

Applying a human rights-based approach

Guidance on the application of a human rights-based approach in the post-2020 Global Biodiversity Framework



Applying a human rights-based approach to the Global Biodiversity Framework¹

The Theory of Change in Draft One of the post-2020 GBF acknowledges “the need for appropriate recognition of gender equality, women’s empowerment, youth, gender-responsive approaches and the full and effective participation of indigenous peoples and local communities in the implementation of this framework” and commits that it “will be implemented taking a rights-based approach and recognizing the principle of intergenerational equity.”² This text on the content and process of a rights-based approach (RBA) is welcome and reinforced in enabling conditions.

Rights based approaches to conservation, sustainable use and benefit-sharing mean, in simple terms, that biodiversity policies, governance and management do not violate human rights and that those implementing such policies actively seek ways to support and promote human rights in their design and implementation.

We understand a ‘rights-based approach’ to be synonymous with a ‘human rights-based approach’, requiring reference to and incorporation of international human rights law and standards and reflecting the growing consensus regarding the integral nature of human rights and environmental action.³ We recommend use of the full phrase of ‘**human rights based approach**’ which is already well established within the UN system.⁴ Explicit reference to human rights is accepted by Parties to the CBD, including in the 2016 Cancun Declaration of Parties to the CBD, where Parties committed “to work at all levels ... incorporating an inclusive economic, social, and cultural approach with full respect for nature and **human rights**”.⁵

We welcome reference to consistency and harmony with other international commitments (paragraph 12), and similarly understand this to include consistency with relevant international human rights law. This reference should be made explicit in this text.

A human rights-based approach to conservation and sustainable use of biodiversity is regarded, both in legal instruments and best practices⁶, as a necessary condition for stopping biodiversity loss and degradation in an equitable and sustained manner. It is an

1 This human rights analysis of Draft One of the post-2020 Global Biodiversity Framework has been collaboratively compiled by members of the Human Rights in Biodiversity working group established in Chiang Mai, 2020. Members contributing included Forest Peoples Programme (FPP), CBD Alliance, Global Youth Biodiversity Network (GYBN), ICCA Consortium, Natural Justice, SwedBio at Stockholm Resilience Centre, Tebtebba Foundation, WWF International, the Raoul Wallenberg Institute on Human Rights and Humanitarian Law, Friends of the Earth International, the CBD Women’s Caucus and Women4Biodiversity, and incorporates analysis provided by the International Indigenous Forum on Biodiversity (IIFB)

2 See HRC Resolution July 2020 on the right of the child to a healthy environment which addresses both the rights and interests of youth and intergenerational responsibilities, and specifically calls for a rights-based approach in environmental decision making: <https://undocs.org/en/A/HRC/RES/45/30>

3 See HRC Resolution 23rd March 2021 (<https://undocs.org/A/HRC/RES/46/7>) recognising that: “sustainable development and the protection of the environment, including ecosystems, contribute to human well-being and to the enjoyment of human rights” and that “degradation and loss of biodiversity often result from and reinforce existing patterns of discrimination, and that environmental harm can have disastrous and at times geographically dispersed consequences for the quality of life of indigenous peoples, local communities, peasants and others who rely directly on the products of forests, rivers, lakes, wetlands and oceans for their food, fuel and medicine, resulting in further inequality and marginalization.”

4 See, for instance, the UN Common Approach to HRBA, available at: https://unsdg.un.org/sites/default/files/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf

5 <https://www.cbd.int/cop/cop-13/hls/cancun%20declaration-en.pdf> (emphasis added)

6 See, for instance, work done by IUCN to systematise a rights-based approach across the Union: https://www.iucn.org/sites/dev/files/content/documents/iucn_rba_systematization_compiled.pdf

essential enabling condition for the resilience of systems of life, good health, and the use, management, restoration, and conservation of natural resources.

Understanding what this means in practice is crucial, and the inclusion of a definition for “rights-based approach” and further guidance will be essential to ensure that RBA will be taken up by Parties and all actors in the implementation, monitoring and reporting of the GBF.

Applying these principles to the GBF reveals advances in the text referencing both substantive and procedures rights, including:

- the reference to equitable management of protected areas in Target 3
- the recognition of traditional knowledge and customary sustainable use in Target 9
- the reference to some underlying drivers such as harmful subsidies in Target 18
- equitable and effective participation and the respect of IPLC rights to lands, territories, and resources in Target 21

For the GBF to facilitate transformative change, it is essential that these advances in integrating elements of a human rights-based approach be maintained and strengthened in the final iteration of the framework, as highlighted by the current UN Special Rapporteur on human rights and the environment in an August 2021 Policy Brief on Human Rights Approaches to Conserving Biodiversity.⁷ As it stands, however, these advances are not sufficient and if they are not supported by improvements in other aspects of the framework, the framework will fall short of its ambition to achieve transformative change.

In order to translate the commitment to a human rights-based approach of the GBF into effective action, we recommend the following:

1. The post-2020 GBF does not currently contain the term ‘human rights’. Given previous commitments within CBD processes and elsewhere, a **direct reference to relevant international human rights instruments** should be incorporated. There are options for how this is done, edits in Paragraphs 12, 14 and/or 16 or in the potential elaboration of ‘guiding principles’ for the Framework as a whole (see annex).
2. The post-2020 GBF should use the full term of **human rights-based approach**. A **definition in the glossary** should be provided to guide implementation, developed with the advice and input of the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Environment Programme (UNEP).⁸ Using ‘rights-based approach’ is also acceptable, where the definition makes clear that it requires application of a human rights-based approach.
3. Text should be included in the CBD COP decision asking the CBD Secretariat, with

⁷OHCHR, *Human rights approaches to conserving biodiversity*, August 2021. Available at: <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/policy-briefing-1-summary.pdf>

⁸ See Key Messages on Human Rights and Biodiversity, OHCHR and UNEP, available at: <https://wedocs.unep.org/bitstream/handle/20.500.11822/35407/KMBio.pdf>

the support of relevant organizations, including again OHCHR and UNEP, to **develop further guidance on the implementation** of an HRBA.

4. Reference to a human rights-based approach in introductory text is essential, but insufficient. The post 2020 GBF draft one **Goals, Milestones and Targets must also be reviewed to ensure improved integration of a human rights-based approach** in the GBF (see below for details). It is also important to adopt relevant indicators to ensure monitoring of an HRBA.⁹
5. Parties to the CBD should include in the CBD COP Decision adopting the GBF the establishment of an effective review mechanism with a mandate that includes reviewing and monitoring the application of an HRBA to the implementation of the GBF.

Translating a Human Rights-Based Approach into the GBF:

Secure the rights of IPLCs to their lands, territories, and resources. According to the IPBES Global Assessment and several other reports¹⁰, at least a quarter of the global land area is traditionally owned, managed, used or occupied by indigenous peoples. In addition, a diverse array of local communities manage significant areas under various property and access regimes and do so in sustainable ways with positive impact for biodiversity and ecosystem services. Many of these areas and property regimes are not formally recognised and are under increased pressure. While we welcome the text in Target 21, securing tenure rights is a crucial condition to achieve the area-based targets of the GBF and require specific reference targets 1, 2 and 3.

Ensure equitable governance in area-based measures. Governance was identified by the IPBES as one of the pathways to achieve transformative change. The LBO2 also highlighted the centrality of governance in achieving transformation. Community-based conservation institutions and local governance regimes have often been effective in preventing habitat and biodiversity loss. Innovative, inclusive and equitable governance approaches to conservation are needed, including equitable co-management regimes and the recognition of the fundamental role of IPLC in conserving biodiversity for the future. Equitable governance should be required in targets 1 and 3, and further reference to participation and equitable governance can be included in targets 20 and 21.

Broaden the scope of fair and equitable benefit sharing. The GBF presents a unique opportunity to increase equity by broadening benefit sharing beyond the narrow scope of genetic resources and the Nagoya Protocol. Goal C and its milestones should cover not only genetic resources but also biological resources and ecosystem services. Traditional knowledge should be mentioned at goal level.

⁹ While further work is needed to elaborate human rights relevant indicators, we would like to refer here both to OHCHR guidance on HR indicators for SDGs: <https://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx>; also relevant for Indigenous Peoples there is also the indicators under the Indigenous Navigator project, which monitors compliance to UNDRIP and other relevant human rights instruments.

¹⁰ <https://report.territoriesoflife.org/wp-content/uploads/2021/05/ICCA-Territories-of-Life-2021-Report-FULL-150dpi-ENG.pdf>; https://www.fnt.awsassets.panda.org/downloads/report_the_state_of_the_indigenous_peoples_and_local_communities_lands_and_territor.pdf

Increase accountability of business and the finance sector, including regarding human rights impacts. The GBF acknowledges the increasing role of businesses and financial flows in driving and responding to biodiversity loss, and the importance of changes in the behaviour of those sectors. Target 15 relies on businesses reporting and assessing their own performance, but we recommend independent verification as good practice. Further guidance is needed for the role of businesses in supporting the GBF and the role of States in holding accountable businesses when they do not comply with laws concerning biodiversity and human rights, with reference to the UN Guiding Principles on Business and Human Rights¹¹ and associated guidance in gender dimensions of the UNGPs.¹²

Provide equitable access to financial resources and apply human rights conditions to area-based financing. The proposed increase in financial resources in target 19, including increased financial flows to developing countries, is welcome. However, experiences with existing financial instruments show that access remains challenging for direct custodians of biodiversity, including IPLCs and women. Equity and fairness require redirecting financial resources to the local level, including through the development of appropriate and targeted instruments for IPLCs and applying human rights-based financing as a lever for equitable and effective implementation.¹³ Likewise, effective measures should be in place so biodiversity financing mechanisms such as payment for ecosystem services are designed and implemented in line with international human rights agreements.

Adequately assess and understand biodiversity and related social and human rights impacts. Impact assessments and due diligence should recognise the need for integrated impact assessments, including social and human rights aspects, as outlined (for instance) in the Akwe: kon Guidelines. Target 14 should broaden reference to impact assessment to incorporate these aspects.

Support and protect human environmental rights defenders.¹⁴ Provide a safe and enabling environment and strengthen practical measures to support and protect human rights defenders in environmental matters, including effective and timely remedies in cases where IPLCs and other defenders face threats, criminalization and/or any form of violence. This should be embedded in the preface and further strengthened with explicit reference in Target 21.

Acknowledge and enhance the interdependence of people and nature. The framework seeks to bring about a transformation of society's relationship with biodiversity and yet many of the goals and targets still take a unilateral, utilitarian and largely monetary approach to this relationship. The framework should promote reciprocal relationships between people and nature, by valuing the contribution of people and their cultures to the natural world, and recognise that rights to lands, territories and resources are deeply linked to cultural rights as protected under the global Covenants. Goal B and its milestones should acknowledge this interdependence by aiming to maintain and enhance nature and people's mutual and interdependent well-being. The protection of customary sustainable use, a core element of CBD implementation, is essential in targets 4, 5, 6, 9 and 10.

11 See, for instance, OHCHR guidance on human rights, climate change and business, equally relevant to guide business action related to biodiversity: <https://www.ohchr.org/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>

12 See, OHCHR Gender Dimensions of the UNGPs, https://www.ohchr.org/Documents/Issues/Business/Gender_Booklet_Final.pdf

13 Including taking into account the voluntary guidelines on safeguards in biodiversity financing mechanisms adopted at CBD COP12 (UNEP/CBD/COP/DEC/XII/3) which explicitly refer to "international human rights treaties".

14 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/088/48/PDF/G1908848.pdf?OpenElement>

Recognise the right to a safe, clean, healthy, and sustainable environment. The recognition and implementation of this right can be a powerful tool to mainstream biodiversity and embed a rights-based approach across policies and processes. It has gained momentum recently, with 69 States calling for its recognition by the Human Rights Council at its last session in March 2021. The fulfilment of this right should be referred to in at least one of the goals or milestones.

Gender equity and equality. The economic and ecological agency of Indigenous and rural women, farmers, fishers, producers, and many other women is often not recognized in policy and decision-making. While women play important roles as managers, leaders and defenders of natural resources and agents of change, they face limitations in accessing financial and other resources and ownership of land and other resources. There are direct links between environmental pressures and gender-based violence¹⁵, and that the degradation of nature, competition over increasingly scarce resources and environmental crime and conflict can also exacerbate violence. Efforts to protect biodiversity need to ensure the protection, empowerment, leadership, decision-making and meaningful and informed participation of women and girls. The priorities of the Draft post-2020 Gender Plan of Action need to be reflected at the level of targets¹⁶ and disaggregated indicators.

Intergenerational equity. It is important to create space for young people to participate in shaping the decisions that will affect their future, and for future generations to enjoy the right to a healthy environment. Children and youth have rights to enjoy their cultural heritage and access and participate in the cultural life of their people. This principle could be strengthened in goal B and target 11 by ensuring that nature's contributions to people also benefit future generations, as well as by adding it as an enabling condition. Furthermore, children's rights should be incorporated in target 21, in addition to the existing reference to youth.

Education. The Convention on the Rights of the Child Articles 28 & 29 affirm children's right to education that shall be directed toward respect for the natural environment. Such education could be strengthened in the GBF by incorporating elements on integrating biodiversity and cultural diversity into formal, non-formal and informal education programmes, as a new target or stronger in Target 20.

Compliance, Monitoring, and accountability. One of the key benefits of using an HRBA is the requirement for a strong process for compliance, monitoring and accountability. This is under discussion already and experiences from the monitoring systems of other treaties (i.e., Aarhus Convention, the Human Rights Treaty Bodies, the Escazu Agreement, and the Universal Periodic Review) provide strong models for what could be put into place for the GBF, including multi-source reporting (including community-based monitoring information systems, and the findings of the Local Biodiversity Outlooks report, providing grounded data) and review by sector experts.¹⁷

15 IUCN (2020): Gender-based Violence and Environment Linkages: the Violence of Inequality

16 Proposed New Target 22 on Gender: "Ensure equitable access and benefits from conservation and sustainable use of biodiversity for women and girls, as well as their effective participation in policy and decision-making processes related to biodiversity." (CBD Women)

17 For more information on how the existing Voluntary Peer Review could also be improved to consider human rights, please see: <https://www.cambridge.org/core/journals/transnational-environmental-law/article/mind-the-compliance-gap-how-insights-from-international-human-rights-mechanisms-can-help-to-implement-the-convention-on-biological-diversity/CE0F47664F08EBE4919D5990F3709484>

Potential text approaches:

Paragraph 12:

... Actions to reach these targets should be implemented consistently and in harmony with the Convention on Biological Diversity and its Protocols and other relevant international obligations **including human rights obligations**, taking into account national socioeconomic conditions. (GBF draft 1, paragraph 12)

Paragraph 14:

The implementation of the global biodiversity framework requires **a human rights-based approach**, integrative **and equitable** governance, and whole-of-government approaches to ensure policy coherence and effectiveness, political will and recognition at the highest levels of government.

Paragraph 16:

Par 16. Efficiency and effectiveness will be enhanced for all by integration with relevant multilateral environmental agreements and other relevant international processes, **including human rights principles and instruments**, at the global, regional, and national levels, including through the strengthening or establishment of cooperation mechanisms.

Guiding Principles:

An additional or alternative approach to link the implementation of the Global Biodiversity Framework with international human rights law and other relevant agreements is to incorporate 'Guiding Principles' against which the Framework would be implemented.

Under such an approach, language would need to be developed. We recommend including similar language to *Agenda 2030 for Sustainable Development* adopted by the UN General Assembly and therefore all Parties to the CBD, for instance: "The post-2020 global biodiversity framework is guided and will be implemented in line with principles of the Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights treaties".¹⁸

Further text on potential 'guiding principles' is being developed by other observer groups to the CBD and those contributing to this analysis continue to the same.

¹⁸ See 'Our Shared Principles and Commitments', page 8, para. 10. "The new Agenda is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties..." UN Agenda 2030 for Sustainable Development. <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

Specific Goals, Milestones and Target recommendations:

We would like to draw attention to the Target text proposals developed and submitted to Parties by the:

- International Indigenous Forum on Biodiversity
- Global Youth Biodiversity Network
- CBD Women's Caucus