



# Transforming biodiversity governance? Indigenous peoples' contributions to the Convention on Biological Diversity

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## ABSTRACT

This article reviews opportunities for, and selected outcomes of, the meaningful participation of Indigenous Peoples and local communities (IPLCs) in the processes of the Convention on Biological Diversity (CBD). Meaningful participation is understood as a collaborative process based on the recognition of IPLCs and their contribution to biodiversity management. The CBD is currently the main instrument for global biodiversity governance, enjoying almost-universal application - with the notable exception of the USA. It arguably provides the most advanced framework for the participation of IPLCs among the multilateral environmental agreements. Following a discussion of challenges regarding concepts and terminology, we provide brief overviews of IPLCs' contributions to the conservation and sustainable use of biodiversity and the evolution of the CBD framework to partially recognize these. We then focus on two case studies: the negotiation and adoption of the Nagoya Protocol on access to genetic resources and fair and equitable benefit-sharing; and the negotiation of the 2022 Kunming-Montreal Global Biodiversity Framework. On the basis of a literature review, content analysis of UN documents, and participant observation at CBD meetings, we combine legal and sociological analysis to find that early gains towards building collaborative spaces for IPLCs in CBD processes in the adoption of the Nagoya Protocol seemed to be receding in the negotiation of the Global Biodiversity Framework, until adoption of the final text which surprisingly integrated a strong rights-based approach, for the first time in the history of the CBD.

## 1. Introduction

The traditional practices that Indigenous Peoples and local communities (IPLCs) apply in the stewardship of the environment, and the knowledge they have developed while living in and depending on natural resources, form crucial contributions to sustainability in the context of global environmental challenges including biodiversity loss (Gadgil et al., 1993). As pointed out by Darrell Posey in the seminal volume *Cultural and Spiritual Values of Biodiversity*,

*Western science may have invented the words 'nature', 'biodiversity' and 'sustainability', but it certainly did not initiate the concepts. Indigenous, traditional and local communities have sustainably utilized and conserved a vast diversity of plants, animals and ecosystems since the dawn of Homo Sapiens.*

(Posey, 1999, p. 7)

These contributions are widely cited in scholarly literature and increasingly recognized by intergovernmental policy processes as fundamental to tackling biodiversity loss (Brondizio et al., 2019). Our article seeks to contribute to the debate about the significance of the

participation and impact of IPLCs on global environmental governance with a focus on the Convention on Biological Diversity (CBD). Legal scholars consider the CBD a frontrunner in terms of its efforts to secure the participation of IPLC representatives compared to other multilateral environmental agreements, albeit always within the strict limits of international law-making which is based on decision-making by governments (Richardson, 2001; Firestone et al., 2005). As discussed below, the innovations of the CBD concern the (qualified) recognition of IPLCs' biodiversity-related knowledge in the Convention text (Article 8(j)), and unprecedented advances to secure IPLCs' participation in the Convention processes (Schabus, 2017). Indigenous actors were however quick to point out limitations in these advances, noting that while the CBD has made "some steps" to accommodate them in the negotiations, the system does not give them "unfiltered access" or "full and effective participation" (Mauro and Hardison, 2000, at 1265). How and where this participation translates into effective influence where IPLCs shape and improve biodiversity policy at the global level is less clear. The relationship between participation and influence has long been discussed in scholarly literature on collective action, and is agreed to take place in complex ways, in complex contexts, and via paths where many actors

**Abbreviations:** CBD, Convention on Biological Diversity; IPLCs, Indigenous Peoples and Local Communities; COP, Conference of the Parties; IPBES, Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services; IIFB, International Indigenous Forum on Biodiversity.

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and institutions engage in discursive contestation to shape the meanings attributed to legal and policy decisions (Bosi and Uba, 2021). Institutions and actors long underpinned by dominant societal discourses originating in the West, and notably in Enlightenment thinking, have an advantage in terms of shaping these meanings (Whyte, 2013; Natarajan and Khoday, 2014; Uggle, 2010). In a nutshell, these dominant discourses are seen as based on assumptions that 'nature' is separate from 'culture' or 'society' and is a set of resources available for exploitation by humankind. This constitutes a serious limitation on the solutions that are considered feasible for conserving these resources, because their exploitation for economic gain remains the basis of their value (e.g. Natarajan and Khoday, 2014; Adger et al., 2001). The discourses or basic assumptions shared among some indigenous knowledge systems tend instead to see humankind as part of nature. They thus attribute intrinsic worth to nature and call for balance among different elements within nature, including humans. This is key to imagining more effective approaches to biodiversity governance (Bavikatte, 2014; Parks, 2020). In that view, understanding where IPLC representatives and their knowledge have shaped decisions is crucial to understanding where and how this key resource to reverse biodiversity loss is achieving influence.

In this article we use the CBD-accepted terminology and refer to 'IPLCs' without distinction between 'Indigenous Peoples' and 'local communities.' This terminology has a long and contested history within the Convention. The 1992 Convention text, in Article 8(j), refers to 'indigenous and local communities.' In 2014, CBD Parties agreed to use the term 'Indigenous Peoples and local communities' in future decisions and documents, in line with a recommendation by the UN Permanent Forum on Indigenous Issues (CBD COP, 2014). This was a long-standing claim by Indigenous Peoples and was considered a victory for their representatives and allies (Forest Peoples Programme, 2013) as a symbolic recognition of the distinct identity of Indigenous Peoples as progressively recognized in international human rights law. At the same time, however, the 2014 CBD decision noted that use of this terminology should not in any way affect the legal significance of CBD Article 8(j), nor be interpreted by Parties as implying a change of their rights or obligations under the CBD (CBD COP, 2014, p. 92). The outcome of lengthy debates and efforts to reach a compromise at the negotiating table, these caveats reflect the position of those CBD Parties that oppose engagement with human rights language and concepts (Morgera, 2018). As a result, legal scholars differ in their interpretation of this terminology. Morgera (2018) notes that 'CBD Parties went to great lengths to indicate that the decision had no implication from the perspective of treaty interpretation' (p. 709), and Chiarolla (2017) argues that despite the decision's symbolic value, the responsibility for recognizing Indigenous Peoples' rights of relevance to biodiversity still rests with national governments. Berry and Lawson, on the other hand, note that the change in terminology posits the identification of 'Indigenous Peoples' and 'local communities' as clearly separate entities for the CBD (Berry and Lawson, 2018). CBD Parties differ in their implementation of relevant CBD provisions and often differentiate between 'Indigenous Peoples' and 'local communities' (Humphries et al., 2021).

There is no universally accepted definition of Indigenous Peoples: considering their diversity, the UN has refrained from adopting an official definition. A set of indicative criteria is used instead, including references to strong links to territories and natural resources, distinct languages, cultures, and governance systems and, most importantly, self-identification as Indigenous. The fundamental principle of self-identification or self-determination was enshrined in the 1989 Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries of the International Labor Organization, and was reaffirmed in the 2006 United Nations Declaration on the Rights of Indigenous Peoples. Similarly, terminology varies when it comes to knowledge associated with indigenous cultures, which can be referred to as traditional, local, or indigenous (Berkes, 1993). Again, following CBD practice, we use the term 'traditional knowledge' to refer to the 'knowledge, innovations and practices' of IPLCs 'embodying traditional

lifestyles relevant for the conservation and sustainable use of biological diversity' (CBD Article 8(j)). Traditional knowledge is gained from empirical observation and transmitted over generations, and is linked to indigenous identity through cultural and social norms (Mazzocchi, 2020). It thus has both a social meaning and a legal character (Four Directions Council, 1996; Posey, 1999). However, Whyte notes that the term 'traditional knowledge' remains an 'awkward' one, based on concepts that are neither employed by the communities that are involved in it, nor adequate to describe the complex relationships and responsibilities it comprises (Whyte, 2013, p. 9). Indigenous and other scholars have used the term in different ways, reflecting its complexity as well as the diversity of indigenous cultures and approaches to knowledge around the globe. Of two broader readings of traditional knowledge, one denotes a store of knowledge to be used by different actors, while a second highlights its situated character, meaning it is connected with a society's culture and, for some, is intertwined with practices based on moral obligations and reciprocal respect (ibid, 2013, p. 3–4; Kimmerer, 2002, p. 434). This last reading entails that traditional knowledge is itself a 'process of participating' (McGregor, 2008, p. 145). We use this reading of traditional knowledge as a process of 'meaningful collaboration' (Whyte, 2013, p. 5) to underpin our idea of meaningful participation.

As mentioned, we focus on the CBD because it is considered one of the more promising sites of global environmental governance for IPLC participation. It recognizes the contribution of IPLCs to the conservation and sustainable use of biodiversity, and has established a Working Group dedicated to traditional knowledge (the Working Group on Article 8(j)), which awards enhanced participation rights to IPLC representatives. We explore whether this participation is linked to actual influence over decision making. Do indigenous worldviews contribute to transform the way the international community values and governs biodiversity? For this to occur, following the definition introduced above, spaces for meaningful collaboration are necessary. These may allow approaches to environmental governance that promote awareness of cross-cultural and cross-situational divides (Whyte, 2013, p. 8). Though the CBD is a state-centered, intergovernmental process, such spaces could be worked towards, and lead to influence. There is no single formula for their construction: the emphasis is on collaboration as an adaptive process of learning rather than on 'participation' as an end point. We therefore consider, following Whyte (2013), whether the discursive spaces and outcomes of the CBD are conducive to allowing this sort of collaboration to unfold. This entails considering the extent of recognition of cross-cultural divides on issues such as 'worldview, language, [and] lifestyle', and the cross-situational inequalities that persist between different actors in global environmental governance. These include inequalities around access to financial resources and political power asymmetries. Is there any evidence of such an 'invitation to learn' in the processes of the CBD (Whyte, 2013, p. 9)?

These questions appear crucial given the current failures and urgent need to curb the loss of biodiversity and prevent extinctions, and calls for pluralistic and partnership-based approaches to address them (Gavin et al., 2018), including through transformative governance models that move past the nature/culture divide (e.g. Ulloa, 2019; Visseren-Hamakers et al., 2021) by better including IPLCs (Reyes-García et al., 2022). Studies of local and national level examples of partnership approaches to environmental governance also suggest this as a fruitful way of addressing current failures. Bearing in mind that meaningful collaboration is a process, existing literature has pointed to various positive (though not perfect and necessarily complex) examples where partnership approaches have improved biodiversity governance as well as community wellbeing. Examples include community-based natural resource management, where the transfer of power from national and sub-national authorities to local communities is identified as a crucial ingredient for successful collaboration (Murphree, 2004), and some generally positive cases are discussed (e.g. Child and Barnes, 2010; Jones, 2010). Gavin and colleagues discuss the case of Gwaii Haanas

National Park Reserve in Canada, underlining the importance of partnerships and participatory governance (2018, p. 7). Parks discusses a range of local communities developing (biocultural) community protocols, underlining the centrality of meaningful collaboration within communities for their success (2018).

In the following, we first provide a brief overview of IPLCs' contribution to conservation and sustainable use of biodiversity, then present the evolution of the relevant CBD framework. We then focus on two key cases: the negotiation and adoption of the Nagoya Protocol on access to genetic resources and fair and equitable benefit-sharing; and the claims of IPLCs during the negotiation of the Kunming-Montreal Global Biodiversity Framework. We draw on legal commentary as well as critical accounts, focusing on where spaces of meaningful participation may be under construction through the recognition of cross-situational and cross-cultural divides (Whyte, 2013). Writing together as a legal scholar/practitioner and a political sociologist, we aim to provide a comprehensive analysis that combines the strengths of both perspectives, while seeking to cover our blindspots. We build on previous detailed research on how IPLC participation is framed in decisions of the CBD Conference of the Parties (COP) (Parks, 2020) and legal analysis of the CBD and its Nagoya Protocol, supported by 20 years of observer participation in CBD meetings (Morgera and Tsioumani, 2011; Morgera et al., 2014). We acknowledge that we are white, female researchers based in a European university; we do not claim to speak on behalf of any IPLC group or individual, involved in the CBD negotiations or not. We have tried to draw on the work of both "western" and Indigenous scholars, as far as linguistic and other obstacles allow; and we gratefully acknowledge the views that Indigenous Peoples' representatives have shared with us over the years.

## 2. Traditional knowledge and the biodiversity challenge

The global situation of Indigenous Peoples is linked to the history of colonial and nation-state policies resulting in dispossession, displacement, marginalization and mandatory assimilation (Colchester, 2001), and to the erosion of their cultures, governance and traditional knowledge systems. Discriminatory policies started shifting towards multicultural approaches and the recognition of customary rights only at the end of the twentieth century (Tsioumani, 2020). In the international arena, this shift began in the realm of human rights with the creation of the Working Group on Indigenous Populations under the Sub-Commission on the Promotion and Protection of Human Rights in 1982. The 1992 Rio Summit saw the recognition of Indigenous Peoples' role in environmental governance, with the adoption of the CBD and the Rio Principles. The adoption of the United Nations Declaration on the Rights of Indigenous Peoples further promoted the recognition of Indigenous Peoples' rights and their special link with their territories and natural resources.

This shift was followed by a rediscovery of traditional knowledge as a paradigm, the fruit of a long process of co-evolution between people and their surroundings which prioritizes co-existence with the natural environment (Mazzocchi, 2020). Traditional knowledge has gained traction not only in environmental research but also in intergovernmental science-policy interfaces, including the Intergovernmental Panel on Climate Change and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES). The latter has recognized the importance of Indigenous and local knowledge since its inception. The IPBES conceptual framework explicitly considers multiple knowledge systems and values, and its work is supported by a dedicated task force on Indigenous and local knowledge composed of 15 experts, including four nominated by Indigenous Peoples' organizations with attention to regional representation (IPBES, 2020a; IPBES, 2020c). Several of the IPBES Global Assessment on Biodiversity and Ecosystem Services key messages demonstrate the importance of traditional knowledge and the crucial role of IPLCs in the conservation and sustainable use of biodiversity on the basis of culturally specific worldviews

such as the health of the land and reciprocal responsibility. IPLCs' major contributions, such as conservation of agricultural biodiversity on farm, landscape management that actively supports biodiversity conservation, and community-based conservation initiatives, are nevertheless under immense pressure from resource extraction and industrialized commodity production. Unsustainable development choices challenge not only traditional environmental management but also livelihoods and, crucially, the existence and transmission of traditional knowledge itself (Brondizio et al., 2019; IPBES, 2020a). Policy shifts suggest some moves towards the acknowledgement of cross-situational and cross-cultural divides within an otherwise hostile global development context. However, such efforts are followed by a range of challenges around implementation and governance processes as we discuss in the following.

## 3. The CBD framework and IPLCs: a literature review

The CBD was adopted in 1992 at the Rio Summit. With 196 Parties to date, it enjoys almost universal participation, with the notable exception of the United States of America. Its three objectives are the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Three additional protocols have been adopted under the Convention: the 2000 Cartagena Protocol on Biosafety; the 2010 Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety; and the 2010 Nagoya Protocol on access to genetic resources and fair and equitable benefit-sharing. Parties are responsible for implementing the CBD and its protocols through national law and policy. Like other multilateral environmental agreements however, implementation falls short (Morgera and Tsioumani, 2011; Ulloa et al., 2018), resulting in the failure to reach the goals that CBD Parties have agreed, such as the Aichi Targets included in the Strategic Plan for Biodiversity 2011–2020 (CBD COP, 2010).

The CBD recognizes the direct dependence of many IPLCs on biological resources, as well as the contribution of their traditional knowledge to biodiversity conservation and sustainable use (Preamble and CBD Article 8(j)). This dual relationship highlights both the vulnerability and the rights of IPLCs with regard to biodiversity, enhancing their legitimacy to participate in CBD decision-making. Until 2000, however, IPLCs were strictly categorized as observers (Oldham, 2003) following the trend of international environmental law and policy at the time. In addition, the CBD definition of traditional knowledge echoes the view of knowledge as a resource rather than a complex interrelationship, though its positioning under in situ conservation (Article 8) draws some attention to its situated character. It was the creation of the International Indigenous Forum on Biodiversity (IIFB) in 1996 by Indigenous Peoples' organizations and allies that proved crucial in opening up CBD processes to more participation (Osakada, 2020). The IIFB prioritized IPLCs' participation rights, further demanding that Indigenous Peoples are recognized as 'rights-holders' under international law (Oldham, 2003). These efforts led to the group's recognition as an advisory body under the Convention, as well as to the establishment of the Working Group on Article 8(j) in 1998 and the adoption of the programme of work on Article 8(j) in 2000.

Established by the CBD COP, the Convention's decision-making body which is composed of Party representatives, the Working Group on Article 8(j) should ensure the participation of representatives of IPLCs 'to the widest possible extent in its deliberations in accordance with the rules of procedure' (CBD Conference of the Parties (COP), 1998, p. 112). In the Working Group, IPLC representatives enjoy enhanced participation rights compared to other multilateral environmental agreements, such as the United Nations Framework Convention on Climate Change. Practices include the nomination of an Indigenous Co-Chair to assist the meeting's Chairperson, the appointment of Indigenous Co-Chairs for contact groups established during negotiations, the nomination of an Indigenous Bureau member, and enhanced opportunities to make interventions on all agenda items. A voluntary funding mechanism was

also created to facilitate the participation of IPLC representatives. Traditional knowledge is considered a ‘cross-cutting’ issue, affecting many aspects of biodiversity and thus different areas of work under the Convention, including ecosystem-related programmes of work, such as forest, inland water, and agricultural biodiversity, but also areas such as access and benefit-sharing and impact assessment. The Working Group has provided recommendations on a range of issues, including the negotiations that led to the adoption of the Nagoya Protocol on Access and Benefit-Sharing, protected areas, and safeguards in biodiversity financing mechanisms. This suggests that the efforts of IPLCs led to the construction of a space where different actors engage in exchanges on a more equal footing compared to the state-centric COP, apparently moving in the direction of meaningful collaboration and participation, though final decisions remain the prerogative of governments.

Given these developments, it comes as no surprise that participation by non-state actors (including IPLCs) in international environmental governance has attracted increasing scholarly interest in recent years. Much of this effort focuses on the more politically charged United Nations Framework Convention on Climate Change (e.g. [Allan and Had-den, 2017](#)), but work on the CBD has explored how participation and influence unfold, underlining the complexities in this apparently positive story. For example, there are relatively narrow legal and discursive spaces available to the ideas and worldviews that IPLCs advance, despite institutional moves towards participation ([Brand and Vadrot, 2013](#); [Marion Suiseeya, 2014](#)), though scholars have also concluded that the CBD grants comparatively wider discursive spaces to IPLCs compared to other multilateral environmental agreements ([Uggla, 2010](#); [Reimerson, 2013](#)). Legal scholars in particular tend to view any opening for non-state actor participation in the CBD as an advancement and opportunity for change, given the limitations that flow from the largely state-centric nature of international law ([Morgera and Tsioumani, 2011](#); [Affolder, 2017](#); [Schabus, 2017](#)). Charters, for instance, argues that ‘Indigenous Peoples have challenged the colonial association of international legality with positivism and state-centrism’ ([Charters, 2021](#), p. 124).

Legal scholars have also focused on the tensions between national sovereignty considerations and Indigenous Peoples’ rights. They note that stronger procedural rights to participation in international processes have not been matched by rights to participation in national level decision-making, for example through the right to prior informed consent over development projects affecting Indigenous lands and resources which is affirmed in the United Nations Declaration on the Rights of Indigenous Peoples ([Osakada, 2020](#)). Critical work on environmental governance also illustrates the gap between the abstract nature of global norms and the reality of practices on the ground. Successes in expanding participation at the international level are accompanied by concerns that deliberation is often treated as a checkbox item and questions of legitimacy regarding who represents whom. The vast diversity of IPLCs around the globe and the exclusion of the great majority of them from global processes due to barriers related to language and lack of access to relevant organizations, information and finances justify these questions. Unequal power relations and limited resources also result in the exclusion of IPLCs from the implementation of policies at the national and local level ([Nelson, 2010](#); [Paulson et al., 2012](#); [Gustafsson and Schilling-Vacaflor, 2022](#)). IPLCs have thus sought to leverage their participation at the international level, despite its imperfections, into influence over decisions that affect them at the domestic level. One example of this is the adoption of the Nagoya Protocol on Access and Benefit-Sharing (Nagoya Protocol) ([Jonas et al., 2010](#); [Bavikatte and Robinson, 2011](#)), which we explore in the next section and contrast with the situation of IPLC influence during the negotiations for the Kunming-Montreal Global Biodiversity Framework. Before discussing these cases, we first present our rationale, linking this to the idea of meaningful participation as a collaborative process which facilitates influence over decisions, along with some comments on methods.

#### 4. Avenues for recognition and participation

Our discussion of meaningful participation builds on the results of a discourse analysis of CBD COP decisions up to the 14th meeting in 2018. This work uncovered increasing attention to IPLCs’ participation, and led to a subsequent analysis of how participation is framed (frame analysis) ([Parks and Schröder, 2018](#); [Parks, 2020](#)). COP decisions are an ideal data source for uncovering trends in the evolution of the CBD: they give shape to the text of the Convention and provide guidance on its implementation, encapsulating consensus decision-making ([Morgera and Tsioumani, 2011](#); [Parks, 2018](#)). For the discourse analysis, the aim was to evaluate the discursive space accorded to IPLCs by investigating the extent to which dominant discourses linked to the nature/culture divide discussed in the introduction persist, and where they are challenged. Each of the decisions sampled was “coded” according to pairs of elements drawn from the literature on the CBD presented above focusing on: exclusion versus participation of IPLCs; external imposition of decisions versus support for internal initiatives ideated and executed by IPLCs; preference for knowledge emanating from modern or western conceptions of science versus recognition of traditional knowledge; and capitalist or market reasoning versus valorizations of other worldviews ([Parks and Schröder, 2018](#)).

The discourse analysis of COP decisions that address IPLCs revealed two themes: the *recognition* of traditional knowledge and customary sustainable use of biodiversity; and the *participation* of IPLCs ([Parks, 2020](#)). Although the definition of meaningful participation as collaboration was not used when this analysis was carried out, these results are interesting for a discussion of collaborative spaces. They suggest that some discursive spaces are available for IPLCs to raise issues of concern within CBD processes. Recognition and participation speak to the idea of seeing IPLC actors as equal, though questions remain about how broad, and indeed how collaborative, these spaces might be. The meanings attached to IPLCs’ participation by non-indigenous actors in particular was unclear in this analysis. Understanding these meanings, and how far they match with the ideas of meaningful participation as collaboration, is key to investigating IPLCs’ influence. A further inductive frame analysis, which investigated the definitions of participation, or the ways in which participation was framed, in COP decisions, revealed a diverse range of meanings. The focus of many was on mechanisms for participation (such as funding or places for IPLC representatives in various processes), while far fewer referred to ideas linked to recognizing IPLCs as equal actors in a collaborative decision-making space (such as the idea of ‘empowerment’ to participate ‘meaningfully’). In addition, the analysis revealed that specific and definite commitments to IPLCs’ participation tended to be watered down over time in CBD decisions ([Parks, 2020](#)).

To investigate the theme of meaningful participation we now discuss two instances of IPLCs’ participation and influence. We illustrate the specific implications of the theme of recognition through the case of the Nagoya Protocol, and reflect on the meanings of participation through the negotiations on the Kunming-Montreal Global Biodiversity Framework. For the Nagoya Protocol, we reflect on the consequences of international level influence for local level effects where IPLCs are concerned, drawing on both legal analysis and sociological literature. For the negotiation of the Global Biodiversity Framework, we also draw on legal analysis as well as analysis of the extent to which IPLCs’ claims were reflected in discussions. The legal analysis is useful to investigate whether the outcomes of the analysis regarding recognition and participation relate to advancements of IPLCs’ rights in law-making and implementation.

#### 5. Analysis and legal commentary

##### 5.1. Recognition and the Nagoya protocol on access and benefit-sharing

With regard to *recognition*, the discourse analysis showed that while

CBD decisions leave some space to IPLCs, this is limited to their role as traditional knowledge holders in line with a definition of that knowledge as a resource to be drawn upon (Whyte, 2013). Decisions that refer to the ‘valorization of other worldviews’ and ‘internal initiatives’, which would point to a recognition of cross-cultural divides and towards more meaningful collaboration (ibid), provide some insights on the breadth of this space. Only texts that conveyed an understanding of nature and culture as mutually dependent and indivisible were included in the “valorization of other worldviews” category, and references were limited. Nevertheless, there was evidence that, along with very small-scale increases in the frequency of such language, there was also an improvement in its quality: language evolved from an initial tendency to define other worldviews only in opposition to market values towards language describing and acknowledging these in their own right. The discursive space opened by the recognition of internal initiatives, which refers to IPLCs’ own definitions of their traditional knowledge as a complex inter-relationship, was also small but growing. A promising example is the inclusion of community protocols in the Nagoya Protocol. Community protocols, discussed in more detail below, are community-developed documents that record aspects of the complex interrelationships between communities and ‘nature’, and link them to legal rights and claims. The recognition of these locally-developed, community-produced ‘internal initiatives’ at the international level may increase chances for their spread (Bavikatte, 2014). This demonstrates that small discursive spaces are potentially important in terms of building meaningful collaboration.

This small space for internal initiatives uncovered in the analysis is accompanied by a peak in talk about the recognition of IPLCs at COP 10, where the Nagoya Protocol was adopted (see Fig. 1). The Nagoya Protocol was hailed as a victory for IPLCs’ influence (Bavikatte and Robinson, 2011), since access and benefit-sharing had long been a key field of struggle. Privatization of genetic resources through patents and plant breeder rights had resulted in a major asymmetry between the stewards of these resources, namely biodiversity-rich developing countries and IPLCs, and those who benefited most from products arising from their use, namely more affluent groups, research institutes and private companies in developed countries. This unfairness was exacerbated by well-documented cases of biopiracy. Biopiracy refers to the appropriation of the knowledge and genetic resources of IPLCs by individuals or institutions that seek exclusive control (through patents or plant breeder rights) (Robinson, 2012). There is extensive documentation of patents being sought or granted over resources in the form they are found in nature or in farmers’ fields, without further improvement, or for products based on plant materials and knowledge developed and used by IPLCs. Examples include the Mayocoba (or Enola) bean, quinoa, neem tree and turmeric (Aoki, 1998). In this context, the CBD objective of fair and equitable sharing of the benefits arising from the utilization of genetic resources aimed to defend the rights of the countries providing these resources, and to ensure the return of some portion of the benefits. Benefit-sharing was conceived as a tool for equity which would balance benefits for holders of genetic resources and traditional knowledge against the profits from their privatization and commercialization. It can

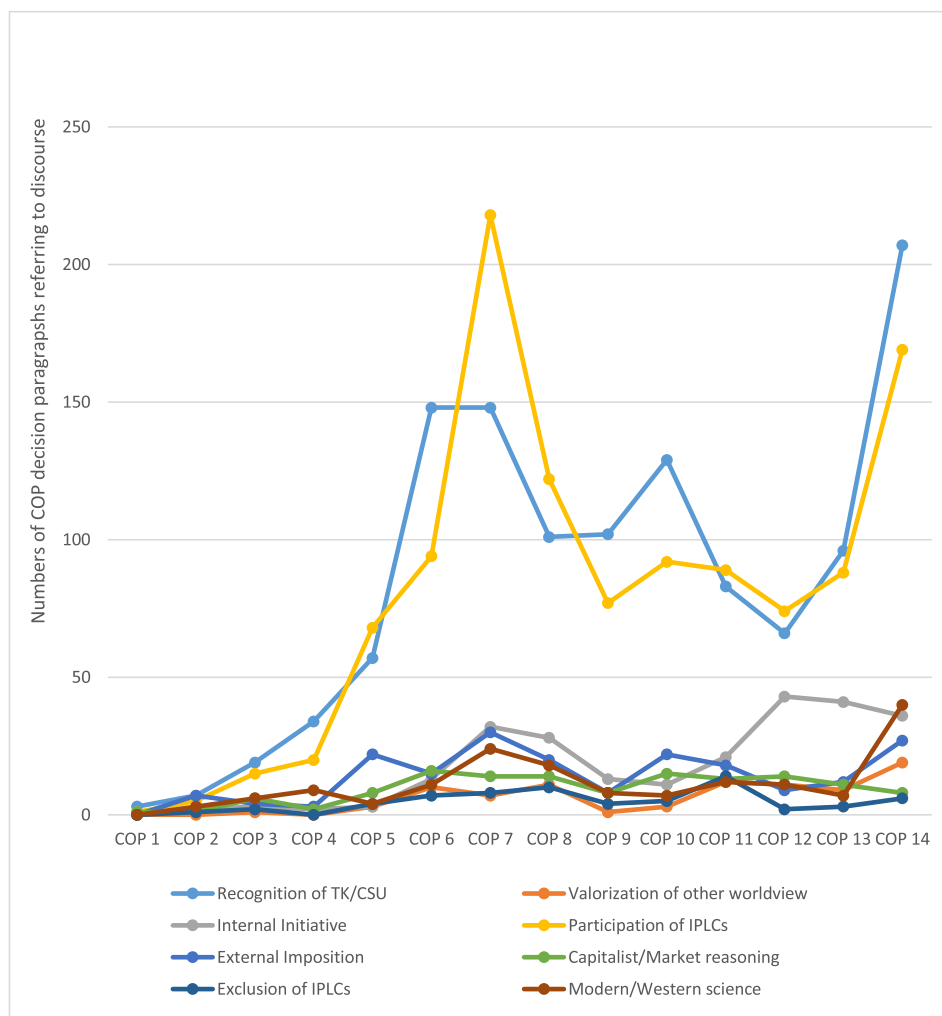


Fig. 1. Discursive space for IPLCs in the CBD (Parks, 2020, p. 112).

further be conceptualized as an incentive for stewards of biodiversity, to reward them and enable their continued contribution to the conservation and sustainable use of biodiversity (Tsioumani, 2020).

Few CBD Parties translated the CBD provisions on access and benefit-sharing into national legislation however. The CBD provides a set of norms, but gives little guidance on how to address complex situations. Interlinkages with other areas of international law, in particular intellectual property rights, and potential conflicts with the provisions of the Agreement on Trade-related Intellectual Property Rights of the World Trade Organization introduced additional challenges (Chouchena-Rojas et al., 2005; Oguamanam, 2006). In addition, developed countries were hesitant to adopt measures supporting benefit-sharing by their researchers and companies with provider countries. Finally, the CBD was silent on the use of traditional knowledge for research and development purposes and did not provide for the sharing of benefits with IPLCs. IPLCs' entitlement to benefit-sharing from the use of their traditional knowledge for conservation purposes was recognized, but with qualified legal language and subject to national legislation (CBD Article 8(j)), in contrast to the clear assertion of national sovereignty over genetic resources (Firestone et al., 2005). The CBD provided limited legal arguments for IPLCs trying to assert their rights over traditional knowledge associated with genetic resources within national contexts (Morgera et al., 2014).

For these reasons, adoption of the Nagoya Protocol was significant. It came after seven years of negotiations and was seen, as mentioned, as a win for IPLCs and the outcome of consistent efforts by their representatives and allies. It was also hailed as 'a significant event in the story of biocultural jurisprudence' (Bavikatte and Robinson, 2011, p. 51). The adoption of the Nagoya Protocol was clearly influenced by the active participation of IPLCs and their allies in the CBD process at a time when discourses about recognition, including the recognition of cross-cultural divides in the form of acknowledging other worldviews, and the recognition of cross-situational divides in the acknowledgement and calls to recognize and support internal initiatives, were on the rise. Arguably marking the culmination of a normative process exploring the human rights dimensions of biodiversity governance, the Protocol is particularly innovative from a legal point of view: it establishes a clear international obligation to share the benefits arising from the use of traditional knowledge for research and development purposes with IPLCs, and includes an obligation for Parties to adopt measures to ensure compliance (Morgera et al., 2014, p. 24 and 29). Its preamble includes language underlining 'the interrelationship between genetic resources and traditional knowledge' and 'their inseparable nature.' The Protocol further recognizes, albeit in more ambiguous legal terms, the right of IPLCs to prior informed consent for access to their genetic resources 'where they have the established right to grant access to such resources' (Nagoya Protocol Article 6(2)). It remains open to legal interpretation whether such a right should be 'established' under national or international law (Bavikatte and Robinson, 2011; Morgera et al., 2014, p. 147). It further references, in a first for an environmental treaty, IPLCs' customary laws, community protocols and procedures with respect to traditional knowledge (Article 12(1)), opening 'the door in international law to legal pluralism and self-determination' of IPLCs (Bavikatte and Robinson, 2011, p. 46) in line with steps towards meaningful collaboration.

Beyond legal analysis, the community protocols mentioned above and recognized in the Nagoya Protocol are an example of an 'internal initiative' clearly linked to the recognition of the contributions of IPLCs to biodiversity conservation and stewardship through their complex interrelationships. The expansion of their use and the consequences that might flow from this are not easy to quantify or predict, but there is potential for meaningful collaboration. They are among the few internationally recognized legal tools currently available which leave space for community-based conceptions of development and the operationalization of provisions related to access and benefit-sharing involving community resources, including traditional knowledge. As mentioned,

community protocols are documents produced by IPLCs to convey information about their ways of life and their relationship to natural resources. They emphasize a community's customary norms, laws and cultural heritage, while at the same time clarifying the rules to be followed in any negotiations regarding access to their resources, including traditional knowledge. They are often drafted in response to moves by outsiders to access and use community resources and knowledge, but may also be developed as a pre-emptive action (Parks, 2018). In that sense they can be understood as laying out processes of meaningful collaboration. In the context of access and benefit-sharing transactions, they have been heralded as tools aiming to achieve procedural fairness and substantive equity in the distribution of benefits (Raven, 2006). Beyond access and benefit-sharing, they recognize and harness the contribution of IPLCs in biodiversity conservation. In the context of infrastructure or development projects, for example, community protocols have proved valuable instruments for informing dialogues between those affected by a project and those proposing it (Parks, 2018). They are thus tools for participation in decision-making for IPLCs affected by a development project, for example by facilitating submissions in the framework of environmental impact assessments. They may also allow communities to leapfrog national gatekeepers and speak directly to global processes, including the CBD (Parks, 2020). In addition, their reflection of IPLCs' customary laws may result in influence over policy and law at multiple levels (Tobin, 2013), for example by reinvigorating traditional institutions, empowering the community concerned, or resulting in policy or jurisprudence changes at the national level.

## 5.2. Participation: failures and successes towards the Kunming-Montreal global biodiversity framework

Regarding the participation of IPLCs in the CBD processes, the analysis of COP decisions highlighted two partially promising meanings about mechanisms for participation. The first related to the submission of inputs, invitations encouraging IPLCs to provide information to a CBD body to underpin its decision-making, thus speaking to address cross-cultural divides. The second related to implementation, decision texts emphasizing the key role of IPLCs in implementing the Convention, thus speaking to address cross-situational divides. These meanings emerged in the analysis as fairly frequent with stable increases over time (Parks, 2020). In addition, the majority of decision texts calling for inputs (81 %) referred to the international level, which implies a direct path from IPLCs to an actor at the CBD (usually the Secretariat) without gate-keeping by state authorities. This suggests that there is better scope for IPLCs to choose and control the information submitted. Implementation is instead foreseen at national and local levels, which is also promising. First, as the CBD is implemented by national governments, increased attention to the role of IPLCs recognizes the persistent difficulties they meet with in terms of environmental governance. Second, it reflects recognition of the contribution of IPLCs and the crucial role of their initiatives, such as community protocols, for environmental governance (e.g. Jonas et al., 2010; Nelson, 2010; Jonas, 2017). Experiences in this vein are often at the basis for calls for inputs. In that sense, inputs and implementation are interlinked, and the account of the success in ensuring the recognition of community protocols above appears once more as a case where international level influence can translate into local meaningful collaborative spaces for IPLCs.

Once more, legal commentary is useful to assess whether these frames of participation are related to specific decisions advancing IPLCs' positions in law-making and implementation. The discourse analysis indicates a clear peak in mentions of IPLCs' participation at COP 7 (see Fig. 1). In legal terms, this can be explained by the number of decisions asserting IPLCs' role in biodiversity governance with a focus on implementation and an accompanying emphasis on the need to 'improve' participation (see Fig. 2). Notably, these decisions include the Akwé: Kon voluntary guidelines on impact assessments (CBD COP, 2004),

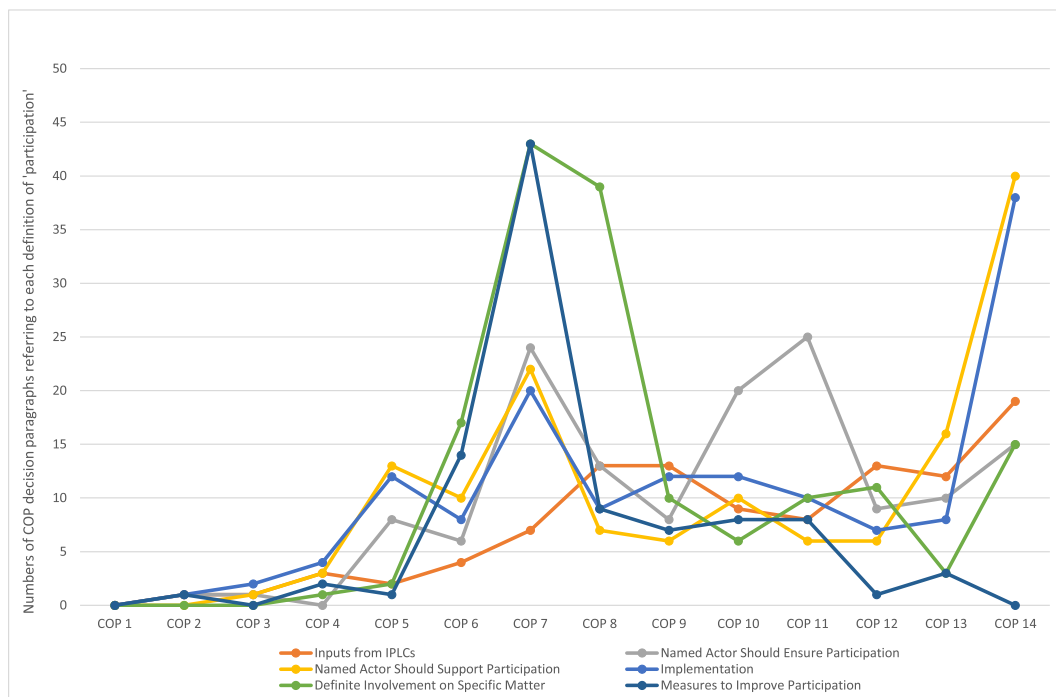


Fig. 2. Meanings ascribed to IPLCs' participation in the CBD (description used 80+ times) (Parks, 2020, p. 145).

considered among the main achievements of the Working Group on 8(j) and directly linked to the inputs and effective participation of IPLCs. The guidelines aim to support the incorporation of cultural, environmental and social considerations related to IPLCs into new or existing impact assessment procedures. They underline that traditional legal tools such as impact assessments can be used to build the enabling conditions for IPLCs' participation in decision making. Impact assessments can be used to identify and weigh the expected cultural, social and environmental costs and impacts of proposed developments, as well as opportunities and potential benefits for the communities (Morgera and Tsioumani, 2011). The guidelines specifically call for assessments of the impacts of proposed developments on traditional systems of land tenure and other uses of natural resources, noting for instance that developments that involve changes to traditional practices for food production, or the introduction of commercial cultivation and harvesting of a particular wild species, may lead to pressures to restructure traditional land tenure systems or expropriate land, as well as pressures on biodiversity (Akwé: Kon guidelines, para. 47). According to the Inter-American Court of Human Rights, the Akwé: Kon guidelines represent 'one of the most comprehensive and used standards' for impact assessments in the context of indigenous and tribal peoples (Inter-American Court of Human Rights, 2018, para 41 and fn 23). The judicial use of the guidelines beyond the CBD is proof of their impact and success (Tsioumani, 2020). In terms of building a space for meaningful collaboration, these guidelines clearly seek to redress cross-cultural divides.

At the same time, close examination of other references to IPLC participation shows that many are circumscribed and use qualified legal language, particularly where tangible IPLC rights necessary to their being treated as equal actors in collaborative decision-making are concerned. The decision on ways to conserve, sustainably use and restore biodiversity and ecosystem services while contributing to climate change mitigation and adaptation (COP Decision X/33) provides an example of such qualified legal language, with Parties allowed a wide margin of discretion to consider the need for IPLC participation in line with their own legislation. Here, it is states which define what a participatory space is, with no requirement for a more collaborative approach. Such examples serve to recall that though avenues for

participation may appear positive and promising, whether they live up to this promise depends on the complexities of how law develops and how implementation plays out in local, politically shaped, realities. The negotiations for the Kunming-Montreal Global Biodiversity Framework suggested this more circumscribed view about how IPLC participation translates into collaborative processes and eventually influence at the international level and empowerment in local realities, at least prior to CBD COP 15 held in December 2022, which surprisingly resulted in major successes for IPLCs.

The Global Biodiversity Framework replaces the 2011–2020 Strategic Plan for Biodiversity containing the Aichi Targets, which provided an overarching framework on biodiversity governance for the UN system, governments, and other partners engaged in policy development. It was finally adopted at CBD COP 15 in a form very different to the draft text negotiated before the meeting. COP 15 had originally been scheduled for 2020 but was postponed due to the Covid-19 pandemic (itself a consequence of biodiversity loss, see IPBES, 2020b). Part of the negotiations took place online in a Working Group on the Global Biodiversity Framework, with in-person meetings resuming in March 2022. The Working Group was tasked with producing the draft Global Biodiversity Framework to be proposed to the COP, and was open-ended: it included representatives of Parties and observers, including IPLCs, civil society, the private sector and academia.

Given that warnings about biodiversity loss are stark, and underline the complex interdependencies between human health, biodiversity, and the exacerbation of other global challenges including climate change, the meaningful participation of IPLCs in negotiations for the Global Biodiversity Framework appeared crucial. Having written this article more than a year prior to COP 15, we focused on the first draft of the Global Biodiversity Framework, circulated in July 2021 (CBD, 2021). To identify IPLC inputs, we referred to the second edition of the Local Biodiversity Outlooks (Forest Peoples Programme et al., 2020). The Local Biodiversity Outlooks present case studies of IPLCs' experiences in the implementation of the CBD together with claims about how the CBD should act to better support this work. It is explicitly intended to bring IPLCs' voices and experiences, understood as rooted in complex understandings of traditional knowledge that point to the complex

interrelationships at work in environmental governance, to the international level. It is designed to complement the Global Biodiversity Outlook (CBD, 2020), a flagship report published periodically by the CBD Secretariat based on research, assessments and national reports on CBD implementation. It is important to underline that the Kunming-Montreal Global Biodiversity Framework is significantly different to its first draft, and represents a significant step forward for IPLCs. This did not seem likely during the negotiations in the Working Group, partly due to the fact that virtual negotiations impeded the involvement of IPLC representatives in the process.

The second edition of the Local Biodiversity Outlooks, published in 2020, aims to communicate the perspectives and experiences of IPLCs on the current social-ecological crisis (Forest Peoples Programme et al., 2020, p. 7). For IPLCs, the biological and cultural diversity, climate and development crises stem from unsustainable global systems of values, knowledge, governance, production, consumption, technology, economics, incentives and trade, all underpinned by unequal decision-making power regarding the future of nature and peoples. The Local Biodiversity Outlooks contain three key messages. The first is that IPLCs' culture and rights should be at the heart of the Global Biodiversity Framework, since this 'would deliver sustainable livelihoods and well-being, and positive outcomes for biodiversity and climate' (ibid., p. 20). The second links the nature/culture divide to fragmentation in approaching environmental crises and their overall inefficiency through the failure to value nature for its intrinsic worth. This can be overcome by incorporating indigenous worldviews that can inspire new narratives (ibid., p. 20). The third key message calls for six transitions to move towards 'more balanced relationships within societies and with nature'. Transitions are needed in the areas of: culture (include diverse worldviews); land tenure (include customary tenure); governance (more inclusive decision-making and self-determined development); incentives and financing (reward effective culture-based solutions); economies (sustainable use, diverse local economies); and food (revitalize indigenous and local food systems) (ibid., pp. 20–21). These key messages are reinforced and supplemented with practical claims throughout the publication, with a human rights-based approach at their core. They clearly reflect the cross-situational and cross-cultural divides that are at the heart of constructing meaningful collaboration as participation.

The first draft of the Global Biodiversity Framework did echo some of the language about valuing nature and transformation found in the Local Biodiversity Outlooks, but its substance did not consider the transitions called for. Its focus was instead on implementation gaps, with the core argument being that biodiversity can be saved with proper implementation of existing rules and proper monitoring. The 'theory of change' in the first draft summarized this logic: action must be taken to: (a) put in place tools and solutions for implementation and mainstreaming; (b) reduce the threats to biodiversity; and (c) ensure that biodiversity is used sustainably in order to meet people's needs and that these actions are supported by enabling conditions and adequate means of implementation, including financial resources, capacity and technology. There was no mention here of the root causes of biodiversity loss, including unsustainable growth, a central point raised in the Local Biodiversity Outlooks and reflective of IPLC worldviews.

This difference is also reflected when considering the recognition and rights-based approaches required for the specific transitions in the Local Biodiversity Outlooks. While both documents agree that IPLCs are central and important actors for biodiversity governance, the Local Biodiversity Outlooks see the ways that IPLCs act as the blueprint for new approaches needed to solve the current crisis - IPLCs have the answers. The draft Global Biodiversity Framework instead described IPLCs as important implementers of the Convention, as well as important but passive recipients of benefits where they hold the right kind of traditional knowledge used in research and development or in natural resource management. Its references to IPLCs suggest they are resources for carrying out the Convention's work rather than holders of rights and stewards of biodiversity within their distinct cultural and socio-

economic systems. This also applies to the theme of IPLC participation - IPLCs should participate in implementation, but their role in decision-making was not central in the first draft. This strays from the definition of meaningful participation as based on equal collaboration.

Rights-based approaches, which are key in the Local Biodiversity Outlooks, were mentioned three times in the draft Global Biodiversity Framework: in relation to the 'theory of change,' which was to be implemented in a rights-based approach; in draft target 21, which mentioned respect for IPLC rights over their lands and thus directly echoed a key claim of the Local Biodiversity Outlooks; and in relation to gender equality. The draft fell short of identifying linkages between the rights-based approach and each of the proposed targets. For example, draft target 3 sought to 'ensure that at least 30 per cent globally of land areas and of sea areas [...] are conserved through effectively and equitably managed, ... systems of protected areas [...]' (CBD, 2021, p. 6), yet failed to link this to IPLCs' tenure rights (Franks, 2021). Not did the draft mention rights-based approaches under the enabling conditions for implementation, though it did refer to a 'participatory and inclusive whole-of-society approach' (CBD, 2021, p. 8) as well as an integrated approach to governance. This did point to a key claim in the Local Biodiversity Outlooks, yet how this would be achieved remained unclear, particularly since most references to IPLCs' participation referred specifically to implementation.

In what came as a major surprise, the Kunming-Montreal Global Biodiversity Framework adopted at COP 15 included a strong focus on rights-based approaches, thus marking a radical rights-turn in global biodiversity law and policy. How exactly agreement was reached on this historically controversial topic is not clear. The final text was the outcome of consultations behind closed doors and part of a compromise package of six key decisions circulated by the Chinese Presidency two days before the end of the meeting. Further research will be needed to understand how this major step forward came about. The outcome is clear however. For the first time in the CBD context, Parties have unequivocally recognized not only the contribution but also the rights of IPLCs to biodiversity, as well as different value systems and concepts, including rights of nature and rights of Mother Earth, as part of its implementation (CBD COP, 2022, Section C, paras 8-9). This is combined with the call for a human rights-based approach in implementation and acknowledgement of the human right to a clean, healthy and sustainable environment, recognized in 2022 by the United Nations General Assembly Resolution 76/300 (Ibid, Section C, para 14). These rather generic statements are accompanied by specific clauses recognizing IPLC rights to land, territories and resources. Target 22, which deals specifically with IPLCs, calls for ensuring their procedural rights (access to information, access to justice, participation in decision-making), while respecting their land and resource rights and ensuring the full protection of environmental human rights defenders. Target 23 on gender specifically recognizes women's and girls' rights and access to land and natural resources. Importantly, the need to recognize and respect IPLC rights over territories is included as a safeguard in Target 1 on spatial planning and in Target 3 on conservation of 30% of terrestrial, inland water, and coastal and marine areas by 2030. This is reinforced by the expectation that parties and other governments will ensure that the rights of IPLCs are respected and given effect (Ibid, Section C, para 6). This recognition of rights-based approaches to biodiversity governance is accompanied by references to different value systems and non-market-based approaches, signalling an acknowledgement of diverse and non-monetary economic systems outside the mainstream capitalist model. Target 16 addresses sustainable and equitable consumption "in harmony with Mother Earth," with target 19 on financial resources recognizing the role and value of collective actions, including by IPLCs, non-market-based approaches, and Mother Earth-centric actions for biodiversity conservation. Mother Earth-centric actions are defined as ecocentric and rights-based approaches enabling the implementation of actions towards harmonious and complementary relationships between peoples and nature, promoting the continuity of all living beings and

their communities, and ensuring the non-commodification of environmental functions of Mother Earth. Finally, reinforcing and expanding prior CBD law and policy, customary sustainable use of wild species should be protected and encouraged (Target 9), while the importance of IPLCs' traditional knowledge for implementation is recognized as equal to scientific evidence (Section C para 19) and as part of the information and knowledge required for decision making (Target 21).

Despite the lack of a clear argument about moving beyond the nature/culture divide and economic growth that would align with the key claims of the Local Biodiversity Outlooks, two targets in the Kunming-Montreal Global Biodiversity Framework go beyond usual biodiversity policy to address, at least partly, finance questions. Target 15 requires large corporations and financial institutions to disclose their impacts and dependencies on biodiversity; while Target 18 requires the elimination or reform of incentives harmful for biodiversity, including subsidies, in a proportionate, just, fair, effective and equitable way, and their reduction by at least 500 billion USD per year by 2030. These may concern government subsidies for agricultural, fisheries or forestry activities, which fail to take into account environmental externalities and thus encourage biodiversity loss. This stops short of the Local Biodiversity Outlooks' call for positive incentives to support small scale producers in addition to secure tenure rights, but does support its more general call for a transition to align financial flows with sustainable practices, thereby addressing cross-situational divides. In addition, reference to the "reform" of harmful incentives and qualifiers to ensure fairness and justice in the process leave space to accommodate the needs of small scale producers in national legislation.

Overall, while the strong rights-based approach was a major victory for IPLCs, the holistic approach suggested in the Local Biodiversity Outlooks did not find much space in the Kunming-Montreal Global Biodiversity Framework. This was to be expected in some respects: the Local Biodiversity Outlooks focus on IPLC contributions (though it addresses all CBD targets and policy areas), while the Global Biodiversity Framework addresses all the CBD objectives and areas of work. At the same time, the Global Biodiversity Framework falls short of reflecting the normative transformation which is advocated for in the Local Biodiversity Outlooks and which is needed to address the root causes of biodiversity loss linked to unsustainable and inequitable growth. These findings are important in terms of reflecting on how IPLCs' participation is translating into influence during the negotiations of important decisions. Until now, the CBD has provided space for IPLCs to participate in implementation in local contexts as their stewardship of biodiversity was recognized as key. This view of IPLCs as holders of resources to be used, corresponding with a less collaborative and complex understanding of traditional knowledge, could limit the role of IPLCs to the execution of decisions, reproducing problems of exclusion at the moment of implementation revealed in recent research (Gustafsson and Schilling-Vacaflor, 2022), and potentially excluding them from international and national decision-making, despite recognition of their importance. This seemed far from building participation as a space for collaboration among equals. The explicit recognition of IPLCs' rights in the new Global Biodiversity Framework however suggests at least that meaningful spaces of collaboration involving IPLCs and some states do exist, and those states were able to fight the corner for IPLC claims.

## 6. Concluding reflections

Our aim in this article was to reflect on spaces for the meaningful participation of IPLCs in CBD processes. We discussed meaningful participation as a collaborative process rooted in the understanding of complex interrelationships between 'nature,' IPLCs, and traditional knowledge, and the acknowledgement of cross-situational and cross-cultural divides, following the work of Whyte (2013). We did this by reflecting on the recognition of IPLCs' contributions and knowledge and meanings assigned to their participation by the CBD, following the results of a previous analysis (Parks, 2020), accompanied by a legal

analysis. We also sought to investigate whether this led to impacts on CBD decisions and thus the contribution of IPLCs' worldviews to improve biodiversity conservation. Due to the recognition of IPLCs' contribution to biodiversity governance, procedural advances, and the efforts of IPLCs and their allies, the CBD offers more space for IPLCs' participation compared to other multilateral environmental agreements. This does not mean that participation is meaningful and influential, however. Critical literature and empirical analysis of the political and discursive underpinnings of the CBD has shown the limitations (though not the entire absence) of this space for the claims and worldviews of IPLCs (e.g. Natarajan and Khoday, 2014). In addition, international environmental law and policy remain largely state-centric. While IPLCs have gradually been recognized as rights-holders in international law and have struggled for self-determination, states assert national sovereignty to block their struggles. However, some scope for their collaborative inclusion and subsequent influence, with positive effects for these struggles for self-determination, can be seen in their limited recognition at the international level. We presented the case of the adoption of the Nagoya Protocol on Access and Benefit-Sharing in this vein as an example where IPLCs and their allies ensured the international recognition of their local level actions and community protocols. This can be interpreted dynamically as a collaborative space that opens 'the door in international law to legal pluralism and self-determination' (Bavikatte and Robinson, 2011, p. 46), and evidence of the myriad ways in which community protocols can act as catalysts for building IPLCs' local level action and influence. Such evidence however is still scant, and particularly favorable contexts are needed.

The increasing talk about the participation of IPLCs was another key part of the analysis: recognition opened the door to participation, and participation shaped the Nagoya Protocol case. Empirical analysis of the meanings attributed to participation in the CBD suggested some shift away from collaborative processes after the adoption of the Nagoya Protocol, yet two promising paths did hold constant and appeared interrelated: calls for information inputs from IPLCs and for their participation in the implementation of the CBD. To the extent that calls for inputs are generally linked to experiences as implementers, there appears to be promise for influence over decision-making based on complex views of traditional knowledge. We presented an analysis of how the claims of IPLCs fared in the negotiation of the Kunming-Montreal Global Biodiversity Framework in this vein, reasoning that the Local Biodiversity Outlooks, which make claims about what the Global Biodiversity Framework should look like on the basis of IPLCs' experiences, should have been taken seriously. The key claims essentially called for a transformation of biodiversity governance that would recognize cross-situational and cross-cultural divides to build a space of collaborative governance, namely by moving beyond the nature/culture divide, adopting a rights-based approach, and proceeding with practical transitions to culture, governance, land tenure, finances, economics and food systems. The first draft of the Global Biodiversity Framework we examined outlined a transformation via enhanced implementation, suggesting severe limitations to the recognition and participation of IPLCs. While the Kunming-Montreal Global Biodiversity Framework adopted at CBD COP 15 shied away from the normative transformation put forward by the Local Biodiversity Outlooks, it surprisingly adopted a strong rights-based approach for the first time in the CBD framework. This suggests that spaces for meaningful collaboration exist in the CBD, but continue to be limited. It also points to the need for future research to understand this major step forward for the CBD, in view of changes in national governments' positions, negotiating dynamics in the CBD processes and impact of indigenous movements worldwide.

In this context the continued activism of the representatives of IPLCs and their allies appears to be paramount to spread this trend and place their knowledge and insights firmly within the CBD negotiations and national implementation efforts. It seems that unless meaningful collaborative spaces can be expanded, the inclusion of crucial

knowledge will be far from guaranteed and promises may be overturned.

### CRedit authorship contribution statement

Both authors (Louisa Parks and Elsa Tsioumani) certify that they have contributed equally to the concept, design, analysis, writing and revision of the manuscript.

Both authors (Louisa Parks and Elsa Tsioumani) certify that this material or similar has not been and will not be submitted to any other journal before its appearance on Biological Conservation.

### Declaration of competing interest

We have no conflict of interest to disclose.

### Data availability

Data will be made available on request.

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### References

- Adger, W.N., Benjaminsen, T.A., Brown, K., Svarstad, H., 2001. Advancing a political ecology of global environmental discourses. *Dev. Chang.* 32 (4), 681–715.
- Affolder, N., 2017. Non-state actors. In: Morgera, E., Razzaque, J. (Eds.), *Encyclopedia of Environmental Law: Biodiversity And Nature Protection Law*. Edward Elgar, Cheltenham.
- Allan, J.L., Hadden, J., 2017. Exploring the framing power of NGOs in global climate politics. *Environ. Polit.* 26 (4).
- Aoki, K., 1998. Neocolonialism, anticommons property, and biopiracy in the (not-so-brave) new world order of international intellectual property protection. *Indiana J. Glob. Legal Stud.* 6 (1), 11–58.
- Bavikatte, K., 2014. *Stewarding the Earth*. In: *Rethinking Property And the Emergence of Biocultural Rights*. Oxford University Press, Oxford.
- Bavikatte, K., Robinson, D.F., 2011. Towards a people's history of the law: biocultural jurisprudence and the Nagoya Protocol on Access and Benefit Sharing. *Law Environ. Dev.* 7 (1), 35–51.
- Berkes, F., 1993. Traditional ecological knowledge in perspective. In: Inglis, J. (Ed.), *Traditional Ecological Knowledge. Concepts And Cases*. Canadian Museum of Nature and International Development Research Centre, Ottawa, pp. 1–10.
- Berry, T., Lawson, C., 2018. 'Local communities' and traditional knowledge at WIPO: a very broad application? *Eur. Intellect. Prop. Rev.* 40, 485–489.
- Bosi, L., Uba, K., 2021. Collective action outcomes: ways forward for the subfield. *Partecipazione e Conflitto* 14 (3), 987–997.
- Brand, U., Vadrot, A.B.M., 2013. Epistemic selectivities and the valorisation of nature: the cases of the Nagoya Protocol and the Intergovernmental science-policy Platform for Biodiversity and Ecosystem Services (IPBES). *Law Environ. Dev.* 9 (2), 202–220.
- Brondizio, E., et al., 2019. Global Assessment Report on Biodiversity And Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity And Ecosystem Services. IPBES, Bonn.
- CBD, 2020. Global Biodiversity Outlook 5. CBD, Montreal.
- CBD, 2021. First draft of the Post-2020 Global Biodiversity Framework. CBD/WG2020/3/3.
- CBD Conference of the Parties (COP), 1998. In: Report of the Fourth Meeting of the Conference of the Parties to the Convention on Biological Diversity, UNEP/CBD/COP/4/27, Decision VI/9, pp. 111–115.
- CBD COP, 2004. In: *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities*, Decision VII/16, p. 10.
- CBD COP, 2010. In: Report of the Tenth Meeting of the Conference of the Parties to the Convention on Biological Diversity, UNEP/CBD/COP/10/27, Decision X/2, pp. 111–123.
- CBD COP, 2014. In: Report of the Twelfth Meeting of the Conference of the Parties to the Convention on Biological Diversity, UNEP/CBD/COP/12/29, Decision XII/12(F), pp. 91–92.
- CBD COP, 2022. Kunming-Montreal Global Biodiversity Framework. UN Doc CBD/COP/DEC/15/4.
- Charters, C., 2021. The sweet spot between formalism and fairness: indigenous peoples' contribution to international law. *AJIL Unbound* 115, 123–128.
- Chiarolla, C., 2017. "Twenty-first Century Challenges for Indigenous Peoples And Natural Resources" A Planet for Life Project. IDDRI, Paris.
- Child, B., Barnes, G., 2010. The conceptual evolution and practice of community-based natural resource management in southern Africa: past, present and future. *Environ. Conserv.* 37 (3), 283–295.
- Chouchena-Rojas, M., Muller, M.R., Vivas, D., Winkler, S., 2005. *Disclosure Requirements: Ensuring Mutual Supportiveness Between the WTO TRIPS Agreement And the CBD*. IUCN, Gland; Cambridge; Geneva.
- Colchester, M. (Ed.), 2001. *A Survey of Indigenous Land Tenure, Report for the Land Tenure Services of the Food And Agriculture Organization*. Moreton-in-Marsh: Forest Peoples Programme.
- Firestone, J., Lilley, J., Torres de Noronha, I., 2005. Cultural diversity, human rights, and the emergence of indigenous peoples in international and comparative environmental law. *Am. Univ. Int. Law Rev.* 20 (2), 219–292.
- Forest Peoples Programme, 2013. *Convention on Biological Diversity: no more excuses to postpone adoption of term 'indigenous peoples'* Submission to the CBD. <http://www.forestpeoples.org/en/topics/convention-biological-diversity-cbd/news/2013/10/convention-biological-diversity-no-more-excuses>.
- Forest Peoples Programme, International Indigenous Forum on Biodiversity, Indigenous Women's Biodiversity Network, Centres of Distinction on Indigenous and Local Knowledge and Secretariat of the Convention on Biological Diversity, 2020. *Local Biodiversity Outlooks 2: The contributions of indigenous peoples and local communities to the implementation of the Strategic Plan for Biodiversity 2011–2020 and to renewing nature and cultures*. A complement to the fifth edition of Global Biodiversity Outlook. Moreton-in-Marsh.
- Four Directions Council, 1996. *Forests, Indigenous Peoples And Biodiversity: Contribution of the Four Directions Council to the Secretariat of the Convention on Biological Diversity*. Four Directions Council, Lethbridge.
- Franks, P., 2021. *Global Biodiversity Framework: Equitable Governance Is Key*. IIED, London.
- Gadgil, M., Berkes, F., Folke, C., 1993. Indigenous knowledge for biodiversity conservation. *Ambio* 22 (2/3), 151–156.
- Gavin, M.C., McCarter, J., Berkes, F., Te Pareake Mead, A., Sterling, E.J., Tang, R., Turner, N.J., 2018. Effective biodiversity conservation requires dynamic, pluralistic, partnership-based approaches. *Sustainability* 10, 1846–1857.
- Gustafsson, M.-T., Schilling-Vacaflor, A., 2022. Indigenous peoples and multiscalar environmental governance: the opening and closure of participatory spaces. *Glob. Environ. Polit.* 1–25.
- Humphries, F., Laird, S., Wynberg, R., et al., 2021. "Survey of Access and Benefit-sharing Country Measures Accommodating the Distinctive Features of Genetic Resources for Food and Agriculture and Associated Traditional Knowledge" Food and Agriculture Organization of the UN Background Study Paper 70.
- Inter-American Court of Human Rights, 2018. *Case of the Saramaka People v. Suriname* (2008), Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs.
- IPBES, 2020. *Key Messages From the IPBES Global Assessment of Particular Relevance to Indigenous Peoples And Local Communities*. IPBES Secretariat, Bonn.
- IPBES, 2020. In: Daszak, P., das Neves, C., Amuasi, J., Hayman, D., Kuiken, T., Roche, B., Zambrana-Torrel, C., Buss, P., Dundarova, H., Feferholtz, Y., Foldvari, G., Igbino, E., Junglen, S., Liu, Q., Suzan, G., Uhart, M., Wannous, C., Woolaston, K., Mosig Reidl, P., O'Brien, K., Pascual, U., Stoett, P., Li, H., Ngo, H.T. (Eds.), *Workshop Report on Biodiversity And Pandemics of the Intergovernmental Platform on Biodiversity And Ecosystem Services*. IPBES Secretariat, Bonn.
- IPBES, 2020. *ILK Task Force Members*. IPBES Webpage. <https://ipbes.net/ilk-task-force-members>.
- Jonas, H., Bavikatte, K., Shrumm, H., 2010. Community protocols and access and benefit sharing. *Asian Biotechnol. Dev. Rev.* 12 (3), 49–77.
- Jonas, H.C., 2017. The evolution of Indigenous Peoples' and Community Conserved Territories and Areas (ICCAs) in International Biodiversity Law and Conservation Policy. In: Morgera, E., Razzaque, J. (Eds.), *Encyclopedia of Environmental Law: Biodiversity And Nature Protection Law*. Edward Elgar, Cheltenham, pp. 145–160.
- Jones, B., 2010. The evolution of Namibia's communal conservancies. In: Nelson, F. (Ed.), *Community Rights, Conservation And Contested Land: The Politics of Natural Resource Governance in Africa*. Earthscan, London, pp. 106–120.
- Kimmerer, R.W., 2002. Weaving traditional ecological knowledge into biological education: a call to action. *Bioscience* 52 (5), 432–438.
- Marion Suiseeya, K.R., 2014. Negotiating the Nagoya protocol: indigenous demands for justice. *Glob. Environ. Polit.* 14 (3), 102–124.
- Mauro, F., Hardison, P.D., 2000. Traditional knowledge of indigenous and local communities: international debate and policy initiatives. *Ecol. Appl.* 10, 1263–1269.
- Mazzocchi, F., 2020. A deeper meaning of sustainability: insights from indigenous knowledge. *Anthr. Rev.* 7 (1), 77–93.
- McGregor, D., 2008. Linking traditional ecological knowledge and western science: aboriginal perspectives from the 2000 state of the lakes ecosystem conference. *Can. J. Nat. Stud.* 28 (1), 139–158.
- Morgera, E., 2018. Dawn of new day: the evolving relationship between the convention on biological diversity and international human rights law. *Wake For. Law Rev.* 53 (4), 691–712.
- Morgera, E., Tsioumani, E., 2011. Yesterday, today and tomorrow: looking afresh at the convention on biological diversity. *Yearb. Int. Environ. Law* 21 (1), 3–40.
- Morgera, E., Tsioumani, E., Buck, M., 2014. Unraveling the Nagoya Protocol: A Commentary on the Nagoya Protocol on Access And Benefit-sharing to the Convention on Biological Diversity. Brill | Nijhoff, Leiden.
- Murphree, M., 2004. Communal approaches to natural resource management in Africa: from whence to where? *J. Int. Wildl. Law Policy* 7, 203–216.

- Natarajan, U., Khoday, K., 2014. Locating nature: making and unmaking international law. *Leiden J.Int.Law* 27 (3), 573–593.
- Nelson, F., 2010. Democratizing natural resource governance: searching for institutional change. In: Nelson, F. (Ed.), *Community Rights, Conservation And Contested Land: The Politics of Natural Resource Governance in Africa*. Earthscan, London, pp. 310–333.
- Oguamanam, C., 2006. Regime tension in the intellectual property rights arena: farmers' rights and post-TRIPS counter regime trends. *Dalhousie Law J.* 29 (2), 413–454.
- Oldham, P.D., 2003. Negotiating diversity: a field guide to the convention on biological diversity. *SSRN Electron. J.* 1–75.
- Osakada, Y., 2020. Indigenous peoples as actors in international law-making: focusing on international environmental law. In: Scott, K.N., et al. (Eds.), *Changing Actors in International Law*. Brill | Nijhoff, Leiden, pp. 101–129. [https://doi.org/10.1163/9789004424159\\_006](https://doi.org/10.1163/9789004424159_006).
- Parks, L., 2018. Challenging power from the bottom up? Community protocols, benefit-sharing, and the challenge of dominant discourses. In: 88 *Geoforum*, pp. 87–95.
- Parks, L., 2020. Benefit-sharing in Environmental Governance Local Experiences of a Global Concept. Routledge, Abingdon.
- Parks, L., Schröder, M., 2018. What we talk about when we talk about 'local' participation in international biodiversity law: the changing scope of indigenous peoples and local communities' participation under the convention on biological diversity. *Partecip.Conflitto* 11 (3).
- Paulson, N., et al., 2012. Indigenous peoples' participation in global conservation: looking beyond headdresses and face paint. *Environ.Values* 21 (3), 255–276.
- Posey, D. (Ed.), 1999. *Cultural And Spiritual Values of Biodiversity*. United Nations Environment Programme, Nairobi.
- Raven, M., 2006. Protocols & ABS: recognising indigenous rights to knowledge in Australian Bureaucratic Organisations. In: 6 *Indigenous Law Bulletin*, 13, pp. 14–15.
- Reimerson, E., 2013. Between nature and culture: exploring space for indigenous agency in the convention on biological diversity. *Environ.Polit.* 22 (6), 992–1009.
- Reyes-García, V., Fernández-Llamazares, Á., Aumeeruddy-Thomas, Y., et al., 2022. Recognizing indigenous peoples' and local communities' rights and agency in the post-2020 Biodiversity Agenda. *Ambio* 51, 84–92.
- Richardson, B., 2001. Indigenous peoples, international law and sustainability. *Rev.Eur. Comp.Int.Environ.Law* 10 (1), 1–12.
- Robinson, D.F., 2012. Biopiracy and the innovations of indigenous peoples and local communities. In: Drahos, P., Frankel, S. (Eds.), *Indigenous Peoples' Innovation: Intellectual Property Pathways to Development*. ANU Press, Canberra, pp. 77–94.
- Schabus, N., 2017. Traditional knowledge. In: Morgera, E., Razzaque, J. (Eds.), *Biodiversity And Nature Protection Law*. Edward Elgar, Cheltenham, pp. 264–279.
- Tobin, B., 2013. Bridging the Nagoya compliance gap: the fundamental role of customary law in protection of indigenous peoples' resource and knowledge rights. *LawEnviron. Dev.J.* 9 (2), 142–162.
- Tsioumani, E., 2020. *Fair And Equitable Benefit-sharing in Agriculture: Reinventing Agrarian Justice*. Routledge, Abingdon.
- Uggla, Y., 2010. What is this thing called 'natural'? The nature-culture divide in climate change and biodiversity policy. *J.Polit.Ecol.* 17 (1), 79–91.
- Ulloa, A., 2019. Indigenous knowledge regarding climate in Colombia: articulations and complementarities among different knowledges. In: Feola, G., Geoghegan, H., Arnall, A. (Eds.), *Climate And Culture: Multidisciplinary Perspectives on a Warming World*. Cambridge University Press, Cambridge, pp. 68–92.
- Ulloa, A.M., Jax, K., Karlsson-Vinkhuyzen, S.I., 2018. Enhancing implementation of the Convention on Biological Diversity: a novel peer-review mechanism aims to promote accountability and mutual learning. *Biol. Conserv.* 217, 371–376.
- Visseren-Hamakers, I.J., Razzaque, J., McElwee, P., Turnhout, E., Kelemen, E., Rusch, G. M., Fernández-Llamazares, Á., Chan, I., Lim, M., Islar, M., Gautam, A.P., Williams, M., Mungatana, E., Karim, M.S., Muradian, R., Gerber, L.R., Lui, G., Liu, J., Spangenberg, J.H., Zaleski, D., 2021. Transformative governance of biodiversity: insights for sustainable development. *Curr. Opin. Environ. Sustain.* 53, 20–28.
- Whyte, K.P., 2013. On the role of traditional ecological knowledge as a collaborative concept: a philosophical study. *Ecol. Process.* 2 (7).