

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)	United States of America
Name of organization (for observers to the committee)	(OAEC) Occidental Arts and Ecology Center
Contact person and contact information for the submission	Yvette Arellano
Date	August 15, 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 objective should be inclusive of all harmed communities, including biodiversity and the environment. The statement should also address present and future generations' ability to live and develop sustainably, free from the entire lifecycle of plastic pollution. We believe that portions of the obligation document should not be optional, but instead required to achieve the original directive: [The resolution \(5/14\)](#) requested the Executive Director of the UN Environment Programme (UNEP) to convene an Intergovernmental Negotiating Committee (INC) to develop "the instrument," which is to be based on a comprehensive approach that addresses the full life cycle of plastic, including its production, design and disposal.

Objective :

(A) End plastic pollution; Protect human health, biodiversity, and the environment both present and future from its adverse effects throughout the lifecycle of plastic.

The obligations stated below have redeeming qualities with respect to addressing toxic exposure however the obligations lack explicit language. Below are specific suggestions that strengthen obligations 1, 2, 3, 8, 9, & 12 and establish more robust protective standards. Obligations and amendments are listed below.

- **1. Possible core obligation: phasing out and/or reducing the supply of, demand for and use of primary plastic polymers**

Subsection a) Options for targets:

REQUIRED (i) Establish **[legally binding]** global targets to **reduce [minimize]** production of **primary** plastic raw material **[throughout the plastic value chain]**

Subsection b) Options for regulating primary plastic polymers:

(i) Impose a moratorium on primary production of plastic polymers or ban, limit or

~~reduce~~ **[minimize]** the manufacture, export and import of ~~virgin~~ plastic polymers.

REQUIRED (ii) Track types and volumes of plastic polymers, precursors, feedstocks manufactured, **[their perspective emissions {types and volumes}]**, imported, and exported as well as the quantities and type of chemicals applied in production through transparency and reporting requirements. **[Establish production thresholds for plastic polymers, precursors, and feedstock throughout the plastic lifecycle]**

NEW (iii) **Option for economic tools: Set globally determined extended producer responsibilities EPR ~~such as price-based measures, production permits, licenses, removal of fiscal incentives and a mandatory fee, tariff or tax on all plastic production.~~**

REQUIRED **NEW**(iv) **Establish an enforcement mechanism**

- **2. Possible core obligation: banning, phasing out, and/or reducing the use of problematic and avoidable plastic products**

Subsection a) Inventory and monitor production of **[and short and long-term health impacts]** of raw materials, including those used in plastic commodities, ~~and establish a global baseline.~~

REQUIRED Subsection b) Establish criteria to determine and prioritize problematic and avoidable plastic products **[plastic polymers, precursors, feedstocks, toxic chemicals]**, including unnecessary or short-lived products.

Subsection c) Ban, phase out, ~~reduce~~ **[limit or minimize]** or control the production, sale, distribution, trade, and use of specific problematic and avoidable plastic products by identified dates (the criteria under (b) above and the list and phase-out dates hereunder could be identified in an annex to the instrument);

- **3. Possible core obligation: banning, phasing out, and/or reducing the production, consumption, and use of chemicals and polymers of concern**

Subsection a) Options for regulating chemicals and polymers of concern:

REQUIRED (i) Ban, phase out, reduce **[minimize]** or control specific polymers and chemicals of concern, or groups of chemicals, **based on criteria identified** to determine polymers and chemicals of concern (list, phase-out date and criteria could be included in an annex to the instrument). Require products and polymers to have comprehensive health evaluations before any products or materials are put on the market (i.e. precautionary principle).

NEW (iv) minimize multigenerational toxic harm to human health, biodiversity and the environment

Subsection b) Options for increasing transparency:

REQUIRED(i) Track types and volumes of polymers and chemicals applied in production, including through disclosure requirements for plastics throughout the supply chain, and plastic production, use and additives, **(consistent on criteria to minimize multigenerational harm human health, biodiversity and the environment)** ~~consistent with national laws.~~

REQUIRED NEW(ii) Provide transparency and access of information on long-term and short-term human health impacts and environmental harm throughout the plastics lifecycle. Assure ease of access for communities adjacent, at the fence line or collocated to plastic production facilities by providing plain language and translated materials containing long-term & short-term health impacts, and environmental harm information.

(ii) Increase transparency through marking (digital watermarks, tracers) and harmonized product labeling, material safety data sheets, product passports and publicly available databases.

- **8. Possible core obligation: promoting the use of safe, sustainable alternatives and substitutes**

Subsection (a) Options for enhancing research and development:

(ii) **Task a technical review committee** (comparable to the Technology and Economic Assessment Panel under the Montreal Protocol on Substances that Deplete the Ozone Layer) with **assessing criteria** for the sustainable production and use of plastics and the availability of safe alternatives and substitutes, set out the criteria in annexes to the instrument, and recommend possible adjustments to such annexes or amendments to the instrument (including new annexes).

- **9. Possible core obligation: eliminating the release and emission of plastics to water, soil and air**

Subsection a) Reduce and, where feasible, **Minimize and Eliminate** releases of plastics to water, soil and air (general and sectoral measures could be listed in an annex to the instrument, including wastewater, industrial facilities, aquaculture, agriculture and the fishing industry, and transport).

Subsection b) Develop and use the best available technology and best environmental practices, including environmental and emission/effluent standards, to minimize and eliminate pollution from all stages of the plastic life cycle.

Subsection c) Prohibit dangerous practices to prevent the production and releases of toxic emissions from plastic waste management.

REQUIRED [NEW Subsection e) Develop global emissions tracking, violation history of parent company and subsidiaries to create a better understanding and work to minimize and eliminate pollution from all stages of the plastic life cycle]

- **12. Possible core obligation: protecting human health from the adverse effects of plastic pollution**

The committee may wish to consider including some or all of the following potential options for control measures and voluntary approaches:

Subsection (a) Options for assessing and evaluating risks:

(i) Evaluate risks caused by plastic and plastic pollution for human health **[of present and future generations]**.

REQUIRED(ii) **[Gather and]** Conduct further research on **[chemicals, polymers, additives...]** adverse effects of plastic and plastic pollution on human health **[free from conflict of interest]**.

Subsection (b) Options for cooperation:

(i) **Promote cooperation, collaboration and exchange of information** with the World Health Organization, the International Labour Organization and other intergovernmental organizations.¹⁸

(ii) Improve the **One Health** approach.

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REQUIRED **[New Subsection C) Options for protection of environmental Justice communities**

(i) Prohibit and ban new plastic infrastructure from those segments of the population that are in vulnerable situations including indigenous people, older persons, persons with disabilities, women, girls, economically marginalized

Explanatory Text:

We aim to eradicate toxic multigenerational harm based in Houston, TX, home to [618 chemical manufacturers](https://www.houston.org/houston-data/chemical-industry-overview)¹. Resins and Plastics rank as the [#1 containerized commodity](https://www.porthouston.com/wp-content/uploads/2022/12/4-Container-Volume-by-Commodity-2021.pdf)² making up nearly 40% of US production. Out of the 14 largest facilities, 13 chemical facilities produce plastic feedstock. Plastic pollution devastates our communities through toxic exposure via legal emissions, flaring, leaks, and chemical disasters³ at plastic production. We get hit with bloated emergency room visit costs and developmental issues, and our communities face sterility all during COVID and unprecedented heat waves. We support global targets, eliminating fossil fuel subsidies, and legally binding measures. Plastic is not a management problem, plastic is the problem.

We do not accept nationally determined commitments as an appropriate response to addressing the entire lifecycle of plastic pollution. We live in a plastic feedstock production community. If the draft national strategy indicates the type of NDCs that the US is proposing, it is woefully deficient in addressing the deadly impacts faced by our community caused directly by plastic production. The current US position not only lags behind the global community, it fails to provide protections to US environmental justice communities. The Environmental Protection Agency, the US agency charged with drafting the [US National Strategy to Prevent Plastic Pollution](https://www.epa.gov/system/files/documents/2023-04/Draft_National_Strategy_to_Prevent_Plastic_Pollution.pdf)⁴, states in the opening disclaimer of the strategy that the document does not impose legally binding requirements.

Addressing human rights begins at extraction and production. In scope, we agree with many countries that an enforcement mechanism is needed, and tracking and reporting throughout the plastics lifecycle is vital. For this to be effective, the instrument must track emissions at every point of emission, not just those out of the stack

¹ <https://www.houston.org/houston-data/chemical-industry-overview>

² <https://www.porthouston.com/wp-content/uploads/2022/12/4-Container-Volume-by-Commodity-2021.pdf>

³ <https://www.texastribune.org/2023/07/26/texas-chemical-disaster-emergency-guide/>

⁴ https://www.epa.gov/system/files/documents/2023-04/Draft_National_Strategy_to_Prevent_Plastic_Pollution.pdf

but emission points, including valves and chemical storage. Living in a community consistently experiencing odors and symptoms, including headaches, nausea, and long-term issues, including reproductive harm, which I face, is a reality for many.

As we face a triple planetary, I stress the need for a globally binding instrument with mandatory obligations, including caps on upstream production and raw material acquisition. We must turn off the tap. The instrument must embed human rights in every aspect. The instrument must include the precautionary principle approach with an end goal of eliminating problematic polymers, chemicals, and additives throughout the plastics value chain and protecting human health, biodiversity, and the environment.

2. Principles

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

Proposed principles:

We support the **Prevention Principle** of environmental law since the recognition in the 1972 Stockholm Declaration on the Human Environment, a principle that appears in 9 and 23 of the 2023 [Maastricht Principle on the Human Right of Future Generations](#). Signatories include members of the international human rights treaty bodies, regional human rights bodies, and former and current Special Rapporteurs of the United Nations Human Rights Council. Protecting future generations and the need to recognize the intergenerational dimensions of present conduct to achieve justice in light of humanity's dependence on and responsibility to natural systems. Core to preserving these rights is the responsibility to protect planetary boundaries.

Principle 8 of the [Rio Declaration on Environment and Development](#) should guide the implementation of the future instrument. Put forth and adopted by the United Nations Conference on Environment and Development in 1992, the principle recognizes the need to eliminate unsustainable patterns of production to achieve sustainable development and a higher quality of life for all people.

Precautionary Principle: Prioritize precaution in plastic production, ensuring that new plastic materials, additives, and production processes are thoroughly tested and evaluated for short and long-term human health impacts and potential environmental harms are understood before approval, sale, and widespread adoption. This must be a requirement without an exemption for the use of preventing intentional and unintentional toxic exposure and assuring the protection of human health, biodiversity, and the environment.

Explanatory Text:

Communities such as our own along the US Gulf Coast are experiencing the devastating impacts of increased infrastructure due to rapidly expanding plastic production. We live with chronic respiratory illness, our families contend with reproductive and developmental impacts, greatly increased risks for cancer, heart disease, diabetes, and a host of other medical conditions directly linked and exacerbated by plastic production. We live under the constant threat of chemical disaster when plastic producing facilities explode, catch fire, leak toxic chemicals into our commutes. Our state government is beholden to industry interests and national protections have been modest and are often rolled back depending on the political climate. My communities health, safety, and environment would benefit most by a strong, legally binding global instrument. We need an instrument guided by principles that recognize our human rights and those of future generations, that recognize the need to prohibit unsustainable methods of production which pose harm to our environment and health, and that assumes above all else a protective standard for human health, environment, and biodiversity throughout the plastic lifecycle.

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:
Propose a new obligation.

Obligation 13: Protecting water security and limiting the use of water throughout the plastic lifecycle

subsection (a) Production and expansion must be banned in areas affected by water stress, and desertification.

subsection (b) Establish global goals to limit use of freshwater or means to attain water that causes harm to human health, environment, and biodiversity throughout the plastic lifecycle for present and future generations.

subsection (c) Examine the water intensity of the recovery of raw materials and plastic-producing feedstocks.

Explanatory Text:

The instrument must include an objective of water security to protect diminishing freshwater sources, as they are inextricably linked to human health and the environment. Every year we have growing water shut-offs and boil water notices and droughts. Plastic producers' response is the building of mass polluting desalination facilities that further exacerbate extreme climate-inducing emissions. Therefore the instrument must limit the use of freshwater water resources or means to attain water that causes harm to human health, environment,

and biodiversity as to protect human rights. Mutagenic, toxic exposures alter our DNA for generations, and toxic chemicals that are mutagenic must take priority. Continuing to build new plastic-producing fossil fuel infrastructure locks our world into decades of deadly emissions that undermine climate progress and the health of vulnerable populations.

Along the US Gulf Coast, we are witnessing firsthand how plastic production is threatening the water security of vulnerable populations. In Corpus Christi, Texas, a plastic plant opened in 2023 by ExxonMobil is using an estimated [25 million gallons of water a day even as local and state officials project that water demand will exceed supply within this decade](#)⁵.

For the first time in history, the United Nations has recognized that everyone, without exception, has a right to live in a clean, healthy, and sustainable environment. Both resolutions from the Human Rights Council (AA/HRC/RES/48/13) in 2021 and the General Assembly (A/RES/76/300) in 2022 recognize many issues. Most notably:

Recognizing that, conversely, the impact of climate change, the sustainable management of chemicals and waste, the resulting loss of biodiversity, and the decline in services provided by the ecosystems interfere with the enjoyment of a clean, healthy, and sustainable environment and that the environmental damage has negative implication both direct and indirect for the effective enjoyment of human rights.

Recalling the guiding principles on business and Human Rights, which underscore the responsibility of all business enterprises to respect Human Rights, including the rights to life, liberty, and security of human rights defenders working in environmental matters referred to as environmental human rights defenders.

RESOLUTION ADOPTED BY THE HUMAN RIGHTS COUNCIL
THE HUMAN RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT
(A/HRC/RES/48/130)

Recognizing further that environmental degradation, climate change, biodiversity loss, desertification, and unsustainable development constitute some of the most pressing and serious threats to the ability to present and future generations to effectively enjoy all human rights.

THE HUMAN RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT
A/RES/76/300

Our statement is built upon the long and strong foundation layed by several United Nations resolutions, frameworks and principles dating back nearly half a century. However, our statement is also built on the first-hand experience of living along the largest petrochemical complex in the US, and being forced to shoulder the enormous costs to our health, safety and environment that the plastic lifecycle poses. Additionally, we support a Code of Conduct and Conflict of Interest policies that ensure the legitimacy, trust, and integrity of international multilateral agreements. Additional bodies, committees, councils, and advisory committees should establish clear guidance and disclosure of conflicts of interest.

Thank you for the opportunity to provide submission and ensure equitable participation.
-Yvette Arellano

⁵ <https://www.texasobserver.org/corpus-christi-water-exxon-desalinization/>