



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

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IUCN WCEL Briefings for Negotiators for INC-2

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

- BRIEFING 5 of 6: Treaty Regime Interaction

**IUCN BRIEFING FOR NEGOTIATORS
Plastic Treaty INC-2 Session**

BRIEFING 5 of 6: Treaty Regime Interaction

Key Messages:

A core theme in United Nations Environment Assembly (UNEA) resolution 5/14 and subsequent discussions at INC-1 was the impact of treaty regime interactions upon the Plastic Pollution Treaty. In this context, comprehensive, integrated regulatory response to the ever-growing challenge of waste plastics in the environment requires a complex mix of legal measures applied in a coherent manner at the global, regional and domestic levels of administration to a range of environmental media and related activities, including sustainable production and consumption, circular economy, waste management, freshwater resources management, biodiversity protection, and marine pollution. Measures to address the problem of plastic pollution are to be found across several sub-fields of international law, biodiversity law, natural resources law, international wildlife law, fisheries and oceans laws, and international freshwater law. Therefore, a clear need for effective mechanisms of interaction between any new plastics treaty and other pertinent international regimes exists. This reflects recent efforts of Conferences of the Parties for various multilateral environmental agreements to create synergies and mechanisms of coordination between treaty regimes with overlapping terms and areas of regulation.

1. Utilise an expansive scope of understanding the impacts of plastic pollution

What? Plastic pollution effects nearly every aspect of life at the individual, community, national, regional and international level. During INC- 1, States and stakeholders emphasised these impacts and stressed that the Plastic Pollution Treaty should be responsive to the multiple levels of effects caused by plastic production, consumption and pollution. This includes the lives of producers and consumers as well as those working in the formal and informal economies. These impacts are

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

How? In recognition of the many forms of **human rights** that are fundamentally connected to plastic pollution and its impacts, the negotiations should examine regime interactions with the core international human rights law treaties, including topics such as non-discrimination, the right to life, food rights, water rights, labour and employment rights, adequate standard of living, women's rights, children's rights, Indigenous and traditional communities' rights, and protections for rural communities. These linkages were affirmed by a number of States during the INC-1 discussions. Specific treaty regimes of relevance:

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

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

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

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

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

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

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

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

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) – including rights to be implemented free from racial discrimination in housing, working rights and employment, payment, and the right to health and medical care.
- Convention on the Rights of Persons with Disabilities (CRPD) – including the right to life, participation and non-discrimination rights, the right to health, the rights of women with disabilities, the rights of children with disabilities, the right to adequate standards of living, and State obligations during times of risk and emergencies.
- International Labour Organization Convention 182 - Worst Forms of Child Labour Convention – including forms of employment and activities that are likely to cause harms to the health and safety of children as a one of the worst forms of child labour within the covered definition of the Convention.
- International Labour Organization Convention 169 – Indigenous and Tribal Peoples Convention – including requirements that in State Parties “special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.” This is further reflected in terms relating to the nexus between Indigenous community rights and interests in land as being critical from a cultural, environmental and economic perspective, as well as the obligations of State Parties to recognise and protect Indigenous ownership and forms of ownership. Protection obligations are also established on the part of States in regard to traditional forms of occupation and subsistence, including fishing and agricultural practices. Given the repeated emphasis by States and stakeholders at INC-1 on the impacts of plastic pollution on Indigenous communities and the need to incorporate traditional knowledge as part of the Plastic Pollution Treaty, the terms of Convention 169 serve a critical point of regime overlap.
- United Nations Declarations on the Rights of Indigenous Peoples – including essential land and natural resource rights recognitions for Indigenous peoples and communities, requirements for consultation and free, prior and informed consent. Given the repeated emphasis by States and stakeholders at INC-1 on the impacts of plastic pollution on Indigenous communities and the need to incorporate traditional knowledge as part of the Plastic Pollution Treaty, the terms of UNDRIP serve a critical point of regime overlap.

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

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

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

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

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

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

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

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

children, reporting and oversight mechanisms potentially overlapping with the National Action Plans foreseen for the Plastic Pollution Treaty. Additionally, negotiations should consider the several treaties which have already designated certain plastics, plastic waste and plasticisers as hazardous or otherwise problematic substances under their terms. Specific treaty regimes of relevance:

- Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat – including requirements for the listing of national wetlands and associated habitats on the List of Wetlands of International Importance, recognising the transboundary impacts of harms to wetlands and associated habitats. Given the extent of plastic pollution harms and potential damage to wetlands nationally and internationally, there is an important connection between the Ramsar Convention and the Plastic Pollution Treaty.
- Stockholm Convention on Persistent Organic Pollutants – including several forms of plastics and plasticisers in covered and excepted lists of pollutants.
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal & Protocol – including multiple forms of plastics and plasticisers in covered and excepted lists of pollutants.
- Minamata Convention on Mercury – stressing the transboundary nature of mercury as a pollutant and agent of harm to human health and the environment, links to sustainable development, stresses impacts of mercury pollution on multiple vulnerable communities, particularly women, children, and future generations, includes similar elements to persistent organic pollutants regarding Indigenous communities and Arctic impacts of mercury, and emphasises the ways in which mercury pollution issues intersect with other treaty regimes. These elements overlap with issues raised for inclusion in the Plastic Pollution Treaty discussions.
- Convention on Long-Range Transboundary Air Pollution
- Vienna Convention for the Protection of the Ozone Layer
- Montreal Protocol on Substances that Deplete the Ozone Layer
- Convention on the Conservation of Migratory Species of Wild Animals – including provisions recognising State Party obligation to adopt measures relating to pollution and other safety threats to migratory species. It should be noted that many of these interlinkages are amplified in the CMS Strategic Plan for Migratory Species 2015 – 2023. Given the impacts of plastic pollution on multiple migratory species, the potential overlaps with the Plastic Pollution Treaty are numerous.
- International Treaty on Plant Genetic Resources for Food and Agriculture – including State Party requirements for “the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.” Given the impacts of plastic pollution on groundwater, soil, and agriculture, the potential overlaps with the Plastic Pollution Treaty are numerous.



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

In COP 15 (2022) Decision 20, State Parties adopted measures recognising the intertwinement of desertification and drought issues with sustainable land management terms more broadly and cross-cutting treaty regimes. This was expanded in Decision 8 from COP 15, highlighting the ways in which reporting requirements under the UNCCD and other related treaty regimes could be beneficial to each other through information sharing and data collection practices.

- Convention on International Trade in Endangered Species of Wild Flora and Fauna – notably, the Strategic Vision for 2021 – 2030 stresses the potential opportunity for advancing the principles of CITES through collaboration with other related treaty regimes. Given the impacts of plastic pollution on all species, including endangered species, the potential overlaps with the Plastic Pollution Treaty are numerous.
- United Nations Framework Agreement on Climate Change & Paris Agreement on Climate Change – including a stress on the role of human activity in generating greenhouse gas emissions, which would cover plastic production, and damage to the environment as well as threats to humankind. The UNFCCC's terms and functioning directly connect with the understanding that the science of climate change and greenhouse gas emission impacts will expand and change, requiring flexibility in legal and regulatory responses. Principles used include equity, precaution, future generations protection and sustainable development.

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

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

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

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

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

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

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

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

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

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

- Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazu Convention) – including specific obligations for State Parties to include access to justice elements in law and policy regarding environmental protection and environmental matters, with a special focus on human rights defenders in terms of access to information as well as protection from harm. During the INC-1 statements, many Escazu Convention State Parties emphasised the connections between efforts to combat plastic pollution and the terms of the Convention.



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- Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) – including obligations for notification and consultation between States where there is an expected transboundary impact as well as mechanisms through which this is to be achieved and the results are to be communicated.
- Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context – including provisions that frame issues such as pollution in a broader context of strategic environmental assessment.
- UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) – including a significant emphasis on transparency, public participation and access to information, and the links between development and health for present and future generations.

How? In recognition of the many forms of **marine and fisheries agreements** that are fundamentally connected to plastic pollution and its impacts, the negotiations should examine regime interactions, including terms relating to pollution prevention, control and prohibitions, sustainable development, the rights of future generations, control measures for wastes, restrictions on activities in State Party territorial waters including those that could extend to plastic pollution, fishing gear-related pollution and methods of disposal, groundwater and freshwater resource protections, restrictions on activities of State Party flag ships including those that could extend to plastic pollution, and training and technology transfer. Specific treaty regimes of relevance:

- International Convention for the Prevention of Pollution from Ships & Protocol – including terms in the annexes addressing restricted wastes that could cover plastics. Protocol provisions include prohibitions on the dumping of hazardous substances at sea as well as the incineration of wastes at sea, charging State Parties with enforcing these measures. State Party obligations under the Protocol extend to activities in their territorial waters as well as flag ships and ships loading and unloading in their waters. However, the Protocol is optional for States to enforce in purely internal waters such as lakes. Places classifications of covered wastes for the purposes of triggering the Protocol in the annexes. Annex III establishes examples of criteria that could be used in evaluating permit applications, including environmental and human health, and could extend to various forms of plastic pollution.
- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas – including requirements that State Parties acting as flag states for ships to adopt and enforce measures that ensure “fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.”
- Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
- Agreement for the Establishment of the Regional Commission for Fisheries
- Asia-Pacific Fishery Commission
- Agreement for the Establishment of the General Fisheries Commission for the Mediterranean
- Agreement of the Central Asian and Caucasus Regional Fisheries and Aquaculture Commission – including a wide range of focus areas for activity and regulation, many



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relating to fishing operations and practices in relation to environmental and natural resource protection.

- Convention on Future Multilateral Cooperation on North-East Atlantic Fisheries
- Convention for the Protection of the Marine Environment of the North-East Atlantic – including pollution from land-based sources, pollution generated by dumping or incineration, and pollution from other sources.
- Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
- Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region & Protocols – including pollution caused by ships, pollution from dumping, land-based pollution, pollution stemming from sea-bed activities, “airborne pollution,” and the creation of certain forms of protected areas under national jurisdiction. Further, there are environmental impact assessment provisions that focus on pollution and associated impacts. The latter was subsequently expanded in the dedicated Protocol Concerning Specifically Protected Areas and Wildlife and the Protocol Concerning Pollution from Land-Based Sources and Activities.
- Convention on the South East Atlantic Fisheries Organization
- Convention for the Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan Convention) – including pollution caused by ships, pollution from dumping, land-based pollution, pollution stemming from sea-bed activities, “airborne pollution,” and the creation of certain forms of protected areas under national jurisdiction.
- Convention was amended by the Convention for the Protection of the Marine Environment and the Coastal Region – including dumping and pollution by aircraft, ships, and incineration at sea, pollution from sea-bed activities, pollution from terrestrial sources, and pollution caused by transboundary shipment of hazardous materials.
- Bamako Convention – including restrictions for wastes resulting from plastics and certain forms of plasticisers as covered hazardous substances.
- Convention on the Protection and Use of Transboundary Watercourses and International Lakes & Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes
- Convention for the Strengthening of the Inter-American Tropical Tuna Commission – including requirements that conservation and management are to be governed with transboundary impact and the precautionary approach in mind.
- Waigani Convention – including wastes resulting from plastics and certain forms of plasticisers as covered hazardous substances.
- Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention)
- Convention on Cooperation for the Protection and Sustainable Use of the Danube River – including pollution and other impacts from fishing activities and focusing on groundwater

and drinking water impacts as well as pollution of the Danube itself. Several forms of plastics and plastic compounds are identified as being within the industrial sectors and industries contributing to pollution and waste issues in the Danube Region.

- Convention on the Protection of the Rhine
- Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin

How? In recognition of the many forms of **cultural heritage** that are fundamentally connected to plastic pollution and its impacts, the negotiations should examine regime interactions, including terms relating to cultural heritage protections, traditional knowledge protection, underwater cultural heritage protection and preservation, and rights of and duties toward future generations. Specific treaty regimes of relevance:

- UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage
- UNESCO Convention for the Safeguarding of Intangible Cultural Heritage – including protections for and recognition of traditional knowledge as a form of intangible cultural heritage.
- UNESCO Convention on the Protection of the Underwater Cultural Heritage
- UNESCO Declaration on the Responsibilities of the Present Generations Toward Future Generations – including the interlinkages between environmental health and protection and the rights of future generations, including the need to “ensure that future generations are not exposed to pollution which may endanger their health or their existence itself.”

What? A core part of most international and regional treaty regimes is the existence of one or more governance mechanisms for the implementation of the treaty. Often, these mechanisms include sub-committees or other structures that specialise in regime convergence and allow for coordination between treaty regimes with overlapping or similar interest areas. For example, the Food and Agriculture Organization (FAO) and World Health Organization (WHO) have a dedicated, shared governance entity for the adoption, review and periodic updating of the Codex Alimentarius, the internationally accepted standards for food practices. These systems offer a formal structure within which to discuss and take decisions on critical issues of shared knowledge.

How? Consider the inclusion of these forms of governance systems within the proposed Plastics Pollution Treaty from the beginning of the negotiations, bearing in mind the many different types of treaty regimes that are implicated in efforts to address plastic pollution.