

Template for submitting comments on the draft guidance for Integrating Human Rights in NBSAPs (OHCHR)

Please submit comments by **26 May 2023** to the following email address: benjamin.schachter@un.org (cc: secretariat@cbd.int)

In submitting comments, you may wish to consider the following questions:

- Does the guidance capture the main human rights issues which should be reflected in NBSAPs?
- Does the guidance capture the main issues related to the rights of people in vulnerable situations? Are there gaps in terms of how their rights should be reflected in NBSAPs?
- Do you have any other comments on how to improve this guidance and its uptake and accessibility?

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Please provide general comments on the draft guidance below.	
<p>This document might benefit from a final copy edit before its release to ensure consistent use of punctuation, style, and abbreviations.</p> <p>The document would benefit from the inclusion of hyperlinks in the references so that users can more easily access relevant sources.</p> <p>Perhaps consider expanding on the references to UN related documents (for example, UNGPs, Our Common Agenda, Common Approach to Biodiversity, UNSG Call to Action) for those readers that might not be aware of these documents and provide them with easy access to the relevant documents (hyperlinks).</p>	
Please provide other comments indicating the section below.	
Section	Comments
0	Overall, it would be useful to clarify the audience for this document as well as its intended use. If the guidance is intended for those leading on the process for the revision or update of NBSAPs, then some of the information provided would not be needed and, instead, more practical suggestions on

	how to action the ideas provided, would be more helpful (e.g. who to work with for those to be implemented).
1	Reference to “their NBSAPs” is inappropriate as UN Country Teams do not have NBSAPs. Suggest deleting “their”.
1.1	We suggest to reference the full title for the “IPBES values report”
1.1	Where reference to the 15 th meeting of CBD COP is made, the term “agreed” in relation to the Kunming-Montreal Global Biodiversity Framework should be replaced with “adopted”.
1.1	A reference should be added to CBD COP decision 15/4, the Kunming-Montreal Global Biodiversity Framework. The subsequent footnote referring to section C of that document might then make more sense.
1.2	The user of the guidance is not clear. If it is intended for those responsible for revising/updating NBSAPs, then a definition of these would not be needed and instead it would be useful to go into much more detail in terms of the integration of human rights within them.
1.2	Is the sentence “To date 193 out of 196 (99%) parties have developed at least one NBSAP” needed?
1.2	Reference is made to the “CBD’s post-2020 global biodiversity framework”. Firstly, this is not the correct title, and secondly the abbreviation “GBF” has already been introduced and used above. <i>Can this be checked elsewhere in the document as well.</i>
1.3	The text refers to business enterprises having a ‘duty to protect human rights’. Noting that ‘duty’ is the language of obligation, it might be more appropriate to refer to the ‘responsibility to protect’. This is in line with the language of the UNGPs.
2	In describing what Parties have committed to the reference provided in the footnote 16 is a page on the CBD website. Given the nature of this guidance document we are providing comment on it would be far better to reference the articles and any decisions which are the actual mandate that Parties are responding to. <i>This comment may also apply elsewhere, wherever possible the official source should be quoted, not an unofficial summary.</i>
2	In the second paragraph perhaps re-phrase “contributing to their poor implementation” or provide evidence (hyperlinks to sources)
2	On the final bullet point, reference could be made to the relationship to ongoing planning at the sub-national level, as NBSAPs are living documents and not all planning is necessarily done at the time the NBSAP is developed.
3	Perhaps consider grouping the bullet points under “general guidance” so that the information is easier to digest
3	Bullet point one addresses explicitly referencing international and national human rights laws. Perhaps this could be further strengthened by adding something like ‘identifying gaps in national law where additional human rights protection would promote biodiversity’.
3	<i>‘Include efforts to respect, protect and fulfil the human right to a clean, healthy and sustainable environment, including with respect to</i>

	<i>biodiversity.</i> Other bullet points are a bit more assertive. Perhaps ‘Explicitly include efforts...’
3	‘ <i>Mainstream a human rights-based approach to biodiversity in all sectoral plans including those with potential high impacts on human rights such as agriculture, fishing, forestry, infrastructure, energy and extractives.</i> ’ Noting links in the introduction and the bullet point that follows, it might be relevant to directly reference ‘the green economy’, ‘emerging sectors’ or similar.
3	In line with the approach of the UNGPs it may be valuable to include an additional bullet point along the lines of ‘ensure that access to effective remedy is available for those whose rights are adversely affected in the context of biodiversity loss’.
4	Please consider making reference to the relevant IPBES reports by using the full title instead of “most recent” IPBES report
4.2	This section could be improved by including a specific obligation for all stakeholders to be able to contribute to data provision (as well as data access). It sort of covers this in this sentence ‘ <i>Provide for timely and adequate notice to the public of opportunities to participate in processes related to NSBAPs and reasonable timeframes for participation</i> ’, but could be made clearer by adding in a separate sentence in section 4.2, for example ‘ <i>Guarantee the right to provide/contribute information in the context of biodiversity, its sustainable use and the equitable sharing of the benefits of genetic diversity.</i> ’
4.2	The term ‘meaningful’ is used in the title to this section; it would be useful for this to be reiterated in the text that follows (i.e. referring to ‘meaningful participation’ rather than only ‘participation’).
4.3	‘ <i>Guarantee access to justice and effective remedy for persons, groups and peoples in vulnerable situations.</i> ’ Suggest ‘... effective remedy for all persons including persons, groups and peoples in vulnerable situations.
4.3	‘ <i>Ensure accountability and effective remedy for biodiversity-related human rights harms including those caused by business enterprises</i> ’ Suggest a clarification e.g. ‘... in any part of their operations ’.
6	The section includes specific sets of obligations for Indigenous Peoples, gender equality, children and youth and Environmental Human Rights Defenders (EHRDs). Perhaps also consider making reference to local communities, as they are also vulnerable groups in many countries
6.1	Consider whether reference should be made to the various voluntary guidelines and codes of conduct that have been developed in the context of the CBD and the work of the Open-ended Working Group on Article 8j (see https://www.cbd.int/convention/wg8j.shtml).
6.1	This section mentions ‘protected areas’ a few times. It should probably also refer to other effective area-based conservation measures or OECMs. The text could be modified to read ‘protected areas and OECMs’ given that all of these principles apply to the establishment of OECMs as well: ‘ <i>participation by Indigenous Peoples and other affected communities</i> ’ and ‘ <i>their management and governance regimes should be based on the participation of the affected Indigenous Peoples and, as required by human</i>

	<i>rights norms, standards and principles, also their free, prior and informed consent.'</i>
6.1	It's great that there is a sentence explicitly stating ' <i>Prohibit conservation measures that forcibly displace Indigenous Peoples</i> '. Perhaps also consider to include another sentence that makes reference to local communities
6.2	The correct reference for the "Gender Plan of Action" adopted at COP 15 is decision 15/11 (https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-11-en.pdf). The current reference in the footnote is to the draft decision which is now superseded.
6.2	Please check the reference in footnote 38. What is the reference to "6NR Technical Guidance: Stakeholder engagement"?
7	<i>'Identify and promote accountability for the duties of businesses'</i> . Suggest 'for the responsibilities of business'
7	<i>'Identify and promote accountability for the duties of businesses to prevent business-related human rights harms from biodiversity loss under the UNGPs</i> . Perhaps add something like 'throughout their operations', to further clarify this position.