

A Rights-based Path for People and Planet

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



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Introduction

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.

1 The Human Rights and Biodiversity Working Group has been active since 2020 and is a 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).

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/3d23/795b0885b1aeec517eee0cfa/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>

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.

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.

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.

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>

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.

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 Informal Group document : pg.16 at CBD/POST2020/OM/2022/1/2.

- 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 and financial institutions, 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.

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>

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,
- the need to account for human rights impacts and essential role of mandatory obligations on business enterprises in the indicators in relation to all businesses, human rights 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.

Text suggestions

Where text edits are proposed, red indicates proposed new text, red strikethrough indicates deletions, and blue indicates support for text that is already in the negotiations, including text that is clean, or bracketed, or present in Composite Text recommendation of OEWG4.

Section B bis

We propose the following edits to the Informal Group text (additions in red, deletions in strike-through, sections we fully support and consider critical in blue):

Human rights-based approach

The framework acknowledges **that all human rights, and including the right to a clean, healthy safe and sustainable environment, are interconnected and interdependent,** recognizing that a **safe, clean, healthy and sustainable environment is important for the enjoyment of human rights.** Its implementation should **follow a human rights-based approach, meaning that all actions should** respecting, protecting and fulfilling **these human rights.**

If working from the composite text, we propose the following edits:

11. The framework acknowledges international human rights law, **including and the right to a clean, healthy 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.'

Rationale:

These amendments relate to the references to the right to a clean, healthy, and sustainable environment ('R2HE'). We propose the above edits to recognise that the R2HE is now an established universal human right, substituting 'and' for 'including', and to remove the word 'safe' and where necessary substitute it for 'healthy', to keep wording in line with the relevant UN Human Rights Council and General Assembly Resolutions¹³.

We support the proposal from GYBN for the addition of a new paragraph in Section B bis:

Intergenerational equity

Implementation of the framework must be guided by the principle of intergenerational equity. This entails recognizing the responsibility of present generations in ensuring the rights of future generations to enjoy a clean, healthy, and sustainable environment. This

¹³ UNHRC48/13 and UNGA76/300

also means ensuring that children and youth are able to participate fully and effectively in decision-making, and respecting their rights to access to information, justice, education, and other rights.

Rationale:

As clearly demonstrated in the positions put forward by the Global Youth Biodiversity Network (GYBN) the importance of the success of this framework for current and future generations is clear. A foundational principle (or premise) must be that the implementation of the framework is guided by the responsibilities of our current generation to the generations that will follow. The principle of intergenerational equity secures this.

Section D

We do not support the alternative approach suggested by the Informal Group that removes reference to human rights, diverse knowledge systems, or the need for a whole of society approach from Section D.¹⁴ 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:

“23. [The framework (see figure 1) recognizes that urgent policy action at global, regional, subregional, national and subnational level is required, and assumes that transformative actions are taken, **on the basis of the fundamental premises/principles outlined in Section B**, to (a) address the drivers of biodiversity loss ...”¹⁵

Rationale:

Section D provides the ‘Theory of Change’ that underpins the GBF. The principles (or premises) outlined in Section B do not appear in the Theory of Change diagram, yet they are the underlying assumptions or basis on which the Theory of Change rests. Without linking the graphic and text of the Theory of Change explicitly back to Section B, a foundational element of the framework disappears.

Goal B

We propose the following edits to the composite text:

Biodiversity is [conserved,] sustainably used and managed and nature’s contributions to people, including [the long-term [integrity] [health] of] ecosystem functions and services, [with those ecosystem[s] [services] currently in decline being restored by [2030] [2050] [taking into account the wide range of biodiversity values] [are valued], maintained and enhanced [through conservation], [especially in the places most important for delivering these contributions], [achieving] [supporting the achievement of] [the] [global] sustainable development [agenda] [goals] [for the benefit of present

¹⁴ CBD/POST2020/OM/2022/1/2: pg. 18

¹⁵ Informal Group Report, CBD/POST2020/OM/2022/1/2, page 20

and future generations] ~~[and the fulfilment of the right to a safe, clean, healthy and sustainable environment, for the benefit of present and future generations]~~ ~~[recognizing that a safe, clean, healthy and sustainable environment is important for the enjoyment of human rights]~~ [and [an equitable] [a] reduction of the ecological footprint of [-%] by 2030 within planetary boundaries is achieved].¹⁶

If working from the Informal Group text (our less preferred option), we propose the following edits:

[Biodiversity is sustainably used and managed]/[Biodiversity is used and managed sustainably] and nature's contributions to people, including ecosystem functions and services, [are valued], **taking into account the wide range of biodiversity values, and** maintained and enhanced **for present and future generations** [with those ecosystem[s] [services] currently in decline being restored by [2030][2050], supporting the achievement of sustainable development, **the fulfilment of the right to a clean, healthy and sustainable environment** [and [an equitable] [a] reduction of the ecological footprint of [-%] by 2030 within planetary boundaries ~~is achieved~~].

Rationale:

Goal B is focused on nature's contributions to people, addressing the balance between and mutual interdependence of humans and nature. Key advances in intergovernmental negotiations, with the passing in the UN General Assembly of a Resolution on the right to a clean, healthy, and sustainable environment¹⁷, and the advancing work of the Intergovernmental Panel on Biodiversity and Ecosystem Services (IPBES), directly underpin this Goal. It is where the diverse values of nature can be highlighted and recognized, as brought forwards in the IPBES Values Assessment 2022. It is also where the right to a clean, healthy and sustainable environment (R2HE), as part of a wider package of human rights, can not only be recognized but its delivery enabled and tracked.

The R2HE should be reflected in the GBF in terms of both recognition under Section B.bis **and** implementation under Goal B. It is therefore important to retain or reinsert its reference into Goal B as per the text above, so that the sustainable use of biodiversity as delivered by this Goal explicitly supports the fulfilment of the right to a clean, healthy and sustainable environment as well as the achievement of sustainable development and a reduction of the ecological footprint. Critically, this element of the Goal can be measured by the two indicators we have proposed for Goal B.

Conservation and protection of biological diversity: Targets 1, 2, 3

Achievement of the three area-based targets depends on securing conditions of equitable governance whereby all conservation and land governance actors, especially rights-holders, are recognized, supported and can meaningfully participate in decision-making

¹⁶ Composite text, CBD/WG2020/REC/4/1: pg. 13

¹⁷ The phrase 'the right to a safe, clean, healthy and sustainable environment' has been amended to match the terms used in the two UN Resolutions ensuring phrasing in line with that in the UNHRC48/13 and UNGA76/300 resolutions, see: <https://digitallibrary.un.org/record/3982508?ln=en> Reference to this right was also included in the outcomes from the 27th COP of the UNFCCC in November 2022.

over conservation and sustainable use of biodiversity. This was confirmed in the IPBES Global Assessment where governance was identified as one of the pathways to achieve transformative change.¹⁸ Local Biodiversity Outlooks (ed. 2) also highlighted the centrality of governance in achieving transformation.¹⁹

Target 1

Ensure that [all] areas are under integrated, **participatory and** biodiversity-inclusive spatial planning or other effective management processes, addressing land and sea use change [[retaining all]/[minimizing loss of] [intact ecosystems]] [threatened ecosystems] [and areas of high biodiversity importance] enhancing connectivity and integrity, **while respecting the rights of indigenous peoples and local communities, and incorporating their own planning processes.**²⁰

We support the continued inclusion of the highlighted phrase in Target 1, regardless of whether it is the Informal Group recommendation or continued negotiation of the OEWG4 outcome, while adding red text to ensure inclusive approaches.

Rationale:

Target 1 envisages spatial planning over 'all areas' of the world. Spatial planning is a tool and its effectiveness depends on the approaches taken and the conditions of its use: spatial planning should be participatory, take into consideration multiple values of biodiversity, and should include spatial planning processes by indigenous peoples and local communities. Text proposed by the Informal Group does this in part.

Target 2

Ensure that at least [20] [30] [per cent]/ [at least [1] billion ha] of areas of degraded terrestrial, inland waters, coastal and marine ecosystems are under restoration [, taking into account their natural state as a baseline [reference]], **[respecting the rights of indigenous peoples and local communities and recognising their contribution to ecosystem restoration.]**²¹

Noting here the existing proposals also from the IIFB.²²

Rationale:

The distinction between conservation and ecosystem restoration is blurry, and even more blurry when it comes to community-based conservation and restoration. Currently,

18 IPBES (2019): Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. S. Díaz, et.al. (eds.). IPBES secretariat, Bonn, Germany. 56 pages. <https://doi.org/10.5281/zenodo.3553579>

19 <https://localbiodiversityoutlooks.net/publications/>

20 Suggested streamlined text Target 1, Informal Group Report, CBD/POST2020/OM/2022/1/2, page 27

21 Informal Group Report, CBD/POST2020/OM/2022/1/2, page 27

22 Ensure that at least 100 per cent of degraded freshwater, marine and terrestrial ecosystems are under restoration, ensuring connectivity among them and focusing on priority ecosystems **with the full and effective participation of IPLCs and enabling and supporting restoration initiatives of indigenous peoples and local communities**

the 'restoration movement' is mostly made up by large scale government initiatives, big conservation NGOs and businesses. Unfortunately, the vast amount of community-based restoration that is happening at community level by indigenous peoples, local communities, pastoralists and small-scale farmers goes widely unrecognised, in spite of their unquestionable collective contribution to ecosystem restoration, likely surpassing large scale government and private sector efforts. Further, ill-suited or ineffective restoration schemes divorced from local communities and from indigenous owners can and will cause human rights violations, as seen already in landscape restoration initiatives. The current wording by the Informal Group has cut out all reference to indigenous peoples and local communities.

Target 3

Ensure and enable at least [30 percent] of [all [---] and of [---]] [globally] [at the national level] especially areas of particular importance for biodiversity and ecosystem functions and services are [effectively conserved through well]/[conserved through effectively] managed, ecologically representative, well-connected and **equitably governed** systems of protected areas [including a substantial portion that is strictly protected] and other effective area-based conservation measures, [placeholder for new language on indigenous protected areas/territories] [, with their free, prior and informed consent] and integrated into the wider landscapes and seascapes, [in accordance with national priorities and capabilities,] [including the right to economic development, will not affect the right or ability of all Parties to access financial and other resources required for the effective implementation of the whole framework,] [while ensuring that [sustainable use] of these areas, if in place, contributes to biodiversity conservation,] and **respecting the rights of indigenous peoples and local communities**.²³

Rationale:

It is widely recognised that community-led conservation institutions and local governance regimes are very effective in preventing habitat and biodiversity loss, particularly those of indigenous peoples. Innovative, inclusive, diverse and equitable governance approaches to conservation are needed that promote indigenous peoples' and local communities' conservation and sustainable use patterns, and including equitable shared governance, co-management regimes and other collaborative arrangements.

- Ensure that diverse and inclusive governance types are fully recognised and supported in protected area and other effective area-based conservation measure (OECM) designations
- Retain and develop, with the IIFB, the [placeholder] text (noting the proposed "territories, lands and areas conserved by Indigenous Peoples and local communities"²⁴) to ensure that IPLCs can report on their own conservation contributions, and that these contributions are recognized and supported

23 Informal Group Report, CBD/POST2020/OM/2022/1/2: page 30

24 ICCA Consortium

Further, conservation too often continues to contribute to the violation of the rights of indigenous peoples and the rights of local communities to their lands, in well documented ways, and global commitments to identify and expand protected and conserved areas must contain assurances that indigenous peoples' lands, territories and resources, and those of local communities, will be included in protected or conserved areas only with their free, prior and informed consent, and with reference to relevant international human rights law.

- Retain at a minimum the existing and agreed references to “equitably governed” and “respecting the rights of indigenous peoples and local communities”
- Include a reference to the requirement for free, prior and informed consent before the lands and territories of indigenous peoples are incorporated into or declared protected or conserved areas or any change in land status is considered
- Follow the lead of the IIFB on possible language to replace bracketed [placeholder] text

Customary sustainable use: Target 5 and 9

We recommend explicit reference to customary sustainable use (CSU) as per the Informal Group proposal for Target 5 with the addition of the text highlighted below.

Target 5

[Prevent overexploitation by ensuring]/[Ensure] that harvesting trade and use of wild species is sustainable and legal, minimizing impacts on non-target species and ecosystems, [and prevent and eliminate biopiracy and other forms of illegal access to and transfer of genetic resources and associated traditional knowledge], while respecting **and protecting the rights of indigenous peoples and local communities to customary sustainable use.**²⁵

Rationale:

Customary sustainable use is the product of a set of values and diverse knowledge systems, and equally the product of institutions, regulations and governing mechanisms that enable the use of species and resources to be sustainable. Customary sustainable use of natural resources by indigenous peoples and local communities is protected under the Convention, which binds Parties to *promote* these practices.²⁶ Moreover, there is an approved CSU Action Plan under the CBD which however has largely not been implemented, monitored nor reported.

²⁵ Composite text, CBD/POST2020/OM/2022/1/2: page 33

²⁶ Convention on Biological Diversity, Article 10(c): “(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”

Target 9

Ensure that the management and use of wild species are sustainable, thereby providing social, economic and environmental benefits for people, especially those in vulnerable situations and those most dependent on biodiversity, including through the promotion of sustainable [biodiversity-based products and services] [including sustainable trophy hunting], and **protecting and [promoting]/[respecting] customary sustainable use by indigenous peoples and local communities.**²⁷

Rationale:

For Target 9, aligning with the recommendations also from the International Indigenous Forum on Biodiversity, we recommend use of the Informal Group report proposal and retention of the text highlighted, with ‘protecting, promoting and respecting ...’ used.

Agroecology and indigenous and local food systems: Target 10 and 16

Target 10

Ensure that [all] areas under agriculture, aquaculture, [fisheries], forestry, [and other productive uses] are managed sustainably, in particular through **models that promote** the sustainable use of biodiversity **including through agroecology**, contributing to [the long-term] **efficiency, productivity and** resilience of these production systems, conserving and restoring **agro-biodiversity** and maintaining [its ecosystem services]/ [nature’s contribution to people].²⁸

Rationale:

Target 10 currently focuses on large-scale agricultural production and neglects the role of small-scale food producers in feeding most of the world. For food systems to be sustainable, equitable and resilient in the long-term, they need to be based on practices and production models that address biodiversity loss, connect social and environmental dimensions, maintain ecosystem functions, and enable the production of healthy and affordable food such as agroecology, conservation agriculture and traditional practices. These systems have overall proven resilient and sustainable, food secure and less vulnerable to climate change and other natural disasters.

Target 16

Ensure that people are enabled **and encouraged** to make sustainable, **equitable and culturally-appropriate** consumption choices including by establishing supportive policy, legislative or regulatory frameworks, improving education, and access to relevant

²⁷ Informal Group Report, CBD/POST2020/OM/2022/1/2: page 38

²⁸ Informal Group Report, CBD/POST2020/OM/2022/1/2: page 39

accurate information and alternatives, and [halve the global footprint [of diets]/[of consumption] per capita] halve per capita global food waste, and substantially reduce waste generation[, and, where relevant, eliminate overconsumption of natural resources and other materials in an equitable manner][, in order for all peoples to live well in harmony with mother earth].²⁹

Rationale:

This target speaks to the responsibilities that sit throughout society to make sustainable consumption choices. It needs to begin with the unique responsibilities of Parties to enable such choices, followed by the importance of encouraging those choices. Consumption patterns are vastly different in different parts of the world and reduction in consumption patterns should be equitable: requiring the most change from those consuming the most or with historical patterns of high consumption. Further, culturally rooted patterns of consumption should be recognised and protected by encouraging culturally appropriate choice. Three edits are suggested to clarify these differentiated responsibilities.

Business, biodiversity, and human rights: Target 15

We endorse the proposal (opt 1 below) by the Global Youth Biodiversity Network (GYBN) to clarify that the commitment is from governments to take action to regulate businesses and financial institutions.

If new drafting is not possible then we recommend instead the text below (opt 2) as a compromise option.

Target 15 (opt 1)

Take legal, administrative or policy measures to ensure that:

- a. All business and financial institutions, particularly those with significant impacts on biodiversity, and large and transnational companies are held legally responsible and accountable for their negative impacts including through penalties and liability and redress for damage;
- b. All processes and activities of businesses are monitored and regulated to eliminate their negative impacts on biodiversity and human rights, ensuring full transparency of their activities and impacts, including compliance and reporting on access and benefit-sharing, and addressing conflicts of interest;
- c. All businesses and financial institutions follow a rights-based approach, including by respecting human rights and the rights of Mother Earth;

in order to reduce biodiversity-related risks from and to businesses and foster a circular economy, operating within planetary boundaries.

Target 15 (opt 2)

Take legal, administrative or policy measures to [ensure that all] [significantly increase the number or percentage of] business and financial institutions [, particularly those] [with significant impacts on biodiversity and human rights] [and large and transnational companies]], that:]

- a. [Through mandatory requirements] undertake human rights and environmental due diligence including Regularly monitoring, assessment, and fully and transparently disclosure of their [dependencies and] impacts on biodiversity [along their operations, supply and value chains and portfolios];
- b. [Provide information needed to consumers to enable the public to make responsible consumption choices];
- c. [Comply and report on access and benefit-sharing];
- d. [Take legal responsibility for infractions] [, including through penalties, and liability and redress for damage and addressing conflicts of interest;]
- e. [Follow a rights-based approach] [, including human rights and the rights of Mother Earth.]

In order to [significantly] reduce [by half] negative impacts on biodiversity, increase positive impacts, reduce biodiversity-related risks to from and to business and financial institutions, and [moving towards sustainable patterns of production] [foster a circular economy] [, consistent and in harmony with the Convention and other international obligations, together with Government regulations that are aligned with international human rights law.]³⁰

Rationale:

We welcome the attention to the role of businesses and financial flows in driving, and responding to, biodiversity loss. Where targets and indicators relate to Parties' implementation in relation to obligations placed on businesses and financial institutions, the Framework should draw on the UN Guiding Principles on Business and Human Rights (the "UNGPs"), which clearly refer to the obligation on all business enterprises to respect human rights as set out under international human rights law.

Given recent regulatory and legislative moves towards requiring due diligence from businesses into both environmental and social impacts of their footprints and portfolios, we strongly recommend that the scope of Target 15 include assessment of social and environmental impacts, including those on biodiversity specifically. This is standard across voluntary and mandatory due diligence requirements, although existing standards are often weak on biodiversity and fail to effectively incorporate human rights into social impact assessment. We do not support the Informal Group's proposal to remove language

³⁰ Composite text, CBD/POST2020/OM/2022/1/2: pg. 43-44

about a human rights-based approach and note that reference to impacts on biodiversity and human rights was an existing text in the First Draft of the GBF.

Nature-based Solutions: Target 8, 11 and 19.1

We recommend that the term “ecosystem-based approaches” be used in the relevant targets instead of the newer and more controversial term of ‘Nature-based Solutions’ (NbS).

In the event that NbS is included (as currently proposed in Targets 8, 11, and 19.1) we recommend that a qualifier is added to the B. bis reference to NbS, including to refer to the need for environmental and social safeguards and to exclude the use of biodiversity or carbon offsetting from commitments made under the GBF.

“This framework is to be implemented taking into account the [resolution on nature-based solutions](#) adopted at the fifth session of the United Nations Environment Assembly, which defines nature-based solutions, **while recognising the need for appropriate environmental and social safeguards, respecting human rights and excluding the use of offsetting as a financing mechanism for nature-based solutions.**”³¹

“This framework is to be implemented based on the ecosystem approach of the Convention, while also taking into account the resolution on nature-based solutions adopted at the fifth session of the United Nations Environment Assembly, which defines nature-based solutions, **while recognising the need for appropriate environmental and social safeguards, respecting human rights and excluding the use of offsetting as a financing mechanism for nature-based solutions.**”

We further recommend the removal of sub-paragraph (f) regarding ‘innovative schemes’ for financing the GBF, as methods referred to, including biodiversity offsets, are unproven on their own merits.

Target 19.1

~~[(f) Stimulating innovative schemes [such as [nature-based solutions and ecosystem-based approaches] payment for [environmental]/[ecosystem] services[, green bonds, biodiversity offsets, carbon credits, benefit-sharing mechanisms in the context of digital sequence information on genetic resources, and debt-for-nature swaps.]]~~³²

Rationale:

Serious concerns have been raised across civil society about the use of the term ‘nature-based solutions’.³³ The inclusion of ‘offsetting’ as a major source of financing for NbS raises

31 B bis, in the composite text report

32 Informal Group Report, CBD/POST2020/OM/2022/1/2: page 49

33 See, for instance, <https://news.mongabay.com/2021/10/are-nature-based-solutions-the-silver-bullet-for-social-environmental-crises/> https://localbiodiversityoutlooks.net/wp-content/uploads/2022/03/Re-thinking-nature-based-solutions_Seeking-transformative-change-through-culture-and-rights_0.pdf

serious concerns about scientific rigour, permanence and unrealistic claims being made about how to get to 'net-zero', whether in terms of emissions reductions or offsetting biodiversity loss.³⁴ Studies into the land areas required to meet some of the claims of how offsetting might support continued unsustainable use of the world highlight that offsetting avoids and delays hard choices.³⁵ It is therefore important, if the term is used, that the Framework clarifies in the glossary and accompanying guidance what would and wouldn't qualify as NbS to address significant risks of greenwashing and perverse outcomes.

Financial equity: Target 19.1

We recommend that language regarding direct access modalities be brought back into the text, provided here as an addition to the Informal Group Report proposals, by amending and building on Composite Text (re-introduced here in blue):

Target 19.1

- a. Increasing new, additional, effective, timely and easily accessible international [finance flows]/[public financial resources from [developed-country Parties] [and countries with a capacity to do so] [and existing instruments and institutions, including international finance institutions and multilateral development banks] in the form of international grants to developing countries [reaching]/[by] at least [[--] billion United States dollars per year] [10 billion United States dollars per year [at an increasing percentage]] financial resources of at least 100 billion United States dollars annually until 2030 an amount to be revised for the period 2030–2050, to address the needs of developing countries] **and with direct access modalities for indigenous peoples, local communities, women, youth and the most vulnerable groups**, by 2030 [avoiding double counting and] [acknowledging common but differentiated responsibilities].³⁶

Rationale:

The proposed increase in financial resources being negotiated under Target 19.1 is welcome and important. Experience with existing financial instruments shows that access remains challenging for indigenous peoples, and for local communities, women, girls and marginalised groups. The provision of equitable access to financial resources is crucial. Research reflects the miniscule proportions of both climate and nature funding that reaches the point of impact. The Composite Text includes reference to the need to prioritise resources “to address the needs of the most vulnerable”, including the most vulnerable countries, and the needs of indigenous peoples, local communities, women and youth. This text has been removed with no clear justification.

³⁴ See, for instance, <https://policy.friendsoftheearth.uk/insight/dangerous-distraction-offsetting-con>

³⁵ See, for instance, <https://www.landgap.org/>

³⁶ Informal Group Report, CBD/POST2020/OM/2022/1/2: page 49

Traditional knowledge: Target 20

Target 20

Ensure that [the best available] [quality] [data,] information and knowledge, [~~prior and informed consent, or or approval and involvement,~~] [~~under mutually agreed terms and subject to national legislation~~] [are is available and accessible to decision makers, practitioners and the public, including the traditional knowledge, innovations [~~, and~~] practices [and technologies] of indigenous peoples and local communities with their free, prior and informed consent **respected, to guide**] [~~to contribute to~~] decision-making for effective [and equitable] governance, integrated and participatory management of biodiversity, and **to** strengthen communication, awareness-raising, education, monitoring, research and knowledge management.³⁷

Rationale:

The Human Rights and Biodiversity Working Group supports, in large part, the proposal of the IIFB in regards to Target 20, recognising that the critical element of the Target from a human rights perspective is the availability and use of the traditional knowledge, innovations and practices of indigenous peoples and local communities and the importance of respect for free prior and informed consent in that context, while emphasizing also the importance of equitable governance in decision making.

Full and effective participation and access to justice: Target 21

Target 21

Ensure the full, equitable, inclusive, effective and gender-responsive³⁸ representation and participation in decision-making, and access to [justice and] information related to biodiversity **in particular** by indigenous peoples and local communities, respecting their cultures and their rights over lands, territories, resources, and traditional knowledge, and by women and girls, children and youth, and persons with disabilities and [ensure the protection and access to justice of environmental human rights defenders].³⁹

Rationale:

Target 21 is a crucial element of the framework to enable the effective, equitable and full participation in decision-making and access to justice and information related to biodiversity, with a particular focus on participation of indigenous peoples and local

³⁷ Proposal by the International Indigenous Forum on Biodiversity (IIFB) for OEWG5, building on the Composite Text from OEWG4

³⁸ For a definition of this term, refer to paragraph 5 of [CBD/WG2020/1/INF/1](#): A gender-responsive approach is one that moves beyond only identifying or raising awareness of gender issues ("do no harm"), to taking measures to actively address gender inequalities ("do better"). As stated by the International Union for Conservation of Nature (IUCN), gender-responsive planned actions should integrate measures for promoting gender equality and women's empowerment, foster women's inclusion and provide equal opportunities for women and men to derive social and economic benefits. Through this approach women may move from being considered only as vulnerable stakeholders, to being valued as active biodiversity stewards, managers and agents of change.

³⁹ Informal Group Report, CBD/POST2020/OM/2022/1/2: page 51

communities, and to secure their rights to land and resources, and on the participation of youth and groups in vulnerable conditions. Target 21 also needs to also secure access to justice and strengthen practical measures to support and protect human rights defenders in environmental matters.

The Informal Group was concerned about the CBD's scope to address the issue of access to justice for human rights and environmental defenders and for IPLCs. Access to justice is a fundamental principle of the rule of law and should not be considered to be outside the scope of any international legal instrument. The Nagoya Protocol, Art. 18(3) specifically refers to access to justice, requiring member states to take measures regarding access to justice. There is already precedent for the idea that access to justice is important in ensuring the effective implementation of environmental laws and policies (e.g., Aarhus Convention, Art. 9(3) (requiring that "members of the public have access to administrative or judicial procedures to challenge acts and omissions ... which contravene provisions of its national law relating to the environment")). Specifically committing states to ensuring access to justice for rights defenders only reiterates what is already required of them under basic principles of rule of law but also recognizes the importance of access to justice for the implementation of the GBF.

Gender equality and the rights of women: Target 22

Endorsing the position of the Women's Caucus to the CBD, we support their recommendation for text as provided here:

Target 22

Ensure gender equality in the implementation of the global biodiversity framework and the achievement of the three objectives of the convention including by recognizing equal rights and access to land and natural resources of women and girls and their full, informed, and effective participation at all levels of policy, implementation and decision-making related to biodiversity.

We also note that the proposal from the Informal Group retains proposed inclusion of language regarding rights to lands and natural resources. We support the retention of this language.

[Secure gender equality in the] implementation of the framework by ensuring that women and girls have equal opportunity and capacity to contribute to the three objectives of the Convention including [by recognizing equal rights and access to land and natural resources of women and girls and] their full, equitable, meaningful, and informed participation and leadership at all levels of action, engagement, policy and decision-making related to biodiversity.⁴⁰

Rationale:

The economic and ecological agency of women, in particular of indigenous and rural women, farmers, fishers, producers, and many other women is often not recognized in access, control, use, 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. The accountable and effective implementation of the Global Biodiversity Framework requires the support of a stand-alone target on gender equality and recognition of the rights of women.

Other text components

The COP15 Decision

The decision at the Conference of the Parties adopting the post-2020 global biodiversity framework should recall the UN General Assembly Resolution on the right to a clean, healthy, and sustainable environment, **explicitly refer to a Human Rights Based Approach to implementation** and urge Parties to mainstream such an approach in their national strategies and action plans.

Further, the COP decision could have additional text asking the Executive Secretary and the Secretariat, with the support of relevant organisations including OHCHR and UNEP, to develop further guidance on the implementation of an HRBA.

Emphasizing that the post-2020 global biodiversity framework should be implemented in a manner consistent with existing human rights obligations, including the right to a clean, healthy, and sustainable environment, and with full respect for existing rights of Indigenous Peoples and local communities in accordance with the UN Declaration on the Rights of Indigenous Peoples and international human rights law,

18. [Requests][Invites] the Global Environment Facility to provide adequate, [timely and predictable], accessible and gender-responsive financial support to all eligible developing countries in an objective manner, free of political considerations, **and directly to Indigenous Peoples and local communities, women and other rights-holders** with a view to supporting their efforts to plan for and implement the post-2020 global biodiversity framework as well as for monitoring of, reporting on, and review and enhancement of its implementation;

20. **bis Urges Parties, other Governments and relevant institutions and organisations to implement the post-2020 global biodiversity framework using a human rights-based approach by ensuring full, effective and equitable participation in decision making of Indigenous Peoples and local communities, women, girls, youth and other people in vulnerable situations, by promoting intergenerational equity and gender equality, and by respecting the collective rights of Indigenous Peoples under UNDRIP and other human rights international instruments including the right to a clean, healthy and sustainable environment;**

22. *Reaffirms* its expectation that Parties and other Governments will ensure that the rights of indigenous peoples and local communities are respected and given effect to in the implementation of the post-2020 global biodiversity framework;

30. *Requests* the Executive Secretary:

(c) [To develop, taking into account the decisions of the Conference of the Parties at its fifteenth meeting and previously adopted programmes of work, guidance materials for Parties, **from a rights-based approach on the use of human rights-based approaches, including and** the identification of **other** possible actions and best practices for reaching the goals, targets and other elements of the post-2020 global biodiversity framework;]

