



In 2022, the **IUCN World Commission on Environmental Law (WCEL)** created the Plastic Pollution Task Force to provide insights and support to the Treaty negotiation process. The following is one of a series of six targeted legal briefs that are part of the present IUCN Submission for the second Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, including in the marine environment.

Contact:

Karine Siegwart, IUCN Head of Delegation, IUCN Senior Policy Advisor, International Policy Centre, karine.siegwart@iucn.org

Alexandra R. Harrington, Lancaster University Law School and Chair, IUCN WCEL Agreement on Plastic Pollution Task Force, a.harrington1@lancaster.ac.uk

IUCN WCEL Briefings for Negotiators for INC-2

These are updated briefings of the INC-1 submissions, please note, and are considered version 2.

- BRIEFING 5

environmental and also span a variety of other areas, implicating many forms of legal rights and obligations at the international and regional levels. In addition to the regimes discussed in the UNEP briefing note 10 in advance of INC-1, many other regimes should be considered when designing the potential interactions with the Plastic Pollution Treaty.

How? In recognition of the many forms of **human rights** that are fundamentally connected to plastic pollution and its impacts, the negotiations should examine regime interactions with the core international human rights law treaties, including topics such as non-discrimination, the right to life, food rights, water rights, labour and employment rights, adequate standard of living,

for rural communities. These linkages were affirmed by a number of States during the INC-1 discussions. Specific treaty regimes of relevance:

- International Covenant on Civil and Political Rights (ICCPR) including the right to life and non-discrimination.
- International Covenant on Economic, Social and Cultural Rights (ICESCR) including the right to work, right to just working conditions, right to an adequate standard of living, right to health, housing rights, the right to food, and adequate standard of living rights.

Of note, in General Comment 26 on Land and Economic, Social and Cultural Rights (2022), the Committee on Economic, Social and Cultural Rights (CESCR) links land rights and sustainable land use to right to clean, healthy and sustainable environment, climate change and land use stresses, as well as right to food, water, agricultural production capacities, and an adequate standard of living. The General Comment further stresses the need for free, prior and informed to comply with the requisite participation, transparency and consultation elements of the ICESCR in its implementation. These are issues that have

impacts of environmental damage and pollution on Indigenous children, including through efforts to implement adaptation and mitigation at the national level.

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) including multiple elements of non-discrimination rights, the right to life, labour and employment rights, rights to participation in public life, the economy and family life, and the right to health.

In General Comment 27 on older women and protection of their human rights (2010), the Committee on the Elimination of All Forms of Discrimination against Women emphasises that climate change and natural disasters pose a special and significant threat to older women across the world because of status as women, elderly, and often marginalised. Pollution plays a role in these harms. Further, in General Comment 34 on the rights of rural women (2016), the Committee stresses the varied identities of rural women, including as part of the fishing industry as well as agricultural sectors, and the need for them to be specifically addressed as such under international

- United Nations General Assembly Resolution on the Right to a Clean, Healthy and Sustainable Environment (2021) while not binding international law, the recognition of this right represents an important and evolving trend that has been reflected in the policies and decisions of many international treaty bodies.

At the regional level, synergies may be found with the Inter-American Human Rights system, the European Charter of Human Rights, and the African Charter of Human Rights as well as the associated court systems. Indeed, these courts have created case law that can be quite critical to support elements of the Plastic Pollution Treaty in terms of environmental protection and the nexus between human rights and the environment.

How? In recognition of the connections between regulation of plastic pollution and **international trade**, the negotiations should examine regime interactions with several forms of trade agreements, including:

- World Trade Organization system as UNEP briefing note 10 in advance of INC-1 highlights, there are foundational connections between the treaties comprising WTO law and the regulation of plastic pollution. What should be further emphasised is the need to ensure that the terms and implementation of the proposed Plastic Pollution Treaty do not pose the threat of non-compliance with the WTO legal system to the point where a State Party to both regimes would face compliance issues and potential Dispute Settlement Body claims while seeking to comply with obligations under the Plastic Pollution Treaty. In this context, the requirement of a potential waiver from the WTO, similar to that issued to facilitate implementation of the Kimberley Certification Process, should be considered from an early point in the negotiation process.
- Free Trade Agreements/Regional Trade Agreements there are currently more than 250 free trade agreements and regional trade agreements between members of the international community. An increasing number of these agreements contain environmental protection, sustainable development, and climate change related provisions and some, for example the NAFTA/USMCA regime, have created environmental compliance oversight organizations under their auspices.

The nexuses between these regimes and the Plastic Pollution Treaty should be explored throughout the negotiation process.

2. Develop synergies between existing treaty regime governance systems and the proposed Plastic Pollution Treaty

What? The issue of plastic pollution intersects with a number of multilateral environmental agreements (MEAs), as highlighted by the discussion in UNEP briefing note 10 in advance of INC-1. Beyond those referenced, there are other treaty regimes, such as the Convention on the International Trade of Endangered Species (CITES) and those that relate to multilateral shared natural resources, such as the Rhine and Danube Rivers, that should be discussed for areas of treaty regime convergence. Similarly, a number of bi-lateral and regional agreements regarding transboundary pollution and shared natural resources exist and there will be correlations between them and the proposed Plastic Pollution Treaty.

How? In recognition of the many forms of **multilateral environmental agreements** that are fundamentally connected to pollution, plastic pollution and its impacts, the negotiations should examine regime interactions, including terms relating to transboundary impacts and harms, impacts on vulnerable communities, impacts on Indigenous communities, impacts on women and

- United Nations Convention to Combat Desertification including involvement of Indigenous and local communities in order to facilitate entrenchment across all levels of government and society, use of National Action Plans as reporting tools for State Parties, which could lead to some overlaps with plastics pollution in terms of terrestrial sources, and capacity-building, technology transfer and community engagement.

In COP 15 (2022) Decision 20, State Parties adopted measures recognising the intertwinement of desertification and drought issues with sustainable land management

generations protection and sustainable development. There is also an express recognition of the connections between Indigenous and traditional communities and biodiversity.

Requires the adoption and reporting of national biodiversity strategies and action plans by State Parties. Provisions address in situ conservation, which is of importance for the plastics context, and sustainable use measures for biological diversity at the national level. Includes provisions for impact assessments that include potential damage to biological diversity including in emergency circumstances. Additional elements include technology transfer, scientific cooperation, and financing.

During COP 15 State Parties and adopted decision stressed connections with ocean degradation, land degradation, pollution and health concerns, mainstreaming biodiversity issues across all elements of law and policy at the national level of State Parties, gaps in information and compliance after a stocktake of the latest national biodiversity strategies and action plans submissions and implementation of Aichi Targets, sustainable wildlife management and regime convergence to support this, expansion of Indigenous and local community inclusion and participation, connections between biodiversity, natural resources and cultural heritage, connections between the conservation and sustainable use of marine and coastal resources, scientific knowledge, and oceans protection, connections between biodiversity and agricultural practices, including sustainable use of soils, highlighting pollution as one of the key threats in this area, connections between biodiversity conservation and human health, inclusion of sub-national governments in the development and implementation of national laws and policies relating to biodiversity, and implementation of a Gender Plan of Action to address responses to biodiversity threats and associated impacts.

The core decision taken during COP 15 was the adoption of the Kunming-Montreal Global Goals for 2050 alongside the 2050 Vision for Biodiversity. Many of these goals and targets are reflective of pollution-related harms and concomitant protections as well as those relating to marine resources and biodiversity protections. The new Kunming-Montreal Framework also includes an updated reporting requirement for national biodiversity strategies and action plans.

Taken together, there are important areas of overlap between the CBD regime and subsequent decisions of the Conferences of the Parties that will be critical to maximising the effectiveness of the Plastic Pollution Treaty.

How? In recognition of the many forms of **environmental impact assessment agreements** that are fundamentally connected to plastic pollution and its impacts, the negotiations should examine regime interactions, including terms relating to access to information, public participation, free, prior and informed consent, the precautionary principle, prevention, the polluter pays principle, interlinkages with human rights, interlinkages with sustainable development, non-discrimination in environmental rights, entrenching the rule of law, environmental justice, rights of future generations, and capacity-building, and the creation of information clearing house mechanism for



