National Environment Service
GOVERNMENT OF THE COOK ISLANDS
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10th February 2023

INC Plastic Secretariat
UNEP

RE: Call for written submissions – Proposed responses on the potential options for elements towards an international legally binding instrument by the Cook Islands

Name of country (for Members of the committee)	COOK ISLANDS
Name of organization (for observers to the committee)	National Environment Service Statutory Agency, Government of the Cook Islands
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I. Substantive elements

1. Objective(s)

The overarching objectives of the new legally binding instrument should be to end plastic pollution in all environments by:

1) Protecting the environment[1] and human health from the impacts of plastics across its full life cycle, employing the precautionary principles and a rights-based approach.
2) Attaining a safe circular economy for plastics that is protective of human health and the environment.

Explanatory text:

The objective is the first step in setting the potential scope of the agreement. It should be concise, but allow for the following outcomes/goals:

1. Minimise material flows from the environment into the economy, particularly for non-renewable and scarce resources, thereby reducing to a minimum the environmental burden resulting from the production of plastics and associated chemicals.
2. Ensure safe, non-toxic, transparent and resource efficient circularity of plastics and associated chemicals, including a reduction in the overall production and consumption of unnecessary, avoidable and problematic plastics, while protecting human health and rights. A core component is the sustainable design of materials and products.
3. Minimise emissions and releases to the environment across the full life cycle, including those related to climate change, and promote remediation where safe to do so for the environment and human health.

It is important for the Cook Islands and many Small Islands Developing State (SIDS) that a holistic approach to the problem of plastics is taken to recognise the full life cycle of plastics. Taking a precautionary rights-based approach will mean that the rights of Pacific Islanders and Indigenous communities are protected. This is essential to safeguarding a healthy environment, including the marine environment.

2. Core obligations, control measures and voluntary approaches

Introduction

(i) CORE OBLIGATIONS AND CONTROL MEASURES

[1] Conservation aims to protect the environment through the responsible use of natural resources, while preservation aims to protect the environment from harmful human activities.

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The articles and chapters of the treaty should first and foremost focus on 'mandatory' provisions with 'specific' control measures and core obligations across the full life cycle of plastics.

The full life cycle phases of plastics is well articulated in the Global Governance of Plastics and Associated Chemicals.

The full life cycle of plastics in phases are in summary:
1. Sourcing/extraction phase – extraction of organic raw materials (hydrocarbons) and inorganic raw materials
2. Chemical phase [otherwise referred to as 'upstream']– production and chemical processing of polymer, commodity, and speciality chemicals
3. Material phase [otherwise referred to as 'midstream'] – manufacturing of materials and final products, and consumption by retailers, transporters, and consumers
4. Dematerialization phase [otherwise referred to as 'downstream'] – waste management and final treatment by waste facilities
5. Leakage phase – legacy pollution and remediation

These phases can also be structured in the stages of sourcing, upstream, midstream, downstream and leakage. Multilateral Environmental Agreements (MEAs) such as the BRS Conventions address many downstream components, hence the articles of the new treaty should primarily cover sourcing, upstream and midstream stages.

As an initial frame for structuring the core obligations and control measures in the instrument—in both the articles and any corresponding annexes—Members of the Committee should have a clear demarcation of each stage of the lifecycle of plastics, in particular:

1) **Provisions to phase out the production and consumption of unnecessary and avoidable chemicals, polymers, and plastic products.**
   a) Development of a criteria for determining which materials and products are unnecessary and avoidable.
   b) The criteria should identify polymers and chemical that have substances that have slow or no degradation in the environment, bioaccumulate and/or have long-term toxic effects, not recyclable and have high litter risk
   c) Parties are required to not allow the production and use of polymers, chemicals and plastic products listed in an Annex.
   d) These criteria should allow for national contexts. Criteria and definitions may be adopted at the national level that are stronger than the global criteria outlined in the Annexes.
   e) Annexes may include listings of chemicals, polymers and products that require elimination (phasing out) or reducing (phasing down) to a minimum. Listings should also include virgin plastic polymers. Specific exemptions for applications must be justified, with any hazard management requirements or end-of-life responsibilities.

2) **Provisions to ensure sustainable design of materials and products and minimise production of problematic chemicals, polymers, and products towards safe, non-toxic, and transparent circularity of plastics.**
   a) This will require the development of criteria for determining which materials, polymers and products are problematic, allowing for national contexts. Criteria and definitions may be adopted at the national level that are stronger than the global criteria.
   b) A registry of product design should be provided by the parties to the secretariat.
   c) Criteria, standards, and definitions/terms will need to be developed. These can be included in Annexes that can be easily updated, outlining design and performance criteria.
   d) A global approach to identifying and managing hazardous chemicals, polymers, and products, including development of a hazard criteria.
   e) A mechanism for certifying adherence to sustainable design criteria (including eco-criteria)
   f) An eco-criteria should be listed for plastic products that consists of both general eco-criteria (e.g., durability) and product- or sectoral-specific eco-criteria (e.g., agri-plastics in agriculture or fishing gear)
   g) Have control measures to avoid green washing. This will also address any rise in alternative products driven by industry innovation that are harmful to the environment
   h) A mechanism for reviewing and updating the criteria will be important
   i) These can be supported by guidelines, including for key sectors, possibly developed with input from the private sector.

3) **Provisions to reduce emissions and eliminate releases of plastics to the environment (water, land, and air), eliminate stockpiles and legacy plastics in the environment.**
   a) Each party is required to take steps to reduce, and where feasible releases of plastics to water, land and air from the source categories listed in an annex.
   b) The Annex should have a list of categories that include wastewater, industrial facilities, aquaculture, agriculture and the fishing industry, and transport.
   c) Phase out unnecessary and avoidable primary micro- and nanoplastics.
   d) Sustainable design of products to improve stability and avoid leakage of chemicals and microplastics.
   e) Mandate use of best practices to minimise losses of pre-production pellets, flakes and powders during production, manufacture, and transport.
   f) Eliminate stockpiles of plastic waste through environmentally sound practices (this may require technical and financial assistance for some countries).
   g) Legacy plastic waste should be addressed by members of the parties through policy measures, followed by financial and legal instruments. Cooperation by members of the parties is encouraged to develop strategies to eliminate legacy plastic waste. There is legacy plastic waste beyond national jurisdictions but within the region that needs to be cleaned up through better cooperation.
   h) The Conference of Parties should have guidelines on the best techniques and environmental practices on how to reduce emissions and eliminate releases of plastics to the environment (water, land, and air), based on the list of categories in the Annex

4) Provisions on Trade controls – chemicals, polymers, products, and waste

a) A minimum set of design and performance criteria must be met before materials and products can be traded, setting a level playing field for the industry. Considerations should also include the use of traditional materials into biodegradable products.
b) All parties to eliminate subsidies for fossil fuels used as raw materials and for petrochemicals destined for virgin polymer production.
c) Parties should ban the exportation and importation of plastic products from/to other countries that do not meet the eco-criteria
d) Trade controls must include restrictions in trade with non-Parties of non-compliant chemicals, polymers, products, and wastes, considering the controls established by the Basel Convention, Stockholm Convention, Rotterdam Convention, etc.
e) HS codes will need revision to allow for meaningful tracking.
f) Development of technologies to enable accurate, traceable, and easy management of HS codes by customs authorities. Build capacity at the border.
g) Transparency is critical to ensure chemical components of the plastic products and materials are identified.
h) The Conference of the Parties should adopt a criteria for Extended Producer Responsibility (EPR) schemes

Each of the sections above should have General Obligations that have legal and administrative measures that can be applied to national legislation.

(ii) VOLUNTARY APPROACHES

Voluntary provisions represent the status quo for many parties under other MEAs, therefore should not be the focus of this legally binding global treaty. Any voluntary provisions to be included in the INC negotiations must have a pathway towards mandatory provisions at an agreed post-date, based on a threshold reached or the years after entry into force of the treaty.

II. Implementation elements

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1. Implementation measures

1) Each Party shall develop and maintain publicly available inventories of plastic-related chemicals, polymers, and products, as well as emissions throughout the full life cycle of plastics.

a) Inventories must be designed to track:
   i) Resource efficiency - material flows from the environment into the economy.
   ii) Circularity - material flows within the economy (including production, import, export, and recycling).
   iii) Pollution - flows from the economy into the environment.
   iv) Remediation – volumes and types of legacy plastics removed from the environment.
   v) Emissions – such as losses of pre-production pellets during production, manufacture, and transport; GHG emissions related to the stages of the plastics life cycle; waste management services; landfill leachate; incineration.

b) Inventories must be designed based on minimum elements outlined in the agreement (possibly in an Annex) to enable the tracking of trends and to measure effectiveness of the agreement.

c) This will require the development of targets and indicators, which should also inform the design of national inventories.

d) Licensing scheme – Parties are to adopt a licensing scheme for production, importation, and exportation of virgin and secondary plastic polymers.

2) Monitoring and evaluation

a) Develop national monitoring programmes to support 1(a) and 3. Monitoring to include plastic production, plastic consumption, plastic waste management, leakage, plastic released to the environment, alternatives, and substitutes

b) An effectiveness evaluation can be included in the agreement.

c) Establish baseline indicators and targets to monitor plastic pollution in the environment and its impacts.

d) Global targets to include the production and consumption of plastic polymers within sustainable levels, recycled plastics within a threshold and near-zero release of plastics to the environment (land, air, and water) by 2040.

e) National targets to include the reduction in production and consumption of plastic polymers, reduction in the release of plastics to the environment, and a minimum target for the collection and recycling of plastic waste.

3) Reporting

a) Reporting to include quantities and type of polymers produced, origins of raw materials used to produce plastic polymers, quantities and type of chemicals applied in production, consumption of virgin plastic polymers, use of plastic by market segment and the management of plastic waste (collection, recycling, disposal, leakage, and trade).

b) Report at regular intervals according to an agreed minimum set of elements, based on national inventories.
c) Integrate plastics-related data in reporting requirements under other MEAs, such as Paris Agreement, CBD, Basel, Rotterdam and Stockholm Conventions, SDGs, etc.
d) A global statistical framework will need to be developed to ensure accurate and comparable reporting. This can be based on the System of Environmental Economic Accounting Central Framework (SEEA).

4) Each Party shall develop and implement a National Action Plan that:

a) Adheres to the minimum elements as laid out in the agreement (possibly in an Annex that can be updated), to allow for comparability.
b) Provides baseline information for the year on which targets will be set. The baseline may be based on production, importation, and legacy waste. Marine colonial waste (washed up marine litter) should be accounted separately as it is outside national control.
c) Sets targets based on the international targets set in the agreement.
d) Provides a minimum period for review and strengthening of the targets, based on international timelines.

5) Subsidiary bodies

i) Subsidiary bodies should be established to assist with implementation of the agreement and could be determined once the substantive content of the agreement is developed. These bodies will not generate primary data, but could include bodies to assess and synthesize available scientific information on environmental, social, and economic impacts and benefits, human health impacts, etc.
ii) Horizon scanning and reports generated by the subsidiary bodies could catalyse targeted research according to the needs of the COP.

2. Means of Implementation

A financial mechanism should be established under the agreement. Consideration can be given to similar articles under the Montreal Protocol and the Minamata Convention – specifically in the areas of a Multilateral Fund, Global Environment Facility Trust Fund, Plastic Pollution Trust fund, transfer of technologies, establishment of an Executive Committee, capacity building and technology assistance.

These articles are provided for reference.

Montreal Protocol, Article 10: Financial mechanism

1. *The Parties shall establish a mechanism for the* ***purposes of providing financial and technical co-operation, including the transfer of technologies,*** *to Parties operating under paragraph 1 of Article 5*

of this Protocol to enable their compliance with the control measures set out in Articles 2A to 2E and Article 2I, and any control measures in Articles 2F to 2H that are decided pursuant to paragraph 1 bis of Article 5 of the Protocol. The mechanism, contributions to which shall be additional to other financial transfers to Parties operating under that paragraph, shall meet all agreed incremental costs of such Parties in order to enable their compliance with the control measures of the Protocol. An indicative list of the categories of incremental costs shall be decided by the meeting of the Parties.

2. *The mechanism established under paragraph 1 shall include a Multilateral Fund. It may also include other means of multilateral, regional and bilateral co-operation.*
3. *The **Multilateral Fund** shall:*
   a) *Meet, on a grant or concessional basis as appropriate, and according to criteria to be decided upon by the Parties, the agreed incremental costs.*
   b) *Finance clearing-house functions to:*
      i. *Assist Parties operating under paragraph 1 of Article 5, through country specific studies and other technical co-operation, to identify their needs for co-operation.*
      ii. *Facilitate technical co-operation to meet these identified needs.*
      iii. *Distribute, as provided for in Article9, information and relevant materials, and hold workshops, training sessions, and other related activities, for the benefit of Parties that are developing countries; and*
      iv. *Facilitate and monitor other multilateral, regional and bilateral co-operation available to Parties that are developing countries;*
   c) *Finance the secretarial services of the Multilateral Fund and related support costs.*
4. *The Multilateral Fund shall operate under the authority of the Parties who shall decide on its overall policies.*
5. *The Parties shall **establish an Executive Committee** to develop and monitor the implementation of specific operational policies, guidelines and administrative arrangements, including the disbursement of resources, for the purpose of achieving the objectives of the Multilateral Fund. The Executive Committee shall discharge its tasks and responsibilities, specified in its terms of reference as agreed by the Parties, with the co-operation and assistance of the International Bank for Reconstruction and Development (World Bank), the United Nations Environment Programme, the United Nations Development Programme or other appropriate agencies depending on their respective areas of expertise. The members of the Executive Committee, which shall be selected on the basis of a balanced representation of the Parties operating under paragraph 1 of Article 5 and of the Parties not so operating, shall be endorsed by the Parties.*
6. *The Multilateral Fund shall be financed by contributions from Parties not operating under paragraph 1 of Article 5 in convertible currency or, in certain circumstances, in kind and/or in national currency, on the basis of the United Nations scale of assessments. Contributions by other Parties shall be encouraged. Bilateral and, in particular cases agreed by a decision of the Parties, regional co-operation may, up to a percentage and consistent with any criteria to be specified by decision of the Parties, be considered as a contribution to the Multilateral Fund, provided that such co-operation, as a minimum:*
   a) *Strictly relates to compliance with the provisions of this Protocol.*

b) *Provides additional resources; and*
c) *Meets agreed incremental costs.*

7. *The Parties shall decide upon the programme budget of the Multilateral Fund for each fiscal period and upon the percentage of contributions of the individual Parties thereto.*
8. *Resources under the Multilateral Fund shall be disbursed with the concurrence of the beneficiary Party.*
9. *Decisions by the Parties under this Article shall be taken by consensus whenever possible. If all efforts at consensus have been exhausted and no agreement reached, decisions shall be adopted by a two-thirds majority vote of the Parties present and voting, representing a majority of the Parties operating under paragraph 1 of Article 5 present and voting and a majority of the Parties not so operating present and voting.*
10. *The financial mechanism set out in this Article is without prejudice to any future arrangements that may be developed with respect to other environmental issues*

Minamata Convention, Article 13: Financial resources and mechanism

1. *Each Party undertakes to provide, within its capabilities, resources in respect of those national activities that are intended to implement this Convention, in accordance with its national policies, priorities, plans and programmes. Such resources may include domestic funding through relevant policies, development strategies and national budgets, and bilateral and multilateral funding, as well as private sector involvement.*
2. *The overall effectiveness of implementation of this Convention by developing country Parties will be related to the effective implementation of this Article.*
3. *Multilateral, regional and bilateral sources of financial and technical assistance, as well as capacity-building and technology transfer, are encouraged, on an urgent basis, to enhance and increase their activities on mercury in support of developing country Parties in the implementation of this Convention relating to financial resources, technical assistance and technology transfer.*
4. *The Parties, in their actions regarding funding, shall take full account of the specific needs and special circumstances of Parties that are small island developing States or least developed countries.*
5. *A Mechanism for the provision of adequate, predictable, and timely financial resources is hereby defined. The Mechanism is to support developing country Parties and Parties with economies in transition in implementing their obligations under this Convention.*
6. *The Mechanism shall include:*
   *(a) The **Global Environment Facility Trust Fund**; and*
   *(b) A specific international Programme to support **capacity-building and technical assistance**.*
7. *The Global Environment Facility Trust Fund shall provide new, predictable, adequate and timely financial resources to meet costs in support of implementation of this Convention as agreed by the Conference of the Parties. For the purposes of this Convention, the Global Environment Facility Trust Fund shall be operated under the guidance of and be accountable to the Conference of the Parties. The Conference of the Parties shall provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources. In addition, the Conference of the Parties shall provide guidance on an indicative list of categories of activities that could receive support*

from the Global Environment Facility Trust Fund. The Global Environment Facility Trust Fund shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities.

8. *In providing resources for an activity, the Global Environment Facility Trust Fund should take into account the potential mercury reductions of a proposed activity relative to its costs.*
9. *For the purposes of this Convention, the Programme referred to in paragraph 6 (b) will be operated under the guidance of and be accountable to the Conference of the Parties. The Conference of the Parties shall, at its first meeting, decide on the hosting institution for the Programme, which shall be an existing entity, and provide guidance to it, including on its duration. All Parties and other relevant stakeholders are invited to provide financial resources to the Programme, on a voluntary basis.*
10. *The Conference of the Parties and the entities comprising the Mechanism shall agree upon, at the first meeting of the Conference of the Parties, arrangements to give effect to the above paragraphs.*
11. *The Conference of the Parties shall review, no later than at its third meeting, and thereafter on a regular basis, the level of funding, the guidance provided by the Conference of the Parties to the entities entrusted to operationalize the Mechanism established under this Article and their effectiveness, and their ability to address the changing needs of developing country Parties and Parties with economies in transition. It shall, based on such review, take appropriate action to improve the effectiveness of the Mechanism.*
12. *All Parties, within their capabilities, are invited to contribute to the Mechanism. The Mechanism shall encourage the provision of resources from other sources, including the private sector, and shall seek to leverage such resources for the activities it supports.*

III. Additional input

The Pacific Regional Declaration on the 'prevention of marine litter and plastic pollution and its impacts emphasizes the use of Indigenous and traditional knowledge systems to 'refuse' many uses of unnecessary plastics:

- ***Stressing*** the importance of incorporating Indigenous and Traditional Knowledge Systems, Practices, and Innovations as appropriate and with their free prior and informed consent that have evolved through generations into nature-based solutions for the sustainable conservation of ecosystems.
- ***Emphasize*** that Indigenous and Traditional Knowledge Systems, Practices, and Innovations with their free prior and informed consent must be an integral part of the solution to the plastic pollution crisis

Provisions for Indigenous and Traditional Knowledge Systems must be included in elements of the treaty.

These articles from existing MEAs on the rights of indigenous peoples are provided for reference.

Convention for Biological Diversity Article 8J

Each contracting Party shall, as far as possible and as appropriate:

Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.

Paris Agreement Article 7(5)

Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.

END