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Business, Human Rights and the Environment in South-East Asia: Overcoming the Plastics Challenge

POLICY TRAINING RESOURCE

30 SEPTEMBER 2022

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TRAINING OVERVIEW

The trainings on *Business, Human Rights and the Environment: Overcoming the Plastics Challenge* are designed to build the capacity of actors in South-East Asia to support a human rights-based and gender equality approach to responsible business plastics action. The overarching aim of the trainings is to enable businesses and governments, as well as civil society, to become champions of human rights responsible plastics transition. This policy training resource is designed to be used in two different ways. It may serve as a ‘train the trainer’ resource, supporting those who deliver trainings. In addition, it may serve as a detailed supplement to the trainings for participants who seek additional learning. Supplementary materials designed to support the delivery of the trainings include a key issues brief, training slides for each module, handouts of the training slide decks for participants, checklists for participants as well as a supplementary toolbox of resources. There are also optional speaker and facilitator notes to accompany the training slides.

The trainings are designed with three different audiences in mind:

1. Businesses and industry associations
2. Governments (e.g. representatives of COBSEA national focal agencies)
3. Civil society actors (e.g. SEA circular project partners)

The trainings are informed by a theory of change according to which information sharing or knowledge awareness is the crucial first step. This includes awareness of the impact of human rights on each stage of the plastics cycle, knowledge of human rights frameworks for addressing environmental challenges including plastic pollution, and knowledge of business and human rights, and responsible business conduct tools that provide guidance on the duties of states and the responsibilities of business enterprises to respect human rights and respond effectively to environmental challenges such as plastic pollution. The trainings consist of 3 modules:

Module 1: The Human Rights Dimensions of the Plastics Crisis

Module 2: Plastics, Human Rights & the Environment (HR&E)

Module 3: Business & Human Rights (BHR) and Plastics

Each module is comprised of an introduction, sub-sections, a summary, and concludes with questions to consider designed to support engagement and further understanding. Case studies are integrated throughout along with reflective checklists to further deepen engagement with the training materials.

Module specific learning objectives and expectations are identified at the beginning of each module. The ideal overall expected length for the delivery of the training is 1 ½ - 2 hours, sub-divided as follows:

- Module 1: 20-30 minutes
- Module 2: 30-40 minutes
- Module 3: 40-50 minutes

It should be clearly communicated to participants that they will benefit the most if, after the trainings have been delivered, they undertake to further reflect on the application of the knowledge learned to the case studies provided with reference to the checklists for participants.

I. Module 1: The Human Rights Dimensions of the Plastics Crisis

A. Introduction and Learning Objectives

Module 1 begins by briefly introducing the global plastics crisis and its impact on people and the planet. The module then introduces a human rights-based approach to plastic pollution and waste, including the human right to a clean, healthy and sustainable environment, and the business responsibility to respect human rights. These will both be explored in greater detail in Modules 2 and 3. Module 1 then turns to the international law and policy context of the plastics crisis, before providing a more detailed consideration of the human rights impacts arising at each stage of the plastics cycle. The module concludes by briefly considering three interconnected domestic challenges: implementing circular economy approaches; supporting informal waste pickers; and countering illegal importation.

After completing this module, participants will be able to:

- **Identify** the different stages of the plastics lifecycle and explain the impacts of each stage on people and planet.
- **Summarize** the contributions of businesses to the plastics crisis, as well as impacts of the crisis on businesses.
- **List** a selection of international and domestic law and policy responses to the plastics crisis and describe their potential and limitations.
- **Summarize** the challenges and opportunities that circular economy approaches, informal waste-pickers, and illegal importation of plastic waste create for the implementation of human rights-based approaches to the plastics crisis.
- **Recognize** the components of a human rights-based approach including the right to a clean, healthy and sustainable environment, and the business responsibility to respect human rights.

B. Plastics Impacts on People and Planet

1. The Plastics Problem

The nature of the global plastics crisis has been the subject of many recent studies, including several led by the United Nations Environment Programme (UNEP).¹ Key features of the plastics crisis include the following facts:

1. Plastics are now ubiquitous across the earth. Estimates place around 75-199 million tons of plastic pollution within the earth's oceans alone. Shockingly, this number could triple by 2040 if no meaningful action is taken.
2. Plastic pollution poses serious risks to the health of humans and animals (especially marine animals). The wide presence of microplastics (plastics that originated as, or have degraded to, less than 2-5 mm in diameter) within the food chain creates a threat even to humans who otherwise do not use plastics.
3. There are significant economic costs associated with the plastics crisis including the negative effects on ocean reliant industries and the cost of clean-up for polluting businesses.
4. Less than 10 per cent of plastics are successfully recycled.
5. The main sources of marine litter are land based, as plastic originating from the land is washed into rivers which flow into the ocean.
6. Plastics result in significant greenhouse gas emissions as emissions occur during their production from fossil fuels and continue through their use and disposal.²

Taken together the issue of plastic pollution is “a major challenge of our time” which will require “the collective efforts of governments, business and consumers to recognize and internalize social, economic and environment costs of marine pollution and identify pathways to address the differentiated repercussions” of plastic pollution on different groups.”³ This is particularly true in the East Asian Seas region which is “both a significant contributor to and impacted by the global problem” of plastic pollution.⁴

2. COVID-19 and the Triple Planetary Crisis

The ongoing COVID-19 pandemic has had a profound impact on plastic pollution. While the pandemic has been an opportunity to reflect on the increasing need for globalized preventive action which centres human rights,⁵ it has also resulted in increased use and production of plastics. This has occurred in a multitude of ways including through the production of personal protective

¹ See for example UNEP, “From Pollution to Solution: A Global Assessment of Marine Litter and Plastic Pollution” (2021), online: <https://wedocs.unep.org/bitstream/handle/20.500.11822/36963/POLSOL.pdf> [UNEP Pollution to Solution]

² *Id.*, at 13-15.

³ UNEP, COBSEA, and Stockholm Environment Institute, “Marine Plastic Litter in East Asian Seas: Gender, Human Rights and Economic Dimensions” (2019), at 6, online: https://www.sea-circular.org/wp-content/uploads/2019/11/SEI_SEA-circular-1.pdf [COBSEA Plastic and Gender].

⁴ *Id.*

⁵ OHCHR & UNEP, “Human Rights, the Environment and COVID-19: Key Messages” (2020), online: <https://www.ohchr.org/Documents/Issues/ClimateChange/HR-environment-COVID19.pdf> [COVID-19 Messages]

equipment (PPE), greater reliance on take-away food, and the delay of many public measures to reduce plastic consumptions (i.e. delays to single-use plastic bag bans).⁶

Adoption of a rights-based approach to “build back better”⁷ to address the unequal impacts of COVID-19 could be an intervention point for the co-building of a human rights approach to address the triple planetary crisis of climate change, loss of biodiversity, and pollution which each have their own inequitable impacts.⁸ As such the issue of plastic pollution should not be approached as a discreet issue, but rather recognized as part of a series of compounding threats to human rights along with COVID-19, climate change, and loss of biodiversity. Equally important is to build ambition for the environmental rule of law through recovery from the COVID-19 crisis, rather than succumbing to the temptation to roll back environmental protections in favour of shallow understandings of economic benefit. The adoption of a human rights-based approach to environmental challenges such as plastic pollution can support the implementation of environmental safeguards through mutually supportive action by governments and businesses.

C. Introduction to a Human Rights-Based Approach

Setting out to create “a common standard of achievement for all peoples and all nations,”⁹ the United Nations adopted the *Universal Declaration of Human Rights* (UDHR) in 1948.¹⁰ Since its inception the UDHR has been the most important and far-reaching of all United Nations declarations, and a fundamental source of inspiration for national and international efforts to promote and protect human rights and freedoms.”¹¹

The UDHR rests on the premise that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood..”¹² Furthermore the UDHR applies to every human “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹³ The UDHR then proclaims a series of human rights including the right to life liberty and security of person; freedom of thought, conscience and religion; opinion and expression; peaceful assembly and association, among many others.

⁶ Teale Phelps Bondaroff and Sam Cooke, “Masks on the Beach: The Impact of COVID-19 on Marine Plastic Pollution” (Oceans Asia, 2020), online: <https://oceansasia.org/wp-content/uploads/2020/12/Marine-Plastic-Pollution-FINAL-1.pdf>.

⁷ COVID-19 Messages (n5)

⁸ UNEP, “Issue Brief SDG 16: Human Rights and the Environmental Rule of Law” (2021), online: <https://wedocs.unep.org/bitstream/handle/20.500.11822/35408/SDG16.pdf>.

⁹ OHCHR, “Fact Sheet No.2 (Rev.1), The International Bill of Human Rights,” at 4, available online: <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet2Rev.1en.pdf>

¹⁰ UN General Assembly, *Universal Declaration of Human Rights*, adopted by General Assembly resolution 217 A (III) (10 December 1948) [UDHR]

¹¹ OHCHR Fact Sheet (n9) at 4.

¹² UDHR (n10) art. 1.

¹³ *Id.*, at Art. 2.

The rights guaranteed in the UDHR are codified in the *International Covenant on Civil and Political Rights*,¹⁴ and the *International Covenant on Economic Social and Cultural Rights*.¹⁵ Together these three documents form what is known as the International Bill of Human Rights.

Other UN Conventions and Treaties elaborate upon other human rights. Of particular relevance to plastic pollution is the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW),¹⁶ to which every COBSEA country is a party.¹⁷ The Convention ensures the protection of Women’s “health and safety in working conditions including the safeguarding of the function of reproduction.”¹⁸ Another relevant Convention is the International Labour Organization’s (*ILO*) *Convention on Occupational Safety and Health*, which has been ratified by the People’s Republic of China, the Republic of Korea, Singapore, and Viet Nam.¹⁹ United Nations General Assembly resolutions are also sources of international human rights law – an important example is the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).²⁰

The integration of a human rights-based approach (HRBA) in the law and policy sphere is further consistent with the right to development, including economic development.²¹ The World Bank, for example, defines economic development as an improvement involving: “self-sustaining growth; structural change in patterns of production; technological upgrading; social, political and institutional modernization; and widespread improvement in the human condition”.²² This definition illustrates the human person as the central focus of economic development. Any condition that adversely affects the capacity of a person to upgrade their living condition, such as adverse human rights impacts posed by plastics as explored in both Modules 1 and 2, is in breach of the right to economic development.

1. Introduction to Human Rights and Environment

The human right to a clean, healthy and sustainable environment was adopted by resolution of the UN Human Rights Council in 2021 and again recognized in a resolution of the UN General Assembly in July 2022 with 8 abstentions and no votes against.²³ This right is also already found in many constitutions around the world, and as part of some regional human rights treaties. As will

¹⁴ *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, (entry into force 23 March 1976).

¹⁵ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 992 UNTS 3, (entry into force 3 January 1976).

¹⁶ *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1243 UNTS 13, (entry into force 3 September 1981).

¹⁷ COBSEA Plastic and Gender (n3) at 19.

¹⁸ CEDAW (n16) at Art. 11(f).

¹⁹ ILO, *Occupational Safety and Health Convention* (22 June 1981), c155; COBSEA Plastic and Gender (n3) at 19.

²⁰ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*: resolution adopted by the General Assembly, 2 October 2007, A/RES/61/295.

²¹ UN General Assembly, *United Nations Declaration on the Right to Development*: resolution adopted by the General Assembly, 4 December 1986, A/RES/41/128.

²² Irma Adelman, “Fifty Years of Economic Development: What Have we Learned?” (n.d.) World Bank Document online: <https://documents1.worldbank.org/curated/en/625131468761704307/pdf/28737.pdf> (accessed 12th May 2022).

²³ 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, “The human right to a clean, healthy and sustainable environment” A/RES/76/300, online: <https://digitallibrary.un.org/record/3983329?ln=en>

be explored in greater detail in Module 2, this right is comprised of substantive, procedural, and equity dimensions.

Substantively, the right guarantees access to clean air, a safe climate, clean water, healthy ecosystems and biodiversity, healthy food, and non-toxic places.²⁴ The procedural components include requirements for prevention, prior assessment, precaution, public participation, and access to information.²⁵ Additionally, the right has a cross-cutting guarantee of equitable application, especially for groups and individuals who are disproportionately affected by environmental harms such as workers; Indigenous, tribal, and traditional peoples; rural and coastal communities; women and gender diverse persons; ethnic, racial and other minorities; persons living in poverty; and children and future generations.

In order to take a human rights-based approach to plastic pollution, substantive, procedural, and equity dimensions of the right to a clean, healthy, and sustainable environment must all be simultaneously guaranteed. The relationship between these rights and the plastics crisis will be explored in detail in Module 2.

2. Introduction to United Nations Guiding Principles on Business & Human Rights (UNGPs)

While **states** are the primary duty bearers under international human rights law, the UDHR 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.”²⁶ Since 2011, the understanding that **business enterprises** are duty bearers with a responsibility to respect human rights going beyond compliance with state law has become widely accepted as a result of the endorsement of the United Nations Guiding Principles on Business and Human Rights (UNGPs)²⁷ by the UN Human Rights Council.²⁸ The UNGPs are comprised of three pillars: **the state duty to protect human rights; the corporate responsibility to respect human rights; and access to remedy.**

As will be explored in detail in Module 3, the business responsibility to respect human rights anticipates that the responsibility extends to all business activities, and to relationships with business partners including entities in the business value chain. As a result, businesses are expected to adopt a policy commitment to respect human rights, undertake human rights due diligence, and enable remediation of human rights harms that were caused or contributed to by business operations.

²⁴ 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>

²⁵ *Id.*; see further 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]

²⁶ UDHR (n10), Preamble.

²⁷ *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 (UNGPs)

²⁸ A/HRC/17/4 (6 July 2011).

The business responsibility to respect human rights under the UNGPs informs the human rights principles of the United Nations Global Compact, and the human rights chapter of the OECD Guidelines for Multinational Enterprises. These relationships, and the implications of the business responsibility for human rights in relation to the plastics crisis, will be explored in Module 3. Overall, a human rights-based approach to the plastics problem must incorporate both the duties of states and the responsibilities of businesses to prevent, minimize and ensure remedy for harms.

D. International Law & Policy Context

As currently constituted international law governs plastic pollution in a fragmented fashion creating gaps in coverage. This section briefly introduces a selection of sources of international law that address aspects of the plastic pollution problem.

1. United Nations Environment Programme (UNEP)

UNEP is the authority within the United Nations System responsible for ensuring the implementation of the environmental dimension of the UN's Sustainable Development Goals.²⁹ In order to fulfill this responsibility UNEP organizes international law's "highest-level decision-making body on the environment," the UN Environmental Assembly (UNEA). UNEA is composed of 193 member states as well as representatives from civil society, businesses, and "other major groups and stakeholders."³⁰ To date UNEA has adopted several resolutions focused on addressing the plastics crisis.³¹ UNEP is also responsible for either administering, or providing, secretariat functions for 15 Multilateral Environmental Agreements (MEAs).³²

InforMEA: A Learning Resource Centre

The United Nations' Information Portal on Multilateral Environmental Agreements (InforMEA) was developed by UNEP as a portal for information on MEAs: <https://www.informea.org/en/node/493128>

Short introductory online courses about a range of MEAs and topics including chemicals and waste, and human rights and environment, are freely available on the InforMEA learning platform: <https://elearning.informea.org>

Due to the fragmented nature of existing treaties, as will be seen below, there has been concerted effort to reach a new MEA which targets the entire lifecycle of plastics. On March 2, 2022, a resolution was adopted at UNEA session 5.2, which created an intergovernmental negotiating committee tasked with developing an internationally binding instrument to comprehensively tackle

²⁹ UNEP, "About UN Environment Programme," online: <https://www.unep.org/about-un-environment>.

³⁰ *Id.*

³¹ See for Example: UNEP Resolution UNEP/EA.3/Res.7, "Marine Litter and Microplastics" (2017); UNEP Resolution UNEP/EA.3/Res.7, "Marine Litter and Microplastics" (2017); UNEP Resolution UNEP/EA.4/Res.9, "Addressing Single-use Plastics Product Pollution" (2019); UNEP Resolution UNEP/EA.5/L.23/Rev.1, "End Plastic Pollution: Towards an Internationally Legally Binding Instrument" (2022) [End Plastic Pollution].

³² Examples include: the Convention on Biological Diversity, the Basel Convention, and the Stockholm Convention among many others.

plastic pollution through a lifecycle approach.³³ Work on drafting the instrument will begin in mid-2022, with an aim to be completed by the end of 2024.³⁴

The instrument may encompass both binding and voluntary elements regarding the need to:

- foster sustainable production and consumption with an emphasis on “circular economy approaches”;
- promote national action plans;
- develop national reporting standards;
- increase knowledge of plastic pollution through education/awareness/information exchange; and to
- promote research and development.³⁵

It remains to be seen exactly what will be in the treaty, which provisions will be binding, which states will assent to being bound by the treaty by becoming a state party, and of those states, how many will have the capacity and commitment to effectively implement treaty obligations. Nevertheless, the negotiation of a plastics treaty presents a significant opportunity to fill the gaps in international law.

2. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes

The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes*³⁶ is an MEA which seeks to protect human health and the environment against the adverse effects of hazardous and other wastes.³⁷ The provisions of the act have three main goals:

the reduction of generation and the promotion of environmentally sound management of hazardous and other wastes requiring special consideration, wherever the place of disposal; the restriction of transboundary movements of hazardous and other wastes except where it is perceived to be in accordance with the principles of environmentally sound management; a regulatory system applying to cases where transboundary movements are permissible based on a Prior Informed Consent (PIC) procedure.³⁸

In 2019 the parties to the Convention agreed to enhance the Convention’s ability to control plastic waste by amending Annexes II, VIII, and IX.³⁹ As of January 1st, 2021 there are 186 states and one regional economic integration organization who have agreed to be bound by the amendments to the Convention, which makes the amendments “the only globally legally binding instrument to specifically address plastic waste.”⁴⁰

³³ End Plastic Pollution (n31) at 2.

³⁴ *Id.*, at 4.

³⁵ *Id.*, at 3.

³⁶ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, 22 March 1989, 1673 UNTS 126 (entered into force 5 May 1992) [Basel Convention].

³⁷ UNEP, *Drowning in Plastics – Marine Litter and Plastic Waste Vital Graphics* (2021) at 51, online: <https://wedocs.unep.org/xmlui/bitstream/handle/20.500.11822/36964/VITGRAPH.pdf> [UNEP Drowning]

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

The amendments require that the movement of plastic waste from the territory of one party to the Convention to another, must only be done with the Prior Informed Consent (PIC) of the party receiving the plastics waste. The PIC procedure requires: a notification by the exporting country; consent and issuance of a movement document; transboundary movement; and confirmation of disposal.⁴¹

The parties who have agreed to the amendments expect the amendments to deliver better management of plastic waste through “increased Control of Transboundary Movement;” “increased environmentally sound management;” and “increased waste prevention and minimization.”⁴²

2019 additionally marked the passing of the Convention’s Ban Amendment which prohibits exporting of hazardous wastes covered by the convention for disposal by members of the OECD, EU and Lichenstein.⁴³

These amendments taken together “are intended to close the loophole of sham recycling and to ban or control the transboundary movements of most plastic wastes.”⁴⁴ However there remains some uncertainty relating to the exception for plastics that are destined for recycling which are “almost free from contamination,” as there is no set threshold to determine this standard. This “may open another loophole for pretend recycling and the transfer of hazardous wastes to low-income countries, given that plastics often contain toxic additives that pose severe threats to the full enjoyment of human rights.”⁴⁵

While the plastics amendments are important, the singular focus on the waste stage of the plastics lifestyle is seen as rendering the Convention “insufficient to confront the global threat of plastics to human rights and the environment.”⁴⁶

3. Stockholm Convention on Persistent Organic Pollutants

The *Stockholm Convention on Persistent Organic Pollutants*⁴⁷ is “aimed at eliminating or restricting the production and use of hazardous organic chemicals that persist in the environment, bioaccumulate in humans and wildlife, have harmful effects and have the potential for long-range environmental transport.”⁴⁸ To this end 26 listed persistent organic pollutants (POPs) are to be eliminated, 2 are to be restricted, and 7 require their unintentional release to be restricted.⁴⁹

Several POPs are commonly used as additives in plastics, or otherwise generated when plastics are incinerated (i.e. polychlorinated biphenyls and decabromodiphenyl ether, which are each listed

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 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> at 14 [Plastics Cycle].

⁴⁵ *Id.*

⁴⁶ *Id.*, at 15.

⁴⁷ The *Stockholm Convention on Persistent Organic Pollutants*, 22 May 2001, 2256 UNTS 119 (entered into force 17 May 2004) [Stockholm Convention].

⁴⁸ *Plastics Cycle* (n44) at 15.

⁴⁹ *Id.*

for elimination).⁵⁰ As a result the Convention can be a useful instrument for intervention at each stage of the plastic lifecycle.

4. International Convention for the Prevention of Pollution from Ships (MARPOL)

The *International Convention for the Prevention of Pollution from Ships* (MARPOL)⁵¹ is the primary international legal instrument for the regulation of marine pollution. The goal of the Convention is to prevent and minimize pollution from vessels. While Annex V of the Convention explicitly prohibits the discharge of any plastics into the sea, the reduction of inadvertent spillage of plastic pellets in maritime transport is a subject of study by the International Maritime Organisation (IMO).⁵² Furthermore, the Convention is being used to ensure adequate facilities at ports that receive plastic waste.⁵³

20 percent of all plastic waste enters ocean ecosystems directly from marine activity.⁵⁴ This makes the Convention an important tool in efforts to reduce plastic waste at sea.

5. Sustainable Development Goals (SDGs)

In 2015 the United Nations General Assembly (UNGA) adopted the Sustainable Development Goals (SDGs) as part of the 2030 Agenda for Sustainable Development.⁵⁵ The Agenda is an all-encompassing document, to be implemented by “all countries and all stakeholders,” and seeks to serve as “a plan of action for people, planet and prosperity.”⁵⁶ The Agenda sets 17 Sustainable Development Goals and 169 targets to be reached by 2030.⁵⁷

Several of these Goals are directly relevant to plastics. Goal 14 is to “conserve and sustainably use the oceans, seas and marine resources for sustainable development,” and establishes an index for plastics debris density to monitor the impact of plastics pollution on the realization of the Goal.⁵⁸

Goal 6 is to “ensure availability and sustainable management of water and sanitation for all,” and has a target to “improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally.”⁵⁹ This goal cannot be met without addressing the threat that plastic pollution presents to human health and water quality.⁶⁰

⁵⁰ *Id.*

⁵¹ *International Convention for the Prevention of Pollution from Ships*, 2 November 1973, 1340 UNTS 61 (entered into force 2 October 1983) (MARPOL).

⁵² Plastics Cycle (n44) at 15; IMO, Sub-Committee on Pollution Prevention and Response (PPR 9), 4-8, 2022, Meeting Summary, online: <https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/PPR-9th-session.aspx>. In April 2022, the Correspondence Group on Marine Plastic Litter from Ships was tasked with further considering options to reduce environmental risk arising from plastic pellet maritime transport.

⁵³ *Id.*, at 16.

⁵⁴ *Id.*

⁵⁵ UNGA Resolution A/RES/70/1, *Transforming Our World: the 2030 Agenda for Sustainable Development* (2015) [2030 Agenda].

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ 2030 Agenda (n55) at 23; Plastics Cycle (n44) at 16.

⁵⁹ 2030 Agenda (n55) at 18; Plastics Cycle (n44) at 16.

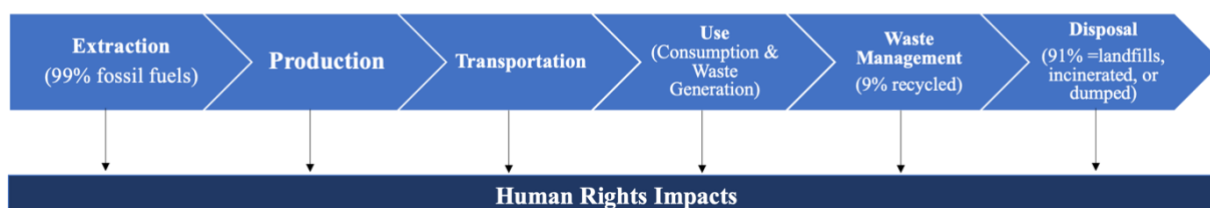
⁶⁰ Plastics Cycle (n44), at 16.

Finally Goal 12, which seeks to ensure sustainable consumption and production patterns, included the goal to “achieve the environmentally sound management of chemicals and all wastes throughout their life cycle” by 2020.⁶¹ UNEP has stated that this goal was not met by the target date.⁶² Applying “a human rights-based approach to that strategy” may be key to correcting this failure, as well as to properly implement the other SDGs relating to plastics.⁶³ As will be seen in Module 3, human rights responsible business conduct that is aligned with the SDGs is one important tool for tackling the plastics crisis.

E. The Lifecycle of Plastics

The 2021 report of the United Nations Special Rapporteur on toxic substances and human rights highlights the impact that plastics have on human rights at each stage of the plastics lifecycle or ‘value chain.’⁶⁴ These stages include the extraction, production, transportation, use, waste management, and disposal of plastics. In this section the effects of each stage of the plastics lifecycle on human rights are highlighted with attention to their environmental justice dimensions.⁶⁵

United Nations Special Rapporteur on Toxic Substances and Human Rights: The Stages of the Plastics Cycle and Their Impacts on Human Rights (July 2021)



Design: Victoria Kongats

Video Aid: Human Rights Impacts Across the Plastics Lifecycle (January 2021)

UNEP, together with Azul, has produced an animated short video that illustrates the impact of plastic pollution across the linear plastics lifecycle on both human rights and the achievement of the SDGs. It is freely available online: <https://www.unep.org/resources/infographic/environmental-justice-and-plastic-pollution-animation>

⁶¹ 2030 Agenda (n55) at 22.

⁶² UNEP, Global Chemicals Outlook II: From Legacies to Innovative Solutions: Implementing the 2030 Agenda for Sustainable Development (2019).

⁶³ Plastics Cycle (n44), at 16.

⁶⁴ Plastics Cycle (n44).

⁶⁵ Juliano Calil, Steffanie Munguia, and Christopher Chin, *Neglected – Environmental Justice Impacts of Marine Litter and Plastic Pollution* (UNEP & AZUL: 2021), online: <https://wedocs.unep.org/xmlui/bitstream/handle/20.500.11822/35417/EJIPP.pdf> [UNEP Environmental Justice] For more on Azul, see online: <https://azul.org/en/who-are-we/>

1. Extraction

The plastics lifecycle begins with “the extraction and refining of raw materials for plastics production.” At present 99% of these are fossil fuels.⁶⁶

This process of extraction and refinement of fossil fuels has a wide-ranging impact, often leading to deforestation, ecosystem fragmentation, and the chemical contamination of land and water with waste waters from the extraction process.⁶⁷ Chronic exposure to these contaminated waters may have severe impact on human health including the causation of cancer, chromosomic alternations, and aplastic amnesia.⁶⁸ Furthermore, these activities often lead to the degradation of air quality, which can also lead to “increased risk of asthma; lung, bladder and lymphohematopoietic neoplasm; and cancers.”⁶⁹ Comparable impacts arise from fossil fuel extraction at sea, impacting marine species.

2. Production

The production stage is an important intervention point. Half of the historical production of plastics has occurred since 2005, and “it is estimated that in 2025, plastic productions will reach over 600 million tons per year,” which is an alarming increase from the 415 millions tons that is currently being produced annually.⁷⁰

Hazardous substances that pollute air, water and soil are emitted during the production of plastics.⁷¹ Toxic chemical additives are added to plastics during production, including endocrine-disrupting chemicals known as phthalates used to “make plastics more durable” which are linked to a wide range of diseases including asthma, breast cancer, type II diabetes, and fertility issues, while other endocrine disrupting plastic additives like bisphenol A are linked to cancer, liver disease and cardiovascular disease.⁷² Microplastics are sometimes manufactured to be added to products including cosmetics, textiles, cleaning products and paints, yet can enter the body by being ingested or inhaled and are associated with the “rise of antibiotic-resistant microbes.”⁷³ In the manufacturing of semi-conductors for the electronics sector “over 250 chemicals are used in a variety of plastics and resins” and are associated with brain tumours, leukaemia, breast cancer and reproductive risks for workers.⁷⁴

The local impact of these hazardous substances are introduced not only from the process of producing the plastics themselves, but also indirectly from warehouses and heavy traffic from trucks.⁷⁵ Furthermore, these impacts can be felt at great distances. Production plants are often

⁶⁶ Plastics Cycle (n44), at 5.

⁶⁷ *Id.* The extraction of fossil fuels is also associated with violations of Indigenous and local community land rights.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 8. A recent study has suggested that plastics contain over 10,000 toxic additives, added at every stage of the plastics cycle. *Id.* at 4. For more on plastics additives see UNEP Drowning (n37) at 14-15.

⁷³ *Id.* at 8. For more on microplastics at each stage of the plastics cycle see UNEP Drowning (n37) at 17-19.

⁷⁴ *Id.* at 9.

⁷⁵ UNEP Environmental Justice (n65) at 24.

located “near rivers and/or groundwater” which can carry the pollution to the ocean.⁷⁶ Workers are exposed to harms and health risks during plastics manufacturing and production.⁷⁷

3. Transportation

During transportation additional risks and harms are assumed such as the emissions used to transport the products and waste,⁷⁸ and the possibility for there to be spillage or loss during transportation whether by land or at sea.⁷⁹ The spillage of microplastics is a particularly concerning possibility, as demonstrated by the *MV X-Press Pearl*, which sank and released millions of plastic pellets which contaminated stretches of the western coastline of Sri Lanka.⁸⁰

The extent of the effect of transportation of plastics is not fully understood. It can be difficult for researchers to fully capture these effects as it is nearly impossible to track “a plastic product from raw material extraction to manufacturing, use and disposal.”⁸¹ Additional research is necessary.

4. Use (Consumption & Waste Generation)

The health risks of plastic products are felt during their use as well. Consumers are “in daily contact with plastics products”, which leads to exposure to toxic compounds through skin contact, ingestion of microplastics in water and the food chain, ingestions of toxic compounds in contact with food and beverages through packaging contact, and the inhalation of contaminated air.⁸² Environmental justice concerns arise as the marketing of low-quality and cost plastic products to low-income communities can result in members of these communities being disproportionately exposed to toxic effects.⁸³ Women are disproportionately impacted by plastics use, with plastics acting as endocrine disrupters.⁸⁴

Beyond the immediate health impact, it has been demonstrated that in-use plastics which are exposed to, and degraded by, sunlight are a source of greenhouse gases.⁸⁵ This stage of use then once again contributes to the interconnectedness of the triple-planetary crisis.

5. Waste Management (Collection, Sorting, Recycling)

Despite best efforts to collect, sort, and recycle plastics the simple truth is that there is “currently no commercially available waste management method capable of solving the global plastic pollution crisis.”⁸⁶ “[I]ndustry disinformation campaigns” have resulted in recycling being commonly accepted as a solution to plastic waste, rather than the adoption of legal limits on

⁷⁶ *Id.*

⁷⁷ Plastics Cycle (n44) at 9-10.

⁷⁸ UNEP Environmental Justice (n65) at 30.

⁷⁹ Plastics Cycle (n44), at 6.

⁸⁰ *Id.*

⁸¹ UNEP Environmental Justice (n65) at 30.

⁸² Plastics Cycle (n44), at 6.

⁸³ UNEP Environmental Justice (n65) at 24.

⁸⁴ Plastics Cycle (n44) at 11, 8.

⁸⁵ UNEP Environmental Justice (n65) at 32.

⁸⁶ Plastics Cycle (n44), at 6.

plastics production.⁸⁷ Informal sector waste pickers, often women and children, play a key role in global plastics recycling efforts, yet are particularly vulnerable to health risks and harms arising from exposure to substances.⁸⁸ Current plastic recycling practices often concentrate toxic additives in plastics, generating new hazardous products.⁸⁹ Additionally, many types of plastics (i.e. coffee cups) cannot be recycled unless the components are separated.⁹⁰ Hospital management of polymer-based medical waste is also a significant and rising issue in Asia stemming from the COVID-19 crisis.⁹¹

To address the lack of efficacy in current or “mechanical” recycling, new forms of recycling are being developed. One such form is “chemical recycling” which introduces chemicals to the recycling process in the hopes of creating better recycled plastics or fuels. Currently the hazard and toxicity of the practice is “under-reported and inadequately assessed.”⁹² Combined with the energy intensive nature of the process, it is an ineffective form of plastic waste management.⁹³

Recycling can be a “dangerous distraction for a society that must transition to a sustainable future.”⁹⁴ All in all, “the recycling practices implemented to date are more of a mirage, an optical illusion that perpetuates the severe human rights impacts of plastics.”⁹⁵

6. Disposal (including Incineration)

Due to the lack of viable recycling processes 91 per cent of accumulated plastics either are put in a landfill, dumped, leaked into nature, or incinerated.⁹⁶ Each of these destinations come with their own health risks.

An estimated 12 per cent of plastics produced since the 1950s have been incinerated, a practice that is more prevalent where solid waste management systems are not established, and “individuals must tend to their own waste.”⁹⁷ Incineration releases additives in plastics, increasing premature mortality risks due to respiratory issues, and associated with “damage to organ systems.”⁹⁸ The incineration of plastics poses a severe health risk, with disproportionate impacts on communities in the Global South that are not able to commit the financial resources necessary to minimize the harm from the ashes.⁹⁹

⁸⁷ *Id.*

⁸⁸ *Plastics Cycle* (n44) at 9-10; *COBSEA Plastic and Gender* (n3) at 22-23.

⁸⁹ *Plastics Cycle* (n44), at 6.

⁹⁰ *Id.* at 7.

⁹¹ World Health Organization, *Global Analysis of Health Care Waste in the Context of COVID-19: Status, Impacts and Recommendations*, February 2022, <https://www.who.int/publications/i/item/9789240039612> [[WHO Global Impact](#)]

⁹² Global Alliance for Incinerator Alternatives, “Chemical Recycling: Status, Sustainability, and Environmental Impacts” (2020), at 23, online: https://www.no-burn.org/wp-content/uploads/CR-Technical-Assessment_June-2020.pdf [Chemical Recycling]

⁹³ *Id.*, at 34

⁹⁴ *Id.*

⁹⁵ *Plastics Cycle* (n44), at 6.

⁹⁶ *Id.*

⁹⁷ UNEP Environmental Justice (n65) at 35.

⁹⁸ *Id.*

⁹⁹ *Id.*

Dumping and landfill sites are also associated with risks to health, “including dangerous emissions of methane, carbon dioxide and heavy metals.”¹⁰⁰ Plastics that do not make it to landfills have a potentially larger capacity to do harm to human and ecosystem health as large volumes of these plastics wash into rivers, and subsequently oceans, where they are either caught in the ocean’s circulation, washed on to beaches, or sunk to the ocean floor.¹⁰¹

Approximately 50% of plastics sink to the ocean floor when introduced to a marine environment. They are introduced to a cold dark environment in which they do not break down, or only break down slowly, contributing to the global accumulation of plastics.¹⁰² Plastic floating on surface water or stranded on beaches eventually breaks down into smaller pieces once exposed to sunlight. This process causes greenhouse gas emissions, the leaching of contaminants into marine environments, and the introduction of increasing quantities of micro and nanoplastics.¹⁰³ These are a particularly acute threat to human health. Microplastics attract compounds from the surrounding ecosystem allowing them to absorb toxins. These toxic microplastics are then readily ingested by fish and other marine organisms, who are unable to properly metabolize them, leading to their accumulation over time.¹⁰⁴ Ultimately the non-metabolizable microplastics make their way up the food chain and are ingested by humans and other predators that eat fish. This has a disproportionate impact on the health of coastal communities who depend on fish as a primary food source.¹⁰⁵

Case Study: Plastic Waste as Fuel Source Contaminates Food Supply in Indonesia

China’s plastic waste import ban implemented in 2017 re-routed plastic waste imports into Indonesia, which caused its waste imports to double between 2017 and 2018.¹⁰⁶ This resulted in plastic being increasingly used as a cheaper fuel source by local tofu factories.¹⁰⁷ Plastic as a fuel source is considerably cheaper than firewood (one small truck filled with plastic = IDR 250,000 to 350,000, which is about USD \$18 to \$25; versus one small truck of firewood, which is about USD \$107).¹⁰⁸

Burning plastic causes dense smoke, which is absorbed into the food chain.¹⁰⁹ Free range eggs in East Java have also contained toxic and banned chemicals (dioxins, flame retardants, and perfluorooctanesulfonic acid (PFOS)) in an amount 70-times higher than the European Food Safety Authority’s daily limit.¹¹⁰ Dioxins are associated with various

¹⁰⁰ *Id.*, at 7.

¹⁰¹ *Id.*

¹⁰² *Id.*, at 36

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Peter Beaumont, “Indonesia’s Food Chain Turns Toxic as Plastic Waste Exports Flood In” *The Guardian* (15 November 2019), online: <https://www.theguardian.com/global-development/2019/nov/15/indonesias-food-chain-turns-toxic-as-plastic-waste-exports-flood-in>.

¹⁰⁷ *Id.*

¹⁰⁸ IPEN, *Plastic Waste Flooding Indonesia Leads to Toxic Chemical Contamination of the Food Chain*, (December 2019) at 13.

¹⁰⁹ *Id.*, at 14.

¹¹⁰ *Id.* at 4; Kharishar Kahfi, “Plastic or egg? Imported Waste Contaminates East Java’s Food Chain: Report” *Jakarta Post* (14 November 2019), online: <https://www.thejakartapost.com/news/2019/11/14/plastic-or-egg-imported-waste-contaminates-east-javas-food-chain-report.html>.

disease such as cancer and cardiovascular disease, diabetes and endometriosis.¹¹¹ PFOS, which persist in the environment, are also associated with various disease and harms, including “cancer, neonatal mortality, delays in physical development and endocrine disruption.”¹¹²

Awareness of health impacts of burning plastic amongst factories has prompted some factories to stop using plastic as a fuel source.¹¹³ In some cases, plastic as fuel was used for years.¹¹⁴

Questions

1. One of the authors of the original report published by IPEN told the Guardian newspaper: “[t]his study pulls back the curtain on how plastic waste carries toxic chemicals into the food chain. Reducing plastics production and the toxicity of plastic materials is really the only option for a toxics-free future.”¹¹⁵ If plastic continues to be used unsafely as a fuel source, would it cause you to re-consider your plastic consumption?

2. When purchasing, disposing or using plastic, how “aware” have you been about the impacts that plastics pose, particularly at the disposal (incineration, etc.), stage?

Credit: The Indonesia Business Council for Sustainable Development shared a version of this case study.

F. Business and the Plastics Crisis

Many businesses are negatively impacted by the global plastics crisis, while others exacerbate the crisis. This section will highlight how business are impacted by the plastics crisis, as well as how businesses contribute to the plastics crises.

1. Business Impacted by the Plastics Crisis

As noted, many businesses are negatively impacted by the plastics crisis. For example, fisheries depend on healthy ecosystems and species, yet marine plastic litter injures marine organisms, contaminates seafood, and destroys habitats.¹¹⁶ Plastics also damage fishing gear, interrupting operations and causing human injuries,¹¹⁷ with the costs of clean up being particularly high after heavy rain events that cause land-based plastic litter to flow into ports, even preventing fishing boats from sailing.¹¹⁸ The shipping industry is also impacted by marine plastic litter that entangles

¹¹¹ IPEN, *Plastic Waste Flooding*, (n108) at 25 (citations omitted).

¹¹² *Id* at 25 (citations omitted).

¹¹³ Achmad Faizal, “Antisipasi Telur Mengandung Dioksin, Pengusaha Tahu di Sidoarjo Mulai Tinggalkan Bahan Bakar Plastik” *Kompas* (12 December 2019) online: <https://regional.kompas.com/read/2019/12/12/19221841/antisipasi-telur-mengandung-dioksin-pengusaha-tahu-di-sidoarjo-mulai?page=all#page2>.

¹¹⁴ *Id*.

¹¹⁵ Beaumont (n106).

¹¹⁶ COBSEA Plastic and Gender (n3) at 29-30.

¹¹⁷ *Id* at 29-30.

¹¹⁸ *Id* at 32 (referencing an example from Japan in 2018).

propellers, posing significant hazards for navigation and even leading to injury and death for human passengers and crew.¹¹⁹ Marine plastic litter has negative impacts on coastal tourism industries, as plastic pollution reduces the aesthetic value of beaches and makes recreational activities such as swimming, surfing and diving less desirable.¹²⁰ The costs of cleaning up marine plastic litter is usually borne by local businesses including ocean hotels and resorts, and by local communities.¹²¹ The extensive use of plastics in agriculture whether as films to cover crops or plastic mulch or otherwise, together with toxic additives, is contaminating soil and the food crops.¹²²

2. Business Contribution to the Plastics Crisis

a) *Extraction and Production*

Business enterprises are responsible for the extraction of fossil fuels, and the subsequent production of plastics. According to the Minderoo Foundation the 20 largest polymer producers accounted for more than half of all single-use plastic generated globally.¹²³ Further, the top 100 largest polymer producers accounted for over 90% of the single-use plastics generated in 2019.¹²⁴

Business contributions to the production of plastics do not end with the producers themselves, as these producers rely on financing. Twenty of the world's largest institutional asset managers "hold over \$300 billion worth of shares in the parent companies of these polymer producers," and are estimated to have lent almost \$30 billion for the production of single-use plastics.¹²⁵

These large polymer producers further "rely almost exclusively on 'virgin' (fossil-fuel-based)" plastics.¹²⁶ In 2019 only 2% of polymers produced by these 100 companies followed a circular model, with the majority of these companies "indicating a complete lack of policies, commitments or targets" to increase circular production.¹²⁷ As such a massive opportunity, and responsibility, lies with large multinational polymer producers, as well as their financiers, to transition to circular models.

Concerns have further been raised that there is a strong push by fossil fuel companies to increase plastics manufacturing in part to justify continued extraction despite concerns over climate change. In April 2022, Californian Attorney General Rob Bonta has launched an investigation into fossil

¹¹⁹ *Id* at 31 (referring to the 1993 sinking of the Shahe Ferry due to an entangled propeller, claiming 292 lives).

¹²⁰ *Id* at 31.

¹²¹ *Id* at 33.

¹²² UNEP Downing (n37) at 21-23.

¹²³ Minderoo Foundation, "The Plastic Waste Makers Index: Revealing the Source of the Single-use Plastics Crisis" (2021), at 12, online: <https://cdn.minderoo.org/content/uploads/2021/05/27094234/20211105-Plastic-Waste-Makers-Index.pdf> [Minderoo Foundation]. These include the American fossil fuel company ExxonMobil, Thailand-based Indorama Ventures, and the Chinese Sinopec.

¹²⁴ *Id*.

¹²⁵ *Id*. These include Barclays in the United Kingdom, JPMorgan Chase in the United States, and Bangkok Bank in Thailand.

¹²⁶ *Id*.

¹²⁷ *Id*.

fuel and petrochemical industries for their role in perpetuating the global plastics crisis.¹²⁸ The Story of Stuff Project has produced an animated short video, [The Story of Plastics](#), that suggests a similar tale.¹²⁹

b) Transport & Trade

The transportation of plastics poses a risk of spillage of plastic pellets and microplastics into the environment, whether by land, river or sea. While MARPOL explicitly prohibits the discharge of plastics into the sea, without proper attention to safe transport accidents nevertheless happen with disastrous consequences.¹³⁰ The Basel Convention applies to the transport of plastics at the waste stage nevertheless, as will be explored below, illicit trade and importation of plastic waste including as part of e-waste remains a huge challenge.

c) Use (as Purchasers, Consumers, and Waste Generators)

The purchasing of polymers from producers is done directly by other businesses before the products are eventually passed to consumers for use. Consequently, intermediary businesses represent an important site of intervention for the reduction of plastic consumption. For example, the fishing sector is thought to contribute around 20% of marine plastics including through derelict fishing gear that once abandoned continues to snare harvestable fish as well as marine mammals.¹³¹ The tourism industry, including shoreline and recreational activities, has been identified as a significant contributor to marine litter, including plastic cigarette butts, plastic beverage bottles and food wrappers.¹³²

The largest problem in business consumption of plastics is through the purchasing of packaging. The generation of plastic waste is strongly related to ultimate use, with the intended use often determining its lifespan.¹³³ Due to its lack of time in use, packaging waste constitutes a massive 42% of plastic waste generated.¹³⁴ This is a problem across many industry sectors. Reduction in plastic packaging is therefore a crucial step for businesses to take in transitioning to a circular economy.

d) Waste Management and Disposal

The waste management stage presents a significant missed opportunity for businesses. As “only about 9 per cent of all plastic waste ever produced has been recycled,”¹³⁵ there are tremendous

¹²⁸ Laura Sullivan, “How Big Oil Misled the Public Into Believing Plastic Would Be Recycled” npr (11 September 2020) online: <https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled>

¹²⁹ The Story of Stuff Project, *The Story of Plastics* (animated short), (21 April 2021), online: <https://www.youtube.com/watch?v=iO3SA4YyEYU>

¹³⁰ *Plastics Cycle* (n44) at 15.

¹³¹ COBSEA *Plastic and Gender* (n3) at 30-31.

¹³² *Id* at 32.

¹³³ OECD, “Global Plastics Outlook: Economic Drivers, Environmental Impacts and Policy Options” (2022), at 39, online: https://read.oecd-ilibrary.org/environment/global-plastics-outlook_de747aef-en#page1 [OECD Global].

¹³⁴ *Id*.

¹³⁵ *Plastics Cycle* (n44) at 6.

opportunities for those businesses that innovatively take on the recycling challenge responsibly, and related investment opportunities.¹³⁶

A particularly challenging plastic waste disposal concern has arisen as a result of COVID-19. According to the World Health Organization (WHO),¹³⁷ insufficient attention was paid to the waste management of PPE (masks, gloves, gowns, packaging, etc.) under the United Nations procurement system in the rush to provide developing countries with PPE.¹³⁸ Plastic production has more than doubled since the beginning of COVID-19, raising concerns over short term impacts on oceans and fresh water from burning plastic, and longer-term impacts caused by nano-plastic particles that will persist in the environment.¹³⁹ The report contains “best practice” recommendations for environmental sustainability of healthcare waste management of PPE, which are grouped into global, national and facility-level recommendations.¹⁴⁰

Reflection: Plastics Lifecycle

Businesses:

How do your **business** activities contribute to each **stage** of the **plastics lifecycle**?

- extraction
- production
- transportation
- use (consumption and waste generation)
- waste management (including recycling)
- disposal

Is your business also negatively impacted by plastics? How?

Governments and civil society:

What impacts fall within your jurisdiction/mandate?

¹³⁶ See eg: OECD Global (n133) at 91; Government of Canada, “Economic Study of the Canadian Plastic Industry, Markets and Waste” (2019), at ii, online: https://publications.gc.ca/collections/collection_2019/eccc/En4-366-1-2019-eng.pdf at ii, iv.

¹³⁷ WHO, *Global Impact* (n91)

¹³⁸ *Id.* at 2.

¹³⁹ *Id.* at 2.

¹⁴⁰ *Id.* at 23.

Case Studies: Business Interventions in the Plastics Lifecycle

Question: At which stage(s) of the plastic lifecycle does this business intervene?

A: Switching to Nature-Based Packaging: Gracz

The creation of nature-based packaging is one such circular transition opportunity, which is being championed by Thai company Gracz.¹⁴¹ Companies such as Gracz have created technology to produce containers and packaging using natural plant fibres.¹⁴² These packages have numerous benefits over fossil fuel-based plastics. One such benefit is that the containers biodegrade over a period of 45 days and may be reused as compost for the further harvesting of the fibres necessary to make them.¹⁴³

Another substantial benefit is the reduced health risk compared to traditional plastics as the nature-based packaging does not contain any chemicals that may cause cancer and will not be incinerated leading to reduced air quality. Furthermore, the production of these plastics alternatives provides work opportunities in the agricultural workforce, which results in the creation of local jobs, and potentially also negates the need for risky and polluting long distance transportation of the goods.¹⁴⁴

Answer? Extraction and production stages; and across the plastics lifecycle?

B: Collection of Single-Use Plastics: Gojek

The food service industry accounts for a significant amount of single-use plastic consumption. For example, the South-East Asian “ride-hailing giant” Gojek has been taking steps to reduce the use of single-use plastics within its food delivery service.¹⁴⁵ Through setting up programs for cutlery and drop off points for the collection of plastic bottles at apartment buildings, Gojek has been able to eliminate 19+ tons of plastic waste over a three-year span.¹⁴⁶

Answer? Extraction, production and disposal stages.

C. Diverting the Disposal of Fast Fashion: Phinix¹⁴⁷

Mass production of petroleum-based synthetic fibers has reduced the production cost of modern clothes. This has led to low-cost clothes being produced and consumed in massive quantities. For example, 28 million tonnes of these fibers were produced in 2002,

¹⁴¹ SEA Circular, “Nature-based Food Packaging Case Study: alternatives to Plastic for Packaging Food,” online: <https://www.sea-circular.org/nature-based-food-packaging/>.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ SEA Circular, “Food Delivery Case Study: Promoting Sustainability Throughout the Food Delivery Value Chain,” online: <https://www.sea-circular.org/food-delivery/>.

¹⁴⁶ *Id.*

¹⁴⁷ See SEA Circular, “Giving Old Clothes New Life Case Study: Empowering Inclusivity, and Reusing Plastic,” online: <https://www.sea-circular.org/giving-old-clothes-new-life/>.

which increased to 61.4 million tonnes in 2017.¹⁴⁸ Strong demand for fast fashion results in large volumes of synthetic clothes and textiles being dumped in landfills due to fast fashion's failure to adopt circular approaches and take responsibility for waste management.

Local communities are exposed to toxins and environmental impacts associated with the demand for extraction of new fossil fuels. Textile production workers are exposed to toxic compounds in newly produced textiles. Dumping of fast fashion exposes the general population to the leakage of plastic waste into the environment from landfills.

Phinix is a textile recycling company started in the Philippines. Phinix collects donated clothes from households, schools, and fabric scraps from clothing factories to transform them into footwear, fashion accessories and lifestyle pieces. These recycled products are marketed and sold on social media, or through pop-up stores. Through this process, Phinix has prevented almost 4000 kilograms of textiles from being dumped into landfills while creating economic opportunity.

Answer? Disposal stage; and across the plastics lifecycle?

G. Domestic Initiatives/Challenges

1. Circular Economy and Single-Use Plastic Bans

The concept of the circular economy challenges the place of plastics within the current world economy. Current use of plastics can be described as a “take, make, use, dispose” model.¹⁴⁹ A circular economy model would reshape the lifecycle of plastics by aiming to: keep resources in use for as long as possible, extract maximum value from resources while in use, and recover and regenerate products at the end of their service life.¹⁵⁰ Beyond this goal of keeping products and materials in use for as long as possible, a circular economy model additionally seeks to design out toxins, waste and pollution, as well as to regenerate natural systems.¹⁵¹

A key initiative to achieve the goal of designing toxins, waste and pollution out of the economy is the banning of single-use plastics, as these products inherently follow the current lifecycle rather than a circular lifecycle.¹⁵² As of July 2018 over 27 countries had banned the use of certain single-use plastics.¹⁵³ Reducing or banning the use of single-use plastics has been proposed as a method by which South-East Asia countries could take action to address the problem of domestic plastic

¹⁴⁸ *Id.* [footnote omitted].

¹⁴⁹ Susan Chen, Charlotte De Bruyna, and Manasa Bollempalli, “Plastics and Circular Economy: Community Solutions” (UNDP, GEF, SDP: 2019), at 9, online: https://sgp.undp.org/innovation-library/item/download/1784_1c10cd6fb14cdb59312acd3dec6a80ab.html [UNEP Circular].

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*, at 10.

¹⁵³ UNEP, “Legal Limits on Single-Use Plastics and Microplastics: A Global review of National Laws and Regulations” (2018), at 3, online: <https://www.unep.org/resources/report/legal-limits-single-use-plastics-and-microplastics>.

pollution.¹⁵⁴ Some South-East Asian countries have become leaders in planning and implementing such bans.¹⁵⁵

These bans however must be well-crafted. A poorly crafted ban which does not account for the differential impacts of the ban can paradoxically lead to human rights infringements. Take for example the banning of plastic straws which disproportionately effects disabled people who rely on straws to nourish themselves.¹⁵⁶ Similarly single-use plastic bans can have disproportionate impacts on people living in poverty who may not be able to afford to buy alternative products that comply with the changed rules.¹⁵⁷ The Philippines for example has been described as a “sachet economy” due to the large reliance of distributing necessary products (i.e. food and hygiene products) to the general population in portioned and cost effective sachets made of multi-layer flexible plastics that are hard to recycle.¹⁵⁸ Banning the use of these sachets could have a profound negative impact on the individuals who rely on using these products. As a result, domestic efforts must address any inequities they may create.

Single-use plastic bans are not the only tool available to governments to reduce plastic pollution. Another possibility is the creation of Extended Producer Responsibility (EPR) schemes. Singapore’s 2019 “Zero Waste Masterplan”¹⁵⁹ provides an example of a concrete commitment to transitioning to a circular economy and employing EPR schemes to achieve these goals. An EPR scheme is established in the Masterplan which makes producers of regulated electrical and electronic products “responsible for the collection and proper treatment of their products when they reach their end-of-life.”¹⁶⁰ Using this scheme the Masterplan targets e-waste, packaging waste, and food waste in order to encourage sustainable production and consumption.¹⁶¹

Case Study: Plastic Diaper-Based Pollution and Extended Producer Responsibilities?

Diapers, which are plastic-based products, are disposed across rivers in Indonesia. Approximately 1.5 million diapers have been disposed into rivers in East Java, which is a regional source of drinking water for riverbank communities.¹⁶² The disposal of diapers

¹⁵⁴ See: Greenpeace, “Southeast Asia’s Struggle Against the Plastic Waste Trade: A Policy Brief for ASEAN Member States” (2019), at 10-11, online: <https://www.greenpeace.org/static/planet4-malaysia-stateless/2019/06/a4175fab-waste-trade-report-gpsea.pdf>.

¹⁵⁵ For example, in 2018 Malaysia developed a “Roadmap Towards Zero Single-Use Plastics” with the target of eliminating the use of single-use plastics by 2030. Government of Malaysia, “Malaysia’s Roadmap Towards Zero Single-Use Plastics 2018-2030: Towards a Sustainable Future” (2019), online: <https://www.pmo.gov.my/ms/2019/07/pelan-hala-tuju-malaysia-ke-arrah-sifar-penggunaan-plastik-sekali-guna-2018-2030/>.

¹⁵⁶ Andrew B Jenks & Kelsey M Obringer, “The poverty of plastics bans: Environmentalism’s win is a loss for disabled people” (2020) 40:1 Crit Soc Policy 151–161 at 158.

¹⁵⁷ *Id.*

¹⁵⁸ World Bank, “Market Study for the Philippines: Plastic Circularity Opportunities and Barriers” (2021), at 51.

¹⁵⁹ Ministry of the Environment and Water Resources Singapore, “Zero Waste Masterplan Singapore” (2019), online: <https://www.mse.gov.sg/resources/zero-waste-masterplan.pdf>.

¹⁶⁰ OHCHR, Special Rapporteur on the Issues of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment, “Non-Toxic Environment to Live, Work, Study, and Play Annex 2 – Good Practices” (2019), A/HRC/49/53, at 9 [Non-Toxic Environment].

¹⁶¹ *Id.*, at 8.

¹⁶² See Watchdoc Image, Revolusi Popoke – Ekspedisi 3 Sungai #01, *Youtube* (1 December 2021; English subtitles) online: https://www.youtube.com/watch?v=_8yxaou5Uo&ab_channel=WatchdocImage.

into waterways have made water supplies unusable. Diapers, which are partially comprised of small microplastic beads, have been identified as likely sources of plastic contamination of waterways. For example, 80% of fish stomachs that were sampled contained microplastics, which makes this food supply unsuitable for human consumption.¹⁶³

Concrete actions have been undertaken across Indonesia to mitigate the contamination of waterways from diapers. These include river clean-ups, government lobbying and lawsuits against the government, the creation of drop points for plastics to prevent their disposal in waterways, and the promotion of more sustainable diaper materials, such as cloth diapers.¹⁶⁴ There has also been increased pressure on manufacturers to manage this waste, which seems to reflect a policy momentum for extended producer responsibility schemes across the lifecycle of a product, in this case diapers. In response to the issue of diaper pollution, Kimberly Clark Softex (PT Softex Indonesia) has created diaper recycling facilities to manage diapers post-consumption.¹⁶⁵ They have also collected 17.4 tons of diapers between 2019 to March 2021.¹⁶⁶ The company is also seeking to collect 9.5 tons of diapers per month to help with Indonesia's national action plan to reduce 70% of plastic waste in oceans by 2025.¹⁶⁷ These recycling facilities have turned these diapers into fertilizers, bricks, fuel and handicrafts.¹⁶⁸

Questions

1. Should every producer that sells plastic commodities, such as diapers, be responsible for plastic waste generated after the product's end-of-use?
2. Should vendors of plastic commodities bear some responsibility for plastic commodities sold rather than producers alone?
3. To what degree should consumers of plastic commodities also bear responsibility for purchased plastic? On every plastic commodity? On certain plastic commodities (non-essential items)? If they have a choice to buy non-plastic-based commodities (re-usable diapers)?
4. Do consumers already bear ultimate responsibility for plastic waste if a producer that is subject to Extended Producer Responsibilities passes the costs of compliance onto the consumer?

¹⁶³ KBR, "Brigade Popok Penyelamat Sungai Brantas" *KBR* (12 March 2019) [interview, Google Translate], online: https://kbr.id/saga/03-2019/brigade_popok_penyelamat_sungai_brantas/98898.html.

¹⁶⁴ Tommy Apriando, "'Diaper Brigade Fights a Chemical Crisis in Java's Rivers'" (6 September 2018) online: <https://news.mongabay.com/2018/09/diaper-brigade-fights-a-chemical-crisis-in-javas-rivers/>; Chris Barrett & Kuruni Rompies, "Baby steps: Tackling Indonesia's Nappy Pollution Crisis" (22 November 2021), online: <https://www.smh.com.au/world/asia/baby-steps-tackling-indonesia-s-nappy-pollution-crisis-20211119-p59ahs.html>.

¹⁶⁵ See Kimberley-Clark Softex, "Kimberly-Clark Softex to Increase its Collection of Used Diapers Through a Partnership With Octopus as it Expands its Recycling Efforts in Indonesia" (21 April 2021) [Press Release], online: <https://www.softexindonesia.com/id/news/kimberly-clark-softex-to-increase-its-collection-of-used-diapers-through-a-partnership-with-octopus-as-it-expands-its-recycling-efforts-in-indonesia>.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

Credit: The Indonesia Business Council for Sustainable Development shared a version of this case study.

Reflection: Integrating Circularity Principles

Businesses:

Evaluate opportunities for your **business** to adopt and implement a **circular economy** model and align it with **human rights-aware** plastics action:

- reduce or eliminate unnecessary plastic packaging
- reduce or eliminate reliance on single-use plastics
- seek non-toxic and plastic alternatives
- seek ways to up-cycle (recover and regenerate) plastic-based products that are at the end of their service life to prevent disposal

Governments and civil society:

How might you legislative/advocate for human rights-aware approaches to circular economy?

2. Supporting Informal Waste-Pickers

The informal waste sector is comprised of individuals who are highly skilled at collecting waste, and adding value to such waste through “sorting, cleaning, altering the physical shape to facilitate transport or by aggregating the materials into commercially viable quantities.”¹⁶⁹ These individuals are often self-employed or work as parts of small businesses, with low capital investments and “little or no state regulation.”¹⁷⁰

Despite the informal nature of the work, waste pickers contribute significantly to developing a more circular economy in many contexts.¹⁷¹ An example of this is the savings that the informal sector provides to cities due to their role in reducing the volume of waste that needs to be collected and brought to landfills.¹⁷²

Informal waste pickers are predominately poor urban and rural women and children, while paid employment in public waste management usually favour men.¹⁷³ The informal waste pickers are exposed to increased risks due to a lack of basic occupational health and safety standards. An example of this is the practice of waste picking in open dumps without protective clothing or equipment while being directly in contact with waste.¹⁷⁴

Furthermore, these workers are often exploited by being paid low prices for the materials they collect, especially if only one buyer exists (such as dumps where waste pickers have to pay to enter and can only sell their materials back to the operator of the dump). This exploitation includes not

¹⁶⁹ COBSEA Plastic and Gender (n3), at 22.

¹⁷⁰ *Id.*, at 21.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*, at 22.

¹⁷⁴ *Id.*

just low wages and poor health conditions, but additionally an increased vulnerability to “gender-based violence due to the intersection of their gender and insecure working conditions.”¹⁷⁵

Steps should be taken not only to improve the living and working conditions of informal waste pickers, but also to fully access the skills and benefits that the informal sector have to offer. Efforts to achieve this may include: recognizing informal waste pickers and including them in new more sustainable formal waste systems; countering the stigma associated with the profession; the creation of social protection policies for workers; addressing the need to ensure the informal sectors livelihood when developing schemes to address plastic pollution; the creation of programs within the waste picking networks to enable the equal involvement of both women and men; and establishing government and private infrastructure to meet waste picker’s needs.¹⁷⁶

3. Countering Illegal Importation

Recycling programs for plastics are an ineffective means to tackle the plastic pollution crisis as 91 per cent of accumulated plastics either are put in a landfill, dumped, leaked into nature, or incinerated.¹⁷⁷ This means that the plastic that enters wealthy nation’s recycling systems are far more likely to end up in a destination other than the intended recycling process. One major ‘solution’ to this problem employed by wealthy nations is to export their ‘recyclables’ to other nations. This practice enables “the current industry model to encourage ever-increasing consumption without concern for the consequences.”¹⁷⁸

The practice of “aspirational recycling” was historically enabled by China.¹⁷⁹ As recently as 2016, Chinese processors imported 51% of the world’s recycling, often accepting recycling that was “contaminated with plastic waste and other nonrecyclables.”¹⁸⁰ In this way China absorbed the negative impacts as “exporting countries sent their recycling overseas without knowing or caring whether it was recycled or not, what the environmental and health impacts were, or who was bearing the brunt of these effects.”¹⁸¹

However, in 2017 China recognized the extent of the environmental impact that the recycling trade was having on the country and chose to introduce their “National Sword policy” which banned the importation of plastic waste to China.¹⁸² This policy led to a massive change in the global recycling network, leading developed nations who had grown accustomed to shipping trash to China to divert these shipments, largely to South-East Asia. As a result, in 2018 Malaysia, Thailand and Vietnam became the world’s top importers of recycled waste and began to bear the brunt of its corresponding environmental impacts.¹⁸³

In the wake of this shift Malaysia, Thailand, Taiwan, and Vietnam each created domestic laws which banned or limited the importation of plastic waste and targeted the operation of illegal

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*, at 39-40.

¹⁷⁷ *Plastics Cycle* (n44) at 6.

¹⁷⁸ 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>

¹⁷⁹ *Id.*, at 11.

¹⁸⁰ *Id.*, at 10-11.

¹⁸¹ *Id.*, at 11.

¹⁸² *Id.*, at 10-11.

¹⁸³ *Id.*, at 10.

plastic recycling factories and importers.¹⁸⁴ Given the patchwork of individual domestic bans, the pattern of plastics exports being diverted to different countries has continued.¹⁸⁵

Furthermore, this ongoing transformation in the plastic waste sector has created opportunities for organized crime and corruption.¹⁸⁶ This has resulted in criminals “disposing of plastic waste illegally, taking advantage of confusion in the marketplace, as well as using increased imports of plastic waste to cover the trafficking in other commodities.”¹⁸⁷ The ability for criminals to capitalize on these opportunities is attributed to structural deficiencies within both exporting and importing countries.¹⁸⁸ Global awareness, collaboration, and investment in recycling capacity, as well as reduction of plastic waste, is necessary to prevent this repeating cycle.¹⁸⁹

The Basel Convention’s plastic waste amendments, discussed above, were designed to address this problem as all plastic waste is subject to the Convention’s PIC procedure unless the plastic is unmixed, not contaminated, and destined for recycling.¹⁹⁰ The utility of the amendment may be limited as some of the largest exporters of plastic waste in the world, such as the United States,¹⁹¹ have not ratified the treaty.

Despite the domestic bans on imports of unrecyclable plastic waste, as well as the expanded scope of the Basel Convention, the import of plastic waste still presents a significant challenge to ASEAN states.¹⁹² Even if the plastics that are imported are legal and “recyclable” through the lens of the Basel Ban, the cumulative impact of domestically generated waste, legal international imports, as well as illegal imports of plastic waste puts a severe strain and an unequal burden on ASEAN countries.¹⁹³

¹⁸⁴ *Id.*, at 36.

¹⁸⁵ *Id.*, at

¹⁸⁶ INTERPOL, “Strategic Analysis Report: Emerging Criminal Trends in the Global Plastic Waste Market Since January 2018” (2020), at 45, online: <https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-report-alerts-to-sharp-rise-in-plastic-waste-crime>.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Center for International Environmental Law, “Legal Analysis of the Consequences of the OECD Non-Consensus Determination on the Basel Plastic Amendment” (2021), at 6, online: https://www.ciel.org/wp-content/uploads/2021/02/OECD_Basel_Legal-Analysis_FINAL.pdf.

¹⁹¹ United States Department of State, “Basel Convention on Hazardous Wastes”, online: <https://www.state.gov/key-topics-office-of-environmental-quality-and-transboundary-issues/basel-convention-on-hazardous-wastes/#:~:text=The%20United%20States%20signed%20the,implement%20all%20of%20its%20provisions>.

¹⁹² Greenpeace, “Southeast Asia’s Struggle Against the Plastic Waste Trade: a Policy Brief for ASEAN Member States” (2019), at 10, online: <https://www.greenpeace.org/southeastasia/publication/2559/southeast-asias-struggle-against-the-plastic-waste-trade/>.

¹⁹³ *Id.* It has been suggested that in order to fully address this burden it may be necessary for ASEAN to fully ban the importation of plastic waste, in addition to addressing further illegal imports, and reducing domestically generated waste through single-use plastic bans and other domestic policies. *Id.* at 10-11.

H. Conclusion

1. Summary

Module 1 explores the global plastics crisis and its impact on people and the planet. The module introduces a human rights-based approach to plastic pollution and waste, including the human right to a clean, healthy and sustainable environment, and considers states and businesses as duty bearers under international human rights law. The international law and policy context of the plastics crisis is introduced, illustrating the gaps and opportunities of international environmental law.

Module 1 then examines in detail the human rights impacts arising at each stage of the linear plastics lifecycle, from extraction, production, and transportation to consumption and use, waste management and disposal. The Module considers both the contributions of select business sectors to the different stages of the linear plastics lifecycle, and the impacts of plastic pollution on select business sectors. The Module concludes by briefly considering three interconnected domestic challenges that will receive further consideration in subsequent modules: implementing circular economy approaches together with human rights due diligence; supporting informal waste workers especially at the waste management stage; and countering illegal importation.

2. Questions to Consider

1. In which ways do plastics and climate change present similar challenges? What types of actions could states, businesses, and civil society take to address both problems at once?
2. What are the stages of the plastics lifecycle? For each stage consider:
 - a. Who can intervene to address problems created at the stage?
 - b. Who is most impacted by the risks associated with the stage?
3. What types of plastic pollution are captured by existing multilateral treaties? What types of plastic pollution are neglected within the treaty framework? What steps has the international community recently taken to address deficiencies within the current framework?
4. How can investment in the circular economy enable a more equitable transition from the widespread use of single-use plastics?
5. What are the root causes of the illegal importation of plastic waste into ASEAN countries? What steps can be taken to stop this practice?
6. What are the three core dimensions of the human right to a safe, clean, healthy, and sustainable environment, which will need to be simultaneously guaranteed in order to take a holistic human rights-based approach to plastic pollution?
7. Who are the duty bearers in international human rights law?

II. MODULE 2: Plastics, Human Rights & the Environment (HR&E)

A. Introduction

The aim of Module 2 is to introduce a framework for understanding the human rights impacts of environmental challenges and apply it to each stage of the plastics lifecycle. The module first introduces sources of international and domestic law that support the right to a clean, healthy and sustainable environment. Then, Module 2 will explore the impact of plastics on each of the substantive components of the human right to a clean, healthy, and sustainable environment. These substantive components include rights to: clean air, a safe climate, clean water, healthy ecosystems and biodiversity, healthy and sustainably produced food, and non-toxic places.

The module then turns to the procedural dimensions of the human right to a clean, healthy, and sustainable environment. These procedural requirements include the need to: follow the principles of prevention, precaution, and prior assessment; provide access to information and science; ensure public participation and free prior and informed consent; protect environmental rights defenders; and enable accountability through access to justice and remedy. The impact of plastics on these rights, as well as the potential for these rights to change how we use plastics, will be explored throughout this analysis.

Finally, Module 2 explores the disproportionate impacts that plastics have on the rights of: Indigenous, tribal, or traditional peoples; coastal communities; women and gender diverse persons; ethnic, racial, and other minorities; persons living in poverty; children; and future generations. Principles on the protection of workers from exposure to toxic substances will also be introduced.

After completing Module 2, participants will be able to:

- **Identify** frameworks that clarify the application of sources of international and domestic human rights law to environmental problems.
- **Describe** the substantive components of the human right to a clean, healthy and sustainable environment and apply them to different stages of the plastics cycle.
- **Describe** the procedural components of a human rights-based approach and apply them to plastic action at different stages of the plastics cycle.
- **Demonstrate** how principles of equity, non-discrimination and vulnerability inform a human rights-based approach to different stages of the plastics cycle.
- **Understand** the relationship between each of the components of the human right to a clean, healthy and sustainable environment, and how respect for all elements can work together to achieve a human rights-informed circular economy approach to plastics.

B. Human Rights and Environment (HR&E) Frameworks

Human rights-based approaches to environmental challenges including plastic pollution are well-established in a range of sources of international and domestic law relevant to South-East Asia. These sources confirm state duties and business responsibilities, and the interdependence of substantive and procedural human rights, and equity.

1. Human Rights Council (HRC) Resolution on HR&E

The United Nations Human Rights Council adopted a resolution during their 43rd meeting on the 8th of October 2021, to recognize and reaffirm “the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights.”¹⁹⁴ The resolution notes that the right is “related to other rights and existing international law,” and affirmed that the promotion of the right requires “the full implementation of the multilateral environmental agreements under the principles of international environmental law.”¹⁹⁵

To this end the resolution “encourages” states to build capacities to protect the environment in order to fulfil all of their human rights obligations, as well as to enhance cooperation with a number of groups including: other states; the Office of United Nation’s High Commissioner on Human Rights (OHCHR); the rest of the UN system; relevant regional actors; as well as relevant non-states stakeholders such as civil society, national human rights institutions, and business.¹⁹⁶ Additionally states are encouraged to share good practices, adopt policies for the enjoyment of the right with respect to biodiversity and ecosystems, and to take the right into account while implementing and following up on the Sustainable Development Goals.¹⁹⁷

On July 28, 2022, the UN General Assembly adopted a resolution recognizing the right to a clean, healthy and sustainable environment that was modelled to a large extent on the UN HRC resolution.¹⁹⁸ Rather than “encouraging” States and non-state actors, the UNGA resolution “*Calls upon* States, international organizations, business enterprises and other relevant stakeholders to adopt policies, enhance international cooperation, strength capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.”¹⁹⁹ The resolution also explicitly “*Recalls* the Guiding Principles on Business and Human Rights, which underscore the responsibility of all businesses to respect human rights.”²⁰⁰

¹⁹⁴ HRC Resolution A/HRC/RES/48/13, “The Human Right to a Clean, Healthy and Sustainable Environment” (2021), at 3.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ UNGA, Resolution adopted by the General Assembly on 28 July 2022, “The human right to a clean, healthy and sustainable environment” A/RES/76/300, online: <https://digitallibrary.un.org/record/3983329?ln=en>

¹⁹⁹ *Id.* at 3 (emphasis in original).

²⁰⁰ *Id.* at 2 (emphasis in original).

2. HR&E in ASEAN

The member states of ASEAN have accepted a mandate to advance the right to a healthy environment through their adoption of the 2012 ASEAN Human Rights Declaration.²⁰¹ ASEAN has recognized both substantive and procedural elements of the right to a healthy environment. The recognized substantive rights include measures to safeguard access to: sustainable food, safe drinking water and sanitation, clean air, healthy ecosystems and biodiversity, a non-toxic environment, and a safe climate.²⁰² The recognized procedural rights used to support the right to a healthy environment by ASEAN include guarantees to access to environmental information, as well as participation in environmental decision making.²⁰³

There are many good practices in the region relating to the application of the right to a healthy environment including regional consultations, multistakeholder workshops, dedicated human rights institutions, and the mainstreaming of human rights in ASEAN documents.²⁰⁴ While ASEAN is making progress in ensuring that the right to a healthy environment is being protected in the region, it has been suggested that there is room for improvement including through capacity building to integrate human rights approaches into environmental policy and planning, and through further development of partnerships, multi-stakeholder agreements, and collaboration among all actors.²⁰⁵

In sum, ASEAN has committed to protecting the right to a healthy environment, has begun taking positive steps to achieve this goal, with room to better leverage power and resources to do so.

3. Domestic Recognition

Environmental human rights have been recognized in the domestic laws of many nations “whether by means of constitutional protection, inclusion in environmental legislation or through ratification of a regional treaty that includes the right.”²⁰⁶ As of 2019 there were 110 states that had constitutionally guaranteed the right to a safe, clean, healthy, and sustainable environment. Further in 101 states the right has been incorporated into legislation.²⁰⁷ In total then “more than 80 per cent of States Members of the United Nations (156 out of 193) legally recognize the right to a safe, clean, healthy and sustainable environment.”²⁰⁸

Many ASEAN states have followed this global trend and recognized the right in their domestic laws.²⁰⁹ Indonesia, Philippines, Thailand, and Vietnam have each recognized the right both within their constitutions, as well as through enabling legislation.²¹⁰ Malaysian courts have interpreted

²⁰¹ ASEAN Discussion Brief No.5, *The Right to a Healthy Environment in Southeast Asia* (2020), at 1.

²⁰² *Id.*, at 5.

²⁰³ *Id.*, at 5.

²⁰⁴ *Id.*, at 7-8.

²⁰⁵ *Id.*, at 9-10.

²⁰⁶ OHCHR, Special Rapporteur on the Issues of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment, *Right to a Healthy Environment: Good Practices* (2019), A/HRC/43/53, at 4 [*Good Practices*].

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ OHCHR, Special Rapporteur on Human Rights and the Environment, “Recognition of the Right to a Healthy Environment in Constitutions, Legislation and Treaties: Asia-Pacific Region” (2020), A/HRC/43/53/AnnexV.

²¹⁰ *Id.*

the constitutional guarantee of “the right to life” as including the right to a healthy environment,²¹¹ while courts in Singapore have left the possibility open to do the same.²¹²

4. Expert Clarifications

The United Nation’s Human Rights Council (HRC) elects independent human rights experts to serve as Special Rapporteurs (SR) to the council. Each special rapporteur has a mandate to advise on human rights from either a thematic or country specific perspective. The mandate typically includes the responsibility to conduct studies with calls for input and expert consultation.²¹³ These studies serve to clarify the scope and application of human rights and contribute to the development of those rights. The mandate of the Special Rapporteur on human rights and the environment (SR Environment), as well as the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (SR Toxics), are particularly relevant for understanding the impact of plastics on human rights, as well as the way in which human rights can enable responsible action aimed at tackling the plastics challenge.

The mandate of the SR Toxics was renewed in 2020.²¹⁴ This mandate requires the special rapporteur “to provide detailed, up-to-date information on the adverse consequences for the full enjoyment of human rights of managing and disposing of hazardous substances and wastes, in an unlawful manner.”²¹⁵ The current mandate holder, Marcos Orellana, published the highly relevant report “The Stages of the Plastics Cycle and Their Impact on Human Rights” in 2021.²¹⁶

The mandate for the SR environment was created in 2012, with the purpose of investigating the human rights obligations “relating to the enjoyment of a safe, clean, healthy and sustainable environment.”²¹⁷ A key document to arise from this mandate is the report on the “Framework Principles on human rights and the environment” completed by the original mandate holder John Knox.²¹⁸ The Framework Principles were developed from extensive mapping of existing international law starting with a 2013 mapping report,²¹⁹ which drew upon “fourteen individual reports examining sources of international and regional human rights and environmental law including civil and political rights, economic, social and cultural rights, women’s rights, the rights of the child, and much more.”²²⁰

²¹¹ *Tan Teck Seng v Suruhanjaya Perkhidmatan Pendidikan* [1996] 2 CLJ 771 (Court of Appeal).

²¹² *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129.

²¹³ OHCHR, “Special Procedures of the Human Rights Council,” online: <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

²¹⁴ HRC Resolution A/HRC/RES/45/17, “Mandate of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes” (2020).

²¹⁵ *Id.*, at 2.

²¹⁶ Plastics Cycle (n44).

²¹⁷ HRC Resolution A/HRC/RES/19/10, “Human Rights and the Environment” (2012).

²¹⁸ Framework Principles (n25).

²¹⁹ OHCHR, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment (2013) A/HRC/25/53 [Mapping Report].

²²⁰ Sara L. Seck, “Teaching Note: Human Rights and the Environment,” in Teaching Business and Human Rights Handbook (Teaching Business and Human Rights Forum, 2020), <https://teachbhr.org/resources/teaching-bhr-handbook/teaching-notes/human-rights-and-the-environment/>; For the background mapping reports see: <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report>.

Framework Principles on Human Rights and the Environment (2018)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

A/HRC/37/59 (Annex), Principles 1-3

1. *States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.*
2. *States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.*
3. *States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.*

The Framework Principles highlight both procedural and substantive rights. The principles center the interdependence of these rights however, as it is impossible to enjoy a vast range of human rights without a safe, clean, healthy and sustainable environment, but it is also vital that procedural human rights are able to be exercised in order to ensure the maintenance of such an environment.²²¹ Furthermore, the Framework Principles set equity and non-discrimination as a cross-cutting theme.²²² The need to ensure equity in the guaranteeing of human rights related to the environment is brought to the foreground in Principle 14 which calls for “additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm.”²²³

Finally, it is important to note that while the recommendations of the special rapporteurs often focus on actions that states should undertake, these reports additionally seek to clarify the responsibilities of businesses. For example, while Framework Principle 12 provides that “States should ensure environmental standards are effectively enforced against both public and private actors,” the Commentary clarifies that the business responsibility to respect human rights of the UN Guiding Principles applies to environmental issues as well.

Framework Principles on Human Rights and the Environment (2018)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Commentary to Principle 12

the responsibility of business enterprises to respect human rights includes the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly related to their operations, products, or services by their business

²²¹ Framework Principles (n25) at 7-8, Principles 1 & 2.

²²² *Id.*, at 8-9, Principle 3.

²²³ *Id.*, at 9, Principle 14. The UNGA resolution on the right to a clean, healthy and sustainable environment explicitly takes note of this aspect of the Framework Principles, stating: “*Reaffirming* that States have the obligation to respect, protect and promote human rights, including in all actions undertaken to address environmental challenges, and to take measure to protect the human rights of all, as recognized in different international instruments, and that additional measures should be taken for those who are particularly vulnerable to environmental degradation, noting the framework principles on human rights and the environment.” (emphasis in original) UNGA Resolution on the Right to a Clean, Healthy and Sustainable Environment (n23) at 2.

*relationships. Businesses should comply with all applicable environmental laws, issue clear policy commitments to meet their responsibility to respect human rights through environmental protection, implement human rights due diligence processes (including human rights impact assessments) to identify, prevent, mitigate and account for how they address their environmental impacts on human rights, and enable the remediation of any adverse environmental human rights impacts they cause or to which they contribute.*²²⁴

The Report of the SR Toxics on the rights of workers who have been exposed to toxics details expansive responsibilities for businesses as well.²²⁵ The report highlights that business have a responsibility to workers for the consequences of exposures to hazardous substances caused by the business.²²⁶ Further this responsibility continues through the entire lifecycle of their products, from extraction to disposal.²²⁷ Finally, this responsibility extends to ensuring that their suppliers (domestic or international) adopt similar good practices to prevent exposures to toxic substances and to accept responsibility for the human rights impacts of such exposures.²²⁸

C. The Human Right to a Clean, Healthy and Sustainable Environment

The remaining sections to Module 2 will explore the substantive, procedural and equity elements of a human rights-based approach to environmental challenges such as plastic pollution, including business responsibilities to workers. This three-prong approach is introduced in the following graphic:



Design: Dalhousie University Graphic Design

²²⁴ *Id.*, at 15, Principle 12, Commentary at para 35.

²²⁵ OHCHR, Special Rapporteur on toxics and human rights, “Principles on the protection of workers from exposure to toxic substances”, (2019), A/HRC/42/41 [Principles Workers].

²²⁶ *Id.*, at 17.

²²⁷ *Id.*

²²⁸ *Id.*

1. Substantive Elements

A wide range of human rights can be harmed by environmental degradation, including rights to life, health and culture, among others. The current SR Environment, David Boyd, has sought to clarify the substantive elements of the right to a clean, healthy and sustainable environment with reference to six substantive elements: clean air, safe climate, clean water, healthy ecosystems and biodiversity, healthy food, and non-toxic places. Each will be considered in turn, with attention to the impacts arising from the plastic lifecycle.

a) *Clean Air*

Emissions which harm air quality occur at each stage of the plastic lifecycle. The extraction and refinement of fossil fuels is an energy and emissions intensive process as are the industrial processes used for the production and manufacturing of plastic goods; the transportation of plastics results in emissions from transport vehicles; the degradation of plastics during use in direct sunlight results in carbon dioxide emissions while microplastics may contaminate the air; and there are substantial emissions related to degradation of plastics in landfills, and the incineration of plastics as a means to avoid landfills.²²⁹

As such plastics have a profound impact on the right to enjoy clean air, and thus the right to a safe, clean, and healthy environment.²³⁰ The SR Environment has argued that states must take seven key steps to ensure respect for the right to clean air:

(a) monitor air quality and impact on human health; (b) assess sources of air pollution; (c) make information publicly available, including public health advisories; (d) establish air quality legislation, regulations, standards and policies; (e) develop air quality action plans at the local, national and, if necessary, regional levels; (f) implement air quality action plans, and enforce the standards; and (g) evaluate progress and, if necessary, strengthen plans to ensure that the standards are met.²³¹

Adopting a chemical free, circular approach to plastic production and use would also reduce the air pollution currently experienced at each stage of the linear plastics cycle.

b) *Safe Climate*

A safe climate is an essential aspect of the enjoyment of the right to a clean, healthy and sustainable environment “and is absolutely essential to human life and well-being.”²³² In order to safe-guard this right, the SR Environment has argued that four main categories of action must be taken: “addressing society’s addiction to fossil fuels; accelerating other mitigation actions; protecting vulnerable people from climate impacts; and providing unprecedented levels of financial support to least developed countries and small island developing States.”²³³

²²⁹ See: *Plastics Cycle* (n44); *UNEP Environmental Justice* (n65).

²³⁰ *Good Practices* (n206) at 8.

²³¹ *Good Practices* (n206) at 8. See further OHCHR, Special Rapporteur on Human Rights and the Environment, “Clean Air and the Right to a Healthy and Sustainable Environment” (2019), A/HRC/40/55.

²³² OHCHR, Special Rapporteur on the Issues of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment, *Safe Climate Report* (2019), A/HRC/74/161, at 25 (para 96). In 2022, a Special Rapporteur was appointed to a new mandate dedicated to human rights and climate change.

²³³ *Id* at 20 (para 75).

As plastic is produced from fossil fuels and is omnipresent in modern society, reliance on plastic products is a key part of “society’s addiction to fossil fuels.” The extensive GHG emissions inherent in the plastics lifestyle contribute to the creation of an unsafe climate. Thus, in order to ensure a safe climate, the plastics challenge will have to be addressed.

As an example of a good practice for beginning to address the threats to ensuring a safe climate, the SR Environment suggests following the lead of states that have constitutionalized their responsibility to address climate change.²³⁴

c) Clean Water

In 2010 the HRC passed a resolution which recognized that the right to safe and clean drinking water is an essential human right which is necessary for the enjoyment of life and all other rights.²³⁵ The SR Environment has further confirmed that the right to safe and sufficient water is a crucial component of the right to a safe, clean, healthy, and sustainable environment, which states and businesses have responsibilities to protect.²³⁶

Plastics have a negative impact on water quality throughout their lifecycle. The extraction process at the beginning of the lifecycle often leads to the contamination of water,²³⁷ likewise production plants which are located by rivers and groundwater often pollute those bodies of water,²³⁸ and incineration can similarly lead to water pollution. Further, the accumulation of large plastic waste, as well as microplastics, in both oceans, fresh water, and even rain (in the case of microplastics²³⁹), poses a significant threat to the cleanliness and sanitation of water.²⁴⁰

Good practices for ensuring the cleanliness of water include “the need for clear articulation of the content of the rights to water and sanitation through laws, regulations and policies governing availability, physical accessibility, affordability, quality and safety, and acceptability” as well as “legal frameworks to eliminate discrimination in the provision of water and sanitation services.”²⁴¹

d) Healthy Ecosystems and Biodiversity

The loss of ecosystem services and biodiversity has profound impact on a broad spectrum of rights including the rights to life, health, food, water, culture, nondiscrimination, and a clean, healthy and sustainable environment.²⁴² This places an obligation on states to “to safeguard biodiversity in

²³⁴ Good Practices (n206) at 9 (citing Côte d’Ivoire, Cuba, the Dominican Republic, Ecuador, Thailand, Tunisia, the Bolivarian Republic of Venezuela, Viet Nam, and Zambia.)

²³⁵ HRC Resolution A/HRC/RES/64/292, “The Human Right to Water and Sanitation” (2010), at 3.

²³⁶ See: OHCHR, Special Rapporteur on Human Rights and the Environment, “Human Rights and the Global Water Crisis: Water Pollution, Water Scarcity, and Water-related Disasters” (2021), A/HRC/46/28; Good Practices (n206) at 14.

²³⁷ Plastics Cycle (n44) at 5.

²³⁸ UNEP Environmental Justice (n65) at 24.

²³⁹ *Id.*, at 36.

²⁴⁰ See: UNEP Environmental Justice (n65) and Plastics Cycle (n44).

²⁴¹ Good Practices (n206) at 14.

²⁴² OHCHR, Special Rapporteur on the Issues of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment, *Human Rights Obligations relating to the Conservation and Sustainable Use of Biological Diversity* (2017), A/HRC/34/49, at 12. See also OHCHR, Special Rapporteur on the Issue of human rights obligations relating to the environment of a safe, clean, healthy and sustainable environment, *Human rights depend on a healthy biosphere*, (2020), A/75/161 at paras 75-77 on the specific responsibilities of businesses. Beyond compliance with the UNGPs, these include to “reduce adverse impacts on ecosystems and

order to protect those rights from infringement” as well as to “protect against environmental harm from private actors.”²⁴³ Likewise businesses have a responsibility to protect the rights relating to biodiversity, and thus biodiversity itself.²⁴⁴

According to SEA Circular “plastic pollution has a direct and deadly effect on wildlife and on biodiversity.”²⁴⁵ It is possible that by 2050 oceans will have more plastics than fish which would cause “incalculable damage to ecosystems, biodiversity and the entire marine and coastal environment.”²⁴⁶ Microplastics are particularly harmful to marine ecosystems as they enter fish “through their gills, before becoming trapped in their vital organs and brains,” while nanoplastics “are even able to enter through cell walls, making them an exceptional risk to marine life.”²⁴⁷ As such action is needed to address the disastrous impacts that plastics can have on biodiversity, and thus the human right to a clean, healthy, and sustainable environment.²⁴⁸

e) **Healthy and Sustainable Food**

The right to food is perhaps the longest recognized right which makes up a component of the right to safe, clean, healthy, and sustainable environment as it was originally recognized as part of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights.²⁴⁹ According to the SR Environment, “a rights-based approach, focused on the right to food and the right to a healthy environment, is an essential catalyst for accelerating the transformation from today’s unsustainable food systems to a future where everyone enjoys healthy and sustainable food, workers are treated fairly and degraded ecosystems are restored.”²⁵⁰ Taking such a rights based approach to the right of food is an obligation rather than an option for states.²⁵¹

Plastics threaten the ability for humans to acquire clean food. Toxins from plastic food packaging can contaminate the food contained inside.²⁵² The prevalence of microplastics within the ocean’s food chain can result in severe exposure to toxins in coastal communities that rely on fish for protein.²⁵³ The extensive use of plastics in agriculture, together with toxic additives, is contaminating soil and food crops.²⁵⁴ Inadequate waste management systems and disposal

biodiversity from their own activities, subsidiaries and suppliers; reduce adverse impacts on nature from the use of their products and services; and publicly disclose their adverse impacts on nature.”

²⁴³ *Id.* (2017 report)

²⁴⁴ *Id.* (2017 report)

²⁴⁵ SEA Circular, “World Environment Day 2020: Plastic Pollution Threatens Marine Biodiversity in South-East Asia” (2020), online: <https://www.sea-circular.org/news/world-environment-day-2020-plastic-pollution-threatens-marine-biodiversity-in-south-east-asia/>.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ See for example OHCHR, Special Rapporteur on Human Rights and the Environment, “Additional Good Practices in the Implementation of the Right to a Safe, Clean, Healthy, and Sustainable Environment,” (2019) A/HRC/43/53/Annex III at 28 (citing the example of Singapore’s relocation of hard coral colonies from a development site in order to preserve ocean biodiversity).

²⁴⁹ *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 25.

²⁵⁰ OHCHR, Special Rapporteur on Human Rights and the Environment, “Healthy and Sustainable Food: reducing the Environmental Impacts of Food Systems on Human Rights” (2021), A/76/179.

²⁵¹ *Id.*, at 21.

²⁵² *Plastics Cycle* (n44) at 6.

²⁵³ *UNEP Environmental Justice* (n65) at 35.

²⁵⁴ *UNEP Drowning* (n37) at 21-23.

practices can cause plastics to enter water and soil, and microplastics to harm wildlife, plants and ultimately food.

f) **Non-Toxic Places**

The ability to live, work and play in a place that is free from toxins is an essential element of not only the right to a lean, healthy, and sustainable environment but also “the rights to life, health, safe food and water, [and] adequate housing.”²⁵⁵ These human rights are severely threatened in areas that have become known as “sacrifice zones,” which are places “where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas.”²⁵⁶

Some of the “most heavily polluting and hazardous facilities” such as oil and gas fields, petroleum refineries, chemical plants, garbage dumps, and hazardous waste incinerators, are required to be used throughout the lifecycle of plastics.²⁵⁷ These facilities not only impact toxicity of places, but also do so in disproportionate ways. The incineration of plastic waste can “increase the risk of premature mortality related to respiratory issues, and may cause damage to organ systems,”²⁵⁸ and is “far more prevalent in countries in the Global South where centralized solid waste management systems are less common, and individuals must tend to their own waste.”²⁵⁹ Similarly the accumulation of plastic pollution disproportionately effects coastal communities.²⁶⁰

Reflection: Embedding Substantive Rights to Advance the Human Right to a Clean, Healthy and Sustainable Environment

Evaluate how the contribution of your business (or organisation) to the plastics lifecycle may **impact** the **substantive** components of the right to a clean, healthy and sustainable environment, including the right to:

- a) clean air;
- b) safe climate;
- c) clean water;
- d) healthy ecosystems and biodiversity;
- e) healthy food; and
- f) non-toxic places.

Does your business (or organization) take pro-active action to support the substantive components of this right?

2. Procedural Elements

To ensure the substantive components of the right to a clean, healthy and sustainable environment are realized, those impacted by environmental harm must be able to exercise the procedural human

²⁵⁵ Good Practices (n206) at 15.

²⁵⁶ OHCHR, Special Rapporteur on Human Rights and the Environment, “Non-toxic Environment to Live, Work, Study, and Play” (2022), A/HRC/49/53, at 7 [Non-Toxic Places].

²⁵⁷ *Id.*

²⁵⁸ Good Practices (n206) at 15.

²⁵⁹ UNEP Environmental Justice (n65) at 35.

²⁶⁰ *Id.*, at 7.

rights elements of the right. Both the SR Environment and the SR Toxics have stressed the importance of procedural rights for environmental protection.

Framework Principles on Human Rights and the Environment (2018)
Office of the United Nations High Commissioner for Human Rights (OHCHR)

Commentary to Principles 1 & 2

the exercise of human rights, including rights to freedom of expression and association, to education and information, and to participation and effective remedies, is vital to the protection of the environment.

Principle 4

provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence

2021 SR Toxics Plastics and Human Rights (para78)

A human rights-based approach is key ... to prevent exposure and transition towards a circular economy at all stages of the plastics cycle [including principles of] informed participation, prevention, precaution and polluter-pays ... [and] effective remedy...

a) Prevention, Prior Assessment & Precaution

The prevention and precautionary principles are foundational principles of international environmental law which are similar in function but apply in different situations based on the degree of certainty of possible damage. Where the consequences of an action or substance are known, the prevention principle applies and requires actors to ensure that steps are taken to minimize these known consequences.²⁶¹ Likewise, even if the consequences of actions or substances are not conclusively known but scientific evidence points to the possibility of serious risks, actors are required to apply the precautionary principle. This principle requires the actors to abstain from taking these potentially harmful actions or using the potentially harmful substances.²⁶²

Both the prevention and precautionary principles readily apply to the plastics context as “urgent and robust measures are indispensable to protect human rights and the environment from plastics and their toxic additives.”²⁶³ According to the SR Toxics “the implementation of those principles calls for a range of measures, such as avoiding false solutions, addressing classes of hazardous chemicals, and an emphasis on product design.”²⁶⁴

These principles additionally extend to the prior assessment of “solutions” to the plastics crisis. These “apparent solutions” often bring problems of their own resulting in there being a need to “assess their potential impacts on human rights to prevent unintended consequences and the

²⁶¹ Plastics Cycle (n44) at 20.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

shifting from one form of toxic exposure to another.”²⁶⁵ An example of this would be the proposal of plastic-to-fuel technologies which present the same risks as incineration of plastics through the release of hazardous substances into the air. Chemical approaches to recycling additionally fit this description as “Grossly inadequate reporting exists on the status of chemical recycling which, along with a lack of independent evidence on the technology, appears to have led to it being portrayed above and well beyond its capabilities.”²⁶⁶ In this way “apparent solutions” like these technologies can result in the shifting of consequences from one form to another,²⁶⁷ and diverts attention from efforts to reduce the use of plastics which may be “the only way to respond to the global plastics problem.”²⁶⁸

The Framework Principles clarify in Principle 8 that assessment processes should not focus exclusively on environmental impacts and should instead “examine the possible effects of the environmental impacts of proposed projects and policies on the enjoyment of all relevant rights, including the rights to life, health, food, water, housing and culture.”²⁶⁹ In completing such an assessment attention should be given to whether projects or policies comply with non-discrimination obligations, applicable domestic laws and international agreements, and to individuals who are particularly vulnerable to environmental harm.²⁷⁰ The Framework Principles also explicitly draw attention to the responsibility of business enterprises under the UNGPs to “conduct human rights impact assessments” and ensure meaningful consultation with those who may be affected.²⁷¹

b) Access to Information

A particularly important procedural right in the plastics context is the right to information. The human right to “seek, receive, and impart information” in the context of environmental matters enables “individuals to understand how environmental harm may undermine their rights, including the rights to life and health, and supports their exercise of other rights, including the rights to expression, association, participation and remedy.”²⁷² The right to information places two positive duties on states: to collect, update, and disseminate information; and to provide affordable, effective, and timely access to the gathered information.²⁷³ States additionally have a responsibility to provide education which develops “respect for human rights and the environment” in order to allow individuals to exercise and take advantage of their right to information.²⁷⁴

The right to information “on hazardous substances and wastes is central to the enjoyment of human rights and fundamental freedoms.”²⁷⁵ This is because if people are unable to know whether they are being exposed to hazardous substances, they will be unable to exercise other substantive and procedural rights such as “The right of victims to an effective remedy, the right to meaningful

²⁶⁵ *Id.*

²⁶⁶ Chemical Recycling (n92) at 34.

²⁶⁷ Plastics Cycle (n44) at 20.

²⁶⁸ *Id.*, at 22; Chemical Recycling (n92) at 34.

²⁶⁹ Framework Principles (n25) at 12 (Commentary to Principle 8).

²⁷⁰ *Id.* (referring to Principles 3, 11, 13, 14, and 15).

²⁷¹ *Id.*, at 12 (Commentary to Principle 8). See further on the UNGPs in Module 3.

²⁷² Framework Principles (n25) at 11 (Commentary to Principle 7).

²⁷³ *Id.*

²⁷⁴ *Id.*, at 10 (Commentary to Principle 6).

²⁷⁵ OHCHR, Special Rapporteur on Toxics and Human Rights, *Right to Information on Hazardous Substances and Wastes* (2015), A/HCR/30/40, at 20.

participation, the right not to be subject to experimentation without consent, [and] the right to the highest attainable standard of health,” among others.²⁷⁶

Within the context of hazardous substances, the right to science accompanies the right to information. States have three main duties in respecting the right to science: to ensure the availability and accessibility of accurate scientific information; to actively combat and correct scientific disinformation; and to foster an “enabling environment where scientific freedoms may be realized and where needed scientific research on toxic substances that endanger human health and the environment” is conducted.²⁷⁷ It is also essential to recognize that “other systems of knowledge and ways of knowing coexist with science, including local, traditional and indigenous knowledge, and have ‘an important role to play in the global scientific dialogue.’”²⁷⁸

These rights are both highly relevant in the plastics context as “The vast majority of rights holders do not have access to information relating to the impacts of the various stages of the plastics cycle.”²⁷⁹ It is additionally essential to ensure non-discrimination in the application of these rights, due to the disproportionate impacts of plastic pollution.²⁸⁰

Case Study: Access to Information with Product Labeling

A simple (albeit not sufficient by itself) step that states and businesses can take to improve access to information on plastics is to ensure clear, evidence-based, labeling on products indicating their recyclability. An example of a good practice in this area is Indonesia’s Ramah Lingkungan (Environmentally Friendly) mark which indicates that packaging meets the government’s national standard for biodegradable plastic or bioplastic bags.²⁸¹

Despite a slight lack of clarity in the image, this mark has been described as effective as it communicates a credible standard in a transparent manner given the clear indication of the criteria number on the mark.²⁸² Such government programs, implemented cooperatively with business, can be effective in ensuring that individuals make informed sustainable decisions.

c) *Public Participation*

It is necessary to ensure that environmental decisions “take into account the views of those who are affected by them” to not only increase public support, and promote sustainable development, but is also to ensure the protection of the “enjoyment of rights that depend on a safe, clean, healthy and sustainable environment.”²⁸³ To this end the OHCHR has recognized the “rights to freedom of expression, association and peaceful assembly in relation to environmental matters” as

²⁷⁶ *Id.*, at 21.

²⁷⁷ OHCHR, Special Rapporteur on Toxics and Human Rights, *Right to Science in the Context of Toxic Substances* (2021), A/HCR/48/61, at 18.

²⁷⁸ *Id.*, at 5.

²⁷⁹ Plastics Cycle (n44) at 18.

²⁸⁰ *Id.*

²⁸¹ UNEP & Consumers International, “Can I Recycle This? A Global Mapping Assessment of Standards, Labels and Claims on Plastic Packaging” (2020), at 51, online:

<https://www.consumersinternational.org/media/352255/canirecyclethis-finalreport.pdf> .

²⁸² *Id.* Ideally, labelling would ensure disclosure of polymers and additives to enable both safe recycling and remedy. Plastics Cycle (n44) at 19.

²⁸³ Framework Principles (n25) at 12 (Commentary to Principle 9).

framework principles underlying and allowing access to the human right to the enjoyment of a clean, healthy, and sustainable environment.²⁸⁴

States have a further obligation to “provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.”²⁸⁵ These individuals and groups are often referred to collectively as “environmental human rights defenders,” and consist of “individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna.”²⁸⁶

Environmental human rights defenders play an essential role in ensuring the right to participation is exercised in relation to environmental matters. However, these human rights defenders have often been the target of violence and murder.²⁸⁷ According to the OHCHR’s Special Rapporteur on the Situation of Human Rights Defenders “There is no more direct attack on civil society space than the killing of human rights defenders.”²⁸⁸ Thus, in ensuring participatory rights, states and business each have a responsibility to protect human rights defenders.²⁸⁹

Respecting the right to public participation in the plastics context requires consultation at all stages of the plastics life cycle.²⁹⁰ Additionally, states have a duty to ensure “the participation of affected communities and environmental human rights defenders in decision-making processes on plastics policies.”²⁹¹

d) Accountability and Access to Justice/Remedy

The ability for individuals to exercise their human right to remedy “is vital to the protection of the environment” and extends to violations of all human rights that relate to environmental harm, including the procedural dimensions considered above.²⁹² In addition to establishing and enforcing substantive environmental standards, state obligations extend to ensuring individuals can access remedies against private actors and government officials.²⁹³ Both judicial and administrative mechanisms may provide effective remedy if basic requirements are met such as timeliness, impartiality and transparency, rights of appeal, appropriate expertise and resources, and the availability of “interim measures, compensation, restitution and reparation.”²⁹⁴ Remedies should be available for past as well as current violations, and for “claims that are imminent and foreseeable.”²⁹⁵ The public should be enabled to access remedy through broad provision of standing, including for collective rights holders, assistance in overcoming obstacles such as

²⁸⁴ *Id.*, at 9-10 (Commentary to Principle 5).

²⁸⁵ *Id.*, at 9 (Principle 4).

²⁸⁶ OHCHR, Special Rapporteur on the Situation of Human Rights Defenders, “The Situation of Environmental Human Rights Defenders” (2016), A/71/281, at 4.

²⁸⁷ OHCHR, Special Rapporteur on the Situation of Human Rights Defenders, “Final Warning: Death Threats and the Killings of Human Rights Defenders” (2020), A/HRC/46/35.

²⁸⁸ *Id.*, at 3.

²⁸⁹ *Id.*, at 20-21.

²⁹⁰ Plastics Cycle (n44) at 19.

²⁹¹ *Id.*

²⁹² Framework Principles (n25) at 2 and 13 (Principle 10 and Commentary).

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

distance, expense, language and illiteracy, and by protecting those who seek remedy from reprisals.²⁹⁶

The responsibility for guaranteeing the right in relation to environmental rights however cannot be left to the legal context of individual states. Instead, the full observance of the right to remedy “requires States to work together to address transboundary and global threats to human rights” as “transboundary and global environmental harm can have severe effects on the full enjoyment of human rights.”²⁹⁷ States often meet this requirement through signing multilateral agreements.²⁹⁸ However other steps can, and should, be taken such as ensuring that “agreements facilitating international trade and investment support, rather than hinder, the ability of States to respect, protect and fulfil human rights and to ensure a safe, clean, healthy and sustainable environment.”²⁹⁹

The right to an effective remedy along with accountability from polluters are “essential elements of a human rights-based approach to plastics.”³⁰⁰ The availability of remedy has historically been elusive in the plastics context as “the plastics industry has deliberately spread disinformation on the false promises of recycling in order to delay controls, divert attention to consumer responsibilities and escape effective accountability for the risks and harms posed by plastics.”³⁰¹

Both business and states have responsibilities to ensure this right. Businesses “have particular responsibilities in regard to the risks and harms caused along all the stages of the plastics cycle.”³⁰² States likewise have a responsibility to accept transnational obligations in ensuring effective remedies due to the global dimension of the plastics problem.³⁰³ According to the SR Toxics, the UNGP’s “have an essential role to play in securing accountability and access to remedy.”³⁰⁴

Case Study: Plastic as a Fuel Source for Cement and Economic Development

The Philippines is one of the fastest growing economies in South-East Asia (i.e., an increase in various developments: airports, bridges, dams, roads, highways, etc.).³⁰⁵ This growth has created a demand for cement and plastic is being used as a fuel source to make cement.³⁰⁶ The government and the business sector support plastic as a fuel source and solution to reduce plastic waste by 40-60%.³⁰⁷ However, the burning of

²⁹⁶ *Id.*

²⁹⁷ *Id.*, at 16 (Commentary to Principle 13).

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ Plastics Cycle (n44) at 19.

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ Claire Jiao, “The Philippines Is Making Roads and Cement with Plastic Garbage” *Bloomberg* (23 January 2020), online: <<https://www.bloomberg.com/news/articles/2020-01-23/the-philippines-is-making-roads-and-cement-with-plastic-garbage#xj4y7vzkg>>.

³⁰⁶ *Ibid.*

³⁰⁷ Philippine News Agency, “Use of plastic as raw materials for cement to reduce plastic waste by 40%” (12 March 2022), online: <https://www.pna.gov.ph/articles/1169621>; Greenpeace Philippines, “Greenpeace calls out Nestle for false claims of plastic neutrality” *Greenpeace Philippines* (5 September 2020), online: <https://www.greenpeace.org/philippines/press/9990/greenpeace-calls-out-nestle-for-false-claims-on-plastic-neutrality/>; Joe Brock, *et al.*, “Trash and Burn: Big Brands Stoke Cement Kilns with Plastic Waste as Recycling Falter” *Reuters* (28 October 2021), online: <https://www.reuters.com/investigates/special-report/environment-plastic-cement/>.

plastic may, if improperly controlled, release toxic chemicals, including dioxins, into the environment that can cause cancer and various hormonal disruptions.³⁰⁸

Questions

1. How can we ensure procedural human rights are advanced while using plastic as a fuel source for economic development (i.e., the rights to: prevention of harm; prior assessment of undertakings; precautionary approach to reduce harms; access to information of undertakings; right to accountability and remedy in cases of uncontrolled environmental and health externalities)?
2. Is there room for the burning of plastic as part of the concept of a “just transition” away from plastic extraction and production?

Reflection: Embedding Procedural Rights to Advance the Human Right to a Clean, Healthy and Sustainable Environment

Identify steps to ensure that your organisation is supporting the exercise of **procedural components** of the right to a clean, healthy and sustainable environment, including by:

- Identifying your organisation’s commitment to **the prior assessment and prevention** of impacts caused by plastics or substitutes;
- Ensuring that the public has **access to information** regarding your organisation’s contribution to the plastics lifecycle, or substitutes, including the use of any hazardous substances or toxic chemicals;
- Supporting and ensuring that rights holders that may be impacted by your organisation’s contribution to the plastics lifecycle or substitutes have an opportunity to **participate** in such assessments, and, where appropriate, that their consent is sought;
- Supporting **access to remedy** for any impact that your organization’s contribution to the plastics lifecycle may have had on human rights.

3. Equity and Vulnerable Groups

“Persons and groups in vulnerable conditions are disproportionately exposed to the impacts of the plastics cycle, depending on factors such as age, gender, ethnicity, education, profession and poverty. [They] often lack tools and opportunities to protect themselves from such exposure...”³⁰⁹

— United Nations’ Special Rapporteur on Toxic Substances and Human Rights

³⁰⁸ World Health Organization, “Dioxins and their effects on human health” (4 October 2016), online: <https://www.who.int/news-room/fact-sheets/detail/dioxins-and-their-effects-on-human-health>.

³⁰⁹ Plastics Cycle (n44) at 9.

Equity and non-discrimination are treated as a cross-cutting theme in the Framework Principles and the importance of attention to vulnerability is noted in the UNGA resolution on the right to a clean, healthy and sustainable environment.³¹⁰ The Framework Principles call on states to “take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.”³¹¹ Importantly, the scope of these vulnerabilities arise not only when individuals or groups are “unusually susceptible to certain types of environmental harm,” but also where individuals or groups have been denied their human rights which would ordinarily help insulate them from environmental harms.³¹² This section introduces different experiences of vulnerability to environmental harm for either, or both, of these reasons. While each experience is considered separately below, it is important to acknowledge that many people experience intersectional marginalization and vulnerability to environmental harm, and so the relationship between the different categories considered here must be acknowledged and accounted for.

a) **Children & Future Generations**

Plastics pose a significant threat to children as with other toxics and pollution as children “have higher levels of exposure and are also more sensitive to it, which makes them more vulnerable than adults.”³¹³ The impacts of this exposure can be irreversible and has been proven to occur before birth through their mother’s exposure.³¹⁴ In this way every child is a victim of “toxic trespass.”³¹⁵

Given the extreme exposure and vulnerability that children have to toxins including from plastics, all international actors including states, businesses, civil society, and international organizations have a responsibility to minimize and remedy this exposure.³¹⁶ Failure to address the impact of toxics in the plastics industry as a whole can result in severe breaches of children’s rights including “the right to life and childhood development, the right to health, the right to physical integrity, the right to be free from the worst forms of child labour, the rights to food, water and adequate housing, and others.”³¹⁷

³¹⁰ Framework Principles (n25) especially at 8-9 (Principle 3) and 16-20 (Principles 14 & 15); UNGA resolution on the right to a clean, healthy and sustainable environment (n21) at 2-3.

³¹¹ Framework Principles (n25) at 16 (Principle 14).

³¹² *Id.* (Commentary to Principle 14). “Vulnerability to environmental harm reflects ‘the interface between exposure to the physical threats to human well-being and the capacity of people and communities to cope with those threats.’” (citing UNEP’s 2002 *Global Environment Outlook* at 302).

³¹³ OHCHR, Special Rapporteur on Toxics and Human Rights, *Rights of the Child and Hazardous Substances and Wastes* (2016), A/HRC/33/41, at 3. See also *Plastics Cycle* (n44) at 10 (“Cancer, endocrine disruption and adverse development are some of the consequences in children that are linked to chemicals used in plastics, and the risks and harms posed by plastics additives are particularly serious at a young stage of body development. Toxic additives, particularly endocrine disrupting chemicals are found in many plastic products used by children, such as bottles and toys. Bisphenols are linked to precocious puberty and obesity. The vulnerability of children is aggravated when they live in poverty or are exposed to dumping sites, or when they work as waste pickers.”)

³¹⁴ *Id.*

³¹⁵ *Id.* at 4.

³¹⁶ *Id.*, at 22-24.

³¹⁷ *Id.* at 21. See also UNGA, Resolution adopted by the Human Rights Council on 7 October 2020, “Rights of the child: realizing the rights of the child through a healthy environment” (2020) A/HRC/RES/45/30, as well as the Convention on the Rights of the Child and the work of the Committee on the Rights of the Child.

However, as children often have limited opportunities to exercise their rights, including to access information, participation and justice, states should enhance the measures they take to protect their rights.³¹⁸

b) Women & Persons of Diverse Genders

Women are disproportionately impacted by the harmful effects of plastics due to “biological, social and economic inequalities, as well as political underrepresentation in the decision-making processes.”³¹⁹ As a result of this disproportionate impact states have a responsibility to develop disaggregated data on the specific effects of environmental harm on women and other groups and individuals who experience disproportionate impacts from environmental harms.³²⁰ States then should use this disaggregated data to ensure that their laws and policies protect against the identified environmental harms, and to notify those who are disproportionately affected that they are at increased risk.³²¹

In the context of plastic pollution there is some disaggregated information available about the disproportionate impacts of such pollution on women. Women experience heightened contact with plastics, such as through exposure to plastic-based hygiene and menstrual products, as well as the workforce.³²² Women make up the majority of the plastics workforce through disproportionate representation in formal jobs such as the textiles industry, and informal work as waste pickers.³²³ This increased exposure is particularly troubling as women are particular at risk to the hazardous effects of plastics during pregnancy and menopause and are likely to experience disproportionate risks of breast cancer and reproductive disorders.³²⁴

To address these disproportionate impacts the Committee on the Elimination of Discrimination Against Women has recognized the need for states to ensure the public participation of women in environmental decision making, to develop policies to protect women’s rights to health, and to research the adverse effects of environmental contamination on women.³²⁵

The 2022 UNGA resolution on the right to a clean, healthy and sustainable environment also recognizes the need to take a gender equality approach, specifically noting:

*“the importance of gender equality, gender-responsive action to address climate change and environmental degradation, the empowerment, leadership, decision-making and full, equal and meaningful participation of women and girls, and the role that women play as managers, leaders and defenders of natural resources and agents of change in safeguarding the environment.”*³²⁶

³¹⁸ Plastics Cycle (n44) at 11.

³¹⁹ *Id.*

³²⁰ Framework Principles (n25) at 17 (Commentary to Principle 14).

³²¹ *Id.*

³²² Plastics Cycle (n44) at 11. For example, bisphenol A can adversely impact uterine and ovarian health.

³²³ *Id.*

³²⁴ *Id.*

³²⁵ Mapping Report (n219) at 19. See generally the Convention on the Elimination of Discrimination Against Women (CEDAW). The Special Rapporteurs on the right to health, and on hazardous substances and wastes, have similarly identified the importance of including women in decision making and taking preventative measures to protect women and children. Mapping Report, *id.*

³²⁶ UNGA resolution on the right to a clean, healthy and sustainable environment (n23) at 2.

In examining the gender, human rights, and economic dimensions of plastic litter in South-East Asia, UNEP and COBSEA provide five key findings:

1. Inclusive policies are lacking in the region to protect and promote gender equality while simultaneously addressing marine plastic litter;
2. The manufacturing and handling of plastics poses serious health risks to workers in the region;
3. Women are exposed to different and greater risks from plastic pollution, but can also be champions of reform through the development of responsible consumption and waste disposal practices;
4. The contributions of informal waste pickers in the region, who are predominately women, are largely overlooked and unsupported;
5. The consequences of plastic litter have wide ranging market repercussions including both revenue losses to government, but also the stifling of certain industries (i.e. fisheries, tourism and shipping).³²⁷

Accordingly, engagement with the informal waste sector is an important point of intervention for ensuring the human rights of women are protected against the environmental harms of plastic pollution. In South-East Asia the formal waste sector is dominated by men, however informal collection of plastics allows for more equal opportunity between men and women.³²⁸ This then becomes a crucial site of women and children's exposure to the health hazards of plastic pollution.³²⁹

Case Study: Networks and Informal Sector Organization

The experience of the informal waste sector in India points to the possibility for tailored interventions in South-East Asia. In India an estimated 53% of women working in the informal waste sector are members of the Alliance of Indian Waste Pickers, a network of organizations which focus on supporting informal waste pickers.³³⁰ The Alliance provides equipment such as uniforms, protective gear, and ID cards which can reduce the hazards of the profession.³³¹ Further, these workers additionally have access to the Self-Employed Women's Association, which is a trade union of women workers who work together to obtain work, income, food, and social security.³³²

The creation of these types of networks not only provides essential support to women who experience extreme exposure to toxins from plastics pollutants but create opportunities for governments and businesses to collaborate to further improve the conditions these women face. As such the creation of these groups can be seen as a

³²⁷ COBSEA Plastics and Gender (n3) at 7-8.

³²⁸ GA Circular, "The Role of Gender in Waste Management: Gender Perspectives on Waste in India, Indonesia, the Philippines and Vietnam" (2019), at 32-34, online: <https://oceanconservancy.org/wp-content/uploads/2019/06/The-Role-of-Gender-in-Waste-Management.pdf>.

³²⁹ *Id.*, at 52. In South-East Asia, support for women waste sector workers has been limited, with Gabriela, an organization aimed at addressing concerns of violence and injustice against women, being a notable exception.

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*, at 57.

good practice for ensuring women’s enjoyment of their human rights in the face of plastic pollution.

c) *Indigenous, Tribal, or Traditional Peoples and Coastal Communities*

Due to the close relationship that Indigenous peoples have with the natural ecosystems of their traditional territories they are recognized as being especially vulnerable to environmental harm.³³³ The rights of Indigenous peoples have been recognized by the UNGA in the 2007 United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), among other international instruments.³³⁴ State obligations towards Indigenous peoples are described in the Framework Principles to include:

1. “Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used;”
2. “Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources;”
3. “Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources;”
4. “Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.”³³⁵

The Framework Principles clarify that these duties apply not only to Indigenous peoples but also to members of traditional communities that may not self-identify as Indigenous but nevertheless directly depend on nature for cultural life and material needs.³³⁶

It is well recognized that “Indigenous peoples around the world have suffered negative, even devastating, consequences from extractive industries.”³³⁷ As the first stage of the plastics lifecycle is the extraction of fossil fuels, plastics cause “serious violations of indigenous peoples’ rights to health, culture, water, food, healthy environment and self-determination, among others.”³³⁸

Coastal communities similarly face some of the most extreme impacts from plastic pollution. First, these communities are “inundated with marine plastic litter” which wash upon their shores.³³⁹ This contributes to severe food security issues in coastal communities as toxic additives from the plastic litter leach from the plastic and contaminate food supply from the ocean.

The food security of coastal communities who rely on seafood is profoundly affected even if large plastic litter is not present. This is because the toxic additives in plastics, as well as microplastics, are “capable of long-range transport by atmospheric and oceanic currents.”³⁴⁰ As a result of these

³³³ Framework Principles (n25) at 18 (Commentary to Principle 15).

³³⁴ *Id.*; Mapping Report (n219) at 21.

³³⁵ Framework Principles, *id.* at 18 (Principle 15).

³³⁶ *Id.* (Commentary to Principle 15).

³³⁷ OHCHR, Special Rapporteur on the Rights of Indigenous Peoples, *Extractive Industries and Indigenous Peoples* (2013), A/HRC/24/41, at 20.

³³⁸ Plastics Cycle (n44) at 12.

³³⁹ *Id.*

³⁴⁰ *Id.*

exposures members of coastal communities, along with Indigenous populations, “register some of the highest levels of persistent pollutants of any population on Earth” even if these communities are not using plastics themselves.³⁴¹ Rural communities too face serious risks when subject to dumping and incineration of plastic wastes.

d) ***Ethnic, Racial or Other Minorities & Persons Living in Poverty***

Members of ethnic, racial or other minority groups, as well people experiencing poverty are more likely to reside in “fenceline communities” that are situated close to chemical industries, causing their residents to “face disproportionate impacts from the petrochemical and plastics manufacturing industries.”³⁴² “Fenceline communities”, sometimes described as “sacrifice zones”, are places “where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas.”³⁴³ The SR Environment has described this as “the disturbing phenomenon of poor and marginalized communities being more heavily affected by pollution is a form of environmental injustice” which is “rooted in racism, discrimination, colonialism, patriarchy, impunity and political systems that systematically ignore human rights.”³⁴⁴

These environmental injustices are borne out in the plastics lifecycle. People living in low-income countries are disproportionately on the “receiving end of the global plastic waste flow.”³⁴⁵ The burning of imported plastic can result in increased toxin exposure to members of these communities.³⁴⁶ Workers are at elevated risk through their employment due to “poor working conditions, limited knowledge about chemical risks and lack of access to health care.”³⁴⁷ Furthermore, people experiencing poverty are more likely to be exposed to toxins from plastics through the products that are accessible to them. Examples include cheap textiles made of plastics, housing with toxic insulation, and slums or homes built on plastic waste.³⁴⁸

States have a responsibility to protect the rights of these groups by ensuring that their laws and policies take into account these disproportionate environmental impacts, as well as the barriers that these groups face in exercising their environmental rights.³⁴⁹ These laws and policies should ensure the gathering of data on environmental impacts, the publication of this data, the inclusion of the groups in decision making processes, as well as the assessment of activities with environmental impacts.³⁵⁰

Case Study: Remedying Injustice in Sacrifice Zones

The creation of responsive courts, together with the fostering of a strong civil society, can provide access to justice and remedy environmental injustices experienced by residents of sacrifice zones. Thailand’s administrative court has been said to be particularly

³⁴¹ *Id.*

³⁴² Plastics Cycle (n44) at 11.

³⁴³ Non-toxic Places (n236), at 7.

³⁴⁴ *Id.*

³⁴⁵ Plastics Cycle (n44) at 11.

³⁴⁶ *Id.*

³⁴⁷ Non-toxic Places (n236) at 7.

³⁴⁸ Plastics Cycle (n44) at 11.

³⁴⁹ Framework Principles (n25) at 17 (Commentary to Principle 14).

³⁵⁰ *Id.*

effective at providing this type of remediation as it has made orders in more than 65 cases involving breaches of environmental human rights.³⁵¹

e) **Formal & Informal Workers**

Workers, whether formal or informal, are among those most exposed to the health risks and harms of the plastics cycle, including through exposure to chemicals in plastics during the manufacturing and recycling stages.³⁵² The right to a safe environment in which to work is undermined when workers are exposed to hazardous substances, and a lack of access to information about health risks and harms undermines the ability to access effective remedy.³⁵³

At the petrochemical and plastics manufacturing stages, the rights of industrial workers are impaired through exposure to substances “utilized or emitted in the industrial process, such as benzene, xylene, toluene, ethylbenzene, heavy metals, bisphenols and the many plastics additives.”³⁵⁴ Over 250 chemicals are found in plastics and resins used in the manufacturing of semiconductors for the electronics sector, creating risks for workers of breast cancer, brain tumors, and leukemia, as well as reproductive risks including reduced fertility, miscarriages and congenital malformation.³⁵⁵

Throughout much of the developing world there are a significant number of individuals known as “waste pickers” who seek to “earn a living by salvaging recyclables from the waste stream for income or personal consumption.”³⁵⁶ These workers are often “uneducated rural migrants who sift through trash heaps or dump sites looking for plastics, metal, and glass to sell to middlemen, who then send the materials to be recycled.”³⁵⁷ These informal waste pickers play a crucial role in global plastic recycling efforts, accounting for an estimated 50% of the recycling of plastics across the developing world.³⁵⁸

Despite these contributions waste pickers have low and insecure incomes, lack legal protection, and are particularly vulnerable to severe health risks due to a lack of access to protective equipment.³⁵⁹ Asthma, cancer, and tuberculosis, as well as respiratory risks and diabetes are among the health risks and harms facing waste pickers from exposure to substances including polychlorinated byphenyls.³⁶⁰ The dismantling of plastic products, as well as e-waste, is also often undertaken by the informal sector, leading to thyroid and brain function disturbances.³⁶¹

The informal waste sector is largely comprised of women and children.³⁶² The gender divide in the sector often leads to social and gender injustices, as women working in the informal sector are

³⁵¹ Non-toxic Places (n256) at 12. See further discussion of the Klity Creek lawsuits.

³⁵² Plastics Cycle (n44) at 9 (para 34).

³⁵³ *Id.*

³⁵⁴ Plastics Cycle (n44) at 9 (para 37)

³⁵⁵ *Id.* at 9-10 (para 38).

³⁵⁶ UNEP, “Health and Safety Guidelines for Waste Pickers in South Sudan” (2013), at 5, online:

https://wedocs.unep.org/bitstream/handle/20.500.11822/19536/health_safety_guidelines_waste_SouthSudan.pdf?sequence=1&isAllowed=y.

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.*; Plastics Cycle (n44) at 10 (para 39).

³⁶⁰ Plastics Cycle, *id.* at 10 (para 39)

³⁶¹ *Id.* at 10 (para 40).

³⁶² COBSEA Plastics and Gender (n3) at 22.

“more vulnerable to gender-based violence due to the intersection of their gender and insecure working conditions in streets, dumps, and landfills.”³⁶³

To address the poor economic and health conditions faced by waste pickers, UNEP has recommended in a report on South Sudan that states and NGOs:

1. Create local associations of informal waste pickers, which then could be linked with other associations globally.
2. Work with waste pickers to establish waste pickers associations which can help provide PPE, medical check-ups, access to microfinancing, and educational opportunities for the children involved in the sector.
3. Develop governmental policies to give waste pickers access to government pensions, health services, training, and microfinancing.
4. Ensure that children involved in the sector are returned to full-time education.
5. Coordinate the international community (i.e. UNICEF, UNDP etc.) to provide funding, health and safety equipment, and training.
6. Ensure that hazardous healthcare wastes are disposed in separate sites.³⁶⁴

Case Study: Informal Waste Workers & Government Partnerships

An example of a successful partnership between an association of informal waste pickers and a local government occurred in Mangaluru, India. With the assistance of WIEGO,³⁶⁵ the waste picker organization Hasiru Dala was able to team up with the local government to survey the city for hot spots of marine waste and informal workers who could help improve the system.³⁶⁶ Hasiru Dala and the local government subsequently set up a system of door-to-door waste collection, where informal waste pickers could gather waste for resale at a newly established government dry waste collection centre.³⁶⁷

The creation of this partnership between an existing waste picker organization and the local government led to “quick and significant results” in addressing marine waste generated by the city.³⁶⁸ As such these programs present means to provide stable working conditions for the informal sector while utilizing the sector’s capabilities to deliver the best environmental results for entire communities to enjoy.

Of particular relevance to the situation of both formal and informal workers are the reports of the Special Rapporteur on toxic substances, and especially the Principles on human rights and the protection of workers from exposure to toxic substances (2019) (Workers’ Principles).³⁶⁹ ‘Workers’ are defined for the purpose of the principles as including “not only directly employed workers but also informal workers, as well as contract workers, subcontractors, agency and other

³⁶³ *Id.* at 23.

³⁶⁴ UNEP South Sudan (n356) at 17.

³⁶⁵ Women in Informal Employment: Globalizing and Organizing (WIEGO)

³⁶⁶ UNESCAP, “Cities and Marine Plastic Pollution: Building a Circular Economy Course Handbook” (2021), at 91, online: <https://www.unescap.org/sites/default/d8files/event-documents/Closing%20the%20Loop%20eLearning%20Course%20Handbook.pdf>.

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ Principles on human rights and the protection of workers from exposure to toxic substances, A/HRC/42/41 (17 July 2019) <http://www.undocs.org/A/HRC/42/41> [Workers Principles]

sorts of temporary workers and all other persons performing work or work-related activities.”³⁷⁰ The Principles confirm that “Workers’ rights are human rights, and human rights are workers’ rights” and that “[t]hese rights are interrelated, indivisible and universal.”³⁷¹

The Workers’ Principles are subdivided into three parts. Part A introduces “Principles on duties and responsibilities to prevent exposure” and it consists of seven principles.³⁷² **Principle 1** provides that “Everyone must be protected from exposure to toxic substances at work”.³⁷³ The Commentary observes that the “right to safe and healthy working conditions” is a human right, not a privilege, and in order to realize this right, worker protection from toxic substance exposure must be provided to all, “regardless of income, age, gender, ethnicity, race, religion or other class or status, whether in formal or informal settings.”³⁷⁴ Given biological differences as well as social roles, it is essential that a gender perspective is integrated.³⁷⁵ Moreover, exposing children to toxic or hazardous substances at work ‘constitutes one of the worst forms of child labour.’³⁷⁶

Principle 2 confirms that “States have a duty to protect the human rights of workers through the prevention of exposure to toxic substances” by adopting precautionary measures in the face of scientific uncertainty in order to realize the right to decent work.³⁷⁷ **Principle 3** confirms the responsibility of business enterprises “to prevent occupational exposures to toxic substances” including through supply chain responsibility linking to the informal sector, and extend to the lifecycle of products.³⁷⁸ The development and adoption of less harmful alternatives that reduce the health and environmental impact of enterprise operations is an important part of the responsibility to prevent worker exposures to toxic substances as is the maximum elimination of toxic substances from products and production processes.³⁷⁹ Importantly, **Principle 7** confirms that “Protecting workers from exposure to toxic substances protects their families, their communities and the environment” pointing to the importance of cooperation between environmental, labour and public health authorities.³⁸⁰

Part B introduces “Principles regarding information, participation and assembly” and consists of four Principles³⁸¹ that complement the procedural rights framework of the right to a clean healthy and sustainable environment. According to **Principle 8**, “Every worker has the right to know their rights”,³⁸² and has the right to information about their potential or actual exposures to toxic or

³⁷⁰ Workers’ Principles, *id.* at 5 (para18).

³⁷¹ *Id.* at 5 (para 15)

³⁷² *Id.* at 5-12 (Principles 1-7).

³⁷³ *Id.* at 5-7 (Principle 1).

³⁷⁴ *Id.* at 7.

³⁷⁵ *Id.* at 7.

³⁷⁶ *Id.* at 7.

³⁷⁷ *Id.* at 7-8. Principle 6 clarifies that States have an obligation to prevent third parties from perpetuating exposure through the distortion of scientific evidence or other manipulation, and a responsibility to protect freedom of expression rights. *Id.* At 11-12.

³⁷⁸ *Id.* at 9. According to Principle 5, the duties and responsibilities extend beyond borders through global supply and value chains and during the life cycle of products. *Id.* At 10-11.

³⁷⁹ *Id.* at 9-10. According to Principle 4, the ILO’s “hierarchy of Hazard controls” should inform international health and safety practices by both states and business which should be informed by the precautionary approach. *Id.*

³⁸⁰ *Id.* at 12

³⁸¹ *Id.* at 12-16 (Principles 8-11).

³⁸² *Id.* at 13. This includes knowledge of the relevant State duties and business responsibilities, and how to “exercise and defend their rights” should they be abused. *Id.*

hazardous substances.³⁸³ Information must be accessible to workers, and be communicated effectively with relevant training as appropriate.³⁸⁴ Business enterprises have a responsibility to identify and assess both “actual and potential exposure by workers to toxic substances in their supply chains and resulting from their own activities.”³⁸⁵

According to **Principle 9**, “Health and safety information about toxic substances must never be confidential” and must be disclosed to exposed workers and affected communities as well as the state.³⁸⁶ **Principle 10** confirms that “The right to safe and healthy work is inseparable from freedom of association, the right to organize and the right to collective bargaining.”³⁸⁷ According to **Principle 11**, “Workers, representatives of workers, whistle-blowers and rights defenders must all be protected from intimidation, threats and other forms of reprisals”.³⁸⁸ The Commentary observes that workers should be empowered to raise concerns to ensure they and their co-workers are protected.³⁸⁹

Part C outlines “Principles regarding effective remedies”.³⁹⁰ **Principle 12** provides that “Workers, their families and their communities must have immediate access to an appropriate and effective remedy, which should be available from the time of exposure”.³⁹¹ Remedy mechanisms should be structured so as to support those most vulnerable to toxic harms who also face the most challenges in accessing remedies, with particular attention to female workers.³⁹² Information in settlement agreements about the nature of the toxic substances and their use should not be kept confidential.³⁹³ According to **Principle 13**, “Workers or their families should not bear the burden of proving the cause of their illness or disability to access an effective remedy”.³⁹⁴

Case Study: The Philippines’ “Sachet Economy”

Sachets, which are lined with plastic and/or aluminum, are used every day in the Philippines and are marketed as an affordable, convenient, easily disposable and less costly household commodity option.³⁹⁵ Approximately 163 million sachets are used per day in the Philippines, which generates significant plastic waste.³⁹⁶ This waste has been

³⁸³ *Id.* at 13. See reference to relevant ILO Conventions in footnote 49.

³⁸⁴ *Id.* at 13.

³⁸⁵ *Id.* at 13. Chemical suppliers have heightened responsibilities.

³⁸⁶ *Id.* at 13-14.

³⁸⁷ *Id.* at 14.

³⁸⁸ *Id.* at 15

³⁸⁹ *Id.* at 15.

³⁹⁰ *Id.* at 16-20 (Principles 12-15).

³⁹¹ *Id.* at 16.

³⁹² *Id.* at 17.

³⁹³ *Id.* at 17-18.

³⁹⁴ *Id.* at 18. Principles 14 and 15 draw attention to criminal sanction and cross-border remedies. *Id.* at 18-19.

³⁹⁵ Karen Lema, “Slave to sachets: How poverty worsens the plastics crises in the Philippines” *Reuters* (Manila), (3 September 2019), online: <https://www.reuters.com/article/us-asia-waste-philippines-idUSKCN1VO0G3>; Global Alliance for Incinerator Alternatives (GAIA), Philippines, *Sachet Economy: Big Problems in Small Packets* (Quezon City, Philippines: GAIA, 2020), online: <https://www.no-burn.org/wp-content/uploads/2021/11/Sachet-Economy-spread-.pdf>.

³⁹⁶ Lema, *id.*

shown to pollute streets, especially in low-income communities where waste collection is less reliable.³⁹⁷ Further, this waste increases the risk of flooding because of its potential to clog waterways.³⁹⁸

Various companies collect and recycle sachets to turn them into other products, such as chairs or cement bricks.³⁹⁹ The collection of sachet waste also presents a potential livelihood opportunity for informal waste workers under a plastic crediting business model, wherein a business funds informal waste workers' collection of sachets to reduce their plastic footprint. While these solutions may be viable and may alleviate some impacts of plastic waste, the extent to which these solutions have meaningful impacts on plastic waste reduction is unknown.

Questions

1. Drawing on **Module 2**, how does the sachet economy impact the right to a clean, healthy and sustainable environment? For example, how may the substantive elements of this right be impacted by plastic waste generated by sachets (the rights to clean water, safe food, health ecosystems & biodiversity, and a toxic-free environment, etc.)?
2. How may a person's procedural rights be impacted by plastic waste caused by sachets (the rights to: prior assessment and precaution; access to information, science and education; public participation; and remedy)?
3. In what ways does plastic waste generated by sachets disproportionately impact equitable and vulnerable groups (people living in poverty, women and gender-diverse people, racialized groups, and coastal communities)?
4. Anticipating **Module 3**, how may a business take responsible action to prevent and remedy the human rights impacts identified in relation to sachets (identify, prevent, mitigate, account for impact)? Might the solutions suggested raise other human rights concerns? If so, how could these be overcome or mitigated to reduce harm?

Reflection: Embedding Equity into Organizations to Advance the Human Right to a Clean, Healthy and Sustainable Environment

Identify **rights holders** who may be disproportionately impacted by your organization's contribution to the plastics lifecycle including: Indigenous peoples, tribal & traditional peoples; rural & coastal communities; women & gender diverse persons; ethnic, racial & other minorities; persons living in poverty; the disabled; formal & informal workers; children & future generations.

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.*

Identify how, and when, your organization interacts with **environmental human rights defenders**. Commit to protect, support and collaborate with defenders to enable human rights-responsible plastics action.

D. Conclusion

1. Summary

Plastics pose a serious threat to the enjoyment of the human right to a clean, safe, healthy, and sustainable environment. This threat effects virtually all of the substantive components of the right, including the rights to: clean air, a safe climate, clean water, healthy ecosystems, biodiversity, healthy food, and non-toxic places.

In order to guarantee the enjoyment of the rights, the procedural rights of individuals must be respected in the plastics context. This includes the need to: follow the principles of prevention, precaution, and prior assessment; provide access to information and science; ensure public participation; protect environmental rights defenders; and to ensure accountability through providing access to justice and remedy.

Finally, while addressing the effects that plastics have on the right to a clean, safe, healthy, and sustainable environment, all stakeholders (including states, businesses, civil society, and international bodies) must recognize and address the disproportionate impacts that plastics have on the rights of: Indigenous, tribal, or traditional peoples; coastal communities; women and gender diverse persons; ethnic, racial, and other minorities; persons living in poverty; children; and future generations. Special attention is due to the rights of both formal and informal workers.

2. Questions to Consider

1. Who is responsible for ensuring the enjoyment of human rights relating to the environment? How can these duty bearers best work together?
2. What are the differences between the substantive and procedural dimensions of the right to a safe, clean, healthy, and sustainable environment? How do they complement each other?
3. Who are the groups that are disproportionately impacted by plastics? Are these groups also disproportionately impacted by COVID-19 and the other dimensions of the triple planetary crisis (climate change, biodiversity loss, other pollution)?
4. What are some examples of good practices which can contribute to alleviating the disproportionate impacts of plastic pollution?

III. MODULE 3: Business & Human Rights (BHR) and Plastics

A. Introduction

The aim of Module 3 is to introduce business and human rights (BHR) frameworks and explore their application to the prevention and remedy of the plastics crisis. The module will first introduce the UN Guiding Principles on Business and Human Rights (UNGPs) together with relevant supplementary guidance by the UN Working Group on Business and Human Rights. After considering the UNDP Asia's work on BHR, the module will turn to other initiatives that integrate BHR beginning with the UN Global Compact, before turning to a detailed examination of the responsible business conduct (RBC) risk-based due diligence approach of the OECD, including both the OECD Guidelines for Multinational Enterprises, and, more briefly, sector-specific guidance. After introducing the work of the International Law Organisation (ILO), the module will

conclude with concrete examples of good practices in the application of business responsibilities for environmental human rights in the plastics context, across several key challenges.

After completing this module, participants will be able to:

- **Explain** the difference between the state duty to protect human rights and the business responsibility to respect human rights, and the importance of access to remedy.
- **Describe** the stages of human rights due diligence (HRDD).
- **Locate** supplementary BHR guidance on issues such as gender, human rights defenders, and national action plans and relate them to the plastics problem.
- **Discuss** the relationship between the BHR and the UN Global Compact, as well as the relationship between BHR and the OECD’s RBC due diligence approach.
- **Demonstrate** the application of BHR and RBC to select plastics challenges.

B. BHR Frameworks

1. UN Guiding Principles on Business & Human Rights

The 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs),⁴⁰⁰ elaborating on the 2008 “Protect, Respect and Remedy” Framework,⁴⁰¹ were unanimously endorsed in a resolution of the UN Human Rights Council in June 2011.⁴⁰² The process for the development of the 2008 Framework and 2011 UNGPs involved extensive multi-stakeholder consultations with representatives from all over the world, including states, business, and civil society. 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.⁴⁰³ They are often described as a polycentric governance framework comprised of three interdependent pillars that together form a “dynamic system of preventative and remedial measures.”⁴⁰⁴ The three pillars as visualized below are: (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 remedies by victims. While the state duty to protect reflects the core of international human rights law, the business responsibility to respect reflects social expectations.⁴⁰⁵

⁴⁰⁰ UN Human Rights Council, *Report of the Special Representative of the Secretary-General on the Issues of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie [Annex: Guiding Principles]* 21 March 2011, UN Doc A/HRC/17/31 [UNGPs]. See also user friendly version of the UNGPs, online: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf [User friendly UNGPs]

⁴⁰¹ UN Human Rights Council, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development [Protect, Respect, Remedy]* 7 April 2008, UN Doc A/HRC/8/5.

⁴⁰² Resolution of the Human Rights Council, A/HRC/RES/17/4 (6 July 2011)

⁴⁰³ UNGPs (n400) at para 14.

⁴⁰⁴ *Id.* at para 6.

⁴⁰⁵ *Id.* at para 82.

Access to remedy in case of harm is also essential. The following image illustrates each of the three pillars:

The United Nations Guiding Principles on Business and Human Rights



Design: Dalhousie University Graphic Design

Two foundational principles underlie the state duty to protect.⁴⁰⁶ **Principle 1** provides that:

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

According to **Principle 2**:

States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

Principle 3⁴⁰⁷ elaborates on general state policy and regulatory functions:

In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;*
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;*
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;*

⁴⁰⁶ User friendly UNGPs (n400] at 3.

⁴⁰⁷ *Id.* at 4.

(d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

The operational principles of the state duty to protect are further elaborated in Principles 4-10 within four overarching themes that touch upon both regulation and policy.⁴⁰⁸ **Principle 4** confirms that state-owned or controlled businesses have a heightened responsibility as states are the primary duty-bearers under international law, while **Principle 5 and 6** address situations in which states are contracting or conducting commercial transactions with businesses. **Principle 7** addresses the extra risk of gross human rights violations in conflict-affected areas.

Principle 8 focuses on the need to ensure policy coherence, a crucially important principle as plastics concerns are often addressed by environment ministries, while human rights, labour, and investment/trade are often handled separately. According to Principle 8⁴⁰⁹:

States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

Principle 9⁴¹⁰ addresses the need for states to maintain “adequate domestic policy space” and regulatory ability to meet their own human rights obligations, even when pursuing investment treaties or contracts with other states or business enterprises, while **Principle 10**⁴¹¹ speaks to the importance of states acting within multilateral institutions drawing upon the UNGPs to advance international cooperation and promote shared understandings when addressing BHR challenges.

The corporate responsibility to respect rights is presented in foundational **Principle 11**⁴¹²:

Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

It is described in the Commentaries as a “global standard of expected conduct for all business enterprises wherever they operate” that is independent of the ability or willingness of states to “fulfil their own human rights obligations.”⁴¹³ It is also “over and above compliance with national laws and regulations protecting human rights.” Importantly, “[b]usiness enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes.”⁴¹⁴ **Principle 12**⁴¹⁵ confirms that the responsibility to respect applies to all “internationally recognized human rights”, while the specific rights implicated will depend in part on industry and country context.

Under **Principle 13**⁴¹⁶, the responsibility requires business enterprises to:

⁴⁰⁸ *Id.* at 6-12.

⁴⁰⁹ *Id.* at 10.

⁴¹⁰ *Id.* at 11.

⁴¹¹ *Id.* at 12.

⁴¹² *Id.* at 13.

⁴¹³ *Id.* at 13.

⁴¹⁴ *Id.*

⁴¹⁵ *Id.* at 13.

⁴¹⁶ *Id.* at 14.

- (a) Avoid causing or contributing to adverse human right impacts through their own activities, and address such impacts where they occur;*
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.*

The Commentary observes that business relationships “include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.”⁴¹⁷ Moreover, **Principle 14** indicates that the responsibility to respect “applies to all enterprises regardless of their size, operational context, ownership and structure” with expectations differing depending on these factors and the severity of the adverse human rights impacts.⁴¹⁸

Principle 15⁴¹⁹ elaborates on the policies and processes that business enterprises need to have in place to meet the responsibility to respect human rights. These include:

- (a) A policy commitment to meet their responsibility to respect human rights;*
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; [and]*
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.*

Operational Principles 16-22 then expand upon these requirements: **Principle 16**⁴²⁰ (policy commitment); **Principle 17**⁴²¹ (parameters for human rights due diligence (HRDD)); Principles 18-21⁴²² (essential components of HRDD); **Principle 22**⁴²³ (remediation).

Principle 23⁴²⁴ confirms that in all contexts business enterprises are expected to:

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;*
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements; [and]*
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.*

Finally, **Principle 24**⁴²⁵ provides clarity to the prioritization of human rights impacts:

⁴¹⁷ *Id.* at 15.

⁴¹⁸ *Id.* at 15.

⁴¹⁹ *Id.* at 15-16.

⁴²⁰ *Id.* at 16.

⁴²¹ *Id.* at 17-18.

⁴²² *Id.* at 19-23.

⁴²³ *Id.* at 24.

⁴²⁴ *Id.* at 25.

⁴²⁵ *Id.* at 26.

Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

Access to remedy, the third pillar, is informed by a foundational **Principle 25**⁴²⁶ that provides that as part of the duty to protect:

States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

The Commentaries clarify that remedies may include “apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”⁴²⁷

Five operational principles elaborate access to remedy. **Principle 26**⁴²⁸ addresses the need for states to reduce legal and other barriers that could lead to access to remedy being denied by domestic judicial mechanisms. **Principle 27**⁴²⁹ addresses the need for states to also provide effective access to non-judicial grievance mechanisms where appropriate, with the Commentaries identifying national human rights institutions as of particular importance.⁴³⁰ **Principle 28**⁴³¹ suggests that states facilitate access to non-state-based grievance mechanisms whether administered by business enterprises, multi-stakeholder groups, or international or regional human rights bodies. **Principles 29**⁴³² encourages businesses to establish or participate in operational-level grievance mechanisms, while **Principle 30**⁴³³ encourages collaborative initiatives, whether industry or multi-stakeholder to ensure the availability of grievance mechanisms. Finally, **Principle 31**⁴³⁴ outlines criteria by which the effectiveness of non-judicial grievance processes can be assessed; they should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning.

Case Study: Plastic Production: Responsibility, Liability & Remedy?

Plastics have a large carbon footprint and contribute significant greenhouse gas (GHG) emissions especially at the production phase (3.4% of total GHG emissions).⁴³⁵ GHG emissions increase climate risks, and the Philippines is “highly vulnerable” to these

⁴²⁶ *Id.* at 27.

⁴²⁷ *Id.* at 27.

⁴²⁸ *Id.* at 28.

⁴²⁹ *Id.* at 30.

⁴³⁰ *Id.* at 30.

⁴³¹ *Id.* at 31.

⁴³² *Id.* at 31.

⁴³³ *Id.* at 32.

⁴³⁴ *Id.* at 33.

⁴³⁵ OECD, *Global Plastics Outlook* (n133) (“[i]n 2019, plastics generated 1.8 gigatonnes (Gt) of greenhouse gas (GHG) emissions – 3.4% of global emissions — with 90% of these emissions coming from their production and conversion from fossil fuels” (1.3.4 “The carbon footprint of the plastics lifecycle is significant”).

risks.⁴³⁶ The Republic of the Philippines Commission on Human Rights (2022), in the first of its kind, found that fossil fuel corporations can be held liable for human rights impacts caused by climate change,⁴³⁷ and that “the carbon majors must conduct due diligence, and climate change and human rights assessments in accordance with the UNGP in all stages of their operations and across all their value chains, even if not required by government regulations in the jurisdictions they operate in.”⁴³⁸

Questions

1. Could plastic producers also be held liable for the human rights and environmental impacts of plastic pollution and waste? Including climate change?

2. Reflecting on **Module 2**, what do the Special Rapporteurs have to say about remedy?

Answer? Access to justice & remedy includes for human rights violations arising from environmental harms (Framework Principles, Principle 10)). But in the plastics context, remedy has historically been elusive due to misinformation and false promises about the potential of recycling, placing responsibility instead on consumers, with the plastics industry failing to remedy the risks and harms posed by plastics and escaping accountability (SR Toxics).

3. Reflecting on **Module 3**, what do the UNGPs say about the responsibility of business enterprises to respect human rights, and remedy?

Answer? To meet the responsibility to respect human rights, businesses need to have “processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute” (UNGPs, Principle 15(c)).

4. According to the UNGPs, how is the degree of liability different if a business directly caused or (indirectly) contributed to an adverse impact? In your opinion, should it be different?

5. If a business has more leverage (resources, etc.) to reduce human rights impacts, does the business have a greater duty to address the adverse impacts of plastic?

Since 2011, the UNGPs have proven to be influential,⁴³⁹ having been embedded in other influential guidance tools such as the human rights chapter of the OECD MNE Guidelines discussed below which have then informed mandatory human rights and environmental due diligence laws.⁴⁴⁰ They have been relied upon in legal decisions to inform the legal standard of care of business

⁴³⁶ Nicholas Kusnetz, “In the Philippines, a Landmark Finding Move Fossil Fuel Companies’ Climate Liability into the Realm of Human Rights” *Inside Climate News* (15 May 2022), online: <https://insideclimatenews.org/news/15052022/philippines-fossil-fuels-climate-liability/>

⁴³⁷ Commission on Human Rights of the Philippines, *National Inquiry on Climate Change Report*, (2022), online: <https://chr.gov.ph/wp-content/uploads/2022/05/CHRP-NICC-Report-2022.pdf> [Philippines Carbon Majors].

⁴³⁸ *Id.*, at 130.

⁴³⁹ UNGA, Report of the Working Group on human rights and transnational corporations and other business enterprises, *Guiding Principles on Business and Human Rights at 10: taking stock of the first decade* (22 April 2021) A/HRC/47/39.

⁴⁴⁰ See e.g. proposed European Directive on Corporate Sustainability Due Diligence: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145

enterprises.⁴⁴¹ They have been adopted by many multinational enterprises including those that are active contributors to the plastics problem.⁴⁴² Therefore, they are an important tool that states and businesses can leverage to ensure a human rights-based approach to the plastics problem is carefully integrated into action.

a) **UN Working Group on BHR**

The United Nations Working Group on Business and Human Rights (WGBHR) was established in 2011 by the Human Rights Council with a mandate to promote and disseminate the UNGPs including lessons and good practices for implementation.⁴⁴³ In the course of their work, the WGBHR has produced numerous reports⁴⁴⁴ and guidance⁴⁴⁵ that provide clarity on the duties of states and responsibilities of businesses in several areas of importance to a human rights-based approach to the plastics problem.

(1) Gender Lens

As elaborated in modules 1 and 2, women, girls, and gender-diverse persons are among those who are most vulnerable to the negative impacts of plastic pollution. At the same time, they often have an important role to play at different stages of the plastics cycle. In recognition of the fact that women and girls experience business and human rights-related abuses disproportionately and in unique ways, the WGBHR launched a project in 2017, culminating in a 2019 report entitled *Gender dimensions of the Guiding Principles on Business and Human Rights*.⁴⁴⁶ Multi-stakeholder consultations were held regionally to inform the report, including one in Asia involving 150 participants from 32 countries.⁴⁴⁷

⁴⁴¹ See e.g. *Milieudefensie et al v Royal Dutch Shell PLC*, ECLI:NL:RBDHA:2021:5337 (26-05-2021, Rechtbank Den Haag), C/09/571932/HA ZA 19-379 (English version – official translation); Philippines Carbon Majors (n437).

⁴⁴² See e.g. Nestle <https://www.nestleprofessional.us/we-share-your-values/nestle-and-human-rights-our-commitment> ; Coca-Cola <https://www.coca-colacompany.com/policies-and-practices/human-rights-principles> ; Unilever <https://www.unilever.com/planet-and-society/respect-human-rights/human-rights-in-our-operations/>

⁴⁴³ Working Group on Business and Human Rights: <https://www.ohchr.org/en/issues/business/pages/wghrandtransnationalcorporationsandotherbusiness.aspx>

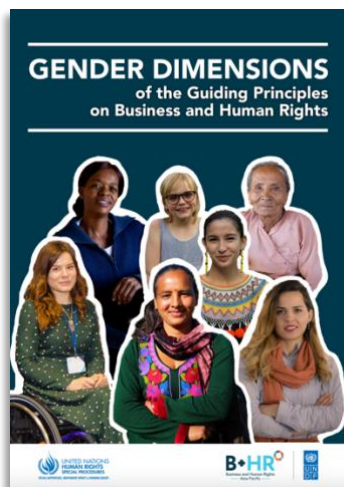
⁴⁴⁴ Reports and other documents: OHCHR and Business and Human Rights: <https://www.ohchr.org/en/special-procedures/wg-business/reports-and-other-documents> and https://www.ohchr.org/EN/Issues/Business/Pages/BHR_Reports.aspx

⁴⁴⁵ Publications and resources: OHCHR and Business and Human Rights: <https://www.ohchr.org/EN/Issues/Business/Pages/Resources.aspx>

⁴⁴⁶ Report of the Working Group on Business and Human Rights, *Gender dimensions of the Guiding Principles on Business and Human Rights*, A/HRC/41/43 (23 May 2019) [Gender Dimensions]. For a user-friendly booklet version see: <https://www.ohchr.org/Documents/Issues/Business/BookletGenderDimensionsGuidingPrinciples.pdf>

⁴⁴⁷ See Agenda of Multistakeholder Asia Consultation <https://www.ohchr.org/Documents/Issues/Business/AsiaConsultationConceptNote.pdf> and Summary <https://www.ohchr.org/Documents/Issues/Business/Gender/AsiaConsultation.pdf> .

The *Gender dimensions* report is generic in nature and builds on the references to gender and women in the UNGPs. These include: the cross-cutting principle of non-discrimination; the explicit need to integrate a gender perspective in particular contexts including the use of gender-disaggregated data; and the need for businesses in particular circumstances to refer to additional standards.⁴⁴⁸ From this, the WGBHR developed a gender framework comprised of a cycle in three steps that is relevant to all three pillars of the UNGPs: (1) gender-responsive assessment; (2) gender-transformative measures; and (3) gender-transformative remedies.⁴⁴⁹



For each of the UNGPs, the WGBHR has proposed a specific gender guidance accompanied by select illustrative actions for states and businesses. Many of these are relevant to the plastics problem. For example, consider the following with regard to the challenges facing informal waste pickers who are predominantly women:

For each of the UNGPs, the WGBHR has proposed a specific gender guidance accompanied by select illustrative actions for states and businesses. Many of these are relevant to the plastics problem. For example, consider the following with regard to the challenges facing informal waste pickers who are predominantly women:

Gender guidance to principle 14: All business enterprises, including micro-, small and medium-sized enterprises, should take appropriate steps in line with the Guiding Principles to respect the human rights of women, including those working in the informal economy.

Illustrative actions:

*(c) Business enterprises should map workers in the informal economy who are part of their supply chains, identify gender-specific issues and take appropriate steps to address these issues;*⁴⁵⁰

More generally, the process of identifying and assessing the gender dimensions of the adverse human rights impacts with which a business may be involved, either directly through operations or indirectly through business relationships, is one that requires particular attention.

Gender guidance to principle 18: In Identifying and assessing any actual or potential adverse human rights impacts, business enterprises should adopt a gender-responsive approach, draw upon gender experts, and conduct meaningful consultations with potentially affected women, women's organizations (including grass-roots organizations) and women human rights defenders.

Illustrative actions:

(a) To overcome practical barriers, patriarchal norms or threats of violence that might discourage potentially affected women from participating in impact assessment processes, business enterprises should take a proactive approach and adopt innovative measures (for example, providing childcare during meetings or holding separate meetings for women);

⁴⁴⁸ Gender Dimensions (n446) at paras 33-36.

⁴⁴⁹ *Id.* at para 39. The assessment stage is to be responsive to “differentiated, intersectional and disproportionate adverse impacts on women’s human rights as well as to discriminatory norms and patriarchal power structures”. The transformative nature of the measures and remedies should bring “change to patriarchal norms and unequal power relations that underpin discrimination, gender-based violence and gender stereotyping.”

⁴⁵⁰ *Id.* at 19.

(b) [...]

(c) *Business enterprises should use sex-disaggregated data and outcome indicators to assess the true impact of their activities on women and consider that different women may be affected differently because of the intersectional nature of discrimination;*⁴⁵¹

(2) Covid Context

The WGBHR have drawn attention to the disproportionate negative impact of the COVID-19 crisis on women, and to the continuing importance of the UNGPs in the COVID-19 context.⁴⁵² The WGBHR recently completed a study on lessons to be learned from the COVID-19 crisis moving forward.⁴⁵³ While the report briefly references environment and climate change concerns, it does not consider the application of BHR to the WHO's recent observation that tens of thousands of tons of medical waste have been generated during COVID-19, including plastics, and urgent attention to effective and safe waste management is needed.⁴⁵⁴

(3) Anti-Corruption

In order to better connect the human rights and anti-corruption agendas, the WGBHR prepared a report that was published in 2020.⁴⁵⁵ An overview of key lessons from this report were presented to the UN General Assembly's Special Session against Anti-Corruption in 2021.⁴⁵⁶ Further events have been held to explore the connections in more detail.⁴⁵⁷

The 2020 Anti-corruption and human rights report considers anti-corruption issues in light of the state duty to protect, the business responsibility to respect, and the importance of access to remedy, with attention to gender dimensions and select industry contexts. Of note is the observation that corruption is not a victimless crime,⁴⁵⁸ but that it can be difficult to identify who the victim is so as to ensure remedy. In the plastics context, corruption issues could arise at multiple stages, including extraction.⁴⁵⁹ When corruption has led to the import of plastic waste that is then incinerated without adequate precautions, local communities will experience human rights abuses as a result of these illicit activities.

⁴⁵¹ *Id.* at 21.

⁴⁵² "Statement by the UN Working Group on discrimination against women and girls: *Responses to the COVID-19 pandemic must not discount women and girls" (20 April 2020), online:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25808&LangID=E>.

⁴⁵³ UNGA, Report of the UN Working Group on Business and Human Rights, "The coronavirus disease and pandemic: lessons learned and moving forward" (20 April 2022) A/HRC/50/40. See also inputs received for this report: <https://www.ohchr.org/EN/Issues/Business/Pages/CFI-report-50th-session-HRC.aspx>

⁴⁵⁴ WHO, "Tonnes of COVID-19 health care waste expose urgent need to improve waste management systems" (1 February 2022), <https://www.who.int/news/item/01-02-2022-tonnes-of-covid-19-health-care-waste-expose-urgent-need-to-improve-waste-management-systems>

⁴⁵⁵ Report of the UN Working Group on Business and Human Rights, "Connecting the business and human rights and anticorruption agendas" (17 June 2020) A/HRC/44/43 [BHR anticorruption] and submissions received:

<https://www.ohchr.org/EN/Issues/Business/Pages/2020Survey.aspx>

⁴⁵⁶ UN Working Group on Business and Human Rights, "Contribution to the United Nations General Assembly Special Session against Corruption to be held from 2 to 4 June 2021", online:

<https://www.ohchr.org/Documents/Issues/Business/WG-BHR-ContributionforUNGASS.pdf>

⁴⁵⁷ See <https://www.ohchr.org/EN/Issues/Business/Pages/Connecting-business-and-human-rights-and-anti-corruption-agendas.aspx>

⁴⁵⁸ BHR anticorruption (n455) at para 65.

⁴⁵⁹ *Id.* at paras 20-21.

(4) Human Rights Defenders and Civic Spaces

In June 2021, the WGBHR published a report providing guidance on how to ensure respect for human rights defenders.⁴⁶⁰ The report was informed by multistakeholder consultations⁴⁶¹ and undertaken in light of the increasing threats to human rights defenders around the world at the same time that civic space – that is, the spaces in which civil society actors may raise human rights concerns – is shrinking.⁴⁶² The report builds on the recognition given in the UNGPs to the important role played by human rights defenders when businesses are seeking to identify adverse human rights impacts in accordance with Guiding Principle 18.⁴⁶³ It aims to provide guidance to States and businesses on how to engage with and safeguard the rights of human rights defenders, including when businesses are addressing risks to defenders through their own activities as well as through business relationships.⁴⁶⁴

The WGBHR report observes that respect for human rights defenders is crucial for sustainable development.⁴⁶⁵ It further suggests that a cultural shift is required so that both States and businesses understand human rights defenders are “essential allies in protecting people and the planet” rather than enemies.⁴⁶⁶ This shift is particularly necessary in the context of the COVID-19 pandemic where increased restrictions have sometimes used as a pretext to circumvent environmental commitments.⁴⁶⁷

The guidance provides ten recommendations for States, including to educate businesses on the positive role of human rights defenders, and to take steps to ensure strategic lawsuits against public participation (SLAPPs) do not result in the silencing of defenders.⁴⁶⁸ Ten recommendations are also provided for businesses including to treat human rights defenders and community leaders as expert resources for human rights due diligence processes, and to respond to concerns raised by human rights defenders with transparency while also protecting them from retaliation.⁴⁶⁹

The need for increased protection of human rights defenders including protection from SLAPPs remains on the agenda of the WGBHR in 2022.⁴⁷⁰

⁴⁶⁰ Report of the UN Working Group on Business and Human Rights, “The UN Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders” A/HRC/47/39/Add.2 (22 June 2021) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/161/49/PDF/G2116149.pdf?OpenElement> [WGBHR HRDs] For the executive summary and key recommendations see <https://www.ohchr.org/sites/default/files/2021-11/EXECUTIVE-SUMMARY-Human-Rights-Defenders-and-the-role-of-business-en.pdf> [Executive summary HRDs]

⁴⁶¹ Executive summary HRDs, *id.* at I.

⁴⁶² WGBHR HRDs (n460) at para 1.

⁴⁶³ *Id.* at para 9.

⁴⁶⁴ *Id.* at paras 6 and 8.

⁴⁶⁵ *Id.* at para 31 (referencing SDG 16 (promotion of peaceful and inclusive societies) and SDG 17 (power of partnerships)).

⁴⁶⁶ *Id.* at para 33.

⁴⁶⁷ *Id.* at para 33.

⁴⁶⁸ Executive summary HRDs (n460) at II.

⁴⁶⁹ *Id.* at III.

⁴⁷⁰ “Critical part of the UNGPs 10+ Roadmap: Increasing the protection of human rights defenders in the face of strategic lawsuits against public participation” (04 February 2022), online: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28088&LangID=E>. The WGBHR observed that the Investor Alliance for Human Rights has called for a “zero tolerance” approach to “reprisals and attacks on defenders” in business “operations, value chains, and business relationships”.

(5) National Action Plans and policy coherence

The importance of state policy coherence was highlighted in Principle 8 of the UNGPs. A common practice among states that has been encouraged by the WGBHR has been the development of National Action Plans (NAPs) on BHR.⁴⁷¹ In 2016, the WGBHR published Guidance⁴⁷² on the development of BHR NAPs, which recommends that governments adopt a 15 step process in 5 phases with the first 3 phases devoted to the initiation, assessment and consultation, and drafting of the initial NAP, while the remaining two phases are devoted to implementation, monitoring and update in a continuous cycle. The Guidance stresses the importance of inclusive and transparent processes, with attention to local context, while accounting for both human rights impacts within state territory and/or jurisdiction, and human rights impacts arising from the activities of companies operating outside the territory.⁴⁷³ Among recommendations is that NAPs consider addressing gaps in existing legal frameworks, such as legislation to address adverse environmental impacts and workers' health and safety.⁴⁷⁴

In July 2019, the WGBHR released a new report specifically on the topic of policy coherence.⁴⁷⁵ The aim of this report is to provide practical recommendations on enhancing government capacity and action in terms of horizontal coherence of policies and practices across functional government areas, including through alignment with the SDGs.⁴⁷⁶ The report highlights the importance of policy coherence for the protection of environmental human rights defenders, and the need to strengthen holistic environmental impact assessment laws,⁴⁷⁷ as well as the importance of ensuring enforcement of environmental and health and safety laws.⁴⁷⁸ Among recommendations is the need to:

*[b]reak institutional silos to allow for the coordination and complementarity of efforts and align the implementation of national action plans with the Sustainable Development Goals, building on dialogues and partnerships. In their implementation plans, States should make explicit the links between the different agendas.*⁴⁷⁹

⁴⁷¹ For country by country information on BHR NAPs, see the website run by the Danish Institute of Human Rights: <https://globalnaps.org> [Global NAPs]

⁴⁷² UN Working Group on Business and Human Rights, "Guidance on National Action Plans on Business and Human Rights" (November 2016):

https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf [WGBHR NAPs]

⁴⁷³ *Id.* at i-ii.

⁴⁷⁴ *Id.* at 20. Beyond this, there is no specific mention of environmental harm or toxics, and no reference to plastics, chemicals, or circular economy.

⁴⁷⁵ UNGA, Report of the Working Group on Business and Human Rights: Policy Coherence, A/74/198 (19 July 2019). Submissions received from states and other stakeholders are available online:

<https://www.ohchr.org/en/business/call-inputs-report-policy-coherence-government-action-protect-again-business-related-human-rights> .

⁴⁷⁶ A/74/198, *id.* at paras 7-8.

⁴⁷⁷ *Id.* at paras 34-37

⁴⁷⁸ *Id.* at para 57.

⁴⁷⁹ *Id.* at para 86(x). Unfortunately, neither of the WGBHR reports make any specific mention of how to integrate plastics, circular economy, extended producer responsibility, or other key solutions put forward in the plastics context.

Several ASEAN states have developed or are developing BHR NAPs.⁴⁸⁰ Thailand was the first Asian country to launch a NAP.⁴⁸¹ Thailand's 1st National Action Plan on Business and Human Rights (2019-2022)⁴⁸² considers linkages with the SDGs (2.3) and focuses its core content on labour (3.1), 'community, land, natural resources and the environment' (3.2), human rights defenders (3.3), and cross-border investment (3.4). The NAP makes over 100 references to the environment, and identifies both opportunities and challenges – for example, Thailand's Constitution recognizes community rights to manage natural resources, biodiversity and the environment in a sustainable manner, and enables Thai communities to petition government agencies to take or refrain from taking actions that would impact peaceful living. Strong procedural environmental rights to information, impact assessment, and participation in public hearings in environmental matters are identified. However, the fast pace of industrial development is leading to negative impacts on health, nature, and natural resources, creating challenges for the Thai government in managing development, and the NAP identifies different initiatives designed to address these challenges.⁴⁸³ While there are no specific mentions of plastics or toxic substances in the NAP, there is much relevant information highlighting the state duty and business responsibility for human rights and its application to environmental concerns.⁴⁸⁴ Thailand has separately developed a plastic action plan.⁴⁸⁵

The development of a BHR NAP in Indonesia has been the subject of several initiatives. A collaboration by the National Commission on Human Rights (KOMHAS HAM) together with the Indonesian civil society organisation Institute for Policy Research and Advocacy (ELSAM), resulted in a 2017 BHR NAP⁴⁸⁶ that has not been recognized by most Indonesian governmental institutions.⁴⁸⁷ The environment features extensively in this BHR NAP and it is recommended that the NAP adopt the principle of ecological justice, using the 'framework of human rights norms and corporate responsibility'. However, it does not explicitly explore how plastic waste pollution contributes to ecological injustice.⁴⁸⁸ Three contexts for the NAP are outlined: decentralization (regional autonomy); the importance of micro, small and medium enterprises; and the role of state-owned enterprises. The 2017 BHR NAP is said to have significantly contributed to further efforts by the Coordinating Ministry of Economic Affairs that was handed over to the Ministry of Law and Human Rights, the National Focal Point for BHR since September 2020.⁴⁸⁹ Separately, however, Indonesia has been involved in many initiatives to address the plastics crisis, most

⁴⁸⁰ See Global NAPs (n471).

⁴⁸¹ See *ibid.* According to Global NAPs at the time of writing, Thailand has published a NAP as has South Korea, Vietnam, Malaysia and Indonesia are developing NAPs, and the Philippines and Myanmar have other non-state initiatives.

⁴⁸² Thailand, Ministry of Justice, "First National Action Plan on Business and Human Rights (2019-2022): <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/NAPThailandEN.pdf>

⁴⁸³ *Id.* at 62-70.

⁴⁸⁴ *Id.* See for example discussion of pillar 2 responsibilities at 95-96.

⁴⁸⁵ See for example "Thailand's Roadmap on Plastic Waste Management 2018-2030": https://www.pcd.go.th/wp-content/uploads/2021/10/pcdnew-2021-10-19_08-59-54_995414.pdf ; and "National Action Plan on Plastic Waste Management in Thailand": https://www.iges.or.jp/sites/default/files/inline-files/S1-5_PPT_Thailand%20Plastic%20Action%20Plan.pdf

⁴⁸⁶ KOMHAS HAM & ELSAM, "National Action Plan on Business and Human Rights (May 2017)" <https://globalnaps.org/wp-content/uploads/2017/11/nap-indonesia.pdf>. [Indonesia proposed NAP]

⁴⁸⁷ Global NAPs, "Indonesia": <https://globalnaps.org/country/indonesia/>

⁴⁸⁸ Indonesia proposed NAP (n486) at 11. There are no references to plastics, circular economy, extended producer responsibility.

⁴⁸⁹ Global NAPs Indonesia (n487). See further details on public consultations, related events and links to drafts.

notably the Global Plastic Action Partnership,⁴⁹⁰ with the launch of the Indonesian National Plastic Action Partnership (NPAP) in 2019 leading to the release of Indonesia’s NPAP Multistakeholder Action Plan (NPAP MAP) in April 2020.⁴⁹¹ While there is no reference to human rights in the text of the NPAP MAP, an action plan is proposed for government, industry and civil society comprised of ‘five points of action’ and ‘critical accelerators that would achieve a radical reduction and sustainable reduction in mismanaged plastic waste’.⁴⁹² These at times reflect environmental human rights concerns including the integration of a gender-conscious approach to reduction and substitution that assesses impacts on society including marginalized groups and women,⁴⁹³ the integration of equality and non-discrimination principles into solid-waste management initiatives,⁴⁹⁴ attention to equitable living wages and safe and dignified working conditions for marginalized groups and women as part of supporting informal-sector workers and companies,⁴⁹⁵ attention to capacity building training on safe, environmentally responsible and gender equity practices in solid-waste management,⁴⁹⁶ the need for partnerships between industry, civil society, government, and religious organizations for public engagement and behaviour-change campaigns,⁴⁹⁷ and the need to collaborate across stakeholders and decision-makers including industry and civil society.⁴⁹⁸ The NPAP MAP is designed to be in line with the NAP on Marine Plastic Debris 2017-2025,⁴⁹⁹ and the 2019 Roadmap for Waste Reduction by Producers.⁵⁰⁰

An important cross-cutting issue that BHR NAPs should consider, including in relation to the plastics challenge, is the problem of corruption.⁵⁰¹ This is briefly considered in the Thailand NAP in relation to its action plan on labour.⁵⁰²

(6) Accountability and Remedy

The third pillar of the UNGPs highlights the vital importance of access to remedy for those whose human rights have been abused, whether judicial or non-judicial, state-based or non-state-based, including corporate level grievance and remedy mechanisms. The WGBHR has produced several

⁴⁹⁰ Global Plastic Action Partnership, “Indonesia”: <https://globalplasticaction.org/countries/indonesia/>

⁴⁹¹ World Economic Forum, Insight Report, “Radically Reducing Plastics Pollution in Indonesia: A Multistakeholder Action Plan, National Plastic Action Partnership” (April 2020) https://globalplasticaction.org/wp-content/uploads/NPAP-Indonesia-Multistakeholder-Action-Plan_April-2020.pdf [Indonesia Multistakeholder Action Plan].

⁴⁹² *Id.* at 30.

⁴⁹³ *Id.* at 31, a

⁴⁹⁴ *Id.* at 31, c

⁴⁹⁵ *Id.* at 32, d

⁴⁹⁶ *Id.* at 32 g

⁴⁹⁷ *Id.* at 32 h

⁴⁹⁸ *Id.* at 32 k

⁴⁹⁹ Indonesia’s Plan of Action on Marine Plastic Debris 2017-2025 (Summary):

https://maritim.go.id/konten/unggah/2018/03/NAP_Marine_Plastic_Debris_Indonesia_Summary.pdf

⁵⁰⁰ Minister of Environment and Forestry of the Republic of Indonesia, “Road Map of Waste Reduction by Producer” (English translation of Decree): https://nicholasinstitute.duke.edu/sites/default/files/plastics-policies/112021_N_2019_The_minister_of_environment.pdf. See also financing roadmap,

<https://pacecircular.org/sites/default/files/2021-03/NPAP-Indonesia-Financing-Roadmap%20%281%29.pdf>,

producer responsibility paper, <https://www.systemiq.earth/wp-content/uploads/2022/01/Producer-Responsibility-in-Indonesia2022.pdf>, and innovation roadmap, https://globalplasticaction.org/wp-content/uploads/NPAP_InnovationTF_Roadmap_VF.pdf

⁵⁰¹ See Global NAPs, “Corruption”, <https://globalnaps.org/issue/corruption/>

⁵⁰² *Id.*

reports focused on remedy,⁵⁰³ including a 2017 general report on accessing effective remedies,⁵⁰⁴ and a 2021 report focused on the important role played by National Human Rights Institutions (NHRIs).⁵⁰⁵ The importance of access to remedy has also been the subject of extensive study by the OHCHR in its Accountability and Remedy Project,⁵⁰⁶ with attention now focused on enhancing the uptake of this work.⁵⁰⁷

b) UNDP Asia on BHR and the UNGPs

UNDP Asia supports awareness, training and dialogue on business and human rights (the UNGPs) in a number of countries in the Asian region.⁵⁰⁸ This includes supporting governments in the drafting of BHR National Action Plans (NAPs), working with civil society to support human rights defenders, including environmental rights defenders, and working with businesses by developing due diligence tools, providing trainings, and supporting the conduct of environmental and human rights impact assessments. UNDP Asia also supports regional forums on BHR.

In September 2021, UNDP Asia launched a *Human Rights Due Diligence Training Facilitation Guide*.⁵⁰⁹ The aim of the *Guide* is to provide an introduction to the UNGPs and the field of business and human rights, for people working within business in different capacities whether senior leadership, middle management, sales, supply chain management, sustainability report, or legal and compliance.⁵¹⁰ The overall objective is to enable training on the conduct of human rights due diligence (HRDD) so as to help businesses ‘identify, prevent, mitigate and account for how they address their adverse human rights impacts’.⁵¹¹ Reference is made throughout the guide to issues implicating the right to a clean, healthy and sustainable environment, including pollution, toxics, and hazardous chemicals, health and safety, land use, consultation and participation as well as the rights of vulnerable groups.⁵¹²

UNDP Asia is committed to drawing environmental human rights issues to the attention of businesses and encouraging them to play a key role in solutions.⁵¹³ UNDP Asia is also committed

⁵⁰³ See generally <https://www.ohchr.org/en/special-procedures/wg-business/access-remedy>

⁵⁰⁴ UNGA, Report of the Working Group on Business and Human Rights, “Access to effective remedies” A/72/162 (18 July 2017).

⁵⁰⁵ UN HRC, Report of the Working Group on Business and Human Rights “Role of national human rights institutions in facilitating access to remedy for business-related human rights abuses” A/HRC/47/39/Add.3 (22 June 2021). See also UN HRC, A/HRC/50/40/Add.4 (2022) entitled “Implementing the third pillars: lessons from transitional justice guidance”.

⁵⁰⁶ OHCHR Accountability and Remedy Project: Improving accountability and access to remedy in cases of business involvement in human rights abuses, <https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project>.

⁵⁰⁷ See Report of the United Nations High Commissioner for Human Rights, “Enhancing the accessibility, dissemination and implementation of the Accountability and Remedy Project” UNGA A/HRC/50/45 (15 April 2022). See also “OHCHR Accountability and Remedy: information note”: <https://www.ohchr.org/sites/default/files/2022-05/arp-information-note.pdf>

⁵⁰⁸ UNDP, “Business and Human Rights in Asia”: <https://bizhumanrights.asia-pacific.undp.org/content/bizhumanrights/en/home/our-work.html>. South-East Asian countries listed as of September 2022 are Indonesia, Malaysia, Myanmar, Thailand, and Viet Nam.

⁵⁰⁹ See UNDP Business and Human Rights in Asia, *HRDD Training Facilitation Guide* (2021) <https://bizhumanrights.asia-pacific.undp.org/content/bizhumanrights/en/home/knowledge-hub0/human-rights-due-diligence-training-facilitators-guide.html>

⁵¹⁰ *Id.* at 6.

⁵¹¹ *Id.*

⁵¹² See for example *Id.* at 17 and 54.

⁵¹³ See for example UNDP Asia video: <https://www.youtube.com/c/UNDPBusinessandHumanRights>

to youth engagement, with 2022 activities including research on responsible consumption and youth, as well as youth as environmental human rights defenders.⁵¹⁴ Many of UNDP Asia BHR resources are relevant to the plastics problem, sometimes by analogy. For example, a report on women’s right in Indonesia and infrastructure development provides a useful overview of challenges for women’s land rights, labour rights, and rights to participation and remedy in the Indonesian context, which are relevant to different stages of the plastics cycle.⁵¹⁵ In August 2022 a report and platform on BHR and clean air in Asia was launched.⁵¹⁶

Reflection

Would your business consider implementing the business responsibility to respect human rights in accordance with the **UNGPs**?

- The creation of a **policy commitment** to respect human rights, which includes a commitment to identify, prevent, mitigate and account for the human rights impacts of your business’ contribution to the plastic lifecycle;
- Undertaking **human rights due diligence** by (1) assessing the actual and potential human rights impacts created by the business’ contribution to the plastics lifecycle, (2) integrating and acting upon these findings, (3) tracking the effectiveness of the response, and (4) communicating how the impacts are addressed;
- Taking appropriate steps to ensure that rights holders have **access to remedy** for any plastics-related adverse human rights impacts caused by your business, and taking steps to **cease or prevent** potential impacts;
- Ensuring a **gender responsive** approach to fulfilling these responsibilities, while treating **human rights defenders** and community leaders as essential allies and experts for human rights due diligence.

2. UN Global Compact

Launched in 2000, the United Nations Global Compact (UNGC) is the world’s largest corporate sustainability and corporate citizenship initiative.⁵¹⁷ Its mission is to help companies to align their business strategies and operations with ten universal principles derived from international legal

⁵¹⁴ UNDP, “Youth as levers of change in business and human rights” (2021) <https://bizhumanrights.asia-pacific.undp.org/content/bizhumanrights/en/home/news-centre/youthasleversofchange.html>

⁵¹⁵ See UNDP, “Infrastructure Development and Women’s Rights in Indonesia” (2021) https://www.id.undp.org/content/indonesia/en/home/library/democratic_governance/12072021.html .

⁵¹⁶ See UNDP, “Asia in Focus: Clean Air and the Business and Human Rights Agenda”, <https://www.undp.org/asia-pacific/publications/asia-focus-clean-air-and-business-and-human-rights-agenda>

⁵¹⁷ United Nations Global Compact (UNGC), “Who Are We” <https://www.unglobalcompact.org/what-is-gc>

instruments⁵¹⁸ while also taking strategic actions to advance the UN Sustainable Development Goals (SDGs).⁵¹⁹

a) *The Ten Principles*

The Ten Principles⁵²⁰ are all relevant to a human rights-based approach to the plastic value chain. And the UNGC Academy has developed short course on the UNGPs and human rights due diligence.⁵²¹ Notably, Principle 1 goes beyond the UNGPs by providing that businesses should not only respect human rights, but also support them. Furthermore, as the three principles relating to environmental challenges are informed by international environmental law principles including the precautionary approach, the UNGC facilitates business engagement with both human rights and environmental challenges at the same time. Similarly, principles on labour and on anti-corruption enable businesses to integrate consideration of human rights, labour, environment and anti-corruption issues.

UN Global Compact: Ten Principles

Human Rights⁵²²

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights, and

Principle 2: make sure that they are not complicit in human rights abuses.

Labour

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

⁵¹⁸ UNGC, “The Ten Principles of the UN Global Compact” <https://www.unglobalcompact.org/what-is-gc/mission/principles> [UNGC Ten Principles]. These are the Universal Declaration of Human Rights, the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.

⁵¹⁹ UNGC, “Global Goals for People and Planet” <https://www.unglobalcompact.org/sdgs/about>

⁵²⁰ UNGC Ten Principles (n501).

⁵²¹ UN Global Compact Academy E-learning Course, “Business and Human Rights: How Companies Can Operationalize the UN Guiding Principles” <https://info.unglobalcompact.org/humanrights>

⁵²² UNGC Ten Principles (n501).

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

b) Sustainable Development Goals

The 17 Sustainable Development Goals (SDGs) were adopted by world leaders in 2015 as part of the 2030 Agenda for Sustainable Development.⁵²³ While as discussed in Part I, SDGs 6, 12, and 14 are explicitly linked to plastics, all 17 SDGs are relevant to differing degrees to a human rights-based approach to the plastics problem. The SDGs are designed as ‘integrated and indivisible’ goals, and ‘seek to realize the human rights of all and to achieve gender equality and the empowerment of women and girls’.⁵²⁴ A human rights-based approach to plastic pollution must therefore consider implications for each of the SDGs, and the relationships among them.⁵²⁵ The UNGC provides an evolving set of resources to assist companies in understanding how to contribute to transformational cross-cutting change across all SDGs.⁵²⁶

The 17 SDGs are:

UN: Sustainable Development Goals

Goal 1: End poverty in all its forms everywhere

Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture

Goal 3: Ensure healthy lives and promote well-being for all at all ages

Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

Goal 5: Achieve gender equality and empower all women and girls

Goal 6: Ensure availability and sustainable management of water and sanitation for all

Goal 7: Ensure access to affordable, reliable, sustainable and modern energy for all

⁵²³ UNGA, “Advancing Sustainable Development” <https://www.unglobalcompact.org/what-is-gc/our-work/sustainable-development>

⁵²⁴ UNGA Resolution A/RES/70/1, *Transforming Our World: the 2030 Agenda for Sustainable Development* (2015) [2030 Agenda]. See online: <https://sdgs.un.org/2030agenda>

⁵²⁵ See also UNWGBHR, “Information Note: The business and human rights dimensions of sustainable development: Embedding “Protect, Respect and Remedy” in SGs Implementation” (Geneva, 30 June 2017), https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf

⁵²⁶ UNGC, “17 Goals to Transform Our World” <https://www.unglobalcompact.org/sdgs/17-global-goals>

Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

Goal 9: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

Goal 10: Reduce inequality within and among countries

Goal 11: Make cities and human settlements inclusive, safe, resilient and sustainable

Goal 12: Ensure sustainable consumption and production patterns

Goal 13: Take urgent action to combat climate change and its impacts

Goal 14: Conserve and sustainable use the oceans, seas and marine resources for sustainable development

Goal 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainable manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss

Goal 16: Promote peaceful and inclusive society for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

Goal 17: Strengthen the means of implementation and revitalize the global partnership for sustainable development

c) Local Networks

Global Compact Local Networks play a key role in implementation of the Ten Principles and advancement of the SDGs. Local Networks are run multi-stakeholder platforms that are business-led and work directly with business members, making them uniquely positioned to help implementation of responsible business practices in different nations with attention to cultural and language contexts.⁵²⁷ There are 15 Local Networks in the Asian region and they actively engage in collaboration to develop solutions at regional and sub-regional levels.⁵²⁸ Sometimes specific issues are identified for collective Local Network attention, such as anti-corruption⁵²⁹ or even plastics and circular economy.⁵³⁰

⁵²⁷ <https://www.unglobalcompact.org/engage-locally/about-local-networks>

⁵²⁸ <https://www.unglobalcompact.org/engage-locally/asia>

⁵²⁹ “United Nations Global Compact to advance collective action against corruption” (15 November 2021) <https://www.unglobalcompact.org/news/4831-11-15-2021>

⁵³⁰ See eg Canadian UNGC initiative with BASF Canada, “Enabling a Circular Economy for Plastics Working Group”, <https://globalcompact.ca/wp-content/uploads/docs/PlasticsCircularityPilot.pdf>

d) **Sustainable Ocean Principles**

The UN Global Compact has developed Sustainable Oceans Principles⁵³¹ comprised of 9 Principles aligned with the UNGC 10 Principles. Practical Guidance geared towards particular industry sectors have been developed as well,⁵³² including for the seaweed industry.⁵³³ The Principles are designed to be relevant both to companies that are ‘part of an ocean productivity value chain’ and to companies with operations that ‘may impact ocean health’.⁵³⁴ Given the impacts of plastics on ocean health and human rights at each stage of the linear plastics life cycle, this makes them relevant to all businesses in the plastic value chain. The Practical Guidance are working documents that will be updated periodically and clarify how companies can integrate material ocean-related risks and opportunities into their corporate strategy, risk management and reporting procedures.⁵³⁵ For example, seaweed is identified as having potential as an alternative plastic packaging, and so as a sustainable business opportunity contribution to ocean health.⁵³⁶

All nine principles are relevant to the plastics challenge to differing degrees depending upon the industry context:

UN Global Compact: Sustainable Oceans Principles

Ocean Health and Productivity

Principle 1: Assess the short and long-term impact of their activities on ocean health and incorporate such impacts into their strategy and policies.

Principle 2: Consider sustainable business opportunities that promote or contribute to restoring, protecting or maintaining ocean health and productivity and livelihoods dependent on the ocean.

Principle 3: Take action to prevent pollution affecting the ocean, reduce greenhouse gas emissions in their operations to prevent ocean warming and acidification, and work towards a circular economy.

Principle 4: Plan and manage their use of and impact on marine resources and space in a manner that ensures long-term sustainability and take precautionary measures where their activities may impact vulnerable marine and coastal areas and the communities that are dependent upon them.

Governance and Engagement

⁵³¹ UN Global Compact, “Sustainable Ocean Principles” (n.d.) <https://d306pr3pise04h.cloudfront.net/docs/publications%2FSustainable+Ocean+Principles.pdf> [Sustainable Ocean Principles]. See further the UNGC Ocean Stewardship Coalition, <https://www.unglobalcompact.org/take-action/ocean>
⁵³² UNGC, “Practical Guidances for the UN Global Compact Sustainable Ocean Principles”, <https://www.unglobalcompact.org/take-action/practical-guidances-for-the-un-global-compact-sustainable-ocean-principles>

⁵³³ Working Document, Practical Guidance for the UN Global Compact Sustainable Oceans Principles: Seaweed (September 2020), <https://ungc-communications-assets.s3.amazonaws.com/docs/publications/UN%20Global-Compact-Sustainable-Ocean-Principles-Seaweed.pdf> [Practical Guidance Seaweed]. This document will be updated on a regular basis. Its scope is the seaweed industry. *Id.* at 6.

⁵³⁴ *Id.* at 3

⁵³⁵ *Id.* at 3.

⁵³⁶ *Id.* at 8.

Principle 5: Engage responsibly with relevant regulatory or enforcement bodies on ocean-related laws, regulations and other frameworks.

Principle 6: Follow and support the development of standards and best practices that are recognized in the relevant sector or market contributing to a healthy and productive ocean and secure livelihoods.

Principle 7: Respect human-, labour- and indigenous peoples' rights in the company's ocean related activities, including exercise appropriate due diligence in their supply-chain, consult and engage with relevant stakeholders and communities in a timely, transparent and inclusive manner, and address identified impacts.

Data and Transparency

Principle 8: Where appropriate, share relevant scientific data to support research on and mapping of relevance to the ocean.

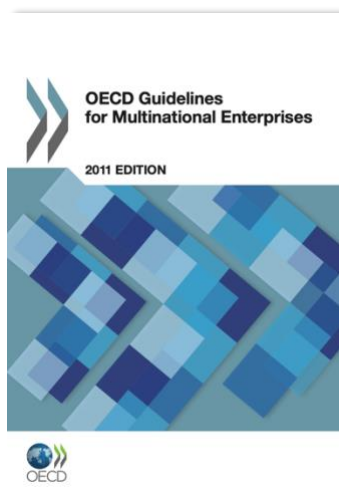
Principle 9: Be transparent about their ocean-related activities, impacts and dependencies in line with relevant reporting frameworks.⁵³⁷

A direct reference to plastics is found in relation to Principle 3 on pollution prevention in the Seaweed Practical Guidance, which guides businesses to: “Demonstrat[e] efforts to reduce marine plastic pollution from within their supply chains, by reporting waste volume and types of materials collected, by recycling and investing in the development of solutions to harmful petroleum-based plastics (bioplastics, compostable plastics) and participating in regular local community beach and water ways clean up.”⁵³⁸

⁵³⁷ Sustainable Ocean Principles (n514).

⁵³⁸ Practical Guidance Seaweed (n516) at 15.

3. OECD Responsible Business Conduct (RBC)



The OECD Guidelines for Multinational Enterprises (OECD MNE Guidelines)⁵³⁹ and accompanying Due Diligence guidance tools⁵⁴⁰ are government-backed international standards for responsible business conduct (RBC). OECD RBC instruments set out the expectation that all businesses avoid and address negative environmental and social impacts arising from their operations, while at the same time contributing positively to sustainable development in every country in which they operate. OECD RBC instruments are promoted to businesses by 50 adhering states⁵⁴¹ each of which is required to establish a National Contact Point (NCP) agency designed to both promote RBC and to hear specific instance complaints (allegations brought against companies for non-compliance with RBC) using non-judicial grievance processes.⁵⁴²

a) *OECD MNE Guidelines & National Contact Points*

While initially developed in the 1970s, the most recent version of the OECD MNE Guidelines dates from 2011. Part I, General Concepts and Principles, clarifies that expectations are the same for domestic and multinational enterprises, and that small and medium-sized enterprises (SMEs) are encouraged to observe the MNE Guidelines as much as possible given their capacity.⁵⁴³ For all enterprises, the first obligation is to obey domestic law, with the OECD MNE Guidelines often extending beyond the law.⁵⁴⁴ Should domestic laws conflict with any standards or principles, enterprises are expected to seek to honour them to the fullest extent without violating domestic law, and governments of adhering or third countries are encouraged to co-operate in good faith to resolve such conflicts.⁵⁴⁵

Part II, General Policies, confirms the expectation that enterprises should both take into account policies in the countries in which they operate and take into account the views of stakeholders.⁵⁴⁶ In addition to contributing to sustainable development and respecting human rights, as well as developing effective practices of self-regulation and management, enterprises are expected to carry out “risk-based due diligence” so as to “identify, prevent and mitigate actual and potential impacts” and to “account for how those impacts are addressed” with the “nature and extent of due diligence depend[ing] on the circumstances of a particular situation”.⁵⁴⁷ Going beyond the human rights

⁵³⁹ OECD (2011) *OECD Guidelines for Multinational Enterprises*, (OECD Publishing, Paris), <http://dx.doi.org/10.1787/9789264115415-en> [OECD MNE Guidelines]

⁵⁴⁰ OECD (2018) *OECD Due Diligence Guidance for Responsible Business Conduct* (OECD Publishing, Paris) <https://mneguidelines.oecd.org/duediligence/>. For sector-specific OECD RBC guidance, see <http://mneguidelines.oecd.org/sectors/>

⁵⁴¹ OECD Declaration and Decisions on International Investment and Multinational Enterprises, <https://www.oecd.org/investment/mne/oecddeclarationanddecisions.htm>. Current Asian country members are Japan and Korea.

⁵⁴² OECD “What are National Contact Points for RBC?” <https://mneguidelines.oecd.org/ncps/>

⁵⁴³ OECD MNE Guidelines (n539) at 18, paras 5-6.

⁵⁴⁴ *Id.* at 17, para 2.

⁵⁴⁵ *Id.* at 17-18, paras 2 & 8.

⁵⁴⁶ *Id.* at 19.

⁵⁴⁷ *Id.* at 19-20, paras 1, 2, 7, and 10.

focus of the UNGPs, the expectation is for risk-based due diligence to be conducted in relation to matters covered by other chapters of the OECD MNE Guidelines.⁵⁴⁸ This means that enterprises need to “[a]void causing or contributing to adverse impacts” “through their own activities, and address such impacts when they occur”, and also “[s]eek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.”⁵⁴⁹ Enterprises should also encourage business partners to apply RBC principles, including sub-contractors and suppliers, and should “[e]ngage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.”⁵⁵⁰ MNEs that are state-owned (SOEs) are also subject to the OECD MNE Guidelines.⁵⁵¹ A crucial component of RBC due diligence under the OECD MNE Guidelines is for due diligence to go “beyond simply identifying and managing materials risks to the enterprise itself, to include the risks of adverse impacts related to matters covered by the *Guidelines*”⁵⁵² including risks to rights holders.⁵⁵³

Many of the Chapters in the OECD MNE Guidelines are relevant to a human rights-based approach to the plastics problem. Chapter IV on Human Rights replicates the responsibility to respect human rights of the second pillar of the UNGPs. It follows from the inclusion of a human rights chapter that all aspects of the environmental human rights-based approach introduced in Module 2 apply to business enterprises under the OECD MNE Guidelines. This includes the substantive right to a clean, healthy and sustainable environment, procedural environmental human rights, and equity and non-discrimination. Other relevant chapters are:

Chapter III. Disclosure

The disclosure chapter confirms the need for enterprises to ensure timely disclosure of accurate material information on enterprise activities including where appropriate for geographic areas or business lines.⁵⁵⁴ Enterprise disclosure policies should include information on risk factors that are foreseeable, as well as ‘issues regarding workers and other stakeholders’.⁵⁵⁵ Businesses are encouraged to publicly communicate additional information including on matters relating to the OECD MNE Guidelines or other codes of conduct, ‘internal audit, risk management, and legal compliance systems’, as well as information regarding stakeholder and worker relationships.⁵⁵⁶ Non-financial disclosure, including social and environmental reporting should be undertaken in accordance with high quality reporting standards, and the standards or policies themselves should be reported.⁵⁵⁷

⁵⁴⁸ *Id.* at 20 para 11

⁵⁴⁹ *Id.* at 20, paras 11-12.

⁵⁵⁰ *Id.* at 20, para 14. See further at 25, para 25 (stating in part: “Effective stakeholder engagement is characterised by two-way communication and depends on the good faith of participants on both sides.”)

⁵⁵¹ *Id.* at 22, para 10 (Commentary).

⁵⁵² *Id.* at 23, para 14 (Commentary). However, the expectation of due diligence does not apply to the chapters on Taxation, Competition, or Science and Technology.

⁵⁵³ *Id.* at 34, para 45.

⁵⁵⁴ *Id.* at 27, para 1.

⁵⁵⁵ *Id.* at 27, para 2.

⁵⁵⁶ *Id.* at 27-28, para 3.

⁵⁵⁷ *Id.* at 28, para 4.

Beyond disclosure to shareholders, enterprise information is important to local communities, workers, governments, special interest groups, and society at large.⁵⁵⁸ Businesses should operate transparently and be responsive to public demands for information.⁵⁵⁹ Disclosure is important for non-traded enterprises, whether privately held or State-owned (SOEs).⁵⁶⁰ The scope of information communicated to the public particularly with regard to environmental matters extends to activities of suppliers, contractors, or joint venture partners, particularly with regard to transfer of environmentally harmful activities.⁵⁶¹ Information should be communicated so as to be easily accessible, with particular attention to access by directly affected poorer communities.⁵⁶²

Application to the Plastics Challenge

Applied to the plastics challenge, the disclosure chapter supports the imperative that businesses gather information on the human rights implications of plastics through all stages of the plastics cycle, and in relation to business operations as well as business relationships. This information must then be made accessible to rights holders so that those who may be at risk of environmental harm can exercise their procedural and substantive environmental human rights to prevent and remedy harms. This responsible business action aligns with procedural environmental human rights to access information and the right to science, as discussed in Module 2.

Chapter V. Employment and Industrial Relations

The employment and industrial relations chapter draws attention to the rights of enterprise workers to establish and join trade unions of their own choosing for the purpose of collective bargaining.⁵⁶³ Businesses are expected to contribute to the elimination of forced labour and child labour, and to be guided by the principle of equality so as not to discriminate against their workers on any grounds.⁵⁶⁴ Consultation and co-operation between workers, their representatives and employers on issues of mutual concern should be promoted, and attention should be given to ensure adequate occupational health and safety protections in enterprise operations.⁵⁶⁵ Where possible local workers should be employed and provided training so as to improve skill levels, in cooperation where appropriate with government authorities.⁵⁶⁶ Where an employment relationship does not exist, businesses are nevertheless expected to conduct risk-based due diligence with attention to supply chain relationships.⁵⁶⁷

Application to the Plastics Challenge

⁵⁵⁸ *Id.* at 28, para 28 (Commentary).

⁵⁵⁹ *Id.* at 28, para 28 (Commentary).

⁵⁶⁰ *Id.* at 28-29 para 29 (Commentary).

⁵⁶¹ *Id.* at 29-30 para 33 (Commentary).

⁵⁶² *Id.* at 30, para 35 (Commentary).

⁵⁶³ *Id.* at 35 para 1. The chapter opening acknowledges the domestic and international legal context and reference is made to the International Labour Organisation (ILO) standards in the Commentary which are reflected in this Chapter.

⁵⁶⁴ *Id.* at 35, para 1. See full paragraph re grounds, and at 39 para 55 (Commentary) for details.

⁵⁶⁵ *Id.* at 36, paras 3-4. On occupational health and safety, see further at 40 para 57 (Commentary).

⁵⁶⁶ *Id.* at 36, para 5.

⁵⁶⁷ *Id.* at 38, para 50 (Commentary).

Applied to the plastics challenge, this chapter clearly supports the imperative that businesses support both formal and informal workers in exercising their rights with the aim of reducing exposure to hazardous substances at all stages of the plastics cycle, and through global supply chains. This aligns with a human rights-based approach that identifies workers and their families as at heightened risk of environmental harms arising from hazardous substances and wastes as explored in Module 2.

Chapter VI. Environment

The environment chapter highlights the need for enterprises to take account of environmental protection while operating in accordance with relevant domestic and international law and policy and contributing to sustainable development.⁵⁶⁸ To do so, businesses need to have environmental management systems in place that collect and evaluate environmental and health and safety (EHS) impacts in a timely fashion.⁵⁶⁹ Measurable objectives and targets for improving environmental performance and utilization of resources should be established, consistent with national and international commitments. They should be reviewed periodically and subject to regular monitoring and verification of progress.⁵⁷⁰

The environment chapter also calls upon businesses to provide both workers and the public with timely information on potential EHS impacts of enterprise activities, and to engage in timely consultation with directly affected communities.⁵⁷¹ Foreseeable EHS impacts associated with the full life cycle of enterprise processes, goods and services should be assessed and addressed in decision-making, with the aim of avoiding impacts, and mitigating those that are unavoidable. Where impacts may be significant, an environmental impact assessment should be prepared.⁵⁷² A precautionary approach should be adopted,⁵⁷³ and contingency plans should be in place for ‘preventing, mitigating, and controlling serious’ EHS damage, including in case of emergencies and accidents, with attention to ‘immediate reporting to the competent authorities’.⁵⁷⁴ Businesses should aim for continuous improvement of corporate environmental performance by the enterprise and through the supply chain, including through the development of products that ‘can be reused, recycled, or disposed of safely’, through the promotion of consumer awareness of the environmental impacts of enterprise products, and through the development of strategies for the ‘substitution or reduction of use of toxic substances’, among others.⁵⁷⁵

The environment chapter further calls upon businesses to educate and train workers in EHS matters, including in relation to hazardous materials, as well as environmental management, impact assessment, the prevention of accidents, and public relations.⁵⁷⁶ Finally, businesses should contribute to public policy development so as to enhance environmental protection and awareness.⁵⁷⁷

⁵⁶⁸ *Id.* at 42.

⁵⁶⁹ *Id.* at 42, para 1.

⁵⁷⁰ *Id.* at 42, para 1.

⁵⁷¹ *Id.* at 42, para 2.

⁵⁷² *Id.* at 43, para 3.

⁵⁷³ *Id.* at 43, para 4.

⁵⁷⁴ *Id.* at 43, para 5.

⁵⁷⁵ *Id.* at 43 para 6.

⁵⁷⁶ *Id.* at 44 para 7.

⁵⁷⁷ *Id.* at 44 para 8.

Application to the Plastics Challenge

Applied to the plastics challenge, this chapter comprehensively supports the imperative that businesses integrate an environmental human rights approach at all stages and through supply chain relationships. This includes procedural components of prevention, prior assessment, and precaution (with the aim of avoiding impacts through product design where possible), access to information and right to science and environmental education, and meaningful and timely public participation in environmental decisions for communities and workers.

Chapter VII. Combatting Bribery, Bribe Solicitation and Extortion

The anti-bribery chapter confirms that businesses “should not, directly or indirectly, offer, promise, give or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. Enterprises should also resist the solicitation of bribes and extortion.”⁵⁷⁸ This includes through the use of third-party agents, contractors, or suppliers, among others.⁵⁷⁹ In order to combat corruption, businesses need to develop and adopt internal control measures to prevent and detect bribery including through ethics and compliance programmes that address the individual circumstances of the enterprise.⁵⁸⁰ Full assessment of the bribery risks facing the business in light of its industrial sector and geographic location should inform the development of these internal controls, which should then be monitored and re-assessed on a regular basis to ensure they are effective and mitigate the risk of enterprise complicity in bribery.⁵⁸¹ The Commentary observes that bribery and corruption and related diversion of funds “undermines attempts by citizens to achieve higher levels of economic, social and environmental welfare, and impedes efforts to reduce poverty.”⁵⁸²

Application to the Plastics Challenge

Applied to the plastics challenge, this chapter directly supports the imperative that businesses confront the organized crime and corruption related challenges arising especially at the importation and incineration stages of the current plastics cycle, but more generally in relation to all environmental crime.⁵⁸³ In this way the environmental human rights risks facing poor and marginalized communities can be reduced if not avoided.

Chapter VIII. Consumer Interests

⁵⁷⁸ *Id.* at 47. The Commentary draws attention to the international legal context; what is discussed in the guidelines may be illegal under domestic law.

⁵⁷⁹ *Id.* at 47, para 1.

⁵⁸⁰ *Id.* at 47, para 2.

⁵⁸¹ *Id.* at 47, para 2.

⁵⁸² *Id.* at 48, para 74 (Commentary).

⁵⁸³ See e.g. WasteForce, “Guidance for Prosecutors of Waste Crime” <https://www.wasteforceproject.eu/wp-content/uploads/2020/07/D4.3-WasteForce-Guidance-for-Prosecutors-of-Waste-Crime.pdf>

The Consumer Interests chapter lays out the expectation that enterprises should ensure the quality of goods and services and should act fairly in marketing and advertising.⁵⁸⁴ Goods and services should not only meet consumer health and safety standards, but also take into consideration “the needs of vulnerable and disadvantaged consumers.”⁵⁸⁵ Accurate and clear information about environmental attributes and disposal, including recyclability of products should be provided to consumers to enable them to make informed decisions.⁵⁸⁶ Enterprises should also support consumer education so that consumers can make informed decisions about complex goods, better understand the environmental and social impacts of their choices, and “support sustainable consumption.”⁵⁸⁷ Enterprises are expected to fully co-operate with public officials in order to prevent or diminish serious public health and safety or environmental threats “deriving from the consumption, use or disposal” of business goods and services.⁵⁸⁸

Application to the Plastics Challenge

Applied to the plastics challenge, this chapter supports the imperative that businesses ensure respect for the rights of consumers to environmentally relevant information, to education on environmental matters and right to science, as well as the importance of attention to equity and vulnerability in environmental and health standards.

Chapter IX. Science and Technology

This Chapter lays out the expectation that enterprises should ensure their activities contribute as appropriate to the development of national and local innovative capacity and adopt practices that “permit the transfer and rapid diffusion of technologies and know-how”.⁵⁸⁹ Science and technology development should address local market needs in host countries, including training, and transfer of technology and intellectual property rights should be undertaken with reasonable terms and conditions so as to contribute “to the long term sustainable development prospects of the host country”.⁵⁹⁰ There is also an expectation that enterprises will develop ties with public research institutions and local universities, and participate in co-operative research with local industry or associations.⁵⁹¹

Application to the Plastics Challenge

Applied to the plastics challenge, this chapter points to the importance of businesses developing innovative solutions to the plastics challenge in an equitable way to ensure long term sustainable solutions.

⁵⁸⁴ OECD MNE Guidelines (n539) at 51.

⁵⁸⁵ *Id.* at 51-52, paras 1 and 8.

⁵⁸⁶ *Id.* at 51, para 2. See further at 53 para 85 (Commentary).

⁵⁸⁷ *Id.* at 51, para 5.

⁵⁸⁸ *Id.* at 51, para 7.

⁵⁸⁹ *Id.* at 55, paras 1-2 (“with due regard to the protection of intellectual property rights”).

⁵⁹⁰ *Id.* at 55, paras 3-4.

⁵⁹¹ *Id.* at 55, para 5.

b) OECD Due Diligence Guidance and Sector-Specific RBC

The OECD has developed a general due diligence guidance as well as sector-specific guidance to help companies implement risk-based due diligence to operationalize responsible business conduct (RBC).

According to the 2018 OECD Due Diligence Guidance on Responsible Business Conduct, risk-based due diligence is the process through which enterprises can ‘identify, prevent, mitigate and account for how they address [their] actual and adverse impacts in their own operations, their supply chain and other business relationships.’⁵⁹² While ‘risk’ is often understood by enterprises as concerning risks to the enterprise itself, the OECD approach to risk-based due diligence is ‘outward-facing’: that is, its focus is on ‘the likelihood of adverse impacts on people, the environment and society that enterprises cause, contribute to, or to which they are directly linked.’⁵⁹³ Specific reference to plastics-related concerns are found throughout the due diligence guidance, including Table 2’s examples of adverse impacts⁵⁹⁴ which include failure to replace substances that are hazardous with those that are less hazardous or harmless,⁵⁹⁵ the existence of unsafe levels of chemical and other hazards in products or services,⁵⁹⁶ and failure to provide clear, verifiable, and accurate information on environmental attributes of products, so as to enable customers to engage in informed decision-making.⁵⁹⁷

The Guidance provides a detailed overview of each step of the due diligence process, followed by supplementary questions and answers related to each step. The six steps are outlined in the following diagram:

Due Diligence Process and Supporting Measures

⁵⁹² OECD (2018) *OECD Due Diligence Guidance for Responsible Business Conduct* (OECD Publishing, Paris) <https://mneguidelines.oecd.org/duediligence/> at 15. [OECD Due Diligence]

⁵⁹³ *Id.* at 15 Box 1.

⁵⁹⁴ *Id.* at 39

⁵⁹⁵ *Id.* at 39 (referring to ILO 1988, No.167)

⁵⁹⁶ *Id.* at 39

⁵⁹⁷ *Id.* at 40.



Source: OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, OECD Publishing, Paris, <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

Of note in the 2018 OECD Due Diligence Guidance is the attention paid to the protection of human rights defenders who are identified as key rights holders for direct consultation, and as frequently subject to reprisals for documenting and speaking out about human rights impacts associated with projects.⁵⁹⁸

The OECD's sector-specific RBC guidance are also relevant to the plastics challenge, whether explicitly or implicitly. For example, the 2016 OECD-FAO Guidance for Responsible Agricultural Supply Chains observes that health and safety risks can arise if physical hazards to food such as plastics are not recognized and prevented.⁵⁹⁹ The 2017 OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector provides detailed guidance of direct relevance to the extraction stage, and by analogy to other stages including the siting of production and waste disposal facilities.⁶⁰⁰ The 2018 Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector does not specifically mention plastics, but does consider related issues throughout.⁶⁰¹ For example, the Section II explores seven modules, of which Module 5 (occupational health and safety) and Module 8 (hazardous chemicals) are especially relevant. Modules 8- 11 provide guidance on environmental due diligence across the full product life cycle including raw material production and manufacturing in the supply chain.⁶⁰² The Guidance notes the importance of anticipating impacts in the product design phase as part of due diligence with the aim of reducing environmental risk of product lines. To determine whether or not to 'take a product from design to development' requires consideration of material choice, the use phase (such

⁵⁹⁸ *Id.* at 27, 38, 48.

⁵⁹⁹ OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016) https://www.oecd-ilibrary.org/agriculture-and-food/oecd-fao-guidance-for-responsible-agricultural-supply-chains_9789264251052-en at 58.

⁶⁰⁰ OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (2017) <https://www.oecd.org/publications/oecd-due-diligence-guidance-for-meaningful-stakeholder-engagement-in-the-extractive-sector-9789264252462-en.htm>

⁶⁰¹ OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (2018) https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-in-the-garment-and-footwear-sector_9789264290587-en

⁶⁰² *Id.* at 159.

as, laundering), and end of life stage (re-use, recycling), as well as the length of use.⁶⁰³ The guidance considers impacts in four key areas: Hazardous chemicals, Water consumption, Water pollution, and Greenhouse Gas (GHG) emissions, of which the hazardous chemicals module is particularly relevant with consideration given to the inventory of chemicals used, the country context of use, supplier assessments, and the need to support the development and adoption of ‘a common industry-wide Manufacturing Restricted Substances List (MRSL)’.⁶⁰⁴ Module 11 addresses bribery and corruption issues including as gateway crimes for violation of environmental standards.⁶⁰⁵ Frequent reference is made to the good practices identified in the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance.⁶⁰⁶

c) *OECD RBC and Global Environmental Challenges*

In December 2021, the OECD published a paper designed to provide a snapshot of how OECD RBC instruments address global environmental challenges.⁶⁰⁷ The paper emphasizes the importance of an environmental human rights approach,⁶⁰⁸ introduces circular economy initiatives,⁶⁰⁹ and provides an overview of OECD National Contact Point (NCP) cases.⁶¹⁰ It describes key provisions in the OECD MNE Guidelines and explores how they have been interpreted in select NCP decisions.⁶¹¹ Particularly relevant to the plastics problem are cases that address responsible resource extraction and manufacturing, as well as disclosure. The paper subsequently explores OECD due diligence instruments and select sector-specific guidance.⁶¹² The paper concludes by introducing policy trends including mandatory human rights and environmental due diligence, as well as anti-waste and circular economy law and policy.⁶¹³ Annex A provides a comprehensive overview of NCP cases that have referred to the environment chapter.⁶¹⁴

Since the National Contact Points were first established in 2000, over 450 specific instances (NCP cases) have been handled of relevance to over 100 countries. The OECD maintains a searchable database of specific instance complaints that enables searching by country, industry sector, and RBC theme.⁶¹⁵ A parallel database is maintained by the NGO OECD-Watch.⁶¹⁶ Both OECD⁶¹⁷

⁶⁰³ *Id.* at 159-160.

⁶⁰⁴ *Id.* at 161-162. Multiple international standards and supplementary resources are provided at 165.

⁶⁰⁵ *Id.* at 176.

⁶⁰⁶ *Id.*

⁶⁰⁷ 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>

⁶⁰⁸ *Id.* at 6, 25-26, 34-35.

⁶⁰⁹ *Id.* at 12.

⁶¹⁰ *Id.* at 14-15.

⁶¹¹ *Id.* at 16-33.

⁶¹² *Id.* at 34-38. The only explicit mention of plastics is with regard to the Garment and Footwear Sector guidance where it is noted that consideration of environmental impacts across the full life cycle of a product would include ‘tak[ing] preventative action to avoid and reduce microplastic shedding and pollution’. *Id.* at 36.

⁶¹³ *Id.* at 39-43.

⁶¹⁴ *Id.* at 46-52.

⁶¹⁵ OECD Database of specific instances <https://mneguidelines.oecd.org/database/>

⁶¹⁶ OECD Watch Complaints database <https://www.oecdwatch.org/complaints-database/>

⁶¹⁷ Specific instance handling under the OECD Guidelines for Multinational Enterprises <https://mneguidelines.oecd.org/specifificinstances.htm>

and OECD-Watch⁶¹⁸ provide detailed information on how to bring an OECD specific instance complaint against an enterprise for failure to comply with the OECD MNE Guidelines, and what to expect from the process. For example, a search of the OECD NCP database reveals 18 complaints relating to operations of MNEs in Indonesia,⁶¹⁹ and 11 relating to the Philippines.⁶²⁰

The OECD e-learning academy on Responsible Business Conduct provides free online learning opportunities on topics such as the OECD approach to risk-based due diligence.⁶²¹

4. International Labour Organisation (ILO)

The International Labour Organisation (ILO)⁶²² is a specialized UN agency that is designed to bring representatives of governments, employers, and workers together in a tripartite structure to ‘set labour standards, develop policies and devise programmes promoting decent work for all women and men.’⁶²³ Several initiatives are of potential importance to the plastics problem and will be briefly introduced here. Notably, the Special Rapporteur on toxic substances’ report outlining Principles on rights of workers, discussed in Module 2, ‘takes note of recent efforts by the ILO to add occupational safety and health as one of the ILO fundamental principles and rights at work’.⁶²⁴ The 1998 Declaration on Fundamental Principles and Rights at Work provides that all members, whether or not they have ratified relevant Conventions, have obligations to promote, respect, and realize principles relating to freedom of association, the elimination or abolition respectively of forced and child labour, and non-discrimination in occupation and employment.⁶²⁵ Among ILO Conventions are some that are potentially relevant yet not widely ratified – these will not be explored here.⁶²⁶

⁶¹⁸ OECD Watch “How to submit a new complaint” <https://www.oecdwatch.org/complaints-database/how-to-submit-a-new-complaint/>

⁶¹⁹ Search for specific instances with Indonesia as the host state (September 9, 2022): [https://mneguidelines.oecd.org/database/searchresults/?hf=10&b=0&q=\(Host%3A\(Indonesia\)\)&s=desc\(mne_datereceived\)](https://mneguidelines.oecd.org/database/searchresults/?hf=10&b=0&q=(Host%3A(Indonesia))&s=desc(mne_datereceived))

⁶²⁰ Search for specific instances with the Philippines as the host state (September 9, 2022): [https://mneguidelines.oecd.org/database/searchresults/?q=\(Host:\(Philippines\)\)](https://mneguidelines.oecd.org/database/searchresults/?q=(Host:(Philippines)))

⁶²¹ OECD e-learning Academy on Responsible Business Conduct: <https://mneguidelines.oecd.org/oecd-e-learning-academy-on-responsible-business-conduct.htm>

⁶²² ILO, “About the ILO” <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>

⁶²³ *Id.*

⁶²⁴ Workers Principles (n369) at 5, para 13.

⁶²⁵ ILO Declaration and Fundamental Principles on Rights at Work (1998) <https://www.ilo.org/declaration/lang--en/index.htm>. The UNGPs explicitly refer to the ILO Declaration as an example of “internationally recognized human rights”. See further ILO Briefing Note, “The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights” (June 2021), online: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/briefingnote/wcms_800261.pdf

⁶²⁶ See for example ILO, *C170 - Chemicals Convention, 1990 (No. 170)* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312315 (provides guidance to governments, employers, and workers in respect to protecting workers, the public, and the environment from workplace chemicals and the externality of these chemicals into the environment. Article 14 requires that chemical substances be disposed in a way that eliminates or significantly reduces safety, health and environmental risks.) [See further study on PPE <https://www.pnas.org/doi/10.1073/pnas.2111530118>] As a second example, see International Labour Organization, *C155 – Occupational Safety and Health Convention, 1981 (No. 155)* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155.

a) **ILO Tripartite Declaration**

The 5th edition of the International Labour Organisation’s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration)⁶²⁷ dates from 2017 and establishes broad human rights-based principles in workplace environments overseen or operated by MNEs. It is directed to both governments and MNEs to encourage the implementation of ILO’s broad concept of decent work.⁶²⁸ This concept is divided into four headings and subheading topics in the MNE Declaration: 1) employment (employment promotion; social security; elimination of forced or compulsory labour; child labour abolition; equality of opportunity and treatment; security of employment); 2) training; 3) conditions of work and life (wages, benefits and conditions of work; and safety and health); 4) industrial relations (freedom of association/right to organize; collective bargaining; consultation; access to remedy and examination of grievances; settlement of industrial disputes).

The MNE Declaration emphasizes that governments should ensure workers in low-income groups are able to access employment with MNEs, where they could benefit from a safer, healthier, and more gender-equal working environment contingent on MNEs implementing the principles.⁶²⁹ Although the MNE Declaration does not have a direct relation to marine litter or plastics, the key principles broadly would encourage governments and MNEs to take proactive measures to ensure workers exposed to plastic pollution especially as a toxic hazard find healthier, safer, and more secure employment within MNEs.

b) **ILO Guidelines for a Just Transition**

The ILO’s 2016 *Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All*⁶³⁰ are designed to provide direction to governments (and ‘social partners’) to secure the social and economic interests of workers in the process of transitioning to more environmentally sustainable economies and jobs. Guiding principles for the transition include the importance of social dialogue as part of the institutional policy-making framework, with all relevant stakeholders involved in ‘adequate, informed, and ongoing consultation’ while attention the gender dimensions of environmental challenges and opportunities must be taken into account in policies and programmes.⁶³¹ The Guidelines were supplemented with a *User’s Manual* in November 2021.⁶³² The Manual aims to encourage and provide direction to workers’

⁶²⁷ ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 5th edition – March 2017, online: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf [ILO Tripartite Declaration]

⁶²⁸ ILO, “Decent Work”, <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm> [‘Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.’]

⁶²⁹ ILO Tripartite Declaration (n627) at 11.

⁶³⁰ ILO, *Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All* (2016), https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_432859.pdf.

⁶³¹ *Id.* at 7-8.

⁶³² ILO, *User’s manual to the ILO’s Guidelines for a just transition towards environmentally sustainable economies and societies for all*, (2021), https://www.ilo.org/actrav/pubs/WCMS_826060/lang--en/index.htm

organizations as agents for change in shaping policies in the transition to sustainable economies.⁶³³ As such its messages appear likely to be equally relevant to transition away from plastics.

c) **Decent Work & Circular Economy in Plastics**

In February 2021, the ILO has also released a short video entitled ‘A Circular Economy Can Promote Decent Work’ demonstrating how the Covid-19 pandemic has highlighted a need for a circular economy based on “repair, reuse, recycle” to ensure supply chains are kept sustainable especially in future pandemics.⁶³⁴ Circular economies can further create jobs and sustainable enterprises across various sectors in the economy. The website hosting the video links to two 2021 action plan agendas for a circular economy in the textiles⁶³⁵ and electronics⁶³⁶ industries, both of which can be comprised of plastics and contribute to plastic pollution. These plans were written and published by PACE (Platform for Accelerating the Circular Economy). PACE has further published a circular economy action plan that is specific for the plastics, which also identifies a series of barriers including the failure to integrate negative environmental externalities into plastics costs, lack of incentives for reuse design, the need for consumer behaviour change such as reuse despite hygiene concerns being heightened due to COVID-19, and challenges in contaminated post-consumer plastics including thousands of diverse chemical additives.⁶³⁷

Reflection

How could your business undertake opportunities to learn about and implement supplementary guidance on business and human rights and responsible business conduct including those developed by:

- UNDP Asia (HRDD Training Facilitation Guide)
- UN Global Compact & Local Networks (including the Ten Principles & Sustainable Oceans Principles)
- OECD e-learning Academy (including the Guidelines for Multinational Enterprises, Due Diligence Guidance for Responsible Business Conduct, and sector-specific initiatives)

Are you familiar with these sources?

⁶³³ *Id.* [‘Workers’ organizations are not passive bystanders, but agents of change able to develop new pathways to sustainability and to ensure that a transition not only delivers on climate policy objectives but incorporates the broader principles of sustainable development and decent work. This user’s manual was prepared with the objective of encouraging and assisting workers’ organizations to engage in policy discussions at all levels in shaping just transition, including in the implementation of the Nationally Determined Contributions (NDCs) of the Paris Agreement.’]

⁶³⁴ ILO, ‘A circular economy can promote decent work’ video https://www.ilo.org/global/about-the-ilo/multimedia/video/institutional-videos/WCMS_771256/lang—en/index.htm

⁶³⁵ <https://pacecircular.org/sites/default/files/2021-02/circular-economy-action-agenda-textiles.pdf>

⁶³⁶ https://pacecircular.org/sites/default/files/2021-02/action-agenda-electronics-feb2021_FINAL.pdf

⁶³⁷ PACE, “Circular Economy Action Agenda”, online: https://pacecircular.org/sites/default/files/2021-02/circular-agenda-plastics-feb2021_FINAL.pdf at 24-27.

C. Business Responsibilities for HR&E and Leverage

Module 3 has so far introduced the business responsibility to respect human rights under the UNGPs, supplementary guidance from the UNWGBHR, and explored how key international BHR frameworks such as the UNGC, OECD, and ILO, have both integrated the business responsibility and considered other relevant environmental human rights aspects of the plastics challenge. In this part we draw upon materials introduced above, as well as materials from Modules 1 and 2, and supplementary sources, to explore opportunities for businesses to work together with rights holders to together champion a human rights-based approach to solutions to the plastics crisis. There are emerging trends for the adoption of mandatory human rights and environmental due diligence laws in certain jurisdictions, sometimes focusing on specific issues such as forced labour.⁶³⁸ However, even in the absence of mandatory laws, the independent responsibility of business enterprises to respect human rights and conduct due diligence provides an important opportunity for businesses to adopt responsible practices that contribute to solutions to the plastics challenge.

1. Integrating Responsibility and Exercising Leverage

A key component of BHR, following the adoption of a human rights policy commitment, is implementation of human rights due diligence (HRDD) to ‘identify, prevent, mitigate and account for how the business enterprise will address its impacts on human rights’.⁶³⁹ Appropriate and effective action to prevent and mitigate adverse impacts can only be undertaken if business enterprises integrate their human rights impact assessment findings across the appropriate levels and functions within the enterprise, and assign responsibility accordingly together with ‘decision-making, budget allocations and oversight processes to enable effective responses’.⁶⁴⁰ Exactly what appropriate action is will vary depending on:

- (i) *Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;*
- (ii) *The extent of its leverage in addressing the adverse impact.*⁶⁴¹

In situations where a business enterprise identifies that it has ‘caused or contributed to adverse impacts’, the business has a responsibility to actively engage in remediation of the harm, whether by itself or in cooperation with other actors including judicial mechanisms.⁶⁴² As discussed in the case study presented in Module 1, in Indonesia businesses who manufactured diapers developed diaper collection facilities to improve river pollution even though they may not have, in a direct sense, caused the pollution. For example, it could be argued that a lack of waste management particularly at the local government-level is the most direct cause of diaper-based river pollution. On the other hand, if producers did not manufacture products that require waste management of

⁶³⁸ *Closing the gap: Evidence for effective human rights due diligence from five years measuring company efforts to address forced labour* (Know the Chain, Business & Human Rights Resource Centre) <https://www.business-humanrights.org/en/from-us/briefings/closing-the-gap-evidence-for-effective-human-rights-due-diligence-from-five-years-measuring-company-efforts-to-address-forced-labour/>

⁶³⁹ UNGPs (n400) at Principle 15(b)

⁶⁴⁰ *Id.* at Principle 19(a)

⁶⁴¹ *Id.* at Principle 19(b)

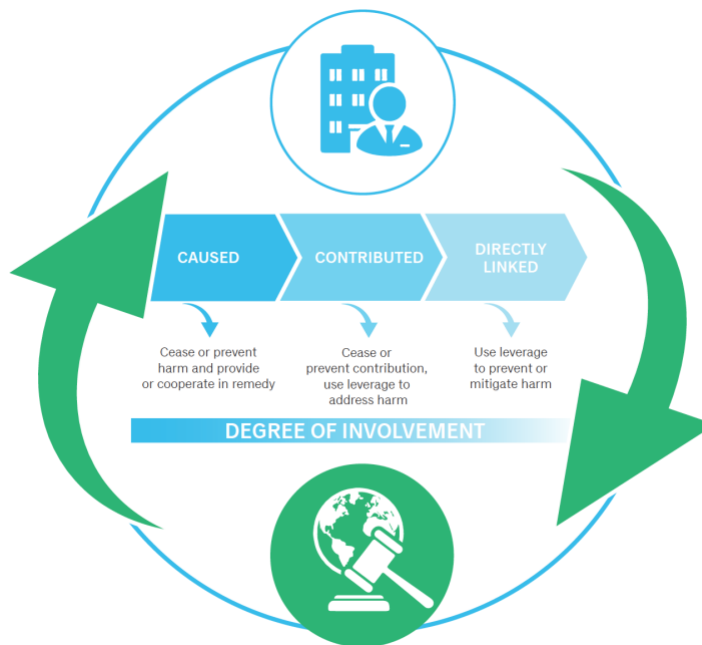
⁶⁴² *Id.* at Principle 22, and Pillar 3.

this kind, local level governments would not be expected to do as much. Similarly, in the sachet waste in the Philippines case study (Module 2), every business involved in the value chain of plastic sachets sold in the Philippines—from extractors of fossil fuels, plastic ‘sachet’ packaging manufacturers, household-goods manufacturers, and even vendors—have a responsibility to prevent, mitigate and remedy sachet-based pollution or exercise leverage where responsibility is directly linked.

Therefore, in situations where the business enterprise contributes or may contribute to harm, it has a responsibility to use its leverage to mitigate remaining impacts as much as possible, after taking necessary steps to cease or prevent its own contribution.⁶⁴³ The severity of the human rights abuse and the human rights implications of terminating the relationship are important considerations together with the extent of leverage, which may be increased by offering capacity-building or other collaborations.⁶⁴⁴ Other steps include tracking the effectiveness of responses to adverse human rights impacts drawing upon feedback from affected stakeholders,⁶⁴⁵ and externally communicating information about the enterprise’s response to identified human rights impacts, with attention to risks posed to affected rights holders.⁶⁴⁶

An important consideration across the linear plastic life cycle and plastic value chain is how to address the third pillar of the UNGPs: access to remedy. The visual below is designed to illustrate how the UNGPs conceptualize this challenge:

Business Responsibility According to the Degree of Involvement



Design: Dalhousie University Graphic Design

Many business enterprises have not yet begun to engage in human rights due diligence for either their own activities or value chains, while those that have started should be transparent about what

⁶⁴³ *Id.* at Principle 19, Commentary

⁶⁴⁴ *Id.* at Principle 19, Commentary

⁶⁴⁵ *Id.* at Principle 20.

⁶⁴⁶ *Id.* at Principle 21.

they have learned and continuously seek to enhance HRDD by engaging with human rights defenders, other affected rights holders, civil society, and trade unions.⁶⁴⁷ Importantly, ‘All enterprises should consider collective leverage approaches, especially when faced with systemic human rights issues.’⁶⁴⁸ Investors and financial institutions should also be aware of their responsibilities to exercise leverage with companies about their human rights practices.⁶⁴⁹

As discussed earlier in this module, the OECD’s risk-based due diligence approach offers insights into how HRDD can apply to different aspects of the plastics challenge. Examples of adverse risks cited in the OECD’s Due Diligence Guidance include the failure to replace hazardous substances with those that are less harmful, as well as the existence of unsafe levels of hazards including chemicals in products or services.⁶⁵⁰ Module 1 introduced the example of Gracz’s transition to a nature-based packaging. Although the nature-based plastics produced by Gracz costs 20% more than traditional single-use plastics (although the price is comparable to higher quality microwaveable plastics) the price “is becoming more acceptable” given wider awareness of the harms of single-use plastic.⁶⁵¹ While government incentives could bring the price point closer to that of traditional single-use plastic options, investment from other businesses and higher-demand volumes could also assist.⁶⁵² Businesses and financial institutions engaging in risk-based due diligence in relation to the plastics challenge should seek out opportunities to invest in businesses that have transitioned to nature-based plastics as part of their responsibility to avoid causing or contributing to human rights harms arising from the use of fossil fuel based plastics. At the same time, it is equally important that risk-based due diligence be applied to ensure that innovative plastics solutions, including those that are nature-based such as ‘bioplastics’, do not inadvertently cause or contribute to other human rights harms.

⁶⁴⁷ OHCHR, Information Note: *Summary of the report of the Working Group on Business and Human Rights to the General Assembly, October 2018 (A/73/163)*, Corporate human rights due diligence: emerging practices, challenges and ways forward, online: <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ExecutiveSummaryA73163.pdf>

⁶⁴⁸ *Id.*

⁶⁴⁹ UNEPFI, Human Rights Guidance Tools for the Financial Sector <https://www.unepfi.org/humanrightstoolkit/finance.php>

⁶⁵⁰ OECD Due Diligence Guidance (n592) at 40 as discussed above.

⁶⁵¹ *SEA Circular*, “Nature-based Food Packaging Case Study: alternatives to Plastic for Packaging Food,” online: <https://www.sea-circular.org/nature-based-food-packaging/>.

⁶⁵² *Id.*

Specifically in the realm of product design, integrating responsibility, or accountability, may be visualized according to four broad principles reflective of a human rights-based approach:

Integrating a Human Rights-Based Approach (HRBA) into Product Design



Design: Dalhousie University Graphic Design

The integration of a human rights-based approach in waste management and disposal, particularly of plastics, may also be visualized according to four similarly broad principles that reflect a human rights-based approach:

Integrating a Human Rights-Based Approach into Waste Management and Disposal



Design: Dalhousie University Graphic Design

2. Protecting and Enabling Formal and Informal Workers

The exercise of HRDD and risk-based due diligence must equally apply to the protection of the rights of formal and informal workers, discussed at length in Module 2, and referenced in this module in relation to diverse BHR frameworks. However, even with regard to well understood issues such as forced labour, many business enterprises in high risk sectors have failed to assess human rights risks, while less than 20% show evidence of mitigating forced labour risks in their supply chains through the adoption of responsible purchasing practices.⁶⁵³

The essential elements of due diligence with regard to workers issues are: (1) supply chain transparency and traceability throughout all tiers of global supply chains, with attention to unauthorized subcontracting; (2) risk assessment processes that are led by workers collectives and include local stakeholders; (3) responsible purchasing practices that support freedom of association; and 4) grievance mechanisms that are worker-oriented to ensure trusted access to remedy.⁶⁵⁴ As explored at length in Module 2 in relation to informal waste pickers and formal industrial plastics workers, including through the Principles on the protection of workers from exposure to toxic substances, workers are at heightened risk of harm from plastics, yet also have a key role to play in pushing for transition away from fossil fuel based plastics. This can only be accomplished if their collective rights, including rights to freedom of association, are respected and they are enabled to be proactive in seeking to protect their health and that of their families and communities.

An additional important tool to ensure the protection of workers who are willing to speak up to raise the alarm about practices that create risks or are unsafe is the adoption of whistle blower protections.⁶⁵⁵ These would ideally be protected by law,⁶⁵⁶ but in the absence of legal protections, business enterprises can create internal protections that reward rather than punish workers who seek to draw attention to plastics related environment and health and safety issues.

3. Enabling Community-Based Approaches to Circular Economy

The meaningful participation of local communities in the development and implementation of solutions to the plastics challenges is an important part of a human rights-based approach. One method of integrating business and community approaches to circular economy that is gaining traction in South-East Asia and across the world is the creation of Extended Producer Responsibility (EPR) schemes. EPR schemes oblige businesses to “assume full responsibility for the products they offer to the public – not just during consumption but also during the end-of-life phase – or once their products have become waste.”⁶⁵⁷ These programs usually are conducted in concert with waste management systems created by governments and civil society.⁶⁵⁸

A strong case study of the implementation of a voluntary EPR scheme is the formalization of a recycling collection program completed by the city council of Petaling Jaya, Malaysia, and Nestle

⁶⁵³ *Closing the Gap Report*, (n638)

⁶⁵⁴ *Id.*

⁶⁵⁵ See generally <https://www.whistleblowers.org/news/why-we-need-whistleblowers-in-the-plastic-industry/>

⁶⁵⁶ See for example whistle blower laws designed to address corrupt practices. See further below.

⁶⁵⁷ WWF Philippines, “EPR Scheme Assessment for Plastic Packaging Waste in the Philippines” (2020), at I, online: https://wwf.org.ph/wp-content/uploads/2020/12/WWF_REPORT_EPR_Philippines_2020.pdf.

⁶⁵⁸ *Id.*

Malaysia.⁶⁵⁹ The recycling program created by the city council and Nestle involved the recruitment and training of door to door collection service targeted at ensuring the collection of highly recyclable materials.⁶⁶⁰ The program additionally sought to engage and educate the residents of the target neighbourhoods to encourage participation and improve the efficacy of the program.⁶⁶¹ The key contribution of Nestle was to cover the gap between the revenue generated from the collection of the recyclables and the ultimate cost of the program.⁶⁶²

Analysis of the program demonstrated its success in shifting the target communities away from the use of single-use plastics, and pointed to the likelihood that similar EPR schemes could become a key part of achieving “Malaysia’s National Marine Litter Policy & Action Plan 2021-2030.”⁶⁶³ In order to use these programs for this goal Malaysia is “actively considering” creating legal requirements for businesses to participate in EPR schemes.⁶⁶⁴

However even in the absence of legal requirements businesses can, and should, voluntarily accept this responsibility through the formation of public-private partnerships.⁶⁶⁵

Indonesia also has experience with EPR, although it is less clear to what extent business and community approaches have been integrated to date.⁶⁶⁶ EPR has been mandatory since 2008,⁶⁶⁷ but with seemingly weak enforcement.⁶⁶⁸ EPR is defined as producers’ “obligation to manage their packaging and/or products that are produced that cannot (easily) decompose by natural processes.”⁶⁶⁹ In 2012, producers were further said to be responsible for ‘reducing, recycling and reusing packaging and/or products.’⁶⁷⁰ However, there has been a lack of detailed government guidance, and industry has supported the plan with voluntary corporate social responsibility (CSR) initiatives.⁶⁷¹ Indonesia’s *Roadmap on Reducing Plastic Pollution by Producers* (Regulations 75/2019) is said to be a cornerstone and landmark change in the EPR landscape in Indonesia. The Roadmap confirms a 30% reduction “at source” target, suggesting that this can be achieved with reducing product packaging as well as recycling and ‘re-use’ waste management schemes. Producers must submit “waste management plans” that must delineate practical actions,⁶⁷² as well

⁶⁵⁹ 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.

⁶⁶⁰ *Id.*, at 8.

⁶⁶¹ *Id.*, at 13.

⁶⁶² *Id.*, at 12.

⁶⁶³ *Id.*, at 20.

⁶⁶⁴ *Id.*, at 12.

⁶⁶⁵ *Id.* at 12.

⁶⁶⁶ Systemiq, APEKSI, APKASI, *Producer Responsibility in Indonesia: What to Know, What Stakeholders Think, and What Could Happen Next* (Jakarta: December 2021) [Systemiq, et al] at 4.

⁶⁶⁷ *Id.* at 5 citing UU 18/2008 regarding Waste Management (Indonesia).

⁶⁶⁸ *Id.* at 5-6.

⁶⁶⁹ Waste Management Law 18/2008, article 15.

⁶⁷⁰ Government Regulation (Peraturan Pemerintah) No 81/2012 article 12, 13 and 14 (Indonesia).

⁶⁷¹ Systemiq, et al at 5-6.

⁶⁷² *Id.* at 6.

as annual reports on progress.⁶⁷³ The Roadmap has been described as a “circular recycling-based system”.⁶⁷⁴

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, it is important to keep in mind that recycling alone does not provide a satisfactory solution to the environmental human rights impacts of plastics, which arise at all stages of the plastics cycle, and may further emerge at the recycling stage if undertaken so as to concentrate toxins in recycled products.

Case Study: Plastic Crediting Business and its Ability to Protect Human Rights Across the Plastic Lifecycle

In response to plastic pollution, businesses have developed methods to monetize and divert plastic pollution. One emerging model is a plastic crediting business.⁶⁷⁵ Under this model, any business can purchase “credits” from a plastic crediting business to offset the amount of plastic waste it generates. The purchase of credits funds the collection of plastic pollution in the amount chosen by a business. In exchange for credits a business may, under some business models, make a public claim that they have “offset” their plastic footprint to appeal to consumers’ environmental interests. Some plastic crediting businesses have leveraged the informal waste sector, some of which have been women-led micro-organizations, by paying them to collect plastic pollution through credits purchased by a business.⁶⁷⁶

The WWF published a position paper on plastic credits in January 2021, which emphasized the model’s potential value to help transition to a more circular economy.⁶⁷⁷ The WWF noted, however, that current business models are not standardized, that they must be credible, and that crediting businesses must commit to transformational change, which implies that they must encourage the reduction of plastic consumption.⁶⁷⁸ There is also a need for plastic crediting business to commit to strong social and environmental safeguards, which could include providing informal waste workers with various occupational health protections (gloves, footwear, hazmat suits etc.).⁶⁷⁹ The WWF also stated that it does not support phrases such as “plastic neutral” or “plastic neutrality”.⁶⁸⁰

Questions

⁶⁷³ *Id.*, see at 10-11: referencing regulation 75/2019 (the Roadmap), the report notes that “there is no explicit enforcement mechanism e.g. through fines or administrative penalties, but it is understood that the government may publish the names of non-compliant companies.”

⁶⁷⁴ Systemiq, et al (n666) at 6.

⁶⁷⁵ Plastic Credit Exchange, “How it Works”, online: <https://www.plasticcreditexchange.com>.

⁶⁷⁶ See Plastic Credit Exchange, “Project Partners”, online: <https://www.plasticcreditexchange.com/about-us/#processing-partners>.

⁶⁷⁷ World Wildlife Fund (WWF), *WWF Position: Plastic Crediting and Plastic Neutrality*, (January 2021) online: https://c402277.ssl.cf1.rackcdn.com/publications/1429/files/original/newWWF_Position_on_Plastic_Crediting_and_Plastic_Neutrality_.pdf?1611957221.

⁶⁷⁸ *Id.* at 1.

⁶⁷⁹ *Id.* at 1.

⁶⁸⁰ *Id.* at 1.

1. Reflecting on Module 1, what are the implications of the plastic credit system for human rights at each stage of the plastics cycle? Do they support or undermine human rights at each stage?

- extraction
- production
- transportation
- use (consumption & waste generation)
- waste management
- disposal

2. Reflecting on **Module 2**, what are the implications of the plastic credit system for the right to a clean, healthy and sustainable environment? Do they support or undermine this right? How does this system support or undermine substantive and procedural rights? How may this system protect equitable and vulnerable groups?

3. Reflecting on **Module 3**, how does the plastic credit system contribute to or undermine responsible business plastics action? At each stage of the plastics cycle? For different rights holders?

4. Supporting Environmental Human Rights Defenders & Avoiding SLAPP Lawsuits

A recurring theme in both modules 2 and 3 is the importance of businesses respecting the rights of environmental human rights defenders (EHRDs) and supporting their work of at all stages of the plastics lifecycle. Indeed, to effectively tackle environmental challenges such as the plastics crisis, businesses and governments must learn to view EHRDs ‘essential allies in protecting people and planet’ rather than as enemies.⁶⁸¹ The work of EHRDs also links to the work of citizen scientists and the need for education to empower action.⁶⁸²

A pervasive problem exists in South-East Asia with businesses engaging in Strategic Lawsuits Against Public Participation (SLAPP). In 2019 only Central America had more recorded cases of the use of SLAPP than South-East Asia.⁶⁸³ The use of SLAPP can be identified where civil, criminal, or administrative lawsuits are filed against Human Rights Defenders who are exercising their participatory rights, with the intention of “silencing or intimidating the Human Rights Defender from further engaging in criticism, opposition, public participation, and similar activities.”⁶⁸⁴

⁶⁸¹ See Executive summary HRDs (n460).

⁶⁸² See eg SEA circular, “Education to empower: citizen science and education to empower communities for safer and cleaner environments”, online: <https://www.sea-circular.org/wp-content/uploads/2021/12/Ten-little-pieces-Case-study.pdf>

⁶⁸³ Business & Human Rights Resource Centre, “Strategic Lawsuits Against Public Participation: Southeast Asia Cases & Recommendations for Governments, Businesses, & Civil Society” (2020), online: https://media.business-humanrights.org/media/documents/SLAPPs_in_SEA_2020_Final_TRddA8a.pdf.

⁶⁸⁴ *Id.*

In South-East Asia only the Philippines has concrete rules defining SLAPP, although their rules limit the defence against such lawsuits to environment-related cases.⁶⁸⁵ As such it is necessary for South-East Asia:

- governments to enact laws to protect human rights defenders from SLAPP lawsuits;
- businesses to adopt policies of non-retaliation or tolerance for the use of SLAPP, and to create opportunities for dialogue with human rights defenders who have been affected by their actions; and
- civil society to identify SLAPPs and mobilize to protect human rights defenders against their use.⁶⁸⁶

Thailand is currently making some tangible progress towards addressing these goals. Its' Office of the Court of Justice is attempting to amend the country's Criminal Procedure Code to give courts the power to dismiss or not accept cases that they consider as being prosecuted with the dishonest intention to distort facts, or to bully or take advantage of the defendant.⁶⁸⁷ However, while this change is ongoing it is still clear that more action is necessary from governments and business in South-East Asia.

5. Centering Equity and Vulnerable Groups

Another recurring theme in both Modules 2 and 3 is the importance of non-discrimination by centring equity and vulnerable groups, with attention to intersectional experiences. Some groups are innately more vulnerable to environmental human rights harms arising at the different stages of the plastics crisis, while for others vulnerability is linked to the kind of work they undertake, and for others it arises from historic or ongoing rights violations. While some of the BHR tools in Module 3 have elaborated upon business responsibilities in relation to a particular group (eg the UNWGBHR's gender guidance), it is important to be aware that other BHR guidance tools may provide additional insights into the challenges facing particular groups and business responsibilities that follow.

For example, in 2012, UNICEF, the Global Compact, and Save the Children released the *Children's Rights and Business Principles*.⁶⁸⁸ These Principles draw upon international legal instruments to guide business action to respect and support children's rights. Among the Principles are many of relevance to the plastics crisis including:

Principle 3 Provide decent work for young workers, parents and caregivers

Principle 5 Ensure that products and services are safe and seek to support children's rights through them

⁶⁸⁵ *Id.*

⁶⁸⁶ *Id.*

⁶⁸⁷ UNEP, "An Assessment of Access to Information, Public Participation and Access to Justice in Environmental Decision-Making in Asia-Pacific" (2021), at 23, online:

<https://wedocs.unep.org/bitstream/handle/20.500.11822/36334/AIPP.pdf?sequence=3&isAllowed=y>.

⁶⁸⁸ UNICEF, *Children's Rights and Business Principles* (2012) <https://www.unicef.org/media/96136/file/Childrens-Rights-Business-Principles-2012.pdf>

Principle 7 Respect and support children’s rights in relation to the environment and to land acquisition and use⁶⁸⁹

Some plastic-specific guidance is emerging that draws attention to the need to particular attention to vulnerable groups. For example, in 2021 the World Economic Forum published a guidance document entitled *Guide to Ensure Gender-Responsive Action in Eliminating Plastic Pollution*.⁶⁹⁰ Developed by the Global Plastic Action Partnership (GPAP), this guidance is designed to support actors in the plastics value chain and plastic pollution action community to adopt a gender-sensitive approach. It outlines gender mainstreaming principles, along with detailed guidance made specific to a variety of stakeholders, including policy-makers, industry and business leaders, innovators, civil society organizations and academia. The guidance recognizes that gender equality is itself an important human right that is key to sustainable development and environmental protection.⁶⁹¹ ‘Given women’s central role in entrepreneurship, resource management, waste disposal and unpaid household labour and informal sector work, policies that aim to support women’s rights and livelihoods should naturally complement efforts to transition to a more sustainable and circular plastics economy.’⁶⁹² An extensive definition of gender-mainstreaming is provided, and a detailed case study serves to clarify why gender and inclusion are key to plastic action.⁶⁹³

6. Confronting Illegal Plastics Imports and Ensuring Safe Disposal

Another challenge to confronting the plastics crisis arises from the potential for corrupt conduct to lead to illegal importation and disposal of plastic waste. More generally, corrupt businesses may attempt to undermine new plastics regulations. Several of the BHR frameworks discussed in Module 3 provide insights into how responsible businesses can tackle these important challenges. Beyond this, an increasingly common tool is the implementation of whistle blower legislation designed to incentivize whistle blowers to come forward with information about clandestine plastics-related crime.⁶⁹⁴

There is some regional precedent for whistleblower reward laws. South Korea allows a whistleblower to recover a maximum of 20% of the total monies.⁶⁹⁵ In 2011, the United States and South Korea were the only two countries listed in the OECD’s *G20 Anti-Corruption Action Plan: Protection of Whistleblowers (Study on Whistleblower Protection Frameworks, Compendium of*

⁶⁸⁹ *Id.*

⁶⁹⁰ Global Plastic Action Partnership, *Guide to Ensure Gender-Responsive Action in Eliminating Plastic Pollution* (2021), <https://globalplasticaction.org/wp-content/uploads/GPAP-Global-Gender-Guidance-May-2021.pdf>

⁶⁹¹ *Id.* at 3.

⁶⁹² *Id.*

⁶⁹³ However, while elements of the gender mainstreaming reflect a human right-based approach, the recommendations directed at businesses are deficient as they fail to identify the business responsibility to respect human rights and potential of human rights due diligence to enable businesses to proactively work to both protect and support women at all stages of the plastics cycle, including through value chain responsibilities. Indeed, ‘human rights’ only appears twice in the text, and ‘due diligence’ does not appear at all.

⁶⁹⁴ See generally National Whistleblower Center, ‘Why we need whistleblowers in the plastics industry’ by Carly Fabian, research associate, with particular attention to US practices: <https://www.whistleblowers.org/news/why-we-need-whistleblowers-in-the-plastic-industry/>

⁶⁹⁵ *Korean Anti-corruption Act*, Arts 11.7, 36, 37, as noted in OECD, “G20 Anti-Corruption Action Plan: Protection of Whistleblowers (Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation)” (2011) at 22, online: <www.oecd.org/corruption/48972967.pdf>.

Best Practices and Guiding Principles for Legislation) that had whistleblower reward laws.⁶⁹⁶ Since this report, Indonesia passed a government regulation in September 2018 that allows a whistleblower to receive a reward in the form of either a commendation or a monetary reward for the disclosure of corruption.⁶⁹⁷ The type of reward provided to a whistleblower will be decided by a law enforcement agency based on factors such as information quality.⁶⁹⁸ The absence of clear and precise whistleblower protection laws in Indonesia is cited as a major issue that will likely hamper the effectiveness of the reward incentives for corruption.⁶⁹⁹

D. Conclusion

1. Summary

Module 3 introduced business and human rights (BHR) frameworks and explored their application to the prevention and remedy of the plastics crisis. The module began with the UN Guiding Principles on Business and Human Rights (UNGPs) together with relevant supplementary guidance by the UNWGBHR including on gender, human rights defenders, anti-corruption, and the development of national action plans. Next, the module introduced UNDP Asia's work on BHR, including its new human rights due diligence training facilitation guide. The module then turned to other initiatives that integrate BHR beginning with the UN Global Compact's 10 Principles, the Sustainable Oceans Principles, and the work of UNGC local networks including on the SDGs. This was followed by detailed examination of the responsible business conduct (RBC) risk-based due diligence approach of the OECD, including relevant chapters of the OECD Guidelines for Multinational Enterprises (on disclosure, workers, environment, consumers, anti-corruption, and science), the OECD Due Diligence guidance, and sector-specific guidance. After introducing the work of the International Law Organisation (ILO), the module concluded with concrete examples of good practices in the application of business responsibilities for environmental human rights in the plastics context, across several key challenges.

Responsible business guidance tools are being developed to help businesses embed both human rights and circularity into their policies and management systems. As the plastics crisis receives increasing attention, and as the right to a clean, healthy and sustainable environment is better understood, there will be increasing expectations that businesses will adopt and implement human rights responsible plastics action.

⁶⁹⁶ See OECD, *Id.*

⁶⁹⁷ See Coconuts Jakarta, "President Jokowi signs law rewarding corruption whistleblowers with up to IDR 200 million" *Coconuts Jakarta* (10 October 2018), online: <<https://coconuts.co/jakarta/news/president-jokowi-signs-law-rewarding-corruption-whistleblowers-idr-200-million/>>; see also, Ulyarta Naibaho & Bilal Anwari, "Anticorruption Latest: Some Encouragement for Whistleblowers and KPK Launches Its First-Ever Prosecution of a Corporation" *ABNR: Counsellors at Law* (blog) (08 November 2018), online: <www.abnrlaw.com/news/anticorruption-latest-some-encouragement-for-whistleblowers-and-kpk-launches-its-first-ever-prosecution-of-a-corporation>.

⁶⁹⁸ See *id.*, Ulyarta Naibaho & Bilal Anwari; Government Regulation No. 43/2018.

⁶⁹⁹ See Coconuts Jakarta (n697); Ulyarta Naibaho & Bilal Anwari, (n697).

2. Questions to Consider

1. What are the three pillars of the UN Guiding Principles on Business and Human Rights (UNGPs)? What relationships exist among the three pillars?
2. What must businesses do to meet their responsibilities under the UNGPs beyond complying with the law? How can human rights due diligence help businesses to become champions of responsible plastics action?
3. What is the UN Global Compact and how can it help businesses to adopt sustainable practices?
4. What are the OECD Guidelines for Multinational Enterprises? Which chapters and what related OECD guidance are relevant to the plastics problem?
5. What is risk-based due diligence? How does adopting a risk-based due diligence approach go beyond compliance with the law and beyond human rights?
6. How can businesses ensure that they are undertaking responsible plastics action that fully incorporates the gender dimensions of the crisis?
7. How can businesses ensure that they are supporting the work of environmental human rights defenders engaged in plastics action?
8. How can businesses ensure that they are supporting informal and formal workers in becoming champions of plastics action?
9. Demonstrate the application of BHR and RBC to select plastics challenges