The ICCA Consortium

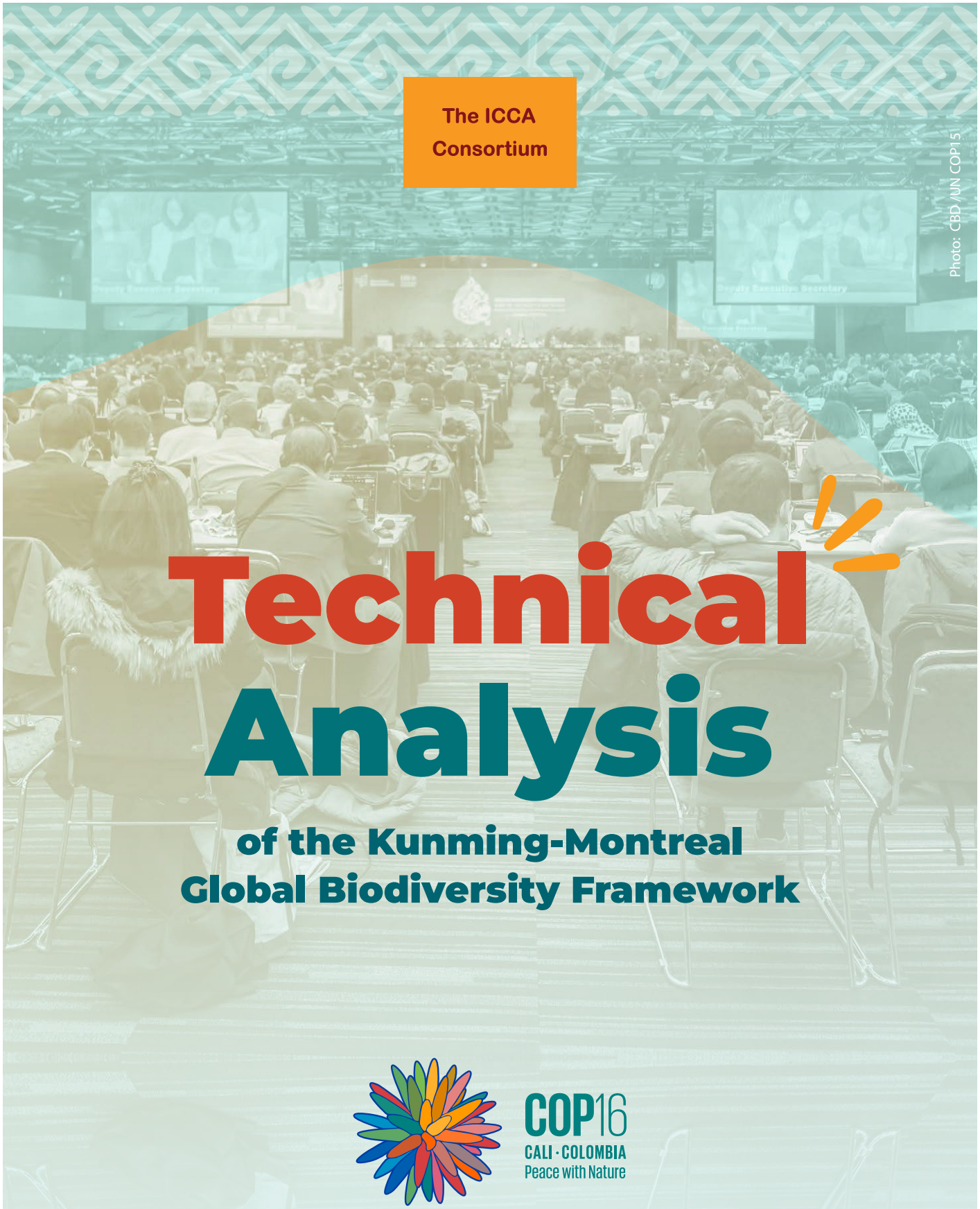

Photo: CBD /UN COP15

Technical Analysis

of the Kunming-Montreal Global Biodiversity Framework

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Technical Analysis of the Kunming-Montreal Global Biodiversity Framework

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In the early hours of December 18, 2022, Parties to the UN Convention on Biological Diversity (CBD) adopted the **Kunming-Montreal Global Biodiversity Framework** after a long and complicated process. The framework includes a 2050 Vision, a Mission, Goals and Milestones, Action Targets and other details.

In 2018, the ICCA Consortium made a **submission** on the preparation, scope and content of the post-2020 global biodiversity framework. This submission outlined key substantive issues that would elicit the 'biggest gains' for biodiversity conservation and that needed to be systematically addressed in the post-2020 global biodiversity framework. It focused on three key issues:

Appropriately recognizing and supporting Indigenous Peoples and local communities and their efforts to govern, manage, maintain, protect and conserve their collective territories of life on their own terms, including through self-determined governance institutions, customary laws and protocols, and systems of Indigenous and local knowledge and customary and communal sustainable use;

Halting industrial drivers of biodiversity loss, including by eliminating perverse investments and incentives that are harmful for biodiversity; and

Preventing and prohibiting attacks on the communities, organizations and individuals who defend biodiversity and Territories of Life against threats.

Since then, the ICCA Consortium **consistently advocated** for these priorities, with the addition of human rights as a fourth and overarching priority in early 2020.

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1 The **ICCA Consortium** is a non-profit membership-based association dedicated to promoting appropriate recognition and support for territories and areas conserved by Indigenous Peoples and local communities (abbreviated as "ICCAs" or, more simply, "territories of life"). It is composed of Members (Indigenous Peoples' and community-based organizations, federations and movements and their supporting civil society organizations and networks) and Honorary members (dedicated individuals with particular expertise and experience). As of September 2024, it includes 244 Members and more than 485 Honorary members in nearly 90 countries. This brief was developed by the ICCA Consortium's Secretariat with several rounds of consultation with and feedback from Members and Honorary members.

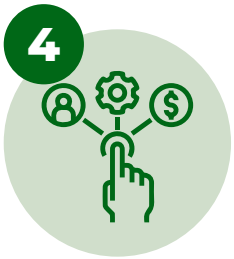
Not all of these key issues were systematically incorporated into the Kunming-Montreal Global Biodiversity Framework when it was finally adopted in December 2022. However, the new framework is arguably a new high watermark for recognition for Indigenous Peoples' and local communities' rights in multilateral environmental law. This is the result of several years of sustained collective effort of Indigenous and local community organizations – including ICCA Consortium Members – and many other supporting organizations, both within the official UN CBD process and in many national contexts.

The present analysis of the new global biodiversity framework focuses on specific targets of relevance to the ICCA Consortium's Members and to custodians of territories of life, and reflects on the main priorities identified in our 2018 submission at the start of the negotiation process. It highlights key considerations in the following six themes:

Systematic integration of human rights, the rights-based approach, justice and equity;

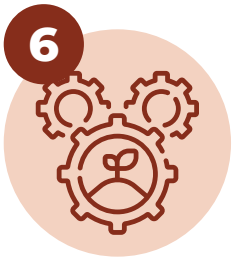
Legal recognition of collective lands, waters and territories of life;

Beyond protected areas and other effective area-based conservation measures (OECMs);



Perverse investments and incentive, positive incentives and resource mobilization;

Protection of environmental human rights defenders; and



Implementation mechanisms.

Photo: Aydin Palabiyikoglu/Anadolu Agency/Getty Images

1

Systematic integration of human rights, the rights-based approach, justice and equity

Throughout the negotiation process, the ICCA Consortium worked with allies and partners to advocate for the recognition and inclusion of human rights and rights-based approaches in the post-2020 global biodiversity framework. The Human Rights Working Group, established after a **pivotal workshop** in February 2020, developed a series of discussion papers and technical guidance to directly inform the development and implementation of the post-2020 framework.[2]

In addition to the key priorities identified above in our 2018 submission, the ICCA Consortium also proposed a focus on key principles for the framework based on: (1) key principles of international environmental law; and (2) other cross-cutting principles concerning good governance and human rights, including women's rights. The ICCA Consortium also highlighted key issues related to marine territories of life and worked to strengthen marine issues in the framework. Other key principles, including good governance and justice, human rights, full and effective participation of rights-holders, fair and equitable sharing and distributions of benefits, and inherent connections between biological and cultural diversity, were incorporated into the new framework.

There are eighteen references to rights in the framework, including: the human rights-based approach; the rights of Indigenous Peoples and local communities; the rights of nature; the rights of Mother Earth; rights outlined in the United Nations Declaration on the Rights of Indigenous Peoples; and the right to a clean, healthy and

2 This series of discussion papers produced by the Human Rights Working Group focuses on: **integrating human rights** (April 2021); **applying a human rights-based approach** (September 2021); **implementing a human rights-based approach** (March 2022); and **realizing human rights** in the post-2020 framework (December 2022).

sustainable environment. The framework affirms the rights of Indigenous Peoples and local communities and calls for Parties to recognize, ensure and protect these rights.

Section C on *Considerations for the implementation of the framework* includes significant recognition of the rights of Indigenous Peoples and local communities, human rights, and the rights-based approach. Paragraph 7(a) includes specific acknowledgement of Indigenous Peoples' and local communities' right to free, prior and informed consent and states that "nothing in this framework may be construed as diminishing or extinguishing the rights that Indigenous Peoples currently have or may acquire in the future." In paragraph 7(g) of Section C, Parties agree that implementation of the framework "should follow a human rights-based approach, respecting, promoting and fulfilling human rights."

The framework also includes explicit language on respecting the rights of Indigenous Peoples and local communities in Target 1 (spatial planning), Target 3 (area-based conservation), Target 22 (participation and access to justice), and Target 23 (gender equality). Target 3 also includes "equitably governed" as a fundamental aspect of protected and conserved areas.

These are notable inclusions in the final text, especially given initial resistance of Parties to include any mention of rights in the targets. Indeed, during the CBD intersessional meetings in November 2019, Parties seemed almost completely uninterested in – if not averse to – incorporating human rights language into the draft framework, claiming (incorrectly) that human rights have no place in an environmental treaty like the CBD.

The changes in attitudes and political will and the progress made from 2020-2022 are notable in multilateral diplomacy and should not be glossed over. These advances were possible through multi-faceted and collective efforts, including supporting the direct participation of rights-holders in the negotiation process, building the evidence base, developing practical technical guidance, advocating publicly and behind-the-scenes with Parties, cross-leveraging progress in the UN human rights system, and diligently engaging in the negotiation of the framework until the last moment of its adoption.

As the world turns its attention to implementation, these **multiple references to rights, justice and equity throughout the framework provide clear and important 'hooks' for realizing these rights in practice at national and sub-national levels, both in terrestrial and marine areas**.

However, some may think that the recognition of human rights in the framework only pertains to safeguarding against human rights violations. **Parties and other duty-bearers must go far beyond the basic principle of "do no harm" in the name of conservation**. A human rights-based approach also includes the responsibility and duty to proactively uphold human rights and support their progressive realization *through* conservation efforts. As underscored by the UN General Assembly's **recent recognition** of the universal human right to a healthy environment and by years of preceding work by the **UN Special Rapporteurs** on human rights and the environment, respecting, protecting and fulfilling human rights is good for the environment, and vice versa.

Photo: Abduvohid Safarov

2

Legal recognition of collective lands, waters and territories of life

Indigenous Peoples and local communities **play an outsized role** in sustaining a healthy planet for all, but often with little to no legal recognition, and often while defending against significant external threats. **Appropriately recognizing and supporting their territories and ways of life on their own terms is one of the biggest opportunities to address the biodiversity and climate crises.**

Target 3 includes specific mention of the rights of Indigenous Peoples and local communities over their traditional territories and recognizes Indigenous and traditional territories as a third pathway alongside protected areas and other effective area-based conservation measures (OECMs). Target 22 recognizes the rights of Indigenous Peoples and local communities over their lands, territories, resources, and traditional knowledge.

Although these provisions could have gone even further including by clearly reaffirming the rights and redressing rights violations and missed opportunities for conservation by recognising and respecting Indigenous and traditional territories of life that are fully or partially overlapped by protected areas,[3] they represent an important step forward for the UN CBD and a **new minimum standard** for implementing the framework in ways that support Indigenous Peoples' and local communities' systems of tenure, self-governance and sustainable ways of life. One aspect of the framework that could be strengthened in the monitoring framework is a focus on collective rather than (only) individual systems of tenure and self-governance by Indigenous Peoples and local communities and on the forms of solidarity and collective action that sustain these systems.

3 See ICCA Consortium published a policy brief on this issue in 2016: ICCAs and Overlapping Protected Areas: Fostering Conservation Synergies and Social Reconciliation. See also 2016 CBD COP13 Decision XIII/2 (para. 7) and IUCN World Conservation Congress Resolutions 2012 094, 2016 030, and 2020 118.

Photo: Save Rivers

3

Beyond protected areas and OECMs

Much of the planet's remaining biodiversity exists outside of state-governed protected areas and OECMs. It is also increasingly recognized that protected areas on their own are insufficient to address the current biodiversity and climate crises, especially when they are not equitably governed and/or effectively managed.

Target 3 of the new global biodiversity framework provides for **diverse stewardship approaches, not only as part of but also beyond (and within) protected areas and OECMs**. Appropriate recognition and support for Indigenous Peoples' and local communities' territories of life can come in many diverse forms, not only through area-based conservation frameworks. For example, legal recognition of an Indigenous Nation's customary territory, laws, governance, and knowledge systems could be a much more durable and effective way to support that Nation to sustain and defend their territory of life in its totality, rather than limited recognition through a narrowly defined protected area law that doesn't align with their worldview or values and that might even undermine their customary practices that contribute to conservation outcomes.

Target 3 refers to "*recognizing indigenous and traditional territories*" in the same sentence as protected areas and OECMs. Indigenous and traditional territories are the longest standing, proven pathways for nature conservation, surpassing the conservation outcomes and longevity of protected areas and OECMs. The clear and explicit intention is to provide a **third pathway** for Indigenous Peoples and local

communities to choose the best options for recognition of their territories of life in their unique contexts.[4] They may well choose to pursue recognition within a national law or framework on protected areas or OECMs in certain circumstances. However, they may not wish to pursue such recognition, particularly in countries where those laws and frameworks have consistently undermined their rights and ways of life and they have no reason to believe the same legal and administrative systems will do things differently.

This 'third pathway' language in Target 3 builds on a range of existing CBD COP Decisions[5] and provides a critically important legal and policy hook for more diverse options for Indigenous and community custodians of territories of life to secure their rights at national and local levels.[6]

Photo : Coordination Afrique de l'Ouest

4 Tugendhat, Helen, Ameyali Ramos Castillo, Viviana Elsa Figueroa, Aquilas Koko Ngomo, Jennifer Corpuz, Holly Jonas, and Milka Chepkorir. (2023) "Respecting the rights and leadership of Indigenous Peoples and local communities in realizing global goals", Oryx, Volume 57, Issue 3. doi: **https://doi.org/10.1017/S0030605323000406**.

5 See, for example, **Decision VII/28**, paras. 2.1.2., 2.2.4, Kuala Lumpur, 2004; **Decision IX/18**, paras 6(a,b), Bonn, 2008; **Decision X/31**, paras 31(b), 32(a,b), Nagoya, 2010; and **Decision XIII/2** para 5(b)(vii), Cancún, 2016; as well as the Voluntary Guidance in **Decision XIV/8**, Annex II, Sharm El-Sheikh, 2018.

6 For more detailed consideration of Target 3, refer to the ICCA Consortium's draft sister analysis, tentatively titled: "Technical Analysis of Target 3 of the Kunming-Montreal Global Biodiversity Framework". It is currently open for consultation with the ICCA Consortium membership and will be available online once finalized.

Photo: Kynan Tegar

4

Perverse investments and incentives, positive incentives and resource mobilization

In Target 18 of the new framework, Parties commit to identifying and phasing out or reforming incentives (including subsidies) harmful for biodiversity and scaling up of positive incentives for the conservation and use of biodiversity. At COP13, Parties identified "*appropriate recognition and support for indigenous peoples and local communities that conserve territories and areas*" as an example of a **positive incentive measure** in the context of resource mobilization (Decision XIII/20, paragraph 23).

Divestment from the drivers of biodiversity loss (and climate breakdown) is essential to achieving the transformative intention of the framework. As long as public and private funds are spent on incentives and industries that are harmful to biodiversity (such as mining, monoculture plantations, and mega-infrastructure projects), we will continue to lose biodiversity and the effect of any positive incentives and actions (such as area-based conservation) will likely be significantly undermined or even negated, included so called nature-based solutions to climate change such as hydro, solar, wind mega projects, compensatory afforestations, and monoculture plantations on territories of life.

In Target 15, Parties adopted very weak text on legal, administrative and policy measures for businesses, including transnational corporations and financial institutions. This target focuses on "encouraging" and "enabling" businesses to disclose, monitor and report on their own actions and compliance. Parties failed to include anything regarding their responsibilities or commitments to actually regulate businesses and hold them legally accountable for the well-documented and undeniably negative impacts they have had on biodiversity and the communities who depend most directly on it around the world. Rights-holders and supporting civil society organizations have **expressed serious concerns** about Parties' failure to adopt any moratoria on biodiversity-harmful industries on the one hand, while including, on the other hand, references to the controversial concepts of **nature-based solutions** and biodiversity offsets and credits.

Photo: Mark Z. Saludes

5

Protection of environmental human rights defenders

In addition to the integration of general human rights mentioned above, Parties have committed to ensuring the protection of environmental human rights defenders in Target 22. This is a long overdue acknowledgement of contributions of environmental defenders to biodiversity and nature and a necessary call to action to halt violent attacks against Indigenous Peoples, communities, organizations, movements, and everyday citizens who are defending biodiversity and nature against threats. It is also closely linked to eliminating perverse incentives for harmful industries, as the same industries that are direct drivers of biodiversity loss also pose the biggest direct threats to territories of life and their Indigenous and community custodians, who often put their lives on the line to defend themselves.

While there is still significant ambiguity about how this will be monitored and reported, the inclusion of specific language on environmental human rights defenders in Target 22 must be used to pressure Parties to address the increasing attacks (political, legal, economic, physical, mental and emotional) against defenders. Implementation of this target must be closely linked to existing and emerging national, regional and international instruments, mechanisms and institutions on human rights defenders, including for reporting on and responding to threats, attacks and other violations. Although defenders are facing increasingly regressive legal and political contexts in many countries, some countries are strengthening at least some forms of legal protection. The **UN Special Rapporteur** on human rights defenders and the Alliance for Land, Indigenous and Environmental Defenders (**ALLIED**, of which the ICCA Consortium is a member) are key actors and advocates in this space.

Finally, Indigenous Peoples and local communities stand together and work collectively to defend themselves and their territories of life against threats. As such, in addition to protection of individual human rights, it is important to focus more on collective forms of protection as well as on solidarity and cultural, spiritual and psycho-social support, rooted in and responsive to the self-determined preferences of the affected communities and individuals.

Photo: WGII Tamblingan Bali

6

Implementation mechanisms

Attention now needs to shift to **inclusive and progressive interpretation and implementation** of the most supportive provisions of the new global biodiversity framework at national and sub-national levels. It is essential to continue advocating for the **four key pillars** of: (a) human rights in general and group-specific rights; (b) appropriate recognition and support for territories of life and their Indigenous and community custodians; (c) protection of the people, communities and organizations risking their lives to defend Mother Earth; and (d) divestment from the drivers of biodiversity loss and climate breakdown and appropriate investment in and support for Indigenous Peoples and local communities on the frontlines of protecting, conserving, and defending nature.

This needs to happen both within and beyond the official UN CBD processes of developing and implementing national biodiversity strategies and action plans (commonly referred to as NBSAPs) and of preparing and submitting national reports. Volunteer peer review of national reports – which has been tentatively tested in recent years in the CBD – and alternative or shadow reports prepared by grassroots movements and civil society organizations are important ways to diversify and strengthen transparency and accountability in the reporting process.

One of the very real challenges with implementation of multilateral agreements such as the UN CBD is that areas of law and policy are “silo-ized” and fragmented, and environment ministries tend to be relatively weak compared to others that have a stranglehold over national economies. Even the best intentioned environment ministries may be unable to successfully implement the framework if their governments are prioritizing continued economic growth at (nearly) any cost. Much more emphasis is needed on integrated approaches to addressing the planetary crises, and much more decisive government action needed to kick some societies’ addiction to fossil fuels and other destructive industries.

Parties and other duty-bearers must work in partnership with Indigenous and community representatives to develop appropriate and robust indicators for the monitoring framework. This should include specific indicators that address quality, not just quantity, and that are based on multiple types of knowledge and evidence, including Indigenous and local knowledge systems as well as social sciences. Extra care needs to be taken in this regard, as inappropriately formulated indicators (such as those only based on natural sciences and quantitative measures) can backfire and undermine the efforts of Indigenous Peoples and local communities.

The **Mapeo app** for ICCAs–territories of life, the **ICCA Registry** (hosted by the UNEP World Conservation Monitoring Centre), the **Indigenous Navigator**, and **national and regional digital and other documentation** carried out by Members of the ICCA Consortium, as well as the broader process guidance for **self-strengthening territories of life**, are just a few of many existing tools and platforms to support Indigenous Peoples and local communities to document and share information about themselves and their territories of life on their own terms.

Photo: PAFID

Reflections

A systemic change is needed in the mainstream conservation industry, as that is where a significant amount of power is still held and many decisions are being taken as CBD Parties, funders and others seek to implement the framework. Although the new forms of recognition in the framework are a high watermark for the UN CBD, at the same time, it should be considered a new minimum standard that needs to be continually built upon in law and policy. Certain parts of the framework are getting closer to the core of what needs to be recognised in the UN CBD, but it is by no means 'enough', certainly not just on paper.

In parallel, the ICCA Consortium will continue to support our Members' self-determined priorities through **diverse networks of solidarity and support**, including: processes of self-strengthening; legal, policy and social recognition (including collective territorial and resource rights and mechanisms for redress in cases of harms); mapping, documentation and communication; inclusive peer learning, exchange, and monitoring processes; and direct, equitable and accessible financial support for custodians of territories of life and their organizations[7].

7 The ICCA Consortium, its Members and other actors, including the CBD Secretariat, have shared numerous sources of guidance and inspiration that support these and other pathways, e.g.: "**Territories of Life: 2021 Report**", ICCA Consortium (2021) and "**Recognizing and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities: Global overview and national case studies**", CBD Technical Series No. 64 (2014); and "**Rights-Based Conservation: The path to preserving Earth's biological and cultural diversity?**", Rights and Resources Initiative (2020).

Photo: CBD /UN COP15

The ICCA Consortium