

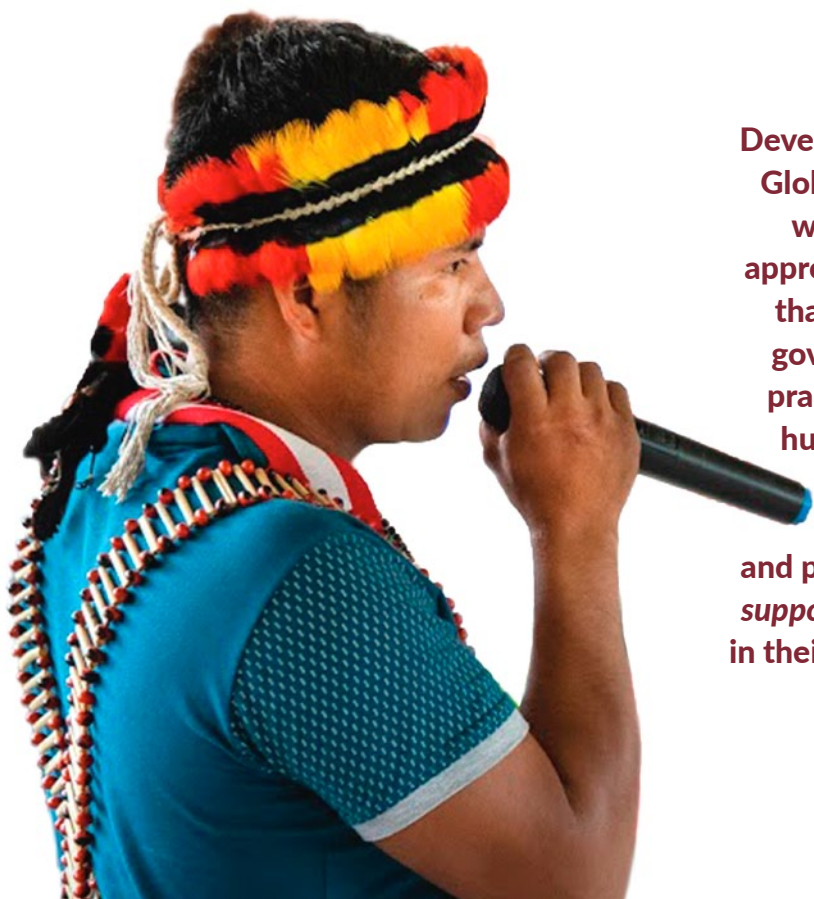
A Rights-based Path for People and Planet

Realising Human Rights through the Post-2020 Global Biodiversity Framework (CBD OEWG-5 & COP15)

This briefing has been prepared by the Human Rights and Biodiversity Working Group¹ as input into the negotiations under the Convention on Biological Diversity (CBD) that will take place in December 2022 to finalise the post-2020 Global Biodiversity Framework (GBF).² The briefing highlights what it takes to integrate a human rights-based approach (HRBA) and how it can be done to ensure an effective, inclusive, equitable and just implementation of the GBF and the achievement of its goals and targets.

This document takes three main negotiation documents as its starting point: the recommendation adopted by the 4th meeting of the open-ended working group³ (herein 'the composite text'); the report of the Informal Group on the post-2020 Global Biodiversity Framework⁴ (herein 'the Informal Group report'); and the report of the expert workshop on the monitoring framework for the post-2020 Global Biodiversity Framework⁵ (herein 'the Bonn expert workshop report').

The organisations that have developed this document recognise that the only basis for negotiation is the composite text, and that is where analysis here focuses, although the Informal Group proposals have been included where relevant and suitable. The outcomes of the Bonn expert meeting on the monitoring framework have been referred to in relation to the development of the Monitoring Framework and indicators.



Developing and implementing the Global Biodiversity Framework with a human rights-based approach means, in simple terms, that the biodiversity policies, governance and management practices agreed *do not violate* human rights and that those making decisions and implementing such policies and practices *actively seek ways to support and promote* human rights in their design, implementation and monitoring.

A human rights-based approach and the post-2020 Global Biodiversity Framework

A human rights-based approach to conservation and sustainable use of biodiversity is recognized as a necessary condition for stopping biodiversity loss and degradation in a manner that is equitable, effective, efficient, and transformative.⁶ It is an essential enabling condition for the resilience of systems of life, good health, and the use, management, restoration, and conservation of natural resources as an integral part of the way in which humans continue to live on our shared earth. Mounting evidence also reflects that only by partnering with, and recognising the leadership of, indigenous peoples and local communities can the ambitions of the GBF be realised.

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Iterations of the draft post-2020 Global Biodiversity Framework have retained reference to the importance of applying a rights-based approach. The debate as we move into the final rounds of negotiations in December is not *if* a rights-based approach is needed, but *how* such an approach should be integrated in the framework and can be applied, and *what* amendments are needed to make it effective.

As this briefing explores, applying a human rights-based approach in the implementation of the Global Biodiversity Framework must include guiding principles (or “fundamental premises”, as proposed by the Informal Group) in the introductory sections of the framework. It also requires that specific human rights are embedded in the language of specific goals and targets, and that indicators are adopted to appropriately monitor, track and report on the realisation of these rights at national and global levels. Reference to the need for further guidance on a human rights-based approach in the COP15 Decision adopting the framework would also provide a mandate for further expert input and support for Parties.

Human rights principles in the Global Biodiversity Framework

It is critically important that human rights are embedded across the Global Biodiversity Framework, from principles through to active practice and measurement of results. The way in which human rights are integrated will determine how or if they are able to positively impact on implementation, that is the outcome we are seeking.

There is significant Party support for this. Since the Co-Chairs Reflections Document released in November 2021⁷, general language related to human rights has been included in a section ‘B.bis’ (then titled ‘Guidance for the implementation of the framework’). The composite text contains three key paragraphs (11, 12, 13) which acknowledge human rights law and recommend the use of a human rights-based approach, among other important commitments such as the recently-recognised universal human right to a clean, healthy and sustainable environment.⁸ In the Informal Group report, these same paragraphs have been retained and reordered under a new title ‘the fundamental premises for the implementation of the framework’.⁹ We support retention of strong language underscoring that the principles contained in Section B.bis are essential and required in the implementation of the framework, rather than optional or suggested.

- We support the Informal Group proposal, which outlines that the “Goals and Targets are to be understood, acted upon, reported and evaluated, consistent with...” the principles listed.
- We support the Global Youth Biodiversity Network suggested addition of a principle on intergenerational equity.
- We do not feel that the term ‘fundamental premises’ is clear or strong enough and continue to prefer ‘principles’ or ‘guiding principles’ for implementation.

It is also important to note that this introductory paragraph sits before the operative elements of the framework and is *not* covered by the monitoring framework that will track achievement of the Global Biodiversity Framework.

- In addition to Section B.bis, the most crucial rights elements must also be integrated into specific Goals and Targets so that these components can be both measured and accounted for.

We further support the acknowledgement in Section D. (Theory of Change) that confirms that the process of transformational change foreseen in the framework relies on the use of a human-rights based approach, including gender equality and intergenerational equity.¹⁰ We do not support the alternative approach suggested by the Informal Group that removes all reference to human rights, diverse knowledge systems, or the need for a whole of society approach from Section D.¹¹ If a streamlined approach is taken adopting the proposal of the Informal Group, then the Theory of Change needs to be linked explicitly to the underlying fundamental 'premises' in Section B.bis.

COP Decision

The decision at the 15th Conference of the Parties to the CBD that adopts the post-2020 Global Biodiversity Framework should recall the UN General Assembly Resolution adopted July 2022 on the right to a healthy, clean, and sustainable environment¹², explicitly refer to the need for implementation through Human Rights Based Approach and urge Parties to mainstream such an approach in their national strategies and action plans, as well as requesting further guidance to be developed to support Parties in doing so.

Goals and Targets

Across the GBF there are key Goals and Targets for which specific human rights have direct relevance:

- as enabling factors for achieving the Goal or Target itself, as in Target 3 where recognition of customary land and tenure rights can foster increased and improved conservation outcomes, and Target 1 where participation is critical to success, or
- as rights that need specific protections under the Target, as in Target 5 on the use of wild species and the need to protect customary sustainable use.

Other examples of rights-critical elements include Goal B, Target 15 on the responsibilities of businesses, Targets 1, 2 and 3 on area-based classifications, and Targets 21 and Target 22 on rights to participation, to lands, territories, and resources, and to gender equality and

the rights of children and youth, women, and girls. These final cross-cutting targets (20, 21, 22) underpin the success of the framework as a whole and are critical to realising a human rights-based approach.

A general reference to human rights principles in the earlier sections of the framework is insufficient to guarantee accountable and inclusive implementation of those Targets. While Section B.bis can set strong overarching principles, it cannot and should not replace the inclusion and retention of rights language in relevant targets and goals.

Monitoring Framework and Indicators

The time remaining for the finalisation of the GBF is short, and a comprehensive GBF requires a well-developed and agreed monitoring framework, including agreed indicators and a means to measure them, or commitments to develop the means to measure them.

Work has been on-going on this monitoring framework alongside the OEWG negotiations, and the Bonn expert workshop report contains recommendations from that work. There remains much more work to be done, and we consider it unlikely that a final monitoring framework will be available for adoption at COP15.

We support the adoption of headline indicators during COP15 if they can be further developed during the negotiations but only where such headline indicators are sufficient for measuring the real impacts of the GBF. Human rights indicators related to the GBF need more work. We will propose some at COP-15 and we expect further work to be carried out by COP-16.

Building on what can be seen in the Bonn expert workshop report, we have the following recommendations for COP15:

1. In the discussions in Montreal and on-going under the Ad Hoc Technical Expert Group (AHTEG), the gaps identified in the Bonn meeting must be addressed (Table 4 in the Bonn expert report). This table of identified gaps needs to be fully reflected in the COP15 documents related to the monitoring framework (COP/15/2) and on-going work post COP15.
2. Indicators measuring human-rights elements are relevant to more than one target. For instance, a

land tenure indicator developed for Target 21 would be equally important for assessing progress in other targets, including Targets 1 and 3 (see table 1 in Bonn report). We strongly recommend clearly identifying where headline indicators can serve monitoring and assessment across multiple Targets and prioritising these for adoption. Table 1 from the Bonn expert workshop report needs to be fully reflected in COP/15/2 and on-going work post COP15.

3. The work on developing headline, complementary and component indicators is critical. We support the continued work of the AHTEG after COP15 to get this right. It is essential that appropriate human rights expertise, and representation from indigenous peoples, local communities, women, and youth be included into that AHTEG. The experience of the small number of human rights-sensitive experts in Bonn revealed the need for more mainstreaming of diverse voices, including human rights experts and issues in the indicator work going forwards.
4. Multiple and diverse data sources and input by indigenous peoples and local community groups and organisations, women, and youth, must be taken into account by agencies responsible for managing data and information related to indicators. Expert-led

headline indicators under the responsibility of a single agency undermine multiple data sources and inputs by IP and LC groups, women, and youth.

Gaps remain in relation to human-rights relevant indicators. Key among these gaps are:

- the lack of indicators for the recognition and implementation of the right to a healthy environment in goal B,
- the lack of an indicator related to equitable governance,
- the lack of indicators for traditional territories, or to free, prior, and informed consent in Target 3,
- lack of an indicator for assessing the extent of customary sustainable use (Targets 5, 9 and others),
- the need to account for human rights impacts in the indicators in relation to business and biodiversity in Target 15, and
- an indicator related to the violence experienced by environmental human rights defenders in Target 21.

Further guidance on human rights indicators is being developed.

Footnotes

1 The Human Rights and Biodiversity Working Group has been active since 2020 and is an Informal Group of organisations working on human rights issues and engaged in the development of the post-2020 Global Biodiversity Framework. Members contributing to this analysis include: Forest Peoples Programme (FPP), SwedBio at Stockholm Resilience Centre, Global Youth Biodiversity Network (GYBN), International Indigenous Forum on Biodiversity (IIFB), ICCA Consortium, Natural Justice, Tebtebba Foundation, WWF International, Fundación Ambiente y Recursos Naturales (FARN), CoopeSoliDar R.L., Friends of the Earth International, the CBD Women's Caucus, Women4Biodiversity, International Land Coalition, BirdLife International, International Institute for Environment and Development (IIED) and Friends of the Earth International.

2 This briefing builds on previous work completed by the Human Rights and Biodiversity Working Group, see: <https://swed.bio/news/hrba-2020-global-biodiversity-framework-gbf/>

3 CBD/WG2020/REC/4/1, available at: <https://www.cbd.int/doc/recommendations/wg2020-04/wg2020-04-rec-01-en.pdf>

4 Report of the meeting of the Informal Group on the post-2020 Global Biodiversity Framework, CBD/POST2020/OM/2022/1/2. Available at: <https://www.cbd.int/doc/c/aa0c/3d23/795b0885b1aee517eee0cfa/post2020-om-2022-01-02-en.pdf>

5 Bonn Report, CBD/ID/OM/2022/1/2, available at: <https://www.cbd.int/doc/c/3190/c3f4/1d9fe2d2dedc8c8b97023750/id-om-2022-01-02-en.pdf>

6 See analysis in Human Rights and Biodiversity Working Group: Paper 1, available at: <https://www.forestpeoples.org/en/briefing-paper/2021/human-rights-post-2020-global-biodiversity-framework-options-integrating-human>

7 Reflections by the Co-Chairs, CBD/WG2020/3/6, 24 November 2021, available at: <https://www.cbd.int/doc/c/e26d/3f00/7cb7a016a3b9bed6304f86aa/wg2020-03-06-en.pdf>

8 11. The framework acknowledges international human rights law, and the right to a clean, safe and sustainable environment. Its implementation should follow a human rights-based approach respecting, protecting and fulfilling these rights, and being mindful of diverse world views, values and knowledge systems, including different conceptualizations of nature and people's relationship with it.

12. Success will depend on ensuring gender equality and empowerment of women and girls and reducing inequalities, enhancing greater access to education and respecting the principle of intergenerational equity.

13. The framework acknowledges the important roles and contributions of indigenous people and local communities as custodians of biodiversity and partners in the restoration, conservation and sustainable use of biodiversity. Its implementation must ensure the respect, preservation and maintenance of the knowledge, innovations and sustainable practices of indigenous peoples and local communities, including through their full and effective participation in decision-making and their free, prior, and informed consent, prior and informed consent or approval and involvement, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and international human rights law.

9 Composite text, CBD/WG2020/REC/4/1: pg. 16

10 See: "recognizes the importance of a [human] rights-based approach, including the respect, protection [promotion] and fulfilment of human rights, [gender equality] and foster intergenerational equity," in Composite Text, CBD/WG2020/REC/4/1: pg. 11

11 CBD/POST2020/OM/2022/1/2: pg. 18

12 <https://digitallibrary.un.org/record/3982508?ln=en>