also an integral part to upholding the human rights principles. Plastic manufacturers should be obliged to make information about the chemicals they use for production and in plastic materials transparent. This will help them improve sustainability, become responsible, and gain trust and recognition for their efforts. Companies along the value chain, and especially downstream users, will know about the ingredients of the articles or products they use and produce. Recyclers will be able to handle waste responsibly and avoid producing contaminated secondary raw materials used for new products. Consumers will be able to access their right to know and make informed decisions while purchasing and disposing of plastic products.

In Africa, relatively few countries produce plastic, but shoulder the burden of toxic and non-recyclable plastic waste exports, therefore Principle 16 of the Rio Declaration on the polluter pays principle has special significance: “the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.” Polymer producers are accountable for the pollution costs of all their plastics, irrespective of the country where the plastics end their life, and of whether the plastics are ultimately destined for recycling or disposal. In line with the polluter pays principle is the imposition of taxes on plastic chemicals, materials and products, as well as development and implementation of EPR schemes which should be mandatory and government-led and work hand-in-hand with global minimisation of plastic production and systems for reuse.

Prevention is also the central focus of several international environmental agreements and is cited in the titles of the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL) and the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, while the United Nations Convention on the Law of the Sea includes an obligation to prevent pollution(Article 194). The Ad Hoc Open-Ended Expert Group on Marine Litter and Microplastics recognized that “prevention is paramount and is the priority” as early as its second meeting in 2018. Prevention also appears both in principles 9 and 32 of the 2023 Maastricht Principles on the Human Rights of Future Generations.
The zero waste hierarchy applies the prevention principle to materials including plastics across their lifecycle. Unlike the traditional waste hierarchy, the zero waste hierarchy includes their design during the production phase, highlights the importance of reuse and repair to extend the use phase, and also covers waste management.

In line with the prevention principle is the precautionary principle to ensure that measures are taken to prevent plastic pollution, even where scientific uncertainty persists and where there are risks of serious or irreversible harm to people and planet there is no excuse to take precautionary measures.

Lastly, all measures taken in regulating the plastic life cycles must be seen through a just transition lens for all workers affected by planned changes in the global plastics economy. At the same time, it is important to recognize the very special role of waste pickers. Waste pickers are the backbone of the waste collection and sorting systems in most countries. They are also one of the most vulnerable occupational groups, predominantly women from socially and ethnically-marginalised communities. As such, waste pickers deserve particular emphasis in a new plastics treaty, to ensure their meaningful inclusion in treaty provisions and implementation, and realise their full potential as engineers of the global materials economy, placing them at the vanguard of collection, sorting, reuse, repair, composting and recycling systems.

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:

- Support the Institution of an independent dedicated global scientific body for the treaty

- Support enforcement and accountability system for the treaty.

- Support comprehensive systems for Identification, transparency and labelling of plastic feedstocks, polymers, additives and products.

- Support the design of a robust treaty that addresses the underlying drivers of plastic pollution (i.e. oil & gas extraction; the additive industry and artificially induced consumption patterns)

- Support the provisional application of the Rules of Procedure (ROP) rather than reopening the ROP discussion to attempt final adoption which may prevent more time wasted and avoid reopening other rules that were agreed in Dakar.

Explanatory Text:
The Scientific body is an important component of the instrument and should:
- Adopt baselines for plastic pollution and toxic exposure monitoring standards;
- Establish harmonised standards, methodologies, metrics and definitions used in monitoring and assessments;
- Provide other relevant guidance for national monitoring efforts;
- Periodically evaluate the global environmental and health impact of plastic pollution, for ecosystems, the climate system, biodiversity and human health, as well as its direct and indirect economic cost;
- Periodically assess how plastics impact environmental justice, Indigenous rights and human rights across their lifecycle;
- Mandate the scientific body to use all the monitoring and assessment data above to detect and report treaty effectiveness and compliance challenges;
- The body should be free from conflicts of interest with corporations with a financial stake in the lifecycle of plastics and hosted by the Secretariat with representation at the national focal points.

The treaty must establish robust surveillance and monitoring systems to ensure enforcement and accountability which can:
- Require Parties to make plastic pollution and other serious breaches of treaty provisions criminal offences under national law.
- Require Parties to provide communities harmed by plastic pollution with access to legal and other effective remedies, including measures to ensure non-repetition.
- Adopt a Global plastic pollution liability and compensation mechanism, as recommended by the U.N. Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana (OHCHR, 2021). Such a mechanism can support access to prompt and adequate compensation in significant plastic pollution events. This mechanism must be financed by polluters with mandatory contributions, to ensure that governments are not in effect subsidising pollution by private actors.

The treaty must support comprehensive systems for identification, transparency and labelling of plastic feedstocks, polymers, additives and products by:
- Developing a comprehensive, precise and public identification of plastic feedstocks, polymers additives and products as a prerequisite to effective regulation, as well as fulfilling the right to information relative to health and the environment. A global platform building on existing public databases such as the CAS Common Chemistry or the OECD eChemPortal would maximise efficiency and minimise duplication.
- Requiring harmonised and accurate labelling: polymers and additives, feedstock type, environmentally-sound reusability, recyclability or compostability, hazards for human and environmental health. Harmonised and accurate labelling could be delivered through a global digital product passport system in multiple languages.
- Prohibiting vague, inaccurate, misleading or unverifiable claims or labelling on plastic materials, products or processes, e.g. “sustainable”, “green”, “eco”, “bio”, “natural”, “carbon neutral”, “plastic neutral”, claims that hide regrettable substitution, such as “BPA-free” claims when equally or more harmful alternative bisphenols are used, claims that disguise thermal treatment or plastic-to-fuel as “recycling”.
The INC process cannot confine itself to a consensus-based decision-making process without critically jeopardising the prospect of an ambitious and effective global treaty and subverting an established international practice, and therefore, INC voting must remain an option. States retain their sovereignty through the ratification process.

- The new interpretive statement adds confusion to the provisional application of Rule 38.1 should negotiations require a vote to unblock a stalemate on an important issue (votes are only considered for very high-profile issues).
- The option to resort to a vote when consensus cannot be found is long-standing negotiations practice in UN spaces and environmental agreements and should remain part of Rule 38.1 - see:
  - UNFCCC (Rule 29)
  - UNGA (Rule 85)
  - UNEA (Rule 49)
  - Stockholm Convention (Rule 37)