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The legal context for the protection of marine biological diversity in the Southwest Caribbean

El contexto legal para la protección de la diversidad biológica marina en el suroeste del Caribe



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Resumen

Los ecosistemas marinos biodiversos, que precedieron y posibilitaron la vida terrestre, siguen siendo fundamentales para su supervivencia y desarrollo. Los puntos críticos de biodiversidad, como el Caribe, se encuentran entre los ecosistemas marinos más complejos y biodiversos del planeta. Estas áreas son los territorios ancestrales de miles de personas y comunidades, Indígenas, Afrodescendientes y otras, que dependen directamente de los recursos naturales del mar para su sustento, así como para el mantenimiento de sus culturas y formas de vida. Sin embargo, estos ecosistemas enfrentan amenazas provenientes del desarrollo costero, el turismo, la contaminación, la sobrepesca y los efectos del cambio climático, los cuales están provocando cambios ambientales a un ritmo mucho más rápido que la capacidad de las estructuras de gobernanza existentes para responder. En este contexto, este artículo revisa el régimen multilateral que regula la conservación y el uso sostenible de la biodiversidad y los ecosistemas de los cuales depende, y examina el grado de implementación nacional de las normas globales. Además, el artículo evalúa hasta qué punto se reflejan en estos marcos los intereses de aquellos cuya vida depende más directamente del acceso y la participación en los beneficios derivados del uso del mundo natural.

Palabras clave:

Biodiversidad; compartir acceso y beneficios; gobernanza de recursos; ley internacional; pueblos Indígenas.

Abstract

Biodiverse marine ecosystems, which preceded and enabled terrestrial life, continue to be fundamental to its survival and flourishing. Biodiversity hotspots, such as the Caribbean, are among the most complex and biodiverse marine ecosystems on the planet. These areas are the ancestral territories of thousands of people and communities—Indigenous, Afro-descendant, and others—who depend directly on the natural resources of the sea for their livelihoods, as well as for the maintenance of their cultures and ways of life. However, these ecosystems face threats from coastal development, tourism, pollution, overfishing, and the effects of climate change, which are driving environmental changes at a pace far beyond the capacity of existing governance structures to respond. In this context, this article reviews the multilateral regime governing the conservation and sustainable use of biodiversity and the ecosystems on which it depends and examines the degree of national implementation of global norms. The article also assesses the extent to which the interests of those whose lives depend most directly on access to and sharing in the benefits derived from the use of the natural world are reflected in these frameworks.

Keywords:

Access and benefit sharing; biodiversity; Indigenous Peoples; international law; resource governance

Introduction

Biodiverse marine ecosystems preceded and enabled terrestrial life and remain critical to its survival and flourishing. The Caribbean encompasses some of the most complex and biodiverse marine ecosystems on the planet, with over 12,000 species reported (Miloslavich *et al.*, 2010). The coasts and islands around the southwest Caribbean are home to thousands of people and communities (Indigenous, Afro-descendant, and others) who depend directly on the natural resources of the sea for their livelihoods, as well as for the maintenance of their cultures and ways of life. In Honduras alone it has been estimated there are over 160 fishing communities and over 10,000 fishers (Funes *et al.*, 2015). However, threats from coastal development, tourism, pollution and overfishing, as well as the effects of climate change, are driving environmental change at a rate far beyond the response capacity of existing governance structures.

In this context, this article argues that the multilateral regime governing the conservation and sustainable use of biodiversity—and the ecosystems upon which it relies—must more effectively engage with the interests of those whose lives most directly depend on accessing and sharing the benefits derived from the natural world. It emphasizes the need for these interests to be recognized and acknowledged, particularly in how states implement their national commitments and engage with these communities. A central focus is how the goals agreed upon under the UN Convention on Biological Diversity (CBD) process were reached, and how they reflect the interests of Indigenous Peoples and Local Communities (IPLCs).¹ Although numerous international environmental agreements have been made since the 1950s with implications for biodiversity regulation – agreements covering particular ecosystems like wetlands (RAMSAR) or the deep ocean (UNCLOS), for example, or particular issues like intellectual property rights (WIPO) and plant genetic resources (UPOV and FAO)² – this paper focuses on the CBD because it acknowledges and harmonizes with these existing processes into a comprehensive approach, now integrated into the Global Biodiversity Framework (GBF) agreed at the CBD COP15 in 2022. The UN CBD is considered «the central

intergovernmental biodiversity process» exemplifying a new era in global biodiversity governance that is more integrated and inclusive (Visseren-Hamakers and Kok, 2022). Indeed, many states are not signatories (parties) to all agreements, while nearly all are party to the CBD. Finally, the paper also argues that the CBD is much more receptive to the participation and interests of IPLCs than other international environmental processes, and since 2010 the CBD and subsequent agreements made by the 196 state parties are now clearly informed by Indigenous perspectives which have become normalized as expected principles for national planning.

The paper is divided into three parts. First, it introduces the CBD and related instruments that comprise the international regime governing the conservation and use of global biological resources, highlighting the obligations they impose on State Parties. Next, it discusses in more detail key elements of the regime that are most relevant to the interests of IPLCs, focusing on provisions that recognize their cultural, economic, and other rights in relation to the natural world, including the right to access biological resources and share in the benefits derived from their commercial use. The paper concludes by examining the customary and continuing practices, governance systems, and strategies of IPLCs in the southwest Caribbean subregion, critically reviewing the regional progress in implementing the goals of the CBD. It argues for rights-based and regional cooperation to support IPLCs in further pursuing their rights and interests.

I.

The global system for environmental governance began to emerge at the UN World Conference on Environment and Development in 1987 and was consolidated at the 1992 UN Conference on Environment and Development (UNCED) in Rio de Janeiro. The legal and institutional outcomes in the «Rio Declaration on Environment and Development» represent the world's best effort to create a global regime that could respond to increasingly evident and problematic environmental degradation and ensure the conservation and sustainable use of natural resources, while addressing global

¹ The term «Indigenous Peoples and Local Communities (IPLCs)» was first adopted in 2014 and is now used in various venues within the United Nations system as shorthand for the many human communities that have «communal ownership and/or governance over lands, whether legal or de facto, and have customary access and strong social and cultural links to their lands and territories» (Kothari *et al.*, 2014). However, it is important to recognize that this term does not have any formal status in defining or limiting Indigenous Peoples' rights under international law (UNEP/CBD/COP/DEC/XII/12, pp. 15-16). Many Indigenous leaders, communities, and organizations have expressed opposition to the term IPLCs (Statement by the Special Rapporteur/UN Expert Mechanism on the Rights of Indigenous Peoples 2023; Cultural Survival/First Peoples Worldwide, 2022), mainly due to its conflation of Indigenous peoples with the vague concept of «local communities» which has no formal status in international law (UNEP/CBD/WG8.1/7/8/Add.1). While international jurisprudence is evolving regarding the meaning of the term «local communities» and the rights such communities may have, developing a consensus will be critical for ensuring the integrity of Indigenous Peoples' participation and interests in environmental regimes like the CBD (Jonas, 2020).

² The Convention on Wetlands of International Importance especially as Waterfowl Habitat (RAMSAR, 1971); United Nations Convention on the Law of the Sea (UNCLOS, 1982); UN World Intellectual Property Organization (WIPO, 1967); International Treaty on Plant Genetic Resources for Food and Agriculture (FAO, 2004); International Convention for the Protection of New Varieties of Plants (UPOV, 1961).

inequality and enabling development for the poorest and most marginalized communities. Rio 92 originally comprised three legal instruments between nation-states: the UN Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD), and a Statement of Principles for Forest Management³.

The text of the Convention on Biological Diversity (CBD), which came into force in 1993, contains 42 articles outlining the principles agreed upon by states to protect and sustainably use natural resources. Subsequent agreements have made these principles more explicit and measurable, specifying activities to be undertaken both domestically and through international cooperation to further these goals.

The CBD system operates like many other UN governance systems, with meetings of all the state parties to the Convention (the Conference of the Parties, or COPs) every two years, and a Secretariat that coordinates activity. Several of the articles in the Convention – such as dealing with Technical and Scientific Cooperation (article 18) or Protected Areas (article 8) – have led to the development of specific Working Groups and other dialogues and forums within the CBD that also meet regularly between COP meetings.

However, much of the substantive responsibility set out in the text falls onto state parties, to develop and implement effective domestic arrangements for advancing the goals of the CBD. These include an obligation to create and regularly revise National Biodiversity Strategies and Actions Plans (NBSAPs), which set out how each country intends to fulfill the objectives of the Convention in light of its specific national circumstances, and the related action plans to be taken to meet these goals, including setting explicit national targets such as percentage of national territory that should become protected areas.

The last element of the CBD is the Secretariat, which operates as a clearing house for the mandatory reporting of progress towards the targets, as well as providing training and capacity building, and information-sharing resources. It oversees a global biodiversity monitoring and reporting system that culminates in the periodic publication of the comprehensive Global Biodiversity Outlook reports⁴. During the three decades that the CBD has been in force, the rapid acceleration in the use of biological resources – particularly

through developments in biotechnology and the growth of the global bioeconomy – has required specific new international agreements. These include the Cartagena Protocol on Biosafety (2003), to ensure the safe handling, transport and use of living modified organisms (LMOs), and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (2014). The CBD also took major steps to spur domestic implementation efforts as the extent of biodiversity loss became clear to the scientific community, committing in 2010 to the Strategic Plan for Biodiversity and the Aichi Biodiversity Targets for the 2011-2020 period. This decision was the first formal requirement that all state Parties develop and implement national planning processes.

However, as 2020 neared very few of the Aichi targets were on course to be achieved, and there was a growing consensus that the extent of degradation of the natural world required more ambitious and serious commitments and actions by states. In 2022, COP15 agreed to the Kunming-Montreal Global Biodiversity Framework (GBF), comparable in scope and ambition to the 2030 Agenda for Sustainable Development and the Paris Agreement in climate change, making commitments to implementation, funding and cooperation far beyond what had been made before (CBD/COP/DEC/15/4; (Díaz *et al.*, 2020).

In conclusion, it must be noted that the development of this regime to govern global biodiversity coincided with the rise of Indigenous activism in international forums, shifts in the multilateral order and significant social change in most countries in the Global North. Together with the strong norms of consensus in achieving formal UN decisions, this has provided Indigenous peoples, lesser developed nation-states and other marginalized communities with more effective opportunities to test the central proposition of the Rio Declaration: do these regimes not only protect the environment and provide a framework for their commercial use, but also address global inequality and insecurity?

II.

International environmental law, like international law in general, reflects the priorities of nation-states. While references to the interests of Indigenous peoples and local communities can be found in international environmental agreements as early as 1957, these rarely go beyond allowing states to licence

³ Formally the «Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests», accessible here: <https://digitalibrary.un.org/record/144461?ln=en&v=pdf>.

⁴ See: <https://www.cbd.int/gbo5> [Editor's note].

traditional hunting for «food, animal feed and other local domestic purposes» (International Environmental Agreements Database Project, 2024). Sub-national groups were rarely considered to deserve the right to participate in these processes until the steadily growing activism of Indigenous Peoples, farmers' rights movements and others began to shift the international discourse from the 1970s on (de Costa, 2006). This activism and advocacy resulted in important forums for Indigenous Peoples to organize internationally, including the Indigenous and Tribal Peoples Convention (ILO, 1957; 1989), and particularly the Working Group on Indigenous Populations (1982-2006) which created the foundation for the UN Permanent Forum on Indigenous Issues and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007).

Growing momentum and coherence of the global Indigenous movement has enabled more effective participation by IPLCs in few international agreements, however, and appears to depend on how each international regime enables Indigenous Peoples to navigate, evade or pursue relationships with state parties, including through cooperation with international NGOs holding UN «observer» status (Djoghla, 2007; Witter *et al.*, 2015; Zurba and Papadopoulos, 2023).

In contrast to the original text of the 1992 UN Framework Convention on Climate Change (UNFCCC), which contains no reference to Indigenous peoples, traditional knowledge, or other relevant terms, and where there was no dedicated forum for IPLCs until 2015⁵, the original text of the Convention on Biological Diversity includes numerous direct acknowledgments of the rights and interests of IPLCs in biodiversity governance. Most importantly, article 8(j) of the CBD requires Parties to «respect, preserve and maintain knowledge, innovations, and practices of Indigenous and local communities», while also ensuring the «equitable sharing of the benefits» arising from that knowledge. Several other articles explicitly concern IPLCs: Article 10 protects customary rights to use biological resources; Article 17 commits to the full exchange and consideration of information from all sources related to the conservation and sustainable use of biological diversity, including Indigenous and traditional knowledge; and Article 18 commits State Parties to scientific and technical cooperation, including efforts to «develop methods of cooperation for the development and use of technologies, including Indigenous

and traditional technologies» (Secretariat of the Convention on Biological Diversity, 2022).

These sections were necessary due to an essential truth about biodiversity. As the preamble of the Convention clearly acknowledges, «the fundamental requirement for the conservation of biological diversity is the *in-situ* conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings». Article 8 of the Convention is specifically devoted to «*in-situ* conservation». *Ex-situ* conservation measures for conserving biological resources (such as seed banks, botanical gardens, and zoos) also play an important role but are understood as «complementing *in-situ* measures». This balance of priorities reflects the scientific consensus on the best approach to protecting biodiversity. Article 8(j) made many of the critical outcomes and processes of the CBD dependent on the fact that the greatest amount of remnant biological diversity remains in the territories of IPLCs, both in the Global South and in large settler colonial countries such as the USA, Canada, and Australia. At least 50% of the world's land is collectively managed by IPLCs under customary tenure systems (Cariño and Faran Ferrari, 2020).

Article 8(j) therefore became critical to advancing the goals of the Convention while providing IPLCs with a greatly enlarged space for advocacy, increasingly in conjunction with lesser-developed nation-states in the Global South. At COP4 in 1998, the Parties to the CBD formalized implementation by creating an «ad hoc open-ended inter-sessional working group ... to address the implementation of Article 8(j) and related provisions of the Convention». The Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions (hereafter the Working Group) was mandated to liaise with all stakeholders between COPs and to advise on and design a programme of work that would enable Parties to progressively make decisions informing IPLCs' interests in key aspects of the CBD. Importantly, the Working Group was to be composed of both State Parties and observers, including «in particular, representation from Indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity with participation to the widest possible extent». The Working Group remains one of the five core bodies of the Convention.⁶

⁵ In 2015, the UNFCCC created a Local Communities and Indigenous Peoples Platform, which acts as a resource hub and knowledge exchange forum but has no formal advisory or consultative role to the Convention: <https://lcipp.unfccc.int/lcipp-background/relevant-decisions-and-conclusions>

⁶ See: <https://www.cbd.int/convention/bodies/intro.shtml>

At the following COP in 2000, that «programme of work» was formally adopted to strengthen the involvement of Indigenous peoples and local communities in achieving the objectives of the Convention. It is striking that the COP5 decision explicitly took into account the work of IPLCs in national, regional, and INGO settings, particularly the considerable efforts in consensus-building across hundreds of different Indigenous communities' and organizations' languages, capacities, and priorities, which resulted in the creation of numerous shared statements and declarations.⁷

COP5 also clearly signaled the importance of the role of the International Indigenous Forum on Biodiversity (IIFB) as a vital channel for the CBD to gather the voices and perspectives of the many Indigenous communities and organizations not adequately represented by the Delegations of State Parties or as officially recognized observers to the CBD. COP5 Decision V/16 includes an explicit call for State Parties to support the participation of the IIFB and other relevant organizations, including by providing resources, capacity-building mechanisms, and their inclusion in national planning discussions.⁸

These developments quickly led to work within the Working Group, driven by IPLCs, to create voluntary guidelines addressing their interests as a way of harnessing the growing coherence of diverse Indigenous communities and sharing these perspectives with State Parties. An initial focus was on developing guidelines for incorporating IPLCs' concerns into environmental assessment legislation, processes, and strategic environmental planning at the national level. The 2004 Akwé: Kon Voluntary Guidelines established a framework for considering the cultural, environmental, and social impacts of developments in the traditional territories and sacred sites of Indigenous and local communities.⁹ This was followed by the 2011 *Tkarihwaí:ri* Code of Ethical Conduct to respect IPLCs' cultural and intellectual heritage; the 2018 *Rutzolijiri-saxik* Voluntary Guidelines for the Repatriation of Traditional Knowledge Relevant for the Conservation and Sustainable Use of Biological Diversity; and the 2019 *Mo'otz Kuxtal* Voluntary Guidelines, which ensure the «free, prior and informed consent» of IPLCs where their knowledge and practices are used

and guarantee the equitable sharing of benefits from those uses. Each of these guidelines has been adopted at subsequent COP meetings through decisions encouraging State Parties to use, promote, and report on their experiences implementing these codes and guidelines.

The «programme of work» of the Ad Hoc Open-ended Inter-Sessional Working Group on article 8(j) and Related Provisions has been revised twice. In 2010, a significant new effort was initiated to advance the goals of article 10, on the sustainable use of biological resources, which created a platform for recognizing and protecting IPLCs' customary uses and supporting their local efforts at ecological restoration. In 2022, the programme of work was overhauled again as part of the Global Biodiversity Framework (GBF) decisions, providing strengthened language and explicit recognition of the growing number of international bodies and legal frameworks that intersect with the CBD and the goals of article 8(j).¹⁰

Complementing the creation of voluntary legal frameworks for recognizing their rights and an expanding programme of work, IPLCs have become more effective at intervening in and informing the global biodiversity assessment process, which is at the core of the entire CBD regime. A critical task for biologists and ecologists interested in environmental change is to establish baselines of knowledge. At COP2 in 1995, it was decided that a comprehensive «state of global biodiversity» report should be developed by 1997 and revised periodically. However, the first Global Biodiversity Outlook (GBO), as it became known, was not ready until 2001, reflecting the highly complex task of integrating scientific knowledge from myriad fields of academic research, as well as monitoring and assessment information from national and regional environmental agencies and a wide range of IGOs and other international actors, not least the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES). Since the adoption of the Aichi Biodiversity Targets, it has included tracking of global progress towards specific CBD goals (now superseded by those in the GBF 2030 documented adopted in Montreal in December 2022). By the early 2010s, it was clear that the construction of the GBO as a scientific framework

⁷ Noting the «existing declarations by indigenous and local communities to the extent they relate to the conservation and sustainable use of biodiversity, including, inter alia, the Kari Oca Declaration, the Mata-atua Declaration, the Santa Cruz Declaration, the Leticia Declaration and Plan of Action, the Treaty for Life Forms Patent Free Pacific, the Ukupseni Kuna Yala Declaration, the Heart of the Peoples Declaration on Biodiversity and Biological Ethics, the Jewel Declaration on Indigenous Communities, Indigenous Knowledge and Biodiversity, the Chiapas Declaration, other relevant declarations and statements of Indigenous Forums, as well as Convention 169 of the International Labour Organization, Agenda 21 and other relevant international conventions». See: <https://www.cbd.int/decision/cop/?id=7158>

⁸ See: <https://www.cbd.int/decision/cop/?id=7158>

⁹ See: <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

¹⁰ See: <https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-10-en.pdf>

was not adequately considering the contributions of IPLCs to achieving biodiversity targets, nor the particular impacts that the status quo was having on them. It was decided that the GBO should be supplemented by a Local Biodiversity Outlook, which centered the voices of IPLCs and drew on their knowledge systems. In 2016, the first LBO was published to supplement GBO-4, and LBO-2 was published in 2020.

Finally, in parallel with these achievements were discussions about how to implement the provisions for ensuring access to and sharing the benefits arising from the use of biodiversity, particularly genetic information such as DNA sequences of plants, animals, and microorganisms. The initial principles of what would become the framework for «access to genetic resources» were set out in Article 15 of the CBD text. After acknowledging directly «the sovereign rights of States over their natural resources», this article is, however, clearly designed to promote scientific research and technological development using genetic resources, «subject to prior informed consent... (and) sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources».¹¹

Debate about the goals of article 15 has often been contentious at the international level, as the fundamental interests of key stakeholders began to diverge. Between COP5 in 2000 and COP10 in 2010, considerable work was done to develop the principles of a comprehensive Access and Benefit Sharing (ABS) framework. In early discussions, IPLC advocates such as the International Indigenous Biodiversity Forum lamented the «disproportionate emphasis [...] placed upon the commercial and economic values of biological diversity through intellectual property rights, at the expense of conservation and its cultural and spiritual values» (UNEP/CBD/COP/6/6). However, this process necessitated reconciling the emerging ABS agenda of the CBD with the progress made by the Article 8(j) Working Group in advancing the discourse about IPLC knowledge about and rights to the natural world. This work also increasingly integrated the ABS agenda with those other bodies at the global level whose mandates include intellectual property rights to biological resources (see section I above).

These negotiations led to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention

on Biological Diversity (hereafter the Protocol), adopted at COP10 in 2010 and opened for signature in 2011. The Protocol seeks to create a comprehensive legal framework for ABS. It introduced the ABS Clearing-House to promote legal certainty and transparency on procedures for ABS, and for monitoring the use of genetic materials, as well as developing formal measures such as an international certificate of compliance.

Notwithstanding these developments, a consensus among State Parties had not been achieved, and a divergence in the regime emerged: whereas the CBD has almost universal participation (196 Contracting Parties), the Protocol took almost four years from the opening of signatures to even enter into force, in October 2014. There are now 140 Parties to it, but these do not include numerous countries with significant biodiversity resources, such as Russia, Colombia, and Costa Rica, nor any of the settler colonial states of Australia, Aotearoa/New Zealand, the US, and Canada. Very few Parties have comprehensive implementing structures.¹²

As noted above, however, the failure to achieve the Aichi targets created a growing sense of urgency within the Convention. By 2020, it was agreed that a more serious and committed effort was required by State Parties. At COP15 in 2022, State Parties agreed to 23 targets in the Global Biodiversity Framework (GBF), including Target 3, the «30 by 30» goals, which commits to ensuring that by 2030:

«at least 30 per cent of terrestrial and inland water areas, and of marine and coastal areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures, recognizing indigenous and traditional territories, where applicable, and integrated into wider landscapes, seascapes and the ocean, while ensuring that any sustainable use, where appropriate in such areas, is fully consistent with conservation outcomes, recognizing and respecting the rights of indigenous peoples and local communities, including over their traditional territories.» (Emphasis added, <https://www.cbd.int/ghf/targets>)

However, reaching consensus on the GBF required intense discussions. COP15 saw a temporary walk-out by developing countries over plans for financing the Framework, and the inclusion of measures to ensure the effective benefit sharing of genetic resources required robust lobbying by the Africa

¹¹ See: <https://www.cbd.int/convention/articles/?a=cbd-15>

¹² Access and Benefit-sharing Clearing-House. <https://absch.cbd.int/en/countries/status/inbetween>

Group (O'Sullivan, 2022). Developed states like Japan and Switzerland, which had opposed the expanded scope of the ABS principles, eventually set their concerns aside, in the greater interest of adopting the larger goals of the entire GBF.

There is now an international and scholarly consensus that the protection of IPLCs' rights, particularly to land tenure, is an essential condition for achieving positive biodiversity conservation outcomes and the goals of the GBF.¹³ As has always been the case, meaningful progress now depends on the extent to which nation-states realize these commitments in their domestic arrangements.

III.

Indigenous peoples and local communities have long histories of experience with imperial, national, and lately multilateral processes that have sought to define boundaries and principles of control, use, and access over natural resources. However, they also share a depth of knowledge of their traditional territories and ecosystems that precedes colonial and modern state boundaries and gives rise to forms of significant solidarity and cooperation.

Sharika Crawford's excellent history of turtle hunting in the sw Caribbean documents the impact on traditional harvesting communities and turtle populations due to the expansion of resource extraction during the 19th century and the rapid growth of state regulation of maritime boundaries from 1890 on. She also shows the ways that the «turtlemen» adapted to these impacts and developed strategies for resistance, building networks and kinship through mobility and the exchange of maritime knowledge. Often subject to state oppression in defending their rights, Crawford shows how traditional communities influenced the delineation of maritime boundaries, and how their knowledge of turtle behavior and species decline not only hastened the introduction of restrictions on turtle hunting in the post-ww2 period but also the demise of their livelihoods (Crawford, 2020). This history provides a strong defense for participatory and rights-based environmental management approaches that prioritize Indigenous knowledges and livelihoods.

Other scholars confirm the critical importance of intercultural encounters in enabling Indigenous communities' resistance to state-imposed maritime boundaries and the

development of counter-territorialization strategies. García shows how established kinship and friendship networks and practices of exchange among Creole Afro-Indigenous communities around the sw Caribbean depend on and reveal shared «sea spatialities» (García Ch., 2024). Drawing on Escobar's analysis of «territories of difference» (Escobar, 2008), the concept of *maritorio* includes the «islands, cays, and sea creatures across the Caribbean Sea, and mobile Black populations with a shared colonial and postcolonial history», obliging holistic strategies that integrate the protection of livelihoods and ecosystems simultaneously (Cupples *et al.*, 2024; Márquez-Pérez, A, 2016). Cupples *et al.* recognize that the «curtailment of Black mobility occurs in a context of serious environmental destruction, biodiversity loss, and resource scarcity», but argue that the «geopoetic understandings of being in the world» shared by Raizal and other Creole peoples in the sw Caribbean can provide a foundation for effective and participatory strategies for environmental protection (Cupples *et al.*, 2024, pp. 2054-2058).

As this paper has shown, the central global process for negotiating biodiversity governance and implementing global biodiversity goals has committed to a plan for action that requires recognition of Indigenous and traditional territories, the inclusion of IPLCs in planning and implementation processes, and that all regulations governing the sustainable use of natural resources respect IPLC rights. Since 2010, State Parties to the Convention have been expected to develop comprehensive domestic implementation strategies, including committing to National Targets in line with the global goals of the CBD as a whole, with specific actions to achieve each goal, and identifying the responsible actors as well as all relevant stakeholders who need to be involved: «(National targets) are the main instrument through which Parties establish and communicate their national contribution towards the Framework and its goals». (Setting national targets) should involve and facilitate the engagement of all government sectors at all levels of government, and all stakeholders, indigenous peoples and local communities, women and youth across society, to ensure that targets, actions and expected outcomes are coordinated, that the concerns of different actors are addressed, and that their ownership and commitment towards implementation are attained.¹⁴

¹³ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) Global Assessment 2019. See: <https://www.ipbes.net/global-assessment> (Baragwanath and Bayi, 2020; Garnett *et al.*, 2018; Díaz *et al.*, 2019; Reyes-García *et al.*, 2019).

¹⁴ «Guidance for Revising or Updating National Biodiversity Strategy Action Plans to align with the Kunming-Montreal Global Biodiversity Framework» (CBD/COP/DEC/15/6/Annex 1).

However, it must be acknowledged that not only do few State Parties in the region and across the Global South have adequate resources to develop domestic planning structures and institutions for implementing them, but the capacity for IPLCs to advocate for their own distinct interests within these national processes is even more constrained. Implementation and national reporting on these Plans is uneven, and progress among the State Parties bordering the southwest Caribbean is limited.¹⁵

For example, Colombia revised its NBSAP in 2017 and last provided a National Report in 2014. However, the country has developed domestic institutions to implement its existing targets, including the National Policy for the Integral Management of Biodiversity and its Ecosystem Services and the Biodiversity Action Plan (BAP), which are aligned with Colombia's National Development Plan. The BAP is clearly informed by an understanding of the role that good environmental management plays in reducing conflict over natural resources and promoting human development. It takes a *socio-ecological* approach, recognizing the interdependence of social and natural systems, and acknowledging the need for strengthened and more diverse participation in planning and implementation processes (Colombia, BAP 2017, pp. 16–17).

The framework also creates an obligation to align regional, departmental, and municipal planning processes with the BAP through Regional Biodiversity Action Plans (p. 60–61). National Targets are clear, with milestones set out for 2020, 2025, and 2030. Relevant to IPLCs in the Caribbean in particular are: goal I.13, which sets targets for the number of regional authorities to implement policies for the «Protection of Traditional Knowledge Systems Associated with Biodiversity in the management cycle starting from coordination with ethnic authorities and local communities in their jurisdiction»; goal I.15, requiring a «National Water Resources Plan (NARP), as a policy instrument based on knowledge of aquatic biodiversity (marine, coastal, and freshwater), and sustainable management of the associated ecosystem services»; goal III.12, which requires the creation of a National Bioprospecting Strategy, including «instruments to define the implementation of fair and equitable sharing of benefits arising from the use of biodiversity», as well as numerous goals to promote greater participation of all stakeholders (p. 92–93).

Nicaragua last revised its NBSAP in 2016 and similarly has not reported to the CBD on national progress since then. The NBSAP centers the Ministry of the Environment and Natural Resources (MARENA) as the central actor and is aligned with domestic legislation, including Law 217: General Law of the Environment and Natural Resources and Law 807: Law of Conservation and Sustainable Use of Biological Diversity. The Plan has specific objectives of relevance to IPLCs, including to «establish the necessary mechanisms for the sustainable use of biological diversity, integrating mitigation and adaptation measures in the face of climate change and thus guarantee the food security and sovereignty of our communities and indigenous peoples [...] (and to) ensure the fair and equitable sharing of the benefits» (Nicaragua, NBSAP 2016).

Strategic goals include the promotion of food security and sovereignty, as well as the recognition and inclusion of «ancestral and traditional knowledge about Biological Diversity, guaranteeing the active participation of local and indigenous communities in decision making about its conservation and sustainable use. » (p. 32). It prioritizes the protection of mangroves and wetlands, calling for the strengthening of processes of shared responsibility with local, ancestral, and Afro-descendant communities (p. 36–37). It explicitly identifies the governments of the Autonomous Regions of the Caribbean Coast and Indigenous leaders and organizations in enhancing the national system of protected areas, including the development of a conservation plan for coral reefs on the Caribbean coast. Furthermore, it guarantees «the inclusion of local and indigenous communities in decision-making for the conservation and sustainable use of biological diversity, taking into consideration ancestral knowledge and practice. » (p. 50).

The fact that these principles and commitments have been articulated in NBSAPs and, in some instances, formalized in law demonstrates the growing influence of IPLCs on the global discourse about biodiversity since the late 1990s. However, it remains troubling for the real concerns of IPLCs and the marine and other environments on which their livelihoods and cultures depend that there is an absence of systematic evidence of progress towards national targets. Moreover, the 2030 Global Biodiversity Framework (GBF) and 2050 Targets/Goals, which all Parties agreed to (with one abstention) at COP15 in 2022, also committed Parties to update their NBSAPs and National Targets prior to the COP16 meeting in October

¹⁵ All relevant documentation reported to the CBD since 2010 from Belize, Colombia, Costa Rica, Honduras, Nicaragua and Panama was reviewed for this article and is available here: <https://www.cbd.int/nbsap/search>

2024. These are expected to go further, taking into account the greater urgency and ambition agreed to in the GBF.

However, the signature commitment of the GBF – Target 3: Conserve 30% of Land, Waters, and Seas by 2030¹⁶ – is understood as wholly unrealistic without further commitments to protect biodiversity that will centrally involve IPLCs and require their consent. Two of the leading international environmental NGOs advocating for biodiversity protection, WWF and the International Union for the Conservation of Nature, are unequivocal on the importance of rights-based, participatory approaches, observing that the «knowledge, innovations, practices, worldviews, and values of Indigenous peoples and local communities are fundamental to the transformative change the GBF seeks to support, and calls for these to be respected, documented and preserved, with Free, Prior and Informed Consent (FPIC). The importance of the UN Declaration on the Rights of Indigenous Peoples and other human rights law is referenced and needs to form the basis for engaged partnership with and support for the contributions of Indigenous peoples and local communities» (WWF and IUCN WCPA, 2023, p. 22). Annex 1 sets the key tasks out and prioritizes measures to promote greater access and participation for IPLCs. Revisions to NBSAPs are required to consider issues such as:

«implementation gaps, existing goals, targets and indicators, the effectiveness of past actions, monitoring systems (including any data and/or knowledge systems and gaps), sectoral and cross-sectoral policies, finance and other means of implementation, and an assessment of how stakeholders, indigenous peoples and local communities, women and youth were involved in the revision and implementation [...] (taking) into account different value systems [...] including [...] traditional knowledge focal points (and) indigenous peoples and local communities» (CBD/COP/DEC/15/6 – Annex 1).

Indigenous, Afrodescendant, and other local communities in the southwest Caribbean region have an unprecedented opportunity to influence the global biodiversity regime through regional dialogue and collaboration. At the time of writing, the 196 state parties to the Convention on Biological Diversity are gathering in Cali, Colombia, along with thousands of delegates representing environmental, industry, and scientific

interests, for the 16th Conference of the Parties (COP16)¹⁷. The host Colombia has also declared COP16 as a «people's COP», foregrounding IPLC participation and expects to welcome 150,000 people to its open meetings and events. However, over 80% of state parties have not submitted revised NBSAPs or updated National Targets (Dunne, 2024).

In this context, both states in the region and IPLCs have a shared interest in the development or revival of regional structures of cooperation. Effective governance of biodiversity in many contexts, and especially in shared marine ecosystems, is inherently dependent on transboundary cooperation. Effective responses to the shared and urgent challenges of biodiversity governance in the southwest Caribbean will therefore rely on deepened commitments to regional cooperation. Previous efforts in the Caribbean and Central American region, such as through the Regional Strategy of the Comisión Centroamericana de Ambiente y Desarrollo (CCAD)¹⁸, or The State of Biodiversity in the Caribbean Community 2020 report of the Caribbean Community and Common Market, provide examples. However, such cooperation needs also to be grounded in the strong consensus now embedded in the CBD about the critical role played by IPLCs in developing and implementing effective plans for biodiversity conservation, not least in respecting IPLC rights to Free, Prior and Informed Consent in the expansion of protected areas for biodiversity conservation.

¹⁶ «Ensure and enable that by 2030 at least 30 per cent of terrestrial, inland water, and of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures, recognizing indigenous and traditional territories where applicable, and integrated into wider landscapes, seascapes and the ocean, while ensuring that any sustainable use, where appropriate in such areas, is fully consistent with conservation outcomes, recognizing and respecting the rights of indigenous peoples and local communities, including over their traditional territories».

¹⁷ See: <https://www.cbd.int/meetings/COP-16>

¹⁸ See: <https://www.cbd.int/doc/nbsap/rbsap/ccad-rbsap.pdf>

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