

# Embedding the right to health within international negotiations on plastics

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## Abstract

Today, plastics are ubiquitous. They are found in almost every corner of life, including food packaging, medical equipment, and the clothes we wear. We know that plastics have the potential to impact numerous human rights, including the right to health. As a response to both the scale of the plastic production as well as the wealth problems caused by plastics pollution, in March 2022, the United Nations Environment Assembly (UNEA) adopted [resolution 15/4](#), “End plastic pollution: Towards an international legally binding instrument.” Next week, from 29th May to 2nd June 2023, the [international negotiating committee](#) (INC) will meet for its second session (INC-2), to [continue discussions](#) on developing this international instrument, which is also tasked to deal with plastic pollution in the marine environment. This policy brief outlines both State obligations owed in respect of the right to health in relation to plastics as well as key messages to negotiators in the ongoing negotiations on a legally binding international instrument for plastics pollution.

## Introduction:

Despite certain knowledge gaps, we know that every stage of the plastics life cycle presents a broad range of risks to human health. Extraction and processing of raw materials for plastic production



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## Key messages to plastics negotiators:

- Create new obligations under the instrument to advance scientific knowledge on the links between plastics and the right to health.
- Create obligations under the instrument to address discrimination, require dis-aggregated data and prioritise the needs of the most vulnerable.
- Ensure public participation, both in negotiations and in implementation of the instrument.
- Include obligations under the instrument in respect of restorative measures and also include provisions on business due diligence.

exposes both workers and adjacent communities to a cocktail of harmful chemicals, through direct contact in addition to exposure to contaminated air, soil and water. Consumers are exposed to plastics through an array of products, including cosmetics, food packaging and fabrics. Additionally, the disposal stage of the plastics life cycle generates harmful waste through incineration, and fuels contamination and degradation of the marine and terrestrial environment, with knock-on health risks through ingestion, inhalation and skin-contact.

Plastics therefore have clear potential to constrain the enjoyment of numerous human rights under international law. In this policy brief, we focus on the interactions between plastics and the right to health. Plastics may undermine rights holders' access to a range of underlying determinants of health, including adequate food, potable water, safe housing, and healthy natural and workplace environments. In this brief, we draw on learnings from a [recent chapter on 'Plastics and the Right to Health'](#) we submitted to the Edward Elgar Research Handbook on Plastics being edited by Elizabeth Kirk, Naporn Popattanacha and Eva Van Der Marel, with a view to setting out the obligations owed by States under the right to health when it comes to plastics. We then conclude with a set of recommendations in respect of what State obligations under the right to health mean for the ongoing

UNEP negotiations for a legally binding international instrument on plastics pollution, including the marine environment.

## State obligations

### 1. Cooperate

States must cooperate internationally to tackle the plastics crisis ([International Covenant on Economic, Social and Cultural Rights](#), art 2 (1)). The State obligation to cooperate and to provide assistance is common to all economic, social, and cultural (ESC) rights. The [Global South suffers a disproportionate burden from global plastic use patterns](#), due, amongst other things, to economic factors like [global plastic waste trade networks](#), in addition to natural forces. Therefore, international cooperation — including technology transfer, knowledge sharing and pooling of resources (financial, technical and otherwise) — must play a central role in tackling the plastics crisis, and thus advancing universal achievement of the right to health (see [ESCR Committee, General Comment No 3](#), para 14). This should include the provision of assistance from the Global North to the Global South to address harms already caused by plastic waste trade networks to date, in addition to actions to reduce the future flow of plastic waste to the Global South. In accordance with the right to science, research on plastics must also involve collaboration and cooperation to avoid “deep international disparities among countries in science and technology” (see [General Comment No 25 \(2020\)](#) para 79).

### 2. Make a plan

Second, while the right to health may be realised progressively over time (like all ESC rights), States are nonetheless under an immediate obligation to “take steps” towards this end ([International Covenant on Economic, Social and Cultural Rights](#), art 2 (1)). In the context of the right to health, this has been interpreted as an immediate obligation on States to develop plans for how they will fully realise the right ([Tobin](#), p 177).



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### 3. Ensure non-discrimination in the enjoyment of the right to health

States are under an explicit obligation ([International Covenant on Economic, Social and Cultural Rights](#), arts 2(2) and 3) to combat discrimination in the enjoyment of the right to health ([General Comment No. 14](#)), including of course by addressing disparities driven by the plastics life cycle. There is clear scope for plastics to impose a disproportionate burden on the health of several distinct groups, such as in respect of women and children who face elevated health risks from exposure to endocrine disrupting chemicals and frontline communities to industrial facilities and workers in the plastics industry who also are disproportionately impacted. The types of remedial action that discriminatory outcomes may require will vary. However, it seems axiomatic that at least two actions apply universally; first, States must advance research into the health impacts of plastics disaggregated by different societal groups, to develop a stronger understanding of potential for discrimination and to facilitate appropriate corrective action ([United Nations Human Rights Council](#), para 43); and second, States must ensure informed public participation in decision-making processes across the plastics life cycle so as to enable vulnerable and traditionally marginalised groups to make their perspectives heard, and facilitate access to remedies in the event of discrimination ([General Comment No. 14](#), para 54).

### 4. Develop scientific research into the health impacts of the plastics life cycle

The need for comprehensive and disaggregated research into the health impacts of plastics, gives rise to a State obligation to develop scientific research into the impacts of plastics on health. While this obligation to develop research is not rooted explicitly in the text of human rights treaties, it is a logical prerequisite to enable states to fulfil their well-established obligations to respect, protect and fulfil all human rights, including the right to health ([General Comment No. 14](#), para 33). Both the depth of global knowledge on plastic-health interactions and the rate at which such research is being conducted continues to ramp up, there are admittedly still knowledge gaps. However, these should not be used as an excuse for inaction. The precautionary principle prescribes that where there is a threat of serious or irreversible harm, lack of scientific certainty shall not be used as a reason for postponing appropriate

responsive measures ([Rio Declaration, Principle 15](#)). To the extent possible and in line with the planning obligation considered above, States should also cooperate internationally, regionally, and nationally to harmonise, prioritise and focus research agendas for maximum impact, and to minimise duplication of effort. In respect of the convening of research agendas, particular effort should be put into avoiding the perpetuation of existing inequalities, including Global North/South inequalities which are prevalent in this domain.

## 5. Facilitate public participation in decision-making processes across the complete plastics life cycle

States should prioritise the facilitation of public participation in decision-making processes across the complete plastics life cycle — not just for individuals experiencing discrimination, but for all rights holders whose enjoyment of the right to health may be impacted by plastics (see [UNGA](#), paras 81 - 87). As stated by the ESCR Committee, access to health-related information and participation in health-related decision making are underlying determinants of the right to health that States must facilitate ([General Comment No. 14](#), para 11). Participation is also implicit in the obligations to ensure non-discrimination, and to respect, protect and fulfil the right to health ([International Covenant on Economic, Social and Cultural Rights](#), arts 2(2) and 3).

## 6. Reduce the impacts of the plastics life cycle on environmental health and workplace hygiene

States are also obligated to take substantive action to protect natural and workplace environmental health from the harmful impacts of the plastics life cycle, as necessary to protect human health. Logically, this obligation will require States to pursue several distinct courses of action that collectively reduce the threats that plastics present to environmental health. Paramount amongst these, States must develop a plan to harmonise and focus their efforts, with



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a view to realising the right to health as efficiently and effectively as possible ([General Comment No. 14](#), para 32). Moreover, considering that the majority of plastic production and disposal processes are conducted by private sector actors, logically States must introduce comprehensive regulatory frameworks at an international, regional and national level, informed by science and extensive public participation and embodying the precautionary principle, that impose appropriate controls on each stage of the plastics life cycle ([UNGA](#) paras 11 and 110(k)(v)). The question of what constitutes an appropriate level of protection should be determined by the best available science, with particular consideration of the heightened risks faced by vulnerable groups, such as women, children and workers. However, considering the volume of plastic pollution and environmental contamination that has already occurred, State action that seeks simply to prevent additional future harm from the plastics life cycle would be insufficient to adequately protect enjoyment of the right to health, without also taking action to rectify environmental harm that has already occurred. Therefore, State actions in pursuit of the right to health must also include restorative measures to combat existing pollution of the air, and terrestrial and aquatic environments.

## Key takeaways for an international instrument on plastics

Having considered the interactions between the right to health and plastics, as well as State obligations therein, we also need to interrogate how human rights may inform the development of a legally binding international instrument on plastics pollution including the marine environment.



Photo: Screenshot, The Menace of Ocean Plastics film

## Develop scientific knowledge

To fully realise the right to health, the development of scientific knowledge should prioritise research on health risks from plastics, to allow for targeted and effective policy development in this area. More generally, information on the human rights implications of the plastics life cycle is vital to the exercise of a myriad of human rights and should be available to all, regardless of nationality or domicile ([UNGA](#), paras 80 to 83). Without adequate information, rights holders simply cannot ensure the ability to exercise their rights as, for example, access to remedy is difficult (if not impossible) in the absence of information ([UNGA](#), para 80). More generally, and as explored above, research should also involve cooperation and collaboration so as to avoid the perpetuation of existing inequalities and ensure that research agendas do not merely follow the priorities of the Global North. Accordingly, information is vital to ensure meaningful participation within the development of initiatives on plastics, including of course the international legally binding instrument on plastics pollution. While research '[on the adverse effects of plastic and plastics pollution on human health](#)' has been noted as a possible option for the instrument (see [here](#)), research initiatives must also facilitate meaningful participation and be mindful of existing global disparities.

## Eradicate Discrimination, ensure meaningful public participation, prioritise the needs of the most vulnerable and remediate damage

An approach centred on the right to health should also seek to eradicate discrimination in the enjoyment of this right. Actualising this through an international instrument would require, among other things, the development of research and information programmes that not only disaggregate health impacts by societal groups, but that also prioritise research into impacts on vulnerable and traditionally marginalised groups. Public participation and transparency should accompany any such prioritisation exercise, and more generally, a human rights-based approach to the development of an international instrument on plastics should offer



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the opportunity for meaningful participation as well as transparency in both the development and implementation of such an agreement with the negotiations on the Escazú Agreement an example of good practice in this regard (see [UNGA](#)).

Perhaps the single most effective way to realise the right to health within a global treaty on plastics would be to impose an outright ban on plastics. This would clearly align with the need identified above to reduce the impacts of plastics on environmental health and workplace hygiene to realise the right to health within the context of the plastics issue. At present, however, there are no scalable, market-ready replacements for all end uses of plastics, though there are of course some substitutes available for certain uses of plastics ([Raubenheimer and Urho, 2020](#)).

Accordingly, a phased approach to any such ban, taking into account, for example, the composition of certain plastics or indeed their end uses (see [Kirk, 2020](#)) – with particular attention given to rights holders such as persons with disabilities who may, for example, have particular reliance upon certain single use plastics – could potentially align with the right to health. This would be the case if both the health risks (both known and suspected) as well as the health benefits of certain plastics including those used in the production of PPE and other socioeconomic considerations, as well as global inequities – bearing in mind the indivisibility of human rights – drove such a process. A number of options are likely to be considered at the INC-2 with respect to, '[banning, phasing out and/or reducing the production, consumption and use of chemicals and polymers of concern](#)' and it is important that any obligations are carefully balanced from a human rights perspective. However, at the same time, obligations in this domain should not be diluted such that they are best endeavour, voluntary measures.



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Ultimately, the UNEA Resolution recognises that existing plastics pollution must be dealt with, noting the need “to promote national and international cooperative measures to reduce plastic pollution in the marine environment, including existing pollution” ([UNEA](#), para 3(c)). INC-2 is likely to consider a number of options for ‘[addressing existing plastics pollution](#)’. Clearly, a targeted — and international — approach to clean up, that prioritises the needs of the most vulnerable, is required to realise State obligations under international human rights law, as well as the right to health more specifically. State actions in pursuit of the right to health must include restorative measures to combat existing pollution of the air, and terrestrial and aquatic environment, and this should be promoted via any international instrument, with technical and financial support as appropriate.

In addition, any such international instrument should also aim to promote the adoption by business of human rights policies, including via due diligence obligations, and should facilitate business compliance with the Guiding Principles on Business and Human Rights (see [UNGA](#), p 20). As advocated by the UN Special Rapporteur on Toxics and Human Rights, a human rights based approach would also require plastics and associated chemical producers be held accountable for past damage, such as via remediation and/or compensation, thereby emphasising the need to involve the private sector in any such process (see [UNGA](#), para 108). While the INC-2 is likely to consider [remediation as a possible option for the international instrument](#), the private sector must be held accountable for past damage, with the UN Guiding Principles on Business and Human Rights given appropriate due regard.

## Key messages to negotiators

**Create new obligations under the instrument to advance scientific knowledge on the links between plastics and the right to health** - Without adequate information, rights holders simply cannot ensure the ability to exercise their rights as, for example, access to remedy is difficult (if not impossible) in the absence of information.

**Create obligations under the instrument to address discrimination, require disaggregated data and prioritise the needs of the most vulnerable** - An approach centred on the right to health should seek to eradicate discrimination in the enjoyment of this right, requiring the development of research and information programmes that not only disaggregate health impacts by societal groups, but that also prioritise research into impacts on vulnerable and traditionally marginalised groups.

**Ensure public participation, both in negotiations and in implementation of the instrument** - A human rights-based approach to the development of a plastics treaty should offer the opportunity for meaningful participation as well as transparency in both the development and implementation of such an agreement with the negotiations on the Escazú Agreement an example of good practice in this regard.

**Include obligations under the instrument in respect of restorative measures and also include provisions on business due diligence** - State actions in pursuit of the right to health must include restorative measures to combat existing pollution of the air, and terrestrial and aquatic environments. In addition, any such international instrument should also aim to promote the adoption by business of human rights policies, including via due diligence obligations, and should facilitate business compliance with the Guiding Principles on Business and Human Rights.



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