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.
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 scope of the plastics treaty must be rooted in a rights-based approach, has to address the full lifecycle of plastics, and should be centered around the health of humans and the environment.

The treaty further needs to have the overall goal of reducing plastic production and eliminate the use of toxic polymers and additives.

Explanatory Text:

On 28 July 2022, the UN General Assembly adopted a resolution stating the human right to a clean, healthy and sustainable environment.

Further, as set out in the report A/76/207 Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana:

“*The plastics crisis affects a broad range of human rights, including the rights to life, the highest attainable standard of health, a healthy environment, housing, water and sanitation, adequate food, equality and non-discrimination, as well as rights to information, participation and effective remedy, all of which are protected under international law. It has disproportionate impacts on groups at heightened risk of human rights violations, such as workers, children, women, persons of African descent, indigenous peoples, coastal communities and people living in poverty.*”
The scope of the treaty therefore needs to focus on human rights (including recognizing and implementing the United Nations Declaration on the Rights of Indigenous Peoples, UNDRIP) and should be set out to protect human- and environmental health. It is critical that this is reflected throughout the operative paragraphs in the text of the treaty, and that the rights-based aspect is considered in a provision on an effectiveness evaluation of the treaty.

It is further evident that to efficiently deal with plastic pollution, production of plastics needs to be urgently reduced, and associated contaminants and toxic polymers need to be eliminated. (Bergman et al 2022 - Science, 376 (6592), DOI: 10.1126/science.abq0082  
Dey et al 2022 – Science, 378 (6622), DOI: 10.1126/science.adf5410)

2. Principles

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

Proposed principles:

The following rights-based principles need to guide the implementation of the plastics treaty:

- The **right to live a healthy life and protection of the environment** (as stipulated by the UN General Assembly resolution A/RES/76/300, Rio principles 1, 4,7; UNDRIP articles 20, 24/2, 29/1)
- Environmental protection needs to guide development, including **reduction and elimination of unsustainable production and consumption** (as stipulated by Rio principles 3, 4, 8, 14; UNDRIP article 32/3)
- Implementation of the **precautionary approach**, including that **lack of scientific certainty shall not be used to postpone cost-effective measures to prevent environmental degradation** (Rio principle 15)
- **Recognition of Indigenous Peoples** throughout the treaty text and the implementation of the treaty, as well as enabling **equitable participation of Indigenous Peoples** (as stipulated by Rio principles 10, 22; UNDRIP articles 3, 18, 41). *Indigenous Peoples should be recognized as rights holders*, and have a separate observer category with a higher status compared to “stakeholders”, such as industry.
- Enable the **operationalization of international human rights obligations in the implementation of the plastics treaty**. This should be addressed in a core obligation to measure the effectiveness of the treaty, by establishing a legal reference group on human rights to review the progress of the treaty’s implementation (as recommended in document A/HRC/19/34 – Report of the UN High Commissioner for Human Rights, and please also refer to ICC’s earlier comments/intervention during INC-2).
- **Polluter-pays principle** (Rio principle 16)
Explanatory Text:

Previous comments by ICC have outlined the importance and relevance of a rights-based approach in the negotiation and implementation of this treaty on plastics pollution. On implementation, ICC suggests the following process as part of the effectiveness evaluation of the treaty: we propose a Legal Reference Group be established, which could be convened by the UN Special Rapporteur on toxics and human rights. This body would review human rights aspects with regards to plastic pollution and should include experts from various groups, peoples and regions, including from Indigenous Peoples, and aim to achieve gender balance. The group would produce a report as part of measuring progress, which would look at aspects of human rights in plastic pollution. The following principles and articles are referred to in the text above (some text was bolded for easier recognition):

UN General Assembly Resolution A/RES/76/300, adopted 28 July 2022:

“1. Recognizes the right to a clean, healthy and sustainable environment as a human right;
2. Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;
4. Calls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.”

Principles of the Rio Declaration on Environment and Development:

1: “Human beings (...) are entitled to a healthy and productive life in harmony with nature.”
3: The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.
4: “(...) environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”
7: “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. (...)”
8: “(...) States should reduce and eliminate unsustainable patterns of production and consumption (...)”
10: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. (...)”
14: “States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.”

15: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

16: “(...) the polluter should, in principle, bear the cost of pollution (...)”

22: “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):

Preamble: “Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,”

Article 3: “Indigenous peoples have the right to self-determination. (…)”

Article 18: “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, (…)”

Article 20: “Indigenous peoples have the right (...) to be secure in the enjoyment of their own means of subsistence (...)”

Article 24, para 2: “Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health.”

Article 29, para 1: “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. (…)”

Article 32, para 3: “(...) appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”

Article 41: “The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.”

Article 46, para 2: “In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. (…)”
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:

The operative paragraphs and the preamble should make reference to the importance of human rights and should mention the particular case of Indigenous Peoples. Good examples with regards to mention of Arctic Indigenous Peoples in the preambular text are the Stockholm Convention on Persistent Organic Pollutants and the Minamata Convention on Mercury.

Research and monitoring of plastics in the environment need to be in place and should be part of the treaty provisions to support the implementation of the treaty. There are existing plastics and contaminant monitoring activities and programs that work in a partnership approach with Indigenous Peoples which should be recognized, supported, and utilized in the implementation of the treaty. These include national (such as the Northern Contaminants Program in Canada), as well as regional programs (such as the Arctic Monitoring and Assessment Programme (AMAP) of the Arctic Council).

Explanatory Text:

As outlined by Provencher et al. (2022), a lack of knowledge currently is limiting our ability to understand the sources, transport, fate, and effects of plastics. This understanding will be crucial to effectively implement the future instrument on plastics pollution. Monitoring activities should also include Indigenous Knowledge and community-based components (Provencher et al. 2022, 2023).

Provencher et al. 2022. Arctic Science 8: 1067–1081 | dx.doi.org/10.1139/AS-2021-0059