



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 series of targeted legal briefs 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.

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## IUCN BRIEFINGS FOR NEGOTIATORS Plastic Treaty INC-2 Session

### BRIEFING 1 of 6: Key Elements for Plastic Pollution Treaty

#### Key Messages:

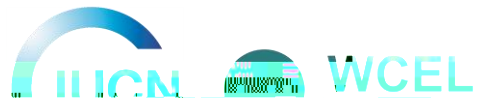
In United Nations Environment Assembly (UNEA) resolution 5/14 and subsequent discussions at INC-1, the issue of elements of the Plastic Pollution Treaty became quite important. Following INC-1, it is clear that the Plastic Pollution Treaty could benefit from many key elements developed throughout treaty practice, especially that of multilateral environmental agreements (MEAs). At the same time, the issues raised by plastic pollution and potential State responses are highly complex, often quite technical, and may require nuanced responses that are not necessary in other treaty regimes. Examining standard concepts from treaty regimes and MEAs allows for negotiations to focus on the ways in which these distinctions can be accommodated and benefit from the strengths of international law and established practice.

#### 1. Preamble

**What?** The use of a preamble is a standard and accepted practice across international treaty law and regimes including but not limited to multilateral environmental agreements. As noted in UNEP briefing note 5 in advance of INC-1, the preamble includes historical and contemporary understandings that informed the creation of a treaty, along with potential nexuses with other treaty regimes, and serves as an interpretive tool for the future. In this context, the drafting of the preamble will be critical to the Plastic Pollution Treaty.

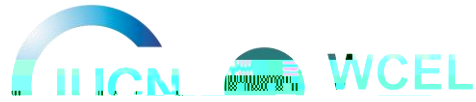
**How?** The preamble may include historical references, treaty regime references, as well as emphasising the core interpretive principles of international law that form the underlying terms of the Plastic Pollution Treaty. In this context, principles such as the polluter pays principle, the precautionary approach, national capabilities and circumstances, sustainable development, the rights of future generations and intergenerational equity could play a significant role in the framing of the Treaty in the preamble content. As was stressed by States during INC-1, the transboundary nature of plastic pollution is an important element for the Plastic Pollution Treaty to include. In this context, including this as a thread from the preamble onward could serve as a comprehensive tool for holistically addressing plastic pollution.

#### 2. Introductory elements including defil ie6co0ld pls



set of objectives since that could later result in questions of whether a treaty regime or the governance system for it is exceeding the scope of the underlying treaty.

**How?** A carefully worded set of objectives reflecting the needs of the international community, the



**How?** In defining the core obligations of the Plastic Pollution Treaty, care should be taken to ensure that choices regarding binding and voluntary classification reflect the theoretical and practical implications of control and voluntary measures.

**4. Implementation measures including national action plans, mechanisms for scientific and technical cooperation and coordination, effectiveness evaluation and national reporting, and compliance measures**

**What?** National









**How?** Dispute settlement will be important to framing the oversight of the Plastic Pollution Treaty. In this context, a phased approach starting with good offices and mediation and escalating to the International Court of Justice where necessary could offer a path that allows the States involved and the Treaty to benefit from the experience of an increasingly environmentally aware international court that is also versed in intricate issues of sovereignty and international law. The inclusion of dispute settlement provisions within the main text of the treaty structure decided upon for the Plastic Pollution Treaty could be considered as an important element that should not be left for the conclusion of a subsequent instrument.

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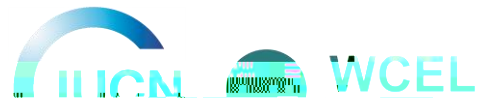






8. Commercial/industrial plastics use
  9. Compostable
  10. Consumer plastics use
  11. Forms of plastic
  12. Global carbon cycle
  13. Greenhouse gases (GHGs)
  14. Harmful additives
  15. Macroplastics
  16. Mechanical recycling
  17. Micropollutants
  18. Necessary plastic products
  19. New forms of plastic
  20. Non-recyclable plastic
  21. Open burning
  22. Plastic additives
  23. Plastic leakage
  24. Post-consumer use
  25. Primary microplastics
  26. Recyclable plastic
  27. Secondary microplastics
  28. Sensitive ecosystems
  29. Short-lives plastics
  30. Single-use plastic
  31. Terrestrial environment
  32. Virgin plastics
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commitment and state of knowledge annexes, pollution assessment annexes, and the(comm) INC

### 3. Other considerations for structure

**What?** Every treaty regime, including MEAs, reflects differing legal and technical issues facing the global community. As a result, their terms and structure are often related and share overlapping areas of convergence, yet they are still expressions of the particular needs of the topic. Given the depth and breadth of plastic pollution and the scope of legal, regulatory, technical and financial issues involved in its regulation, the possibility of a hybrid specific and framework convention structural model could offer a potential solution.

**How?** It is crucial that a robust set of definitions in the key terms section of the Plastic Pollution Treaty from the outset and ensuring that legal and scientific needs are communicated to negotiators and members of civil society. With this background, it would possible for the Treaty to be crafted in a way that contains significant control measures in the main text (specific convention model) while allowing for the development of subsequent protocols and agreements to address emerging issues (framework convention model).

Regardless the form of convention used for the Plastic Pollution Treaty, starting from the bottom-up approach through national action plans, the Plastic Pollution Treaty should include a strong system of international oversight. This would apply to robust binding guidance for national plans, binding requirements for reporting on implementation and achievement of these plans (possibly by using indicators), independent review and a mechanism for facilitating implementation and compliance. It might also be helpful to graphically illustrate how these elements fit together. To address increasing ambition over time, inclusion of the requirement for iterative processes for all State Parties, the need for progression of ambition in national action plans, global stocktakes which inform the level of ambition in the next round of national plans, and common timeframes for reporting and next round of national actions plans should be considered as critical elements.

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## IUCN BRIEFINGS FOR NEGOTIATORS Plastic Treaty INC-2 Session

### BRIEFING 4 of 6: Just Transition and the Plastic Pollution Treaty

#### Key messages:

The Plastic Pollution Treaty's scope, as articulated by United Nations Environment Assembly (UNEA) resolution 5/14, includes the circular economy and elements of the plastic life-cycle as vital elements for addressing plastic pollution and production. The fundamental connections between the circular economy, plastic life-cycle and global efforts to address plastic pollution were affirmed by States and stakeholders throughout the INC-1 discussions. At the same time, a number of States and stakeholders expressly referenced the need to include just transition as part of the Plastic Pollution Treaty during INC-1. In the plastics context, the transition away from plastic production as well as plastic-intensive industries and the informal sector can be seen as essential yet also carries with it the potential to cause unemployment and poverty. Just transition could offer a bridge through which to address the immediate issues of job loss as well as underlying socio-economic barriers and achieve synergies with other treaty systems. This should be done by including just transition terms in the core measures of the Plastic Pollution Treaty, the governance system adopted for the Treaty, and the amendments, annexes or protocols adopted depending on the structural choice made for the Treaty.

#### 1. Basic background on Just Transition

Just transition is most often equated with labour rights movements. This is with good reason, since the origins of just transition philosophies are firmly rooted in union efforts to counter impacts of coal mine closures in the United States during the 1980s and 1990s. From that point onward, just transition has spread and moved beyond one country or industry. While it is still tied to the coal sector, it has been diversified to include fossil fuels generally, and to balance efforts at transitioning away from high-carbon fuels. Just transition is a larger concept, however, and can be translated across a variety of sectors and issue areas with thorough legal and regulatory measures.

#### 2. Just Transition in the plastics life-cycle and circular economy

**What?** In the plastics context, the transition away from plastic production as well as plastic-intensive industries and the informal sector can be seen as essential yet also carries with it the potential to cause unemployment and poverty. A number of States and stakeholders expressly referenced the need to include just transition as part of the Plastic Pollution Treaty during INC-1. As has been seen in efforts to transition away from coal and fossil fuel extraction sectors due to climate change law, transitions must be done carefully and inclusively.

**How?** A just transition in the context of the plastics life-cycle and circular economy will depend on the national or sub-national setting in which it occurs but also will require international law to guide and oversee full implementation.

Based on experiences with transitions in other industries, it has become clear that legal and regulatory efforts should focus on not only the individuals losing their jobs but also their families and communities since there are impacts across these layers. In the plastics context, this will be particularly critical for those engaged in the informal economy, such as waste pickers, who are often at the margins of society to begin with and frequently are women, children, the extreme poor or Indigenous peoples. Thus, they already face structural barriers to education, career choice and career advancement without the added stress of transitioning to another sector or job. To address this, the Plastic Pollution Treaty could include wide-ranging provisions for coordination with and







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 also emerged in the first stages of the Plastic Pollution Treaty negotiations.

In General Comment 23 on the right to just and favourable conditions of work (2016), the CESCR notes that the scope of covered work under the ICESCR has evolved to include the informal sector as well as those who are self-employed. The informal sector is critical to many aspects of the plastics life-cycle and, as highlighted by States and stakeholders during INC-1, it is vital that the workers in this sector be included in the terms of the Plastic Pollution Treaty.

- Convention on the Rights of the Child (CRC) – including the right to life, the right to health, the right to food, incorporation of the evolving capacities and best interests of the child standard in all aspects of law and policy that affect them, the rights to involvement in legislative and other decision-making, and protections from exploitative working conditions. Children and future generations have an integral link with the outcomes of the Plastic Pollution Treaty from a health and human rights perspective, including those working in the informal sector and facing increased risks of potential harm as a result.

While still in draft form, Draft General Comment 26 on children's rights and the environment with a special focus on climate change emphasises that pollution and waste have contributed to and exacerbated climate change, as well as the impacts of pollution on all aspects of children's lives and experiences. It places an emphasis on the concerns of future generations in this context, noting that there are intragenerational and intergenerational effects that can take several generations to manifest. Critically, it highlights the ways which pollution and environmental degradation can impact all aspects of the child's right to health. Additionally, the General Comment highlights the particular impacts of environmental damage and pollution on Indigenous children, including through efforts to implement adaptation and mitigation at the national level.

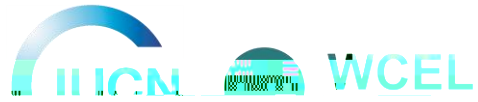
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – including multiple elements of non-discrimination rights, the right to life, labour and employment rights, rights to participation in public life, the economy and family life, and the right to health.

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 and national laws. Given the connections between plastic pollution of the seas and in the agricultural sectors, these are critical considerations for the Plastic Pollution Treaty as well.

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) – including rights to be implemented free from racial discrimination in housing, working rights and employment, payment, and the right to health and medical care.
- Convention on the Rights of Persons with Disabilities (CRPD) – including the right to life, participation and non-

disabilities, the rights of children with disabilities, the right to adequate standards of living, and State obligations during times of risk and emergencies.

- International Labour Organization Convention 182 - Worst Forms of Child Labour Convention – including forms of employment and activities that are likely to cause harms to the health and safety of children as a one of the worst forms of child labour within the covered definition of the Convention.
- International Labour Organization Convention 169 – Indigenous and Tribal Peoples Convention – including requirements that in State Parties “special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.” This is further reflected in terms relating to the nexus between Indigenous community rights and interests in land as being critical from a cultural, environmental and economic perspective, as well as the obligations of State Parties to recognise and protect Indigenous ownership and forms of ownership. Protection obligations are also established on the part of States in regard to traditional forms of occupation and subsistence, including fishing and agricultural practices. Given the repeated emphasis by States and stakeholders at INC-1 on the impacts of plastic pollution on Indigenous communities and the need to incorporate traditional knowledge as part of the Plastic Pollution Treaty, the terms of Convention 169 serve a critical point of regime overlap.
- United Nations Declarations on the Rights of Indigenous Peoples – including 420068207 (t) and natural resource rights recognitions for Indigenous peoples and communities, requirements for consultation and free, prior and informed consent. Given the repeated emphasis by States and stakeholders at INC-1 on the impacts of plastic pollution on Indigenous communities and the need to incorporate traditional knowledge as part of the Plastic Pollution Treaty, the terms of UNDRIP serve a critical point of regime overlap.
- United Nations General Assembly Resolution on the Right to a Clean, Healthy and Sustainable Environment (2021)48(un)3(i)15(t)-4(i)5(es )8(an)3(d t)-7(he)14( )-4(ne)3(ed)3( )6(t)-4(o in(



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



will expand and change, requiring flexibility in legal and regulatory responses. Principles used include equity, precaution, future generations protection and sustainable development.

The Paris Agreement includes just transitions, food security, human rights, Indigenous communities and local communities, gender equity and the rights of children and future generations. It establishes Nationally Determined Contribution reporting requirements, which could represent areas of significant overlap with National Action Plans in the plastics context. Similar overlaps and potential for complementarity are provided for in terms of mitigation and adaptation, as well as loss and damage, capacity-building, and transparency framework.

Recent decisions from COP 27 (2022) have focused on the expansion of just transitions and highlighting of intersections between UNFCCC and other treaty regimes for achieving this, the connections with the Sustainable Development Goals, creation of increased goals for global levels of adaptation, recognition of impacts of climate change on agriculture, soil health and food security along with cross-connections to Sustainable Development Goals and biodiversity issues, and financing for loss and damage with a focus on climate vulnerable States.

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

- United Nations Convention on Biological Diversity (CBD) & Protocols – including the importance of biodiversity to the global environment, and damage to biodiversity as a threat to humankind. The CBD's terms and functioning directly connect with the understanding that the science of biodiversity loss and conservation will expand and change, requiring flexibility in legal and regulatory responses. Principles used include equity, future 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.

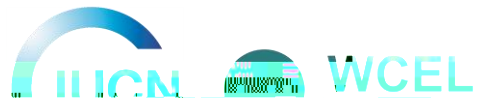
**How?** In recognition of the many forms of **environmental impact assessment agreements** that are fundamentally connected to plastic pollution and its impacts, the negotiations should examine regime interactions, including terms relating to access to information, public participation, free, prior 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 information sharing. Specific treaty regimes of relevance:

- Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazu Convention) – including specific obligations for State Parties to include access to justice elements in law and policy regarding environmental protection and environmental matters, with a special focus on human rights defenders in terms of access to information as well as protection from harm. During the INC-1 statements, many Escazu Convention State Parties emphasised the connections between efforts to combat plastic pollution and the terms of the Convention.
- Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) – including obligations for notification and consultation between States where there is an expected transboundary impact as well as mechanisms through which this is to be achieved and the results are to be communicated.

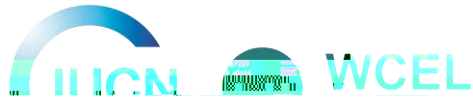








- UNESCO Declaration on the Responsibilities of the Present Generations Toward Future Generations – including the interlinkages between environmental health and protection and the rights of future generations, including the need to “ensure that future generations are not exposed to pollution which m generations ar



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**BRIEFING 6 of 6: Circular Economy and Plastic Life-Cycle Issues**

**Key messages:**

The Plastic Pollution Treaty's scope, as articulated by United Nations Environment Assembly (UNEA) resolution 5/14, includes the circular economy and elements of the plastic life-cycle as vital elements for addressing plastic pollution and production. The fundamental connections between the circular economy, plastic life-cycle and global efforts to address plastic pollution were affirmed by States and stakeholders throughout the INC-1 discussions. To address these issues, the Plastic Pollution Treaty should consider the value of explicit and implicit inclusion of circular economy provisions so as to addr





