  
**RE: Written submission to the UN Special Rapporteur on the life cycle of plastics and human rights**

Dear Sir/Madam:

1. **The Right to Environment as envisaged in the Kenyan Constitution (COK, 2010)**

The Kenyan constitution states that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures particularly those contemplated by Article 69; and to have obligations relating to the environment fulfilled under Article 70. The Environmental Management and Coordination Act. 1999 (EMCA), recognises that plastics waste are potentially hazardous to human health or the environment. The Ministry of Environment in Kenya through a presidential directive has gone a step further to ban the use of single use plastics in all protected areas and this ban should be extended to all public spaces. Such a strategic model ought to be replicated in other parts of the African continent since plastics pollution is a big threat to the fulfillment of human rights.

1. **Kenya Free Trade Agreement will make Kenya a dumping ground for plastic waste.**

The on-going preliminary talks of creating a Free Trade Agreement (FTA) between Kenya and the United States poses immense challenges on plastics pollution. According to a report by [Unearthed](https://unearthed.greenpeace.org/2020/08/30/plastic-waste-africa-oil-kenya-us-trade-deal-trump/), the oil backed trade groups are pushing the US Trade negotiators to put plastics as part of the agenda and have the FTA as an entry point of the plastics industry across the African continent. According to a report by [ISRI](https://www.isri.org/), it is estimated that the U.S recycles more than 3.5 million tons of plastics every year. Every type of plastics that are recycled can save enough energy to power nearly two households for an entire year. This is not sustainable as only about 9% of the plastics produced ever gets recycled. We call upon the United States Trade Representative to stop any plans in the negotiations framework that threatens to dump plastics in sub-Saharan Africa. There are multiple ways in which the proposed U.S-Kenya Free Trade Agreement is designed to bring plastics into the African continent using Kenya as an entry point:

1. *Through an Environment Chapter in the FTA*. The priority trade policy agenda for the Biden administration is to work with friends and allies on trade enforcement and pursue meaningful change for U.S workers and businesses in the global trading landscape.
2. *Investment cooperation*. Expansion of U.S petrochemical corporations in Africa will take the form of easing regulatory barriers such as plastics bans, tariff facedown, creating a conducive environment for plastics and petrochemical products including offering them tax incentives to set up their industries.

1. **We call for effective implementation of the existing Policy and Regulatory Frameworks in Africa**

Policy and regulatory frameworks are critical instruments of tackling the manufacture, sale and distribution of plastic products. If implemented to the letter, they have the potential to deal with the immense threats posed by the plastics industry of polluting our environment and infringing on our human rights. It is against this backdrop that 34 out of 54 African countries have either passed some form of law banning plastic and implemented it or have passed a law with a purpose of executing it. Out of those, 16 have totally banned plastics bags or have done so partially without yet introducing regulations to enforce the ban. In Kenya, anyone found manufacturing, importing or selling a plastic carrier bag could be fined up to $40,000 (£32,000) or face a prison sentence of up to four years. Using the banned bags carries a fine of more than $500 or a jail term of up to a year. This was issued through gazette notice No. 2356 by the Ministry of Environment and Forestry. Such strong policy, institutional and regulatory frameworks need to be designed in order to protect the lives of humans and the environment.

1. **Recycling as a false solution to plastics pollution**

For a very long time the plastics industry has promoted the idea that recycling is the best way to keep plastic out of the landfill, but more than 90% of all the plastic ever produced has not been recycled. Plastic is far more likely to end up in landfills, incinerators or in the environment than to be recycled. Corporate commitments to confront plastic pollution have overwhelmingly focused on increasing recycled or recyclable content, promoting recyclability or technological recycling solutions. However, due to the nature of plastics, the mixture of plastics and the enormous amount of plastics produced, exposés have demonstrated that recycling systems have failed to deliver on the promise.

Recycling systems cannot keep up with the huge volume of plastic waste generated. In Germany - which has the highest recycling rates in the world based on collection - more than 60% of all plastic waste is burned and only 38% recycled. The plastics crisis we are already in shows that recycling has already failed.

Plastic not recycled domestically has typically been packed into mixed bales and largely exported to other countries to deal with. The United States, for example, exported one third of its recyclable plastic waste, and until 2018, half of that was destined for China. In 2018, China banned the importation of foreign waste. Now the plastic waste is looking for a new home in the global south. Recycling should not be used as an excuse to export plastic waste to the global south especially in Africa. The proposals by American Chemistry Council to include plastic waste exportation in the ongoing US-Kenya trade deal is an example of using recycling to export plastic waste and this needs to be discouraged in the strongest possible terms.

1. **Extended Producer Responsibility (EPR)**

We expect measures to tackle plastic waste and the pollution crisis at its source; because focusing on improving recovery will not address the continued increase in plastic packaging production or the lack of outlets for recyclable materials. EPR regulations in Kenya must include eco-modulation and reduction targets that incentivizes producers to minimize problematic and non-essential packaging and increase the market share of reusable packaging, and fund reuse and refill services. Waste pickers, who are responsible for the recovery of Kenya’s post-consumer paper and packaging, should be provided new opportunities in these shifts, such as through the collection of reusable items and the processing of organic waste.

Kind regards,

Greenpeace Africa