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PLASTICS, HUMAN RIGHTS, AND BUSINESS RESPONSIBILITIES

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OVERVIEW:

Plastic pollution is a major threat to human health, marine life, and coastal ecosystems in the East Asian Seas Region. The protection of the environment is key to human well-being and the effective enjoyment of human rights is dependent upon healthy ecosystems and biodiversity. Each stage of the plastics lifecycle negatively impacts the enjoyment of human rights, with the most disadvantaged segments of East Asian society bearing a disproportionate burden of environmental harms. Those most vulnerable include rural and coastal communities and the urban poor, women, children, ethnic minorities, people with disabilities, and other marginalized groups including informal workers engaged in plastics waste management.¹

A human rights-based approach informed by international human rights law to prevent and manage plastic pollution at each stage of the plastics lifecycle can build the capacity of those with the power to act responsibly in the face of the plastics challenge—governments and businesses. At the same time, a human rights-based approach can further serve to empower people most impacted by plastic harms by helping them identify and exercise their human rights under norms and principles of international human rights law. This issue brief provides an overview of a human rights-based approach to plastic pollution informed by international human rights law at each stage of the plastics lifecycle and illustrates what must be done to protect the interests of rights holders while ensuring that duty bearers are held accountable.

RIGHTS HOLDERS:

The human right to a clean, healthy and sustainable environment was endorsed by the UN Human Rights Council in October 2021 and the UN General Assembly in July 2022.² Substantively, the right guarantees access to clean air, a safe climate, clean water, healthy ecosystems and biodiversity, healthy food, and non-toxic places.³ The procedural components include requirements for prevention, prior assessment, precaution, public participation, access to information and science, and access to justice.⁴ The right has a cross-cutting guarantee of equity and non-discrimination, centering groups and individuals who are disproportionately affected by environmental harms such as: Indigenous, tribal, and traditional peoples; rural and coastal communities; women and gender-diverse persons; ethnic, racial and other minorities; persons living in poverty; the disabled; formal and informal workers; and children and future generations.



1 UNEP & COBSEA, “A human rights-based approach to preventing plastic pollution, issue brief” (2019), online: https://www.sea-circular.org/wp-content/uploads/2020/03/UNEP-COBSEA-SEA-circular_Issue-Brief-02_A-human-rights-based-approach-to-preventing-plastic-pollution.pdf; OHCHR, Special Rapporteur on Toxic Substances and Human rights, The stages of the Plastics Cycle and Their Impacts on Human Rights, 2021, A/76/207, online: <https://digitallibrary.un.org/record/3936771?ln=en> [Plastics Cycle].

2 UNGA, Resolution adopted by the Human Rights Council on 8 October 2021, “The human right to a clean, healthy and sustainable environment” A/HRC/RES/48/13, online: <https://digitallibrary.un.org/record/3945636?ln=en>; UNGA, Resolution adopted by the General Assembly on 28 July 2022, A/RES/76/300, online: <https://digitallibrary.un.org/record/3983329?ln=en>

3 OHCHR, “The Right to a safe, clean, healthy, and sustainable environment: Factsheet”, online: <https://www.ohchr.org/sites/default/files/2022-05/Recognition-Factsheet-FINAL.pdf>

4 OHCHR, Special Rapporteur on the Issues of Human Rights and the Environment, Framework Principles on Human Rights and the Environment, 2018, A/HRC/37/59. User friendly version online: <https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf> [Framework Principles]; Plastics Cycle (n1).

DUTY BEARERS:

While states are the primary duty bearers under international human rights law, the Universal Declaration on Human Rights contemplates that “every individual and every organ of society” has an obligation to “strive by teaching and education to promote respect for these rights and freedoms, and by progressive measures, national and international, to secure their universal and effective recognition and observance.”⁵ Since 2011, the understanding that business enterprises are duty bearers with a responsibility to respect human rights going beyond compliance with domestic state law has become widely accepted as a result of the endorsement of the United Nations Guiding Principles on Business and Human Rights (UNGPs) by the UN Human Rights Council.⁶ The UNGPs have been integrated into key responsible business conduct (RBC) guidance instruments such as the UN Global Compact, the work of the International Labour Organization, and the OECD Guidelines for Multinational Enterprises, and inform the OECD’s risk based due diligence approach,⁷ including in relation to environmental challenges and circular economy solutions.⁸

THE UNGPS

The UNGPs do not create new international law, but rather elaborate upon the implications of existing international law and standards for both states and businesses. They are comprised of three interdependent pillars that together form a system of measures designed to prevent and remedy human rights impacts: (1) the state duty to protect against human rights abuses by business enterprises; (2) the corporate responsibility to respect human rights; and (3) the need for greater access to effective remedy for victims. While the state duty to protect reflects the core of international human rights law, the business responsibility to respect reflects social expectations. Access to remedy is essential for rights to be meaningful. State-owned enterprises have a heightened responsibility to respect human rights.



THE WORKING GROUP ON BUSINESS AND HUMAN RIGHTS (WGBHR)

The UN Human Rights Council created the WGBHR in 2011 to assist with the promotion and implementation of the UNGPs. The WGBHR has produced numerous reports and guidance that clarify the duties of states and responsibilities of businesses in several areas of importance to a human rights-based approach to the plastics problem. These include clarification on the gender dimensions of the UNGPs,⁹ the connection between BHR and anti-corruption,¹⁰ guidance for ensuring respect for human rights defenders,¹¹ and guidance for states seeking to develop National Action Plans (NAPs) on BHR.¹²

⁵ Universal Declaration of Human Rights (art. 1), adopted by General Assembly resolution 217 A (III) (10 December 1948).

⁶ United Nations Guiding Principles on Business and Human Rights, A/HRC/17/31 (Annex), online: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁷ OECD, “OECD Due Diligence Guidance for Responsible Business Conduct”, online: <https://mneguidelines.oecd.org/Flyer-RBC-Due-Diligence.pdf>. To learn more about the OECD risk-based due diligence, see OECD, e-learning Academy on Responsible Business Conduct, online: <https://mneguidelines.oecd.org/oecd-e-learning-academy-on-responsible-business-conduct.htm>

⁸ OECD (2021), The role of OECD instruments on responsible business conduct in progressing environmental objectives, <https://mneguidelines.oecd.org/The-role-of-OECD-instruments-on-responsible-business-conduct-in-progressing-environmental-objectives.pdf>

⁹ UNWGBHR, Gender dimensions of the Guiding Principles on Business and Human Rights, A/HRC/41/43 (23 May 2019), https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/41/43.

¹⁰ UNWGBHR, Connecting Business and Human Rights and the Anti-corruption Agendas, A/HRC/44/43 (17 June 2020), online: <https://digitallibrary.un.org/record/3889182?ln=en>.

¹¹ UNWGBHR, Guidance on Ensuring Respect for Human Rights Defenders, (2021) A/HRC/47/39/Add.2, online: <https://digitallibrary.un.org/record/3929918?ln=en>.

¹² UNWGBHR, Guidance on national Action Plans on Business and Human Rights, (2016) online: https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf. To ensure policy coherence, this guidance can help to ensure that the development of state plastics action plans and BHR action plans align and are mutually supportive.

UNITED NATIONS SPECIAL RAPPORTEURS

UN Special Rapporteurs are independent experts appointed by the UN Human Rights Council with mandates to clarify the application of international human rights law to specific substantive areas. The reports of the Special Rapporteur on human rights and the environment¹³ and the Special Rapporteur on toxic substances and human rights¹⁴ are of particular relevance to the plastics challenge.

SUMMARY:

Both businesses and states are human rights duty bearers. The business responsibility to respect human rights, including all aspects of the right to a clean, healthy and sustainable environment, applies at each stage of the plastics lifecycle.



CONCRETE ACTIONS FOR BUSINESSES TO UPHOLD THE RESPECT PILLAR OF THE UNGPS

The responsibility of business enterprises to respect human rights requires:

1. the adoption of a policy commitment to respect human rights;
2. the exercise of human rights due diligence to:
 - i. identify and assess actual and potential human rights risks
 - ii. prevent and mitigate identified adverse impacts
 - iii. track the effectiveness of responses over time, and
 - iv. communicate to account for how actions taken address impacts; and
3. enabling access to remedy for adverse human rights impacts caused or contributed to by business operations.

THE PLASTICS LIFECYCLE: AN ENDURING RESPONSIBILITY

Plastics can be traced through a lifecycle with five distinct stages:

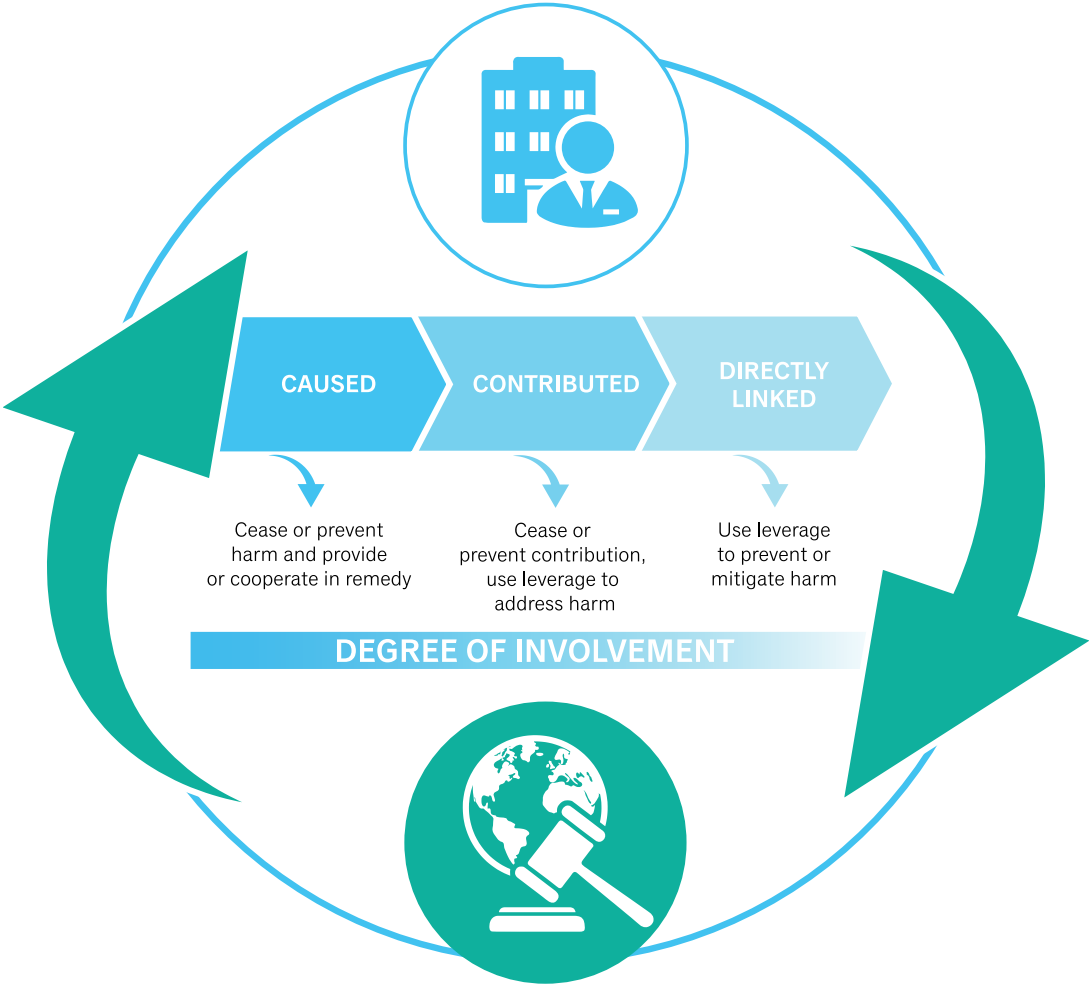
1. the **extraction** of fossil fuels;
2. the **production** of the plastic products from the extracted fossil fuels;
3. the **transportation** of those plastics products;
4. the **use** of plastic products, including packaging, and corresponding **generation of plastic waste**; and
5. the **management** of plastic waste including efforts to collect, sort, reuse or recycle. Or alternatively, the **disposal** of plastic waste including placement in landfills, dumping, leaking into nature, and incineration.¹⁵

¹³ <https://www.ohchr.org/en/special-procedures/sr-environment>

¹⁴ <https://www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights>

¹⁵ Plastics Cycle (n1).

Plastics can have a negative impact on human rights at each stage of their lifecycle. It is essential for duty bearers to understand that when they participate in the lifecycle of plastics, their impacts on human rights extend beyond their stage of intervention. For example, a fossil fuel extraction company may negatively impact the human rights of communities adjacent to the extraction site and thus would have a responsibility to mitigate and address these human rights impacts. However, their impacts on human rights (and thus their responsibility to respect human rights) do not end there as they are indirectly responsible for each subsequent stage of the plastics lifecycle (i.e. if the fossil fuels were not extracted the plastic would not have been produced, transported, used, or disposed). Likewise, businesses operating at the middle or end of the plastics lifecycle impact human rights beyond their immediate actions by creating a need for the production of virgin plastics (i.e. a waste incineration company creates demand for more virgin plastics by diverting plastic away from recycling).



The remainder of this issue brief will explore opportunities for businesses at each stage of the plastics lifecycle to fulfill their responsibility to respect human rights. The degree of responsibility each business bears is dependent upon their degree of involvement in human rights impacts including the amount of leverage they hold in supply and value chain relationships.

1. EXTRACTION

The extraction and refinement of raw materials for virgin plastics production is the first stage of the plastics cycle. Currently, approximately 99% of plastics are produced from fossil fuels.¹⁶ Fossil fuel extraction affects a wide range of human rights, from local and Indigenous community land rights to chemical contamination of waters, lands, and ecosystems, to worker and community health and safety. Fossil fuel extraction for plastic production also aggravates air pollution and the impact of climate crisis on the enjoyment of human rights.

A human rights approach to the plastics crisis informed by the right to a clean, healthy and sustainable environment necessitates a move away from plastics derived from fossil fuels and towards a chemical-free circular economy. It also brings into focus the need for responsible businesses to support the work of environmental human rights defenders who oppose fossil fuel extraction, as allies in the fight against plastic pollution.

2. PRODUCTION

In 2019 the top 100 largest polymer producers accounted for over 90% of the single use plastics generated, yet only 2% of polymers were produced following a circular model. At the same time, twenty institutional asset managers held hundreds of billions of dollars of shares in their parent companies.¹⁷ These large multinational polymer producers, and their financiers, bear a heavy responsibility to transition away from fossil-fuel-based polymers and to embrace circularity.

The implementation of Extended Producer Responsibility (EPR) schemes is a key tool for ensuring producers assume financial responsibility for the lifecycle of their products.¹⁸ Re-investing profits into research and development is also essential to allow for a just and equitable transition from plastics to more environmentally and human rights friendly alternatives, guided by principles of prevention, precaution, and prior assessment.¹⁹ At the same time, supporting workers to exercise rights to healthy and safe working and living conditions for themselves, their families, and the environment is essential for the prevention of harm from toxic substances used and emitted in plastics production.²⁰ Providing access to information about hazardous chemicals for workers and communities is also vital to enable meaningful access to remedies in the event of harm.

The adoption of a human rights due diligence approach to product design is an important tool for transition away from harmful plastics.



¹⁶ Plastics Cycle (n1) at 5.

¹⁷ Minderoo Foundation, "The Plastic Waste Makers Index: Revealing the Source of the Single-use Plastics Crisis" (2021), online: <https://cdn.minderoo.org/content/uploads/2021/05/27094234/20211105-Plastic-Waste-Makers-Index.pdf> at 12.

¹⁸ See: WWF Philippines, "EPR Scheme Assessment for Plastic Packaging Waste in the Philippines" (2020) online: https://wwf.org.ph/wp-content/uploads/2020/12/WWF_REPORT_EPR_Philippines_2020.pdf.

¹⁹ On just transition and the role of workers, see ILO, Guidelines for a Just Transition towards Environmentally Sustainable Economies and Societies for All, (2016), online: https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf

²⁰ OHCHR, Special Rapporteur on Toxic Substances and Human rights, Principles on human rights and the protection of workers from exposure to toxic substances, 2019, A/HRC/42/41, online: <http://www.undocs.org/A/HRC/42/41> See further <https://www.ohchr.org/EN/Issues/Environment/SRToxicSandHumanRights/Pages/PrincipalsProtectionofWorkers.aspx>

3. USE

Consumers are exposed to toxic additives in plastics as part of daily contact whether in plastic packaging or products themselves, with microplastics ingested in drinking water and food while others are absorbed through the skin or by breathing contaminated air.²¹ These disproportionately impact vulnerable groups including children. A significant problem is the purchasing and use of packaging, constituting 42% of plastic waste. This is a crucial site of intervention for businesses seeking to reduce their plastic output.²²

The purchasing of polymers from producers is done directly by other businesses, before products are passed to consumers for use. As such intermediary businesses have a responsibility to audit and reduce their plastic use where possible. Doing so will reduce not only the plastic waste that these businesses generate and the demand for the extraction of fossil fuels for the production of virgin plastics, but also human rights impacts of all stages of the plastics lifecycle. A key opportunity is at the design phase,²³ where plastics and toxic chemical use can be eliminated or reduced, and reuse and recycling enabled, or alternative materials built in. Product design should again be guided by principles of prevention, precaution and prior assessment, aware of the challenge of toxins in recycled plastics, as well as extended producer responsibility, reflecting the polluter pays principle. The right to access to information about plastics composition and additives used in products is essential for workers, consumers, and communities to be able to exercise their rights. The right to participate in decision-making about plastic use is also crucial, including where a lack of alternatives may disproportionately impact some marginalized groups.

4. TRANSPORTATION

The transportation of plastics occurs both before and after the use stage. Before use, accidents during transportation at sea has led to contamination of coastlines from release of plastic pellets and microplastics.²⁴ Transportation of plastic waste is an additional challenge relevant to Southeast Asia, as the region has historically been subjected to the world's highest rates of "recycled" plastic waste. While this reality has prompted many Southeast Asian countries to ban the importation of plastic waste, the illegal importation of plastic waste remains a problem.²⁵

Responsible businesses can play an important role in exposing corrupt businesses who continue to participate in illegal importation practices, through the act of whistleblowing.²⁶ Business respect for worker whistleblower protections, and community rights of participation and freedom of expression can enable an engaged public to challenge illegal importation and its human rights consequences.

21 Plastics Cycle (n1) at 6, 10.

22 OECD, "Global Plastics Outlook: Economic Drivers, Environmental Impacts and Policy Options" (2022), at 39, online: <https://doi.org/10.1787/de747aef-en>.

23 On circular economy and product design in sustainable sourcing, see WWF Indonesia and Indonesia Business Council for Sustainable Development, Sustainable Sourcing Guideline (Version 01-May 19, 2020) at 67-71.

24 Plastics Cycle (n1) at 6.

25 GAIA, "Discarded: Communities on the Frontlines of the Global Plastic Crisis" (2019), at 13, online: <https://www.no-burn.org/wp-content/uploads/Report-April-22.pdf>

26 Some countries have laws in place that encourage the whistle blowers to disclose corruption.

5. WASTE MANAGEMENT AND DISPOSAL

The waste management and disposal stages present significant challenges. As “only about 9 per cent of all plastic waste ever produced has been recycled,”²⁷ there are tremendous opportunities for those businesses that innovatively take on the recycling challenge responsibly, and related investment opportunities. EPR schemes engaging plastic producers often target the waste stage for their intervention, with the plastic producer investing in a program to collect and recycle the products they create.²⁸ EPR may be seen as a version of the polluter pays principle. However, current recycling practices may pose a risk to human rights to health, and without full information and assessment may further concentrate toxic additives in new products.²⁹ Respect for the rights of informal waste workers, often women, is crucial, including through the provision of protective gear, the gathering of gender-disaggregated data, and support to organize into workers’ associations.³⁰

While EPR schemes, especially those that meaningfully integrate business and community approaches to circular economy, have a key role to play in addressing the plastics challenge, recycling alone does not provide a full solution to the human rights impacts of plastics which arise at all stages of the plastics cycle.

Especially concerning is the dumping, leakage, and incineration of plastic wastes, which are associated with dangerous emissions of highly toxic substances into the air, water, and land, with associated health risks for vulnerable rural and coastal communities.³¹ Responsible business conduct requires respect for the rights of local communities to live in a clean, healthy, and sustainable environment and the need to address actions that cause or contribute to human rights harms through access to remedy.

The adoption of a human rights due diligence approach to waste management and disposal is an important tool for responsible plastics action.



27 Plastics Cycle (n1) at 24.

28 See: UNEP, COBSEA, & SEA Circular, “3R (Reduce, Reuse, Recycle) Initiatives: Solving Plastic Pollution at the Source” (2021), online: https://www.mbpj.gov.my/sites/default/files/pj_case_study_malaysia_under_sea_circular_project.pdf.

29 Plastics Cycle (n1) at 6-7, 21.

30 GA Circular, “The Role of Gender in Waste Management: Gender Perspectives on Waste Management in India, Indonesia, the Philippines and Vietnam” (2019) at 32-34, 52 & 57, online: <https://oceanconservancy.org/wp-content/uploads/2019/06/The-Role-of-Gender-in-Waste-Management.pdf>; UNEP, COBSEA, SEI, “Marine Plastic Litter in East Asian Seas: Gender, human rights and economic dimensions” (2019) at 7-8 & 23, online: https://www.sea-circular.org/wp-content/uploads/2019/11/SEI_SEA-circular-1.pdf.

31 Plastics Cycle (n1) at 7.

CONCLUSION

The negative human rights impacts of plastic pollution are international in scale, but human health, marine life and coastal ecosystems in the East Asian Seas region have been especially impacted by plastic. The brunt of these human rights impacts trickle-down at each stage of the plastic lifecycle from the initial extraction of fossil fuels to the disposal of plastic. These impacts also disproportionately affect vulnerable and marginalized groups in the East Asian Seas region.

The successful transition away from plastics and its human rights impacts can be facilitated if governments and businesses recognize and adhere to what are increasingly authoritative principles and norms of international human rights law, including the human right to a clean, healthy and sustainable environment and business responsibilities to respect human rights. Adherence to these principles by governments and businesses will help to shift away from harmful plastics and ultimately restore marine life, healthy coastal ecosystems and human health.

The SEA circular project Reducing marine litter by addressing the management of the plastic value chain in Southeast Asia is implemented by the UNEP Regional Office for Asia and the Pacific and the Coordinating Body on the Seas of East Asia (COBSEA), with funding support from the Government of Sweden. SEA circular aims to reduce and prevent plastic pollution and its impact by working with governments, businesses, civil society, academia and international partners. The initiative promotes market-based solutions and enabling policies to transform plastic value-chain management, strengthens the science base for informed decision making, creates outreach and raises awareness. The project leverages COBSEA's regional mechanism to tackle the transboundary challenge of marine litter in a harmonized manner.