

# AMNESTY INTERNATIONAL

## RECOMMENDATIONS TO STATES AHEAD OF COP 15 (CONVENTION ON BIOLOGICAL DIVERSITY) 30 X 30 PROPOSAL

The Global Biodiversity Framework, to be negotiated at the 15<sup>th</sup> Conference of Parties (COP) of the Convention on Biological Diversity (CBD), contains a proposal to commit states to declaring 30% of the Earth's land and sea mass as protected areas for conservation purposes, by 2030. This is the so-called 30 x 30 proposal.

Amnesty International's position is that, while the proposal has the potential to be a significant step forward in protecting biodiversity on the planet, and at the same time contributing to the fight against the climate crisis, it also presents a grave risk to the rights of Indigenous Peoples. The livelihoods and rights of subsistence land-users will also be significantly threatened. This is because of the devastation that the implementation of protected areas has wreaked among these peoples and communities in many cases. The organization urges parties to the CBD that the protected areas target must not be included in the Global Biodiversity Framework unless robust protections for the rights of Indigenous Peoples, and for the rights of subsistence land-users, as currently enshrined in international human rights law, are hard-wired into the text.

### KEY MESSAGES

- Over the years, millions of people have experienced violence, forced evictions and the destruction of their culture and way of life in the context of protected areas;
- The CBD safeguards and targets currently in force do not sufficiently protect their rights;
- Robust protections of the rights of Indigenous Peoples, and the rights of subsistence land-users, must be built into the Operative Paragraph of Target 3 on protected areas;
- Provisions in the text which call into question states' commitments to legally recognised human rights, by making them subject to national legislation, must be removed;
- Indigenous Peoples' right to be consulted in order to obtain their free, prior and informed consent on any decision affecting them, means that the safeguards demanded by them at the CBD must be included.

## WHAT DOES THE GLOBAL BIODIVERSITY FRAMEWORK PROPOSE?

Target 3 of the draft Global Biodiversity Framework (GBF)<sup>1</sup> proposes to commit states parties to the Convention on Biological Diversity (CBD) to declaring at least 30% of the world's land and sea masses as protected areas "and other effective area-based conservation measures".

In September 2020 Amnesty International co-signed, along with 172 other NGOs and academics, a joint letter calling on the parties to the CBD to radically strengthen the protections of the rights of people affected by protected areas in what was then the "zero-draft" GBF.<sup>2</sup> The zero-draft document at that time required states to "respect [Indigenous peoples'

<sup>1</sup> Report of the Open-ended Working Group on the Post-2020 Global Biodiversity Framework on its third meeting (part II), CBD/WG2020/3/7, <https://www.cbd.int/conferences/post2020/wg2020-03/documents>

<sup>2</sup> "NGO concerns over the proposed 30% target for protected areas and absence of safeguards for Indigenous Peoples and local communities", 28 September 2020, <https://www.ldh-france.org/wp-content/uploads/2020/09/en-fr-es-it-de-200928.pdf>

and local communities'] rights over lands, territories and resources" (although not directly linked to the protected areas target) but did not provide for free, prior and informed consent in relation to protected areas.<sup>3</sup> In March 2022, ESCR-Net, of which Amnesty International is a member, urged that the failings in the text be remedied.<sup>4</sup> Since that time only limited progress has been made. In the current draft, much of the language, including most of the language protecting human rights – and notably the language requiring free, prior and informed consent – is still in square brackets. This means it has not yet been agreed and may still be deleted.<sup>5</sup> Conversely, the text "in light of national circumstances and with respect for national legislation", also in square brackets, is highly problematic as States may interpret it as allowing them to avoid their international human rights law obligations.

A protected area is defined in the Convention as a "geographically defined area which is designated or regulated and managed to achieve specific conservation objectives".<sup>6</sup> In 2008, the International Union for the Conservation of Nature (IUCN), in consultation with the CBD Secretariat, further defined it as a "clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values".<sup>7</sup>

An "other effective area-based conservation measure" or OECM is defined by the IUCN as a "geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values." These can include "territories and conserved areas governed by any of four governance types, i.e., by governments, private actors, indigenous peoples and local communities, and shared governance arrangements".<sup>8</sup>

Evidence shows that it is territories governed by Indigenous Peoples, or by subsistence land-users, that offer the best hope of furthering conservation goals. The highly authoritative Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), which informs negotiations both at the CBD COP and its "bigger twin", the UNFCCC COP, concluded that "[n]ature is generally declining less rapidly in indigenous peoples' land than in other lands, but is nevertheless declining", and attributes that decline to external factors such as "growing resource extraction, commodity production, mining and transport and energy infrastructure". The report also finds that "Some climate change mitigation programmes have had negative impacts on indigenous peoples and local communities". Finally, the report finds that these negative external factors "also challenge traditional management, the transmission of indigenous and local knowledge, the potential for sharing of benefits arising from the use of, and the ability of indigenous peoples and local

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<sup>3</sup> <https://www.cbd.int/doc/c/abb5/591f/2e46096d3f0330b08ce87a45/wg2020-03-03-en.pdf>, Target 21. Note the position of many representatives of Indigenous Peoples, and of the UN Special Rapporteur on the Rights of Indigenous Peoples, opposing the conflation of the categories of Indigenous Peoples and local communities; see José Francisco Calí Tzay: Protected areas and indigenous peoples' rights: the obligations of States and international organizations, A/77/238, July 2022, p 6.

<sup>4</sup> "The Right to Land and Tenure Rights must be central to the Post 2020 Global Biodiversity Framework", [https://www.escr-net.org/sites/default/files/cbd\\_solidarity\\_letter\\_en.pdf](https://www.escr-net.org/sites/default/files/cbd_solidarity_letter_en.pdf), March 2022

<sup>5</sup> Target 3: [Ensure that][ecosystems, habitats and the biodiversity they contain are maintained and restored by conserving][enable] at least [30 per cent] [globally][, at the national level,] of [terrestrial, [and] [freshwater][inland water] and marine [and coastal] areas] [land areas and of [sea][marine]areas][the ocean][,respectively]], [inclusive of areas that are already protected and conserved,] especially areas[, at the national level,] of particular importance for biodiversity and [ecosystem [functions][services] and] [its contributions to people], are [effectively] conserved [and sustainably used] through [effectively][well-] managed and equitably governed, ecologically representative and well-connected [systems][networks] of protected areas and other effective area-based conservation measures [that prohibit environmentally-damaging activities], [including indigenous territories, when applicable,] and integrated into the wider land[-][scapes] and seascape [and national and regional ecological networks], [while ensuring that sustainable use of these areas, if in place, contributes to biodiversity conservation,] [recognizing the contribution of IPLCs to their management, and ensuring the rights of IPLCs in accordance with UNDRIP and international human rights law][[bearing in mind][recognizing] that national contributions to this global target will be decided according to national priorities and capabilities, in accordance with the principles of the Rio Declaration, with adequate safeguards for the rights of IPLCs and the rights to development, will not affect the rights or ability of all Parties to access financial and other resources required for the effective implementation of the whole GBF [giving effect to][respecting][ensuring][with full respect for human rights, including][fully respecting and upholding] the rights of Indigenous Peoples and local communities, [including their land and territories][, including the right to prior and informed consent, free prior and informed consent and approval][, in light of national circumstances and with respect for national legislation]

<sup>6</sup> <https://www.cbd.int/doc/legal/cbd-en.pdf>, Art. 2.

<sup>7</sup> "Protected Areas", in "Biodiversity A-Z", United Nations Environment Programme, <https://www.biodiversitya-z.org/content/protected-areas>

<sup>8</sup> <https://portals.iucn.org/library/sites/library/files/documents/PATRS-003-En.pdf>, p. 1, p. 3.

communities to conserve and sustainably manage, wild and domesticated biodiversity that are also relevant to broader society.”<sup>9</sup>

A 2020 study by Rights and Resources International found that “[Indigenous peoples, local communities, and African-descendants] effectively conserve forests, ecosystems, and biodiversity through collective ownership, governance strategies, and traditional ecological knowledge ... [Indigenous peoples, local communities, and African-descendants] make investments equal to a quarter of global investment in conservation and manage and protect biodiversity efficiently at a lower cost and without the support received by conservation organizations ... Equitable alliances between conservation actors and [Indigenous peoples, local communities, and African-descendants] prevent deforestation and land use changes better than protected areas managed exclusively by public or private entities.”<sup>10</sup> Indigenous Peoples’ positive track record as conservators can be explained by the traditional knowledge of their environments that they hold, built up over many generations, their customary sustainable stewardship of wild species, and the fact that significant environmental damage or biodiversity reduction on their lands can jeopardize the survival of their unique culture and identity.<sup>11</sup>

This suggests that a highly promising way forward for biodiversity conservation would be for states to work with Indigenous Peoples to strengthen their role in the governance of their lands – particularly through processes to recognize legal land title, supported by the state with the necessary financial, technical and legal resources – tackle the negative external factors that inhibit conservation and strengthen traditional knowledge and its transmission to new generations.

Indigenous Peoples in some cases wish to declare their lands as protected areas for conservation purposes – with or without state support or recognition.<sup>12</sup> The GBF, under the concept of OECMs, allows for the inclusion of territories managed by Indigenous Peoples, and this has huge potential to promote biodiversity and increase carbon sequestration. However, the process for designating OECMs for the purposes of the GBF remains under state control, while safeguards to ensure Indigenous Peoples’ free, prior and informed consent are still in question.

Furthermore, there is a large financial incentive for states – and in some cases private companies – to retain control of protected areas, rather than allowing them to be governed by the people who live on them. Carbon off-setting projects offer the owners of protected areas the opportunity to monetize their conservation efforts, by making deals with polluting countries or companies that involve being paid for the carbon sequestration they do as a way to offset the emissions that the polluting country or company continue to produce – thus allowing them to claim they are implementing the Paris agreement without actually reducing emissions.<sup>13</sup> There is therefore a financial incentive for the state not to recognize the land title of Indigenous Peoples, or of subsistence land-users, or to support them in declaring their territory as a self-governed OECM for the purposes of the GBF, as it would strengthen their case for at least a share, if not all of the income from such initiatives. Even if they have land title they might find themselves cheated out of the proceeds – as one community in Mexico discovered.<sup>14</sup>

## WHAT IS THE HUMAN RIGHTS TRACK RECORD OF PROTECTED AREAS?

In its research on protected areas in Cambodia, Kenya, Nepal, Tanzania and Uganda, Amnesty International has documented large-scale human rights violations, including forced evictions from ancestral lands, destruction of cultural practices, arbitrary arrests of protesting community members, denial of the right to livelihoods, health and education, and failure to obtain free, prior and informed consent.<sup>15</sup> A report by the NGO Minority Rights Group International on Kahuzi-

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<sup>9</sup> IPBES, “Summary for policymakers of the global assessment report on biodiversity and ecosystem services”, <https://ipbes.net/global-assessment>, p. 14

<sup>10</sup> Rights And Resources Initiative, “Rights-Based Conservation: The path to preserving Earth’s biological and cultural diversity?”, <https://rightsandresources.org/publication/rights-based-conservation/>, November 2020, p 5.

<sup>11</sup> Amnesty International, “Any Tidal Wave Could Drown Us: Stories from the Climate Crisis” (case studies: Indigenous Innu People in Pessamit, Quebec, Canada, and Indigenous Peoples in Yakutia, Russian Federation), forthcoming publication.

<sup>12</sup> The Narwhal, “The Mamalilikulla’s long journey home”, 24 September 2022, <https://thenarwhal.ca/ipca-mamalilikulla/>.

<sup>13</sup> Stop Burning Our Rights, p. 61-63; Amnesty International, “COP26: States risk bulldozing human rights of people most affected by the climate crisis”, <https://www.amnesty.org/en/wp-content/uploads/2021/11/IOR4049812021ENGLISH-1.pdf>, 11 November 2021

<sup>14</sup> Bloomberg, “BP Paid Rural Mexicans a “Pittance” for Wall Street’s Favorite Climate Solution”, June 27, 2022, <https://www.bloomberg.com/features/2022-carbon-offset-credits-mexico-forest-bp/>

<sup>15</sup> “Kenya: Families torn apart: Forced eviction of Indigenous people in Embobut forest”, May 2018, <https://www.amnesty.org/en/documents/afr32/8340/2018/en/>; “Nepal: Violations in the name of conservation”, August 2021 <https://www.amnesty.org/en/documents/asa31/4536/2021/en/>; “Uganda: 13 Years in limbo: Forced evictions of the Benet in the name of

Biega National Park in the Democratic Republic of Congo documented that “joint contingents of park guards and Army soldiers burned entire villages to the ground, employed heavy weapons such as mortars and rocket-propelled grenades to shell villages, indiscriminately fired on, killed and maimed unarmed civilians, subjected dozens of Batwa women to group rape at gunpoint, and were described by eyewitness sources as burning several Batwa alive and mutilating Batwa corpses, sometimes reportedly taking appendages as trophies.”<sup>16</sup> Between 2019 and 2020 over 50 Indigenous Batwa were arrested, mostly on charges of “illegal occupation” of their ancestral lands.<sup>17</sup>

The forced removal of people from protected areas, and the military force used to keep them from returning, is a model that has been termed “fortress conservation”. A UN expert defined fortress conservation as “based on the following assumptions: protected areas should be created and governed by States; the goal of protected areas should be strict nature preservation with emphasis on biodiversity conservation and protected area management required protected areas to be uninhabited and without human use of natural resources. In its worst forms, coercive force was considered legally and morally justified to remove resident peoples and protect biodiversity.”<sup>18</sup> The resulting dispersal has not only resulted in catastrophic impoverishment, but has meant that the unique identity, culture and language of affected Indigenous Peoples may disappear altogether.<sup>19</sup> A 2009 study estimated that between 10.8 and 173 million people had to that point been displaced by conservation projects.<sup>20</sup>

## HOW HAVE INDIGENOUS PEOPLES BEEN ABLE TO PARTICIPATE IN THE GBF?

In a response to the letter co-signed by Amnesty International in March 2022, mentioned above, the Co-Chairs of the GBF process and the Executive Secretary of the Convention on Biological Diversity stated that “the Convention’s voluntary fund supported 14 IPLCs [Indigenous peoples and local communities] to participate in the second meeting of the Open-ended Working Group on the Post-2020 Global Biodiversity Framework from 24-29 February 2020, in Rome. A total of thirty indigenous peoples and local community representatives participated in the meeting. Additionally, as per our usual practice, on 23 February 2020, a preparatory meeting was held for the International Indigenous Forum on Biodiversity (IIFB), to build capacity of the IPLCs to participate in the post-2020 global biodiversity framework ... The Secretariat ... remains in almost daily contact with the IIFB to identify opportunities for input, dialogue and capacity building, throughout the process. The IIFB is officially recognized by the Conference of the Parties and is best placed to lead these issues in the post-2020 process.”<sup>21</sup>

However, in order to fulfil the obligation to consult with Indigenous Peoples in order to obtain their free, prior and informed consent (FPIC), Indigenous representatives must not only be present, but their presence and inputs must translate into influence over the outcomes of consultations. In situations where the human rights impact on Indigenous Peoples is particularly severe – as has been demonstrated to be the case with protected areas – decisions cannot go ahead without the FPIC of Indigenous Peoples.<sup>22</sup> The protections of Indigenous Peoples’ rights in the current GBF text are the result of IIFB demands; however they are in square brackets and are therefore not guaranteed to remain in the final agreed text.

## CONCLUSION

While the 30 x 30 proposal has the potential to be a significant step forward in protecting biodiversity on the planet, and at the same time contributing to the fight against the climate crisis, it also presents a grave risk to the rights of peoples affected by protected areas. Arguably, it is the CBD’s weak or non-existent protections for the rights of Indigenous

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conservation”, November 2021, <https://www.amnesty.org/en/documents/afr59/4138/2021/en/>; “Tanzania: Halt brutal security operation in Loliondo”, November 2021, <https://www.amnesty.org/en/latest/news/2022/06/tanzania-halt-brutal-security-operation-in-loliondo/>; Cambodia: ‘Our traditions are being destroyed’: Illegal logging, repression, and Indigenous peoples’ rights violations in Cambodia’s protected forests, January 2022, <https://www.amnesty.org/en/documents/asa23/5183/2022/en/>.

<sup>16</sup> “To Purge the Forest by Force: Organized violence against Batwa in Kahuzi-Biega National Park”, <https://minorityrights.org/publications/pnkb/>, April 2022, p. 3.

<sup>17</sup> To Purge the Forest by Force, p. 6.

<sup>18</sup> Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, A/71/229, 29 July 2016, para. 34.

<sup>19</sup> “Kenya: Families torn apart: Forced eviction of Indigenous people in Embobut forest”, pp 56-58.

<sup>20</sup> A. Agrawal and K. Redford, “Conservation and Displacement: An Overview”, in *Conservation & Society*, 2009, Vol. 7, No. 1 (2009), p. 4.

<sup>21</sup> Letter to Joe Eisen, Executive Director of Rainforest Foundation UK, from Basile van Havre, on behalf of the Co-Chairs of the Post-2020 Global Biodiversity Framework and Elizabeth Maruma Mrema, Executive Secretary, Convention on Biological Diversity, 22 September 2022, Ref. SCBD/SSSF/AS/JS/TM/89114

<sup>22</sup> Report to the General Assembly on the Rights of indigenous peoples, Special Rapporteur on Rights of Indigenous Peoples, A/66/288 (2011), para. 84.

Peoples, and for those of subsistence land-users, that have contributed to a situation where the rightful owners of lands, who have been maintaining a far more sustainable relationship with those lands than people who live in industrialized areas, can be evicted without due process, consultation or compensation. In 2010, a first, more modest protected areas objective was included in the Aichi Biodiversity Targets, agreed by the Conference of Parties of the CBD. This called for at least 17% of terrestrial and inland water, and 10% of coastal and marine areas, to be protected for conservation purposes by 2020.<sup>23</sup> The targets included only very weak protections for affected peoples, making no mention of the right to ancestral lands, or to consultations in order to obtain free, prior and informed consent, and were not directly linked to the protected area target. Even these weak targets were made “subject to national legislation”, rendering their applicability highly problematic in countries with legislation which runs counter to international standards on the rights of Indigenous Peoples. Furthermore the language used referred to “indigenous and local communities”, terminology which is unacceptable to Indigenous Peoples as it fails to recognize their status as peoples and therefore their right to self-determination.<sup>24</sup>

In its worst forms, “fortress conservation”, funded and in some cases directly implemented by donors and conservation NGOs from the world’s richest countries, transfers the burden of “solving” the climate crisis from those richest countries, most responsible for causing it, to some of the poorest and most marginalized peoples in the developing world. At the same time, carbon off-setting allows rich countries and companies to avoid their responsibility to reduce emissions in real terms. In this way a situation of global injustice continues to be sustained and promoted, termed by academics as a form of neo-colonialism.<sup>25</sup>

It is therefore imperative that robust protections of the rights of Indigenous Peoples, and those of subsistence land-users, are built into Target 3 on protected areas and OECMs. It is further necessary to ensure that the participation of Indigenous representatives in the negotiations is not tokenistic, but actually translates into concrete outcomes in the text of the GBF.

## RECOMMENDATIONS

The organization urges all parties to the CBD to ensure that:

- Text requiring full respect for the rights of Indigenous Peoples, in accordance with the UN Declaration on the Rights of Indigenous Peoples and international human rights law, is included **in the operative paragraph of Target 3**, including -
  - the right to their lands and territories
  - the right to be fully and effectively consulted in order to obtain their free, prior and informed consent
  - the right to fully participate in conservation, including by declaring their territories as conservation areas, and to receive from the state, where requested, adequate funding, at a level corresponding to that invested in state-run conservation initiatives<sup>26</sup>;
- Text requiring full respect for the rights of subsistence land-users, in accordance with international human rights law, is included **in the operative paragraph of Target 3**;
- The text “in light of national circumstances and with respect for national legislation” is **not** included;
- The participation of representatives of Indigenous Peoples in the GBF negotiations is genuine, effective, culturally appropriate and rights-compliant; this means that, in light of the enormous impact that Target 3 will have on their right to lands and natural resources, to self-determination, and to culture, the final text must only be agreed with their free, prior and informed consent.

Failing this, Target 3 on protected areas and OECMs should **not** be included in the GBF.

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<sup>23</sup> Convention on Biological Diversity, Aichi Biodiversity Targets, <https://www.cbd.int/sp/targets/>, 2010, Target 11.

<sup>24</sup> Aichi Biodiversity Targets, Target 18.

<sup>25</sup> Aby Sène, “Western Nonprofits Are Trampling Over Africans’ Rights and Land”, in Foreign Policy, <https://foreignpolicy.com/2022/07/01/western-nonprofits-african-rights-land/>, July 2022.

<sup>26</sup> International Indian Treaty Council 47th Anniversary Conference, “Conference Resolution on Protected Areas”, March 2022, para. 8.