

Written statement for the public hearing organised by the Committee on Economic Cooperation and Development of the German Bundestag on Wednesday, 25th January 2023, on “Global biodiversity conservation – effects of the new CBD framework on the German government’s actions”

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Summary

Government development cooperation and international conservation organisations working to implement the post-2020 Global Biodiversity Framework must consider a suite of factors to enable an effective and equitable response to the biodiversity crisis.

The following summary outlines challenges and opportunities.

- Militarisation and securitisation of protected areas facilitate human rights abuses. This raises major obstacles for implementing sustainable and Indigenous Peoples and Local Communities (IPLC) oriented conservation management.
- Extensive displacements and resource restrictions placed on IPLCs by state governments or NGOs have eroded IPLCs’ trust in conservation agencies.
- To build working partnerships and rebuild relations with IPLCs, justice frameworks need to be adopted and integrated into international donor activities at all levels.
- Organisations working in conservation should incentivise reporting, reflecting and improving on challenges and failures, especially where it concerns working with IPLCs.
- Free, Prior, and Informed Consent by IPLCs is a necessary prerequisite to engagement. IPLCs should be respected as equal partners by including them from the beginning, including recognition of their autonomy in decision-making processes.
- An independent and accessible grievance mechanism for reporting and handling complaints should be established across all post-2020 Global Biodiversity Framework working areas.
- Innovative funding models include direct funding pathways to support IPLC-led conservation and development, particularly in light of recent research showing their comparative efficacy to traditional protected areas.
- Funding directed to strengthening land tenure of IPLCs or their rights to territory and sustainable use of resources can result in positive social and environmental outcomes.
- More recognition needed on how extractive industries and pursuit of economic growth conflicts with achievement of biodiversity conservation targets.

History of protected area policies on resident human populations

Global biodiversity conservation policies, particularly in the form of protected areas (PAs), have always implicated resident human communities, termed Indigenous Peoples and Local Communities (IPLCs). Yellowstone National Park in the USA, created in 1872, is widely considered to be the first national park in the world, and many large parks and reserves were created in Global South countries during colonial administration for the enjoyment of the colonial elite. The creation of Yellowstone National Park resulted in the eviction of the Shoshone, Lakota, Nez Perce, and other native American peoples, and this model of ‘fortress conservation’ was replicated across the world¹.

Since the 1950s, for many formerly colonised countries, the creation of PAs has continued to increase, concomitant with displacement of IPLCs and restriction of access to natural resources such as timber, firewood, fodder, pasturelands, medicinal plants, wild vegetables, animal or fish protein etc. Globally, there are now over 267,000 PAs covering 15.8% of the Earth’s land surface, and over 18,000 marine PAs covering 8.16% of the Earth’s marine waters². Under the post-2020

GBF Target 3, at least 30% globally of land areas and of sea areas are to be conserved by 2030, either under PAs or Other Effective area-based Conservation Measures.

PAs are usually initiated and designated by state governments, and IPLCs are often informed by way of an eviction notice or restrictions to their means of livelihood. These regulations are often enforced by the military, who are tasked with safeguarding PAs, and reports of use of violence or intimidation by the military have surfaced. One recent example comes from Bardiya National Park, Nepal, which recently received the prestigious TX2 award for increasing its tiger population. Partly in response to this, the local community protested against recent wildlife attacks on its community, however the Nepali army reacted by fatally shooting an 18 year old woman³. Another incident from Nepal occurred in Chitwan National Park whereby a group of youths from the marginalised Chepang indigenous community entered Chitwan National Park to collect snails for food. The army arrested them, and although they were later released, one of the youths, Raj Kumar, died in hospital two days later from injuries inflicted in prison⁴. Such instances have been continually recorded across Global South countries over the last three decades^{5,6}.

Where such human rights abuses have been committed, there are often no independent watchdogs that IPLCs can report violations to. In the cases above, for example, Nepali conservation organisations (national and international) did not respond or condemn these actions. Any forms of grievance redress usually then have to be directed to human rights organisations within the country, who may be able to advise these communities of their rights and possible legal action that they can take. It is only with international pressures that funders, international NGOs (INGOs) or national park authorities may take action, such as with the case of national park rangers funded by WWF committing human rights abuses in national parks in Cameroon, the Democratic Republic of Congo, Nepal, and India. In this case, some international funding to WWF was withheld, but apologies or redress to the affected communities by either WWF or the relevant national park authority have not been made. However, withdrawing funding support to problematic organisations or governments may sometimes backfire and do more harm than good. A sudden cut in funding may result in basic services not being provisioned, and local populations may be further disenfranchised.

Underlying these violations is the lack of respect and lack of Free, Prior, and Informed Consent (FPIC); many communities are not consulted about their lands being included within PA boundaries, finding out only when authorities arrive to demolish their homes and other structures or restrict their access to vital natural resources. PA regulations might also be perceived by wildlife authorities as necessary (e.g. fishing or hunting permits) but in areas which were historically used and managed by IPLCs, can be perceived as a violation of their rights or disrespect of customary practices.

This is compounded by the fact that although many communities may have been living on that land for generations, they may not have legal tenure over the land. In some cases, this is because customary tenure of Indigenous peoples might not be recognised by the nation-state. In this report, it is important to note Indigenous Peoples and Local Communities should be seen similarly as rights holders needing respect and fair participation in decision-making processes. Although Indigenous Peoples hold additional rights under international law, such as to self-determination and self-governance, the politics of indigeneity and who counts as indigenous are under constant contestation and vary from country to country. Seeing both as having equal access to rights concerning their lands and use of resources for their livelihoods is necessary.

A longstanding historical aspect of conservation is international donors' outsized influence on protected area designation in Global South countries. In most cases, these are a continuation of colonial policies. Herein foreign institutions are able to significantly impact the lives and livelihoods of Global South populations. A well-known example is, following the Durban Accord in 2003, the Malagasy government was pressured by INGOs to increase its protected area estate.

Such influence by undemocratically elected entities on local populations, restricting their access and their resource use, is indicative of the unequal power dynamics in conservation⁷.

Further, close relations between INGOs and nation-state governments, as a result of funding agreements, can often mean that they direct conservation attention to areas that may have been thriving on their own before. This points to longstanding histories and an imperative for conservation to sell and perform success⁸. Failing to address these institutionalised habits will compromise the potential positive impact of the new CBD framework. Indeed, an evident pattern in Global South conservation and conservation more broadly is a reluctance to be reflective and admit failure, and a tendency to avoid dialogue on this subject for fear of losing funding to competitors⁹. International donors must be impressed upon that Global South organisations and governments should report on their challenges in promoting just and effective conservation, making fully transparent their failures and giving incentives to do so, well over and above the incentives to report success.

Global Biodiversity Framework and rights-based approaches

The post-2020 Global Biodiversity Framework (GBF) that was finalised at the 15th Conference of the Parties to the Convention on Biological Diversity on 19th December 2022 included human rights-based approaches (RBA) as a guiding principle, and explicitly included the rights of Indigenous Peoples, including rights to their territory, in line with the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP).

Before embarking on any process of implementation, the GBF objectives must first be understood and contextualised with regards to IPLC understandings of biodiversity conservation. This requires in-depth translation and brokering work to be done in a coordinated fashion by scientists and Indigenous knowledge holders. For example, this would entail matching common western vernacular or Latin names for certain species with local names, or reaching a common understanding of what is to be conserved or what threats to biodiversity are. An example of such a participatory research project which can be used as a future model involved Indigenous and foreign experts producing a reference library for Amazonian soil types that included both scientific and Indigenous names and ecological characteristics. This allowed a common understanding and was integral for recognising IPLC knowledge, allowing them to trust outsiders¹⁰. Trust will be a fundamental prerequisite to any joint action with IPLCs and scholarship has underlined the importance of perceptions of justice in facilitating that and enabling reciprocal and effective partnerships¹¹.

It is therefore integral to promote rights-based approaches, which may be foregrounded in the widely applied environmental justice framework of recognition justice, procedural justice, and distributional justice. Recognition justice refers to the respect of diverse values, knowledges, genders, ethnicities, castes, classes, and abilities. Recognition justice for IPLCs would involve centering their understanding of nature when designing a conservation action plan. Recognition also includes the existence of unequal power structures within society and avoidance of cultural and cognitive domination taking into account histories of colonisation.

Procedural (or representational) justice is about struggles over membership, having one's voice heard, listened to, and being recognised as eligible to participate. A typical example would be holding meetings about PA management at times where the marginalised in a community cannot attend. More serious forms of misrecognition occur when IPLCs are seen as ineligible to participate in conservation management decision-making processes.

Distributional injustices are often the most visible, and include the high opportunity costs that IPLCs face in coexisting with wildlife, their unequal share of the benefits of wildlife tourism, their

eviction from PAs, or the costs they accrue in safeguarding biodiversity on behalf of the global community. All three forms of environmental justice are linked and must be discussed in tandem.

As such, for RBA to be mainstreamed, all parties involved need to be aware of their capacity and obligation as rights holders and duty bearers, be sensitive to the history of the specific place and/or people involved, and be attentive to the political economy and power disparities between the parties involved¹². There also needs to be access to funding and capacity-building of all parties involved, and mutual trust between the parties involved or in the process.

Providing direct funding to IPLCs, or funding organisations that focus on IPLC-led conservation such as the Pawanka Fund (<https://pawankafund.org>), is most efficient and sustainable (IIPFCC 2022 - principles & guidelines for direct access funding). At present, less than 1% of funding goes to IPLCs despite their contributions to conservation¹³. Donor agencies can implement funding streams that are less bureaucratic and are directly accessible by IPLCs, so that they are empowered to direct and determine conservation efforts on their land.

Funding can also focus on supporting IPLCs to secure their land tenure, strengthening or revitalising local or customary governance institutions, or improving their capacity to monitor their lands, resources, and deter intruders into their territories¹⁴. Communities with secure land tenure, autonomy over management and legitimate internal institutions often have better environmental outcomes¹⁵, while Indigenous lands that are covered by PA legislation have better quality forests¹⁶.

Political support, supportive legislation and a constitution that recognises Indigenous peoples and their rights to their customary territory and practices, or that enables secure tenure to land used or managed by IPLCs can thus help achieve RBA. These legislations that strengthen IPLC rights and tenure should be enforced, so that when required and demanded by IPLCs, state forces help IPLCs to keep out unwanted intruders in their territories. Other environmental regulations on limiting habitat destruction, pollution, and extractive industries can also be supportive.

Over the last decade (2012-2022), over 1700 land and environmental defenders have been killed, many of whom are Indigenous peoples fighting against extractive activities by corporations or state governments¹⁷. Such killings are often extrajudicial, yet national governments have often failed to investigate and bring perpetrators to justice. Environmental defenders have often been criminalised, hindering their efforts at protecting biodiversity and their lands¹⁸.

A global grievance mechanism and restitution process would allow for independent reporting and monitoring of complaints regarding human rights abuses in conservation, and a clear protocol for seeking redress¹⁹. Such a mechanism would have to be easily accessible and be perceived as legitimate. While INGOs such as WWF or Conservation International may have their own grievance mechanisms, there is seldom independent monitoring or auditing that grievances will be adequately and appropriately addressed.

Principles and guidelines of working with IPLCs to implement rights-based approaches to conservation

Working with IPLCs to implement RBA to conservation requires in the first instance, an acknowledgement and recognition that IPLCs have long been stewards of their land, and in many cases, the rich biodiversity and positive environmental outcomes in their lands are a result of their active management and practices²⁰. For Indigenous peoples, this includes recognition of their rights to self-determination, self-governance, and that for many communities, collective tenure rights are more important than just individual rights.

The minimum duty as required by nation-states are

- 1) recognition and protection of IPLCs' rights to the lands and resources that they have traditionally used, occupied, or owned;
- 2) active consultation and having Free, Prior, and Informed Consent (FPIC) before undertaking any measures that would affect IPLCs' lands and resources;
- 3) respect and protection of IPLC's traditional knowledge and practices regarding conservation and sustainable use of their lands and resources; and
- 4) that IPLCs obtain their share of equitable benefits arising from activities related to their lands or resources.

Ideally, IPLCs will be empowered, through the accessibility of direct funding, to lead, design, and implement conservation projects on their lands or regarding their resources, or be equipped with skills to be able to do so²¹. They can then approach their national governments, if they so wish to, for their contributions to be included within national targets (under Other Effective area-based Conservation Measures). At all points, their right to self-determination and self-governance should always be respected.

However, in most cases, it still falls within the remit of national governments to identify and draw up conservation action plans. In such instances, any planning for PAs should be done with the active and equal participation of IPLCs living in areas that would be affected, these PAs should be considered for co-management with or full management by IPLCs. This may include their responsibility to map, monitor, regulate, and report on wildlife populations and the PA, and should be provided the funding and capacity to do so. For example, such an arrangement exists in the Thaidene Nënë National Park Reserve and Territorial Protected Area in Canada. These responsibilities need to be carefully and explicitly negotiated between all parties involved, and assessed on a continuous basis to ensure that obligations are met by all parties.

At a minimal level, community participation is considered to have been achieved when, after national park authorities have decided where they will create a protected area, a meeting with the communities affected is convened and communities informed of the process. Communities are seldom given the opportunity to have their opinions and objections heard, or to provide other recommendations or input. However, this does not meet full and effective participation criteria.

Meetings should thus be conducted in a language accessible to community members, in an appropriate meeting format and with a suitable time frame to allow for adequate discussion and addressing of views from all parties involved, i.e. early on in the process of creating a new conservation area. IPLCs should be given equal weight in decision-making power, including on the topic of benefit-sharing. Although it may not always be possible to include all members of the IPLC community in discussions, where representatives have to be chosen, perspectives from all genders and age groups should be considered, with separate discussions held if necessary. Although autonomy in decision-making is central to RBA, this can be a contentious point when national governments or other stakeholders are not willing to share power.

Even in cases where conservation projects are led or dominated by IPLC representatives, care must be taken that elite capture of benefits does not result in furthering inequality within the community. This can often be the case when traditional governance structures come up against state-appointed leaders, or when customary governance institutions are weak and no longer respected in the community due to wider influences.

In selecting project partners in Global South countries, donor agencies should also be aware that not every Global South organisation represents or are considered IPLCs, since national elites may be better positioned to write a funding proposal. A thorough understanding of the specific political economic context of the place is required, and appropriate partners who hold legitimacy chosen. The inclusion of human rights sensitive experts and anthropologists within the project may help ensure that principles and guidelines to rights-based approaches are adhered to.

Assessments of project implementation should include social impacts, such as perceptions of equity or infringements of rights, through the use of independent auditors.

While these are some universal principles that are recommended to ensure the rights of IPLCs are not undermined by conservation actions, when working with specific partners, their requirements and recommendations should be heeded over universal ones.

Economic growth, the financial sector, and biodiversity conservation

However, a major critique of the GBF is that it still fails to address the underlying and major driver of biodiversity loss – neoliberal capitalism and its relentless pursuit of economic growth²². Land-use change is the biggest direct driver of biodiversity loss, in particular deforestation, which has been linked to investments in land and the international trade for timber, crops, or livestock^{23, 24} or extractive industries such as oil, gas, or metal mining²⁵. These not only affect forest cover and biodiversity, but also communities living within²⁶.

As such, a major point to note for Global North countries wanting to fulfil its GBF obligations would be to ensure consistency across its ministries such that it is not further contributing to these drivers of biodiversity loss, such as through continued coal extraction. This is particularly key since offsetting, whether biodiversity or carbon, is shown to be ineffective²⁷. Each area holds unique biodiversity, and even if similar species can be found elsewhere, those particular areas hold specific and special meanings to human communities that cannot be replaced.

Further, although the financial sector is an inexorable part of capitalism, there are still certain steps that can be taken to ensure that private and public investment conserves and promotes biodiversity. Taxes can be levied on companies whose activity is premised on environmental destruction, exploitation of human labour and animal life such as with extractive industries, industrial agriculture or livestock farms. All investments in environmentally destructive activities should be halted, and ethical investment principles should be applied universally.

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